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| Dated 20[\*] |
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| (1) *[ESCo]*  AND  (2) *[Contractor]* |
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| |  | | --- | | GREEN HEAT NETWORK FUND  DRAFT: OPERATION AND MAINTENANCE AGREEMENT | |
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# Version Control

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| **Version number** | **Date of issue** | **Author** | **Comment** |
| 1.0 | 31 March 2019 | Lux Nova Partners | Initial/internal draft |
| 2.0 | 31 July 2019 | Lux Nova Partners | Draft issued for focused consultation |
| 3.0 | 16 October 2019 | Lux Nova Partners | Marked up following responses to consultation meeting on 19.09.19 |
| 4.0 | 13 December 2019 | Lux Nova Partners | Marked up after responses to wider consultation which closed on 17.11.2019 |
| 5.0 | 15 December 2020 | Lux Nova Partners | No further comments from BEIS |
| 6.0 | 29 November 2022 | Lux Nova Partners | Update of statutory references and consistency/ drafting amends |

*GUIDANCE NOTE*

*This Operation & Maintenance Agreement is not necessarily relevant to every district heating scheme.*

*However, it may be relevant to a district heating scheme where an energy supplier (ESCo) owns (or has rights to use) and needs to maintain district heating infrastructure. The initial extent of this infrastructure is to be illustrated in Schedule 20 (Drawings).*

*ESCO may have separately procured the design and build of this infrastructure (for example, through any of a number of industry standard form contracts) or it may have adopted the infrastructure already built by someone else.*

*How this agreement might fit into a project structuring is illustrated in the following diagram:*

*Under this Agreement, ESCo is outsourcing to a Contractor a range of operation and maintenance services in respect of that infrastructure. These services are to be scoped out in Schedule 1 (Service Requirements).*

*Extensions to the infrastructure can be made (under separate agreement) and brought into the operation and maintenance responsibility of the Contractor, in accordance with the acceptance and take over processes of Schedule 7 (Acceptance process) and Schedule 8 (Take over process).*

*This Operation & Maintenance Agreement can be used, with modifications, to provide the operation and maintenance elements under the umbrella Design, Build, Operate and Maintain (DBOM) Agreement, or alternatively for use by a Developer/ Landlord who owns an Energy System, is a heat supplier to its tenants and employs an O&M Contractor.*

*The structuring assumption and risk allocation underlying this Operation and Maintenance Agreement is far from the only possible or valid structure and, even adopting the structure described above, there could be a wide range of variant approaches to aspects of the commercial structuring and contracting matrix. Therefore, it is very likely that this template Operation and Maintenance Agreement will serve only as a starting point for drafting of an agreement that will need to be tailored to the particular characteristics of a given district heating scheme. Public sector bodies should take into consideration any public accounting impacts when entering into agreements.*

*THIS DOCUMENT IS RELEASED TO BE USED AS A DRAFTING TEMPLATE, TAILORED AND DEVELOPED FURTHER FOR THE SPECIFICS OF THE PARTICULAR PROJECT.*

*Neither the content of the above guidance, nor the drafting of this template document, is intended to constitute or to replace the need for expert legal advice, which should be sought on every district heating project. No liability is accepted for use of this template document. All liabilities are excluded to the fullest extent permitted by law.*

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**THIS AGREEMENT** is dated [DATE]

**Parties**

1. [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS](**ESCo**); and
2. [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS](**Contractor**),

(ESCo and the Contractor each being a “**Party**” and together being the “**Parties**”).

**Recitals**

1. ESCo is [to be] the supplier of heat [and electricity] at a district heating scheme serving consumers in [INSERT][[1]](#footnote-1).
2. [[Following a tender exercise,] ESCo has appointed [INSERT] (the "**Design & Build Contractor**") to design and build the Initial Energy System.][[2]](#footnote-2)
3. [Following a tender exercise,] the Contractor has been selected by ESCo to operate and maintain the Initial Energy System [and any extensions to it].
4. The Contractor has available the necessary resources, knowledge and experience required to operate and maintain the Energy System.
5. ESCo wishes to appoint the Contractor to operate and maintain the Energy System on the terms and conditions of this Agreement.

**Agreed Terms**

1. Interpretation

The following definitions and rules of interpretation apply in this Agreement.

* 1. Definitions:

**Accept:** the process by which the Contractor acknowledges responsibility for the Energy System (excepting the Taken Over Assets), including the issuing of an Acceptance Certificate, in accordance with Schedule 7 *(Acceptance Process)* (and “**Acceptance**” shall be construed accordingly)**.**

**Acceptance Certificate:** has the meaning given in paragraph 2.3 of Schedule 7 *(Acceptance Process).*

**Affiliate:** means, in relation to any person, any subsidiary, any holding company or any subsidiary of such holding company, and holding company and subsidiary shall have the meaning given to them in section 1159 of the Companies Act 2006.

**Agreement:** this agreement.

**Annual Contractor Cap on Liability**: has the meaning given to it in clause 17.3 *(Liability of the Contractor).*

**Annual ESCo Cap on Liability:** has the meaning given to it in clause 17.2 *(Liability of ESCo)*.

**Applicable Law**: any law applicable in England, including any common law, statute, statutory instrument or other delegated or subordinate legislation or any international law, any proclamation, byelaw, rule, order, notice of any competent body, together with any applicable regulatory policy, guidance, direction, industry code or judgment of a relevant court of law, or directives or requirements of any Regulatory Body.

**Approvals:** the confirmation in writing by ESCo to the Contractor of the acceptance by ESCo of any aspect of the Services including the operation, maintenance and repair of the Energy System which is required from time to time for the operation of the Energy System and the performance of the Services in accordance with this Agreement.

**Approved Sub-Contractor:** a Sub-Contractor [on the list of approved sub-contractors or] the appointment of which has been approved by ESCo in accordance with clause 13.1 *(Sub-contracting and assignment).*

**Approved Sub-Contract:** a Sub-Contract which have been approved by ESCo in accordance with clause 13 *(Sub-contracting and assignment)*.

**Assumed Contracts**: the contracts listed in Part 2 of Schedule 16 (*ESCo’s Equipment and assumed contracts*) which are to be [novated]/[assigned][[3]](#footnote-3) by ESCo to the Contractor with effect from the Services Commencement Date.

**Authorisations:** means any authorisation, consent, permission, approval, resolution, licence, exemption, filing, notarisation, permit, licence, agreement or registration, (whether statutory, regulatory, contractual or otherwise) including (without limitation) required by Applicable Law [or required from any statutory utility provider][or required from any owner of property or other rights] necessary for the provision of the Services.

**Background IPR**: any and all IPRs that are owned by or licensed to either Party and which are or have been developed independently of this Agreement (whether prior to the Effective Date or otherwise).

**Benchmarker**:has the meaning given to it inSchedule 5 *(Benchmarking).*

**Benchmarking Report**: has the meaning given to it in Schedule 5 *(Benchmarking).*

**Benchmark Review**: has the meaning given to it in Schedule 5 *(Benchmarking).*

**Business Day**: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**CEDR**: means the Centre for Effective Disputes Resolution.

**Change**: has the meaning given in Schedule 17 (*Change Control Procedure*).

**Change Control Note**: has the meaning given in Schedule 17 (*Change Control Procedure*).

**Change Control Procedure**: the procedure for introducing changes to this Agreement, as set out in Schedule 17 (*Change Control Procedure*).

**Change in Law**: the occurrence of any of the following after the Effective Date:-

1. the enactment or commencement of any new Applicable Law, other than any Applicable Law which on the Effective Date had been published:-
   1. in a draft Bill as part of a Government Departmental consultation paper;
   2. in a Bill laid before Parliament;
   3. in a draft statutory instrument; or
2. the modification or repeal of any Applicable Law;
3. a change in the interpretation, application, or enforcement of any Applicable Law;
4. any applicable judgment of a relevant court of law which changes a binding precedent; or
5. the imposition of a requirement by a competent authority, having the force of law, for an additional Authorisation that was not required on the Effective Date.

**Change of Control**: in respect of either Party, a change in Control of that Party.

**Change Request**: a written request (in the case of ESCo) or a recommendation (in the case of Contractor) for a Change which is submitted by one Party to the other pursuant to the Change Control Procedure.

**Charges**: the Service Charges and, as applicable, any Commercial Customer Secondary Distribution Network Charges, Repair Works Fees and/or Exit Assistance Service Charges and any other charges which may become due and payable pursuant to this Agreement.

**[CIU:** means a customer interface unit which contains a display and associated ancillary equipment, wiring and apparatus connected to a Customer Metering System in a Residential Unit, showing consumption, payment, debt and consumption history**]**[[4]](#footnote-4)

**Commercial Building**: a building occupied by a Commercial Customer and supplied with Energy Supply [directly from a Substation].

**Commercial Customer:** a commercial owner or occupier of a Commercial Unit which is a counterparty to a Commercial Unit Heat Supply Agreement.

[**Commercial Customer Secondary Distribution Network:** within a Commercial Building[[5]](#footnote-5), the heating network, and associated plant and equipment downstream of [the secondary side of the Substation][[6]](#footnote-6), but not including the Customer Metering System or the Network Metering System.]

[**Commercial Customer Secondary Distribution Network Charge**:has the meaning given under clause 3.10.2 *(Extensions to Demarcation Points with respect to Commercial Customers).*]

**Commercial Unit Heat Supply Agreement**: an agreement between ESCo and a Commercial Customer for the supply of Energy.

**Commercial Unit:** a building or unit which is used for business or commercial purposes and which is connected to a [Secondary Distribution Network].

**Common Parts**: those areas within a building in which any Customer Units are located that are provided with Energy Supply but which are not Customer Units.

**Common Parts Heat Supply Agreement:** an agreement between ESCo and a Landlord for Energy Supply to Common Parts.

**Confidential Information**: any information, however conveyed or presented, that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing Party, together with all information derived by the receiving Party from any such information and any other information clearly designated by a Party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential.

**Connection Agreement:** the form of agreement between ESCo and a Developer (and any Landlord which succeeds in title) in relation to the connection of a Development to the Energy System.

**Consumer Prices Index**: the Consumer Prices Index as published by the Office for National Statistics from time to time, or failing such publication, such other index as the Parties may agree most closely resembles such index.

**Contractor Cure Period:** has the meaning given under clause 28.1.3 *(Remediation Plan Process).*

**Contractor Insurances:** those insurances set out in clause 27 *(Insurance).*

**Contractor’s Data:** any data (including any Personal Data relating to the staff, customers or suppliers of Contractor), Documentation, text, drawings, diagrams, images or sounds (together with any database made up of any of those), embodied in any medium, that are supplied to ESCo by or on behalf of Contractor.

**Contractor's Exit Manager**: the person identified as such in Schedule 14 Part 1 (*Representatives*) (or any replacement notified by the Contractor to ESCo from time to time), being the person responsible for managing the Exit Plan on behalf of the Contractor.

**Contractor’s Financial Liability:** means as set out in Schedule 3 *(Charges)*.

**Contractor's Personnel**: all employees, staff, other workers, agents, contractors and consultants of the Contractor who are engaged from time to time in the discharge of the Contractor’s obligations under this Agreement.

**Contractor's Premises**: any premises in the possession or control of the Contractor from which the Services are delivered, in whole or in part or in which records relating to the Services are kept.

**Contractor's Representative**: the person identified as such in Schedule 14 Part 1 (*Representatives*) (or any replacement notified by the Contractor to ESCo from time to time) as the person responsible for managing the Contractor's overall relationship with ESCo.

**Contractor's Responsibilities**: the responsibilities of the Contractor as specified in Schedule 12 (*Contractor's responsibilities*).

**Contractor's Services Manager**: the person identified as such in Schedule 14 Part 1 (*Representatives*) (or any replacement notified by the Contractor to ESCo from time to time), being the person responsible for managing the Services on behalf of the Contractor.

**Contractor Termination Grounds:** any of the following:

1. ESCo fails to make payments to the Contractor which are properly due and invoiced, and the payments:
   1. are in a sum in excess of [INSERT] % of the annual Service Charges;
   2. have been due for more than [INSERT] calendar days since their due date for payment;
   3. have been due for more than [INSERT] calendar days since the Contractor served formal notice of ESCo’s non-payment; and
   4. remain outstanding;
2. the aggregate liability of ESCo to the Contractor arising out of or in connection with this Agreement and with respect to any and all claims and costs arising out of or under this Agreement or arising out of the performance or non-performance of any other obligation of ESCo in connection with this Agreement, including any non-contractual obligations arising from this Agreement, exceeds the Annual ESCo Cap on Liability;
3. an Insolvency Event occurs in respect of ESCo;
4. [other].

**Contractor Termination Notice**: has the meaning given to it in clause 30.2.1(b) (*Termination by Contractor*).

**Contract Year**: a period of twelve (12) months (or such shorter period if this Agreement is terminated earlier), commencing on the Services Commencement Date and/or each anniversary of the Services Commencement Date.

**Control**: in respect of either Party, the acquisition of either:

1. the voting rights attaching to [25]% or more of the voting shares in that Party; or
2. the power to direct or cause the direction and management of the policies of that Party in accordance with the acquirer's wishes, whether as a result of the ownership of shares, control of the board of directors, contract or any powers conferred by the articles of association or other constitutional documents of that Party.

**Customer:** a Commercial Customer, a Residential Customer or a Landlord (as the context requires).

**Customer Metering Systems:** heat meters installed at each HIU and any electronic remote meter reading system connected to each of these meters, together with the central monitoring computer and any interface modules and associated equipment.

[**Customer Services Contractor:** the contractor employed by ESCo to undertake customer services, metering and billing services and meter maintenance services for Customers and HIU maintenance services to Residential Customers on behalf of ESCo in relation to the Energy System.][[7]](#footnote-7)

**Customer Unit:** means a Commercial Unit or a Residential Unit.

**Data Protection Legislation:** means all Applicable Law relating to the processing of Personal Data and privacy, including (i) the UK GDPR; (ii) the Data Protection Act 2018 to the extent that it relates to the processing of Personal Data and privacy.

**Default**: any default of either Party in complying with its obligations under this Agreement.

**Deficiency Points:** as defined in paragraph 2.2 of Part 2 of Schedule 2 *(Output Specification).*

**Deficiency Point Value:** as defined in paragraph 2.3 of Part 2 of Schedule 2 *(Output Specification).*

**Deficiency Sum:** as defined in paragraph 2.5 of Part 2 of Schedule 2 *(Output Specification)*.

**Demarcation Points:** the physical point at which the Contractor’s responsibility to provide the Services in relation to the Energy System [ends]/[transfers from the Contractor tothe Customer Services Contractor][[8]](#footnote-8)as identified on the Responsibility Diagram.

[**Design & Build Contract:** means [INSERT DETAILS].]

[**Design & Build Contractor:** means [INSERT DETAILS].

**Developer:** a developer of a Development requiring Heat, with whom ESCo has entered into or enters into (as relevant) a Connection Agreement and Framework Heat Supply Agreement.

**Development:** means a development of commercial or residential buildings and units, or a combination which are connected, or are to be connected, to the Energy System.

**Dispute**: any dispute under this Agreement.

**Dispute Resolution Procedure**: the dispute resolution procedure set out in clause 33 (*Dispute resolution procedure*).

**Documentation**: all technical specifications, drawings, user manuals, operating manuals, process definitions and procedures, and all such other documentation as is required:

1. to be developed by the Contractor in order to provide the Services; or
2. to be supplied by the Contractor to ESCo to enable it to make use of the Services.

**Due Date**: has the meaning give in clause 7.3 (*Charges and invoicing*).

**Effective Date**: the date of this Agreement.

[**Electricity Network**: the Initial Electricity Network and any modifications or extensions thereto made in accordance with this Agreement.]

**Emergency:** an event, incident or circumstance which is or is likely to be materially disruptive to the operation of the Energy System, cause material damage to property, or creates an imminent risk of material harm to the health, safety or welfare of anyone or material harm to the environment.

**Energy**: Heat [and/or, electricity, as applicable].

**Energy Centre:** means all buildings and structures, including accommodation within the buildings and structures, on the Energy Centre Site, including but not limited to the structure, cladding systems, plant rooms, gas meter rooms, control room, offices, meeting rooms, visitors centre, toilets, store rooms, roof and all associated equipment, plant and services, together with any extensions thereto.

**Energy Centre Site:** means the site of the Energy Centre [with title reference [INSERT]], as identified [with a [red] line] in drawing [*insert drawing reference*] set out in Schedule 20 *(Drawings)*.

**Energy Plant and Equipment:** means the heating facilities, plant and equipment installed [in the Energy Centre] for the purposes of production and delivery of Heat [and production of electricity], together with any ancilliary plant and equipment[[9]](#footnote-9).

**Energy System**: means:

1. the Heat Distribution Network;
2. [the Electricity Network];
3. the Energy Plant and Equipment;
4. the Residential Unit HIUs;
5. the Commercial Unit HIUs;
6. the CIUs;
7. the Customer Metering System;
8. [Temporary Boiler Plant];

**ESCo's Data**: any data (including any Personal Data relating to the staff, customers or suppliers of ESCo), Documentation, text, drawings, diagrams, images or sounds (together with any database made up of any of those), embodied in any medium, that are supplied to Contractor by or on behalf of ESCo.

**ESCo's Exit Manager**: the person identified as such in Part 1 of Schedule 14 (*Representatives*) (or any replacement notified by ESCo to Contractor from time to time) being the person responsible for managing the Exit Plan on behalf of ESCo.

**ESCo's Personnel**: all employees, staff, other workers, agents, contractors and consultants of ESCo who are engaged from time to time in the discharge of ESCo’s obligations under this Agreement or the provision of the Energy Services.

**ESCo's Representatives**: the person identified as such in Part 1 of Schedule 14 (*Representatives*) (or any replacement notified by ESCo to Contractor from time to time), being the person responsible for managing ESCo's overall relationship with Contractor.

**ESCo's Responsibilities**: the responsibilities of ESCo as specified in Schedule 11 (*ESCo's responsibilities*).

**ESCo's Services Manager**: the person identified as such in Part 1 of Schedule 14 (*Representatives*) (or any replacement notified by ESCo to Contractor from time to time) being the person responsible for managing the Services on behalf of ESCo.

**ESCo Termination Grounds:** any of the following:

1. a Major Default has occurred which is capable of remedy, ESCo has issued a Remediation Notice pursuant to clause 28.1 *(Remediation Plan Process)* and the Contractor:
   1. has failed to put forward a Remediation Plan and failed to remedy the breaches specified in the Remediation Notice within the Contractor Cure Period; or
   2. has put forward a Remediation Plan but has materially failed to remedy the breaches specified in the Remediation Notice in accordance with the Remediation Plan;
2. a Major Default has occurred which is not capable of remedy, and in respect of which:
   1. it would be unreasonable to expect ESCo to accept financial compensation for such default (where applicable); and
   2. such Major Default has given ESCo reasonable grounds to believe that the Contractor is manifestly incapable of properly fulfilling its obligations pursuant to this Agreement;
3. the Contractor, as employer under an O&M Sub-contract, has breached the O&M Sub-contract such that an O&M Contractor Termination Ground has arisen;
4. an Insolvency Event occurs in respect of the Contractor;
5. the aggregate liability of the Contractor to ESCo arising out of or in connection with this Agreement and with respect to any and all claims and costs arising out of or under this Agreement, or arising out of the performance or non-performance of any other obligation of the Contractor in connection with this Agreement, including any non-contractual obligations arising from this Agreement, exceeds the Annual Contractor Cap on Liability;
6. the Contractor has committed any act set out under clause 34 *(Termination for Corrupt Gifts, Payment of Commission, Bribery or Corruption)*;
7. the Contractor has failed to comply with clause 3.12 *(Financial Security)* or failure by the provider of any Financial Security to comply with the terms of such Financial Security;
8. [other].

**ESCO Termination Notice**: has the meaning given to it in clause 30.1.1(b)(*Termination by ESCo*).

**Exit Assistance Services**: the transitional services to be provided by the Contractor in respect of the termination of this Agreement, as set out in the latest Exit Plan.

**Exist Assistance Service Charges**: the charges in respect of Exit Assistance Services, set out in Schedule 3 *(Charges)* or the Exit Plan*.*

**Exit Manager**: the ESCo Exit Manager or the Contractor Exit Manager, as applicable, and ‘**Exit Managers**’ shall be construed accordingly.

**Exit Plan**: the plan for the provision of the Exit Assistance Services in the event of the expiry or termination of this Agreement for any reason, as set out in the Annex to Schedule 18 (*Exit plan and service transfer*) as may be amended from time to time in accordance with clause 32 (*Exit and service transfer*).**Financial Security:** financial security meeting the requirements set out in and in the form appended to Schedule 11 *(Performance Security).*

**Forced Outages:** a time or period when any component of the Energy System is unavailable for operation for any reason other than scheduled maintenance and such unavailability is not excused by this Agreement.

**Force Majeure Event**: means the occurrence after the date of this Agreement of any event beyond the reasonable control of a Party, which cannot reasonably be avoided or overcome by that Party and which is not attributable to the acts or omissions of that Party and which may include (but is not limited to):-

1. war, hostilities (whether war be declared or not), invasions, act of foreign enemies, civil war, sabotage, piracy;
2. rebellion, terrorism, revolution, insurrection, military or usurped power, riot, civil commotion or disorder;
3. ionising radiation or contamination by radio‑activity, except as may be attributable to ESCo and/or any ESCo Related Parties or the Developer and/or any Developer Related Parties is the source or cause of such radiation or contamination;
4. chemical or biological contamination of the Energy System and/or the communal energy supply from any of the events referred to in paragraph (a) above; or
5. contamination, the presence of which was caused by the release, discharge, spillage or deposit of that contamination by a third party;
6. operation of the forces of nature such as earthquake, hurricane, lightning, typhoon or volcanic activity;
7. explosions, fires or destruction of plant, machinery or premises;
8. acts, inactions, defaults or restraint of a statutory undertaking, government or public authority, whether lawful or unlawful, except for:-
   1. acts for which the relevant Party has assumed the risk by virtue of other provisions of this Agreement;
   2. acts which the relevant Party should reasonably have anticipated and against which it should reasonably have mitigated; and
   3. any lack of Authorisation, licence or approval necessary for the performance of this Agreement which is to be issued by any public authority unless ESCo or the Developer (as applicable) has failed to apply for any such Authorisation in accordance with Good Industry Practice;
9. strikes, lockouts or labour disputes generally affecting the construction industry or energy generation industry or any supply chain related to or, service or supply to such industries, or a significant sector of any of them;
10. the discovery of fossils, antiquities or unexploded ordnance at the Development;
11. failure or interruption of supply of any utilities serving the Energy System;
12. epidemics or pandemics; and

which directly causes either Party to be unable to comply with all or a material part of its obligations under this Agreement provided that it shall not include events or circumstances which delay or prevent the ability of the relevant Party to make any payments when due under this Agreement.

**Force Majeure Termination Notice**: has the meaning given to it in clause 30.3 (*Force Majeure Termination*).

**Foreground Intellectual Property:** all Intellectual Property relating to the Energy System and the provision of the Services in relation to the Energy System which is:-

1. conceived, first reduced to practice or writing or developed in whole or in substantial part by a Party or the Parties jointly; or
2. conceived, first reduced to practice or writing or developed in whole or in substantial part by the agents, representatives, contractors or sub-contractors of a Party and licensed, transferred or assigned to that Party,

during the term of this Agreement.

**Framework Heat Supply Agreement**: an agreement between ESCo and a Developer or Landlord for the supply of Energy to a Development.

**Good Industry Practice**: those practices, methods, specifications and standards which comply with all Applicable Law, applicable Standards and Authorisations that a competent and experienced contractor in the district heating industry would be expected to use and/or adopt in relation to the provision of comparable works and services which are substantially similar to the works and/or services (as applicable) or the relevant part of them to be delivered pursuant to this Agreement, having regard to factors such as the nature and size of the Parties , the Service Levels, the Term, the pricing structure and any other relevant factors.

**Good Value:** has the meaning given to it in Schedule 5 *(Benchmarking).*

**Group**: in relation to a company, that company, any subsidiary or holding company [from time to time **OR** at the date of this Agreement] of that company[, and any subsidiary [from time to time **OR** at the date of this Agreement] of a holding company of that company].

**Group Company**: in relation to a company, any member of its Group.

**Helpline:** as defined under paragraph 17 of Schedule 1 Part 2 *(The Services).*

**Heat:** heating and/or cooling, as specified in Schedule 1 *(Service Requirements).*

**Heat Interface Unit** or **HIU:** the heat interface unit located in a Customer Unit or Common Part that transfers heat from the Secondary Distribution Network to the Tertiary Heating System (excluding any Customer Metering Systems and ancillary parts) within a Customer Unit or Common Parts, and includes the cabinet casing, back plate and all other equipment within the HIU.

**Heat Distribution Network**: the Primary Distribution Network and any modifications or extensions thereto made in accordance with this Agreement and any Secondary Distribution Network(s) Accepted in accordance with this Agreement.

**Heat Network Regulations:** the Heat Network (Metering and Billing) Regulations 2014, together with any associated guidance, including the heat Network (Metering and Billing) Regulations 2014 Scope Guidance (March 2015).

**Indemnified Party:** as defined under clause 18.1.1 *(Indemnity)*.

**Initial Energy System:** the elements of the Energy System (including the Initial Heat Distribution Network) [and, where relevant, Initial Electricity Network] constructed under the Design & Build Contract as at the Effective Date*.*

**[Initial Electricity Network:** the network of wires and ancillary electrical plant and equipment a schematic of which is set out in Schedule 20 *(Drawings)*.]

**Initial Heat Distribution Network:** the network of heat pipes and ancillary plant and equipment a schematic of which is set out in in Schedule 20 *(Drawings)* together with any additional pipework, plant or equipment added as part of the Primary Distribution Network Completion Works.

**Initial Term**: the period commencing on the Effective Date and ending on the [NUMBER] anniversary of the [Effective Date **OR** Service Commencement Date].

**Insolvency Event**: in respect of either Party:

1. other than for the purposes of a bona fide reconstruction or amalgamation, such Party passing a resolution for its winding up, or a court of competent jurisdiction making an order for it to be wound up or dissolved, or that Party being otherwise dissolved; or
2. the appointment of an administrator of, or the making of an administration order in relation to, either Party, or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or any part of the entity's undertaking, assets, rights or revenue; or
3. that Party entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them, or taking steps to obtain a moratorium, or making an application to a court of competent jurisdiction for protection from its creditors; or
4. that Party being unable to pay its debts, or being capable of being deemed unable to pay its debts, within the meaning of section 123 of the Insolvency Act 1986; or
5. that Party entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors.

**Internal Secondary Distribution Network**: any part of a Secondary Distribution Network which is above ground and internal to any Residential Units or Commercial Unit:

1. from the point of entry to a Residential Unit to the HIU; and
2. where a Commercial Unit is fitted with a residential style HIU, from the point of entry to that Commercial Unit to the HIU or otherwise from the point of entry to the Commercial Unit.

**IPRs**: any and all intellectual property rights of any nature anywhere in the world whether registered, registrable or otherwise, including patents, utility models, trade-marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

**Landlord:** the title holder of a building in which a Substation or Customer Unit is located, or a Commercial Building (which may include a Developer and its successor in title).

**Major Default:** means:

1. a material breach by the Contractor of its obligations under this Agreement; and/or
2. a failure by the Contractor to meet any of the Service Levels for [INSERT] consecutive months or a total of [INSERT] months or more in any rolling 12-month period; and/or
3. [INSERT] or more Monthly Service Failures have occurred in any 12-month rolling period; and/or
4. the Contractor fails to pay any undisputed sum due to ESCo within [INSERT] calendar days from the due date, having received a written demand for payment from the other Party and, following the due date, a further notification of non-payment.

**Minimum Design Life:** means for design life for the components of the Energy System and the Energy Centre as follows:

*[INSERT TABLE SETTING OUT COMPONENT DESIGN LIFES - EG:]*

|  |  |
| --- | --- |
| ***Component*** | ***Minimum Design Life*** |
| *Energy Centre structure and civil works* | *[ ] years* |
| *Energy Centre façade* | *[ ] years* |
| *Energy Centre roof* | *[ ] years* |
| *Boilers* | *[ ] years* |
| *Pumps* | *[ ] years* |
| *Controls* | *[ ] years* |
| *Pressurisation units* | *[ ] years* |
| *Thermal stores* | *[ ] years* |
| *Ventilation plant* | *[ ] years* |
| *Above ground pipework* | *[ ] years* |
| *Below ground pipework* | *[ ] years* |

**Mixed Use Development:** a Development which contain both Residential Units and Commercial Units.

**month**: a calendar month(and monthly shall be interpreted accordingly).

**Network Extension:** means any extension of the Energy System [following the Services Commencement Date], including any Primary Distribution Network Extension.

**Network Metering Systems:** heat meters installed at each Substation, and any electronic remote meter reading system connected to each of these meters, together with the central monitoring computer and any interface modules and associated equipment, that are not Customer Metering Systems.

**Normal Working Hours:** [8]am to [6]pm and only on [Mondays to Fridays][, and excluding Bank Holidays].

**O&M Manuals:** the operation and maintenance manuals supplied to the Contractor by ESCo or the Design & Build Contractor, as relevant, on or prior to the Services Commencement Date [(which should contain information related to installed equipment product information, testing and commissioning information and manufacturers’ recommended maintenance standards)].

**Operational and Strategic Spares**: as defined under paragraph 10.1 of Schedule 1 Part 2 *(Service Requirements).*

**Other Party:** as defined under clause 21.1.3 (*Intellectual Property Rights*).

**Payment Period:** a [month] during the Term (including any incomplete month prorated, at the beginning or end of the Term).

**Performance Monitoring Reporting System:** the system described in Paragraph 4 of Schedule 1 Part 2 (*Service Requirements*) and more particularly described in Schedule 2 Part 1 (*Output Specification and Service Levels*).

**Person:** any natural person, corporation, division of a corporation, partnership, trust, joint venture (which includes a co-ownership), association, company, estate, unincorporated organisation or government.

**Personal Data**: means any information relating to an identified or identifiable natural person that is processed by Contractor as a result of, or in connection with, the provision of the services under this Agreement; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

**Personnel:** the Contractor’s Personnel or ESCo’s Personnel, as the context requires.

**Policies**: those policies set out in Schedule 13 *(Standards and Policies).*

**PPM System:** the planned preventative maintenance system prepared in accordance with paragraph 3 of Schedule 1 Part 2 *(Service Requirements).*

**Practical Completion:** shall have the meaning given to it under (as relevant):

1. the Design & Build Contract; or, as applicable
2. where any works to deliver a Network Extension are undertaken by a Third Party Contractor, in the relevant Third Party Works Contract,

and “**Practically Complete”** shall be construed accordingly.

**Primary Distribution Network**: means:

1. the Initial Heat Distribution Network; and
2. once Practically Complete, any Primary Distribution Network Extension(s).

**Primary Distribution Network Completion Works**: any works required to be undertaken by the Design & Build Contractor under the Design & Build Contract following Practical Completion of the Initial Heat Distribution Network to complete and fully commission the Initial Heat Distribution Network.

**Primary Distribution Network Extension**: means any addition to the Initial Heat Distribution Network [constructed pursuant to a works contract entered into between ESCo and the Design & Build Contractor or constructed pursuant to a works contract entered into between ESCo and the Design & Build Contractor or a Third Party Works Contractor (as the context requires)].

**Qualifying Change in Law:** either:

1. a Change in Law, the terms of which apply expressly to this Agreement and not to similar contracts procured, or to the Contractor and not to other persons; or
2. a Change in Law which specifically refers to the provision of services the same as or similar to any of the Services.

**Quality Management System:** the management and quality control system prepared in accordance with paragraph 4.5 of Schedule 1 Part 2 (*Service Requirements*).

**Regulatory Body**: any government department and regulatory, statutory and any other entity, committee and body which, whether under statute, rules, regulations, code of practice or otherwise, is entitled by any Applicable Law to supervise, regulate, investigate or influence the matters dealt with in this Agreement or any other affairs of ESCo (including Ofgem and the Heat Trust).

**Remediation Notice**: a written notice given by ESCo to Contractor pursuant to clause 28.1 (*Remediation plan process*) to initiate the Remediation Plan Process.

**Remediation Plan**: the plan agreed in accordance with clause 28 (*Remediation plan process*) for the resolution of a Contractor's Default.

**Remediation Plan Process**: the process for resolving certain of Contractor's Defaults as set out in clause 28 (*Remediation plan process*).

**Repair Works:** the repair/replacement of any building component parts, landscaping, plant, equipment and services comprised in the Energy System by the Contractor in accordance with the terms of this Agreement.

**Repair Works Fee**: has the meaning given in Schedule 3 *(Charges)*.

**Replacement Contractor:** means a contractor that will replace the Contractor (in accordance with Schedule 18 (*Exit Plan and Energy Supply transfer arrangements)*) in the event of any termination or expiry of this Agreement.

**Request for Payment:** has the meaning given under clause 7.1 (*Charges and Payment*).

**Required Action:** has the meaning given to it in clause 29 *(ESCo Step-In Process).*

**Residential Customer:** a domestic consumer of Energy who is a counterparty to a Residential Heat Supply Agreement.

**Residential Development**: a Development which contains only Residential Units.

**Residential Heat Supply Agreement:** an agreement between ESCo and a domestic consumer for the supply of Energy.

**Residential Unit**: the dwelling, unit or apartment occupied by a Residential Customer.

**Residential Unit HIU:** mean the equipment Installed at each Residential Unit used for the transfer of Heat from the Secondary Distribution Network to the Tertiary Heat System within a Residential Unit,

**Responsibility Diagram:** the diagram that shows which entity is responsible for the operation, maintenance, repair and/or replacement of the respective parts of the Energy System, together with the extents of the Energy System, as set out in Schedule 20 *(Drawings)* and as may be amended from time to time in accordance with this Agreement.

**Representatives**: ESCo's Representatives and/or Contractor's Representatives.

**Safety Policy:** Contractor’s policy for safe access to Contractor’s Premises, as set out in Schedule 13 Part 2 (*Policies and Procedures*) and any amendment or replacement as may be notified by Contractor to ESCo.

**Schedule of Rates:** the schedule of rates set out in Schedule 3 (*Charges*).

**Secondary Distribution Network:** means within a Residential Development and/or Mixed Use Development, the network, associated services and assets, forming part of the Heat Distribution Network, between [the secondary side of the Substation and the point of connection to each Residential Unit HIU, Commercial Unit HIU, including but not limited to pumps, speed controllers, pressurisation units, pressure vessels, pipes (including insulation), pipeline ancillaries (including insulation), electrical supplies to components of the Secondary Distribution Network from the first distribution board upstream and all controls relating to the Secondary Distribution Network (including; control panels, control devices, and associated control wiring), but not including the Customer Metering System or the Network Metering System.

**Served Premises**:

1. any building in which a Customer Unit or Commercial Unit is located; or
2. any site in which a Commercial Building is located; and
3. any land over which ESCo has rights of access and through which the Energy System passes.

**Service Charges**: the service charges set out in Annex 1 to Schedule 3 *(Charges)* which become due and payable by ESCo to the Contractor in respect of the Services, calculated as set out in Schedule 3 *(Charges)*.

**Service Credits**: the sums attributable to a Service Failure as specified Schedule 3 (*Charges*).

**Service Failure Deduction:** has the meaning given to it in Schedule 2 Part 2 (*Output Specification*).

**Service Level**: has the meaning given to it in Schedule 2 Part 2 (*Output Specification*).

**Service Level Failure**: has the meaning given to it in Schedule 2 Part 2 (*Output Specification*).

**Service Level Failure Point**: has the meaning given to it in Schedule 2 Part 2 (*Output Specification*).

**Service Level Report:** has the meaning given to it in Schedule 2 Part 2 (*Output Specification*).

**Service Requirements**: ESCo's requirements for the Services as set out in Schedule 1 (*Service requirements*) as amended from time to time in accordance with the Change Control Procedure.

**Services**: the services to be provided by the Contractor to ESCo pursuant to this Agreement, including the services detailed under clause 3 *(Contractor’s obligations)* and Schedule 1 *(Service requirements)* and any changes to such services instructed in accordance with clause 10 *(Changes)* and Schedule 17 *(Change Control Procedure)*.

**Services Commencement Date**: the date of Practical Completion under the Design & Build Contract.

**Services Managers**: ESCo's Services Manager and Contractor's Services Manager.

**Site Rules:** means as set out in Schedule 9*(Site Rules)*.

**Standards**: those standards set out in Schedule 13 *(Standards and Policies).*

**Step-in**: the process of ESCo temporarily taking over any part (or all parts) of the Services in accordance with clause 29 *(ESCo Step-in Process).*

**Sub-Contract:** the terms upon which the Contractor appoints a Sub-Contractor.

**Sub-Contractor:** a person appointed by the Contractor to discharge any of the Contractor’s obligations under this Agreement.

**Sub-Contractor Termination Grounds:** means grounds have arisen for termination by an Approved Sub-Contractor of an Approved Sub-Contract.

**Substation:** a heat transfer station which is part of the Primary Distribution Network containing heat exchangers, controls, Network Metering Systems[, Customer Metering Systems,] and related ancillary equipment which are the interface between the Primary Distribution Network or a Primary Distribution Network Extension and the relevant Secondary Distribution Network.

**Takeover:** means the transfer to the Contractor, in accordance with Schedule 8 *(Take over process)*, of the sole responsibility for, as applicable:

1. the operation, maintenance and repair of a Secondary Distribution Network in accordance with the terms of this Agreement; or
2. the operation, maintenance, repair of a Primary Distribution Network Extension in accordance with the terms of this Agreement,

and the term “**Taken Over**” and “**Taking Over**” shall be interpreted accordingly.

**Taken Over Assets**: any Primary Distribution Network Extension(s) and any Secondary Distribution Network(s) Taken Over by the Contractor.

[**Temporary Boiler Plant**: trailer mounted pre-fabricated plantrooms complete with boiler plant, pumps, controls, power generator, flue/flue dilution, fuel store and associated systems.][[10]](#footnote-10)

**Temporary Services:** deploying, connecting, testing, operating, maintaining, repairing and replacing the Temporary Boiler Plant in accordance with clause 3.4.1 and as further detailed in Schedule 1 *(Service Requirements).*

**Term**: the period of the Initial Term as may be varied by:

1. any extensions to this Agreement which are agreed pursuant to clause 2.2 (*Extension of agreement*); or
2. the duration of the Termination Period; or
3. the early termination of this Agreement in accordance with clause 30 (*Termination*).

**Termination Date**: the date of expiry or termination of this Agreement.

**Termination Notice**: an ESCo Termination Notice, a Contractor Termination Notice or a Force Majeure Termination Notice, as applicable.

**Termination Period**: the period of up to [SPECIFY] as specified in the Termination Notice pursuant to clause 30.1 (*Termination for cause*) during which period ESCo may require Contractor to continue to provide the Services after a Termination Notice has been given provided always that such period may not extend the Initial Term (as extended by clause 2.2 *(Commencement and duration)).*

**Tertiary Heating System:** means the network of internal pipes and other ancillary equipment located within each Residential Unit that transfers Heat around the Residential Unit from a Residential Unit HIU and its isolation valves.

**Third Party Claim:** has the meaning given in clause 18.2 *(Third Party Claims)*.

**Third Party Works Contract:** a contract between ESCo and a Third Party Works Contractor for the design and build of any Network Extension(s).

**Third Party Works Contractor:** a contractor (other than the Design & Build Contractor) appointed by ESCo to design and build any Network Extension(s).

**Transfer Date**: has the meaning given under clause 14.1 *(TUPE)*.

**Transferring Employees**: has the meaning given under clause 14.1 *(TUPE)*.

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (246/2006.

**UK GDPR**: means, as applicable to either party or the Services from time to time, Regulation (EU) 2016/679 as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time).

**VAT**: value added tax as provided for in the Value Added Tax Act 1994.

**Water Quality Requirements:** as defined in Schedule 1 Part 4 *(Service Requirements).*

**Works Contractor:** the Design & Build Contractor or relevant Third Party Works Contractor, as the context requires.

* 1. Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
  2. The Schedules and Annexes form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules and Annexes.
  3. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
  4. A reference to **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 [and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of:
     1. another person (or its nominee), whether by way of security or in connection with the taking of security; or
     2. its nominee].

[For the purposes of determining whether a limited liability partnership is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.]

* 1. Unless the context requires otherwise, words in the singular include the plural and in the plural include the singular.
  2. Unless the context requires otherwise, a reference to one gender shall include a reference to the other genders.
  3. A reference to a statute or statutory provision or subordinate legislation is a reference to it as amended, extended or re-enacted from time to time.
  4. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
  5. [A reference to **writing** or **written** includes email].
  6. A reference to **this Agreement** or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other agreement as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.
  7. References to clauses, Schedules and Annexes are to the clauses, Schedules and Annexes of this Agreement and references to paragraphs are to paragraphs of the relevant schedule.
  8. Any words following the terms **including**, **include**, **in particular**, for example or any other similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or terms preceding those terms.
  9. [If there is an inconsistency between the clauses, Schedules and Annexes, the provisions in the clauses shall prevail in preference to the Schedules and Annexes, and the provisions of the Schedules shall prevail over the provisions of any Annex.]

1. Commencement and duration
   1. This Agreement shall take effect on the Effective Date and shall continue for the Term.
   2. If ESCo wishes to extend this Agreement beyond the expiry of the Initial Term, it shall give Contractor at least [NUMBER] months' written notice of such intention prior to the expiry of the Initial Term [provided always that ESCo shall not be entitled to extend the Initial Term by more than [NUMBER] years]. If ESCo gives such notice then the Parties shall negotiate in good faith to agree the terms of such extension by not later than [NUMBER] months prior to the expiry of the Initial Term.
   3. [If ESCo does not wish to extend this Agreement beyond the Initial Term or the Parties cannot agree the terms of such extension, this Agreement shall expire on the expiry of the Initial Term.][If the Parties have not agreed the terms of such extension by not later than [NUMBER] months prior to expiry of the Initial Term, the provisions of clause 32 (*Exit and service transfer*) and the Exit Plan shall apply.][[11]](#footnote-11)
2. Contractor's Obligations

General

The Contractor shall provide ESCo with the Services in accordance with and subject to the terms and conditions of this Agreement.

Commencement of responsibility for the Energy System

Responsibility for the Energy System

Except in relation to Taken Over Assets, the Contractor shall Accept in accordance with Schedule 7 (Acceptance Process) and be solely responsible for the Energy System (subject to clause 3.8 (Costs of Repair and Replacement)), in accordance with the terms of this Agreement.

Responsibility for Taken Over Assets

Subject to completion of Takeover in accordance with Schedule 8 (Take over process), the Contractor shall Takeover and, subject to clause 3.8 (Costs of Repair and Replacement), shall be solely responsible for the Taken Over Assets in accordance with the terms of this Agreement.

General Standards of Performance

The Contractor shall, at all times, perform its obligations under this Agreement in accordance with:

* + 1. all Applicable Laws, including without limitation, Data Protection Legislation and the Heat Network Regulations;
    2. Good Industry Practice;
    3. all applicable Policies;
    4. the Quality Management System;
    5. the Performance Monitoring Reporting System;
    6. all Approvals and any proper instructions and directions of ESCo given from time to time in accordance with this Agreement; and
    7. all provisions of this Agreement.

Operation and Maintenance

Subject to the exclusions under clause 3.5 *(Exclusions from scope),* the Contractor shall operate, maintain, test and inspect and repair and replace (as relevant) the relevant components of the Energy System, throughout the Term, in such manner as to:

* + 1. maintain continuity and quality in the supply of Energy to all Customers at all times, minimising downtime, and deploying the Temporary Boiler Plant when necessary in order to ensure the Service Levels are met;
    2. maximise the availability and efficiency of the Energy System and, wherever possible, minimise operating costs which shall include (but not be limited to):
       1. maximising the efficiency of the operation of components of the Energy System; and
       2. [optimising operation of energy production plant or sources to reduce the carbon intensity and cost of production of Energy supplied][[12]](#footnote-12);
    3. minimise the incidence, severity and duration of Forced Outages; and
    4. prolong the operating life of the Energy System, preventing premature wear and tear or deterioration of the Energy System (taking into account the expected degradation assuming maintenance in accordance with Good Industry Practice) and ensuring that the Energy System is in a fit state to continue in operation for, at least, the Minimum Design Life.

Exclusions from scope

Subject to clause 3.11 *(Extensions to Demarcation Points with respect to Commercial Customers)*, the Contractor’s obligations shall exclude the following[[13]](#footnote-13):

* + 1. [the operation, maintenance, repair or replacement of Secondary Distribution Networks within Commercial Units and Commercial Buildings];
    2. [the operation, maintenance, repair or replacement of Internal Secondary Distribution Networks or heating systems within Residential Units or Commercial Units];
    3. [the operation, maintenance, repair or replacement of Customer Metering Systems or Network Metering Systems;][[14]](#footnote-14)
    4. [other than as required to repair leaks, the replacement of pipework, isolation valves, insulation, expansion joints or pipe brackets contained within Secondary Distribution Networks;][[15]](#footnote-15) and
    5. [the operation, maintenance, repair or replacement of HIUs within Residential Units, Commercial Buildings or Common Parts or Commercial Units][[16]](#footnote-16).

Compliance with Works Contractors’ Requirements during construction works

The Contractor shall, and shall procure that all Contractor’s Personnel shall, at all times, comply with all the regulations, safety requirements, reasonable orders and instructions of any Works Contractor employed by ESCo and notified to the Contractor (including during any defects liability period under the Design & Building Contract or during any Network Extension).

Costs of Operation and Maintenance

All operation and planned maintenance carried out in relation to the Energy System, required to be undertaken by the Contractor in order to comply with this Agreement, shall be undertaken by the Contractor and paid for by ESCo as a component of the Charges.

Costs of Repair and Replacement

* + 1. All repairs and replacements in relation to the Energy System required to be undertaken by the Contractor in order to comply with this Agreement [shall be undertaken by the Contractor and paid for by ESCo as a component of the Charges in accordance with Schedule 32 *(Charges)*][[17]](#footnote-17) [shall be undertaken by the Contractor at its own cost and in except to the extent and where the Contractor provides reasonable evidence (including photographic evidence) and explanation (suitable to pursue an insurance claim) that the repairs or replacements were required as a result of:
       1. damage to the Energy System directly resulting from any act or omission of ESCo in breach of this Agreement, whereupon ESCo shall pay the Contractor’s reasonable costs incurred in rectifying such damage in accordance with Schedule 32 *(Charges);*
       2. damage to the Heat Distribution Network directly resulting from the acts of any person other than Contractor (or any Contractor’s Personnel), whereupon, subject to clause 3.8.2, the Contractor, acting on behalf of ESCo shall use all reasonable endeavours to recover costs, including (where relevant) from:
          1. [Landlords, pursuant to Connection Agreements;]
          2. [any relevant insurance providers,]

provided that any such costs not recovered shall be for the account of ESCo;

* + - 1. subject to clause 3.8.2, if the Contractor evidences to the reasonable satisfaction of ESCo that the defect or component failing and giving rise to the need to undertake such repair or replacement work constitutes:
         1. a defect in works carried out and completed prior to the Services Commencement Date pursuant to the Design & Build Contract which was only discovered after (and was not reasonably discoverable prior to) the expiry of [INSERT] years from the Services Commencement Date; or
         2. a defect in any other works carried out pursuant to the Design & Build Contract or a Primary Distribution Network Extension carried out by the Design & Build Contractor pursuant to the D&B Contract which was only discovered after (and was not reasonably discoverable prior to) the expiry of [INSERT] years from the relevant Practical Completion date of such works,

the Contractor shall only be liable for the costs of each repair or replacement up to the value of the Contractor’s Financial Liability, in accordance with Schedule 3 *(Charges)*;

* + - 1. subject to clause 3.8.2, if the Contractor evidences to the reasonable satisfaction of ESCo that the defect or component failing and giving rise to the need to undertake such repair or replacement work constitutes a defect in:
         1. any Third Party Primary Distribution Network Extension undertaken by any Third Party Works Contractor; or
         2. [the Secondary Distribution Network,]

in respect of which the Contractor has been unable, despite using all reasonable endeavours, to recover under relevant rights procured by ESCo in favour of the Contractor pursuant to paragraph 2.1 of Schedule 8 *(Take over process)*, due to either the inadequacy of party rights, the Contractor shall only be liable for the costs of each repair or replacement up to the value of the Contractor’s Financial Liability in accordance with Schedule 3 *(Charges)*.][[18]](#footnote-18)

* + 1. The Contractor shall be responsible for, and shall at its own cost repair, any and all damage to the Energy System, plant and equipment, property or buildings caused or allowed to be caused by the Contractor or Contractor’s Personnel and the Contractor shall indemnify ESCo in respect of any resulting Third Party Claims in accordance with clause 18 *(Indemnities and Third Party Claims).*

Authorisations

* + 1. The Contractor shall obtain, in the name of ESCo whenever possible and otherwise, if appropriate, in its own name, and maintain all Authorisations for the operation of the Energy System. ESCo shall provide the Contractor with such assistance and co-operation in obtaining and maintaining all such licences, consents, permits, authorisations and other approvals as the Contractor reasonably requests.[[19]](#footnote-19)

[Improvements and modifications

* + 1. The Contractor will keep itself fully and properly informed of all matters concerning Good Industry Practice in the operation and maintenance of the Energy System and shall notify ESCo of any modifications which it considers would result in improved efficiency, performance or operation of the Energy System.
    2. The Contractor shall be entitled to propose changes to the Services in accordance with clause 10 *(Changes)*.

Extensions to Demarcation Points with respect to Commercial Customers

* + 1. ESCo may request the Contractor to provide a price to extend the Services to include a Secondary Distribution Network, providing clear details of the revised Demarcation Points with respect to the relevant Customer to enable the Contractor to cost extension to the Services.
    2. The Contractor shall provide such a price as a [monthly charge] (“**Commercial Customer Secondary Distribution Network Charge**”) within [INSERT] Business Days of a request by ESCo.
    3. ESCo shall notify the Contractor if it accepts the Commercial Customer Secondary Distribution Network Charge proposed by the Contractor.
    4. If the Parties are unable to agree the Commercial Customer Secondary Distribution Network Charge within [INSERT] Business Days of the Contractor providing a price in accordance with clause 3.11.2 or the Contractor fails to provide a price within the time period specified in that clause, either Party may refer the matter to the Dispute Resolution Procedure, having regard to the Schedule of Rates.
    5. From the date of Take Over of the relevant Secondary Distribution Network:
       1. the Energy System and the Services shall be deemed to have been extended to include the Taken Over Secondary Distribution Network; and
       2. the Contractor shall be entitled to be paid the Commercial Customer Secondary Distribution Network Charge agreed with ESCo (or determined following reference to the Dispute Resolution Procedure).
    6. The Contractor shall not be entitled to refuse to extend the Services or Take Over the relevant Secondary Distribution Network pending resolution of the appropriate Commercial Customer Secondary Distribution Network Charge.

Financial Security

* + 1. The Contractor shall be required to provide and maintain throughout the Term, Financial Security, in an amount and form and from a provider reasonably satisfactory to ESCo.
    2. In the event that there is a material adverse change in the financial standing of any provider of Financial Security, the Contractor shall, within [INSERT] Business Days of a request from ESCo, provide an alternative Financial Security in no lesser amount and in a form and from a provider reasonably satisfactory to ESCo.

1. Output Specification and Service Levels
   1. The provisions of Schedule 2 *(Output Specification and Service Levels)* shall apply in respect of the Output Specification and Service Levels.
   2. ESCo and the Contractor shall review the Output Specification and the Service Levels following any Change in Law and every [NUMBER] years throughout the Term and make any necessary changes in accordance with the Change Control Procedure to reflect changes in the Service Requirements.
2. ESCo’s Obligations
   1. ESCo shall:
      1. subject always to the Contractor complying with the Site Rules:
         1. ensure that the Contractor is provided with adequate contractual rights to obtain access to the Served Premises in accordance with clause 6 *(Access and Use of Premises)* in order to perform the Services under this Agreement;
         2. where relevant, ensure that the Contractor is provided with the sufficient contractual rights against the relevant Developer under a Connection Agreement(s) and/or other third party agreements in order to discharge its obligations in accordance with Schedule 8 *(Take Over process)*;
         3. grant (and hereby grants) to the Contractor a licence in respect of the Energy Centre Site which will give the Contractor free, safe and, as far as reasonably practicable, uninterrupted access to those parts of the Energy Centre Site necessary for the Contractor to perform the Services;
      2. pay the Charges and any other sums due to the Contractor in accordance with this Agreement.
3. Access

Access and Use of Premises

* + 1. The Contractor shall comply with the requirements for access set out under Schedule 9 *(Site Rules).*
    2. The Contractor shall not, in any circumstances, use any location, or premises which form any part of the Energy Centre Site or Served Premises to perform any task or operation, other than in relation to the provision of the Services, unless previously agreed in writing by ESCo.
    3. The Contractor shall only be permitted to access the Common Parts of Residential, Mixed Use and Commercial Buildings, the Development and the Substation in accordance with the relevant Commercial Unit Heat Supply agreement, Common Parts Heat Supply Agreement, Framework Heat Supply Agreement or Connection Agreement (as relevant and as supplied by ESCo to the Contractor).
    4. In the event that the Contractor is unable to gain access to the Common Parts of Residential, Mixed Use and Commercial Buildings, the Development and the Substation (as relevant) or is unable to make arrangements with the Customer or Landlord (as relevant), the Contractor shall notify ESCo in writing stating the details of the attempts made to arrange access and sufficient particulars to identify the Customer or Landlord concerned, whereupon ESCo shall provide all reasonable assistance to enable the Contractor to secure the access required.
    5. The Contractor shall promptly, and at its own expense, make good all damage to Served Premises and adjoining or neighbouring premises arising directly out of the performance of the Services by the Contractor under this Agreement.
    6. The Contractor shall take good care of the accommodation, furnishing, fixtures and other office materials provided by ESCo at the Energy Centre Site. The Contractor shall maintain and update an inventory of all such items on an appropriate basis.

Access by ESCo.

ESCO, ESCo's Representative and ESCO’s Personnel shall have full access to the Energy System, including the Energy Centre, at all times. Where the Contractor has been granted rights to control access to the Energy Centre or any part of the Energy System, the Contractor shall, on reasonable prior notice, permit them access and shall agree to them testing or taking samples to verify compliance by the Contractor with the terms of this Agreement.

1. Charges and invoicing
   1. Within [INSERT] Business Days after the end of each consecutive Payment Period (the first such period commencing on the Services Commencement Date), the Contractor shall submit to ESCo in respect of the Services provided during the relevant Payment Period:
      1. the Performance Report;
      2. the Service Level Report;
      3. a statement (“**Request for Payment**”) setting all Charges due to the Contractor in accordance with Schedule 3 (*Charges*) and accompanied by a valid VAT invoice in respect of the net amount due. [All invoices shall be directed to ESCo's Representative.]
   2. The Request for Payment shall be accompanied by sufficient supporting information to enable ESCo to verify that the sums requested are properly due (and the Contractor shall promptly provide such further supporting information as ESCo may reasonably request).
   3. ESCo shall pay the Charges within [NUMBER] days of receipt of an undisputed invoice from Contractor (**Due Date**).
   4. If ESCo receives an invoice which it reasonably believes includes a sum which is not valid and properly due:
      1. ESCo shall notify Contractor in writing as soon as reasonably practicable;
      2. ESCo's failure to pay notified disputed Charges shall not be deemed to be a breach of this Agreement provided that ESCo shall pay any amount of the invoice which is not in dispute by the Due Date;
      3. the Parties shall seek to agree the amount properly due and, failing agreement within [INSERT] days from the date ESCo notifies the Contractor of the dispute, either Party may refer the dispute to be resolved through the Dispute Resolution Procedure (and the amount so agreed or determined to be properly due in respect of the relevant charges being the “**resolved amount**”);
      4. if, following resolution of a dispute, the resolved amount is greater than any sum already paid by ESCo in respect of the relevant Charges (the difference being a “**withheld sum**”), then ESCo shall pay the Contractor the withheld sum within [INSERT] Business Days from receipt of an invoice showing the correct amount due [and the Contractor shall be entitled to charge interest on the withheld sum in accordance with clause 7.7 (*Interest on late payment*) from the original Due Date until the date of payment];
      5. if, following resolution of a dispute, the resolved amount is less than any sum already paid by ESCo in respect of the relevant Charges (the difference being an “**overpayment**”), then the Contractor shall refund such overpayment to ESCo within [INSERT] Business Days from the date the dispute was resolved [and ESCo shall be entitled to charge interest on the withheld sum in accordance with clause 7.7 (*Interest on late payment*) from the date ESCo made the relevant payment up to the date the Contractor refunded such overpayment];
      6. [the Parties may agree to reconcile withheld sums and overpayments through adjustment of the next following Request for Payment.]
   5. The Contractor shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to ESCo pursuant to this Agreement. Such records shall be retained for inspection by ESCo for [NUMBER] years from the end of the Contract Year to which the records relate.
   6. The Contractor shall not suspend access to the Energy System if any payment is overdue unless it is entitled to terminate this Agreement under clause 30.2 (*Termination*) for failure to pay undisputed charges.
   7. If a Party fails to make any payment due to the other Party under this Agreement by the due date for payment, then[, without limiting the other Party's remedies under clause 30 (*Termination*),] the defaulting Party shall pay interest on the overdue amount at the rate of [4]% per annum above [NAME OF BANK]'s base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting Party shall pay the interest together with the overdue amount.
   8. Except as otherwise provided, the Parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this Agreement.
   9. All sums payable by either Party under this Agreement shall be paid in sterling.
   10. The Contractor shall indemnify ESCo against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on ESCo at any time in respect of the Contractor's failure to account for, or to pay, any VAT relating to payments made to the Contractor under this Agreement.
   11. [ESCo may retain or set off any sums owed to it by the Contractor which have fallen due and payable against any sums due to the Contractor under this Agreement [or any other agreement pursuant to which the Contractor or any member of the Contractor’s Group provides goods or services to ESCo or any member of ESCo's Group].]
2. [Indexation

Unless stated otherwise, all monetary figures stated in this Agreement (whether stated as being payable by either Party or limiting a Party’s liability or otherwise) shall be adjusted annually, at the end of each Contract Year, to reflect the change in the Consumer Prices Index over the Contract Year just ended.] *[Drafting Note: Parties can also consider use of other indices.]*

1. Delay
   1. The Contractor shall be granted an extension of time and shall not incur Deficiency Points where, and to the extent that any delay or impairment in the performance of the Services is the direct result of (and except to the extent caused or contributed to by the Contractor):
      1. ESCo Default;
      2. a Force Majeure Event for which the Contractor is granted relief in accordance with clause 26 *(Force Majeure)*;
      3. a Change in Law;
      4. delay in the grant by any Regulatory Body of any Authorisations[, the Contractor having demonstrated to the reasonable satisfaction of ESCo that it submitted the relevant application (and used all reasonable endeavours to obtain) the Authorisations in due time to avoid breach of this Agreement],

provided that the Contractor shall be under a duty to mitigate the impact of any such event on the performance of the Services.

* 1. [Where delay arises due to ESCo’s Default, the Contractor shall also be entitled to claim fair and reasonable additional costs incurred in respect of any delays or impediments which are the direct and unavoidable result of ESCo’s Default.]

1. Changes
   1. Where ESCo or Contractor sees a need to change this Agreement, ESCo may at any time request or Contractor may at any time recommend, such Change only in accordance with the Change Control Procedure set out in Schedule 17 *(Change Control Procedure).*
   2. Until such time as a Change is made in accordance with the Change Control Procedure, ESCo and Contractor shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms.
   3. Any work undertaken by the Contractor or Contractor's Personnel which is not in accordance with this Agreement and has not been authorised in advance through the Change Control Procedure shall be undertaken entirely at the expense and liability of the Contractor.
2. Change in Law
   1. The Contractor shall perform the Services and discharge its obligations under this Agreement in accordance with all Applicable Law, including any Change in Law.
   2. Each Party shall:
      1. inform the other as soon as it becomes aware of any Change in Law that may impact on the Services;
      2. provide the other with timely details of measures it proposes to take and changes it proposes to make to comply with any such Change in Law;
      3. consult with the other and, if possible, agree, with other on the manner, form and timing of changes it proposes to make to comply with the relevant Change in Law;
      4. only implement any such changes in accordance with the Change Control Procedure; and
      5. use all reasonable endeavours to minimise any disruption caused by any Change in Law.
   3. Subject to the provisions of this clause 11, if a Change in Law renders it impossible for either Party to perform its obligations under this Agreement in compliance with Applicable Laws or would require a change to the Services in order to comply with Applicable Laws, either Party may issue a Change Request in accordance with the Change Control Procedure. The Parties shall seek to agree such modifications to this Agreement as are necessary to enable them each to discharge their obligations lawfully and which best maintain the commercial balance between the Parties as contained in this Agreement, in accordance with the Change Control Procedure, prior to the relevant Change in Law. [*Drafting Note: Parties to consider if there are any circumstances in which they may want to terminate following changes in law.]*
   4. Any such modification shall be carried out without any increase in costs to ESCo, unless the Change in Law constitutes a Qualifying Change in Law. For the avoidance of doubt, the Contractor shall be responsible for the costs and the implementation of any modifications required as a result of a Change in Law which does not amount to a Qualifying Change in Law.
   5. Where a Qualifying Change in Law occurs which impacts on the performance of the Services or which imposes a new or modified obligation on the Contractor in connection with the Services, the Contractor shall notify ESCo of:
      1. any necessary change in the Services;
      2. whether any changes are needed to this Agreement;
      3. whether any relief from its obligations is required;
      4. any change in the cost of the provision of the Services, including evidence of how such change in costs is calculated; and
      5. any additional services that may need to be provided as a necessary consequence of the impact of the Qualifying Change in Law.
   6. The Contractor shall use all reasonable endeavours to mitigate the impact of the Qualifying Change in Law, including:
      1. providing evidence that it has used reasonable endeavours to minimise any increase in costs and maximise any reduction in costs in relation to the Services;
      2. demonstrating how any additional cost of the Services is being measured in a cost-effective manner; and
      3. giving evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses providing services that are the same or similar to the Services.
3. Inducements and Gratuities
   1. Neither the Contractor nor any of the Contractor’s Personnel may in any circumstances solicit or accept any gift, gratuity, tip or any other form of money taking or reward, collection, or charge from any person in connection with the provision of all or any part of the Services other than pursuant to the terms of this Agreement.
   2. Any breach by the Contractor or any of the Contractor’s Personnel of clause 12.1 will be regarded as a material breach of this Agreement by the Contractor. Without prejudice to any other remedies available to ESCo under this Agreement, ESCo’s Representative may require the removal of any of the Contractor’s Personnel found to be in breach of clause 12.1.
4. Sub-Contracting and assignment
   1. [The Contractor may sub-contract any element of the Services provided it notifies ESCO’s Representative of the identity of the sub-contractor and provides such evidence of its competence to perform the relevant element(s) of the Services as ESCO’s Representative may reasonably request.][The Contractor shall not sub-contract any elements of the Services without the prior written consent of ESCo or ESCo’s Representative. If the Contractor wishes to sub-contract any element of the Services, then the Contractor shall supply to ESCo’s Representative sufficient information in writing to confirm the sub-contractor’s competence and ability to perform such work, the name of the proposed sub-contractor, the reason for sub-contracting the work, the work the Contractor proposes to sub-contract and the locations at which the work is proposed to be sub-contracted and the period in which the work is proposed to be sub-contracted.]
   2. [Subcontracting][Consent (if given) to any sub-contracting] will not relieve the Contractor from any liability or obligation under this Agreement and the Contractor will be responsible for the acts, omissions, default and negligence of its Sub-Contractors, and all of the Contractor’s Personnel, in all respects as if they were the acts, Defaults and negligence of the Contractor.
   3. [If any part of the Services in respect of which an Approved Sub-Contractor has been engaged is not provided to the standards required by this Agreement, without prejudice to any other remedies available to ESCo, ESCo’s Representative shall be entitled, upon reasonable notice in writing to the Contractor, to withdraw the relevant consent given pursuant to clause 13.1.
   4. The Contractor shall provide full and adequate supervision of any and all Contractor’s Personnel and shall ensure that such Contractor’s Personnel comply with all relevant terms of this Agreement.

[Provision of Collateral Warranties

In respect of each of the Contractor’s Approved Sub-Contractors, the Contractor shall deliver to ESCo a collateral warranty for the benefit of ESCo executed by that Sub-contractor, substantially in the form set out in Schedule 6 *(Collateral Warranties).*]

1. TUPE
   1. For the purposes of this clause 14, “**Transferring Employees**” shall mean those employees of the Contractor or any Contractor’s Personnel wholly or mainly engaged in the provision of the Services or otherwise in the performance of any task in discharge of the Contractor’s obligations pursuant to this Agreement, as the case may be, as immediately before the Termination Date whose employment transfers to the party to whom the obligations to provide the Services transfer, as appropriate, pursuant to TUPE. Upon expiry or termination of this Agreement for whatever reason (such date being termed the “**Transfer Date**”), the provisions of this clause 14 shall apply.
   2. The Contractor shall or shall procure that all wages, salaries and other benefits of the Transferring Employees and other employees or former employees of the Contractor (who had been engaged in the provision of any part of the Services) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Transferring Employees and such other employees or former employees of the Contractor up to the Transfer Date, are satisfied.
   3. The Contractor shall indemnify ESCo from and against all losses, liabilities, costs (including reasonable legal costs), claims and demands arising out of or in connection with:
      1. the employment of any Transferring Employee by the Contractor up to the Transfer Date; and/or
      2. any claim by or on behalf of the Transferring Employees that the Contractor or any of the Contractor’s Personnel has failed to comply with its obligations under regulation 13(4) of the Transfer Regulations.
2. Documentation and records
   1. ESCo shall provide the Contractor such Documentation relating to the Energy System as soon as reasonably practicable after receipt thereof from any Works Contractor. [Any such Documentation which is the subject of the Design & Build Contract shall be the responsibility of the Design & Build Contractor to provide to the Contractor.][[20]](#footnote-20)
   2. All records and Documentation maintained by the Contractor in relation to the Energy System shall be available for inspection by ESCo at all times and ESCo shall be entitled to take copies of any such records or Documentation or any part thereof.
3. Liaison

Where the provision of the Services requires any interface with any other of ESCo’s Personnel, the Contractor shall ensure that its staff co-operate fully with such ESCo’s Personnel so as to ensure minimum disruption to ESCo’s activities in relation to the Development.

1. Limitation of Liability

Purpose

This clause 17 sets out the limits of each Party’s liability in connection with this Agreement and each Party acknowledges and agrees that:

* + 1. the restrictions on liability in this clause 17 *(Limitation of liability)* apply to every liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise;
    2. without limiting the operation of clause 17.1.3, the provisions of this clause 17 are fair and reasonable having regard to the circumstances as at the date hereof and have been subject to full negotiation;
    3. this Agreement satisfies the requirement of reasonableness within the meaning of sections 2(2) and 11 of the Unfair Contract Terms Act 1977;
    4. the limitations of liability set out in clauses 17.2 and 17.3 shall, as they apply to a Party, apply to any indemnities given by that Party under this Agreement. [*Drafting Note: The Parties may want to consider whether they want to carve out any indemnities from the liability caps].*

Liability of ESCo

Subject to clause 17.4, the maximum aggregate liability of ESCo to the Contractor arising out of or in connection with this Agreement, including any non-contractual obligations arising from this Agreement, shall be limited to a maximum of:

* + 1. in respect of [INSERT][[21]](#footnote-21), [INSERT AMOUNT][[22]](#footnote-22); and
    2. in respect of everything else, [INSERT AMOUNT][[23]](#footnote-23) (the “**Annual ESCo Cap on Liability**”).

Liability of the Contractor

Subject to clause 17.4, the maximum aggregate liability of the Contractor to ESCo arising out of or in connection with this Agreement, including any non-contractual obligations arising from this Agreement, shall be limited to a maximum of:

* + 1. in respect of [INSERT][[24]](#footnote-24), [INSERT AMOUNT][[25]](#footnote-25); and
    2. in respect of everything else, [INSERT AMOUNT][[26]](#footnote-26) (the “**Annual Contractor Cap on Liability**”).

Exclusions from limits on liability:

* + 1. The Annual Contractor Cap on Liability shall not apply to liabilities in respect of which insurance proceeds are recovered under the Contractor Insurances (including deductibles and excesses associated with such recovery) nor shall the Contractor Cap in Liability apply to the indemnity hereinafter contained in Clause 18.1. The Contractor shall fully indemnify ESCo against loss arising out of any failure of the Contractor to obtain or maintain the Contractor Insurances, any act or omission of the Contractor which invalidates the Contractor Insurances and any conditions, exclusions or limitations placed on the Contractor Insurances because of the claims history of the Contractor or an Affiliate of the Contractor.
    2. No provision of this Agreement shall limit the liability of one Party (the “first Party”) to the other in respect of:
       1. death or personal injury caused by negligence of either Party or either Party’s Personnel;
       2. any losses resulting from the wilful default of, or fraudulent misrepresentation or fraudulent concealment by, the first Party or the first Party’s Personnel.
    3. Neither Party shall have any liability to the other for any losses to the extent that the losses were caused by a breach of this Agreement by that other Party.
    4. To the extent permitted by Applicable Law, neither Party shall be liable to the other under this Agreement for any loss of profit, loss of use, loss of production, loss of opportunity, loss of contracts or for any other indirect or consequential loss or damage that may be suffered by the other Party [(save to the extent such loss or damage is stated in this Agreement to be recoverable in the form of reasonable interest, break costs or similar charges the other Party is bound to pay to a third party under a valid, enforceable and pre-existing contract with such third party as a direct result of any breach of this Agreement by the first Party)].

1. Indemnities and Third Party Claims

Indemnity

* + 1. Without prejudice to clause 17.4 and subject to clauses 18.1.2 and 18.2, the Contractor shall indemnify and keep indemnified ESCo on demand from and against:
       1. losses, costs, claims, damages or other liabilities arising from death or personal injury to any of ESCo’s Personnel or loss or damage to any property of ESCo or ESCo’s Personnel; or
       2. claims by any third party in respect of death or personal injury of any third party or loss of or damage to any third party’s property (“**Third Party Claims**”),

which, in either case, arise out of the Contractor’s Default or the negligence or wilful misconduct of the Contractor or any Contractor’s Personnel arising whilst on the Served Premises or during the performance of the Contractor’s obligations under this Agreement.

* + 1. ESCo shall take reasonable steps to mitigate the consequences of the relevant Default of negligence on the part of the Contractor or Contractor Personnel.
    2. The Contractor’s liability under clause 18.1.1 shall be reduced to the extent that the Contractor’s Default was caused by, or any losses, costs, claims, damages or other liabilities were increased by, ESCo’s Default.

Third Party Claims

* + 1. In the event that ESCo receives notice of any Third Party Claim, ESCo shall give prompt notice to the Contractor of such Third Party Claim, together with such reasonable details of the Third Party Claim as are then available to ESCo. The Contractor shall, to the extent necessary and at its own expense, join as a party to such Third Party Claim and co-operate with ESCo as to the defence of the Third Party Claim and work with ESCo towards mitigating any losses, costs, claims, damages or other liabilities associated with the Third Party Claim.
    2. [No Third Party Claim shall be settled by ESCo without prior consultation with the Contractor, both Parties acting reasonably and in good faith.]
    3. All costs, charges and expenses incurred by ESCo in connection with defending a Third Party Claim pursuant to this clause 18.2, that are directly as a consequence of the Contractor’s Default or the negligence or wilful misconduct of the Contractor or any Contractor’s Personnel whilst on the Served Premises or during the performance of the Contractor’s obligations under this Agreement shall be borne by the Contractor.

1. Benchmarking
   1. ESCo may, by written notice, require a Benchmark Review of any or all of the Charges, the Services and the Service Levels in accordance with the provisions of Schedule 5 *(Benchmarking)*.
   2. The first Benchmark Review may be requested by ESCo to occur at any time following the [NUMBER] anniversary of the Services Commencement Date. ESCo may not request a subsequent Benchmark Review until a period of [NUMBER] months has expired from the date of the last Benchmarking Report.
   3. Subject to clause 19.4 *(Contractor disputes the Benchmarker's review)*, if any Benchmark Review determines that any or all of the Charges, Services or Service Levels do not represent Good Value, ESCo may require the Contractor to reduce the Charges and/or implement improvements to the Services or Service Levels in accordance with the relevant Benchmarking Report within [NUMBER] months of receipt of the Benchmarking Report.
   4. If the Contractor reasonably believes the Benchmarker has not complied with the provisions of Schedule 5 (*Benchmarking*) in any material respects, or that the Benchmarker has made a manifest error in determining the results of the Benchmark Review, the Contractor may dispute the Benchmarking Report and the matter shall be dealt with in accordance with the Dispute Resolution Procedure.
   5. [Any amendment to the Charges, Services or Service Levels in accordance with any Benchmarking Report shall be documented by the Parties using the Change Control Procedure without cost to ESCo].
2. Governance

The Parties agree to manage this Agreement through the governance structure more specifically detailed in Schedule 15 (*Contract and service management*).

1. Intellectual Property Rights

Ownership of Intellectual Property

* + 1. All Background IPR is and shall remain the exclusive property of the Party owning it (or, where applicable, the person from whom its right to use the Background Intellectual Property has derived).
    2. All rights to Foreground IPR shall belong to ESCo.
    3. If a Party (the “**Registering Party**”) wishes to file a patent application, trade mark application or other application for protection or registration of Foreground Intellectual Property of which it is the exclusive owner, the other Party (the “**Other Party**”) shall provide such assistance as may reasonably be required to prepare, file and prosecute such application in the Registering Party’s name. The Registering Party shall bear all costs incurred in connection with such preparation, filing, prosecution and maintenance of application(s) including the other Party’s reasonable costs of complying with the Registering Party’s request for assistance.

Grant of Rights

* + 1. ESCo grants to the Contractor a non-exclusive, royalty-free licence to use its Background Intellectual Property and Foreground Intellectual Property for the period of this Agreement in order for the Contractor to perform its obligations set out in this Agreement to operate and maintain the Energy System and make the Energy supply (and not for any other purpose). The Contractor may sublicense its rights under this Clause 21.2.1 to the Contractor’s Personnel (with the right to further sublicense) in order for it to carry out its obligations under this Agreement.
    2. The Contractor grants to ESCo a perpetual, royalty-free licence to use its Background Intellectual Property for any reasonable purposes in connection with this Agreement.

Infringement

* + 1. Each Party shall immediately give Notice in writing to the Other Party of any challenge to the other Party’s Intellectual Property or any inadvertent disclosure or unauthorised use of the other Party’s Intellectual Property or know‑how which comes to its knowledge.
    2. Each Party shall at the other Party’s expense give such assistance as is reasonably requested by the Other Party to assist the Other Party in the prevention of any such infringement, challenge or unauthorised use.

Indemnity

Subject to Clause 17 (Limitation of Liability), each Party agrees to indemnify the Other Party in respect of any action, claim, demand, cost, charge or expense made by any third party arising out of or in connection with any infringement of such third party’s Intellectual Property due to the indemnifying Party’s breach or negligent performance or failure in performance of this Agreement.

1. Grant of licences
   1. The Contractor grants to ESCo a royalty-free, non-exclusive, non-transferable licence during the Term to use Contractor's Data, including the right to grant sub-licences to its subcontractors, provided that any relevant subcontractor has entered into a confidentiality undertaking with ESCo in a form reasonably acceptable to the Contractor.
   2. ESCo grants to the Contractor a royalty-free, non-exclusive, non-transferable licence during the Term to use ESCo's Data, including the right to grant sub-licences to its subcontractors, provided that any relevant subcontractor has entered into a confidentiality undertaking with the Contractor in a form reasonably acceptable to ESCo.
   3. The licences granted in clause 22.1 and clause 22.2 are granted solely to the extent necessary for the performance of the Services in accordance with this Agreement. Neither Party shall use the licensed materials for any other purpose.
   4. Neither Party shall have any right to use any of the other Party’s names, logos or trade marks on any of its products or services without the other Party’s prior written consent.
2. Data processing

The Parties shall comply with the data processing requirements as set out in Schedule 19 (*Data processing*).

1. Confidentiality
   1. Except to the extent set out in this clause 24 (*Confidentiality*) or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:
      1. treat the other Party's Confidential Information as confidential; and
      2. not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
   2. Clause 24.1 shall not apply to the extent that:
      1. such information was in the possession of the Party making the disclosure, without obligation of confidentiality, prior to its disclosure; or
      2. such information was obtained from a third party without obligation of confidentiality; or
      3. such information was already in the public domain at the time of disclosure otherwise than through a breach of this Agreement; or
      4. such information was independently developed without access to the other Party's Confidential Information.
   3. The Contractor may only disclose ESCo's Confidential Information to Contractor's Personnel who are directly involved in the provision of the Services and who need to know the information. Contractor shall ensure that such Contractor's Personnel are aware of, and comply with, these confidentiality obligations.
   4. The Contractor shall not, and shall procure that Contractor's Personnel do not, use any of ESCo's Confidential Information received otherwise than for the purposes of this Agreement.
   5. The Contractor undertakes (except as may be required by Applicable Law or in order to instruct professional advisers in connection with this Agreement) not to:
      1. disclose or permit disclosure of any details of this Agreement to the news media or any third party other than its Sub-Contractors; or
      2. disclose that ESCo is a customer or client of the Contractor; or
      3. use ESCo's name or brand in any promotion or marketing without the prior written consent of ESCo.
   6. [At the written request of ESCo, the Contractor shall procure that each member of Contractor's Personnel identified in ESCo's request signs a confidentiality undertaking prior to commencing any work in connection with this Agreement.]
   7. Nothing in this clause 24 (*Confidentiality*) shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPRs.
   8. On the Termination Date, each Party shall:
      1. return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;
      2. [at the election of the other Party,] [return or] erase all the other Party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically practicable); and
      3. certify in writing to the other Party that it has complied with the requirements of this clause, provided that a recipient Party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by Applicable Law or any Regulatory Body. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient Party.
   9. Except as expressly stated in this Agreement, no Party makes any express or implied warranty or representation concerning its Confidential Information.
2. Warranties and representations
   1. Each Party warrants, represents and undertakes that:
      1. it has full capacity and authority to enter into and to perform this Agreement;
      2. this Agreement is executed by a duly authorised representative of that Party;
      3. there are no actions, suits or proceedings or regulatory investigations pending or, to that Party's knowledge, threatened against or affecting that Party before any court or administrative body or arbitration tribunal that might affect the ability of that Party to meet and carry out its obligations under this Agreement;
      4. once duly executed, this Agreement will constitute its legal, valid and binding obligations;
      5. its Representative shall be authorised to carry out the matters for which they are expressed to be responsible in Schedule 14 (*Representatives*);
      6. it will ensure that the other Party (or its nominee) shall acquire title to any assets sold or transferred to it (or its nominee) in the course of the provision of the Services or pursuant to the operation of the Exit Plan with full title guarantee and free from all encumbrances; and
      7. it will execute all documents and do all such acts as the other Party may require to perfect the assignment of any IPR pursuant to the operation of the Exit Plan.
   2. Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by either Party in respect of any information which is provided by it to the other and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by Applicable Law.
3. Force majeure
   1. Subject to the remaining provisions of this clause 26, neither Party to this Agreement shall in any circumstances be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such delay or non-performance is due to a Force Majeure Event.
   2. In the event that either Party is delayed or prevented from or hindered in performing its obligations under this Agreement by a Force Majeure Event, such Party shall:
      1. give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause of the delay or prevention and its estimated duration;
      2. use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
      3. resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
   3. A Party cannot claim relief if the Force Majeure Event is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
   4. The Contractor cannot claim relief if the Force Majeure Event is one where a reasonable service provider should have foreseen and provided for the cause in question.
   5. As soon as practicable following the affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement. Where the Contractor is the affected Party, it shall take or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Good Industry Practice.
   6. The affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
   7. During the continuance of any Force Majeure Event, either Party may terminate this Agreement in accordance with clause 30.3 (*Termination*) in the circumstances set out in that clause.

Burden of Proof

The burden of proof as to whether a Force Majeure Event has occurred and as to the consequences of such a Force Majeure Event shall be upon the Party claiming Force Majeure.

Duties of the Parties

The Parties shall use all commercially reasonable efforts to prevent or avoid any event, condition or circumstance, which would result in a Force Majeure Event, to minimize the effects of each Force Majeure Event and to reduce and minimize any ensuing delay or interruption in the performance of their obligations hereunder.

Liabilities

Neither Party shall be liable to the other for any damage or loss resulting from an interruption in the Services pursuant to this clause 26.

1. Insurance
   1. The Contractor shall maintain in force at least the following insurance policies with reputable insurance companies to cover its relevant potential liabilities in connection with this Agreement:
      1. a public liability insurance policy with a limit of at least [£[AMOUNT] million per claim];
      2. a professional indemnity insurance policy with a limit of at least [£[AMOUNT] million per claim];
      3. employer's liability insurance with a limit of at least [£[AMOUNT] million] for claims arising from a single event or series of related events in a single calendar year; and
      4. product liability insurance with a limit of at least [£[AMOUNT] million] for claims arising from a single event or series of related events in a single calendar year.
   2. The Contractor shall ensure that ESCo's interest is noted on each insurance policy, or that a generic interest clause has been included. At the written request of ESCo, the Contractor shall provide ESCo with a copy of each insurance policy. On the renewal of each policy, the Contractor shall promptly send a copy of the receipt of the premium paid by the Contractor to ESCo.
   3. The Contractor shall, during the term of this Agreement, and for a period of one year after that:
      1. administer the insurance policies and the Contractor's relationship with its insurers at all times to preserve the benefits for ESCo set out in this Agreement;
      2. do nothing to invalidate any insurance policy or to prejudice ESCo's entitlement under those policies; and
      3. procure that the terms of such policies are not altered in such a way as to diminish the benefit of the policies for ESCo which are provided as at the Effective Date.
2. Default and Remediation Plan Process
   1. If ESCo is of the opinion that the Contractor has committed any Default(s) and the Default(s) is capable of remedy, then ESCo may give a notice (“**Remediation Notice**”) to the Contractor which shall specify:
      1. the Default(s), in outline;
      2. any actions that ESCo believes the Contractor needs to take with respect to remedying the Default(s); and
      3. the reasonable timeline in which the Contractor must complete the remedy of the relevant Default(s) (“**Contractor** **Cure Period**”).
   2. ESCo shall be under no obligation to initiate the Remediation Plan Process if it issues an ESCo Termination Notice pursuant to clause 30.1.1 in the circumstances set out in the following limbs of the definition of ESCo Termination Grounds: [(f) *(Contractor Insolvency Event),* (g) *(Aggregate liability exceeds Annual Contractor Cap on Liability),* (h) *(Termination for Corrupt Gifts, etc)*]
   3. Within [NUMBER] Business Days of receipt of a Remediation Notice, the Contractor shall either:
      1. submit a draft plan (“**Remediation Plan**”) of the measures it proposes to take to remedy the relevant Default(s) and the timeline for taking such measures (which must not be longer than the Contractor Cure Period); or
      2. if it disputes that it is responsible for the matters which are the subject of the Remediation Notice, inform ESCo that it does not intend to submit a Remediation Plan and, if ESCo does not withdraw the Remediation Notice, either Party may refer the dispute to the Dispute Resolution Procedure.
   4. ESCo shall either approve the draft Remediation Plan pursuant to clause 28.3 within [NUMBER] Business Days of its receipt of same, or it shall inform the Contractor why it does not accept the draft Remediation Plan. In such circumstances, the Contractor shall address all such concerns in a revised Remediation Plan, which it shall submit to ESCo within [NUMBER] Business Days of its receipt of ESCo's comments. If no such notice is given, the Contractor's draft Remediation Plan pursuant to clause 28.3 shall be deemed to be agreed.
   5. Once agreed, the Contractor shall immediately start work on the actions set out in the Remediation Plan and shall remedy the relevant Default(s) within the Contractor Cure Period.
3. ESCo Step-in Process
   1. ESCo shall be entitled to take action itself to remedy any relevant Default(s) in accordance with this clause 29, in the following circumstance:
      1. if a Remediation Plan cannot be agreed in accordance with clause 28.4 *(Remediation Plan Process)* within [NUMBER] Business Days of ESCo rejecting a draft Remediation Plan; and/or
      2. [in an Emergency.]
   2. Where the circumstances in clause 29.1 apply, and ESCo wishes to take action itself to remedy any relevant Default(s), ESCo shall notify the Contractor in writing of:-
      1. the action ESCo wishes to take;
      2. the reason for such action;
      3. the date ESCo intends to commence such action;
      4. the time period ESCo believes will be necessary for such action; and
      5. to the extent practicable, the effect on the Contractor and its obligation to undertake the Services during the period such action is being taken by ESCo.
   3. Following service of such notice, ESCo shall take such action as notified (the "**Required Action**") provided that:-
      1. for so long and to the extent that the Required Action taken prevents the Contractor from undertaking the Services (or any part thereof), the Contractor shall be relieved of its obligations to undertake the Services (or relevant part thereof); and
      2. ESCo shall use reasonable endeavours to mitigate its costs of undertaking the Required Action.
   4. The Contractor shall reimburse all reasonable costs incurred by ESCo in taking the Required Action and notified to the Contractor.
   5. For the avoidance of doubt, any Required Action taken pursuant to this clause 29 shall not constitute a waiver by ESCo of any other right or remedy of ESCo under this Agreement.
4. Termination
   1. Where ESCo wishes to terminate this Agreement due to the Contractor's Default:
      1. subject to clause 28 (*Remediation plan process*), ESCo may only terminate this Agreement if:
         1. one or more ESCo Termination Grounds have arisen; and
         2. by giving written notice to the Contractor (“**ESCo Termination Notice**”):
            1. identifying the ESCo Termination Grounds being relied on; and
            2. specifying the date when this Agreement is to terminate (not to be earlier than [NUMBER] Business Days after the date of the notice);
      2. [where ESCo is terminating this Agreement for a Major Default, it may rely on a single Major Default or on a number of Defaults or repeated Defaults that, taken together, constitute a Major Default;]
      3. ESCo shall also inform the Contractor in the ESCo Termination Notice of the duration of the Termination Period during which it requires Contractor to continue to provide, or procure the provision of, some or all of the Services. ESCo may extend or shorten such period by giving the Contractor at least [INSERT] Business Days' notice.
   2. Where the Contractor wishes to terminate this Agreement due to ESCo's Default:
      1. the Contractor may only terminate this Agreement if:
         1. one or more Contractor Termination Grounds has arisen; and
         2. by giving written notice to ESCo (“**Contractor Termination Notice**”):
            1. identifying the Contractor Termination Grounds being relied on; and
            2. specifying the date when this Agreement is to terminate (not to be earlier than [NUMBER] Business Days after the date of the notice).
   3. During the continuance of any Force Majeure Event, either Party may terminate this Agreement by written notice (“**Force Majeure Termination Notice**”) to the other if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than [NUMBER] Months.
5. Consequences of termination and survival[[27]](#footnote-27)
   1. Following the service of a Termination Notice for any reason, the Contractor shall continue to provide or procure the provision of the Services to the required Service Levels, and shall ensure that there is no degradation in the standards of the Services until the expiry of the Termination Period.
   2. On termination of this Agreement for Contractor Default, the Contractor shall pay to ESCo:
      1. all reasonable demonstrable costs of retendering the Service;
      2. any sums due for the Operational and Strategic Spares in accordance with paragraph 10.7 of Schedule 1 *(Service Requirements)*;
      3. the costs of any rectification required to the Energy System (which shall be the subject of an independent condition survey) to ensure compliance with clause 3.4,

subject to a cap of [AMOUNT], such sums being payable within [INSERT] Business Days of the service of the relevant Notice of Termination.

* 1. On termination of this Agreement for ESCo Default, ESCo shall pay to the Contractor:
     1. any reasonable break costs arising from Termination;
     2. less any sums due from the Contractor for the Operational and Strategic Spares in accordance with paragraph 10.7 of Schedule 1 *(Service Requirements)*;

subject to a cap of [INSERT], such sums being payable within thirty (30) Business Days of the service of the relevant Notice of Termination.

* 1. On the Termination Date:
     1. the Contractor shall deliver to ESCo all books, records, accounts, Documentation, systems, electronic records, databases and manuals which it has received, developed and maintained relating to ESCo or the Energy System pursuant to this Agreement, in a format that is commonly usable, such as CSV or similar;
     2. the Parties shall take all steps as may be reasonably required to complete any final accounting between them and to provide, if applicable, for the orderly transfer of insurance and completion of any other matter contemplated by this Agreement; and
     3. title to all materials, equipment, supplies, consumables, spare parts and other items purchased or obtained by the Contractor for the Energy System shall pass to and vest in ESCo upon the passage of title from the vendor or supplier thereof and payment by ESCo or reimbursement of the costs of all such materials, equipment, supplies, consumables, spare parts and other items, if applicable.
  2. On termination or expiry of this Agreement, the following provisions shall continue in force:
     1. Clause 1 (*Interpretation*);
     2. Clause 7.5 (*Retention of service charges records*), clause 7.7 (*Interest*), and clause 7.10 (*VAT*);
     3. Clause 21 (*IPRs*);
     4. Clause 22.2 (Grant of licence to Contractor) and clause 22.4 (*No use of a Party's name, logo or trademarks*);
     5. Clause 23 (*Data processing*);
     6. Clause 24 (*Confidentiality*);
     7. Clause 25.1.6 (*Representation relating to full title guarantee*) and clause 25.1.7 (*Perfection of assignment of IPRs*);
     8. Clause 17 (*Limitation of liability*);
     9. Clause 27.3 (*Insurance*);
     10. Clause 31 (*Consequences of expiry and termination*);
     11. Clause 32 (*Exit and service transfer*);
     12. Clause 33 (*Dispute resolution procedure*);
     13. Clause 38 (*Waiver*);
     14. Clause 41 (*Announcements*);
     15. Clause 43 (*Further assurance*);
     16. Clause 44 (*Entire agreement*);
     17. Clause 45 (*Third party rights*);
     18. Clause 48 (*Governing law*);
     19. Clause 49 (*Jurisdiction*);

* + 1. Schedule 3 (*Charges*); and

* + 1. Schedule 18 (*Exit plan and service transfer arrangements*).

1. Exit and Services transfer
   1. In the event of the termination or expiry of this Agreement for any reason, both Parties shall comply with their respective obligations set out in Schedule 18 (*Exit plan and service transfer arrangements*), and each of the Parties shall co-operate with the Replacement Contractor to the extent reasonably required to facilitate the smooth migration of the Services from the Contractor to the Replacement Contractor.
   2. ESCo shall pay the Exit Assistance Services Charges in respect of the provision of the Exist Assistance Services, except in circumstances where ESCo has terminated this Agreement pursuant to clause 30.1 (*Termination for cause*).
   3. The Parties shall review the Exit Plan no less than once during each Contract Year and either Party may propose changes to reflect changes in the Services and any relevant Change in Law. Following each review, the Contractor shall:
      1. submit a revised Exit Plan to ESCo for review;
      2. within [NUMBER] Business Days after the submission of the revised Exit Plan, the Parties shall meet and use all reasonable endeavours to agree the contents of the revised Exit Plan, based on the principles set out in Schedule 18 (*Exit plan and Energy Supply transfer arrangements*) and the changes that have occurred in the Services and any relevant Change in Law since the Exit Plan was last agreed; and
      3. if the Parties are unable to agree the contents of the revised Exit Plan within that [NUMBER] Business Day period, the previous version shall continue to apply and either Party may refer the Dispute for resolution in accordance with the Dispute Resolution Procedure.
   4. Until the agreement of the Exit Plan, the Contractor shall provide the Exit Assistance Services in accordance with the principles set out in Schedule 18 (*Exit plan and Energy Supply transfer arrangements*) and the last-approved version of the Exit Plan (insofar as this still applies) to ESCo. The Contractor shall ensure that it is able to implement the Exit Plan at any time.
   5. Within [thirty (30)] days after service of a Termination Notice by either Party or [six (6) months] prior to the expiration of this Agreement:
      1. the Contractor shall update the Exit Plan into a final form that could be implemented immediately and, in doing so, provide as much detail as is appropriate given the nature of the termination or expiry and the timing of termination, so that such Exit Plan can be submitted to ESCo for review and approval; and
      2. the Parties shall meet and use their respective reasonable endeavours to agree the contents of such Exit Plan based on the principles set out in Schedule 18 (*Exit plan and Energy Supply transfer arrangements*); and
      3. until the agreement of the updated Exit Plan, the Contractor shall provide the Exit Assistance Services in accordance with the last-approved version of the Exit Plan (insofar as this still applies) to ESCo and both ESCo and the Contractor shall comply with their respective obligations set out in Schedule 18 (*Exit plan and Energy Supply transfer arrangements*).
2. Dispute Resolution Procedure
   1. If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**), then [, except as expressly provided in this Agreement,] the Parties shall follow the procedure set out in this clause:
      1. either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the [EMPLOYEE TITLE] of [Party 1] and [EMPLOYEE TITLE] of [Party 2] shall attempt in good faith to resolve the Dispute;
      2. if the [EMPLOYEE TITLE] of [Party 1] and [EMPLOYEE TITLE] of [Party 2] are for any reason unable to resolve the Dispute within [30] days of service of the Dispute Notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of [Party 1] and [SENIOR OFFICER TITLE] of [Party 2] who shall attempt in good faith to resolve it; and
      3. if the [SENIOR OFFICER TITLE] of [Party 1] and [SENIOR OFFICER TITLE] of [Party 2] are for any reason unable to resolve the Dispute within [30] days of it being referred to them, the Parties agree to enter into mediation in good faith to settle the dispute in accordance with [the CEDR Model Mediation Procedure **OR** OTHER PROCEDURE]. Unless otherwise agreed between the Parties within [NUMBER] days of service of the Dispute Notice, the mediator shall be nominated by [CEDR **OR** OTHER BODY **OR** OTHER PERSON]. To initiate the mediation, a Party must serve notice in writing (**ADR notice**) to the other Party to the Dispute, referring the dispute to mediation. [A copy of the ADR notice should be sent to [CEDR **OR** OTHER PROVIDER]]. Unless otherwise agreed between the Parties, the mediation will start not later than [NUMBER] days after the date of the ADR notice.
   2. The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute under clause 48 (*Jurisdiction*) which clause shall apply at all times.

**OR**

No Party may commence any court proceedings under clause 48 (*Jurisdiction*) relation to the whole or part of the Dispute until [NUMBER] days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.]

1. Termination for Corrupt Gifts, Payment of Commission, Bribery or Corruption

ESCo shall be entitled to terminate this Agreement and to recover from the Contractor the amount of any loss resulting from such termination if:-

* + 1. the Contractor or any of the Contractor’s Personnel has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any action in relation to this Agreement or any other contract with ESCo; or
    2. the Contractor engages in or any of the Contractor’s Personnel commits, in connection with this Agreement, a prohibited act under the Prevention of Corruptions Act 1889 or the Bribery Act 2010, or any other relevant Laws, statutes, regulations or codes in relation to bribery and anti-corruption; or
    3. [the Contractor or any of the Contractor’s Personnel has given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972 or has taken part in collusion with one or more tenderers or parties in fixing or adjusting the bids submitted for the Agreement.]

1. Conflict

If there is an inconsistency between the clauses, Schedules and Annexes respectively, the provisions in the clauses shall prevail in preference to the Schedules and Annexes, and the provision of the Schedule shall prevail over the provisions of the Annex.

1. Assignment and other dealings
   1. ESCo may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement[, provided that it gives prior written notice of such dealing to the Contractor].
   2. The Contractor shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.
2. Variation

No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

1. Waiver

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by Applicable Law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

1. Rights and remedies

[Except as expressly provided in this Agreement, the **OR** The] rights and remedies of ESCo provided under this Agreement are in addition to, and not exclusive of, any of its rights or remedies provided by Applicable Law.

1. No partnership or agency
   1. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.
   2. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
2. Announcements

No Party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by Applicable Law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

1. Severance
   1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
   2. If any provision or part-provision of this Agreement is deemed deleted under clause 42.1 (*Deletion of invalid, illegal or unenforceable provision*) the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
2. Further assurance

[At its own expense, each **OR** Each] Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, [promptly] execute and deliver such documents and perform such acts as may [reasonably] be required for the purpose of giving full effect to this Agreement.

1. Entire agreement
   1. This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
   2. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Subject to clause 17.4.2(b) (*Liability which cannot be legally limited*), each Party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this Agreement.
2. Third party rights
   1. This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement.
   2. [The rights of the Parties to rescind or vary this Agreement are not subject to the consent of any other person.]
3. Notices
   1. A notice [or communication] given to a Party under or in connection with this Agreement shall be in writing and sent to such Party at the address [or email address] given in this Agreement or as otherwise notified in writing to [the **OR** each] other Party.
   2. This clause 46.2 (Notice delivery methods) sets out the delivery methods for sending a notice to a Party under this Agreement and, for each delivery methods, the date and time when the notice is deemed to have been received or given (provided that all other requirements of this clause have been satisfied and subject to the provision in clause 46.3 (*Deemed receipt outside business hours*)
      1. if delivered by hand, on signature of a delivery receipt[ or at the time the notice is left at the address];
      2. if sent by [pre-paid first class post or other[ next working day delivery service[ providing proof of [postage **OR** delivery]] at 9.00am on the [second] Business Day after posting[ or at the time recorded by the delivery service];
      3. if sent by pre-paid airmail [providing proof of [postage **OR** delivery]], at [9.00am on the [fifth] Business Day after posting[ or at the time recorded by the delivery service] OR [INSERT TIME AND DATE]; [or]
      4. [if sent by email, at the time of transmission.
   3. If deemed receipt under clause 46.2 (*Notice delivery methods*) would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this clause 46.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
   4. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
   5. [A notice given under this Agreement is not valid if sent by email.]
4. Counterparts
   1. This Agreement may be executed in any number of counterparts, each of which when executed [and delivered] shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.
   2. [Transmission of [an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) **OR** the executed signature page of a counterpart of this Agreement] by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each Party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.]
   3. [No counterpart shall be effective until each Party has executed [and delivered] at least one counterpart.]
5. Governing law

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

1. Jurisdiction

Each Party irrevocably agrees that the courts of England and Wales shall have [exclusive **OR** non-exclusive] jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

1. - Service Requirements
   * 1. : Energy requirements and Services Commencement Date

Energy:

* + - * 1. Heat: [INSERT][[28]](#footnote-28)
        2. [Electricity: [INSERT][[29]](#footnote-29)]

Services Commencement Date: [*INSERT DATE*]

* + 1. : Operational, Maintenance and Repair Work
       1. General
          1. The Contractor shall undertake and be responsible for all necessary operation, testing, maintenance, replacement and repair services in relation to the components of the Energy System, including but not limited to, landscaping and grounds maintenance, roads, fences, buildings (including cleaning), plant, equipment, services and all other associated systems and apparatus to ensure that the components of the Energy System operate and are in good condition in accordance with this Agreement and is capable at all times of meeting the Output Specification, Service Levels and all other obligations of the Contractor contained in this Agreement.
          2. The Contractor shall, in accordance with this Agreement, make all necessary arrangements for inspection, testing, operation, maintenance, repair and replacement of the Energy System, including:

routine, periodic and visual inspection and testing (including any availability tests, system tests or annual insurance inspections) of the Energy System, including all safety systems, as required by this Agreement or as reasonably directed by ESCo and including any works arising from or associated with such tests;

routine, scheduled, non-scheduled and emergency maintenance, repair or replacement of the component parts of the Energy System;

create and maintain full records of the maintenance, repair or replacement and any modification of the component parts of the Energy System;

create and maintain adequate records of the condition of all buildings, landscaping, grounds maintenance, fences and roads through which the Energy System runs, including a record of the dates and details and dates of any maintenance undertaken in respect thereof;

create and maintain records of data on the operating performance of the Energy System, including operating hours and all measurements and all records which may be required under the terms of the Authorisations or any other provision of this Agreement;

create and maintain a register of all equipment subject to inspection required by Applicable Law or under the terms of the Authorisations, including a record of all test dates and results;

create and maintain a stores and spares inventory recording and requisition system;

create and maintain a sub-contractor control and supervision system;

create and maintain a system hosting all *“as built”* drawings and all operating and maintenance manuals for the components of the Energy System (including any necessary changes thereto whether resulting from the replacement of any component part of the Energy System or work carried out by the Contractor or any other person or as a result of changes in Applicable Law or otherwise);

[carry out a combustion test after servicing and adjusting each boiler or undertaking any works which could have any impact on the operating efficiency of that boiler;]

[complete a gas safety record in accordance with Applicable Law for each boiler, at the time of each minor and major boiler service;]

comply with the relevant manufacturer's recommendations during any applicable warranty period;

correct, by appropriate measures, any failure, damage, deterioration or malfunction to any building, landscaping, road, item of plant, equipment or services forming a part of the Energy System;

undertake sufficient checks to ensure that all Contractor’s Personnel are suitably trained, qualified and experienced to perform the tasks which the Contractor has appointed them to perform and, where necessary, ensure such other Contractor’s Personnel are appointed by the Contractor as are necessary to provide the Services on a day-to-day basis and carry out all necessary administration in respect of all such Contractor’s Personnel;

ensure that the operation and maintenance standards set out in Schedule 10 *(Standards of Operation and Maintenance)* are adhered to; and

keep all of the above information and records up-to-date at all times, give ESCo full access to all such information and records at all times and to such other pertinent information relating the components of the Energy System and/or the performance of the Services as may reasonably be requested by ESCo from time to time;

[establish and maintain a PPM System, containing all of the above information and records, and ensure that that PPM System is kept fully up-to-date at all times.]

* + - 1. Operation and Maintenance responsibility
         1. The Contractor shall:

be responsible for all day-to-day operation, maintenance and repairs and replacements of the Energy System and for managing all associated work and resources;

within [PERIOD] of the Services Commencement Date, and of each anniversary of the Services Commencement Date, provide a programme of maintenance for approval by ESCo’s Representative, including:

precise dates for the maintenance of items that could affect or will affect the continuity of Energy supply to Customers; and

the duration of any necessary maintenance, including the reasons why this is necessary with the levels of resilience and duplication built into the system. If, for any reason, the Contractor is unable to meet a particular programmed date, the Contractor shall agree a revised date with ESCo’s Representative. For any maintenance that could affect or will affect the continuity of Energy supply to Customers, the Contractor shall use all reasonable endeavours to undertake this maintenance during the summer, subject to maintaining the required frequency of plant maintenance that is required;

upon completion of maintenance works in accordance with the PPM system, within [INSERT] Business Days, update the PPM System with full details of the work undertaken and any issues arising. Where the service visit results in a recommendation of further work, this shall be forwarded to ESCo’s Representative within [INSERT] Business Days of the maintenance date, together with a quotation of cost and timescale to start and complete the work if these costs do not fall for the account of the Contractor in accordance with the terms of this Agreement. Where the Contractor becomes aware of the need for further work outside the scope of the Services, the Contractor shall advise ESCo’s Representative within [INSERT] Business Days of so becoming aware;

mitigate in the event that the supply of electricity to the Energy Centre fails, whether planned or unplanned, by arranging a rapid response electrical generator hire contract with a specialist that ensures that the generator is connected to the Energy Centre and supplying power within [INSERT] hours of notification and that it is of adequate capacity to operate sufficient plant to meet the heat requirements of the Heat Distribution Network. Where the generator is required to be used in such circumstances, the Contractor will be paid an additional fee for the transport, connection and hire charges of the generator, including its re-fueling, as detailed within Schedule 3 *(Charges)*, provided that the rapid response generator hire contract shall be included at the Contractor’s own cost [and, where any failure of supply of electricity is due to any breach of the Design & Build Contractor under the Design & Build Contract or any breach of the Contractor under this Agreement, all additional costs relating to transport, connection and hire charges of the generator shall be borne by the Contractor];

in the event that the supply of Heat to a Development fails due to an issue with the Heat Distribution Network for a pre-determined duration (pre-determined duration to be agreed with ESCo from time to time), develop a contingency plan to deploy the Temporary Boiler Plant, connect it to the Development and re-instate the supply of Heat to the Development until the issue with the Heat Distribution Network is remedied. Where the Temporary Boiler Plant is required to be used in such circumstances, the Contractor will be paid an additional fee for the deployment and connection of the Temporary Boiler Plant, including its re-fueling, as detailed within Schedule 3 *(Charges)*, provided that the operation and maintenance of the Temporary Boiler Plant shall be included at the Contractor’s own cost [and, where any failure of the Heat Distribution Network is due to any breach of the Design & Build Contractor under the Design & Build Contract or any breach of the Contractor under this Agreement, all additional costs relating to the deployment and connection of the Temporary Boiler Plant shall be borne by the Contractor];

[in the event that ESCo requires a supply of Heat to a Development to be served by the Temporary Boiler Plant due to a Development requiring Heat before the Primary Distribution Network has been extended to the Development), liaise with the Developer so that the Developer provides a temporary gas supply if possible, develop a plan with the Developer to deploy the Temporary Boiler Plant, connect to the Development, including its gas supply if available, and supply Heat to the Development until the Primary Distribution Network has been extended and connected to the Development. Where the Temporary Boiler Plant is required to be used in such circumstances, the Contractor will be paid an additional fee for the liaison with the Developer, the deployment and connection of the Temporary Boiler Plant, including its fuel costs (gas or fuel oil), as detailed within Schedule 3 *(Charges)*, but the operation and maintenance of the Temporary Boiler Plant shall be included at the Contractor’s own cost.]

* + - 1. Preparation of a PPM System
         1. At least [PERIOD] prior to the Services Commencement Date, the Contractor shall prepare and submit to ESCo a full computerised planned preventative maintenance system using a software system of ESCo’s choice, such system to be licensed by ESCo (“**PPM System**”) for all landscaping and grounds maintenance, fences, roads, buildings (including cleaning), plant, equipment and services and associated systems forming the Energy System, including all assets, and such PPM System shall contain operating and maintenance tasks which meet the following:

all Authorisations;

all statutory inspections;

the maintenance as set out in Schedule 10 *(Standards of Operation and Maintenance)*;

further maintenance for any elements of the Energy System not covered in Schedule 10 *(Standards of Operation and Maintenance)*;

maintenance to Good Industry Practice; and

manufacturers’ recommended maintenance standards as contained in the O&M Manuals.

* + - * 1. Where the Contractor finds there is a conflict between any of the above when setting up the PPM system, the Contractor shall identify such conflicts to ESCo’s Representative and ask ESCo’s Representative to make a determination on such conflicts. The Contractor shall then be bound by ESCo’s decision.
      1. Monitoring and Inspection by the Contactor of the Services
         1. From the Services Commencement Date, the Contractor shall operate and maintain the Performance Monitoring Reporting System designed to ensure that the Services are carried out in compliance with this Agreement. Such a system must include;

adequate supervision by competent supervisory staff to ensure performance of the Services in accordance with this Agreement;

meetings with ESCo’s Representative; and

the preparation and maintenance of accurate books and records in respect of the provision of the Services to the extent:

required by this Agreement;

reasonably required by ESCo’s Representative to ensure that any costs charged to ESCo in respect of the Services are properly recorded, identified and auditable;

reasonably necessary to record the nature and quality of all work carried out by the Contractor in the performance of the Services; and

otherwise reasonably necessary to ensure that the Services are provided in a proper and timely fashion.

* + - * 1. Such records must be retained at least for a period of three (3) years following the Termination Date, or until such time as any claim has been settled and shall be made available during every working day for inspection and copying by ESCo’s Representative on reasonable notice.
        2. The Contractor shall implement, as soon as reasonably practicable, any reasonable written recommendations for the improvement of such system as may be made by ESCo’s Representative from time to time.
        3. ESCo’s Representative shall have the right, at any time, to inspect the Energy System and to witness performance of the Services to ensure that the Services are being carried in accordance with this Agreement, including by having access to and/or inspecting:

any part of the Contractor’s Premises from which the Services are provided;

any Contractor’s Personnel for the purpose of interviewing him or her in connection with the carrying out of all or any part of the Services;

vehicles, materials, equipment, plant, stores, spare parts, and other equipment used or proposed to be used in connection with the provision of the Services;

any records and Documentation in the possession of the Contractor as ESCo is entitled to examine under the provisions of this Agreement.

Quality Management System

The Contractor shall, within [INSERT] Business Days of the Effective Date, submit to ESCo’s Representative details of its quality management system (“**Quality Management System**”) which shall be developed specifically for the Energy System and requirements of this Agreement. ESCo’s Representative may notify the Contractor of any recommendations it believes necessary for modification of the Quality Management System and the Contractor shall take reasonable account of such recommendations and re-issue its Quality Management System.

ESCo’s Representative shall have the right to audit the Quality Management System from time to time, which audit may include some or all of the following activities:

visits to the Contractor's Premises;

interviewing the Contractor’s management and Contractor’s Personnel; and

the right to examine Documentation relevant to the Quality Management System.

If ESCo identifies any defects in the operation by the Contractor of its Quality Management System and notifies these to the Contractor, the Contractor shall use its best endeavours to rectify any such failures.

* + - 1. Meetings
         1. The Contractor shall, where requested so to do by ESCo’s Representative (acting reasonably), attend any meetings which may be arranged between ESCo’s Representative and any members of the public and/or organisations including but not limited to residents’ forums and local organisations concerned with the performance of the Services, provided that such meetings shall not be more regularly than one per month. ESCo’s Representative shall give the Contractor reasonable notice of such meetings which may take place outside the Contractor's Normal Working Hours.
         2. The Contractor shall, where requested so to do by either ESCo or ESCo’s Representative, attend any meetings with which may be arranged between ESCo or ESCo Representative and a Developer, Customer[, the Customer Services Contractor] or ESCo’s Personnel. ESCo’s Representative shall give the Contractor reasonable notice of such meetings which will normally take place during the Contractor's Normal Working Hours.
      2. Working Hours
         1. Save where expressed otherwise, the Contractor will not be expected to attend meetings with ESCo or ESCo’s Representative out of Normal Working Hours.
         2. Where the Contractor works outside of Normal Working Hours, it must notify ESCo’s Representative, and any such work must be carried out so as not to disturb Customers.
         3. [Subject to clause 10 *(Changes)* and Schedule 17 *(Change Control Procedure)*, where the Contractor is required to perform work outside of Normal Working Hours which may disturb any Customer, the Contractor shall contact ESCo’s Representative[ and the Customer Services Contractor,] before commencing work. No work will be performed without the consent of ESCo’s Representative in such circumstances. If necessary, the Contractor will accommodate minor or temporary variations to its normal method of performing the Services, as agreed with ESCo’s Representative, to avoid unnecessary disruption at no additional cost to ESCo.]
         4. For the avoidance of doubt, to the extent that this Agreement requires work outside of Normal Working Hours, the Contractor shall not be entitled to impose greater costs on ESCo.
      3. Emergencies
         1. In the event of an Emergency, the Contractor shall take such action as the Contractor reasonably considers necessary or desirable in order to prevent or minimise injury, damage or loss, and will promptly report to ESCo’s Representative the nature of the Emergency and the action taken by the Contractor in response thereto and any loss or damage caused. The Contractor shall, as appropriate, take steps to notify any Regulatory Body, the Contractor’s insurers and any other persons required to be notified by ESCo or the Contractor.
         2. If ESCo reasonably considers that there is an Emergency and, in its reasonable discretion, believes that the Contractor is not taking the necessary and proper steps to overcome the Emergency, ESCo shall, for so long as such Emergency continues, be entitled to direct the Contractor to provide all or any of the Services in such manner and/or at such times and/or to provide such Services as ESCo shall consider to be necessary to maintain the proper operation and/or maintenance of the components of the Energy System or to reduce the risk to life or property, provided always that ESCo may not require the Contractor to operate or maintain the Energy System contrary to the requirements of any Applicable Law, any Authorisations or if doing so would put the Contractor at risk of personal injury.
      4. Materials
         1. The Contractor shall ensure that materials used in the supply of the Services:

comply with all Applicable Law, Good Industry Practice and all applicable Policies;

are suitable and fit for purpose for the provision of the Services;

for replacements, are like for like in terms of material and product; and

have not been previously been used and, when installed, are covered by the full extent of the available manufacturer’s warranty when the product was first purchased.

* + - * 1. The Contractor shall use, mix and prepare all materials in a safe manner and shall keep the same under proper control and safe keeping and shall ensure that all materials are properly, accurately and clearly labelled on their containers (where appropriate) in accordance with any applicable statutory requirements and in accordance with best trade practice.
        2. If, in the reasonable opinion of ESCo’s Representative, the materials supplied by the Contractor do not comply with the requirements of this Agreement then ESCo’s Representative may instruct the Contractor to not use or, if already used, to remove and replace, such materials and:

the Contractor shall comply with such instruction; and

if the Contractor fails to comply with such instruction, then ESCo shall be at liberty to provide the materials or make arrangements for their storage or employ other persons to provide the materials and all costs thereof together with a reasonable administration charge, may be deducted from the sums due to the Contractor under this Agreement or shall be recoverable from the Contractor by ESCo as a debt.

* + - 1. Hazardous Substances and waste
         1. The Contractor shall inform ESCo of the delivery, in the performance of the Services, of any goods having a toxic hazard or other hazard to the safety or health of persons or property, identifying those hazards and giving full details of any precautions to be taken by the Contractor on the delivery of such goods and their subsequent storage or handling.
         2. The Contractor shall ensure that all such goods are suitably packed and identified at the time of delivery with reference to the hazards attaching to them.
         3. The Contractor shall give all notices and shall procure all necessary licences and permits and will indemnify ESCo against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Contractor of this obligation.
         4. The Contractor shall be responsible, at its own cost, for the safe disposal in accordance with Applicable Law and Good Industry Practice of any waste produced in the performance of the Services.
         5. The Contractor shall be responsible for the security of all materials (including all hazardous materials) used by, and all waste (including all hazardous waste) produced by, the Contractor and any Contractor’s Personnel in connection with the provision of the Services and shall hold ESCo harmless in respect of any costs, claims, expenses, losses or other liability or claims incurred by ESCo as a result of any use, storage or disposal of such materials by the Contractor in breach of this Agreement.
      2. Spares
         1. Within [INSERT] months of the Effective Date, the Contractor shall prepare and submit to ESCo’s Representative a list of spare parts which it considers to be necessary to purchase for the continuing operation and maintenance of the Energy System in accordance with the provisions of this Agreement, including all strategic spares necessary to cover plant breakdown and limit outages and shall set such stock levels as may be reasonably expected to ensure that repair and maintenance works shall be carried out as quickly and efficiently as possible (“**Operational and Strategic Spares**”).
         2. When developing this list of Operational and Strategic Spares, the Contractor shall act in accordance with Good Industry Practice to ensure that the list provided reflects only those spares which the Contractor believes are essential to the delivery of the Services in accordance with the requirements of this Agreement, taking into account alternative approaches to holding spare parts where the Services can be maintained to the standard required by this Agreement. The Contactor shall also give due consideration to the shelf-life of spare parts and the expected levels of usage under normal operation and expected failure rates and should not include any items to the Operational and Strategic Spares which, acting in accordance with Good Industry Practice, would not be required during the Term or could become obsolete or unusable due to shelf-life.
         3. ESCo’s Representative shall review and seek to agree this list with the Contractor and, once agreed, the Contractor shall purchase the initial supply of Operational and Strategic Spares [and charge ESCo for these at cost plus [INSERT]%]. The costs to which the Contractor’s mark-up is added shall be the cost paid by the Contractor less any discounts given to the Contractor by the relevant equipment supplier and any rebates paid by the relevant supplier of that item to the Contractor.
         4. In the event that the Parties are unable to agree the list within [INSERT] Business Days of the Contractor providing it to ESCo’s Representative, either Party may refer the matter to be resolved in accordance with the Dispute Resolution Procedure.
         5. The Contractor shall store these Operational and Strategic Spares [in the area set aside for this purpose in the Energy Centre or Substation as appropriate]. Suitable shelving and racking shall be provided by the Contractor where spares are to be located within [the Energy Centre]. Lockable robust cabinets shall be provided by the Contractor where spares are to be located within a Substation. The Contractor shall ensure a full up to date inventory of all such spares is retained on the PPM System and that the items are stored in safe manner which prevents damage to the items.
         6. If the Contractor uses any of the Operational and Strategic Spares then it shall immediately advise ESCo’s Representative in writing and shall replenish the Operational and Strategic Spares stock accordingly at its own cost so as to be able to hand back to ESCo on termination of this Agreement a full stock of Operational and Strategic Spares. This shall also apply to any item which is taken from the Operational and Strategic Spares but is subsequently found to be faulty or not fit for purpose.
         7. Upon termination of this Agreement for any reason, the Contractor shall ensure that the ownership of the Operational and Strategic Spares is passed to ESCo and that the stock levels are as required to be maintained in accordance with this paragraph 10. If any stocks of the Operational and Strategic Spares are not in accordance with these levels then either the Contractor shall rectify any understocking of such spare parts or, if the Contractor does not carry this out within [INSERT] Business Days of the date of termination, then ESCo may purchase such spare parts as are missing and charge the Contractor at cost plus [INSERT]%.
      3. Tools, Vehicles and Equipment
         1. Save as otherwise provided in this Agreement, the Contractor shall at its own expense provide, all vehicles, tools and other equipment necessary for the provision of the Services and ensure that they are kept and stored in accordance with the provisions of this Agreement.
         2. The Contractor shall have available, as standard equipment, a freezing set capable of effective isolation of water services up to [50mm] in diameter. The Contractor shall also have Contractor’s Personnel available to operate this equipment properly.
         3. The Contractor shall also have available, as standard equipment, a system flusher for use when flushing out of small sections of heating system pipework. No flushing through to drains will be allowed. The Contractor shall agree with ESCo’s Representative any flushing chemical to be used before use. Where a system flusher is used, the Contractor shall provide all relevant safety sheets, at point of use.
         4. For the avoidance of doubt, the Contractor shall at all times be fully responsible for the licensing and payment of all licensing fees, parking fees, taxes and insurance required in connection with or arising out of the possession or use of all vehicles and other equipment, and parts used in the provision of the Services.
         5. The Contractor shall be responsible for the security of all vehicles, equipment and other equipment and parts and ESCo shall not be liable in the event of any loss thereof or damage thereto (save in so far as such loss or damage is caused by any deliberate or negligent act of ESCo or ESCo Personnel).
         6. The Contractor shall, at its own expense, put and keep all vehicles, equipment, and other equipment used in the performance of the Services at all times in safe, good, clean and serviceable repair and condition in accordance (where applicable) with all Applicable Law and in such condition and appearance as is commensurate with the proper performance of this Agreement.
         7. [The Contractor shall ensure that its name, address and business are clearly displayed on all of its vehicles, with the exception of company cars used by supervisory staff.]
         8. The Contractor shall:

take all reasonable and practicable steps to ensure that any vehicle and other equipment are used in a careful and proper manner and for the purpose for which they are constructed, designed and/or modified;

ensure that all vehicles and, where appropriate equipment are driven only by the holder of a full and current driving licence as required for that category of vehicle;

ensure that no vehicles, or other equipment (where applicable) are loaded at any time in excess of the maximum weights permitted by Applicable Law in respect of such equipment;

comply with all Applicable Law governing the use and operation of any vehicles or other equipment used in the provision of the Services;

be responsible for all costs in any way associated or connected with the use and operation of equipment and vehicles;

ensure drivers are trained and thoroughly competent in all aspects of the safe use of vehicles and other equipment;

ensure that vehicles or equipment are used carefully when in close proximity to children;

ensure that the routes including access and egress points to be taken by vehicles and other equipment for the purposes required in connection with the performance of the Services, are clearly defined and agreed with ESCo’s Representative;

ensure that all parking rules are followed and that a parking permit is used when required;

ensure that parking does not obstruct chute, storage or emergency access; and

ensure that disabled access ramps are not obstructed.

* + - * 1. The Contractor shall indemnify ESCo against all damage to property or injury to persons that occur through the use by the Contractor of vehicles and equipment in the provision of the Services.
      1. Inspection of work by the Contractor
         1. The Contractor undertakes to:

to appoint a suitably qualified supervisor (other than the original supervisor involved in the work) to inspect on a regular basis all work undertaken by Contractor’s Personnel;

to report on the above inspections to ESCo’s Representative on a monthly basis in a format to be agreed between ESCo’s Representative; and

to undertake a joint inspection of a proportion of such work with ESCo’s Representative, as directed by ESCo’s Representative.

* + - 1. Metering
         1. [With the exception of Customer Metering Systems and Network Metering Systems, ][[30]](#footnote-30) where automated meter recording systems are not provided or are not operational, the Contractor shall read each day each meter contained within the Energy System, including but not limited to heat, electricity, gas, and water consumption meters.
         2. The Contractor shall check the automated or manual reading each day for accuracy both against the previous reading and against the corresponding consumption for the same period in the previous year wherever possible and the degree days in that month where relevant. In the event that a meter reading is deemed to be inaccurate and the meter is malfunctioning the Contractor shall repair or replace the meter as appropriate. During such periods when the meter is malfunctioning, the Contractor shall keep all necessary records to assist in the calculation of an estimated consumption for the period that the meter is deemed to be inaccurate or inoperable. Where the meter is not deemed to be malfunctioning the Contractor shall promptly investigate any unusual readings which fall outside of expected norms and rectify faults found.
      2. Supply of utilities etc
         1. [ESCo][The Contractor] shall procure electricity, gas, water, telecommunications and drainage utility services for the Energy Centre. [ESCo’s Representative shall manage][The Contractor shall as agent for ESCo in managing] the agreements for such utility services, including verifying the accuracy of invoices submitted by providers of these utility services.
         2. Any changes to or replacements of or supplements to such utility arrangements shall be managed by [ESCo’s Representative][the Contractor, acting as agent of ESCo].
         3. [[ESCo][The Contractor] shall be responsible for the procurement of [OTHER FUEL].[[31]](#footnote-31)]
      3. Network Extensions

In the event that any Network Extension is procured by ESCo, ESCo shall issue a Change Request to the effect that the Contractor shall treat such Network Extension as part of the Energy System and shall provide all relevant Services in relation to such Network Extension in accordance with this Schedule 1. Services in relation to such Network Extension shall be priced in accordance with the Schedule of Rates.

* + - 1. Management, Design Review, Workmanship Quality Review and Administrative Services
         1. The Contractor shall provide the following management, design review, workmanship quality review and administrative services to ESCo under this Agreement:

day to day management of the Energy System including the management by the Contract Manager to ensure the proper and efficient operation of the Energy System;

response to all questions from ESCo [and the Customer Services Contractor] regarding the operation and maintenance of the Energy System;

preparation of an annual operating budget to be approved by ESCo;

preparation of predicted daily demand and consumption profiles for gas and water required from the utility providers for the year ahead, including allowing for programmed new Development connections;

all accounting services, both management and financial, to ensure the proper operation of the Energy System and the processing of all purchases, including checking and approving for payment all energy invoices;

the design review and workmanship quality review of Secondary Distribution Networks delivered by Developers, undertaken as part of the Takeover Process, which shall be instructed via a Change Request;

the design review and workmanship quality review of Network Extensions, undertaken as part of the Takeover Process, which shall be instructed via a Change Request;

the management of all physical connections to the Energy System, due to the installation of Secondary Distribution Networks and Primary Distribution Network Extensions or otherwise which are requested and approved by ESCo by way of a Change Request.

* + - 1. Communication Systems and Helpline
         1. The Contractor shall provide single direct duty telephone (the “**Helpline**”) and single duty email access to responsible duty engineers within his organisation to ensure work is carried out in accordance with this Agreement and to which ESCo [and the Customer Services Contractor] can make contact with the Contractor during and outside of Normal Working Hours to report faults in relation to any component of the Energy System.
         2. The Contractor shall provide all Contractor’s Personnel carrying out the Services with mobile telephones or two-way radios to enable the Contractor to make contact with them.
         3. The Contractor shall, within [INSERT] Business Days of the Effective Date, supply ESCo’s Representative with full details of the method by which the Contractor will comply with the communication requirements.
         4. Any calls to the Helpline shall be recorded by the Contractor on the PPM system or such other system as is agreed by ESCo, and records shall be kept of appropriate details of such calls. Such records shall be available for inspection by ESCo’s Representative at any time during Normal Working Hours.
         5. The Contractor shall use all reasonable endeavours to ascertain from the caller the nature of the reported fault and as to whether it falls within the contractual responsibility of the Contractor.
         6. Where the call has been received from ESCo [or the Customer Services Contractor] and the Contractor believes, using Good Industry Practice, that the fault does not result from a failure of any item of plant or equipment which is a component of the Energy System, the Contractor shall advise ESCo [and the Customer Services Contractor] that rectification of the fault is not accepted by the Contractor.
         7. Unless the Contractor can demonstrate beyond reasonable doubt that the fault is not the responsibility of the Contractor pursuant to this Agreement, then the Contractor shall attend and rectify the fault.
         8. [Where the Contractor does not accept such faults as being the responsibility of the Contractor [or has passed faults to the Customer Services Contractor which are then attended by the Customer Services Contractor engineer who can demonstrate beyond reasonable doubt that the fault is of a nature which requires rectification by the Contractor, then the Contractor shall pay the scheduled costs of the Customer Services Contractor’s abortive visit to ESCo and shall accept responsibility for rectifying the fault.][[32]](#footnote-32)
         9. [Where there is disagreement between the Customer Services Contractor and the Contractor then this shall be referred to ESCo for determination and the Contractor and the Customer Services Contractor shall be bound by the decision of ESCo.][[33]](#footnote-33)
         10. Where the Contractor attends a call which, after the Contractor’s initial diagnosis, proves not to be the responsibility of the Contractor pursuant to this Agreement, then the Contractor may:

immediately abort the job and advise ESCo [and the Customer Services Contractor][[34]](#footnote-34); or

complete the job (subject to agreement of payment terms with ESCo [or the Customer Services Contractor, as applicable].[[35]](#footnote-35))

* + - * 1. Where the Contractor receives a call from [a Customer Services Contractor or][[36]](#footnote-36) or ESCo’s Representative regarding a fault relating to any component of the Energy System, the Contractor shall categorise the call against the Output Specification and relevant Service Levels and respond to the fault within the agreed timescales in accordance with Schedule 2 *(Output Specification and Service Levels).*
        2. Wherever practically possible, the Contractor shall rectify faults and/or restore Energy supplies to the Customers at the first visit and shall regularly communicate to ESCo’s Representative [and the Customer Services Contractor] the progress being made in resolving such faults where they affect Energy supplies to Customers. The frequency of such communication shall be as follows for each category of call:

Emergency – at least once per [INSERT] whilst the fault is continuing;

No Heat for up to [INSERT] Customers, at least once every [INSERT] whilst the fault is continuing;

No Heat for over [INSERT] Customers, at least once every [INSERT] whilst the fault is continuing; and

All others – at least once every [INSERT] whilst the fault is continuing.

* + - * 1. The Contractor shall log instructions from the local distribution network operator, and any other utility providers and all other relevant bodies, including in respect of gas and water which may affect the operation of the Energy System.
        2. The Contractor shall fully guarantee all Repair Works for at least [INSERT] from the date the Repair Works were completed. During this period, the Contractor shall be liable for all labour and materials costs in the event of the repair failing and any such Repair Works shall not be included in the Contractor’s Financial Liability. The Contractor shall not be responsible for any vandalism or misuse of the Energy System by third parties provided the Contractor has taken reasonable measures to prevent such damage. The Contractor shall keep a record of all equipment replaced with dates of installation and associated warranty periods. These shall be included in the PPM System.
    1. : Employees, Health and Safety
       1. Health and Safety
          1. The Contractor will operate a suitable safety management system and describe that system within its Health & Safety Policy.
          2. The Contractor shall:

be responsible for putting in place and managing a fully compliant health and safety and permitting system for the Energy System; and

promptly notify ESCo’s Representative of any health and safety hazards, which may arise in connection with the performance of the Services; and

promptly notify ESCo’s Representative of any health and safety hazards which may exist or arise in relation to the Energy System and which may affect the Contractor in the performance of the Services or any Customer; and

inform all Contractor’s Personnel and visitors to the Energy Centre of all known health and safety hazards and shall instruct them in connection with any necessary safety measures; and

notify ESCo’s Representative immediately in the event of any incident occurring in the performance of the Services where that incident causes any personal injury or any damage to property; and

take all measures necessary to comply with Applicable Law which may apply to the safety of the Contractor, the Contractor’s Personnel, Customers or the general public in the performance of the Services; and

comply with any reasonable directions made by ESCo’s Representative in respect of health and safety policies or safe working procedures and practices; and

ensure that, throughout the Term, such persons as may be required by Applicable Law are appointed as persons responsible for health and safety matters and that the Contractor has, available to respond within a reasonable time, an authorised person to carry out high voltage electrical switching procedures and isolation. The Contractor shall inform ESCo’s Representative in writing of the identity, address and daytime telephone number of such persons and shall inform ESCo’s Representative in advance of any change in their identity; and

ensure that all Contractor’s Personnel are fully conversant with and comply with ESCo’s health and safety policy and that they take all such precautions as are necessary to protect the health and safety of ESCo staff, Customers and the public; and

ensure that all Contractor’s Personnel are properly trained and instructed with regard to fire risks and fire precautions; and

regularly inspect and assess the condition of all equipment, machines and procedures used in the provision of the Services and which the Contractor is required to maintain in accordance with this Agreement and promptly remedy any defects or faults revealed by such inspections, in order to restore proper health and safety standards; and

ensure that it keeps records of such inspections and the results thereof.

* + - * 1. Without prejudice to any other rights or remedies available to ESCo, ESCo’s Representative may suspend the provision of the Services (or any part of the Services) forthwith if the Contractor is in breach of this Part 3 of Schedule 1 *(Service Requirements)* or of any other duties or obligations in relation to health and safety matters or where the continued performance of the relevant Service(s), in the reasonable opinion of ESCo’s Representative, presents an Emergency. If ESCo reasonably believes that it needs to take action in connection with such an Emergency, then it shall do so in a manner which is reasonable and shall be entitled to charge such additional direct reasonable costs as it incurs to the Contractor.
      1. Contractor’s Personnel and Contract Manager
         1. The Contractor must deploy a sufficient number of Contractor’s Personnel to ensure that the Services are provided at all times and in all respects in accordance with this Agreement [and, in any event, shall provide a Contract Manager who will be based in the Energy Centre or who is able to respond during Normal Working Hours but also including Bank Holidays, to issues if they arise on the Energy System, within a reasonable time period (taking into account the need to ensure that the Services are provided at all times)]. Where the Contract Manager is not available to respond to issues arising, the Contractor shall ensure that alternative, suitably qualified operation and maintenance personnel are available and, for the avoidance of doubt, such personnel shall be available on a 24/7 365 day per year cover rota.
         2. The Contractor shall only deploy such suitably qualified experienced and competent personnel as are required for the performance of the Services and the Contractor's other obligations under this Agreement. The Contractor shall ensure that each of the Contractor’s Personnel has sufficient competence to carry out the duties allocated to them, and provide proof of such competence when required and are fully trained in and fully aware of;

any relevant provisions of this Agreement, including all Standards and Policies;

all rules, procedures and standards referred to in this Agreement relevant to the work that each of the Contractor’s Personnel is deployed to perform;

all requirements of Applicable Law and Authorisations, including relevant rules, procedures and statutory requirements concerning health and safety at work;

fire risks and fire precautions and emergency action including evacuation procedures;

the need to maintain high standards of hygiene, courtesy and consideration;

the need to recognise situations which may involve any actual or potential risk of personal injury to any person (including members of the public), and the need to make such situations safe;

the need, in the event of any Emergency, immediately to contact the Contract Manager (and the Contractor will ensure that the Contract Manager shall forthwith notify ESCo’s Representative); and

the need to maintain the highest practical environmental and energy efficiency standards.

* + - * 1. The Contractor will be entirely responsible for the employment and conditions of service of all Contractor’s Personnel including, inter alia the payment of salaries and wages (including any overtime and bonuses), the payment of income or other taxes, national insurance contributions and sick pay.
        2. The Contractor will and shall procure that all Contractor’s Personnel comply with the policies, codes and procedures referred to in this Agreement and with all Authorisations and Applicable Law.
        3. To the extent that the conduct of any of the Contractor’s Personnel has given rise to or is likely to give rise to an impairment of the image or reputation of ESCo, ESCo’s Representative may (acting reasonably) require the Contractor to remove such Contractor’s Personnel from the provision of the Services.
        4. The Contractor will be responsible for any liability, loss or damage which may arise as a consequence of the deployment or removal of any of the Contractor’s Personnel and the Contractor will fully and promptly indemnify ESCo in respect of all demands, claims, liabilities, losses, damages, costs and expenses incurred by ESCo arising out of or in connection with such deployment or removal.
        5. The Contractor must ensure that all Contractor’s Personnel carry out their duties, conduct themselves and perform the Services in as orderly and quiet a manner as may be reasonably practicable, having regard to the nature of the duties being performed by them and in accordance with the Standards and Policies.
        6. The Contractor shall further ensure that no Contractor’s Personnel unlawfully removes any article, thing, material, item of equipment or part thereof from premises owned or managed by ESCo.
        7. The Contractor will ensure that Contractor’s Personnel carry out their duties and otherwise conduct themselves whilst at premises belonging to ESCo in such a way as to minimise disruption to the work of ESCo, any of ESCo’s Personnel, any Customers or the general public.
        8. The Contractor will at its own cost provide, and will ensure that Contractor’s Personnel carry at all times whilst deployed in the provision of the Services, such identification as may from time to time be specified by ESCo’s Representative (including, if so required by ESCo’s Representative, photographic identification). The Contractor will ensure that each Contractor’s Personnel discloses his or her identity and status as Contractor’s Personnel when requested to do so by ESCo’s Representative.
        9. [The Contractor shall, at its own cost provide, and ensure that Contractor’s Personnel wear at all times whilst deployed in the provision of the Services, a uniform as approved by ESCo’s Representative.]
        10. Where the nature of, or the place or circumstances of, the tasks being carried out by Contractor’s Personnel make the wearing of any special or protective clothing and/or footwear necessary or appropriate, the Contractor will at its own cost provide, maintain and replace such clothing or footwear and ensure that Contractor’s Personnel wear such clothing or footwear when engaged in such tasks
        11. If, owing to the nature of any particular tasks which Contractor’s Personnel are requested to perform, such tasks are exempt from the provisions of Section 4(2) of the Rehabilitation of Offenders Act 1974 by virtue of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975, then the Contractor must ensure that all Contractor’s Personnel deployed in carrying out such tasks provide all information required by the said Act and Order about convictions which would otherwise be spent under the Act. The Contractor must disclose to ESCo’s Representative the names and sufficient information to enable proper checks to be made and, as appropriate, all convictions of Contractor’s Personnel deployed in the performance of such tasks and ESCo may require such Contractor’s Personnel to be removed from the provision of the Services in the event that ESCo’s Representative reasonably believes such Contractor’s Personnel to be unsuitable to perform such tasks.
        12. All Contractor’s Personnel working on the Energy System shall be suitably qualified to undertake the work they are undertaking.
        13. Within [INSERT] Business Days of the Services Commencement Date, the Contractor shall provide a schedule of all Contractor’s Personnel and their job titles who will be working on the Energy System. This schedule will include the name and details of all relevant training or qualification of each of the Contractor’s Personnel and evidence of the competence of any of the Contractor’s Personnel, including details of previous experience. The Contractor shall ensure that this schedule is updated on a six monthly basis and where there is a change in personnel.
        14. ESCo reserves the right to require removal from the Services of any individual used by the Contractor who, in the opinion of ESCo’s Representative:

is not performing work in strict compliance with this Agreement; and/or

is or is deemed to be guilty of misconduct or negligence; and/or

is acting in a manner which is detrimental to ESCo's interests; and/or

is not medically fit to perform the Services or provides a risk to the health of those with whom that person may come into contact during work on the Contract.

* + - * 1. This right to remove Contractor’s Personnel shall not be exercised arbitrarily, vexatiously or capriciously by ESCo’s Representative.
        2. Any such individual removed will be promptly replaced by the Contractor with a properly qualified Contractor’s Personnel, in such time as is acceptable to ESCo’s Representative, and at no extra cost to ESCo.
        3. ESCo shall in no circumstances be liable to the Contractor in respect of any such removal or ensuing disciplinary action and the Contractor shall fully and promptly indemnify ESCo against any claim made by such staff.
        4. The Contractor shall notify ESCo of its proposed lead manager for the Energy System, the “**Contract Manager**” who shall be based on site at the Energy Centre Site, and provide details of such individual's previous experience and, if ESCo is not reasonably satisfied of that individual's ability to carry out the functions required, ESCo shall be entitled to reject the appointment. The Contractor shall notify ESCo if at any time it intends to replace the Contract Manager and ESCo shall also have the right to reject such appointment if it is not reasonably satisfied of the individual's ability. If a Contract Manager is appointed who subsequently reasonably appears to ESCo to be incapable of performing to the standard required of the Contract Manager, ESCo shall be entitled to request the Contract Manager’s dismissal and the Contractor shall use its best endeavours to find a suitable replacement.
        5. The Contractor will provide a sufficient complement of supervisory staff in addition to the Contract Manager who will be available to attend a weekly meeting in person with such members of ESCo’s Personnel as ESCo’s Representative shall specify and to ensure that Contractor’s Personnel engaged in the provision of the Services are at all times adequately supervised and that such Contractor’s Personnel properly perform their duties.
        6. The Contractor shall ensure that its own supervisory staff shall be responsible for the control and direction of all Contractor’s Personnel deployed in the provision of the Services and that they comply with all reasonable instructions and requests given and made by ESCo’s Representative in connection with the conduct of Contractor’s Personnel whilst at premises belonging to or managed by ESCo.
        7. All supervisory staff must be available to consult with ESCo’s Representative at all times during the working day and to attend a meeting with ESCo’s Representative upon reasonable notice of any meeting being given.
        8. The Contractor shall:

ensure a system for staff consultation and liaison including safety matters in keeping with all statutory requirements, the Authorisations and good industrial relations is maintained; and

arrange for any necessary continuing training and retraining of staff.

* + 1. : Water Treatment Regime
       1. Water Treatment Regime

The Contractor shall ensure that at all times the water treatment regime complies with the O&M Manuals and as follows:

During any Works undertaken by the Contractor:

to protect the Heat Distribution Network (including Substations), from damage and fouling, the Contractor must ensure that any sections of the Heat Distribution Network on which the Contractor carries out construction or repairs works is cleaned and flushed in accordance with Applicable Law, Good Industry Practice and the Policies;

water treatment procedures on newly cleaned closed systems shall be in accordance with Applicable Law, Good Industry Practice and the Policies plus as stipulated further below; and

the final system fill shall be using softened water.

Returning Systems to Operation

Prior to bringing any sections of the Heat Distribution Network into operation following draining down, the following procedures must be carried out to ensure the water quality of this system is acceptable to ESCo:

samples shall be taken of the water in the section being brought back into operation;

the number and locations of samples are to be in accordance with Applicable Law, Good Industry Practice and the Policies but must also include one sample from each heat exchanger which has been isolated and drained down;

all samples must be analysed by a UKAS accredited laboratory; and

the minimum parameters for sampling results for the Heat Distribution Network are as follows (the “**Water Quality Requirements**”) and the Contractor shall not bring any part of the network back into operation until these criteria for the respective part of the Heat Distribution Network have been achieved.

Primary Distribution Network

|  |
| --- |
| **BACTERIA – Primary Distribution Network -** [INSERT REQUIREMENTS] |
| **CHEMICAL - Primary Distribution Network -** [INSERT REQUIREMENTS] |
| **MAKEUP WATER - Primary Distribution Network -** [INSERT REQUIREMENTS] |

Secondary Distribution Network

|  |
| --- |
| **BACTERIA - Secondary Distribution Network -** [INSERT REQUIREMENTS] |
| **CHEMICAL - Secondary Distribution Network -** [INSERT REQUIREMENTS] |
| **MAKEUP WATER – Secondary Distribution Network -** [INSERT REQUIREMENTS] |

Ongoing Operation

All records of action, results and planned sampling dates must be kept in an on-site log book by the Contractor and must include a graphic trend pattern on results, in accordance with Applicable Law, Good Industry Practice and the Policies.

The make-up water consumption shall be recorded at weekly intervals and shall be negligible with no rising trend. If any rising trends are identified then these should be immediately investigated and rectified by the Contractor.

This log book must be made available for inspection on request by ESCo’s Representative.

The Contractor must ensure that the Water Quality Requirements anywhere within the Heat Distribution Network are in accordance with those set out above and, if not, advise ESCo’s Representative and ensure a rectification plan is put in place as soon as any deviations from these requirements are identified. This plan must be developed by a competent and qualified water treatment technical specialist.

Evidence of compliance with these Water Quality Requirements shall be provided to ESCo’s Representative when requested but shall as a minimum be included with each Request for Payment.

In addition, the Contractor shall comply with the following:

the Contractor shall take measures to prevent extended periods of no flow which can cause fouling and/or deterioration of heat exchangers;

a water treatment specialist shall be employed to manage the water quality of the Heat Distribution Network who shall visit site on at least a monthly basis and take and test samples to ensure compliance with the Water Quality Requirements;

any additional monitoring deemed appropriate by the water treatment specialist to ensure the Water Quality Requirements are met should be undertaken;

a corrosion monitoring regime shall be implemented; and

on-going Heat Distribution Network water treatment/maintenance records and water quality laboratory analysis shall be retained and shall be made available to ESCo’s Representative, upon request.

1. – Output Specification and Service Levels
   * 1. : Output Specification
        1. The Output Specification: Energy System Performance

The Contractor shall ensure that at all times the Energy System performs in accordance with all sections of the Output Specification as set out below.

[INSERT OUTPUT SPECIFICATION][[37]](#footnote-37)

* + - 1. Performance Measurement

The Performance Monitoring Reporting System

The Performance Monitoring Reporting System described below sets out the basis on which the level of compliance by the Contractor with the requirements of the Output Specification in each Payment Period shall be calculated.

[INSERT DETAILS OF PERFORMANCE MONITORING][[38]](#footnote-38)

* + 1. : Service Levels, Output Specification Performance Penalties and Bonus
       1. General
          1. [The Parties agree that the calculation of Deficiency Sums and Service Level Deductions are a genuine pre-estimate of the relevant and corresponding losses likely to be suffered by ESCo.]
       2. Output Specification and Deficiency Points
          1. The Contractor shall ensure that, at all times from the Services Commencement Date, the Services comply with the Output Specification and the Service Levels.
          2. From a period commencing [INSERT] months after the Services Commencement Date, failure to meet the Output Specification shall, subject to paragraph [2.3], result in Deficiency Points (“**Deficiency Points**”) being incurred.
          3. The Deficiency Point Value (the **“Deficiency Point Value**”) for each of each element of the Output Specification shall be:

[INSERT TABLE OF DEFICIENY POINT VALUES FOR FAILURE TO ACHIEVE KEY OUTPUT SPECIFICATIONS]

* + - * 1. The Deficiency Point Value shall be re-calculated annually in accordance with the indexation of the Charges in accordance with Schedule 3 *(Charges)*.
        2. For each Payment Period, the Contractor shall multiply the Deficiency Point Value for the relevant Output Specification element by the number of Deficiency Points accrued and shall deduct this sum (the “**Deficiency Sum**”) from the monthly Charges to be invoiced to ESCo for that Payment Period.
        3. The Contractor’s liability for Deficiency Sum payments shall be limited as follows:

[SET ANY CAPS ON DEFICIENCY SUM PAYMENTS]

* + - 1. Output Specification - Performance Bonus

[INSERT ANY PERFORMANCE BONUS SYSTEM]

* + - 1. Service Levels and Service Failure Deductions
         1. Table 1 below sets out:

the service levels that the Contractor must meet in the delivery of the Services (each a “**Service Level**”); and

for each failure by the Contractor to meet a Service Level (each a “**Service Level** **Failure**”), the number of points that shall accrue against the Contractor (each a “**Service Level** **Failure Point**”).

* + - * 1. Within [five (5) Business Days] of any Service Level Failure occurring, the Contractor shall notify ESCo of the relevant Service Level Failure and the measures it proposes to take to avoid such a Service Level Failure recurring.
        2. With each Request for Payment, the Contractor shall provide ESCo with a report summarising the Contractor’s performance against the Service Levels and all Service Level Failures arising in the relevant Payment Period, together with number of Service Level Failure Points accrued in that Payment Period (“**Service Level Report**”).
        3. For every [INSERT] Service Level Failure Points occurring in the relevant Payment Period, ESCo shall be entitled to a deduction of [INSERT] from the Charges payable to the Contractor (the amount which ESCo is entitled to deduct being a “**Service Failure Deduction**”).
        4. If the Contractor accumulates [INSERT] or more Service Level Failure Points in any month, a "**Monthly Service Failure**" shall be deemed to have occurred.
        5. If a Monthly Service Failure occurs in respect of a given month, the Contractor shall:

notify ESCo immediately of the Monthly Service Failure;

provide ESCo with a Remediation Plan in accordance with clause 28 *(Remediation plan process)*;

deploy all additional resources and take all remedial action that is necessary to rectify or to prevent the relevant Service Level Failures from recurring; and

carry out the actions identified in Remediation Plan in accordance with its terms.

* + - * 1. If [INSERT] or more Monthly Service Failures occur within a rolling [INSERT] [calendar month] period, a Major Default shall be deemed to have occurred.
      1. Exclusions
         1. The Contractor shall not incur Deficiency Points or Service Level Failure Points in respect of any Payment Period where, during the relevant Payment Period, the relevant element of the Output Specification or relevant Service Level is not met, or the failure to meet the relevant element of the Output Specification or Service Level is, as a direct result of any of the following events:

ESCo Default;

any Force Majeure Event;

any shutdown of all or any part of the Energy System expressly requested in writing by ESCo, other than as a result of a Contractor Default;

any outage, shutdown of all or any relevant part of the Energy System or any interruption in the provision of the Services which is necessary to carry out any maintenance of the Energy System pursuant to this Agreement provided that such maintenance is carried out in accordance with this Agreement, was previously and expressly agreed by the Contractor with ESCo in writing, and the need for such maintenance is not a result of any Contractor Default;

any outage, any shutdown of all or any part of the Energy System or any interruption in the provision of the Services as a result of any Emergency or where required by any Regulatory Authority (except where due to any Contractor Default).

* + 1. : Interference with performance of the Services
       - 1. If the Contractor becomes aware that any ESCo Default(s) is causing or is likely to cause it to fail to meet the Output Specification or any Service Level:

the Contractor shall notify ESCo as soon as reasonably practicable, giving such details as are reasonable in the circumstances;

ESCo may challenge any such notice received from the Contractor if it believes, in its reasonable opinion, that the alleged ESCo Default is not occurring or should not prevent the Contractor from performing the Services in accordance with the relevant Output Specification or Service Level. Any resulting disputes regarding the occurrence or impact of an ESCo Default which cannot be resolved within [NUMBER] Business Days may be referred by either Party for resolution in accordance with the Dispute Resolution Procedure;

the Contractor shall:

continue to provide the affected Services in accordance with this Agreement as best as it is able to in the circumstances; and

be entitled to be paid for the provision of the Services which have been affected by ESCo's Default(s) [together with any additional costs reasonably incurred by Contractor which directly relate to such ESCo Default(s)].

* + - * 1. If either Party becomes aware of any other incident or circumstances likely to cause an interruption to or material degradation in the delivery of the supply of Energy (whether or not resulting in a failure to meet the Output Specification or Service Levels):

it shall notify the other as soon as reasonably practicable;

the Contractor shall respond [without delay] to all queries and requests for information from ESCo about any such incident[, noting that ESCo may be required to comply with statutory or other regulatory timescales];

the Contractor shall use all reasonable endeavours to restore the Services as soon as reasonably practicable; and

each of the Parties shall take reasonable steps to mitigate the effects of such interruption to or deterioration in the supply of Energy.

Table 1 – Service Levels

[INSERT TABLE – INCLUDING SERVICE REQUIREMENTS, CORRESPONDING SERVICE LEVEL TO BE ACHIEVED, EVENT CONSITUTING A FAILURE, POINTS ACCRUING IN RESPECT OF EACH SUCH FAILURE]

1. – Charges
   * + 1. Payment of Charges
          1. In respect of each Payment Period (the first such period commencing on the Services Commencement Date), ESCo shall pay the Contractor the Charges payable in respect of the relevant Payment Period calculated as follows:

the Service Charges for the Services, calculated in accordance with Annex 1 to this Schedule 3 (Charges); plus

any Commercial Customer Secondary Distribution Network Charges payable pursuant to clause 3.11 *(Extensions to Demarcation Points with respect to Commercial Customers);*

subject to clause 3.8 *(Costs of repair and replacement)*, the addition of any Repair Works Fee due to in accordance with paragraph 2, Schedule 3 (*Charges*);

any adjustment to any of the Charges in accordance with clause 10 *(Changes)* and Schedule 17 *(Change Control Procedure);*

the addition of any Performance Bonus Payment pursuant to paragraph 3 of Schedule 2 Part 2; *(Output Specification);* and

subject to the deduction of:

any Service Failure Deductions pursuant to Schedule 2 Part 2 *(Service Levels,* Output *Specification, Performance Bonus and Penalties)*;

any Deficiency Sum pursuant to Schedule 2 Part 2 *(Service Levels, Output Specification, Performance Bonus and Penalties)*; and

any reasonable costs of a Required Action undertaken pursuant to clause 29 *(ESCo Step-in Process)*;

subject to the addition of VAT on relevant items, at the prevailing rate.

* + - * 1. For the avoidance of doubt, except as expressly stated otherwise, all costs of performing the Services as detailed in this Agreement shall be included in the Service Charges and the Contractor shall not be entitled to any additional payments for undertaking the relevant Services.
      1. Payment for Repair Work
         1. In addition to the monthly Service Charges, subject to clause 3.8 *(Costs of repair and replacement),* the Contractor shall be entitled to charge the reasonable costs of any repair work that it has undertaken on the Energy System in the relevant Payment Period, as follows

the fee that the Contractor is entitled to charge shall be calculated in accordance with Annex 1 of this Schedule 3 *(Charges)*;

only the fee so calculated that in excess of [INSERT] excluding VAT per each Repair Work (the “**Contractor’s Financial Liability**”) may be charged to ESCo in the Request for Payment (and, for the avoidance of doubt, all such costs up to the Contractor’s Financial Liability shall be borne by the Contractor),

(such sums that the Contractor is entitled to charge being a “**Repair Works Fee**”).

* + - * 1. Details of each Repair Work (including a detailed breakdown of costs and copies of invoices from subcontractors or suppliers the Contractor has used to undertake such Repair Work) must be included in such Request for Payment.
        2. If the Contractor reasonably believes, before commencing the Repair Work, that the cost of the Repair Work may exceed the Contractor’s Financial Liability, the Contractor must notify [and obtain the approval of] ESCo’s Representative before commencing such Repair Work and, where practicable, the Contractor shall obtain three quotes for such Repair Works.
        3. The Contractor shall not be entitled to charge any Repair Works Fee if the need for the Repair Works arises due to:

any Contractor Default or any act or omission on the part of any Contractor’s Personnel;

[any Defect in the Energy System under the Design & Build Contract during the Defects Liability Period][[39]](#footnote-39)

* + - * 1. [If the need for any Repair Work arises due to any Defect in the Energy System then to the extent that any sum is recovered from any Works Contractor in respect of such Defects the amount of any charge that the Contractor can make against ESCo shall be reduced by the sum recovered from the Works Contractors (and, to the extent that any Repair Works Fee has been charged to ESCo but subsequently recovered from any Works Contractor, the Contractor shall issue a corresponding credit in the next Request for Payment).]

Annex 1 – Pricing Schedule

*[Note: insert details of Service Charges, including periodicity of Service Charges (drafting assumes monthly and annual Service Charges)]*

Annex 2 – Schedule of Rates

1. – Monitoring and Reporting
   * + 1. General obligation to provide information
          1. The Contractor shall, as soon as reasonably practicable, provide ESCo’s Representative with:

any information relating to the carrying out of the Services which ESCo’s Representative may reasonably request; and

any information which ESCo’s Representative may require in order to discharge any obligations to which it is subject under Applicable Laws.

* + - 1. Electronic Records
         1. The Contractor shall keep and maintain electronic records relating to:

each reported failure;

the response time to each reported failure; and

the repair time for each reported failure,

* + - * 1. Instances of planned downtime or scheduled maintenance of plant must be logged electronically.
      1. Monthly Reporting
         1. [INSERT]
      2. Quarterly and Annual Reporting
         1. [INSERT]

1. – Benchmarking
   * + 1. Interpretation
          1. The definitions and rules of interpretation in this paragraph apply in this Schedule.

**Average Price**: in relation to the Equivalent Services provided by a Comparison Sample, the mean price of the relevant services over the previous 12-month period.

**Benchmarked Services**: in relation to a Benchmark Review, the Services that ESCo elects to include in that Benchmark Review under paragraph 2.2 of this Schedule 5 *(Benchmarking).*

**Benchmarker**: the independent third party appointed by ESCo following discussions with the Contractor under paragraph 3 of this Schedule 5 *(Benchmarking)*.

**Comparison Sample**: a sample of organisations providing Equivalent Services identified in accordance with paragraph 4.11.1 of this Schedule 5 *(Benchmarking)*.

**Equivalent Services**: services that are similar in all material respects to the Benchmarked Services (including in terms of scope, specification, volume and quality of performance) that are generally available within the UK and are supplied by a provider of operation and maintenance services to a customer similar in size to ESCo over a similar period, in particular, and where available, including services purchased by ESCo from any other service provider that are identical or similar to the Services (including in terms of scope, specification, volume and quality of performance).

* + - * 1. A Benchmarked Service shall be Good Value, or the Benchmarked Services as a whole shall be Good Value:

in relation to the Charges, if the charges attributable to a Benchmarked Service or Benchmarked Services are, having regard to the Service Levels, less than or equal to the Average Price for Equivalent Services provided by a Comparison Sample; and

in relation to the Service Levels, if the Service Levels attributable to Benchmarked Services are, having regard to the Charges, equal to or better than the median service levels for Equivalent Services provided by a Comparison Sample.

* + - 1. Purpose and scope of Benchmark Review
         1. The purpose of the Benchmark Review shall be to establish whether a Benchmarked Service is, or the Benchmarked Services as a whole are, Good Value.
         2. The Benchmarked Services shall be identified by ESCo in the written request it gives under clause 19.1. Prior to issue by ESCo of such written request, ESCo shall consult with the Contractor (but shall not be obliged to agree with the Contractor) about those Services it proposes to benchmark.
      2. Appointment of Benchmarker
         1. Each Benchmark Review shall be performed by an independent third party appointed by agreement between the Parties. [If the Parties cannot agree on the independent third party within [NUMBER] Business Days of receipt by the Contractor of ESCo's written request, ESCo may refer the matter for resolution by the Dispute Resolution Procedure.]
         2. The Contractor has the right at any time to require the Benchmarker to enter into an appropriate confidentiality undertaking directly with it, provided that:

such undertaking shall not restrict disclosure by the Benchmarker to ESCo for the purposes of the Benchmark Review; and

the exercise of such right shall not unreasonably delay the conduct of the Benchmark Review.

* + - * 1. The costs and expenses of the Benchmarker shall be shared equally by the Parties, unless the Benchmarking Report states that the Services that are benchmarked are not Good Value, in which case the costs and expenses of the Benchmarker shall be borne solely by the Contractor.
        2. Each Party shall bear its own costs (other than the costs of the Benchmarker) relating to a Benchmark Review, save that if any Benchmarking Report states that the Services that are benchmarked are Good Value, ESCo shall bear any reasonable additional costs incurred by the Contractor as a result of any disruption to the provision of the Services caused by the Benchmark Review to which that Benchmarking Report relates.
        3. The Benchmarker shall conduct the benchmark by applying the following general principles and criteria:

benchmarking shall be carried out in an independent and objective manner;

the Benchmarker shall be jointly instructed by the Parties;

benchmarking shall be truly comparative in respect of the technology, services and service levels;

benchmarking shall be structured and undertaken in a way that causes the minimum disruption possible; and

immediately following selection of the Benchmarker, the Parties and the Benchmarker shall agree the general principles and method of benchmarking.

* + - * 1. The Contractor shall not be deemed to be in breach of, for any failure to perform, any obligation under this Agreement (nor will it in any circumstances be liable for Service Credits) where such failure is a result of disruption caused by the Benchmarker.
      1. Benchmarking process
         1. ESCo's instructions to the Benchmarker shall require the Benchmarker to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within [NUMBER] Business Days after the date of appointment of the Benchmarker. The plan shall include:

a proposed timetable for the Benchmark Review (including for delivery of the Benchmarking Report);

a description of the information that the Benchmarker requires each Party to provide;

a description of the benchmarking methodology to be used; and

details of any organisations providing Equivalent Services which ESCo proposes, having consulted with the Contractor (and including any organisations providing Equivalent Services reasonably proposed by the Contractor), are included within the Comparison Sample.

* + - * 1. In carrying out the benchmarking analysis, the Benchmarker shall have regard to the following matters when performing a comparative assessment of the Benchmarked Services:

the contractual and business environment under which the Services are being provided;

any front-end investment and development costs;

the Contractor's risk profile, including the financial, performance or liability risk (including any limitation or exclusion of the Contractor's liability under this Agreement) associated with the provision of the Services as a whole; and

any other factors reasonably identified by the Contractor which, if not taken into consideration, could unfairly cause the Contractor’s pricing to appear non-competitive.

* + - * 1. Each Party shall give notice in writing to the Benchmarker and to the other Party within [NUMBER] Business Days after receiving the draft plan, advising whether it approves the draft plan or, if it does not approve the draft plan, suggesting amendments to that plan. Neither Party may unreasonably withhold or delay its approval of the draft plan and any suggested amendments must be reasonable.
        2. Where a Party suggests amendments to the draft plan under paragraph 4.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 4.2 shall apply to any amended draft plan. If the Benchmarker believes that the suggested amendments are not reasonable then the Benchmarker shall discuss the amendments with the Parties to reach a resolution. If the Parties are unable to agree a resolution within [NUMBER] Business Days of the matter first being referred to each of them by the Benchmarker for discussion, then such matter shall be resolved in accordance with the Dispute Resolution Procedure.
        3. Failure by a Party to give notice under paragraph 4.3 shall be treated as approval of the draft plan by that Party.
        4. Once the plan is approved by both Parties, the Benchmarker shall carry out the Benchmark Review in accordance with the approved plan. Each Party shall, to the extent it is not precluded from doing so by confidentiality obligations owed to third parties, provide the information described in the plan, together with any additional information reasonably required by the Benchmarker. The Contractor shall use its best endeavours to obtain authority from such third parties to disclose such information to the Benchmarker solely for the purposes of enabling him to carry out the Benchmark Review.
        5. Each Party shall co-operate fully with the Benchmarker, including by providing access to records, technical Documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker. The Benchmarker shall be instructed by ESCo to minimise any disruption to the Services.
        6. ESCo shall instruct the Benchmarker to produce the Benchmarking Report within [NUMBER] Business Days of the appointment of the Benchmarker. Any correspondence between either of the Parties and the Benchmarker shall be copied to the other Party at the same time. The Benchmarker shall share with the Parties, in an even-handed manner, all data relating to the Benchmarking and the Benchmarking Report to the extent that it is lawfully able to do so.
        7. Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
        8. The selection of the Comparison Sample (both in terms of number and identity of entities) shall be a matter for the Benchmarker's professional judgement.
        9. Once it has received the information it requires, the Benchmarker shall:

identify the Comparison Sample in accordance with the agreed methodology;

calculate the Average Price and/or median service level specifications for the Equivalent Services provided by the Comparison Sample;

compare the Charges attributable to the Benchmarked Services (having regard to the Service Levels and other relevant factors) with the Average Price of the Equivalent Services provided by the Comparison Sample and determine whether or not each Benchmarked Service, and/or the Benchmarked Services as a whole, are Good Value in relation to the Charges; and

compare the Service Levels attributable to the Benchmarked Services (having regard to the Charges and other relevant factors) with the median service levels of the Equivalent Services provided by the Comparison Sample and determine whether or not each Benchmarked Service, and/or the Benchmarked Services as a whole, are Good Value in relation to the Service Levels.

* + - * 1. In conducting the Benchmark Review, the Benchmarker shall apply correction factors to the information to take account of reasons for difference in accordance with Good Industry Practice. Such normalisation information shall be available for approval by the Parties before the production of the Benchmarking Report.
        2. The Benchmarker shall perform the Benchmark Review in a fully transparent and open manner and shall promptly provide ESCo and the Contractor with full details of all data and methodologies employed at all stages of the Benchmark Review.
      1. Benchmarking Report
         1. The Benchmarker shall prepare a **Benchmarking Report** setting out its findings at the time specified in the plan approved under paragraph 4 of this Schedule 5 *(Benchmarking)* (being no later than that specified in paragraph 4.8). Those findings:

shall include a finding as to whether or not each Benchmarked Service is Good Value and/or whether the Benchmarked Services as a whole are Good Value;

may include other findings regarding the quality and competitiveness or otherwise of the Services; and

if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Services, and in particular to the Charges or Service Levels, that would be required to make that Benchmarked Service or those Benchmarked Services Good Value.

* + - * 1. If the Benchmarking Report states that the Services, Charges or Service Levels (or any part of them) that are benchmarked are not Good Value then clause 19.3 shall apply.
        2. For the avoidance of doubt, Benchmark Reviews shall not result in any increase to the Charges (either individually or in aggregate) or any decrease in the performance of any Services or Service Levels.

1. – Collateral Warranty

[INSERT][[40]](#footnote-40)

1. – Initial Network Acceptance Process
   * + 1. Interpretation and application
          1. The following terms shall have the following meanings when used in this Schedule 7 *(Acceptance Process)*:

“**ESCo Requirements”** means ESCo’s Requirements for the Initial Network pursuant to the Design & Build Contract or any other contract entered into with the Design & Build Contractor for Design & Build Works.

"**Non-Conformities**" means any items comprised in the Initial Network (excepting the Taken Over Assets) that do not comply with the relevant ESCo Requirements following inspection by the Contractor.

"**Rectification Plan**" means a plan agreed between the Contractor, ESCo and the Design & Build Contractor, as relevant, setting out any agreed remedial works and/or actions required to be undertaken by the Design & Build Contractor in respect of the Non-Conformities in any items comprised in the Design & Build Works (excluding the Taken Over Assets).

"**Schedule of** **Non-Conformities"** means a document drawn up by the Contractor in relation to any element of the D&B Works which has Non-Conformities (excluding the Taken Over Assets).

* + - 1. Design & Build Works acceptance

Defects and Non-Conformities

Following inspection of the relevant Design & Build Works, the Contractor shall create a Schedule of Non-Conformities and issue to ESCo and the Design & Build Contractor.

Rectification Plan

The Contractor shall attend any meeting between ESCo and the Design & Build Contractor, where a Rectification Plan shall be agreed, setting out the Non-Conformities and the agreed remedial works and/or actions that the Design & Build Contractor shall take in respect of the Non-Conformities, including any agreed time scales or other terms.

Acceptance

Except in relation to the Taken Over Assets, following:

* + - 1. agreement of the Rectification Plan pursuant to paragraph 2.2 above;
      2. the rectification of any Non-Conformities in the Design & Build Works following re-inspection by the Contractor, such that Practical Completion under the Design & Build Contract or any other relevant contract for Design & Build Works, can be achieved; and
      3. achievement of Practical Completion of the relevant element(s) of the Design & Build Works;

the Contractor shall, on the date of Practical Completion of the relevant element(s) of the Design & Build Works, issue a certificate of acceptance which confirms that the D&B Works have no Non Conformities;

the (“Acceptance Certificate”)

whereupon, following the later of the issue of the Acceptance Certificate and the Services Commencement Date (as relevant), the Contractor shall be solely responsible for the relevant element(s) of the Design & Build Works in accordance with the terms of this Agreement and shall commence the Services in relation to all such elements that are Practically Complete.

1. – Take Over Process in respect of Network Extensions and Secondary Distribution Networks
   * + 1. Interpretation and application
          1. The following terms shall have the following meanings when used in this Schedule 8 *(Take over process)*:

"**Acceptance Date**" means the date on which, as applicable:

1. Secondary Distribution Networks are accepted in accordance with paragraph 5;
2. Primary Distribution Network Extensions are accepted in accordance with paragraph 6; or
3. Third Party Works are accepted in accordance with paragraph 7.

"**Acceptance Information**" means, as the context requires, the information provided to ESCo respectively pursuant to paragraphs 5, 6 or 7 below.

“**ESCo’s Requirements”** means, as the context requires, the Primary Distribution Network Extension Specification, the Secondary Distribution Network Specification or the Third Party Works Specification.

"**Initial Commissioning**" means, as the context requires, the initial commissioning of the Secondary Distribution Network in accordance with Applicable Laws, Good Industry Practice, the Policies and ESCo’s Requirements relevant to the commissioning of the Secondary Distribution Network, Primary Distribution Network Extensions or relevant Third Party Works.

**“Initial Inspection”** means, as the context requires, the initial inspection of the Secondary Distribution Network, Primary Distribution Network Extension or relevant Third Party Works, in accordance with the relevant ESCo’s Requirements.

"**Final Commissioning**" means, as the context requires, the final commissioning of the Secondary Distribution Network, the Primary Distribution Network Extension or the relevant Third Party Works, in accordance with ESCo’s Requirements.

**“Final Inspection”** means, as the context requires, the final inspection of the Secondary Distribution Network, the Primary Distribution Network Extension or the relevant Third Party Works, in accordance with ESCo’s Requirements.

"**Non-Conformities**" means any:

1. items comprised in the Secondary Distribution Network, Primary Distribution Network Extension or relevant Third Party Works, that do not comply with relevant ESCo’s Requirements; or
2. failure to provide the Acceptance Information.

“**Primary Distribution Network Extension Specification**” means the specification provided to the Contractor by ESCo pursuant to paragraph 4.1.1 of this Schedule 8 *(Take Over Process).*

"**Rectification Plan**" means a plan agreed between the Contractor on behalf of ESCo and the Developer or any Third Party Contractor in accordance with the terms of this Schedule 8 *(Take Over Process)*, setting out any agreed remedial works and/or actions in respect of the Non-Conformities in any items comprised in the Secondary Distribution Networks, Primary Distribution Network Extensions or other relevant Third Party Works.

"**Schedule of** **Non-Conformities"** means a schedule of Non-Conformities drawn up by the Contractor after inspecting the items comprised in the Secondary Distribution Network, Primary Distribution Network Extension or relevant Third Party Works.

“**Third Party Works Specification”** means the specification provided to the Contractor by ESCo pursuant to paragraph 4.1.1 of this Schedule 8 *(Take over process)*.

* + - 1. ESCo obligations
         1. Where the Contractor is unable, despite using all reasonable endeavours, to obtain any information from a Developer or a Third Party Works Contractor or enforce any obligation against a Developer or a Third Party Works Contractor pursuant to (as relevant) a Connection Agreement, development agreement or Third Party Works Contract in order to comply with the Contractor’s obligations under this Schedule 8 *(Take over process)*, ESCo shall use all reasonable endeavours to assist the Contractor to obtain any such information or enforce any such obligation.
         2. ESCo shall procure, in relation to the items comprised in the Secondary Distribution Network, Primary Distribution Network Extension or relevant Third Party Works to be Taken Over by the Contractor pursuant to this Schedule 8 *(Take over process)*, adequate third party rights and/or collateral warranties, enforceable by and for the benefit of the Contractor against any relevant Developer, Developer sub-contractor or Third Party Works Contractor that undertook the design, manufacture, installation or commissioning of the items comprised in the Secondary Distribution Network, Primary Distribution Network Extension or relevant Third Party Works.
      2. commencement of services

The Contractor shall commence the Services in relation to the items comprised in the Secondary Distribution Network, Primary Distribution Network Extension or relevant Third Party Works at an agreed date with ESCo following Taking Over by the Contractor.

* + - 1. DESIGN APPROVAL
         1. ESCo shall procure (under the relevant developer agreement, Connection Agreement or Third Party Contract (as relevant)) that the relevant Developer or Third Party Works Contractor shall:

prior to commencing the detailed design of the items comprised in the Secondary Distribution Network, Primary Distribution Network Extension or relevant Third Party Works, provide the Contractor with a Technical Information Pack together with ESCo’s Requirements in respect of the scheme design, which shall include the items comprised in the Secondary Distribution Network, Primary Distribution Network Extension or relevant Third Party Works (normally RIBA Stage 3 and prior to a planning submission) which shall include all issues that are referred to within ESCo’s Requirements as requiring the Contractor’s approval and/or agreement; and

prior to commencing the installation of the items comprised in the Secondary Distribution Network, Primary Distribution Network Extension or relevant Third Party Works, provide the Contractor with a Technical Information Pack in respect of the detailed design, which shall include the items comprised in the Secondary Distribution Networks, Primary Distribution Network Extensions or other relevant Third Party Works, (normally RIBA Stage 4 and post a planning approval), which shall include all issues that are referred to within ESCo’s Requirements as requiring the Contractor’s approval and/or agreement.

* + - * 1. In respect of the items comprised in the Secondary Distribution Network, Primary Distribution Network Extension or relevant Third Party Works, the Contractor shall, with the approval of ESCo (not to be unreasonably withheld or delayed), as soon as reasonably practicable and in any event within [INSERT] Business Days of actual receipt (or such other period as may be agreed between the Parties) of any Technical Information Pack, return one (1) copy of the Technical Information Pack endorsed either:

“Accepted”, or

“Revise and Re-submit”, in which case paragraph 4.3 shall apply.

* + - * 1. Any Technical Information Pack (whether relating to the scheme design or the detailed design of the items comprised in the Secondary Distribution Network, Primary Distribution Network Extension or relevant Third Party Works) endorsed “Revise and Resubmit” by the Contractor shall be revised by the Developer or Third Party Works Contractor (as relevant) and resubmitted to the Contractor in accordance with the comments provided by the Contractor. The Contractor shall, as soon as reasonably practicable and, in any event, within [INSERT] Business Days of actual receipt of the re-submitted Technical Information Pack, return the re-submitted Technical Information Pack to the Developer or Third Party Works Contractor (as relevant) endorsed either:

“Accepted”, or

“Revise and Re-submit”, in which case the Contractor shall refer the matter to ESCo.

* + - * 1. In each case where the Contractor returns a Technical information Pack endorsed “Revise and Re-submit” it shall also provide the Developer or the Third Party Works Contractor with detailed reasons for such endorsement.
        2. If the Developer or the Third Party Works Contractor (as relevant) does not agree with any endorsement and/or comments made by the Contractor, the Developer or Third Party Works Contractor (as relevant) shall, within [INSERT] Business Days of receipt of the Contractor’s comments, notify the Contractor of the same setting out its reasons. In such circumstances, the Contractor shall be required to consult with ESCo to agree a joint response.
        3. If the Contractor fails to return a Technical Information Pack duly endorsed within the time periods stated above, then the Developer or Third Party Works Contractor (as relevant) may give the Contractor and ESCo written notice of such failure. If the Contractor fails to return the Technical Information Pack within [INSERT] Business Days of such further notice, the Contractor shall be deemed to have returned such Technical Information Pack to the Developer or Third Party Works Contractor marked “Accepted” and the Developer or Third Party Works Contractor may proceed to implementation of the detailed design or installation, as applicable, of the items comprised in the Secondary Distribution Network, Primary Distribution Network Extension or relevant Third Party Works.
        4. The Contractor may only raise comments in relation to the submission of any Technical Information Pack by the Developer or the Third Party Works Contractor (as relevant) on the grounds that:

the Technical Information Pack does not comply with ESCo’s Requirements relating to the items comprised in the Secondary Distribution Network, Primary Distribution Network Extension or relevant Third Party Works;

the Technical Information Pack is in breach of any Applicable Law; or

the Developer or the Third Party Works Contractor (as relevant) has not provided reasonably sufficient details regarding the design of the items comprised in the Secondary Distribution Network, Primary Distribution Network Extension or other relevant Third Party Works as outlined in ESCo’s Requirements.

* + - * 1. The Parties acknowledge that:

neither the giving of any Approval (and for the purposes of this paragraph, “Approval” means consent, permission, expression of satisfaction or other approval) nor the review of any Documentation produced, or course of action proposed, by or on behalf of the Contractor in connection with the design of the items comprised in the Secondary Distribution Network, Primary Distribution Network Extension or relevant Third Party Works by the Contractor; and/or

the lack of examination by the Contractor of (as relevant) the Developer’s or Third Party Works Contractor’s drawings, Documentation, calculations, or details relating to the items comprised in the Secondary Distribution Network, Primary Distribution Network Extension or relevant Third Party Works, nor any comment, rejection or Approval expressed by such person in regard thereto, either with or without modifications;

shall in any respect relieve or absolve the Developer or the Third Party Works Contractor (as relevant) of any of its obligations or liability under or in connection with the relevant development agreement, Connection Agreement or Third Party Works Contract to comply with ESCo’s Requirements or of its duty to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the Approval, review or course of action or the accuracy, safety, suitability, adequacy of performance or practicality of its design or howsoever arising.

* + - 1. Secondary Distribution Network

Prior to installation

ESCo shall procure that the Developer shall give the Contractor not less than [INSERT] Business Days prior notice of the commencement of the installation of the Secondary Distribution Network, whereupon, the Contractor shall obtain from the Developer (on the basis of rights obtained by ESCo under the development agreement or Connection Agreement, as relevant) a drawing (or drawings) of the Secondary Distribution Network in AutoCAD and pdf that clearly shows:

those parts of the Secondary Distribution Network which can be visually inspected without excavation or removal of panels or flooring (other than panels or flooring designed to be capable of removal for inspection or similar purposes) or other substantial interference with any fixed structure. These areas shall be designated on such plan as “not concealed”; and

those parts of the Secondary Distribution Network which cannot be visually inspected without excavation or removal of panels or flooring (other than panels or flooring designed to be capable of removal for inspection) or other substantial interference with any fixed structure. These areas shall be designated as “concealed”.

During the installation, ESCo shall procure that the Developer shall give at least [INSERT] Business Days’ notice to the Contractor prior to any part of the Secondary Distribution Network being concealed to allow the Contractor to inspect those parts of the Secondary Distribution Network being concealed. The Contractor agrees that a representative of the Developer and/or ESCo shall be permitted to accompany the Contractor and its representatives on such inspection. If the Contractor declines to attend or does not attend on the agreed date, then the Developer may proceed with the concealment of the installation.

Information and Inspection

For the purposes of setting quality standards early, if requested by ESCo, the Contractor shall, on behalf of ESCo, undertake an Initial Inspection of the Secondary Distribution Network and highlight where the Secondary Distribution Network has Non-Conformities. ESCo shall give the Contractor not less than [INSERT] Business Days' notice of this requirement and shall procure (under the development agreement or Connection Agreement (as relevant)) the grant from the Developer to the Contractor (in its own capacity or as agent of ESCo) of all access reasonably necessary for the Contractor to undertake the Initial Inspection. The Contractor agrees that a representative of the relevant Developer and/or ESCo shall be permitted to accompany the Contractor and its representatives on such Initial Inspection.

Not later than [INSERT] Business Days before the commencement of the Final Inspection of the Secondary Distribution Network, the Contractor shall obtain from the Developer (on the basis of rights obtained by ESCo under the development agreement or Connection Agreement, as relevant), the following information in relation to the Initial Commissioning of the Secondary Distribution Network:

installation drawings in PDF and AutoCAD format to reflect the status of the installation at that time;

pressure testing records; and

flushing records.

ESCo shall procure (under the development agreement or Connection Agreement (as relevant)) that the Developer gives the Contractor not less than [INSERT] Business Days' notice of the completion of Final Commissioning activities. On completion of the Final Commissioning, the Contractor shall undertake the Final Inspection of the Secondary Distribution Network, to assess whether the Secondary Distribution Network has been designed and installed in accordance with the Specification of Requirements for Developer and is free from any Non-Conformities. ESCo shall procure (under the development agreement or Connection Agreement (as relevant)) that the Developer grants to the Contractor all access reasonably necessary for the Contractor to undertake the Final Inspection. The Contractor agrees that a representative of the relevant Developer and/or ESCo shall be permitted to accompany the Contractor and its representatives on such inspection.

Not later than [INSERT] Business Days before the Final Inspection, the Contractor shall obtain from the Developer (on the basis of rights obtained by ESCo under the development agreement or Connection Agreement, as relevant) the information listed in paragraph 5.2.2 (to the extent it has not already been obtained) and the following information in relation to the Secondary Distribution Network subject to the Final Inspection:

as built drawings in PDF and AutoCAD format;

pressure testing records;

flushing records;

operation and maintenance manuals, including manufacturers’ literature;

the diameter, material type, leakage detection functionality (if present) and insulation details of the pipe and pipeline ancillaries;

details of any pipe supports where such supports are installed

details of all pipe entries through structures, including sealing details; and

the location and type of each valve.

The Contractor shall obtain from the Developer (on the basis of rights obtained by ESCo under the development agreement or Connection Agreement, as relevant) any updated information listed in paragraph 5.2.4 above if such information is updated, or if new information is available, before the date the Contractor commences the Services in relation to the Secondary Distribution Network.

Defects and Non-Conformities

Not later than [INSERT] Business Days after the Initial Inspection (if it has been requested by ESCo), the Contractor shall provide an initial Schedule of Non-Conformities to ESCo and the Developer.

Not later than [INSERT] Business Days after the Final Inspection, the Contractor shall provide a final Schedule of Non-Conformities to ESCo and the Developer.

Rectification plan

Within [INSERT] Business Days of the Contractor providing ESCo and the Developer with the final Schedule of Non-Conformities in accordance with clause 5.3.2 above, the Parties shall meet to mutually agree a Rectification Plan setting out the Non-Conformities and the agreed remedial works and/or actions that the Developer (or its agents) shall take in respect of the Non-Conformities, including any agreed time scales or other terms.

Takeover

Once the final Rectification Plan has been agreed or determined pursuant to paragraph 5.4 above, the Developer and the Contractor shall sign a takeover certificate confirming that the Contractor agrees to commence the Services in respect of the Secondary Distribution Network at the relevant date agreed, subject to the Developer carrying out, or procuring the carrying out of, its obligations under the Rectification Plan, provided that the Contractor shall not be obliged to commence the Services in relation to the relevant Secondary Distribution Network if any Non-Conformities pose a health and safety risk until such Non-Conformities are remedied by the Developer.

Remedial Action

The Contractor shall procure (on the basis of rights obtained by ESCo under the Development agreement or Connection Agreement, as relevant) that the Developer carries out all of its obligations under the Rectification Plan within the timescales set out in the Rectification Plan and grants to the Contractor all access reasonably necessary for the Contractor (in its own capacity or as agent of ESCo) to inspect the Secondary Distribution Network to confirm that the Developer’s obligations under the Rectification Plan have been carried out to the reasonable satisfaction of the Contractor. The Contractor agrees that a representative of the Developer and/or ESCo shall be permitted to accompany the Contractor and its representatives on such inspection.

Until the Developer has carried out its obligations under the Rectification Plan, the Contractor shall be relieved from performing those elements of the Services that the Contractor is reasonably prevented from carrying out until such obligations are performed.

If the Developer fails to carry out any of its obligations under the Rectification Plan within the timescales set out in the Rectification Plan, ESCo shall procure (under the development agreement or Connection Agreement, as relevant) that if such failure persists for more than [INSERT] Business Days after an initial written notice from the Contractor to the Developer of the Developer’s failure to carry out the relevant obligations under the Rectification Plan, ESCo, or the Contractor under instruction from ESCo, may perform, or procure that a third party performs, the relevant obligations under the Rectification Plan and ESCo shall procure that the Developer shall be liable for ESCo’s or the Contractor’s reasonable direct costs of doing so.

Cost of Inspection and Witnessing

The costs of inspection and witnessing of the Secondary Distribution Network, including any Initial Inspections, are included in the Charges set out in Schedule 3 *(Charges)*.

* + - 1. primary heating network extensions

Inspection prior to installation

ESCo shall procure that the Design & Build Contractor or Third Party Works Contractor shall give the Contractor not less than [INSERT] Business Days’ prior notice of the commencement of the installation of the Primary Distribution Network Extension, whereupon, the Contractor shall obtain (on the basis of rights obtained by ESCo under the Third Party Works Contract) from the Design & Building Contractor or Third Party Works Contractor, as applicable, a drawing (or drawings) of the Primary Distribution Network Extension in AutoCAD and pdf that clearly shows:

those parts of the Primary Distribution Network Extension which can be visually inspected without excavation or other substantial interference with any fixed structure. These areas shall be designated on such plan as “not concealed”; and

those parts of the Primary Distribution Network Extension which cannot be visually inspected without excavation or other substantial interference with any fixed structure. These areas shall be designated as “concealed”.

During the installation, ESCo shall procure that the Design & Build Contractor or Third Party Works Contractor, as applicable, shall give at least [INSERT] Business Days’ notice to the Contractor prior to any part of the Primary Distribution Network Extension being concealed to allow the Contractor to inspect those parts of the Primary Distribution Network Extension being concealed. The Contractor agrees that a representative of the Design & Build Contractor or Third Party Works Contractor, as applicable, and/or ESCo shall be permitted to accompany the Contractor and its representatives on such inspection. If the Contractor declines to attend or does not attend on the agreed date, then the Developer may proceed with the concealment of the installation.

Information and Inspection

ESCo shall procure (under the Design & Build Contract or Third Party Works Contract, as applicable) that the Design & Build Contractor or Third Party Works Contractor, as applicable, gives the Contractor not less than [INSERT] Business Days' notice of the completion of Final Commissioning activities. On completion of the Final Commissioning, the Contractor shall undertake the Final Inspection of the Primary Distribution Network Extension, to assess whether the Primary Distribution Network Extension has been designed and installed in accordance with ESCo’s Requirements and is free from any Non-Conformities. ESCo shall procure (under the Design & Build Contract or Third Party Works Contract, as applicable) that the Design & Build Contractor or Third Party Works Contractor, as applicable, grants to the Contractor all access reasonably necessary for the Contractor to undertake the Final Inspection. The Contractor agrees that a representative of the Design & Build Contractor or Third Party Works Contractor, as applicable, and/or ESCo shall be permitted to accompany the Contractor and its representatives on such inspection.

Not later than [INSERT] Business Days before the Final Inspection, the Contractor shall obtain from the Design & Build Contractor or Third Party Works Contractor (on the basis of rights obtained by ESCo under the Design & Build Contract or Third Party Works Contract, as applicable) the information listed in paragraph 6.1.1 (to the extent it has not already been obtained) and the following information in relation to the Primary Distribution Network Extension subject to the Final Inspection:

as built drawings in PDF and AutoCAD format;

pressure testing records;

flushing records;

operation and maintenance manuals, including manufacturers’ literature;

the diameter, material type, leakage detection functionality (if present) and insulation details of the pipe and pipeline ancillaries;

details of any pipe supports where such supports are installed

details of all pipe entries through structures, including sealing details;

the location and type of each valve;

the location of any heat exchangers and control panels, if relevant; and

details of control systems installed.

The Contractor shall obtain from the Design & Build Contractor or Third Party Works Contractor, as applicable, (on the basis of rights obtained by ESCo under the Design & Build Contract or Third Party Works Contract, as applicable) any updated information listed in paragraph 6.2.2 above if such information is updated, or if new information is available, before the date the Contractor commences the Services in relation to the Primary Distribution Network Extension.

Defects and Non-Conformities

Not later than [INSERT] Business Days after each inspection of concealed services, the Contractor shall provide a Schedule of Non-Conformities to ESCo and the Design & Build Contractor or Third Party Works Contractor, as applicable.

Not later than [INSERT] Business Days after the Final Inspection, the Contractor shall provide a final Schedule of Non-Conformities to ESCo and the Design & Build Contractor or Third Party Works Contractor, as applicable.

Rectification plan

Within [INSERT] Business Days of the Contractor providing ESCo and the Design & Build Contractor or Third Party Works Contractor, as applicable, with the final Schedule of Non-Conformities in accordance with paragraph 6.3.2 above, the Parties shall meet to mutually agree a Rectification Plan setting out the Non-Conformities and the agreed remedial works and/or actions that the Design & Build Contractor or Third Party Works Contractor, as applicable, shall take in respect of the Non-Conformities, including any agreed time scales or other terms.

Takeover

Once the final Rectification Plan has been agreed or determined pursuant to paragraph 6.4 above, the Design & Build Contractor or Third Party Works Contractor, as applicable, and the Contractor shall sign a takeover certificate confirming that the Contractor agrees to commence the Services in respect of the Primary Distribution Network Extension at the relevant date agreed, subject to the Design & Build Contractor or Third Party Works Contractor, as applicable, carrying out, or procuring the carrying out of, its obligations under the Rectification Plan, provided that the Contractor shall not be obliged to commence the Services in relation to the relevant Primary Distribution Network Extension if any Non-Conformities pose a health and safety risk until such Non-Conformities are remedied by the Design & Build Contractor or Third Party Works Contractor, as applicable.

Remedial Action

The Contractor shall procure (on the basis of rights obtained by ESCo under the Design & Build Contractor or Third Party Works Contract, as applicable) that the Design & Build Contractor or Third Party Works Contractor, as applicable, carries out all of its obligations under the Rectification Plan within the timescales set out in the Rectification Plan and also grants to the Contractor all access reasonably necessary for the Contractor to inspect the Primary Distribution Network Extension to confirm that the obligations of the Design & Build Contractor or Third Party Works Contractor, as applicable, under the Rectification Plan have been carried out to the reasonable satisfaction of the Contractor. The Contractor agrees that a representative of the Design & Build Contractor or Third Party Works Contractor, as applicable, and/or ESCo shall be permitted to accompany the Contractor and its representatives on such inspection.

Until the Design & Build Contractor or Third Party Works Contractor, as applicable, has carried out its obligations under the Rectification Plan, the Contractor shall be relieved from performing those elements of the Services that the Contractor is reasonably prevented from carrying out until such obligations are performed.

If the Design & Build Contractor or Third Party Works Contractor, as applicable, fails to carry out any of its obligations under the Rectification Plan within the timescales set out in the Rectification Plan and such failure persists for more than [INSERT] Business Days after an initial written notice from the Contractor to the Design & Build Contractor or Third Party Works Contractor, as applicable, of the failure of the Design & Build Contractor or Third Party Works Contractor, as applicable, to carry out the relevant obligations under the Rectification Plan, ESCo, or the Contractor under instruction from ESCo, may perform, or procure that a third party performs, the relevant obligations under the Rectification Plan and ESCo shall procure that the Design & Build Contractor or Third Party Works Contractor, as applicable, shall be liable for ESCo or the Contractor’s reasonable direct costs of doing so.

Cost of Inspection and Witnessing

The costs of inspection and witnessing of the Primary Distribution Network Extension, including any Initial Inspections, are included in the Charges set out in Schedule 3 *(Charges)*.

* + - 1. other third party works

Inspection prior to installation

ESCo shall procure that the Third Party Works Contractor shall give the Contractor not less than [INSERT] Business Days prior notice of the commencement of the Third Party Works, whereupon, the Contractor shall obtain from the Third Party Works Contractor (on the basis of rights obtained by ESCo under the Third Party Works Contract), as relevant a drawing (or drawings) of the Primary Distribution Network Extension in AutoCAD and pdf that clearly shows:

those parts of the Third Party Works which can be visually inspected without excavation or other substantial interference with any fixed structure. These areas shall be designated on such plan as “not concealed”; and

those parts of the Third Party Works which cannot be visually inspected without excavation or other substantial interference with any fixed structure. These areas shall be designated as “concealed”.

During the installation, ESCo shall procure that the Third Party Works Contractor shall give at least [INSERT] Business Days’ notice to the Contractor prior to any part of the Third Party Works being concealed to allow the Contractor to inspect those parts of the Third Party Works being concealed. The Contractor agrees that a representative of the Third Party Works Contractor and/or ESCo shall be permitted to accompany the Contractor and its representatives on such inspection. If the Contractor declines to attend or does not attend on the agreed date, then the Developer may proceed with the concealment of the installation.

Inspection and Information

Not later than [INSERT] Business Days before the commencement of the Final Inspection of Third Party Works, the Contractor shall obtain from the Third Party Works Contractor (on the basis of rights obtained by ESCo under the Third Party Works Contract) the following information in relation to Third Party Works:

as built drawings in PDF and AutoCAD format of each element of the Third Party Works;

operation and maintenance manuals, including manufacturers’ literature of the Third Party Works;

control system operation manual of the Third Party Works (to the extent relevant);

pressure testing records of the Third Party Works (to the extent relevant);

flushing records of the Third Party Works (to the extent relevant);

the diameter, material type, leakage detection functionality (if present) and insulation details of the pipe and pipeline ancillaries of the Third Party Works (to the extent relevant);

details of any pipe supports where such supports are installed of the Third Party Works (to the extent relevant);

details of all pipe entries through structures, including sealing details of the Third Party Works (to the extent relevant);

details of any plant or equipment installed (to the extent relevant);

the location of plant and equipment (to the extent relevant); and

the location and type of each valve of the Third Party Works (to the extent relevant);.

When requested by the Third Party Works Contractor by giving not less than [INSERT] Business Days’ notice, the Contractor shall undertake the Final Inspection of Third Party Works, to assess whether Third Party Works are free from any Non-Conformities. ESCo shall procure (under the Third Party Works Contract) the grant from the Third Party Works Contractor to the Contractor of all access reasonably necessary for the Contractor to witness the Final Commissioning. The Contractor agrees that a representative of ESCo and/or Third Party Works Contractor shall be permitted to accompany the Contractor and its representatives witnessing the Final Inspection.

The Contractor shall obtain from the Third Party Works Contractor (on the basis of rights obtained by ESCo under the Third Party Works Contract) any updated information listed in paragraph 7.2.1 above if such information is updated, or if new information is available, before the date the Contractor commences the Services.

Defects and Non-Conformities

Not later than [INSERT] Business Days after each inspection of concealed services, the Contractor shall provide a Schedule of Non-Conformities to ESCo and the Third Party Works Contractor, for Third Party Works inspected.

Not later than [INSERT] Business Days after the Final Inspection, the Contractor shall provide a final Schedule of Non-Conformities to ESCo and the Third Party Works Contractor clearly scheduling which elements of the Third Party Works have Non-Conformities.

Rectification Plan

Within [INSERT] Business Days of the Contractor providing ESCo and the Third Party Works Contractor with the final Schedule of Non-Conformities for Third Party Works in accordance with paragraph 7.3.2 above, the Parties shall meet to mutually agree a Rectification Plan setting out the Non-Conformities and the agreed remedial works and/or actions that the Third Party Works Contractor shall take in respect of the Non-Conformities, including any agreed time scales or other terms.

Takeover

Once the Rectification Plan has been agreed or determined pursuant to paragraph 7.4 above, the Third Party Works Contractor and the Contractor shall sign a takeover certificate confirming that the Contractor accepts the installation of Third Party Works and agrees to commence the Services in respect of such Third Party Works on the relevant date agreed, excluding any element of the Third Party Works scheduled as having Non-Conformities pursuant to paragraph 7.2 above, provided that the Contractor shall not be obliged to commence the Services in relation to the relevant elements of the Third Party Works if any Non-Conformities pose a health and safety risk, until such Non-Conformities are remedied by the Third Party Works Contractor.

Remedial Action

The Contractor shall procure (on the basis of rights obtained by ESCo under the Third Party Works Contract) that the Third Party Works Contractor carries out all of its obligations under the Rectification Plan within the timescales set out in the Rectification Plan and also grants to the Contractor all access reasonably necessary for the Contractor to inspect Third Party Works to confirm that the Third Party Works Contractor’s obligations under the Rectification Plan have been carried out to the reasonable satisfaction of the Contractor. The Contractor agrees that a representative of the Third Party Works Contractor and/or ESCo shall be permitted to accompany the Contractor and its representatives on such inspection.

Until the Third Party Works Contractor has carried out its obligations under the Rectification Plan, the Contractor shall be relieved from performing those elements of the Services on the relevant elements of the Third Party Works that the Contractor is reasonably prevented from carrying out until such obligations are performed.

If the Third Party Works Contractor fails to carry out any of its obligations under the Rectification Plan within the timescales set out in the Rectification Plan, ESCo shall procure (under the Third Party Works Contract) that the Third Party Works Contractor shall be liable for all reasonable costs and losses that the Contractor incurs as a direct result. If such failure persists for more than [INSERT] Business Days after an initial written notice from the Contractor to the Third Party Works Contractor of the Third Party Works Contractor’s failure to carry out the relevant obligations under the Rectification Plan ESCo or the Contractor under instruction form ESCo, may perform, or procure that a third party perform, the relevant obligations under the Rectification Plan and ESCo shall procure that the Third Party Works Contractor shall be liable for ESCo or the Contractor’s reasonable direct costs of doing so.

Cost of Inspection and Witnessing

The costs of inspection and witnessing of the Third Party Works, shall be agreed between the Parties, acting reasonably.

1. – Site Rules

[INSERT][[41]](#footnote-41)

1. – Standards of Operation and Maintenance

The following standards of maintenance set out the minimum inspection, maintenance, cleaning requirements and disaster recovery provisions that are required for the main elements of the Energy System.

[INSERT]

1. - ESCo's Responsibilities

In order to facilitate the provision of the Services by Contractor, ESCo shall (in addition to those ESCo responsibilities and obligations identified elsewhere in this Agreement), be responsible for the following:

* + - 1. Access
         1. ESCo shall:

provide Contractor with access to appropriate members of ESCo's Personnel, as such access is reasonably requested by Contractor, in order for Contractor to discharge its obligations under this Agreement;

respond to and provide such Documentation, data and other information as Contractor reasonably requests in order for Contractor to perform its obligations under this Agreement;

to the extent that the following are not expressly provided for elsewhere in this Agreement, using its reasonable endeavours, respond to requests for information in a prompt and timely manner, where such requests are reasonably made by or on behalf of Contractor to enable Contractor to comply with its obligations under this Agreement; and

subject to their compliance with any reasonable safety requirements notified to Contractor, provide such access for any Contractor's Personnel to any relevant ESCo premises during ESCo's normal working hours in each Business Day as may be reasonably required in connection with the provision of the Services and at such other hours as may be arranged in advance.

* + - * 1. The Contractor shall indemnify ESCo in respect of any damage to any of ESCo’s premises or any other property of ESCo caused by the Contractor or Contractor’s Personnel in accessing ESCo’s premises.
      1. Connections
         1. ESCo shall not connect or permit to be connected to be connected to the Energy System any equipment which does not comply with the following requirements:

in respect of connections to the Heat Distribution Network:

[STATE REQUIREMENTS];

[STATE REQUIREMENTS].

[in respect of connections to the Electricity Network:]

[STATE REQUIREMENTS];

[STATE REQUIREMENTS].

1. – Contractor’s Responsibilities
   * + 1. General
          1. The Contractor shall:

provide such reasonable co-operation and information in relation to the Services to such of ESCo's customers as ESCo may reasonably require for the purposes of receiving Energy Supply from ESCo; [and

ensure that any Contractor's Personnel who are engaged in the provision of any of the Services shall, if required by ESCo, attend such meetings at the premises of ESCo or elsewhere as may be reasonably required by ESCo; and]

* + - * 1. [OTHER]

1. - Standards and Policies
   * 1. : Standards

*[NOTE: SET OUT APPLICABLE STANDARDS BINDING ON THE CONTRACTOR – FOR EXAMPLE:*

1. IET Wiring Regulations BS 7671:2008 (2011);
2. British Standards and BS Codes of Practice and EN Standards;
3. Any requirements of the Local Fire Prevention Officer/LFCA;
4. Any requirements of the local Distribution Network Operator;
5. All relevant BSRIA Guides
6. All relevant CIBSE Codes, including without limitation “*CP1 Heat Networks: Code of Practice for the UK (2020)*”]
   * 1. : Safety Policy

*[INSERT SAFETY POLICY BINDING ON THE CONTRACTOR]*

* + 1. : Other Policies

*[INSERT OTHER POLICIES BINDING ON THE CONTRACTOR]*

1. - Representatives
   * 1. : Contractor's Representatives

|  |  |  |
| --- | --- | --- |
| **Name** | **Job title** | **Responsibilities** |
|  | Contractor's Representative |  |
|  | Contractor's Services Manager |  |
|  | Contractor’s Exit Manager |  |
|  | [OTHERS] |  |

* + 1. : ESCo's Representatives

|  |  |  |
| --- | --- | --- |
| **Name** | **Job title** | **Responsibilities** |
|  | ESCo's Representative |  |
|  | ESCo's Services Manager |  |
|  | ESCo’s Exit Manager |  |
|  | [OTHERS] |  |

1. - Contract and Service Management

[INSERT]

1. – ESCo’s Equipment and Assumed Contracts
   * 1. : ESCo’s Equipment

[INSERT]

* + 1. : Assumed Contracts

[INSERT]

1. - Change Control Procedure
   * + 1. Principles
          1. Each of the following shall be a “**Change**”:

a change to the Services (including a change in the scope of the Services, a requirement to cease providing any of the Services, a requirement to perform additional services and a change in how any of the Services are performed);

a change in the Output Specification or Service Levels (including related points and deductions accruing for failures);

extending the scope of the Services to include a Network Extension;

any other change to this Agreement.

* + - 1. Procedure
         1. Either Party shall be entitled to issue to the other a request for a Change (a "**Change Request**") which must set out:

the nature of the Change requested;

the reason for the Change (including, where applicable, the relevant Change in Law necessitating the Change); and

a timeline by when the Change should be implemented.

* + - * 1. Within [INSERT] Business Days of receiving a Change Request issued by ESCo, the Contractor shall issue its proposal for implementing the requested Change (“**Change Control Note**”) which must set out:

details of the likely impact, if any, of the Change on other aspects of this Agreement including:

whether, in the Contractor’s reasonable opinion, the Change would put either Party in breach of Applicable Laws or Authorisations and, if it would, any modification to the Change that would avoid such a breach;

whether, in the Contractor’s reasonable opinion, the Change would require any additional Authorisations to be obtained (and, if so, by whom) or any amendment to any Authorisations;

how the Contractor proposes to implement the Change, including any specifications;

a reasonable timetable for implementation of the Change;

any required modification of the Output Specification or the Service Levels;

any additional Documentation required;

any change to working arrangements; and

any amendment required of this Agreement;

details of any increase or decrease to the Charges [in accordance with the Schedule of Rates], provided that:

[if the relevant Change is outside of the scope of the Schedule of Rates, the Contractor shall provide a detailed assessment of the cost of the proposed Change, including:

reasons why the Change is not covered by the Schedule of Rates;

a breakdown of how the costing has been calculated; and

evidence of how the costing demonstrates best value;]

[the Contractor shall not be entitled to impose any charge or increase in Charges in respect of changes to Services or Service Levels required by a Benchmarking Report;]

where a Change Request relates to a Change in Law, the Contractor shall only be entitled to increase the Charges as provided for under clause 11 *(Change in Law)*;

the date of expiry of validity of the Change Control Note; and

provision for signature by ESCo and the Contractor.

* + - * 1. If the Contractor issues a Change Request, the Change Request must be accompanied by the Contractor’s Change Control Note.
        2. For each Change Control Note submitted by the Contractor, ESCo shall, within the period of validity of the Change Control Note:

allocate a sequential number to the Change Control Note;

evaluate the Change Control Note; and

as appropriate, notify the Contractor either:

that it requires further information; or

that it rejects the Change Control Note, in which case, it may (but shall be under no obligation to) request a revised Change Control Note; or

that it accepts the Change Control Note and arrange for two copies of the Change Control Note to be signed by or on behalf of ESCo and return one of the copies to the Contractor; or

that it is withdrawing the Change Request; or

that it is re-issuing the Change Request, with modifications.

* + - * 1. For the avoidance of doubt:

ESCo shall be under no obligation to consider or respond to a Change Request proposed by the Contractor unless the Change which is the subject of the Change Control Note results from a Change in Law [necessitating a change in any aspect of this Agreement], in which case, if ESCo rejects the Contractor’s Change Proposal or disputes that there has been a Change in Law or that the Change in Law necessities a Change, either Party may refer the matter to be resolved in accordance with the Dispute Resolution Procedure;

nothing in this Schedule 17 *(Change Control Procedure)* shall require the Contractor to:

offer services which are materially different to the Services already provided under this Agreement;

breach any Applicable Law or Authorisations,

and, if the Parties are unable to agree whether any Change requested would be in contravention of this paragraph 2.5.2 either Party may refer the matter in dispute to be resolved in accordance with the Dispute Resolution Procedure.

ESCo may refer any matter in dispute to be resolved in accordance with the Dispute Resolution Procedure.

* + - * 1. If ESCo requests a revised Change Control Note, it shall set out its reasons for rejecting the Change Control Note and the Contractor shall, within [INSERT] Business Days, submit a revised Change Control Note, taking into account the reasoning given by ESCo for rejection. The revised Note Control Note shall be subject to consideration in accordance with paragraph 2.4.
        2. A Change Control Note signed by ESCo and by the Contractor shall constitute an amendment to this Agreement.

1. - Exit Plan and Energy Supply transfer arrangements
   * + 1. Definitions
          1. The definitions in this paragraph apply in this Schedule 18.

**Assets**: all assets and rights other than the Energy Systems required by the Contractor to provide any of the Services.

**Business Process Manual**: the manual which is prepared by the Contractor and which details the business procedures which it follows in the provision of the Services.

**Contractor Registers**: the registers and database referred to in paragraph 4.2.1 and paragraph 4.2.3 of this Schedule 18.

**Exclusive Assets**: those Assets which are used by the Contractor exclusively in connection with the provision of the Services.

**Fair Market Value**: the fair market value of the relevant Asset(s) calculated in accordance with [SPECIFY].

**Net Book Value**: the net book value of the relevant Asset(s) calculated in accordance with [the depreciation policy in [SPECIFY].

**[Non-Exclusive Assets**: those Assets used by the Contractor in connection with the provision of the Services but which are also employed by the Contractor for other purposes.]

**Register:** the Contractor Registers or the ESCo Registers, as applicable, and ‘Registers’ shall be construed accordingly.

**Transferable Assets**: those of the Exclusive Assets which are capable of legal transfer to the Replacement Contractor.

**Transferable Contracts**: the subcontracts, licences for Contractor’s Software, licences for Third Party Software or other agreements which are necessary to enable the Replacement Contractor to be able to provide the Services.

**Transferring Assets**: has the meaning set out in paragraph 5.1.1 of this Schedule 18.

**Transferring Contracts**: has the meaning set out in paragraph 5.1.2 of this Schedule 18.

* + - 1. Purpose of Schedule
         1. ESCo and the Contractor are required to ensure the orderly transition of the Services from the Contractor to a Replacement Contractor in the event of any termination or expiry of this Agreement. This Schedule sets out the principles of the exit and service transition arrangements which are intended to achieve this and upon which the Exit Plan shall be based.
         2. For the avoidance of doubt, the Contractor is responsible for the overall management of the exit and Service transfer arrangements.
      2. Exit Plan
         1. The Exit Plan shall:

address each of the issues set out in this Schedule 18 to facilitate the transition of the provision of the Services from the Contractor to the Replacement Contractor and shall ensure that there is no disruption in the supply of the Services or of the supply of Energy to Customers and no deterioration in the quality of delivery of the Services;

detail how:

the provision of the Services will transfer from the Contractor to the Replacement Contractor; and

the delivery of the Services by the Contractor to ESCo will transfer to delivery of the Services by the Replacement Contractor to ESCo,

including details of the processes, Documentation, data transfer, systems migration, security and the segregation of technology components owned by either Party from any technology components run by the other;

provide a timetable and identify critical issues during the transition period; and

set out the management structure to be put in place and employed during the Termination Period.

* + - 1. Obligations during the Term
         1. The Exit Managers shall liaise with one another in relation to all issues relevant to termination or expiry and all matters connected with this Schedule 18 and each Party's compliance with it.
         2. During the Term, the Contractor shall:

create and maintain a register of all Energy System assets;

create and maintain a register of all the Contractor’s Assets, detailing their ownership status as either Exclusive Assets (separately identifying Transferable Assets) or Non-Exclusive Assets and the [Net Book Value OR Fair Market Value] of Transferrable Assets;

create and maintain a database setting out the Contractor’s technical infrastructure through which the Services are delivered. Such database shall be capable of allowing staff of the Replacement Contractor to acquire sufficient technical understanding of how the Contractor provides the Services to ensure the smooth transition of the Services with the minimum of disruption to Customers; and

at all times keep the Contractor Registers up to date and shall maintain copies of any agreements referred to in any Contractor Registers.

* + - * 1. The Parties shall agree the format of the Contractor Registers as part of the process of agreeing the first Exit Plan.
        2. At the same time as the Contractor submits a revised Exit Plan, it shall also submit to ESCo up-to-date Contractor Registers.
        3. The Contractor shall ensure all Exclusive Assets are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.
        4. On reasonable notice, the Contractor shall provide to ESCo, such material and information as ESCo shall [reasonably] require in order to facilitate the preparation by ESCo of any invitation to tender and/or to facilitate any potential Replacement Contractor undertaking due diligence (including in relation to the Services, Assets, Customer's Data and Registers).
        5. ESCo and the Contractor acknowledge that the transition of the provision of the Services to the Replacement Contractor may be phased over a period of time so that certain identified Services are transferred to the Replacement Contractor before others.
        6. Each Party shall comply with all of its obligations contained in the Exit Plan.
        7. From the date [six months] before expiry or from the service by either Party of any Termination Notice (whichever is the earlier) and during any Termination Period, the Contractor shall not terminate or vary in any material respect any Transferable Contract without ESCo’s prior written consent, such consent not to be unreasonably withheld or delayed.
        8. Upon termination or expiry (as the case may be) or upon expiration of the Termination Period or, provided that it does not have an adverse impact on the ability of Contractor to provide the Services:

the Contractor shall cease to use ESCo’s Data and, at the direction of ESCo either:

provide ESCo or the Replacement Contractor with a complete and uncorrupted version of the Contractor's Data in electronic form (or such other format as reasonably required by ESCo or the Replacement Contractor); or

destroy (including removal from any hard disk) or return (at ESCo’s option) all copies of Contractor's Data [not required to be retained by the Contractor for statutory compliance purposes] and confirm in writing that such destruction has taken place;

The Contractor shall erase from any computers, storage devices and storage media that are to be retained by the Contractor after the end of the Termination Period and any software containing the IPRs owned by ESCo;

The Contractor shall transfer to ESCo or the Replacement Contractor such of the following as are in the Contractor's possession or control:

all materials created by the Contractor in connection with the provision of the provision of Services, the IPRs in which are owned by the Contractor; and

any equipment which belongs to ESCo;

the Contractor shall vacate the Energy Centre Site and any Served Premises; and

each Party shall return to the other Party all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information, save to the extent that ESCo requires the same to appoint and instruct the Replacement Contractor.

* + - 1. Transfer of assets and contracts
         1. Not less than [six months] prior to expiry or, in the case of termination, as soon as practicable (but in any event not later than [one month] following delivery of the up-to-date Contractor Registers) or in the event of a Termination Period, not later than one month prior to the date of expiration of the Termination Period, ESCo shall notify the Contractor:

which, if any, of the Transferable Assets require to be transferred to it and/or any Replacement Contractor (**Transferring Assets**);

which Transferable Contracts require to be transferred to it and/or to the Replacement Contractor or any other licences of the Contractor's Software required by ESCo and/or the Replacement Contractor (**Transferring Contracts**);

in order for ESCo to continue to supply Energy and the Replacement Contractor to provide the Services from the end of the Termination Period. At the request of ESCo, the Contractor shall provide such assistance as may be necessary to help ESCo and/or the Replacement Contractor to identify which Transferable Assets and which Transferable Contracts are required for the continued provision of the supply of Energy and the provision of the Services from the end of the Termination Period.

* + - * 1. The Contractor shall sell the Transferring Assets to ESCo or the Replacement Contractor (as determined by ESCo) with effect from the end of the Termination Period and the sale shall take place at such place as ESCo shall specify. ESCo or the Replacement Contractor (as applicable) shall acquire the Transferring Assets at [Net Book Value **OR** Fair Market Value] in accordance with [INSERT]. Risk in such Transferring Assets shall pass to ESCo or the Replacement Contractor (as appropriate) at the end of the Termination Period and title to such Transferring Assets shall pass to ESCo or the Replacement Contractor (as appropriate) on payment for the same.
        2. Where the Contractor is notified that ESCo and/or the Replacement Contractor requires continued use of any of the Exclusive or Non-Exclusive Assets, the Contractor shall:

procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by ESCo) for ESCo and/or the Replacement Contractor to use such assets (with a right of sub-licence or assignment on the same terms); or failing which

procure a suitable alternative to such assets and ESCo or the Replacement Contractor shall bear the reasonable proven costs of procuring the same.

* + - * 1. The Contractor shall, at ESCo’s request, procure the novation or assignment to ESCo and/or Replacement Contractor of the Transferring Contracts.
        2. ESCo shall:

accept (or, as applicable, procure that the Replacement Contractor accepts) assignments from the Contractor or join with the Contractor in procuring a novation of each Transferring Contract; and

once a Transferring Contract is novated or re-assigned to ESCo or the Replacement Contractor, ESCo shall carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract or, as applicable, procure that the Replacement Contractor does the same.

* + - * 1. The Contractor shall have no further obligation or liability under a Transferring Contract which is assigned or novated to ESCo (or the Replacement Contractor) pursuant to paragraph 5.4 of this Schedule 18 in relation to any matters arising following the date of such assignment or novation.
      1. Payment on termination or expiry
         1. Subject to paragraph 6.2 of this Schedule 18, ESCo shall, or shall procure that the Replacement Contractor shall, pay to the Contractor the price determined in accordance with paragraph 5 of this Schedule 18:

for the Transferring Assets; and/or

for the continued use of the Exclusive Assets and Non-Exclusive Assets as referred to in paragraph 5.3 of this Schedule 18.

* + - * 1. Any Charges to be paid by ESCo in respect of the Contractor performing its obligations in this Schedule 18 (if any) shall be determined in accordance with Schedule 3 *(Charges)*. The continued provision of the Services shall be paid for in accordance with the Charges relating thereto.
      1. Apportionments
         1. There shall be apportioned between the Contractor and ESCo or the Replacement Contractor and ESCo all outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts.
         2. This apportionment shall be carried out as follows:

the payments shall be annualised and divided by 365 to reach a daily rate;

ESCo shall be responsible for or shall procure that the Replacement Contractor shall be responsible for or entitled to (as the case may be) an amount equal to the number of complete days during the period of the invoice after the transfer, multiplied by that daily rate; and

the Contractor shall be responsible for or entitled to (as the case may be) the rest of the invoice.

* + - * 1. Each Party shall pay and ESCo shall procure that the Replacement Contractor shall pay any monies due under this paragraph 7 as soon as practicable.

1. - Data Processing

[DATA PROCESSING CLAUSES]

1. - Drawings

[Annex drawings for:

Initial Heat Distribution Network

[Initial Electricity Network]

Energy Centre Site

Responsibility Diagram]

1. - Financial Security

[INSERT][[42]](#footnote-42)

|  |  |
| --- | --- |
| Signed by **CONTRACTOR** in the presence of: | ....................................... |

.......................................

[SIGNATURE OF WITNESS]

[NAME, ADDRESS AND OCCUPATION OF WITNESS]

|  |  |
| --- | --- |
| Signed by **ESCO** in the presence of: | ....................................... |

.......................................

[SIGNATURE OF WITNESS]

[NAME, ADDRESS AND OCCUPATION OF WITNESS]

1. Identify where the district heating scheme is [↑](#footnote-ref-1)
2. The recital allows for any D&B contractor to be identified. Where this O&M Agreement is used under the umbrella DBOM Agreement, the contractor identified here will be the same as the Contractor identified in the O&M Agreement itself [↑](#footnote-ref-2)
3. Include as appropriate, depending on the commercial risk allocation in relation to the Assumed Contractors. An O&M Contractor may charge a premium to take any historic risk on an assumed contract. [↑](#footnote-ref-3)
4. Amend as appropriate to reflect technical solution. [↑](#footnote-ref-4)
5. Consider whether this needs to extend to network outside of a building and extending across a wider commercial development [↑](#footnote-ref-5)
6. Check to conform to particular network design [↑](#footnote-ref-6)
7. Include if the ESCo is employing a Customer Services/ Metering and Billing Contractor. NB: there may be O&M services, for example in relation to HIUs and meters that would be carried out by the Metering & Billing contractor. If that is the case, exclude the scope of “Managed Equipment” under a Metering & Billing Agreement as appropriate from this Agreement. [↑](#footnote-ref-7)
8. Insert to the extent that there is a separate Customer Services/ Metering and Billing Contractor [↑](#footnote-ref-8)
9. For use where there is a centralised energy centre or centres. [↑](#footnote-ref-9)
10. Parties may wish to specify particular temporary boiler plant [↑](#footnote-ref-10)
11. As drafted, this Agreement gives Contractor monopoly rights to allow/refuse access at the end of the Initial Term. Depending upon the structure of the district heating network and associated supply rights, Parties should consider how they are addressing continuity of supply to customers. How that is addressed in this Agreement will need to follow whether and how continuity in supply is secured across the matrix of heat contracts. [↑](#footnote-ref-11)
12. Modify wording to reflect project priorities and technologies available [↑](#footnote-ref-12)
13. Amend as appropriate [↑](#footnote-ref-13)
14. Include only if placing a separate metering services agreement or performing in-house [↑](#footnote-ref-14)
15. Assumes responsibility for lifecycle replacement of Secondary Distribution Networks has not been assumed by ESCo [↑](#footnote-ref-15)
16. Include only if placing a separate metering services agreement or performing in-house [↑](#footnote-ref-16)
17. Use this option where Contractor is not the Design & Build Contractor [↑](#footnote-ref-17)
18. Use this option when incorporating this Agreement within the umbrella DBOM Agreement. [↑](#footnote-ref-18)
19. Parties should consider where responsibility should lie for obtaining Authorisations and in whose name they should be obtained. [↑](#footnote-ref-19)
20. Include where this O&M Agreement is being used with the umbrella DBOM Agreement [↑](#footnote-ref-20)
21. Parties to consider according to the particular cirumcstances. Specify any types of liability to be subject to the cap to be set in the next square brackets – e.g. insured risks [↑](#footnote-ref-21)
22. Parties to consider according to the particular circumstances. Set cap on liability applicable to specified types of liability – eg insured risks capped at limits of insurance. [↑](#footnote-ref-22)
23. For example, a monetary amount or a multiple of the Charges. [↑](#footnote-ref-23)
24. Parties to consider according to the particular circumstances. Specify any types of liability to be subject to the cap to be set in the next square brackets – e.g. insured risks [↑](#footnote-ref-24)
25. Parties to consider according to the particular circumstances. Set cap on liability applicable to specified types of liability – e.g. insured risks capped at limits of insurance [↑](#footnote-ref-25)
26. For example, a monetary amount or a multiple of the Charges. [↑](#footnote-ref-26)
27. Parties to consider according to the particular circumstances. [↑](#footnote-ref-27)
28. Insert details of heat operating requirements [↑](#footnote-ref-28)
29. Where relevant, insert details of electricity operating requirements [↑](#footnote-ref-29)
30. Include where metering and billing is being contracted under a separate agreement [↑](#footnote-ref-30)
31. Where technologies chosen involve use of other fuels, provisions may need to be added to address where responsibility for procuring relevant fuels is to lie [↑](#footnote-ref-31)
32. Delete if no separate Customer Services Contractor [↑](#footnote-ref-32)
33. Delete if no separate Customer Services Contractor [↑](#footnote-ref-33)
34. Delete if no separate Customer Services Contractor [↑](#footnote-ref-34)
35. Delete if no separate Customer Services Contractor [↑](#footnote-ref-35)
36. Delete if no separate Customer Services Contractor [↑](#footnote-ref-36)
37. Output Specification might include, eg: fuel conversion efficiency, boiler heat utilization, flow and return temperatures, [↑](#footnote-ref-37)
38. Performance Monitoring Reporting System should include measures for recording and reporting Contractor’s achievement of the Output Specification, including periodicity of measurement and reporting. [↑](#footnote-ref-38)
39. Include where this O&M Agreement is included under the umbrella DBOM Agreement [↑](#footnote-ref-39)
40. Insert preferred form of collateral warranty [↑](#footnote-ref-40)
41. Site rules appropriate to parties and project context to be inserted [↑](#footnote-ref-41)
42. Add preferred form(s) of security [↑](#footnote-ref-42)