|  |
| --- |
|  |
| Dated [DATE] |
|  |
|  |
| (1) *[ESCo]*  AND  (2) *[PipeCo]* |
|
| |  | | --- | | GREEN HEAT NETWORK FUND  DRAFT: USE OF SYSTEM AGREEMENT |  Version Control  |  |  |  |  | | --- | --- | --- | --- | | **Version number** | **Date of issue** | **Author** | **Comment** | | 1.0 | 24 Feb 2019 | Lux Nova Partners | Initial discussion draft | | 1.1 | 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 September 2019 | | 4.0 | 13 December 2019 | Lux Nova Partners | Marked up after responses to wider consultation which closed on 17 November 2019 | | 5.0 | 15 January 2020 | Lux Nova Partners | Marked up following comments from BEIS | | 6.0 | 29 November 2022 | Lux Nova Partners | Update of statutory references and consistency/ drafting amends | |
|  |
|  |

*GUIDANCE NOTE*

*This Use of System Agreement is not relevant to most district heating schemes, as they are currently structured in the United Kingdom.*

*It may be relevant to a district heating scheme that has separated out (‘unbundled’) ownership and operation of a heat distribution network from the functions and businesses of heat generation and heat supply – see diagram below for an illustration of the structure anticipated.*



*This agreement assumes an arrangement which is fundamentally similar to regulated gas and electricity networks where:*

* *an energy distributor (here, PipeCo) owns an energy distribution network (here, the Heat Network which is a collection of heat network assets, the extent of which is to be specified in Schedule 1 (Energy Network));*
* *the distributor operates and maintains the distribution network (although, through separate contract(s), it might outsource operation and/or maintenance to third parties who owe it a duty of care in respect of the work and services they provide);*
* *the distributor grants an energy supplier (here, [ESCo]) the right to use the distribution network to convey energy (here, heat) from energy (here, heat) production assets putting energy into the network (at Entry Points) to consumers taking energy (here, heat) from the network (at Exit Points); and*
* *the distributor (PipeCo) charges the energy supplier ([ESCo]) according to its use of the network in serving its customers.*

*It also assumes that PipeCo is primarily a network asset holding company (for investment purposes) which does not actively “manage” the network. Once the network is designed and built, management of inputs and outputs must therefore sit with ESCo (or another entity). PipeCo merely maintains the network. It assumes that [ESCo] is both generator and supplier.*

*This form of contract provides drafting for either PipeCo or ESCo to terminate for fault and require the transfer of contracts and assets (where relevant) to an incoming “Replacement Network Operator” or “Replacement Supplier” as relevant. The suggested ability of both parties to force a transfer of the agreement/ assets to a replacement operator or a replacement supplier will need tailored to the wider contractual matrix/ model for the scheme. It is unlikely that on one scheme both parties will have this ability: one party is likely to have a more enduring “interest” than the other due to the wider commercial / governance model.* *This form of contract does not deal with the design and build of the initial network or any network extension. Design and build could be addressed through a number of industry standard form contracts. It could be procured by PipeCo or by someone else and adopted by PipeCo. Where the initial network or any network extension is adopted by PipeCo, the template Connection and Adoption Agreement could be adapted for use by PipeCo.*

*The structuring assumption underlying this Use of System 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 Use of System Agreement will serve only as a starting point for drafting of an agreement that will need to be developed significantly and tailored to the particular characteristics of a given, unbundled district heating scheme. Public sector bodies should take into consideration any public accounting impacts when entering into agreements.*

*Unlike regulated gas and electricity networks, there is not (at present) a heat-specific regulator and only general principles of consumer protection law and competition law apply to every district heating scheme. Public sector schemes will also need to take into account procurement law and work within appropriate powers. Pending heat regulation, it is anticipated that the architects of the particular district heating scheme will be putting in place a system of overall governance arrangements appropriate to the particular characteristics of their scheme and the stakeholders involved (including the types of consumers taking heat) to ensure a robust structure. With that in mind, references are included to a Governing Body, and rights of the Governing Body to enforce certain provisions of this Use of System Agreement in certain serious default or termination scenarios. They are included as markers only and the architects of the particular district heating scheme will need to adapt as appropriate.*

*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.*

*ƒ*

**Table Of Contents**

[1. Interpretation 1](#_Toc120620255)

[2. Commencement and duration 11](#_Toc120620256)

[3. Right to connect to and to use the Energy NETWORK 11](#_Toc120620257)

[4. Maintenance of the Energy Network 12](#_Toc120620258)

[5. Service Levels 12](#_Toc120620259)

[6. Interference with the provision of the services 13](#_Toc120620260)

[7. Charging and invoicing 14](#_Toc120620261)

[8. [Governance 15](#_Toc120620262)

[9. Change control 16](#_Toc120620263)

[10. IPRs 16](#_Toc120620264)

[11. Grant of licences 16](#_Toc120620265)

[12. Data processing 16](#_Toc120620266)

[13. Confidentiality 17](#_Toc120620267)

[14. Warranties and representations 18](#_Toc120620268)

[15. Compliance and change in law 18](#_Toc120620269)

[16. Force majeure 19](#_Toc120620270)

[17. Limitations on liability 20](#_Toc120620271)

[18. Insurance 23](#_Toc120620272)

[19. Termination 24](#_Toc120620273)

[20. Remediation Plan Process 25](#_Toc120620274)

[21. Consequences of termination and survival 26](#_Toc120620275)

[22. Exit and Energy Supply transfer 28](#_Toc120620276)

[23. Dispute Resolution Procedure 29](#_Toc120620277)

[24. Assignment and other dealings 30](#_Toc120620278)

[25. Variation 30](#_Toc120620279)

[26. Waiver 30](#_Toc120620280)

[27. Rights and remedies 30](#_Toc120620281)

[28. No partnership or agency 30](#_Toc120620282)

[29. Announcements 30](#_Toc120620283)

[30. Severance 30](#_Toc120620284)

[31. Further assurance 31](#_Toc120620285)

[32. Entire agreement 31](#_Toc120620286)

[33. Third Party rights 31](#_Toc120620287)

[34. Notices 31](#_Toc120620288)

[35. Counterparts 32](#_Toc120620289)

[36. Governing law 32](#_Toc120620290)

[37. Jurisdiction 32](#_Toc120620291)

[Schedule 1 - The Energy Network 33](#_Toc120620292)

[Part 1 : The Heat Network 33](#_Toc120620293)

[Part 2 : [The Electricity Network] 33](#_Toc120620294)

[Schedule 2 – ESCo’s equipment 34](#_Toc120620295)

[Schedule 3 - Service Requirements 35](#_Toc120620296)

[Part 1 : Services Commencement Date 35](#_Toc120620297)

[Part 2 : Services Description 35](#_Toc120620298)

[Part 3 : Service Levels 35](#_Toc120620299)

[Schedule 4 - ESCo's Responsibilities 36](#_Toc120620300)

[Schedule 5 – PipeCo’s Responsibilities 38](#_Toc120620301)

[Part 1 : General 38](#_Toc120620302)

[Part 2 : Plant rooms to which ESCo is to be given access 39](#_Toc120620303)

[Schedule 6 – New Connections and modifications to existing Entry Points and Exit Points 40](#_Toc120620304)

[Schedule 7 - Charges and Deductions 41](#_Toc120620305)

[Part 1 : Charges 41](#_Toc120620306)

[Part 2 : Service Credits 41](#_Toc120620307)

[Part 3 : Termination Compensation 41](#_Toc120620308)

[Schedule 8 - Policies 42](#_Toc120620309)

[Part 1 : Safety Policy 42](#_Toc120620310)

[Part 2 : Other policies and procedures 42](#_Toc120620311)

[Schedule 9 - Representatives 43](#_Toc120620312)

[Part 1 : PipeCo's Representatives 43](#_Toc120620313)

[Part 2 - ESCo's Representatives 43](#_Toc120620314)

[Schedule 10 - Contract and Service Management 44](#_Toc120620315)

[Schedule 11 - Change Control Procedure 45](#_Toc120620316)

[Schedule 12 - Exit Plan and transfer arrangements 47](#_Toc120620317)

[Schedule 13 - Data Processing 55](#_Toc120620318)

**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](**PipeCo**),

(and each a “**Party**” and Parties shall be construed accordingly).

**Recitals**

1. PipeCo is the owner[[1]](#footnote-1) of a network of district heating[cooling] pipes and ancillary equipment [and an electricity network and ancillary equipment] serving [*area/development*].
2. ESCo has the right[[2]](#footnote-2) to supply energy to customers connected to PipeCo’s network[s] [and to connect additional customers to PipeCo’s network[s]].
3. ESCo wishes to make use of PipeCo’s network[s] 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:

**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.

**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).

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

**Change**: any change to this Agreement including to any of the Services.

**Change Control Note**: the written record of a Change agreed or to be agreed by the Parties pursuant to the Change Control Procedure.

**Change Control Procedure**: the procedure for changing this Agreement, as set out in Schedule 11 (*Change control procedure*).

**Change in Law**: the occurrence of any of the following after the date of this Agreement:

1. the enactment or commencement of any new Applicable Law, other than any Applicable Law which on the date of this Agreement 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 date of this Agreement.

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

**Charges**: the Service Charges, the Transitional Assistance Service Charges and any other charges which may become due and payable pursuant to this Agreement.

**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**: the addition of an Entry Point or Exit Point not forming part of the Energy System at the Services Commencement Date.

**Consents**: all permissions, consents, approvals, certificates, permits, licences, agreements and authorities (whether statutory, regulatory, contractual or otherwise) necessary for the provision of the Services.

**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.

**Contract Year**: a period of 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.

**Critical Service Failure**: an event where PipeCo's performance of any Service falls to, or below, any of the Critical Service Levels for that Service.

**Critical Service Levels**: has the meaning set out in Schedule 3Part 3 (*Service levels*).

**Customer**: a customer of ESCo receiving a Heat Supply [and/or an Electricity Supply, as the context requires].

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

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

**Dispute Resolution Procedure**: the dispute resolution procedure set out in clause 23 (*Dispute resolution procedure*).

**Distribution Services**: the operation and maintenance of the Energy Network in accordance with this Agreement to allow the passage of Heat through the Heat Network [and, where applicable, electricity through the Electricity Network].

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

1. is required to be supplied by PipeCo to ESCo to enable it to connect to or use the Energy Network; and
2. is required to be developed by PipeCo in order to enable ESCo to connect to or use the Energy Network or to enable PipeCo to provide the Services.

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

**Effective Date**: has the meaning given to it in clause 2.1 *(Commencement).*

**[Electricity Entry Point**: any point identified as such in Schedule 1Part 2 (Electricity Network), as may be modified from time-to-time in accordance with this Agreement.]

**[Electricity Exit Point**: any point identified as such in Schedule 1Part 2 (Electricity Network), as may be modified from time-to-time in accordance with this Agreement.]

**[Electricity Network**: the network of network of wires and ancillary plant and equipment, and Electricity Entry Points and Electricity Exit Points, more particularly described in Schedule 1Part 2 (Electricity Network), as may be modified from time-to-time in accordance with this Agreement.]

**[Electricity Supply**: the supply of electricity by ESCo to Customers from electricity delivered to Electricity Exit Points.]

**Energy**: Heat [or, where applicable, electricity].

**Energy Supply**: Heat Supply [or Electricity Supply, as the context requires].

**Energy Network**: the Heat Network [and, where applicable, the Electricity Network].

**Entry Point**: a Heat Entry Point [or an Electricity Entry Point, as the context requires].

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

**ESCo's Equipment**: has the meaning given to it in Schedule 2 (ESCo’s Equipment).

**ESCo's Exit Manager**: the person identified as such in Part 1 of Schedule 9 (*Representatives*) (or any replacement notified by ESCo to PipeCo from time to time) being the person responsible for managing the Exit Plan on behalf of ESCo.

**ESCo's Representatives**: the person identified as such in Part 1 of Schedule 9 (*Representatives*) (or any replacement notified by ESCo to PipeCo from time to time), being the person responsible for managing ESCo's overall relationship with PipeCo.

**ESCo's Responsibilities**: the responsibilities of ESCo as specified in Schedule 4 (*ESCo's responsibilities*).

**ESCo's Services Manager**: the person identified as such in Part 1 of Schedule 9 (*Representatives*) (or any replacement notified by ESCo to PipeCo from time to time) being the person responsible for managing the Services on behalf of ESCo.

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

**Exit Plan**: the plan for the provision of the Transitional Assistance Services in the event of the expiry or termination of this Agreement for any reason, as set out in the Annex to Schedule 12 (*Exit plan and service transfer*) as may be amended from time to time in accordance with clause 22 (*Exit and service transfer*).

**Exit Point**: a Heat Exit Point [or an Electricity Exit Point, as the context requires].

**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 Network 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 Network;
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.

**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.

**[Governing Body:** [NAME].[[3]](#footnote-3)]

**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.

**Heat**: thermal energy, as specified in Schedule 1Part 1 (Heat Network).

**Heat Entry Point**: any point identified as such in Schedule 1Part 1 (Heat Network), as may be modified from time-to-time in accordance with this Agreement.

**Heat Exit Point**: any point identified as such in Schedule 1Part 1 (Heat Network), as may be modified from time-to-time in accordance with this Agreement.

**Heat Network**: the network of heat pipes and ancillary plant and equipment, and Heat Entry Points and Heat Exit Points, more particularly described in Schedule 1Part 1 (Heat Network), as may be modified from time-to-time in accordance with this Agreement.

**Heat Supply**: the supply of Heat by ESCo to Customers from Heat delivered to Heat Exit Points.[[4]](#footnote-4)

**holding company**: has the meaning give in clause 1.5 (*Interpretation*).

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

**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.

**Mandatory Policies**: ESCo's business policies [and codes] [attached **OR** listed] in Schedule 8 (*Policies*)[, as amended by notification to PipeCo from time to time].

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

**Network Operating Parameters**: the operating parameters, thresholds and other criteria with which ESCo’s use of the Energy Network must comply, as set out in Schedule 1 *(The Energy Network).*

**Personal Data**: means any information relating to an identified or identifiable natural person that is processed by PipeCo 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**: in respect of a Party, all employees, staff, other workers, agents, contractors and consultants of that Party who are engaged from time to time in the discharge of that Party’s obligations under this Agreement.

**PipeCo’s Data:** any data (including any Personal Data relating to the staff, customers or suppliers of PipeCo), documents, 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 PipeCo.

**PipeCo's Equipment**: the Energy Network and any other plant or equipment belonging to or provided by PipeCo or its Subcontractors (but not hired, leased or loaned from ESCo) for the provision of the Services.

**PipeCo's Exit Manager**: the person identified as such in Part 2 of Schedule 9 (*Representatives*) (or any replacement notified by PipeCo to ESCo from time to time) being the person responsible for managing the Exit Plan on behalf of PipeCo.

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

**PipeCo's Representative**: the person identified as such in Part 2 of Schedule 9 (*Representatives*) (or any replacement notified by PipeCo to ESCo from time to time) as the person responsible for managing PipeCo's overall relationship with ESCo.

**PipeCo's Responsibilities**: the responsibilities of PipeCo as specified in Schedule 5 (*PipeCo's responsibilities*).

**PipeCo's Services Manager**: the person identified as such in Part 2 of Schedule 9 (*Representatives*) (or any replacement notified by PipeCo to ESCo from time to time) being the person responsible for managing the Services on behalf of PipeCo.

**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.

**Relevant Change in Law**: any Change in Law which requires a change in ownership of the Heat Network [or, where applicable, the Electricity Network] or which affects the performance of the Services or the setting of the Charges.

**Remediation Notice**: has the meaning given to it in clause 19.1 (*Remediation plan process*).

**Remediation Plan**: the plan agreed in accordance with clause 20 (*Remediation plan process*) for the resolution of a Default.

**Remediation Plan Process**: the process for resolving Defaults as set out in clause 20 (*Remediation plan process*).

**Replacement Network Operator**: any replacement supplier of the Services appointed by [Governing Body] from time to time.[[5]](#footnote-5)

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

**Safety Policy:** PipeCo’s policy for safe access to PipeCo’s Premises, as set out in Schedule 8Part 1 (*Safety policy)* and any amendment or replacement as may be notified by PipeCo to ESCo.

**Service Charges**: the charges which become due and payable by ESCo to PipeCo in respect of the Services, which shall be calculated in accordance with Schedule 5 (*Charges and deductions*).

**Service Credits**: the sums attributable to a Service Failure as specified in Part 2 of Schedule 5 (*Charges and deductions*).

**Service Failure**: a failure by PipeCo to deliver any part of the Services in accordance with the Service Levels.

**Service Levels**: the service levels to which the Services are to be provided, as set out in Schedule 3Part *3* (*Service levels*) as may be amended from time to time in accordance with this Agreement.

**Services**: the Distribution Services and any other services specified in Schedule 3Part 2 *(Services description)*.

**Services Commencement Date**: the date specified as such in Schedule 3Part *1* (*Services Commencement Date*) for the commencement of the Services.

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

**Standards:** means*[NOTE: SET OUT APPLICABLE STANDARDS – FOR EXAMPLE:*

*(a) IET Wiring Regulations BS 7671:2008 (2011);*

*(b) British Standards and BS Codes of Practice and EN Standards;*

*(c) Any requirements of the Local Fire Prevention Officer/LFCA;*

*(d) Any requirements of the local Distribution Network Operator;*

*(e) All relevant BSRIA Guides*

*(f) All relevant CIBSE Codes, including without limitation “CP1 Heat Networks: Code of Practice for the UK (2020)”, [Heat Trust Scheme Rules]]*

**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 earlier termination of this Agreement in accordance with clause 19 (*Termination*).

**Termination Compensation**: the sums calculated in accordance with Part 3 of Schedule 5 (*Charges and deductions*) in order to compensate PipeCo for the loss of this Agreement if PipeCo terminates this Agreement in accordance with clause 19.3 (*Termination for ESCo Default*) before the expiry of the Initial Term. *[Drafting Note: Consider whether any termination compensation ought to be payable by PipeCo to ESCo].*

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

**Termination Notice**: any notice to terminate this Agreement which is given by either Party in accordance with clause 19 (*Termination*).

**Termination Period**: the period of up to [SPECIFY] as specified in the Termination Notice pursuant to clause 19.1 (*Termination for cause*) during which period ESCo may require PipeCo 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).

**Transitional Assistance Services**: means as set out in Schedule 3Part 2 to this Agreement.

**Transitional Assistance Service Charges**: means as set out in Schedule 7 to this Agreement.

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

* 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 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 later of:
      1. [the date that [*Note: insert any conditions precedent*]; and]
      2. the date of this Agreement,

(the ‘**Effective Date**’) and shall continue for the Term.

* 1. If ESCo[[6]](#footnote-6) wishes to extend this Agreement beyond the expiry of the Initial Term, it shall give PipeCo 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.
  2. [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. After such expiry, ESCo shall have no further right to use the Energy Network][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 22 (*Exit and service transfer*) and the Exit Plan shall apply.][[7]](#footnote-7)

1. Right to connect to and to use the Energy NETWORK
   1. Subject to ESCo complying with its obligations under this Agreement, it shall have the right to receive the Distribution Services on the terms set out in this Agreement.
   2. The Parties shall comply with the provisions of Schedule 6 *(New Connections and modifications to Entry Points and Exit Points)* in respect of new Connections and modifications of existing Entry Points and Exit Points.[[8]](#footnote-8)
   3. ESCo acknowledges that its right to receive the Distribution Services, to alter any Entry Points or Exit Points and to make new Connections is subject to the certain Network Operating Parameters set out in Schedule 1 *(The Energy Network).*
   4. If ESCo’s use of the Energy Network exceeds or otherwise contravenes the Network Operating Parameters:
      1. PipeCo shall have no liability in respect of any resulting Service Failure;
      2. PipeCo shall have the right to restrict or suspend ESCo’s use of the Energy Network until ESCo has restored conditions to comply with the Network Operating Parameters; and
      3. ESCo shall indemnify PipeCo for the reasonable cost of repairing any damage thereby caused to the Energy Network.
2. Maintenance of the Energy Network
   1. PipeCo shall operate and maintain the Energy Network and shall have the right to modify, upgrade and replace the Energy Network in accordance with the terms of this clause 4 (*Maintenance of the Energy Network*).
   2. In operating, maintaining, repairing, modifying, upgrading or replacing the Energy Network or any part of it, PipeCo shall:
      1. comply with Applicable Laws and Good Industry Practice;
      2. obtain, maintain and comply with all Consents;
      3. comply with PipeCo’s Responsibilities; and
      4. subject to clause 5 *(Service levels),* maintain the capability of the Energy Network to, at least, meet the Service Levels.
3. Service Levels
   1. PipeCo shall ensure that the Services meet or exceed the Service Levels at all times from the Services Commencement Date (subject to any modification of the Service Levels agreed between the Parties pursuant to Schedule 6 *(New Connections and modifications to existing Entry Points and Exit Points)*, Schedule 11 *(Change Control Procedure)* or otherwise agreed in writing between the Parties).
   2. If there is a Service Failure, PipeCo shall:
      1. notify ESCo immediately of the Service Failure;
      2. provide ESCo with a Remediation Plan in accordance with clause 20 (*Remediation plan process*);
      3. deploy all additional resources and take all remedial action that is necessary to rectify or to prevent the Service Failure from recurring; and
      4. carry out the actions identified in Remediation Plan in accordance with its terms.
   3. Subject to the limit set out in clause 17.5.1 (*PipeCo’s liability cap*), PipeCo shall automatically credit ESCo with the applicable Service Credits. Service Credits shall either be shown as a deduction from the amount due from ESCo to PipeCo in the next invoice then due to be issued under this Agreement, or PipeCo shall issue a credit note against a previous invoice and the amount for the Service Credits shall be repayable by PipeCo as a debt within [NUMBER] Business Days of issue of the credit note. [The Parties agree that any such Service Credits have been calculated as, and are, a genuine pre-estimate of the loss likely to be suffered by ESCo.]
   4. PipeCo shall provide ESCo with a [monthly] report detailing its performance in respect of each of the Service Levels.
   5. [A review meeting to assess the performance of PipeCo in the delivery of the Services shall be held at [six-monthly] intervals throughout the Term. Each meeting shall be attended by senior representatives of ESCo and of PipeCo, together with the Services Managers.]
   6. ESCo and PipeCo shall review the Service Levels every [NUMBER] months throughout the Term and make any changes in accordance with the Change Control Procedure to reflect changes in the Services Description, changes in Entry Points and/or Exit Points and/or Change in Law.
   7. PipeCo shall have no liability under this clause 5 in respect of any Service Failures (and no Service Credits shall be due) to the extent that that Service Failure is due to either of:
      1. an ESCo Default[[9]](#footnote-9); or
      2. a Force Majeure Event.
4. Interference with the provision of the services
   1. If PipeCo becomes aware that any ESCo Default(s) is causing or is likely to cause a Service Failure:
      1. PipeCo shall notify ESCo as soon as reasonably practicable, giving such details as are reasonable in the circumstances;
      2. if such ESCo Default causes a Service Failure, PipeCo shall have the rights and relief set out in 5.7 *(No liability for Service Failure)* and clause 6.1.3(b) (*Entitlement to payment*);
      3. PipeCo shall:
         1. [have the right to suspend performance of the Services][continue to provide the affected Services in accordance with this Agreement as best as it is able to in the circumstances]; and
         2. 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 PipeCo as consequence of ESCo Default(s).
   2. ESCo may challenge any notice received from PipeCo pursuant to clause 6.1.1 (*Notification of ESCo's default*) if it believes, in its reasonable opinion, that the alleged ESCo Default should not prevent PipeCo from performing the Services in accordance with the Service Levels and this Agreement. 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.
   3. 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 Services (whether or not resulting in a Service Failure):
      1. it shall notify the other as soon as reasonably practicable;
      2. PipeCo 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];[[10]](#footnote-10)
      3. without prejudice to the provisions of clause 5 (*Service levels*), clause 6.1 and clause 16 (*Force majeure*), PipeCo shall use all comply with Applicable Laws and shall use reasonable endeavours to restore the Service as soon as reasonably practicable; and
      4. each of the Parties shall take reasonable steps to mitigate the effects of such interruption to or deterioration in the Services.
5. Charging and invoicing
   1. In consideration of the provision of the Services by PipeCo in accordance with the terms and conditions of this Agreement, ESCo shall pay the Charges to PipeCo in accordance with Schedule 5 (*Charges and deductions*).
   2. PipeCo shall invoice ESCo for payment of the Charges at the time the Charges are expressed to be payable in accordance with Schedule 7 (*Charges and deductions*). All invoices shall be directed to ESCo's Representative. Any such invoices shall take into account any Service Credits which have been accrued in the previous period.
   3. ESCo shall pay the Charges which have become payable in accordance with Schedule 7 (*Charges and deductions*) within [NUMBER] days of receipt of an undisputed invoice from PipeCo (**Due Date**).
   4. If ESCo receives an invoice which, acting in good faith, it reasonably believes includes a sum which is not validly and properly due:
      1. ESCo shall notify PipeCo in writing as soon as reasonably practicable;
      2. ESCo's failure to pay the disputed Charges shall not be deemed to be a breach of this Agreement;
      3. ESCo shall pay the balance of the invoice which is not in dispute by the Due Date (‘**undisputed sum’**);
      4. to the extent that, following resolution of the Dispute, it is agreed or determined that ESCo’s liability in respect of the amount demanded by PipeCo:
         1. is greater than any undisputed sum ESCo has already paid to PipeCo, then ESCo shall pay that additional amount to PipeCo and PipeCo may charge interest on that additional amount in accordance with clause 7.7 (*Interest on late payment*) from the original Due Date until the date of payment;
         2. is less than any undisputed sum ESCo has already paid to PipeCo, then PipeCo shall refund to ESCo the amount of the over-payment and ESCo shall be entitled to demand interest be added to that amount in accordance with clause 7.7 (*Interest on late payment*) from the date the over-payment was received by PipeCo until the date of refund to ESCo; and
      5. where either Party is required to make a balancing payment in accordance with clause 7.4.4, it shall do so within [NUMBER] Business Days and, where PipeCo is required to issue a refund, it shall do so within [NUMBER] Business Days.
   5. PipeCo 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. PipeCo shall not suspend access to the Energy Network if any payment is overdue unless it is entitled to terminate this Agreement under clause 19.3 (*Termination by PipeCo for ESCo's Default*) 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 19 (*Termination*),] the defaulting Party shall pay interest on the overdue amount at the rate of [4]% per annum above [FULL 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 Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by ESCo following delivery of a valid VAT invoice.
6. [Governance[[11]](#footnote-11)

The Parties agree to manage this Agreement through the governance structure more specifically detailed in Schedule 10 (*Contract and service management*).]

1. Change control

Any requirement for a Change shall be subject to the Change Control Procedure.

1. IPRs
   1. Subject to clause 11 (*Grant of licences*):
      1. ESCo shall not acquire any right, title or interest in or to the IPRs of PipeCo or its licensors, including PipeCo's Background IPRs; and
      2. PipeCo shall not acquire any right, title or interest in or to the IPRs of ESCo or its licensors, including ESCo's Background IPRs.
   2. Where either Party acquires, by operation of law, title to IPRs of the other referred to in clause 10.1, and this acquisition is inconsistent with the allocation of title set out in that clause 10.1, such IPRs shall be assigned by it to the other Party on the request of the other Party, whenever that request is made.
2. Grant of licences
   1. PipeCo grants to ESCo a royalty-free, non-exclusive, non-transferable licence during the Term to use PipeCo'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 PipeCo.
   2. ESCo grants to PipeCo 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 PipeCo in a form reasonably acceptable to ESCo.
   3. The licences granted in clause 11.1 and clause 11.2 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. [The Parties shall, if requested by the Governing Body, in accordance with Schedule 12 (*Exit plan and service transfer arrangements*), grant or procure the grant to the Replacement Network Operator or Replacement Supplier, as applicable, of a licence on like terms to the licence granted in clause 11.2.]
   5. 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.
   6. In the event of the termination or expiry of this Agreement, the licence referred to in clause 11.1 and any licence granted in accordance with clause 11.5 shall terminate automatically and ESCo shall deliver to PipeCo all material licensed to ESCo pursuant to clause 11.1 or clause 11.5 in its possession or control. However, the licences granted pursuant to clause 11.2[ and clause 11.4] shall continue in full force and effect.
3. Data processing

The Parties shall comply with the data processing requirements as set out in Schedule 13 (*Data processing*).

1. Confidentiality
   1. Except to the extent set out in this clause 13 (*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 13.1 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. Either Party may only disclose Confidential Information it receives from the other to its Personnel who are directly involved in discharge of its obligations under this Agreement and who need to know the information. Such Party shall ensure that its Personnel are aware of, and comply with, these confidentiality obligations.
   4. Each Party agrees that it shall not, and shall procure that its Personnel do not, use any Confidential Information received from the other Party otherwise than for the purposes of this Agreement.
   5. Each Party undertakes (except as may be required by 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 Subcontractors; or
      2. use the other Party’s name or brand in any promotion or marketing without the prior written consent of that Party.
   6. [At the written request of either Party, the other Party shall procure that any member of its Personnel in receipt of Confidential Information from the other Party signs a confidentiality undertaking prior to commencing any work in connection with this Agreement.]
   7. Nothing in this clause 13 (*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 law or any applicable governmental or regulatory authority. 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 9 (*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 law.
3. Compliance and change in law
   1. In performing its obligations under this Agreement, each of the Parties shall comply with:
      1. the Applicable Laws; and
      2. the Mandatory Policies.
   2. With regard to compliance with Applicable Laws, each Party shall:
      1. inform the other as soon as it becomes aware of any changes in Applicable Laws that may impact on the performance by either Party of its obligations under this Agreement, including any Relevant Change in Law;
      2. provide the other with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes;
      3. consult with the other and, if possible, agree with other on the manner, form and timing of changes it proposes to make to meet those changes in the Applicable Laws;
      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 changes in Applicable Laws introduced pursuant to this clause 15.2 (*Changes in applicable law*).
   3. If a Change in Law renders unlawful or impossible the performance by either Party of its obligations under this Agreement, the Parties shall seek in good faith to agree such modifications to this Agreement as are necessary to render performance possible and lawful provided that PipeCo shall not be entitled to claim an increase in the Charges as the result of a Change in Law other than a Relevant Change in Law*. [Drafting Note: Parties to consider any circumstances when they may want to terminate due to change in law].*
4. Force majeure
   1. Subject to the remaining provisions of this clause 16, 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. PipeCo 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 PipeCo 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. Either Party may, during the continuance of any Force Majeure Event, terminate this Agreement in accordance with clause 19.2 in the circumstances set out in that clause.
5. Limitations on liability[[12]](#footnote-12)
   1. **Background to the limits and exclusions on PipeCo's liability**

Each Party has obtained insurance cover in respect of its own legal liability for individual claims as set out in clause 18 (*Insurance*). The limits and exclusions in this clause reflect the insurance cover each Party has been able to arrange and each Party is responsible for making its own arrangements for the insurance of any excess loss.

* 1. **Scope of limitations in this clause**

The restrictions on liability in this clause 17 (*Limitations on 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.

* 1. **[No limitations in respect of deliberate default**

Neither Party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.]

* 1. **Liability which cannot legally be limited**

Nothing in this Agreement limits any liability which cannot legally be limited, including [but not limited to] liability for:

* + 1. death or personal injury caused by negligence, or the negligence of either Party's personnel, agents or subcontractors; or
    2. fraud or fraudulent misrepresentation.
  1. **Cap on PipeCo's liability**
  2. Subject to clause 17.4 (*Liabilities which cannot legally be limited*), PipeCo's total aggregate liability are as follows:
     1. in respect of Services Credits, is limited, in each Contract Year to [PERCENTAGE]% of the Service Charges that are paid [or payable] by ESCo in respect of the applicable Contract Year; and
     2. in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, restriction, breach of contract or otherwise under or in connection with this Agreement, shall in no event exceed:
        1. in respect of any claims recoverable by it under any of the insurances required pursuant to clause 18.1 *(Required insurances),* the amount recovered by it under such insurances or that would have been recoverable but for breach by PipeCo of its obligations under clause 18 *(Insurance)*; and
        2. in respect of any other claims:
           1. £[AMOUNT] for events arising in the first Contract Year or, if greater, [PERCENTAGE]% of the aggregate of the Service Charges and all other Charges paid [and payable] under or in pursuant to this Agreement in the first Contract Year; and
           2. £[AMOUNT] for events arising in each subsequent Contract Year or, if greater, [PERCENTAGE]% of the aggregate Service Charges paid [and payable] under or pursuant to this Agreement in the subsequent Contract Year in respect of which the claim arises.
  3. **Cap on ESCo's liability**
  4. Subject to clause 17.4 (*Liabilities which cannot legally be limited*), ESCo's total aggregate liability is as follows:
     1. in respect of any claims recoverable by it under any of the insurances required pursuant to clause 18.1 *(Required insurances),* the amount recovered by it under such insurances or that would have been recoverable by it but for breach by ESCo of its obligations under clause 18 *(Insurance)*; and
     2. in respect of any other claims:
        1. £[AMOUNT] in the first Contract Year or, if greater, [PERCENTAGE]% of the aggregate of the Service Charges and all other Charges paid under or pursuant to this Agreement in the first Contract Year; and
        2. £[AMOUNT] in each subsequent Contract Year or, if greater, [PERCENTAGE]% of the aggregate of the Charges paid under or pursuant to this Agreement in the subsequent Contract Year in respect of which the claim arises.
  5. **Specific heads of excluded loss [and exceptions from them]**
     1. Subject to clause 17.4 (*Liabilities which cannot legally be limited*), the types of loss listed in clause 17.7.3 are wholly excluded by the Parties[, but the types of loss and specific losses listed in clause 17.7.4 are not excluded].
     2. [If any loss falls into one or more of the categories in clause 17.9.3 (*Types of loss wholly excluded*) and also falls into a category, or is specified, in clause 17.7.4 (*Types of loss and specific losses which are not excluded*), then it is not excluded.]
     3. **Types of loss wholly excluded:**

To the extent permitted by Applicable Law, neither Party shall be liable to the other under this Agreement for:

* + - 1. Loss of profits.
      2. Loss of sale or business.
      3. Loss of agreements or contracts.
      4. Loss of anticipated savings.
      5. Loss of use or corruption of software, data or information.
      6. Loss of or damage to goodwill.
      7. Indirect or consequential loss.
    1. **Types of loss and specific losses not excluded:**

Notwithstanding clause 17.9.3 (*Types of loss wholly excluded*), the Parties shall be liable to the other for:

* + - 1. Service Credits;.
      2. wasted expenditure;
      3. additional costs of procuring and implementing replacements for, or alternatives to, Services not provided in accordance with this Agreement. These include [but are not limited to] consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials.
      4. losses incurred by ESCo arising out of or in connection with any third party claim against ESCo which has been caused by the act or omission of PipeCo. For these purposes, third party claims shall include [but not be limited to] demands, fines, penalties, actions, investigations or proceedings, including [but not limited to] those made or commenced by subcontractors, PipeCo's personnel, regulators and customers of ESCo.
      5. [Other specific losses].
  1. **[No liability for claims not notified within [NUMBER] months.**
  2. Unless a Party notifies the other Party that it intends to make a claim in respect of an event within the notice period, the other Party shall have no liability for that event. The notice period for an event shall start on the day on which the Party wishing to make a claim became, or ought reasonably to have become, aware of [its having grounds to make a claim in respect of the event **OR** the event having occurred (as opposed to it becoming aware of its having grounds to make a claim in respect of it)] and shall expire [NUMBER] months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.]
  3. **Exclusive financial remedy**

The Service Credits shall be the exclusive financial remedy for ESCo for each Service Failure for which Service Levels have been set, unless:

* + 1. any failure to meet the Service Levels (either on an individual basis or in aggregate) constitutes a failure beyond that for which the Service Credits have been set; or
    2. ESCo is otherwise entitled to terminate this Agreement for PipeCo's Default; or
    3. the failure to perform the Services in accordance with the Service Levels has arisen due to theft, gross negligence, fraud, fraudulent misrepresentation or wilful default,

in which case ESCo may obtain such other remedies as may be available to it, either under this Agreement or otherwise at law or in equity, including the right to terminate this Agreement in accordance with clause 19 (*Termination*).

1. Insurance
   1. Each Party 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 property damage insurance policy with a limit of at least [£[AMOUNT] million per claim];
      2. a public liability insurance policy with a limit of at least [£[AMOUNT] million per claim]; and
      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.
   2. Each Party shall, at the written request of the other Party, provide the other Party with:
      1. a copy of each required insurance policy; and
      2. insurer or broker confirmation of the inception or renewal of the relevant policy, as applicable.
   3. Neither Party shall, during the term of this Agreement:
      1. do anything to invalidate any insurance policy or to prejudice the other Party’s entitlement under those policies; or
      2. procure that the terms of such policies are altered in such a way as to diminish the benefit of the policies for the other Party.
2. Termination
   1. Where ESCo wishes to terminate this Agreement due to PipeCo's Default:
      1. subject to clause 20 (*Remediation plan process*), ESCo may only terminate this Agreement if:
         1. one or more of the circumstances set out in clause 19.1.4 occurs or exists; and
         2. by giving written notice to PipeCo specifying the date when the Agreement is to terminate (not to be later than the earlier of the date of expiry of this Agreement or [NUMBER] Business Days after the date of the notice);
      2. [where ESCo is terminating this Agreement for a material Default, it may rely on a single material Default or on a number of Defaults or repeated Defaults that, taken together, constitute a material Default;]
      3. ESCo shall also inform PipeCo in the Termination Notice of the duration of the Termination Period during which it requires PipeCo to continue to provide, or procure the provision of, some or all of the Services. ESCo may extend or shorten such period by giving PipeCo at least [30 (thirty)] Business Days' notice;
      4. the events which shall entitle ESCo to issue a Termination Notice are as follows:
         1. an Insolvency Event affecting PipeCo occurs; and/or
         2. PipeCo is in material Default of this Agreement, which is irremediable[; and/or]
         3. [PipeCo is in material Default of this Agreement and such Default is not remedied in accordance with the Remediation Plan Process; and/or]
         4. [PipeCo has committed [NUMBER] Critical Service Failure(s); and/or]
         5. [PipeCo has accrued Service Credits in any period of [NUMBER] consecutive months, or any [NUMBER] months in any rolling 12-month period, in excess of £[AMOUNT].]
   2. Either Party may, during the continuance of any Force Majeure Event, terminate this Agreement by written 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] Business Days.
   3. Where PipeCo wishes to terminate this Agreement due to ESCo's Default:
      1. PipeCo may only terminate this Agreement if:
         1. one or more of the circumstances set out in clause 19.3.3 occurs or exists; and
         2. by giving written notice to ESCo specifying the date when the Agreement is to terminate (not to be later than the earlier of the date of expiry of this Agreement or [NUMBER] Business Days after the date of the notice);
      2. PipeCo shall also inform ESCo in the Termination Notice of the duration of the Termination Period during which it shall continue to provide some or all of the Services. PipeCo may extend or shorten such period by giving ESCo at least [30 (thirty)] Business Days' notice;
      3. the events which shall entitle PipeCo to issue a Termination Notice are as follows:
         1. ESCo fails to pay an undisputed sum due to PipeCo under this Agreement which, either in isolation or in aggregate, exceeds the Charges due and payable in the previous month and such failure continues for [NUMBER] days from receipt by [ESCo's Finance Director **OR** ESCo] of notice of non-payment from PipeCo; and/or
         2. an Insolvency Event affecting ESCo occurs; and/or
         3. ESCo is in material Default of this Agreement, which is irremediable[; and/or]
         4. [ESCo is in material Default of this Agreement and such Default is not remedied in accordance with the Remediation Plan Process.]
3. Remediation Plan Process
   1. If either Party (the ‘**Defaulting Party**’) commits a Default and the Default is capable of remedy, the other Party (the ‘**Affected Party’**) shall be entitled to serve notice on the Defaulting Party (‘**Remediation Notice**’) which shall specify the Default in outline and the actions the Defaulting Party needs to take with respect to remedying the Default.
   2. Within [NUMBER] Business Days of receipt of a Remediation Notice, the Defaulting Party shall either:
      1. submit a draft Remediation Plan; or
      2. if it disputes that it is responsible for the matters which are the subject of the Remediation Notice, inform the Affected Party that it does not intend to submit a Remediation Plan and, if the Affected Party does not withdraw the Remediation Notice, either Party may refer the dispute to the Dispute Resolution Procedure.
   3. The Affected Party shall either approve the draft Remediation Plan within [NUMBER] Business Days of its receipt pursuant to clause 20.2, or it shall inform the Affected Party why it cannot accept the draft Remediation Plan. In such circumstances, the Defaulting Party shall address all such concerns in a revised Remediation Plan, which it shall submit to the Affected Party within [NUMBER] Business Days of its receipt of the Affected Party's comments. If no such notice is given, the Affected Party's draft Remediation Plan shall be deemed to be agreed.
   4. The Defaulting Party shall start work on the actions set out in the Remediation Plan within [NUMBER] Business Days of the Parties agreeing the Remediation Plan.
   5. If, despite the measures taken under clause 20.3, a Remediation Plan cannot be agreed within [NUMBER] Business Days then the Affected Party may elect to end the Remediation Plan Process and take such measures itself to remedy the relevant Default as are reasonable in the circumstances and shall be entitled to recover from the Defaulting Party, and the Defaulting Party shall be obliged to reimburse, the reasonable costs of implementing such measures.
   6. If a Remediation Plan is agreed between the Parties, but the Defaulting Party fails to implement or successfully complete the Remediation Plan by the required remedial plan completion date, the Affected Party may:
      1. give the Defaulting Party a further opportunity to resume full implementation of the Remediation Plan; or
      2. escalate any issues arising out of the failure to implement the Remediation Plan to the Defaulting Party's Services Manager under the Dispute Resolution Procedure; or
      3. take such measures itself to remedy the relevant Default as are reasonable in the circumstances and shall be entitled to recover from the Defaulting Party, and the Defaulting Party shall be obliged to reimburse, the reasonable costs of implementing such measures.
   7. If, despite the measures taken under clause 20.6, the Defaulting Party fails to implement the Remediation Plan in accordance with its terms, the Affected Party may elect to end the Remediation Plan Process and refer the matter for resolution by the Dispute Resolution Procedure or take such measures itself to remedy the relevant Default as are reasonable in the circumstances and shall be entitled to recover from the Defaulting Party, and the Defaulting Party shall be obliged to reimburse, the reasonable costs of implementing such measures.
4. Consequences of termination and survival[[13]](#footnote-13)
   1. Following the service of a Termination Notice for any reason, and subject always to clauses 3.4 *(ESCo contravening Network Operating Parameters)*, 5.7 *(ESCo Default and Force Majeure Events),* 6 *(Interference with the provisions of the Services)* and 7.6 *(Suspension for non-payment),* PipeCo 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 the Termination Date:
      1. ESCo shall pay to PipeCo any sums due in respect of Services provided by PipeCo as at the Termination Date[; and
      2. Where PipeCo has terminated this Agreement pursuant to clause 19, ESCo shall pay to PipeCo the Termination Compensation [subject to the limits of liability set out in clause 17] ; and
      3. Where ESCo has terminated this Agreement pursuant to clause 19, PipeCo shall pay to ESCo the Termination Compensation [subject to the limitations of liability set out in clause 17]; and*[Drafting Note: Consider whether any termination compensation ought to be payable by PipeCo to ESCo].*
      4. [ESCo shall provide access, during normal working hours, to PipeCo and the Replacement Network Operator for up to 12 months after the expiry or termination of this Agreement to such information relating to the Services as remains in the possession or control of ESCo.][[14]](#footnote-14)
      5. [PipeCo shall provide access, during normal working hours, to ESCo and the Replacement Supplier for up to 12 months after the expiry or termination of this Agreement to such information relating to the Services as remains in the possession or control of PipeCo.]
   3. On termination or expiry of this Agreement, the following provisions shall continue in force:
      1. Clause 1 (*Interpretation*);
      2. Clause 5.3 (*Service credits*);
      3. Clause 7.5 (*Retention of service charges records*), clause 7.7 (*Interest*), and clause 7.10 (*VAT*);
      4. Clause 10 (*IPRs*);
      5. Clause 11.2 (Grant of licence to PipeCo), clause 11.4 (*Grant of licence to replacement supplier*), clause 11.5 (*No use of a Party's name, logo or trademarks*) and clause 11.6 (*Termination of licences*);
      6. Clause 12 (*Data processing*);
      7. Clause 13 (*Confidentiality*);
      8. Clause 14.1.6 (*Representation relating to full title guarantee*) and clause 14.1.7 (*Perfection of assignment of IPRs*);
      9. Clause 17 (*Limitation of liability*);
      10. Clause 18.3 (*Insurance*);
      11. Clause 21 (*Consequences of termination and survival*);
      12. Clause 22 (*Exit and service transfer*);
      13. Clause 23 (*Dispute resolution procedure*);
      14. Clause 26 (*Waiver*);
      15. Clause 29 (*Announcements*);
      16. Clause 31 (*Further assurance*);
      17. Clause 32 (*Entire agreement*);
      18. Clause 33 (*Third Party rights*);
      19. Clause 36 (*Governing law*);
      20. Clause 37 (*Jurisdiction*);

* + 1. Schedule 7 (*Charges and deductions*); and

* + 1. Schedule 12 (*Exit plan and service transfer arrangements*).

1. Exit and Energy Supply 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 12 (*Exit plan and service transfer arrangements*), and each of the Parties shall co-operate with the Replacement Network Operator or Replacement Supplier, as applicable, to the extent reasonably required to facilitate the smooth migration of the Services from PipeCo to the Replacement Network Operator or from ESCo to the Replacement Supplier, as applicable.
   2. ESCo shall pay the Transitional Assistance Service Charges in respect of the provision of the Transitional Assistance Services, except in circumstances where ESCo has terminated this Agreement pursuant to clause 19.1 (*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 Energy Services and any relevant Change in Law. Following each review, [ESCo][PipeCo] shall:
      1. submit a revised Exit Plan to [PipeCo][ESCo] [and Governing Body] 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 12 (*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, PipeCo shall provide the Transitional Assistance Services to ESCo in accordance with the principles set out in Schedule 12 (*Exit plan and Energy Supply transfer arrangements*) and the last-approved version of the Exit Plan (insofar as this still applies). PipeCo 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 months] prior to the expiration of this Agreement:
      1. PipeCo 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 Governing Body 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 12 (*Exit plan and Energy Supply transfer arrangements*); and
      3. until the agreement of the updated Exit Plan, PipeCo shall provide the Transitional Assistance Services in accordance with the last-approved version of the Exit Plan (insofar as this still applies) to ESCo and both ESCo and PipeCo shall comply with their respective obligations set out in Schedule 12 (*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 36 (*Jurisdiction*) which clause shall apply at all times.

**OR**

No Party may commence any court proceedings under clause 36 (*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. Assignment and other dealings
   1. Either Party may subcontract its obligations under this Agreement provided that it shall remain responsible for the discharge of its obligations.
   2. PipeCo may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with its interest in the Energy Network and any or all of its rights and obligations under this Agreement[, provided that it gives prior written notice of such dealing to ESCo].
   3. ESCo shall not assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.
2. Variation

Without prejudice to Schedule 11 (*Change control procedure*), 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 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 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 Parties (such consent not to be unreasonably withheld or delayed), except as required by 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 30.1 (*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 (*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. [The Parties to this Agreement acknowledge and accept that the Governing Body shall have the right to enforce the provisions of clauses 11.4 (*Grant of licence to Replacement Network Operator*), clause 22 (*Exit and Energy Supply transfer*)[ and clause 33.3 (*Right to vary or rescind Agreement*)].]
   2. [Save as provided in clause 33.1,] 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.
   3. [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 the 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 34.2 (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 34.3 (*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 34.2 (*Notice delivery methods*) would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this clause 34.3, 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. - The Energy Network
   * 1. : The Heat Network

*[Note: details of the Heat Network to be inserted here, including: Heat Network diagram, initial Heat Entry Points and Heat Exit Points and setting any required Network Operating Parameters (such as operating temperatures, pressures, secondary network water quality standards or any other required operating parameters, etc)]*

* + 1. : [The Electricity Network]

*[Note: where relevant, details of the Electricity Network to be inserted here, including: Electricity Network diagram, including initial Electricity Entry Points and Electricity Exit Points and setting any required Network Operating Parameters (such as operating voltages, any maximum or minimum required operating parameters, etc)]*

1. – ESCo’s equipment

*[Note: set out any equipment of ESCo connecting to the Energy Network]*

1. - Service Requirements
   * 1. : Services Commencement Date

The Services Commencement Date is [*insert date or trigger*]

* + 1. : Services Description

*[Note: set out scope of any additional services to be delivered by PipeCo]*

* + 1. : Service Levels

*[Note: set out any performance levels to be achieved by PipeCo, distinguishing between Service Levels and Critical Service Levels – e.g. CIBSE CP1 offers some suggestions on monitoring requirements, performance levels required to meet Heat Trust requirements etc.]*

1. - ESCo's Responsibilities

In order to facilitate the provision of the Services by PipeCo, 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 PipeCo with access to appropriate members of ESCo's Personnel, as such access is reasonably requested by PipeCo, in order for PipeCo to discharge its obligations under this Agreement;

respond to and provide such Documentation, data and other information as PipeCo reasonably requests in order for PipeCo 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 PipeCo to enable PipeCo to comply with its obligations under this Agreement; and

subject to their compliance with any reasonable safety requirements notified to PipeCo, provide such access for any of PipeCo'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. PipeCo shall indemnify ESCo in respect of any damage to any of ESCo’s premises or any other property of ESCo caused by PipeCo or PipeCo’s Personnel in accessing ESCo’s premises.
      1. Training
         1. ESCo shall use its reasonable endeavours to ensure that all of its staff who will use the Services complete any relevant training modules, as agreed with PipeCo, to help them to become competent in the use of the Services.
      2. Connected equipment
         1. ESCo shall not connect or permit to be connected to be connected to the Energy Network any equipment which does not comply with the following requirements and in respect of each Entry Point and Exit Point that it meets the following requirements, as applicable:

in respect of the Heat Network:

[STATE EQUIPMENT REQUIREMENTS];

in respect of Heat Entry Points, [*Note: state requirements*];

in respect of Heat Exit Points, [*Note: state requirements*];

any equipment that would cause breach of the Network Operating Parameters set out in Schedule 1Part 1 *(Heat Network);*

[in respect of the Electricity Network:

[STATE EQUIPMENT REQUIREMENTS];

in respect of Electricity Entry Points, [*Note: state requirements*];

in respect of Electricity Exit Points, [*Note: state requirements*]];

any equipment that would cause breach of the Network Operating Parameters set out in Schedule 1Part 2 *(Electricity Network).*]

* + - 1. [Electricity licence exemptions][[15]](#footnote-15)
         1. [ESCo represents and warrants that it, and its intended Electricity Supply, qualifies for exemption from the requirement to hold a licence to supply electricity under the Electricity Act 1989, as amended (the ‘**Act’**) and acknowledges that PipeCo is relying on ESCo to use the Electricity Network in such a way that will not trigger any requirement for PipeCo to holder a licence to distribute electricity under the Act.
         2. ESCo shall ensure that it does not connect and does not permit to be connected to the Electricity Network any domestic consumers of electricity or any non-domestic consumers in circumstances that would either:

render it ineligible for exemption from the requirement to hold a licence to supply electricity under the Act; or

render PipeCo and the Electricity Network ineligible for exemption from the requirement to hold a licence to distribute electricity under the Act.]

1. – PipeCo’s Responsibilities

In order to facilitate the use of the Energy Network by ESCo, PipeCo shall (in addition to those PipeCo responsibilities and obligations identified elsewhere in this Agreement), be responsible for the following:

* + 1. : General
       1. General
          1. PipeCo 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 PipeCo's Representative shall, if required by ESCo and on reasonable prior written notice, attend such meetings at the premises of ESCo or elsewhere as may be reasonably required by ESCo.]

* + - 1. Access
         1. In relation to PipeCo's Premises:

PipeCo shall, subject to ESCo and ESCo’s Personnel complying with the Safety Policy, provide ESCo and ESCo’s Personnel with access to such parts of PipeCo's Premises as ESCo reasonably requires for the purposes only of connecting to the Energy Network and receiving the Services;

PipeCo shall provide ESCo with such accommodation and facilities in PipeCo's Premises as is specified in Part 2 of this Schedule 5 or which is otherwise agreed by the Parties from time to time; and

subject to the requirements of clause 21 (*Consequences of termination and survival*) and the Exit Plan, in the event of the expiry or termination of this Agreement, PipeCo shall, on reasonable notice, provide ESCo with such access as ESCo reasonably requires to PipeCo's Premises to remove any of ESCo's Equipment. All such equipment shall be promptly removed by ESCo.

* + - * 1. ESCo shall indemnify PipeCo in respect of any damage to the Energy Network, any of PipeCo’s Premises or any other property of PipeCo caused by ESCo or ESCo’s Personnel in accessing PipeCo’s Premises.
      1. Training
         1. PipeCo shall provide training or manuals, to be agreed with ESCo, to enable ESCo’s Personnel to become competent in the use of the Services.
    1. : Plant rooms to which ESCo is to be given access

*[Note: identify any plant rooms or other premises to which ESCo is to be given access]*

1. – New Connections and modifications to existing Entry Points and Exit Points
   * + - 1. If ESCo wishes to make a new Connection or to modify any existing Entry Points or Exit Points:

it shall give PipeCo not less than [NUMBER] Business Days’ prior written notice, giving sufficient relevant details to enable PipeCo to make the assessment below;

it shall provide PipeCo with such further information as PipeCo may reasonably request in respect of the relevant Entry Point(s) or Exit Point(s), within [NUMBER] Business Days of PipeCo’s request;

PipeCo shall then give due consideration to ESCO’s request and information provided by ESCo and shall notify ESCo if it considers that:

making such Connection or modification might reasonably be expected to cause a Service Failure (unless the Parties agree to an appropriate modification of the Service Levels), damage to the Energy Network or harm to human health, safety or damage to property; or

making such Connection or modification would take use of the Energy Network outside the operating parameters or thresholds specified in Schedule 1 *(Energy Network);*

ESCO shall not be entitled to make the Connection or modification:

if it would put ESCo in breach of the provisions of paragraph 3 *(Connected equipment)* [or paragraph 4 *(Electricity licence exemptions)*]of Schedule 4 *(ESCo’s obligations)* or any other provision of this Agreement;

without the prior written consent of PipeCo, if it would cause breach of any Network Operating Parameters*;* or

if PipeCo has served notice pursuant to paragraph 1.1.3 of this Schedule 6 provided that, if PipeCo has notified ESCo that making such connection or modification might reasonably be expected to cause a Service Failure only, ESCo shall be entitled to make such connection or modification if the Parties agree to an appropriate modification of the Service Levels;

any Connection or modification which might be permitted by PipeCo in the circumstances referred to in paragraph or 1.1.4(b) or 1.1.4(c) above shall be a Change and the Change Control Procedure pursuant to Schedule 11 (*Change Control Procedure*) shall apply. Where the Parties sign a Change Control Note pursuant to Schedule 11 (*Change Control Procedure*) in relation to any new Connection and/or modification, PipeCo’s obligations under this Agreement shall extend to any such new Connection and/or modification;

for the avoidance of doubt, any Connection or modification not requiring PipeCo consent shall be subject to the charging regime set out in Schedule 7 *(Charges and Deductions).*

1. - Charges and Deductions
   * 1. : Charges

Service Charges

*[Note: insert pricing structure – eg price per kW peak flow, price per kWh conveyed, etc and methodology for determining any volume-based charges – eg by reference to metering*]

New connections and modifications to existing ones

*[Note: address how pricing changes for permitted new Entry Points and Exit Points and for changes to permitted capacities, etc of existing ones within Energy Network operating parameters]*

* + 1. : Service Credits

Service Credits

*[Note:* *insert methodology for determining Service Credits by reference Service Failures*]

* + 1. : Termination Compensation

Termination Compensation

*[Note: insert methodology for determining Termination Compensation*]

1. - Policies
   * 1. : Safety Policy

*[Note: include any safety policy to be followed]*

* + 1. : Other policies and procedures

*[Note: include any other policies and procedures to be followed]*

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

|  |  |  |
| --- | --- | --- |
| **Name** | **Job title** | **Responsibilities** |
|  | PipeCo's Representative |  |
|  | PipeCo's Services Manager |  |
|  | PipeCo’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
2. - Change Control Procedure
   * + 1. Principles
          1. Where ESCo or PipeCo sees a need to change this Agreement, ESCo may at any time request, and PipeCo may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 11.
          2. Until such time as a Change is made in accordance with the Change Control Procedure, ESCo and PipeCo shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms prior to such Change.
          3. Any discussions which may take place between ESCo and PipeCo in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either Party.
          4. Any work undertaken by PipeCo and PipeCo's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 11, shall be undertaken entirely at the expense and liability of PipeCo.
       2. Procedures
          1. Discussion between ESCo and PipeCo concerning a Change shall result in any one of the following:

no further action being taken; or

a request to change this Agreement by ESCo; or

a recommendation to change this Agreement by PipeCo.

* + - * 1. Where a written request for an amendment is received from ESCo, PipeCo shall, unless otherwise agreed, submit two copies of a Change Control Note signed by PipeCo to ESCo within three weeks of the date of the request.
        2. A recommendation to amend this Agreement by PipeCo shall be submitted directly to ESCo in the form of two copies of a Change Control Note signed by PipeCo at the time of such recommendation. ESCo shall give its response to the Change Control Note within three weeks.
        3. Each Change Control Note shall contain:

the title of the Change;

the originator and date of the request or recommendation for the Change;

the reason for the Change;

full details of the Change, including any specifications;

the price, if any, of the Change;

a timetable for implementation, together with any proposals for acceptance of the Change;

a schedule of payments if appropriate;

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

the timetable for the provision of the Change;

the personnel to be provided;

the Charges;

the Documentation to be provided;

the training to be provided;

working arrangements; and

other contractual issues;

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

provision for signature by ESCo and PipeCo.

* + - * 1. For each Change Control Note submitted by PipeCo ESCo shall, within the period of the validity of the Change Control Note:

allocate a sequential number to the Change Control Note; and

evaluate the Change Control Note and, as appropriate:

request further information; or

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 PipeCo; or

notify PipeCo of the rejection of the Change Control Note.

* + - * 1. A Change Control Note signed by ESCo and by PipeCo shall constitute an amendment to this Agreement.

1. - Exit Plan and transfer arrangements[[16]](#footnote-16)
   * + 1. Definitions
          1. The definitions in this paragraph apply in this Schedule 12.

**Assets**: the PipeCo Assets or the ESCo Assets, as applicable.

**ESCo Assets**:all assets and rights other than the PipeCo Assets required by ESCo to provide the Energy Supply.

**ESCo Business Process Manual**: the manual which is prepared by ESCo and which details the business procedures required to provide the Energy Supply.

**Exclusive Assets**: the Exclusive ESCo Assets or the Exclusive PipeCo Assets, as applicable.

**Exclusive ESCo Assets**: those Assets which are used by ESCo exclusively in connection with the provision of the Energy Supply.

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

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

**ESCo Registers**: the registers and database referred to in paragraph 4.2.1 and paragraph 4.2.2 of this Schedule 12.

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

**Non-exclusive Assets**: the Non-exclusive ESCo Assets or the Non-exclusive PipeCo Assets, as applicable.

**Non-exclusive ESCo Assets**: the ESCo Assets which ESCo also uses for purposes other than providing the Energy Supply.

**Non-exclusive PipeCo Assets**: the PipeCo Assets which PipeCo also uses for purposes other than providing the Services.

**PipeCo Assets**: all assets (including the Energy Network) and rights required by PipeCo to provide the Services.

**PipeCo Business Process Manual**: the manual which is prepared by PipeCo and which details the business procedures required to provide the Services.

**PipeCo Registers**: the registers and database referred to in paragraph 4.3.1 and paragraph 4.3.2 of this Schedule 12.

**Registers:** the PipeCo Registers or the ESCo Registers, as applicable.

**Transferable Assets**: those of the Exclusive Assets which are capable of legal transfer to the Replacement Network Operator or Replacement Supplier, as applicable.

**Transferable Contracts**: the subcontracts, licences or other agreements which are necessary to enable PipeCo to continue to perform the Services to the Replacement Supplier, or the Replacement Network Operator to take over provision of the Services in place of PipeCo.

**Transferring Assets**: has the meaning set out in paragraph 5.1.1 of this Schedule 12.

**Transferring Contracts**: has the meaning set out in paragraph 5.1.3 of this Schedule 12.

* + - 1. Purpose of Schedule
         1. ESCo and PipeCo are required to ensure the orderly transition, as applicable, of:

[the Services from PipeCo to a Replacement Network Operator, in the event of termination of this Agreement by ESCo][[17]](#footnote-17);

[the Energy Services from ESCo to a Replacement Supplier in the event of termination or expiry of this Agreement by PipeCo.]

* + - * 1. 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:

[PipeCo is responsible for the overall management of the exit and Service transfer arrangements in the event of termination of this Agreement by ESCo];

[ESCo is responsible for the overall management of the exit and Energy Supply transfer arrangements in the event of termination of this Agreement by PipeCo][[18]](#footnote-18).

* + - 1. Exit Plan
         1. The Exit Plan shall:

address each of the issues set out in this Schedule 12 to facilitate the transition of the provision of the Energy Supply from ESCo to the Replacement Supplier or of the provision of the Services from PipeCo to the Replacement Network Operator, as applicable, in either case to ensure that there is no disruption in Energy Supply to Customers and no deterioration in the quality of delivery of the Services experienced by Customers;

detail how:

the provision of Energy Supply by ESCo will transfer from ESCo to the Replacement Supplier; or

the provision of the Services by PipeCo will transfer from PipeCo to the Replacement Network Operator,

when the relevant circumstances arise, and 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 12 and each Party's compliance with it.
         2. During the Term, ESCo shall:

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

create and maintain a database setting out ESCo's technical infrastructure through which the Energy Supply is delivered. Such database shall be capable of allowing staff of the Replacement Supplier or Replacement Network Operator, as applicable, to acquire sufficient technical understanding of how ESCo provides the Energy Supply to ensure the smooth transition of the Energy Supply with the minimum of disruption to Customers; and

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

* + - * 1. During the Term, PipeCo shall:

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

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

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

* + - * 1. The Parties shall agree the format of the Registers as part of the process of agreeing the first Exit Plan.
        2. At the same time as [ESCo][PipeCo] submits a revised Exit Plan, it shall also submit to [PipeCo][ESCo] up-to-date Registers.
        3. [ESCo][PipeCo] shall ensure all Exclusive Assets are clearly marked to assist in their transfer in accordance with the Exit Plan.
        4. On reasonable notice, each Party shall provide to the other Party and the Governing Body, such material and information as the other Party and the Governing Body shall [reasonably] require in order to facilitate the preparation by the Governing Body of any invitation to tender and/or to facilitate any potential Replacement Supplier or Replacement Network Operator undertaking due diligence (including in relation to the Services, the Energy Supply, the Assets, Customer's Data and Registers).
        5. Each of the Parties acknowledge that the transition of the Services to the Replacement Network Operator or of the Energy Supply to the Replacement Supplier, as applicable, may be phased over a period of time so that certain identified Services are transferred to the Replacement Network Operator, or Energy Supply is transferred to the Replacement Supplier, as applicable, 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, ESCo shall not terminate or vary in any material respect any Transferable Contract without PipeCo'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 provision of the Services or the Energy Supply, as applicable: ability of PipeCo to provide the Services:

ESCo shall:

cease to use PipeCo's Data and, at the direction of PipeCo, either:

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

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

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

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

all Customer's Assets;

all materials created by ESCo in connection with the provision of the Energy Supply, the IPRs in which are owned by ESCo; and

all ESCo Exclusive Assets;

vacate any PipeCo's Premises; and

PipeCo shall:

cease to use ESCo's Data and, at the direction of ESCo, either:

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

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

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

transfer to the Replacement Network Operator such of the following as are in PipeCo's possession or control:

all Customer's Assets;

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

all PipeCo Exclusive Assets;

vacate any ESCo's Premises.

* + - 1. Transfer of assets and contracts[[19]](#footnote-19)
         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 Registers) or in the event of a Termination Period, not later than one month prior to the date of expiration of the Termination Period, the Party serving the termination notice shall notify ESCo:

which, if any, of the Transferable Assets require to be transferred to it and/or any Replacement Supplier or Replacement Network Operator, as applicable (**Transferring Assets**);

which, if any, of the Exclusive Assets which are not Transferable Assets and which of the Non-Exclusive Assets the Replacement Supplier or Replacement Network Operator, as applicable, requires the use of; and

which Transferable Contracts require to be transferred to the Replacement Supplier or Replacement Network Operator, as applicable (**Transferring Contracts**),

in order to permit the Replacement Supplier to provide the Energy Supply, or the Replacement Network Operator to provide the Services, as applicable, from the end of the Termination Period. The Parties shall provide such assistance as may be necessary to help the other, Replacement Supplier or the Replacement Network Operator, as applicable, to identify which Assets and which Transferable Contracts are required for the continued provision of the Services and the provision of the Energy Supply from the end of the Termination Period.

* + - * 1. The relevant Party shall sell the Transferring Assets to the Replacement Supplier or Replacement Network Operator, as applicable, with effect from the end of the Termination Period. The Replacement Supplier or Replacement Network Operator, 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 the Replacement Supplier or Replacement Network Operator, as appropriate, at the end of the Termination Period and title to such Transferring Assets shall pass to the Replacement Supplier or Replacement Network Operator, as applicable, on payment for the same.
        2. Where either Party is notified in accordance with paragraph 5.1.2 that the other Party and/or the Replacement Supplier or Replacement Network Operator requires continued use of any of the Exclusive or Non-Exclusive Assets,

it shall:

procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed with the other Party) for the other Party and/or the Replacement Supplier or Replacement Network Operator, as applicable, 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 that Party or the Replacement Supplier or the Replacement Network Operator, as applicable, shall bear the reasonable, proven costs of procuring the same.

at the other Party’s request and with the co-operation of the other Party, procure the novation or assignment to the Replacement Supplier or Replacement Network Operator, as applicable, of the Transferring Contracts.

the other Party shall procure that the Replacement Supplier or Replacement Network Operator, as applicable, accepts assignment of each Transferring Contract;

once a Transferring Contract is novated or re-assigned, the Replacement Supplier or Replacement Network Operator, as applicable, shall carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract; and

the Party whose obligations and liabilities under a Transferring Contract have been assigned or novated to the Replacement Supplier or Replacement Network Operator, as applicable, pursuant to paragraph (c) of this Schedule 12 shall have no further obligation or liability 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 12, payment to the relevant Party of the price determined in accordance with paragraph 5 of this Schedule 12 shall be due as a condition of:

the transfer of the Transferring Assets; and

the continued use of the Exclusive Assets and Non-Exclusive Assets, as referred to in paragraph 5.1.2 of this Schedule 12.

* + - * 1. Any Charges to be paid by PipeCo in respect of ESCo performing its obligations in this Schedule 12 (if any) shall be determined in accordance with Schedule 5. 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 each Party and the Replacement Supplier or Replacement Network Operator, as applicable, 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. Each Party shall be responsible for discharging its obligations and meeting its liabilities in respect of the Transferring Assets and Transferring Contracts unless and until those obligations and liabilities have been transferred to the Replacement Supplier or Replacement Network Operator, as applicable.

# Annex to Schedule 12 (*Exit Plan and Service transfer arrangements*) - Exit Plan

1. - Data Processing

[DATA PROCESSING CLAUSES]

|  |  |
| --- | --- |
| Signed by **PIPECO** 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. This could be expanded upon to explain how PipeCo came to own the network. As drafted, this Agreement does not address the laying out of the heat network but this may be a desirable addition on some projects. [↑](#footnote-ref-1)
2. This could be expanded upon to explain where the right arises from and the degree of exclusivity. [↑](#footnote-ref-2)
3. Placeholder reference to the entity/body with rights to re-tender the provision of the Energy Services upon expiry or early termination of ESCo’s right to provide the Energy Services. [↑](#footnote-ref-3)
4. Further detail may be useful – eg to identify types of Customer, types of connected network, types of connection point or metering. [↑](#footnote-ref-4)
5. The Replacement Network Operator provisions in this Agreement assume a contract matrix that includes rights being given or reserved in another document(s) to replace ESCo with a replacement supplier – for example, in the event of expiry or early termination of a concession agreement or other agreement granting ESCo a terminable right to supply heat to customers. [↑](#footnote-ref-5)
6. The project sponsor may wish to reserve to the Governing Body or another entity the right to extend the Initial Term. [↑](#footnote-ref-6)
7. As drafted, this Agreement gives PipeCo 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-7)
8. This Agreement assumes that some initial Entry Points and Exit Points will already be connected at the date of issue, plus some basic provisions around modification of those existing connections and the adding of new connections. These provisions will need review and development according to the requirements of the particular district heating scheme, including the commercial structure, allocation of roles, etc. [↑](#footnote-ref-8)
9. This Agreement assumes ESCo is generator and supplier. [↑](#footnote-ref-9)
10. Anticipating customer service standards imposed by (future) legislation or voluntary participation in a customer protection scheme, such as Heat Trust. See Heat Trust Scheme Rules at https://www.heattrust.org/the-scheme-rules. [↑](#footnote-ref-10)
11. This clause and Schedule 10 (*Contract and service management*) allow for the inclusion of governing principles to be incorporated according to the particular needs of the chosen commercial and contract structure. [↑](#footnote-ref-11)
12. Parties to consider according to the particular circumstances. [↑](#footnote-ref-12)
13. Parties to consider according to their particular circumstances. [↑](#footnote-ref-13)
14. The suggested ability of both parties to force a transfer of the agreement to a replacement operator or a replacement supplier will need tailored to the wider contractual matrix/ model for the scheme. It is unlikely that on one scheme both parties will have this ability: one party is likely to have a more enduring “interest” than the other due to the wider commercial / governance model. [↑](#footnote-ref-14)
15. This wording references the exemptions from the requirement to hold an electricity supply or electricity distribution licence. Activity falling outside the relevant exemptions and not covered by a licence, could give rise to criminal liability. Wording should be deleted if there is no private wire electricity supply. [↑](#footnote-ref-15)
16. This schedule sets out a starting point for development of some principles for change in the provider of the Services or Energy Supply, in various termination scenarios. The operational and asset transfer provisions will need to be developed further according to the particular governance and termination/expiry transfer arrangements conceived of for the particular district heating scheme. The suggested ability of both parties to force a transfer of assets will need tailored to the wider commercial / governance model for the scheme. [↑](#footnote-ref-16)
17. The suggested ability of both parties to force a transfer of the agreement to a replacement operator or a replacement supplier will need tailored to the wider contractual matrix/ model for the scheme. It is unlikely that on one scheme both parties will have this ability: one party is likely to have a more enduring “interest” than the other due to the wider commercial / governance model. [↑](#footnote-ref-17)
18. As above in relation to transfer. [↑](#footnote-ref-18)
19. As above: The suggested ability of both parties to force a transfer of the agreement to a replacement operator or a replacement supplier will need tailored to the wider contractual matrix/ model for the scheme. It is unlikely that on one scheme both parties will have this ability: one party is likely to have a more enduring “interest” than the other due to the wider commercial / governance model. [↑](#footnote-ref-19)