|  |
| --- |
|  |
| Dated 20[\*\*] |
|  |
|  |
| (1) *[Plot Developer]/ [Commercial Building Customer]*  AND  (2) *[ESCO]* |
|
| |  | | --- | | GREEN HEAT NETWORK FUND  DRAFT: [PLOT] / [COMMERCIAL BUILDING] CONNECTION AND SUPPLY AGREEMENT | |
| Version Control  |  |  |  |  | | --- | --- | --- | --- | | **Version number** | **Date of issue** | **Comment** | **Author** | | 1.0 | June | Revised draft to amalgamate plot/ bulk heat supplies and optionality | Lux Nova Partners | | 2.0 | 31.07.19 | Draft for focused consultation | Lux Nova Partners | | 3.0 | 16.10.19 | Marked up following responses to consultation meeting on 19.09.19 | Lux Nova Partners | | 4.0 | 13.12.19 | Marked up after responses to wider consultation which closed on 17.11.19 | Lux Nova Partners | | 5.0 | 15.1.2020 | Marked up following comments from BEIS | Lux Nova Partners | | 6.0 | 29.11.2022 | Update of statutory references and general drafting update | Lux Nova Partners |   ***GUIDANCE NOTE***  *This [Plot Development] / [Commercial Building] Connection and Supply Agreement is not necessarily relevant to every district heating scheme.*  *It is intended to be used by Plots with multiple buildings, or one Commercial Building, connecting into a district heating scheme, the energy centre of which is not situated on the Plot/ by the Commercial Building.*  *How this Agreement might fit into a project structuring is illustrated in the following diagram:*    *Drafting relating:*   1. *to a Plot Development or a Plot Developer is included [blue]* 2. *to a single Commercial Building (referred to as “the Building”) is included in [green].* 3. *to a Plot Development or a Building, where such Building has internal Secondary Network and subdivided Commercial Units (i.e. not bulk heat supply), is included in [purple]* 4. *standard drafting applicable to all scenarios is left black.*   *The Agreement has been drafted with optionality, such that the following can be accommodated:*   1. *Connection of the Plot Development to the district heating scheme plus*    * *Obligation on the Plot Developer to ensure that every building on the Plot is connected to the district heating scheme and relevant Connection and Supply Agreements (for Commercial Customers)/ Registered Provider Void Supply Agreements / [Plot] Developer Void Supply Agreements are entered into*    * *Adoption of Primary Plot Distribution Network/ Secondary Distribution Network by ESCO*    * *Supplies to Residential Customers (occupying Units within Plot Developments)*    * *Customer Services to Residential Customers* 2. *Connection of a Plot Developer/ Commercial Building Developer plus*    * *Obligation on the Plot Developer/ Commercial Building Developer to ensure that every Commercial Unit is supplied with Heat on first letting*    * *Metering and billing services on behalf of the Plot Developer/ Commercial Building Developer landlord to Commercial Customers*    * *Acceptance of Secondary Network within the buildings on the Plot/ within the Plot Development/ Commercial Building with a view to provision of ancillary operation and maintenance services.*   *It would therefore be sensible for ESCo and plot developers/commercial building developers to agree secondary network performance and efficiency criteria at the design stage – and, at commissioning, the developer can then demonstrate to ESCo that it has met such criteria.*   1. *Bulk supply of heat to the owner/ occupier of a Commercial Building*   *Note that unlike the Concession Agreement, this Connection and Supply Agreement does not require ESCO to build out of the energy generating equipment to certain specifications/ to operate and maintain such Energy System where built by ESCO. This Agreement deals with the construction of the Connection point and operation and maintenance “down stream” from the Connection (housed within a Substation on the Plot/ within the Commercial Building) via secondary heating network to the HIUs (where applicable), or just directly to the point of Connection.*  *It is assumed that this Connection and Supply Agreement will be entered into after Planning Permissions have been granted for the relevant Plot/ Commercial Building.*  *The structuring assumption and risk allocation underlying this 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 Agreement will serve only as a starting point for drafting of an agreement that will need to be tailored to the particular characteristics of a given district heating scheme. Public sector bodies should take into consideration any public accounting impacts when entering into agreements.*  *THIS DOCUMENT IS RELEASED TO BE USED AS A DRAFTING TEMPLATE, TAILORED AND DEVELOPED FURTHER FOR THE SPECIFICS OF THE PARTICULAR PROJECT.*  *Neither the content of the above guidance, nor the drafting of this template document, is intended to constitute or to replace the need for expert legal advice, which should be sought on every district heating project. No liability is accepted for use of this template document. All liabilities are excluded to the fullest extent permitted by law.* |
|  |

Table Of Contents

**CLAUSE / SCHEDULE PAGE NO:**

[1. Interpretation 2](#_Toc114042858)

[2. Commencement, duration and extension of term 27](#_Toc114042859)

[3. Exclusivity 27](#_Toc114042860)

[4. Mutual Obligations 28](#_Toc114042861)

[5. ESCO’s Obligations 29](#_Toc114042862)

[6. [Plot Developer]/[Building Developer] Obligations 32](#_Toc114042863)

[7. Ownership and access 33](#_Toc114042864)

[8. Environmental Matters 37](#_Toc114042865)

[9. [Connection arrangements 38](#_Toc114042866)

[10. Supply arrangements 39](#_Toc114042867)

[11. [Heat charges to customers 41](#_Toc114042868)

[12. [Charging and invoicing 42](#_Toc114042869)

[13. [Metering and billing 43](#_Toc114042870)

[14. Compensation And Relief events 48](#_Toc114042871)

[15. [Intellectual Property 50](#_Toc114042872)

[16. [Grant of licences 51](#_Toc114042873)

[17. Data processing 51](#_Toc114042874)

[18. Confidentiality 52](#_Toc114042875)

[19. Warranties and representations 54](#_Toc114042876)

[20. Representatives 56](#_Toc114042877)

[21. Compliance and change in laws 57](#_Toc114042878)

[22. Force majeure 58](#_Toc114042879)

[23. Limitations on liability 59](#_Toc114042880)

[24. Insurance 62](#_Toc114042881)

[25. Mitigation and Setoff 62](#_Toc114042882)

[26. Default, Cure and Termination 63](#_Toc114042883)

[27. Consequences of termination or expiry 65](#_Toc114042884)

[28. Dispute Resolution Procedure 68](#_Toc114042885)

[29. Assignment and other dealings 68](#_Toc114042886)

[30. Variation 69](#_Toc114042887)

[31. Waiver 69](#_Toc114042888)

[32. Rights and remedies 70](#_Toc114042889)

[33. No partnership or agency 70](#_Toc114042890)

[34. Publicity 70](#_Toc114042891)

[35. Severance 71](#_Toc114042892)

[36. Further assurance 71](#_Toc114042893)

[37. Entire agreement 71](#_Toc114042894)

[38. Third party rights 71](#_Toc114042895)

[39. Notices 71](#_Toc114042896)

[40. Counterparts 72](#_Toc114042897)

[41. Governing law 72](#_Toc114042898)

[42. Jurisdiction 72](#_Toc114042899)

[Schedule 1 : PLANS 74](#_Toc114042900)

[Schedule 2 : Programmes 75](#_Toc114042901)

[Schedule 3 : Technical Specifications 76](#_Toc114042902)

[Part 1 : [Primary Plot Distribution Network Specification] 76](#_Toc114042903)

[Part 2 : Substation Specification; 76](#_Toc114042904)

[Part 3 : Secondary Distribution Network Specification; 76](#_Toc114042905)

[Part 4 : [HIU Specification]; 76](#_Toc114042906)

[Part 5 : [Commercial Unit Heat Exchanger Specification]; 76](#_Toc114042907)

[Part 6 : Heat Meter Specification; 76](#_Toc114042908)

[Part 7 : [Tertiary Heating Systems Technical Specification]; 76](#_Toc114042909)

[Part 8 : [Electricity Network Specification] 76](#_Toc114042910)

[Part 9 : Drawings 76](#_Toc114042911)

[Schedule 4 : Design & Delivery Process 77](#_Toc114042912)

[Schedule 5 : Works Obligations 78](#_Toc114042913)

[Part 1 : [Plot Developer]/[Building Developer] Works 78](#_Toc114042914)

[Part 2 : ESCO Works 79](#_Toc114042915)

[Part 3 : General Works requirements 80](#_Toc114042916)

[Part 4 : Site Rules 86](#_Toc114042917)

[Part 5 : Form of Collateral Warranty 87](#_Toc114042918)

[Schedule 6 : Acceptance Procedure 92](#_Toc114042919)

[Schedule 7 : Adoption Procedure 101](#_Toc114042920)

[Schedule 8 : ESCO Services 108](#_Toc114042921)

[Schedule 9 : Connections 111](#_Toc114042922)

[Part 1 : Connection Charges 111](#_Toc114042923)

[Part 2 : Form of Connection and Supply Agreement 112](#_Toc114042924)

[Schedule 10 : Customer Supply Agreements 113](#_Toc114042925)

[Part 1 : [Residential Supply Agreement] 113](#_Toc114042926)

[Part 2 : [Commercial Unit Supply Agreement] 113](#_Toc114042927)

[Part 3 : [[Registered Provider]/ [[Plot] Developer Void] Supply Agreement] 113](#_Toc114042928)

[Schedule 11 : Customer Charges 114](#_Toc114042929)

[Part 1 : [Residential Charges 114](#_Toc114042930)

[Part 2 : Commercial Charges 116](#_Toc114042931)

[Schedule 12 : Data Processing 118](#_Toc114042932)

[Schedule 13 : Marketing and Public Relations 121](#_Toc114042933)

[Schedule 14 : Governance, Monitoring and Reporting 123](#_Toc114042934)

[Part 1 : Monitoring and Reporting 123](#_Toc114042935)

[Part 2 : Governance 125](#_Toc114042936)

[Schedule 15 : Key Performance Indicators 126](#_Toc114042937)

[Schedule 16 : Insurances 129](#_Toc114042938)

[Part 1 : [PLOT DEVELOPER]/[BUILDING DEVELOPER] INSURANCES 129](#_Toc114042939)

[Part 2 : ESCO INSURANCES 133](#_Toc114042940)

[Schedule 17 : Change Procedure 136](#_Toc114042941)

[Part 1 : Variation Requests 136](#_Toc114042942)

[Part 2 : Change in Law 145](#_Toc114042943)

[Schedule 18 : Disaster Recovery Plan 148](#_Toc114042944)

**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]([**Plot Developer]/[Building Developer]**); and
2. [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is [ ] (**ESCO**).

Recitals

1. The [DESCRIPTION OF THE DEVELOPMENT] (the “**Development”)** is [a development project being delivered by [ ] (the “**Developer**”)[[1]](#footnote-2) which includes delivery of [ ] new homes, [ ] commercial units and [ ][[2]](#footnote-3)]/ [an existing development comprising [ ] homes, [ ] commercial units and [ ]] in the [ LOCATION ] area, [ LOCATION]
2. This [Plot]/ [Commercial Building] Connection and Supply Agreement sets out the terms on which:
   1. The [Plot Developer] / [Building Developer] shall have designed, installed and constructed the [Secondary Distribution Network]/ [Building Heating System],[[3]](#footnote-4)
   2. [ESCO shall Accept the [Secondary Distribution Network]/[ ]],[[4]](#footnote-5)
   3. [ESCO shall Adopt [the Primary Plot Distribution Network and] [the Secondary Distribution Network]/[ ]],[[5]](#footnote-6)
   4. ESCO shall keep the [Plot Development]/ [Building] Connected to ESCO’s Energy System,
   5. ESCO shall provide the [Plot Developer] / [Building Developer] with services relating to the operation and maintenance of the Connection [and the Secondary Distribution Network (including Heat Meters), [Residential HIUs] and Commercial Unit Heat Exchangers)][[6]](#footnote-7), and
   6. ESCO shall provide a Heat Supply to [Customers [on the Plot Development]/ [within the Building] pursuant to agreed form Customer Supply Agreements][[7]](#footnote-8)/ [the Building Developer][[8]](#footnote-9) and to certain standards.
3. Subject to the terms of this Agreement and the other Project Agreements, the [Plot Developer]/ [Building Developer] shall grant to ESCO (or procure the grant to ESCO) leases, licences, wayleaves or easements (as relevant) on or across the [Plot Development]/ [Building] where elements of the Energy System will be operated and maintained to enable ESCO to fulfil its obligations under this Agreement.

Agreed Terms

1. Interpretation

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

* 1. Definitions:

**[Accept** means the transfer to ESCO of the responsibility for the operation and maintenance of the [Secondary Distribution Network] [and [ ]] designed and installed by the [Plot Developer] /[Building Developer] in accordance with Schedule 6 (Acceptance Procedure)] and **Accepted** and **Acceptance** shall be construed accordingly][[9]](#footnote-10).

**[Acceptance Date:** has the meaning given under Schedule 6 (Acceptance Procedure)].

**[Adopt:** means the transfer to ESCO of the sole responsibility for the [ownership], operation, maintenance, replacement and insurance of the [Secondary Distribution Network][and [ ]] designed and installed by the Plot Developer in accordance with Schedule 7 (Adoption Procedure) and **Adopted** and **Adoption** shall be construed accordingly][[10]](#footnote-11).

**[Adoption Criteria:** means the adoption criteria set out under Schedule 7 (Adoption Procedure)].

**[Adoption Date:** has the meaning given under Schedule 7 (Adoption Procedure)].

**[Adoption Fee:** means [ ][[11]](#footnote-12)].

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

**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, including all Environmental Laws.

**Authorisations:** means an authorisation, consent, permission, approval, resolution, licence, exemption, filing, notarisation, permit, licence, agreement or registration, (whether statutory, regulatory, contractual or otherwise) including (without limitation), relating to Planning Permissions and all Environmental Laws.

[**Back-bill:** means a ‘catch-up’ Energy Bill to reconcile Charges made for the Heat Supply [and/or Electricity Supply].

**[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)].

**Base Rate:** means the borrowing base rate published by the Bank of England from time to time.

**[Billing Period:** the period of [1 month].[[12]](#footnote-13)

**[Building:** means the building developed and/or owned by the Building Developer, in respect of which a Connection is made and to which Heat Supply is made pursuant to this Agreement, as identified on the Development Plan].

**[Building Heat Exchanger:** means a unit comprising heat exchanger, pump and associated input and output valves and controls used for the transfer of heat from the Heat Distribution Network to the Building at the Connection Point (Commercial Building)].

**[Building Heating System:** the network internal to the Building, constructed by the Building Developer, to distribute heat and hot water.][[13]](#footnote-14)

**[Building Heat Substation:** means a plant room located within the Building, within which the Connection Point (Commercial Building), Building Heat Exchanger and all relevant ancillary equipment and infrastructure is housed.]

**[Building Heat Substation Lease:** means a lease of the Building Heat Substation, granted pursuant to Clause 7.2 (Ownership and Access)].[[14]](#footnote-15)

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

**[Capacity Charge:** a charge for keeping available to the Building Developer the agreed heat delivery capacity, at the rate set out under Schedule 11 (Customer Charges).

**CDM Regulations:** means the Construction (Design and Management) Regulations 2015 (as updated from time to time).

**[Change Control Procedure**: means the procedure set out under Part 1 of Schedule 17 (Change Procedure)].

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

1. the enactment or commencement of any new Applicable Law, other than any Applicable Law which on the Effective Date has been published:-
   1. in a draft Bill as part of a Government Departmental Consultation Paper
   2. in a Bill
   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 Regulatory Body for an additional Consent that was not required on the Effective Date.

**Charges:** means the Heat Charges [and Electricity Charges (as relevant)][[15]](#footnote-16).

**[CIU:** means a customer interface unit which contains a display and associated ancillary equipment, wiring and apparatus connected to a Heat Meter in a Residential Unit, showing consumption, payment, debt and consumption history as described further in the relevant Technical Specification.][[16]](#footnote-17)

**[Commercial Building:** means a building located on the Plot Development which is served by its own Connection Point (Commercial Building)][[17]](#footnote-18).

**[Commercial Building Connection:** means the physical connection of a Commercial Building to the Heat Distribution Network at the Connection Point (Commercial Building) to enable a Heat Supply to be provided to that Commercial Building].

**[Commercial Building Customer:** means a customer taking a Heat Supply in a Commercial Building pursuant to a Connection and Supply Agreement.]

**[Commercial] Building Heat Substation:** means a plant room located within a Commercial Building within which the Connection Point (Commercial Building) and all relevant ancillary equipment and infrastructure is housed.]

**[Commercial Comparator:** means the comparator set out under Schedule 11Part 2 (Commercial Charges).]

**[Commercial Customer:** means a Commercial Unit Customer or Commercial Building Customer as the context requires].

**[Commercial Unit Heat Supply Agreement:** means an agreement between a Commercial Unit Customer and ESCO for a Heat Supply in the form set out under Schedule 10 (Customer Supply Agreements)][[18]](#footnote-19).

**[Commercial Unit Customer:** means a customer taking a Heat Supply in a Commercial Unit pursuant to a Commercial Unit Heat Supply Agreement].

**[Commercial Unit:** means a self‑contained unit for occupation forming part of the [Plot Development which is not a Residential Unit], [Building] in respect of which an individual Commercial Unit Heat Supply Agreement has been entered into or is required to be entered into pursuant to a Connection and Supply Agreement].

**[Commercial Unit Heat Exchanger:** means a unit comprising heat exchanger, pump and associated input and output valves and controls used for the transfer of heat from the Secondary Distribution Network to a Commercial Unit, as further detailed in the relevant Technical Specification].

**[Common Parts:** means any part of the Plot Development which is not a Commercial Building, Commercial Unit or a Residential Unit.][[19]](#footnote-20)

**Comparator:** means the methodology and supporting documentation for demonstrating that the Heat Charges applicable at that time produces a total annual cost which remains competitive against [ ][[20]](#footnote-21) as set out under Schedule 11 (Customer Charges).

**Compensation Event**[[21]](#footnote-22)**:** means:

1. prevention, impediment, default or failure of the other Party of its obligations under this Agreement (which shall include the [Plot Developer]/[Building Developer] Related Parties and ESCO Related Parties as relevant), whether by act or omission;
2. in relation to a claim by ESCO, errors, omissions or material inconsistencies arising from information supplied by the [Plot Developer]/[Building Developer] pursuant to Schedule 4 (Design and Delivery Process);
3. [a failure by the [Plot Developer]/[Building Developer] to grant the necessary property rights required by ESCO to deliver the Heat Supply as detailed under Clause 7 (Ownership and Access)] [[22]](#footnote-23); and
4. [ ][[23]](#footnote-24) .

**Competent Person** means a person with the necessary skills, experience and knowledge to perform the relevant task 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:** means the physical connection of the [Plot Development] /[Building] to the Heat Distribution Network at the [Connection Point (Plot)] / [Connection Point (Commercial Building)] to enable a Heat Supply to be provided to that [Plot Development]/ [Building]**.**

**[Connection and Supply Agreement:** means an agreement, in the same or similar form to this Agreement, entered into between a Commercial Building Customer and ESCO.]

**Connection Charge:** means the connection charge for the [Plot Connection]/ [Building Connection] calculated in accordance with Schedule 9 (Connections).

**Connection Date:** means the date on which the [Plot Developer]/ [Building Developer] requires a Connection to have achieved Service Readiness, pursuant to paragraph 1, Part 1 of Schedule 9 (Connections), as may be extended from time to time in accordance with the terms of this Agreement.

**Connection Point:** means the Connection Point (Plot) or the Connection Point (Commercial Building) (as the context requires).

**[Connection Point (Plot):** means the outlet valve of the [Plot Boundary Valve, forming part of the [Primary Plot Distribution Network]/[Plot Heat Exchanger located within the Plot Heat Substation] and identified in the Connection Point Drawings]**[[24]](#footnote-25)**.

**Connection Point (Commercial Building):** means [the outlet valve of the heat exchanger] located within the Commercial Building Heat Substation at which point a Commercial Building is connected directly to the Primary Distribution Network as identified on the Connection Point Drawings.

**Connection Point Drawings:** mean the drawings set out under Schedule 3Part 9 (Drawings) identifying the relevant Connection Point.

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

**Contract Year**: a period of 12 months (or such shorter period if this Agreement is terminated earlier), commencing on the Effective Date.

**[Customer:** means, [in the Building the] [on the Plot Development, the individual and any], business, organisation or other body who, by way of a Customer Supply Agreement [or Commercial Building Connection and Supply Agreement], consumes or requires the availability of the Heat Supply [or Electricity]].

**[Customer Services:** includes metering and billing and customer complaints handling as further set out under Schedule 8 (ESCO Services)].

**[Customer Supply Agreement(s):** means a Commercial Unit Heat Supply Agreement, [a Residential Heat Supply Agreement or a [Registered Provider]/[[Plot] Developer Void] Heat Supply Agreement].

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

**Data Protection Protocol:** means the data protection processes and duties set out in Schedule 12 (Data Processing) as the same may by updated in writing from time to time in accordance with Clause 17.3 (Data Processing).

**[Defect:** means a defect in plant or equipment (other than plant or equipment supplied and installed by ESCO) which is found following the [Acceptance Date] / [Adoption Date] where such defect:

1. does not arise due to ESCO’s or its contractors’ or their respective employees’ negligence; or
2. does not arise due to ESCO’s breach of its obligations under this Agreement or any Customer Supply Agreement in respect of the operation, maintenance, repair or replacement of any part of the Energy System or the relevant item of plant/equipment; or
3. does not arise due to damage caused by residents or other third parties.]

**Delay Damages:** means the ESCO Delay Damages and the [Plot Developer]/[Building Developer] Delay Damages as appropriate].

**Developer:** has the meaning given in Recital (A).

**Development:** has the meaning given in Recital (A).

**Development Plan:**  means the plan identified as such and set out in at **Error! Reference source not found.** (Plans) to this Agreement.

**Disaster Recovery Plan:** means the plan which sets out ESCO’s contingency plan to enable the continuity of Heat Supply which meets the relevant performance standards set out under [the Customer Supply Agreements] [this Agreement] as set out under Schedule 18 (Disaster Recovery Plan).

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

**Dispute Resolution Procedure**: the dispute resolution procedure set out in Clause 28 (Dispute Resolution Procedure).

**Due Date**: has the meaning give in Clause 12.1 (Charging and invoicing).

**[Easement Corridor:** has the meaning given under the Lease[s]].

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

**[Electricity Charges:** have the meaning given under Schedule 11 (Customer Charges)].

**[Electricity Delivery Point:** means the Electricity Meter located in the Building].

**[Electricity Meter:** means the meter used to measure the Electricity Supply made via the Electricity Network to [a Commercial Customer] / [the Building Developer] as described further in the relevant Technical Specification.]

**[Electricity Network**: the private network of wires and ancillary plant and equipment more particularly described in the relevant Technical Specification as may be modified in accordance with this Agreement.]

**[Electricity Supply**: the supply of electricity to [Commercial Building Customers], [Commercial Unit Customers] [the Building Developer], enabled over the Electricity Network in accordance with Clause 5.2 (Electricity Supply)][[25]](#footnote-26).

**Emergency:** means any event where ESCO reasonably considers it necessary to take urgent steps to remedy any matter for reasons of health and safety or events requiring the intervention of the police or emergency services or water leaks that may cause significant material damage whether or not this is as a result of ESCO’s failure to comply with any of its obligations under this Agreement.

**Emergency Works:** means any works carried out by ESCO which are required in response to an Emergency.

**[Energy Bill:** a statement or invoice issued at regular intervals to the Building Developer in accordance with Clause 13 (Metering and Billing).]

**Energy Plant and Equipment:** means the heating facilities, plant and equipment used by ESCO to produce and generate heat [and electricity].

**Energy System**: means:

1. the Heat Distribution Network;
2. the Energy Plant and Equipment;
3. the Residential HIUs;
4. the Commercial Unit Heat Exchangers;
5. the CIUs;
6. the Heat Meters;
7. any Temporary Heat Solutions; and
8. [where applicable, the Electricity Network].

**Environment:** means all or any of the following media, namely air, water (including without limitation water in drains and sewers) or land (including without limitation such media within buildings or other natural or man‑made structures, above, on or below ground) and any living organisms (including man) or ecosystems supported by such media.

**Environmental Laws:** means all Applicable Law relating to human health, the Environment or any Hazardous Substance.

**Environmental Permits:** means all Authorisations required under Environmental Laws for the carrying out of the Parties' respective obligations under this Agreement (as appropriate).

**ESCO:** means the entity identified as such in the recitals to this Agreement.

**ESCO Authorisations:** means any Authorisations, other than the [Plot Developer]/[Building Developer] Authorisations, required for the delivery of the ESCO Works, [the ESCO Services], the Heat Supply [or the Electricity Supply].

**ESCO Cap on Liability:** means the cap on liability specified in Clause 23.3 (Limitations on Liability).

**[ESCO Cure Period:** means a reasonable time limit agreed between the Parties in accordance with Clause 26.1.1 (Notice of Defective Performance) within which the ESCO must take action to remedy a breach].

**ESCO Delay Damages:** means [ ][[26]](#footnote-27).

**ESCO Property Damage:** means any damage to or destruction of ESCO’s property or any third party property at the [Plot Development]/ [Building] caused by the [Plot Developer]/[Building Developer] or a party invited onto the [Plot Development]/ [Building] by the [Plot Developer]/[Building Developer] (but which is not ESCO) whilst carrying out works at the [Plot Development]/ [Building], or performing any of the [Plot Developer’s]/[Building Developer’s] obligations, or exercising any of the [Plot Developer’s]/[Building Developer’s] rights under this Agreement, but excluding any Indirect Loss.

**ESCO Programme of Works:** has the meaning given in Schedule 5 (Works Obligations).

**ESCO Related Parties:**  means ESCO's employees, subcontractors, agents, ESCO Representatives and Affiliates.

1. **[ESCO’s Representative:** means the person appointed by ESCO pursuant to Clause 20 (Representatives)][[27]](#footnote-28).
2. **[ESCO Services:**  means the operation, maintenance, repair [and replacement] of the [Secondary Distribution Network][[28]](#footnote-29), together with the Customer Services, as set out under Schedule 8 (ESCO Services)].

**ESCO Termination Grounds:** means:

1. the [Plot Developer]/[Building Developer] is in material or persistent breach of its obligations which substantially prevents ESCO from performing its obligations or exercising its rights under this Agreement [or a Customer Supply Agreement] and such breach is notified by ESCO to the [Plot Developer]/[Building Developer] and:-
   1. where the breach is capable of remedy:-
      1. the [Plot Developer]/[Building Developer] has failed to put forward a reasonable programme setting out how it proposes to remedy the breach (the “[Plot Developer]/[Building Developer] Cure Programme”) or commence remedying the breaches specified in such notification within the [Plot Developer]/[Building Developer] Cure Period; or
      2. the [Plot Developer]/[Building Developer] has put forward a [Plot Developer]/[Building Developer] Cure Programme but has materially failed to remedy the breaches specified in such notification in accordance with the [Plot Developer]/[Building Developer] Cure Period; and/or
   2. where the breach is not capable of remedy:-
      1. it would be unreasonable to expect ESCO to accept financial compensation for such default (where applicable); and
      2. such breach has given ESCO reasonable grounds to believe that the [Plot Developer]/[Building Developer] is incapable of properly fulfilling its obligations pursuant to this Agreement; and/or
2. a Major Default is caused by a breach of this Agreement by the [Plot Developer]/[Building Developer] and which is not capable of remedy, and in respect of which:-
   1. it would be unreasonable to expect ESCO to accept financial compensation for such default (where applicable); and
   2. such Major Default has given ESCO reasonable grounds to believe that the [Plot Developer]/[Building Developer] is manifestly incapable of properly fulfilling its obligations pursuant to this Agreement; and/or
3. [ESCO has suspended or disconnected the Heat Supply [or electricity supply] to the Building, as set out in Clause 13.4 (Failure to make payment) [and ESCO has sent the Building Developer a further final reminder letter and, after [10 Business Days][[29]](#footnote-30), the Building Developer still has not paid the overdue Heat Charges [and/or Electricity Charges]; and/or
4. an Insolvency Event occurs in relation to the [Plot Developer]/[Building Developer] and/or;
5. the aggregate liability of the [Plot Developer]/[Building Developer] to ESCO arising out of or in connection with this Agreement and with respect to any and all claims and costs arising out of or under this Agreement or arising out of the performance or non‑performance of any other obligation of the [Plot Developer]/[Building Developer] in connection with this Agreement, including any non‑contractual obligations arising from this Agreement, exceeds the [Plot Developer]/[Building Developer] Cap on Liability.

**ESCO Termination Payment:** means:

1. [all reasonable costs incurred by the [Plot Developer]/[Building Developer] in providing the [ESCO Services], the Heat Supply [and the Electricity Supply] from the date of Termination until the procurement of a replacement ESCO]; and
2. [ ].[[30]](#footnote-31);

**ESCO Warning Notice:** has the meaning given under Clause 26.2 (Right to Service Warning Notice).

1. **ESCO Works:** means those works set out under Schedule 5Part 2 (ESCO Works).

**Expiry Date:** means [ ]**[[31]](#footnote-32)**.

**Failure Event:**  means those events set out in Schedule 15 (Key Performance Indicators).

**Final Termination Notice:** means a notice served pursuant to Clause 26.3.1 (Timing of Service of Final Termination Notice).

**[FOI:** means the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act]**[[32]](#footnote-33)**.

**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 [Plot Developer]/[Building Developer] and/or a [Plot Developer]/[Building Developer] Related Parties is the source or cause of such radiation or contamination;
4. chemical or biological contamination of the Energy System and/or the communal energy supply from any of the events referred to in paragraph (a) above;
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 [Plot Developer]/[Building 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 [Plot Development]/[Building];
11. failure or interruption of Utilities serving the Energy System; and
12. epidemic or pandemic;
13. 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 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.

**[Guaranteed Standards for Heat Supply:** means the standards set out in in the Customer Supply Agreements].

**Hazardous Substances:** means any substances whether in solid, liquid or gaseous form, which are capable of causing harm to human health or to the Environment whether alone or in combination with any other substances.

**Heat Capacity:** means [ ] kWh/ annum required at the Connection.

**Heat Charges:** means the Standing Charge and the Variable Charge.

**Heat Distribution Network**: means the heating supply network, comprising of the Primary Distribution Network and the Secondary Distribution Network, as further detailed in the relevant Technical Specification and pursuant to Schedule 4 (Design and Delivery Process), which provides the Heat Supply from the Energy Centres via the Connection Point to [Residential HIUs] [and Commercial Unit Heat Exchangers.]

**Heat Meter:** means the metering equipment intended to be used to measure the Heat Supply delivered to [any Customer] / [the Building Developer] [as described further in the relevant Technical Specification].

**Heat Supply**: the supply of heat generated by the Energy Plant and Equipment or any Temporary Heat Solution to [Customers], [the Building Developer] enabled by the Heat Distribution Network, and **Heat** shall be construed accordingly.

**[Heat Trust Scheme:** means the voluntary scheme established to protect the interests of householders and micro businesses connected to heat networks in the UK, including the Heat Trust Scheme Rules (at <https://www.heattrust.org/the-scheme-rules>) and the Scheme Bye-Laws, or any equivalent replacement scheme thereof.]

**Indirect Loss:** means loss of profit or revenue, loss of opportunity, loss of contract or loss of goodwill, the cost of obtaining any new financing or maintaining any existing financing (including the making of any scheduled or other repayment or prepayment of debt and the payment of any other costs, fees or expenses incurred in connection with the obtaining or maintaining of financing) but for the avoidance of doubt, shall not include:

1. any amounts expressly payable under this Agreement; and
2. any Delay Damages, costs, losses or damage in the form of reasonable interest, break costs or similar charges, or compensation payments a Party is bound to pay to a third party under a valid, enforceable and pre‑existing contract with such third party as a direct result of any breach of this Agreement by the other Party (and for the avoidance of doubt, such contracts include Customer Supply Agreements).

**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 (as may be updated from time to time); or
5. that Party entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors.

**[Insured Risks:** means such risks in relation to the Energy System and the [Plot Development]/[Building] as the Parties shall be required to insure against pursuant to Clause 24 (Insurance) and Schedule 16 (Insurance)].

**[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][[33]](#footnote-34).

**Key Performance Indicator:** means an indicator of ESCO performance as set out in Schedule 15 (Key Performance Indicators).

**Lease**: means the [Building Heat Substation Lease]/[Plot Heat Substation Lease] (and “**Leased”** shall be construed accordingly).

**Licence:** has the meaning given pursuant to Clause 7.2.2 (Ownership and Access) (and “**Licensed”** shall be construed accordingly).

**Loss(es):** means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands (excluding Indirect Losses), but, for the avoidance of doubt Losses shall include  [*Insert losses to be covered*] and any costs and/or losses which a Party is entitled to recover pursuant to the terms of this Agreement. *[Drafting Note: The Parties may want to consider specifying which losses they want to be covered].*

**[Major Default:** means:

1. a material or persistent breach by ESCO of its obligations pursuant to Clause 5 (ESCO’s Obligations) which materially affects the delivery of the ESCO Works, [the ESCO Services] [or] the Heat Supply, [or the Electricity Supply] in accordance with the requirements of this Agreement; and/or
2. [three (3) ] or more Monthly Service Failures have occurred in any [Twelve (12)] month rolling period pursuant to this Agreement[[34]](#footnote-35); and/or
3. [subject to Clause 13 (Metering and Billing)] failure by either Party to make any payments due to the other within [sixty (60)  Business Days] after the date of service of any written demand for payment (which demand may only be made after the date on which the relevant amount became due) unless such failure or delay is permitted under the terms of this Agreement, including where the relevant payment or the amount thereof is the subject of a dispute between the Parties; and/or
4. a material breach of a [Plot Heat Substation Lease(s)] / [Building Heat Substation Lease]; and/or
5. [ ][[35]](#footnote-36)].

**Metering and Billing Regulations:** means the Heat Network (Metering and Billing) Regulations 2014 as amended or replaced from time to time.

**[Milestones:** means the milestones agreed in accordance with paragraph [ ], Part [ ] of Schedule 5 (Works Obligations).]

**[Minimum Annual Electricity Take:** [●] kWh[[36]](#footnote-37)

[**Minimum Annual Heat Take**:[●] kWth] [[37]](#footnote-38)

**Monthly Service Failure:** has the meaning given in Schedule 15 (Key Performance Indicators).

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

**Notice:** has the meaning given in Clause 39 (Notices) and **Notify** shall be construed accordingly.

**Notice of Defective Performance:** has the meaning given under Clause 26.1 (Termination).

**[Operation and Maintenance Manuals:** means the operation and maintenance manuals for the [Secondary Distribution Network] [and [ ][[38]](#footnote-39)] as provided to ESCO by the [Plot Developer]/[Building Developer] during the [Acceptance testing]/[Adoption testing] procedures set out under Schedule 6 (Acceptance Procedure)/[Schedule 7 (Adoption Procedure)].

**[Operation and Maintenance Services:** means the operation and maintenance of the [Secondary Distribution Network] [and [ ][[39]](#footnote-40)] as set out under Schedule 8 (ESCO Services)].

**[Operational Period:** means, for each part of the Energy System, the period commencing on [either Practical Completion, Adoption or] [Acceptance] or the of the relevant part of the Energy System and ending upon the Expiry Date or Termination Date (as applicable)].

**Party** or **Parties:** means ESCO and/or the [Plot Developer]/[Building Developer] individually or collectively as the context requires.

**[Performance Forecast:** has the meaning given in paragraph 4 of Schedule 14 (Governance, Monitoring and Reporting).]

**Personal Data**: has the meaning given to that term in the Data Protection Legislation in force from time to time.

**[Planning Permissions:** means any outline planning permissions and/or detailed planning permission or planning agreements relevant to the [Plot Development]/ [Building].]

**[Plot Connection:** means the physical connection of the Plot Development to the Connection Point (Plot) to enable a Heat Supply to be provided to the Plot Development].

**[Plot Developer:** means the Party identified as such in the Recitals]

**[[Plot Developer]/[Building Developer] Authorisations:** means any Authorisations directly relating to the Planning Permissions and [ ][[40]](#footnote-41) required for the [Plot Developer]/[Building Developer] Works.

**[Plot Developer]/[Building Developer] Cap on Liability:** means the cap on liability specified in Clause 23.2 (Limitations on Liability).

**[[Plot Developer]/[Building Developer] Cure Period:** means a reasonable time limit agreed between the Parties in accordance with Clause 26 (Default Cure and Termination) within which the [Plot Developer]/[Building Developer] must take action to remedy a breach.]

**[[Plot Developer]/[Building Developer] Delay Damages:** means [ ][[41]](#footnote-42)].

**[Plot Developer]/[Building Developer] Delivery Programme:** means the indicative delivery programme for the [Plot Development]/[Building] set out in Schedule 2 (Programmes) as updated and provided to ESCO from time to time].

**[Plot Developer]/[Building Developer] Property Damage** means any damage to or destruction of the [Plot Development]/[Building] or any third party property on the [Plot Development]/[Building] caused by or arising out of ESCO or an ESCO Related Party performing any of ESCO’s obligations, or exercising any of ESCO’s access rights, under this Agreement, but excluding any Indirect Loss.

**[Plot Developer]/[Building Developer] Related Parties:** means the [Plot Developer’s]/ [Building Developer’s] employees, subcontractors, agents, the [Plot Developer]/ [Building Developer] [Representatives] and Affiliates.

**[Plot Developer’s]/ [Building Developer’s] Representative**: means the person appointed by the [Plot Developer]/[Building Developer] pursuant to Clause 20 (Representatives).

**[Plot Developer]/[Building Developer] Termination Grounds:** means:

1. a Notice of Defective Performance has been issued by the [Plot Developer]/[Building Developer] pursuant to Clause 26 (Default, Cure and Termination) and ESCO:-
   1. has failed to either put forward a reasonable programme setting out how it proposes to remedy the breach (the “**ESCO Cure Programme**”) or to commence remedying the breaches specified in the Notice of Defective Performance within the ESCO Cure Period; and/or
   2. has put forward an ESCO Cure Programme but has materially failed to remedy the breaches specified in the Notice of Defective Performance in accordance with the ESCO Cure Programme; and/or
2. a Major Default is caused by a breach of this Agreement by ESCO and which is not capable of remedy, and in respect of which:-
   1. it would be unreasonable to expect the [Plot Developer]/[Building Developer] to accept financial compensation for such default (where applicable); and
   2. such Major Default has given the [Plot Developer]/[Building Developer] reasonable grounds to believe that ESCO is manifestly incapable of properly fulfilling its obligations pursuant to this Agreement; and/or
3. an Insolvency Event occurs in relation to ESCO; and/or
4. ESCO has breached Clause 29 (Assignment and Other Dealings); and/ or
5. the aggregate liability of ESCO to the [Plot Developer]/[Building Developer] arising out of or in connection with this Agreement and with respect to any and all claims and costs arising out of or under this Agreement, or arising out of the performance or non‑performance of any other obligation of ESCO in connection with this Agreement, including any non‑contractual obligations arising from this Agreement, exceeds the ESCO Cap on Liability.

**[Plot Developer]/[Building Developer] Termination Payment:** means

1. [all Losses incurred or committed to by ESCO in performance of ESCO’s obligations under this Agreement (including [any Adoption Fee paid to the Plot Developer,] the cost of any capital investment relating to the Connection and any loss of bargain, loss of profit, legal costs, overhead costs, cancellation costs, capital expenditure and any payments to third parties in respect of advice, surveys, investigations and/or the provision of equipment/installation materials) in respect of the period from the Termination Date to the Expiry Date][[42]](#footnote-43); and
2. [ ].

**[Plot Developer]/[Building Developer] Warning Notice:** has the meaning given under Clause 26.2 (Right to Serve Warning Notice).

**[Plot Developer]/[Building Developer] Works:** means those works set out under Schedule 5Part 1 ([Plot Developer]/[Building Developer] Works).]

**[Plot Development:** means the area identified in the Plot Development Plan].

**[Plot Heat Substation:** means a plant room located on the Plot Development within which the Connection Point (Plot) and all relevant ancillary equipment and infrastructure is housed].

**[Plot Heat Substation Lease:** means a lease of the Plot Heat Substation, granted pursuant to Clause 7.2 (Ownership and Access)].[[43]](#footnote-44)

**[Practical Completion:** has the meaning given in Schedule 5 (Works Obligations).]

**[Practical Completion Certificate:** has the meaning given in Schedule 5 (Works Obligations)].

**Primary Distribution Network:** means the network of pipes and other ancillary equipment that transfers Heat from the Energy Plant and Equipment to the Connection Point and which forms part of the Heat Distribution Network.

**[Primary Plot Distribution Network:** means part of the Primary Distribution Network that is located on the Plot Development as further detailed in the relevant Technical Specification][[44]](#footnote-45).

**Project:** has the meaning given in the Recitals.

**Project Agreements:** means:

1. this Agreement;
2. the Lease[s];
3. [each of the Connection Agreements][[45]](#footnote-46);
4. [each of the Customer Supply Agreements]; and
5. [*other* ancillary *agreements].*

**Project Variation:** has the meaning given under Clause 30 (Variations) and where designated as such under this Agreement.

**Recognised Investment Exchange:** has the meaning given to it in section 285 of the Financial Services and Markets Act 2000.

**[Registered Provider:** has the meaning given under the Housing and Regeneration Act 2008 as may be updated from time to time][[46]](#footnote-47).

**[Registered Provider]/[ Developer Void] Supply Agreement:** means an agreement for the Heat Supply to a Registered Provider or the Plot Developer (where the Plot Developer is responsible for Voids), in the form set out under Schedule 10 (Customer Supply Agreements)].

**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.

**Relevant Authority:** means any court with the relevant jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom which has jurisdiction arising out of or in connection with the [Plot Development]/ [Building] and/or the Energy System, including the Heat Trust, Ofgem and the Land Registry.

**[Representatives**: [Plot Developer]/[Building Developer]’s Representatives and/or ESCO’s Representatives as the context requires.]

**[Requests for Information:** shall have the meaning set out in the FOIA].

**[Required Insurances:** means the insurances required to be taken out by ESCO and the [Plot Developer]/[Building Developer] (respectively) as set out under Schedule 16 (Insurances).]

**[Residential Comparator:** means the comparator set out under Schedule 11Part 1 (Residential Charges).]

**[Residential Customer:** means a customer taking a Heat Supply in a Residential Unit pursuant to a Residential Heat Supply Agreement].

**[Residential Heat Supply Agreement:** means an agreement between a Residential Customer and ESCO for a Heat Supply in the form set out under Schedule 10 (Heat Supply Agreements).]

**[Residential HIU:** mean the equipment Installed at each Residential Unit used for the transfer of Heat from the Secondary Distribution Network to the Tertiary Heating System within a Residential Unit, as more fully described in the relevant Technical Specification.]

**[Residential Unit:** mean self‑contained units of residential accommodation in respect of which an individual Residential Heat Supply Agreement has been or will be entered into.]

**Retail Prices Index/RPI**: the Retail 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.

**Satisfactory Alternative Temporary Heating:** means:

1. the temporary heating services satisfy Authorisations;
2. [the temporary heating services allow ESCO to perform the ESCO Services]; and
3. the supply of heat is otherwise in accordance with the requirements of this Agreement and [the Customer Supply Agreements].

**[Secondary Distribution Network:** means the network of pipes and other ancillary equipment that transfers Heat from the relevant Connection Point [up to and including] [Residential HIUs and] Commercial Unit Heat Exchangers as further detailed in the relevant Technical Specification.]

**[Secondary Distribution Network Services**: means the operation, maintenance and repair of the Secondary Distribution Network and associated services as more particularly described under Schedule 8 (ESCO Services)].**[[47]](#footnote-48)**

**Security:** means a mortgage, assignment, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**Service Failure**: a failure by ESCO to meet the Service Levels as set out under Schedule 15 (Key Performance Indicators).

**[Service Failure Payment:** thecompensation required to be paid to the Building Developer pursuant to this Agreement for a Service Failure, as set out in Schedule 15 (Key Performance Indicators).]

**Service Failure Points**: means points accrued by ESCO pursuant to the provisions of Schedule 15 (Key Performance Indicators).

**Service Levels**: the service levels as set out in Schedule 15 (Key Performance Indicators).

**Service Readiness:** means in respect of the [Plot Development] / [Building] the stage at which the relevant ESCO Works have been completed in accordance with the requirements of this Agreement [(including the completion of HIU commissioning in accordance with Good Industry Practice)] so that the Connection can be completed and ESCO can provide the Heat Supply [and the ESCO Services to the Customers] in accordance with this Agreement [and the Customer Supply Agreements].

**Service Readiness Date:** the date on which the [Plot Developer]/[Building Developer] requires Service Readiness.

**[Service Period:** means a continuous period of twelve (12) months or part thereof ending on [31 March]].

**Site:** means the site on which the [Plot Development] / [Building] is located as identified on the Development Plan.

**Site Rules:** means all reasonable rules, instructions, policies and procedures relating to access, security and safety at the Site which have been communicated to ESCO in writing by the [Plot Developer]/[Building Developer] from time to time.

**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]]*

**Substation** means a [[Plot Heat Substation] [and/or Commercial Building Heat Substation] as the context requires][[48]](#footnote-49) [Building Heat Substation].

**Sufficient Security:** means either:

1. a bond or equivalent form of Security from a reputable financial institution (approved by ESCO or the [Plot Developer]/[Building Developer] (as the context requires), such approval not to be unreasonably withheld or delayed), in a form reasonably satisfactory to ESCO or the [Plot Developer]/[Building Developer] (as the context requires), in an amount equivalent to the[ESCO Cap on Liability or the [Plot Developer]/[Building Developer] Cap on Liability (as the context requires)][[49]](#footnote-50); or
2. a guarantee in a form approved by ESCO or the [Plot Developer]/[Building Developer] (as the context requires), such approval not to be unreasonably withheld or delayed. [*Drafting Note: Parties to consider form of payment security in the context of their particular circumstances.]*

**Standing Charge:** means the charge for maintenance and replacement of components of the Energy System charged to [Customers under Customer Supply Agreements regulated in accordance with Clause 11 (Heat Charges to Customers)], [the Building Developer pursuant to Clause 12 (Charging and Invoicing)][[50]](#footnote-51) and Schedule 11 (Customer Charges).

**Tax:** means any kind of tax, duty, levy or other charge whether or not similar to any in force at the Effective Date and whether imposed by a local, governmental or other Regulatory Body in the United Kingdom or elsewhere.

**Technical Specifications[[51]](#footnote-52):** means the:

1. [Primary Plot Distribution Network Specification];
2. Substation Specification;
3. Secondary Distribution Network Specification;
4. [HIU Specification];
5. [Commercial Unit Heat Exchanger Specification];
6. Heat Meter Specification;
7. [Tertiary Heating Systems Technical Specification]; [and]
8. [Electricity Network Specification];

as set out under Schedule 3 (Technical Specifications).

**Temporary Heat Solution:** any temporary heat solution provided by ESCO for the provision of heating to [Customers] [the Building Developer] when heat supplies from the Energy Plant and Equipment (or the Heat Distribution Network as relevant) are temporarily unavailable (including following any ESCO failure to achieve Service Readiness in accordance with the terms of this Agreement), in accordance with Paragraph 3 (Temporary Heat Solutions) of Schedule 8 (ESCO Services).

**Temporary Heat Solution Works:** any works undertaken by ESCO pursuant to this Agreement which constructs and connects any Temporary Heat Solution to the Connection as further set out under Schedule 5 (Works Obligations).

**Termination Compensation**: means the [Plot Developer]/[Building Developer] Termination Payment or the ESCO Termination Payment.

**Termination Date**: has the meaning given under Clause 26 (Termination) (and "**Termination**" shall be construed accordingly).

**[Tertiary Heating System:** means the network of internal pipes and other ancillary equipment located within each Residential Unit that transfers Heat around the Residential Unit from a Residential HIU and its isolation valves, to be designed and installed by the Plot Developer in compliance with the relevant Technical Specification and subject to acceptance by ESCO of the design in accordance with Paragraph [ ] of Schedule 4 (Design and Delivery Process)].

**Third Party:** means a third party who is not a Party to this Agreement, but shall not include Affiliates of ESCO or the [Plot Developer]/[Building Developer].

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

**[Unit:** means a Commercial Unit [or a Residential Unit as the context requires]].

**Variable Charge**: mean the variable kWh charge for Heat consumed, charged to [Customers under Customer Supply Agreements regulated in accordance with Clause 11 (Heat Charges to Customers)], [the Building Developer pursuant to Clause 12 (Charging and Invoicing)][[52]](#footnote-53) and Schedule 11 (Customer Charges).

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

**[Voids**: means any Residential Unit which remains unsold or unlet for any reason on the first development and/or letting].

**[Vulnerable Residential Customers** has the meaning given in the Residential Heat Supply Agreement].

**Works**: means the [Plot Developer]/[Building Developer] Works or the ESCO Works as appropriate.

* 1. Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
  2. The Schedules 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.
  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.
  5. [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.]
  6. Unless the context requires otherwise, words in the singular include the plural and in the plural include the singular.
  7. Unless the context requires otherwise, a reference to one gender shall include a reference to the other genders.
  8. A reference to a statute or statutory provision or subordinate legislation is a reference to it as amended, extended or re-enacted from time to time.
  9. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
  10. [A reference to **writing** or **written** includes fax [and email **OR** but not email]][[53]](#footnote-54).
  11. 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.
  12. References to clauses, Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
  13. If there is an inconsistency between the clauses and Schedules respectively, the provisions in the clauses shall prevail in preference to the Schedules..
  14. 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.

1. Commencement, duration and extension of term
   1. This Agreement shall take effect on the Effective Date and shall continue until the earlier of:
      1. the Termination Date; and
      2. the Expiry Date;

(the “**Term**”).

* 1. Upon Termination or Expiry the provisions of Clause 27 (Consequences of Termination or Expiry) shall apply.

1. Exclusivity
   1. The [Plot Developer]/[Building Developer] hereby grants ESCO the right, on an exclusive basis in relation to the [Plot Development] /[Building], to:
      1. carry out the ESCO Works and [Adopt (as relevant)], [operate and maintain the [Secondary Distribution Network [and [ ];
      2. [carry out the ESCO Services]; and
      3. provide the Heat Supply [to Customers pursuant to Customer Supply Agreements] [the Building Developer];

subject to and in accordance with the terms of this Agreement.

* 1. Subject to Clause 3.3 and to the extent permitted by Applicable Law, as a condition of this Agreement, the [Plot Developer]/[Building Developer] warrants, represents and, for the duration of the Term, undertakes that:
     1. it has not entered into, and shall not enter into, any agreement or arrangement for the provision by a third party during the Term for a supply of energy for the purposes of space and/or water heating to the [Plot Development]/ [Building];
     2. it shall not install, use or enable or facilitate the installation or use of any form of gas supply, any gas-fired appliance (except appliances used for any purpose other than the generation or conveyance of heating and/or hot water), any boilers, any electric storage heaters, any heat microgeneration equipment (including solar thermal panels and/or ground, water or air source heat pumps) or any other alternative central heating or hot water system for the supply of space and/or water heating to the [Plot Development]/ [Building] while a Heat Supply for such purpose is being (or is intended to be) made available to the [Plot Development]/ [Building] using the Energy System; and
     3. no [Commercial Buildings or][[54]](#footnote-55) [Commercial Units] are connected to any public gas distribution network on their first development, sale and/or letting.
  2. The restriction under Clause 3.2 shall not apply in relation to:
     1. the provision of heating or hot water to any temporary buildings that are used for construction purposes, which means any structure installed on the premises at the [Plot Development]/ [Building] and occupied as part of the construction process which is intended to be removed when construction ceases, including, without limitation, site offices, canteens and mess rooms, drying and changing rooms, rest rooms, wash rooms and toilets;
     2. [in relation to the supply of gas for cooking [in any Commercial Unit]][[55]](#footnote-56);
     3. [where the annual heating demand of a [Unit] or Commercial Building is less than [ ] kWth][[56]](#footnote-57); and
     4. the provision of heating or hot water by any temporary means by the [Plot Developer]/[Building Developer] in any circumstance where the Heat Supply supplied by ESCO is interrupted or suspended.

1. Mutual Obligations
   1. Each Party agrees:
      1. to co‑operate with the other Party, at its own expense, in the fulfilment of the purposes and intent of this Agreement, provided that nothing in this Clause 4.1.1 shall relieve a Party from complying with its obligations under this Agreement or oblige a Party to fulfil another Party's obligations; and
      2. use all reasonable endeavours to procure the co‑operation between [Plot Developer]/[Building Developer] Related Parties and ESCO Related Parties for the purposes of the Parties complying with their respective obligations under this Agreement.
   2. In performing their respective obligations under this Agreement, each Party shall act, and shall use all reasonable endeavours to procure that each ESCO Related Party (in the case of ESCO) or each [Plot Developer]/[Building Developer] Related Party (in the case of the [Plot Developer]/[Building Developer]) acts, in good faith, in accordance with Good Industry Practice and in compliance with the Site Rules.
   3. Without prejudice to either Party's obligations under Clauses 4.1 and 4.2, each Party shall use all reasonable endeavours to minimise interference with the activities of the other Party at the [Plot Development]/ [Building].
   4. [The Parties shall comply with their respective obligations under the Leases (subject to, and in accordance with, this Agreement][[57]](#footnote-58).
   5. [The Parties shall comply with their respective obligations set out under Schedule 14 (Governance, Monitoring and reporting)].
   6. The Parties shall comply with their respective obligations under the CDM Regulations and shall co-operate in order to facilitate the compliance of the other Party with such Regulations.
   7. Each Party (the "**First Party**") shall indemnify the other Party (the "**Second Party**") in respect of any Losses suffered or incurred by the Second Party as a result of a breach by the Second Party of the CDM Regulations, to the extent such Losses were caused by the act or omission of the First Party.
   8. [The Parties acknowledge and agree that ESCO shall not be responsible for the construction, installation, ownership, operation and/or maintenance of any Tertiary Heating System, which shall be the responsibility of the Plot Developer, the relevant Customer and/or the relevant Registered Provider (as applicable)].
   9. [The Parties acknowledge and agree that ESCO shall not be responsible for the construction, installation, ownership, operation and/or maintenance of any Building Heating System within the Building, which shall be the responsibility of the Building Developer][[58]](#footnote-59).
   10. Without limiting the operation of any other provision of this Agreement, each Party ensure that it shall, and procure that any person appointed by it to undertake such obligations shall at all times:
       1. provide Competent Persons to perform its obligations under this Agreement; and
       2. take all precautions necessary for the protection of itself, its contractors or sub-contractors (of any tier) and any other persons invited onto or otherwise on the Leased or Licensed areas.
2. ESCO’s Obligations

ESCO shall, at its own cost (save to the extent that ESCO is entitled to make charges to the [Plot Developer]/[Building Developer] under, [or to Customers pursuant to,] this Agreement):

perform all of its obligations set out in this Agreement and the Schedules hereto and shall not by action or inaction impede the [Plot Developer]/[Building Developer] in the performance of its obligations under this Agreement;

give such assistance as the [Plot Developer]/[Building Developer] reasonably requires to evidence to the Local Planning Authority that the Connection is compliant with all Authorisations in accordance with Clause 21 (Compliance and Change in Laws);

warrant that in the preparation of the Technical Specifications it has exercised and shall continue to exercise all the reasonable skill, care and diligence to be expected of a prudent competent and properly qualified professional designer experienced in the delivery of design for projects of equivalent size, scope, nature and complexity and in a location similar to the [Plot Development]/[Building], and, for the avoidance of doubt, shall accept all risk in the adequacy of such Technical Specifications meeting the requirements of this Agreement;

undertake the design, delivery, construction, installation and commissioning of the ESCO Works in accordance with accordance with the terms of this Agreement, including without limitation, Schedule 3 (Technical Specifications), [Schedule 4 (Design & Delivery Process)][[59]](#footnote-60) and Schedule 5 (Works Obligations);

[Adopt the [Secondary Distribution Network] in accordance with the terms of Schedule 7 (Adoption Procedure)];

[Accept the [Secondary Distribution Network] in accordance with the terms of Schedule 6 (Acceptance Procedure)];

ensure that the Energy System is operated and maintained at ESCO’s costs (subject to Clause 21 (Compliance and Change in Laws) Clause 30 (Variation) and charges to [Customers]/[the Building Developer] in accordance with this Agreement):

in accordance with this Agreement including without limitation [Schedule 8 (ESCO Services)] Schedule 3 (Technical Specifications), [the Customer Supply Agreements,] the Leases, Good Industry Practice and any reasonable instructions given by the [Plot Developer]/[Building Developer] from time to time relating to ESCO’s performance of its obligations under this Agreement;

so as to comply and enable the [Plot Developer]/[Building Developer] to comply with the provisions of the Planning Permissions; and

in a manner that is efficient, effective and safe and does not or is not likely to be injurious to health or to cause Loss to property;

[obtain accreditation under and comply with the Heat Trust Scheme in respect of the Energy System serving the Plot Development];

not cause or permit to be caused any physical damage to any part of the [Plot Development] / [Building] or any assets or other property of the [Plot Developer]/[Building Developer] and shall promptly make good any Loss caused in breach of this Clause 5.1.9 to the reasonable satisfaction of the [Plot Developer]/[Building Developer];

meet the Key Performance Indicators; and

comply with the Disaster Recovery Plan.

* 1. **[Electricity Supply[[60]](#footnote-61)**

[ESCO]/ [The [Plot Developer]/[Building Developer]] shall construct and lay the Electricity Network from the Energy Centre Plant and Equipment [at the cost of [ESCO]/ [the [Plot Developer]/[Building Developer]]] in accordance with the relevant Technical Specification, to [any Commercial Customers requiring electricity supply from ESCO] / [the Building].

Following Practical Completion of the Electricity Network, ESCO shall undertake all such tests as are reasonably necessary to ensure the safety and operability of the Electricity Network. Following the satisfactory completion of such tests, ESCO shall [adopt and] take full title and risk in the Electricity Network. If any of the relevant tests fail, ESCO shall [be entitled to request that the [Plot Developer]/[Building Developer], at their own cost] rectify any deficiency in the Electricity Network and the tests and rectification process shall be re-run until the tests are satisfactorily passed.

Following satisfactory testing of the Electricity Network in accordance with Clause 5.2.2 above, ESCO shall supply electricity from the Energy Centre Plant and Equipment via the Electricity Network directly to [any Commercial Customers requiring electricity supply from ESCO] / [the Building]. Nothing in this provision shall require ESCO to obtain an Electricity Supply Licence, and it is acknowledged that such Electricity Supply shall be made pursuant to Supply Licence Exemptions A or C (pursuant to Schedule 4 of the Electricity (Class Exemption from the Requirement for a Licence) Regulations 2001), unless and until ESCO obtains, in its complete discretion, an Electricity Supply Licence.] [The [Plot Developer]/[Building Developer], shall ensure that the such Electricity Supply is only used by it at the [Plot Development]/ [Building] (and not supplied on to any other Party) and shall indemnify the ESCOfor any use of the Electricity Supply that is contrary to this Clause 5.2.3, recognising that such contrary use may put the ESCOin breach of the Electricity (Class Exemptions from the Requirement for a Licence) Regulations 2001] *[Drafting Note: Parties to consider any further amendments where ESCo is also providing electricity supply.]*

1. [Plot Developer]/[Building Developer] Obligations

The [Plot Developer]/[Building Developer] shall:-

[Develop the Plot Development in accordance with the Plot Development Plan, the Plot Developer Delivery Programme, and all Applicable Law and Authorisations];

perform all of its obligations set out in this Agreement and the Schedules hereto and shall not by action or inaction impede ESCO in the performance of its obligations under this Agreement;

undertake or procure the design, delivery, construction, installation and commissioning of the [Plot Developer]/[Building Developer] Works in accordance with the terms of this Agreement, including without limitation, the [Plot Development Plan,] the [Plot Developer]/[Building Developer] Programme, Schedule 3 (Technical Specifications), [Schedule 4 (Design & Delivery Process)] and Schedule 5 (Works Obligations);

[comply with its obligations in relation to Adoption under Schedule 7 (Adoption Procedure)];[[61]](#footnote-62)

[provide ESCO with regular updates of the number, type, size and expected build completion dates of all [Commercial Buildings and/or Commercial Units] [Commercial Units] [on the Plot Development] /[within the Building]];

provide ESCO with details of any changes to the [Plot Developer]/[Building Developer] Delivery Programme and shall use reasonable endeavours to notify ESCO promptly (and, in any event, within ten (10) Business Days of it becoming aware) of any material change in the use or operation of the [Plot Development]/ [Building] that is likely to have an impact on the heat demand, [the Plot Development Plan], the [Plot Developer]/[Building Developer] Delivery Programme, the Technical Specifications, the ESCO Works [and/or the ESCO Services];

not cause or permit to be caused any physical damage to any assets or property of ESCO and shall reimburse ESCO for any reasonably incurred costs in relation to making good such Loss suffered by ESCO and caused in breach of this Clause 6.1.7; and

[procure that each of its Third Party Sub-Contractors provides a collateral warranty for the benefit of ESCO (in the form set out Schedule 5Part 5 (Collateral Warranty) or an equivalent form, to the satisfaction of ESCO (acting reasonably)) in respect of the Secondary Distribution Network [and [ ]][[62]](#footnote-63).

[The Plot Developerwarrants and represents to ESCO that the Plot Developerhas or shall, undertake all necessary consultation, and has satisfied all of its obligations to consult, with Customers and any relevant third parties as required by section 20 of the Landlord and Tenant Act 1985 (and/or any other Applicable Law) in relation to the execution of this Agreement, the undertaking of the ESCO Works, the Heat Supply, [the Electricity Supply] [and the provision of the ESCO Services by ESCO]. The Plot Developershall indemnify ESCO in respect of any Losses ESCO may incur in connection with any breach of this Clause 6.2 (including any Losses incurred by ESCO in connection with any consultation that may be required under the Landlord and Tenant Act 1985 after the Effective Date in respect of the ESCO Works, the Heat Supply, [the ESCO Services] [and the Electricity Supply]].

1. Ownership and access[[63]](#footnote-64)

The Parties acknowledge that ESCO shall be granted access rights for construction of the ESCO Works [and provision of the ESCO Services], pursuant to this Clause 7 [and the Lease[s]].

The [Plot Developer]/[Building Developer] shall:

[grant, or procure that there is granted to, ESCO the Lease(s)[[64]](#footnote-65) relating to the Substation(s) on Practical Completion of such Substation(s) and thereafter comply with the terms of such Lease[s];

grant (and hereby grants):

* + - 1. a licence to ESCO that will give ESCO and the ESCO Related Parties free, safe and reasonably uninterrupted access to those parts of the [Plot Development]/ [Building] necessary for ESCO to undertake the ESCO Works (the “**Licence**”), (subject to ESCO and the ESCO Related Parties complying with all relevant Site Rules, CDM Regulations and health and safety obligations) including:-

at any time for any purpose required by Applicable Law; and

in accordance with this Agreement and the ESCO Programme of Works for the purpose of undertaking the ESCO Works.

[The Plot Developer shall provide ESCO with access to and use of areas of reasonable size and physical location on the Plot Development for use as a laydown and loading areas in connection with the ESCO Works].

The [Plot Developer]/[Building Developer] covenants (on behalf of itself and any landlord under the Lease) that:

* + 1. ESCO will acquire a good title pursuant to any Lease[s] granted in accordance with this Agreement which is capable of protection by way of registration at the Land Registry free from any onerous encumbrances and/or any other third party rights which could or do materially affect ESCO's ability to observe and perform any of its obligations under the Lease;
    2. it and/or any superior landlord in respect of any Lease granted or varied in accordance with this Agreement has consented or will consent to the grant or variation of the Lease;
    3. it shall at all times observe, perform and comply with all of its obligations as tenant under any superior lease granted to it by a superior landlord in respect of any demised premises to which a Lease granted to ESCO relates and, at the written request of ESCO, enforce its rights thereunder insofar as they relate to such demised premises; and
    4. it has the benefit of any Authorisations which may be required in order to allow ESCO to procure registration of the Lease[s] at the Land Registry within the appropriate timeframes following the grant of the Lease[s], and the [Plot Developer]/[Building Developer] shall (or shall procure that the relevant landlord shall) use reasonable endeavours to assist ESCO in dealing with any requisitions from the Land Registry that are applicable to the grantor in order to procure such registration.

ESCO shall:

subject to Clause 7.5, accept the grant of the Lease[s] relating to the Substation[s] on Practical Completion of the Substation[s] (as relevant);

[use all reasonable endeavours to agree (acting reasonably) with the Plot Developer the route of the Easement Corridor (as defined in the Leases) consistent with the Plot Development Plan and Schedule 4 (Design and Delivery Process) across the Plot as soon as reasonably practicable];

where it exercises its rights under this clause:

* + - 1. comply with all Applicable Laws, Authorisations and the terms of the Leases ;
      2. obey the reasonable instructions of the [Plot Developer]/[Building Developer] consistent with the Agreement;
      3. comply with all rules, policies and procedures of the [Plot Developer]/[Building Developer] relating to health and safety which have been communicated to ESCO in writing at or before the time of execution of this Agreement and in particular ESCO shall ensure that each of the ESCO Parties who has access to the [Plot Development]/[Building] prior to completion of the design, construction, installation, fit out and commissioning of the ESCO Works shall carry a Construction Skills Certificate Scheme card at an appropriate level and comply with the site health and safety and access requirements of the principal contractor;
      4. ensure that as little disruption as possible to the activities of the [Plot Developer]/[Building Developer] is caused by the exercise of such rights; and
      5. comply at all times with the Site Rules.

procure that, subject to complying with all relevant safety procedures previously notified in writing, the [Plot Developer]/[Building Developer] and the [Plot Developer]/[Building Developer] Related Parties shall have access at all reasonable times to the areas demised by the Lease[s], with one full working day’s prior Notice to ESCO, for the purpose of general inspection and to ascertain generally that the provisions of this Agreement and the Lease[s] are being complied with, subject and without prejudice to the terms of the Lease[s]; and

procure that, subject to complying with all relevant safety procedures, a Competent Person from the [Plot Developer]/[Building Developer] and/or the [Plot Developer]/[Building Developer] Related Party is provided with access as soon as practicable, but in any event within [four (4)] hours, to the areas demised by the Lease[s] without prior notice to ESCO, for the purpose of resolving issues that could be deemed an Emergency.

ESCO shall not be obliged to accept the grant of any Lease unless:

all consents required from third parties for the grant and subsequent registration of the relevant Lease have been provided to ESCO, in a form satisfactory to ESCO (acting reasonably);

in relation to any restrictions on title noted in the relevant Proprietorship Register, all necessary certificates, deeds of covenant or RX4s as are required for the registration of the relevant Lease at the Land Registry have been provided to ESCO in a form satisfactory to ESCO (acting reasonably);

at the date of the grant of the relevant Lease, [the [Plot Developer]/[Building Developer] has evidenced to the reasonable satisfaction of ESCO][[65]](#footnote-66) / [ESCO is satisfied][[66]](#footnote-67) (acting reasonably) that the relevant landlord’s title is not encumbered by any matter which would prevent nor does it lack any right which would prevent:

* + - 1. the grant of the relevant Lease;
      2. the use permitted by the relevant Lease; or
      3. the exercise of the rights granted by the relevant Lease by ESCO;

provided that where the title is encumbered or lacks a right as described above, the [Plot Developer]/[Building Developer] may satisfy this condition by way of title indemnity insurance on terms and for a sum in each case acceptable to ESCO acting reasonably; and

the [Plot Developer]/[Building Developer] provides replies acceptable to ESCO acting reasonably to all reasonable enquiries and pre-completion requisitions raised by ESCO or ESCO’s solicitors prior to the completion of any Lease.

* 1. In relation to the Lease[s]:
     1. in accordance with the provisions of section 38(A) of the Landlord and Tenant Act 1954, the [Plot Developer]/[Building Developer] (on behalf of itself and any landlord under the Lease) and ESCO have agreed that the provisions of sections 24 to 28 of that Act shall be excluded in relation to the tenancy created by the Lease;
     2. the [Plot Developer]/[Building Developer] (as the landlord under the Lease) or the landlord under the Lease has served on ESCO a notice in the form, or substantially in the form, set out in Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (the "**Order**"); and
     3. the requirements specified in Schedule 2 to the Order have been met in that ESCO has made the appropriate declaration in the form, or substantially in the form, set out in Schedule 2 to the Order.

If, for any reason, ESCO is not able to exercise the relevant property rights as required to be granted (or procured) by the [Plot Developer]/ [Building Developer] in respect of the [Plot Development]/ [Building] in order to deliver the Heat Supply as required by this Agreement, or perform any of its other obligations under this Agreement, ESCO shall be relieved of the relevant obligations until such time as it is able to exercise the relevant rights [and a Compensation Event shall be deemed to have occurred][[67]](#footnote-68).

1. Environmental Matters[[68]](#footnote-69)
   1. The Parties acknowledge that this Clause 8.1 is an agreement on liabilities for the purposes of exclusion from and apportionment and attribution of liability for remediation of contaminated land (in terms of paragraphs 7.29 and 7.30 of the Statutory Guidance issued under section 78A(2), (5) and (6) of Part IIA of the Environmental Protection Act 1990 (Agreements on Liabilities) (Defra publication entitled "Contaminated Land Statutory Guidance April 2012")) to the extent and effect that any enforcing authority shall give effect to the relevant provisions of this Clause 8.1.
   2. ESCO and the [Plot Developer]/[Building Developer] shall co-operate with each other with respect to their obligations under this Clause 8.1.
   3. Any Party may notify any relevant enforcing authority of the terms of this Agreement. The Parties must do all necessary things and execute any further documents as such authority may require in order to give effect to this Clause 8.
   4. **[Plot Developer]/[Building Developer] Responsibility** 
      1. Notwithstanding any covenant, provision or obligation contained in this Agreement or elsewhere, but subject always to Clause 8.5.1, the Parties agree that:
         1. the [Plot Developer]/[Building Developer] shall be solely responsible for and shall undertake (at its sole cost) any remediation of the Environment in relation to the [Plot Development]/ [Building] (including, for the avoidance of doubt, the land which is subject to each Lease [and Easement] but save where ESCO is in breach of Clause 8.5; and
         2. ESCO shall have no liability in relation to any Hazardous Substances present in, on, at, under, around or migrating to or from the [Plot Development]/ [Building] (including, for the avoidance of doubt, the Substation[s] and the land which is subject to each Lease [and Easement] and the [Plot Developer]/[Building Developer] agrees to indemnify and hold harmless ESCO against all Losses related to, or arising out of, such Hazardous Substances (including, without limitation, liabilities arising out of claims by any third party or action taken by any Relevant Authority or remedial works taken to avoid such formal claim or action) and including in respect of the removal, cleaning and remediation by ESCO (or on ESCO's behalf) of any soil, building material, structure and the Environment that is contaminated by said Hazardous Substances.
      2. The [Plot Developer]/[Building Developer] agrees that in undertaking the [Plot Developer]/[Building Developer] Works and any remediation works required by Clause 8.4.1, the [Plot Developer]/[Building Developer] shall carry out such works or procure that they are carried out in accordance with Good Industry Practice and to the standard required by all relevant Environmental Laws and Environmental Permits.
      3. ESCO shall, as soon as reasonably practicable after becoming aware, advise the [Plot Developer]/[Building Developer] of any relevant Environmental Laws and Environmental Permits having been breached as a result of the [Plot Developer]/[Building Developer] Works or any remediation works undertaken by the [Plot Developer]/[Building Developer] pursuant to Clause 8.4.2 or in relation to any [Plot Developer]/[Building Developer] Works and the [Plot Developer]/[Building Developer] will remedy the breach (at its sole cost) and shall be liable for, indemnify and hold harmless ESCO against any Losses arising from the [Plot Developer]/[Building Developer]'s breach.

ESCO Responsibility

* + 1. The [Plot Developer]/[Building Developer] shall, as soon as reasonably practicable after becoming aware, advise ESCO of any relevant Environmental Laws and Environmental Permits having been breached as a result of the ESCO Works, the Heat Supply, [the Electricity Supply] [or ESCO Services] and ESCO will, remedy the breach (at its sole cost) and shall be liable for, indemnify and hold harmless ESCO against any Losses arising from the [Plot Developer]/[Building Developer]'s breach.
    2. ESCO shall be responsible for any Hazardous Substances created by ESCO and brought into the Substation[s] [and/or the land which is subject to each Easement] which subsequently is deposited or spilled on and/or released or escapes into the Environment at and around the Energy System the presence of which is caused by, or attributable to the acts or omissions of, ESCO and/or any ESCO Affiliate ("**ESCO Contamination**"), and ESCO agrees to indemnify and hold harmless the [Plot Developer]/[Building Developer] against all Losses related to, or arising out of, damage to the Environment caused by such ESCO Contamination (including, without limitation, liabilities arising out of any claims by a third party, action taken by any Relevant Authority and/or remedial works undertaken by the [Plot Developer]/[Building Developer] to avoid further damage to the Environment and/or to remove any Hazardous Substances).

1. [Connection arrangements[[69]](#footnote-70)
   1. [Subject to Clause 9.3, as a condition of this Agreement, the Plot Developer shall not sell, transfer, lease or otherwise dispose of a Commercial Building to a Commercial Customer, without first procuring that a Connection and Supply Agreement is entered into by such Commercial Customer[[70]](#footnote-71).
   2. ESCO shall be required on request by the Plot Developer to enter into a Connection and Supply Agreement with a Commercial Customer.
   3. The Plot Developer shall not be required to comply with Clause 9.1 where:
      1. the restriction is deemed unlawful;
      2. a Plot Developer Warning Notice has been served (provided that where a Final Termination Notice is not subsequently served within 3 months of service of such Developer Warning Notice, the Plot Developer shall be forthwith required to comply with Clause 9.1);
      3. [the Commercial Building is one which shall consume less than [ ] kWth.]; and
      4. the Parties agree in writing that it is not appropriate to require a Connection.
   4. The Plot Developer shall in respect of a Plot Connection:
      1. enter into a Registered Provider Heat Supply Agreement with ESCO where the Plot Developer is a Registered Provider in respect of Residential Units within the relevant Plot Development; or
      2. procure that where there is a third party Registered Provider in respect of Residential Units within the relevant Plot, such other Registered Provider enters into a Registered Provider Heat Supply Agreement with ESCO; or
      3. [enter into a [Plot] Developer Void Heat Supply Agreement with ESCO where the Plot Developer is a Landlord of Residential Units within the relevant Plot which are let under leases or tenancy agreements with terms of less than [seven (7)] years][[71]](#footnote-72).
2. Supply arrangements
   1. The [Plot Developer]/[Building Developer] shall:
      1. [in respect of Residential Units where a Registered Provider Heat Supply Agreement or a Plot Developer Heat Supply Agreement is not in place] use all reasonable endeavours to ensure that on first sale and/or letting Customers of all Units within the [relevant Plot Development]/[Building], are provided with a relevant form of Welcome Pack and the relevant form of Customer Supply Agreement prior to exchange of contracts in respect of the sale, transfer or disposal of the freehold interest or leasehold interest in the Unit by the [Plot Developer]/[Building Developer] to the prospective Customer; and
      2. following any exchange of contracts in respect of the sale, transfer or disposal of the freehold interest or leasehold interest in any Unit by the [Plot Developer]/[Building Developer], the [Plot Developer]/[Building Developer] shall notify ESCO of the same and, in respect of each Unit, provide to ESCO:
         1. the prospective Customer's name and contact details;
         2. the building number, door number, postcode and tenure for the Unit;
         3. the reference number for the Heat Meter at the Unit (if applicable);
         4. the meter reading for the Heat Meter at the Unit (if applicable); and

use all reasonable endeavours to procure that the Customer enters into a Customer Supply Agreement with ESCO.

* 1. [ESCO shall offer to enter into a Customer Supply Agreement (in the relevant form) with each Customer from time to time].
  2. Subject to Clause 10.4 below, the [Plot Developer]/[Building Developer] shall include within the leases of [Residential Units or ]Commercial Units that it is a party to within the [Plot Development]/[Building], appropriate provisions so as to:
     1. impose an obligation on the relevant tenant or lessee to allow ESCO access to the [relevant Residential Unit or] Commercial Unit for the purpose of carrying out its obligations under this Agreement to the extent that it is not reasonably possible for ESCO to perform such obligations without access to such premises subject toESCO agreeing to make good any damage caused by such access to the reasonable satisfaction of the [Plot Developer]/[Building Developer] or relevant tenant or lessee;
     2. to the extent permitted by law and subject to the exceptions set out in Clause 3.3 of this Agreement as applicable, impose an obligation on the relevant tenant or lessee not to install or use any form of gas supply, any gas-fired appliance (except appliances used for any purpose other than the generation or conveyance of heating and/or hot water), any boilers, any electric storage heaters, any heat microgeneration equipment (including solar thermal panels and/or ground, water or air source heat pumps) or any other alternative central heating or hot water system for the supply of space and/or water heating to the Unit while a Heat Supply for such purpose is being (or is intended to be) made available to that Unit using the Energy System; and
     3. [allow ESCO to enforce the obligations in Clause 10.3.1 under the Contracts (Rights of Third Parties) Act 1999].
  3. The obligations referred to in Clause 10.3 above may be expressed in specific or general language provided that the substantive effect of the obligations is the same.]
  4. Subject to Clause 10.6, ESCO shall provide the [ESCO Services], the Heat Supply [and the Electricity Supply] to the [Plot Developer and all relevant Customers on the Plot Development (as applicable)]/ [Building Developer] subject to, and in accordance with, the provisions of this Agreement [and the relevant Customer Supply Agreements] and in accordance with Good Industry Practice and all Applicable Law (including the Heat Network (Metering and Billing) Regulations 2014).
  5. The Parties acknowledge and agree that:
     1. ESCO has the right to provide the [ESCO Services,] the Heat Supply [and the Electricity Supply];
     2. the obligation on ESCO to provide the [ESCO Services,] the Heat Supply [and the Electricity Supply] to [the Building Developer] [the Plot Developer] [and relevant Customers (as applicable)] is subject to:
        1. [there being in effect a Customer Supply Agreement entered into between ESCO and the Customer or the Plot Developer (as applicable), which, for the avoidance of doubt, shall exclude any Customer Supply Agreement which has been terminated or ceases to have effect in accordance with the terms of such agreement];
        2. the installation, design, construction, completion, commissioning [and/or Acceptance] [and/or Adoption] of all parts of the Energy System relevant to the provision of the Heat Supply, [the Electricity Supply], [and the ESCO Services] to the [Building Developer]/ [Customer, at the relevant Unit] [or the Plot Developer (as applicable) in accordance with the requirements of the Technical Specifications]; and][[72]](#footnote-73)
        3. the completion and commissioning of the relevant [Tertiary Heating System at the relevant Unit (as applicable)]/ [Building Heating System] in accordance with the requirements of the Technical Specifications and/or ESCO’s reasonable requirements.

1. [Heat charges to customers
   1. ESCO shall ensure that:
      1. [the Heat Charges payable by Residential Customers comply with the Residential Comparator;] *[Drafting Note: Alternative comparators to show more cost reflective pricing for district heating schemes may be considered.]*
      2. [the Heat Charges payable by Commercial Customers comply with the Commercial Comparator, unless otherwise agreed between any Commercial Customer and ESCO]; *[Drafting Note: Alternative comparators to show more cost reflective pricing for district heating schemes may be considered.]*and
      3. [the service levels and service credits set out in the forms of Customer Supply Agreement in Schedule 10 (Customer Supply Agreement) are updated from time to time to ensure that they are no less favourable to Customers than the service levels and service credits set out in the Heat Trust Scheme Rules (<https://www.heattrust.org/the-scheme-rules>) (in respect of all Customers, [including those Commercial Customers not covered by such rules)][[73]](#footnote-74).] [*Drafting Note: ESCo will need to ensure that there is a system in place to monitor Heat Trust Scheme Rules and to amend customer supply agreements (within a reasonable period) following changes to the Heat Trust Scheme Rules.]*
2. [Charging and invoicing[[74]](#footnote-75)
   1. [Due Date

Payments shall be due on the dates or within the time periods stated in this Agreement or, if not stated, shall be due on the date 30 days after agreement or determination of the sum payable.

* 1. Business Days

If any payment to be made by a Party to the other Party would become due on a day which is not a Business Day, it shall be paid on the next Business Day.

* 1. Interest
     1. If either Party fails to pay any amount payable by it under this Agreement to the other Party on its due date, interest shall accrue on the overdue amount:-
        1. daily;
        2. from the due date until the date of payment; and
        3. at three per cent per annum above the Base Rate.
     2. Any interest accruing under this Clause 12 shall be:-
        1. compounded with the overdue amount on the last day of each month; and
        2. immediately payable by the Party on demand.
  2. Interest on disputed amounts

In the event that any payment is the subject of a bona fide unresolved Dispute that has been notified by one Party to the other Party in accordance with Clause 28 (Dispute Resolution Procedure) then Clauses 12.3.1 and 12.3.2 shall only apply to the disputed amount finally resolved to be due and payable.

[Scheme for Construction Contracts

If it is determined that this Agreement is one to which the Housing Grants Construction and Regeneration Act 1996 applies, the provisions of this Clause 12 shall be supplemented and/or substituted (as appropriate) by the relevant provisions of the Scheme for Construction Contracts (England and Wales) Regulations (as amended).]]

1. [Metering and billing[[75]](#footnote-76)
   1. **Charges and billing** 
      1. The Charges as at the date of this Agreement are set out under Schedule 11 (Customer Charges) and shall be payable by the Building Developer in accordance with the terms of this Clause 13.
      2. The Charges shall be reviewed annually and shall be adjusted on [1 April][[76]](#footnote-77) in line with inflation and in accordance with Schedule 11 (Customer Charges).
      3. ESCO shall issue an Energy Bill in respect of each Billing Period on [or after] the invoice date, setting out:
         1. the Building to which the Energy Bill is applicable;
         2. the Billing Period to which the Energy Bill relates;
         3. any Connection Charge payable;
         4. in relation to the delivery of the Heat Supply, any Capacity Charge payable;
         5. in relation to the delivery of the Heat Supply, the Standing Charge payable[[77]](#footnote-78);
         6. in relation to the delivery of the Heat Supply, the Variable Charge payable, based on:
            1. the amount of Heat Supply delivered to the Connection Point in the previous billing period, as measured by the Heat Meter or based on a reasonable estimate pursuant to Clause 13.3.4; and
            2. the price per kWh of Heat Supply;
         7. [in relation to the delivery of the Electricity Supply, the Electricity Charges];
         8. any applicable VAT and any other taxes;
         9. any amounts to recover underpayments or overdue charges in accordance with Clause 13.4 (Failure to make payment);
         10. any amounts refunded or any Service Failure Payment paid following a Service Failure, set out in Schedule 15 (Key Performance Indicators);
         11. the amount of any adjustment following a disputed Energy Bill;
         12. the balance of the Building Developer’s account; and
         13. [ ][[78]](#footnote-79) .
      4. Where the Energy Bill is based on an estimate of the Heat Supply [or Electricity Supply] delivered, ESCO shall make any necessary adjustments after the next accurate Heat Meter [or Electricity Meter (as relevant)] reading and shall debit or credit the Energy Bill for the next Billing Period.
      5. Where there has been undercharging for the Heat Supply [or Electricity Supply] delivered, ESCO may issue a Back-bill or reconcile the undercharging by applying a debit on the Building Developer’s account. ESCO shall not be entitled to issue a Back-bill or reconcile the undercharging where more than a year has passed since the Billing Period in which the undercharging occurred.
      6. The Building Developer shall notify ESCO as soon as reasonably practicable (and in any event within [five (5)] business days) if the Building Developer disputes an estimated Energy Bill.
   2. **Payment**
      1. The Building Developer must pay the amount set out in the Energy Bill within [twenty one (21)] days from the date of the Energy Bill (for the purposes of this Clause 13, the “**Due Date**”), [provided that][[79]](#footnote-80):
         1. where the Building Developer’s consumption of the Heat Supply has been less than the Minimum Annual Heat Take, the Building Developer shall be required to pay for the Minimum Annual Heat Take (less any volume of Heat Supply in respect of which ESCO has been required to pay a Service Failure Payment); [and
         2. [where the Building Developer’s consumption of the Electricity Supply has been less than the Minimum Annual Electricity Take, the Building Developer shall be required to pay for the Minimum Annual Electricity Take (less any volume of Electricity Supply in respect of which ESCO has been required to pay a Service Failure Payment).]
      2. If the Building Developer wishes to dispute any part of an Energy Bill in accordance with this Agreement then it must do so within [fourteen (14)] days of the date of the Energy Bill. The Building Developer must pay any undisputed amount by the Due Date. On resolution of the dispute, within [fourteen (14)] days of the resolution of the dispute, as applicable, either the Building Developer shall pay any amount withheld determined to be owing by it or ESCO shall repay to the Building Developer any overpayment it is agreed or determined to have received.
      3. The Building Developer shall be responsible for paying all Heat Charges [and Electricity Charges] due under this Agreement until:
         1. termination of this Agreement pursuant to Clause 26 (Default Cure and Termination); or
         2. suspension of this Agreement pursuant to Clause 13.4 (Failure to make payment).
      4. Where the Agreement has not been terminated, responsibility for paying the Heat Charges [and/or Electricity Charges] shall continue even if:
         1. Heat Supply [or Electricity Supply] has been consumed at the Building without the Building Developer’s permission;
         2. the Building Developer does not consume any Heat Supply (in which case the Variable Charge will be zero, but the Standing Charge shall be payable)); and
         3. [the Building Developer does not consume any Electricity Supply (in which case [ ] will be payable)].[[80]](#footnote-81)
      5. The Building Developer shall remain liable to pay the Heat Charges [or Electricity Charges] where the Heat Supply to the Connection Point [or the Electricity supply to the Electricity Delivery Point] is interrupted or unavailable. If the interruption or unavailability is due to a Service Failure, the Building Developer shall be entitled to a Service Failure Payments as set out under Schedule 15 (Key Performance Indicators).
      6. If the Building Developer fails to pay the Heat Charges [and/or Electricity Charges] by the Due Date, ESCO reserves the right to charge interest at a rate of [•] per annum.
   3. **Meter readings**
      1. ESCO undertakes to accurately measure consumption of the Heat Supply at the Heat Meter [and the Electricity Supply at the Electricity Meter]. The Building Developer shall accept as accurate all meter readings taken or estimated by ESCO unless it reasonably considers there to be a material error in such readings or estimations or that the Heat Meter [or Electricity Meter] is defective.
      2. The Energy Bill shall show the amount of Heat Supply delivered to the Connection Point, which shall be recorded by the Heat Meter and the automated meter-reading system, [and the Electricity Supply delivered to the Electricity Delivery Point which shall be recorded by the Electricity Meter and the automated meter-reading system (as relevant)]. Where possible, ESCO shall read the Heat Meter [and Electricity Meter] remotely every month without requiring access to the Building. If ESCO is unable to read the Heat Meter [or Electricity Meter] remotely, ESCO shall, where possible, provide the Building Developer with the means to provide ESCO with reading(s).
      3. If ESCO has not been able to read the Building Developer’s Heat Meter [or Electricity Meter] because of a fault in ESCO’s automated meter-reading system, the Building Developer has not been able to give ESCO the Building Developer’s own readings, or ESCO has reason to believe that the Building Developer’s Heat Meter [or Electricity Meter] is not reading correctly, ESCO may send the Building Developer an Energy Bill and the Building Developer must pay ESCO on the basis of ESCO’s reasonable estimate of the amount of Heat Supply [or Electricity Supply (as relevant)] used.
      4. ESCO’s reasonable estimates of the Heat Supply will be based on the current Capacity Charge, Variable Charge and Standing Charge and either:
         1. the Building Developer’s pattern of energy use in the past; or
         2. the Heat Supply that ESCO estimates that the Building Developer is likely to use given the size of the Building and comparison readings from other similar properties.
      5. [ESCO’s reasonable estimates of the Electricity Supply will be based on the current Electricity Charge and either:
         1. the Building Developer’s pattern of energy use in the past; or
         2. the Electricity Supply that ESCO estimates that the Building Developer is likely to use given the size of the Building and comparison readings from other similar properties.]
      6. If the Building Developer believes that the Heat Meter [or Electricity Meter] is faulty, the Building Developer must notify ESCO as soon as possible in order that ESCO can arrange a check as set out under Clause 13.3 (Meter readings).
      7. If the Building Developer requests ESCO check the Heat Meter [or Electricity Meter (as relevant)] and ESCO finds that it is accurate, the Building Developer may be required to pay ESCO’s reasonable costs of checking the Heat Meter [or Electricity Meter (as relevant)]. The Building Developer shall not be required to pay any costs connected with an inspection of a Heat Meter [or Electricity Meter (as relevant)] if the Heat Meter [or Electricity Meter (as relevant)] is shown to be inaccurate (to greater than +/- [5%]) or not functioning correctly.
      8. ESCO may also ask to check the Heat Meter [or electricity meter (as relevant)] at any time if ESCO believes that it is not accurate. The Building Developer will not be required to pay any costs of checking if ESCO requests to check the Heat Meter [or Electricity Meter (as relevant) unless it has damaged the Heat Meter].
      9. In the event that the Heat Meter [or Electricity Meter (as relevant)] records errors, ESCO shall recalibrate, repair or replace the Heat Meter [or Electricity Meter (as relevant)] promptly. ESCO shall be responsible for the cost of such replacement or repair unless the fault is due to any acts or omissions of the Building Developer (or its officers, employees, agents or contractors) in which event the Building Developer shall pay ESCO the reasonable costs of the repair or replacement of the Heat Meter [or Electricity Meter (as relevant)].
      10. If, following any inspection, the Heat Meter [or Electricity Meter (as relevant)] is found to be defective or a Heat Meter [or Electricity Meter (as relevant)] reading is shown to be inaccurate, ESCO shall adjust the subsequent Energy Bill to account for any inaccurate Heat Meter [or Electricity Meter (as relevant)] reading.
   4. **Failure to make payment**
      1. If the Building Developer fails to pay the Energy Bill by the Due Date, ESCO may undertake any of the following actions:
         1. ask the Building Developer to pay by another method;
         2. charge the Building Developer interest on the overdue amount at a rate of [•];
         3. request a refundable deposit equivalent to ESCO’s reasonable estimate of the Heat Charges [and/or Electricity Charges] for a period of [three (3) calendar months];
         4. request a guarantee for the Building Developer’s payments; *[Drafting Note: Parties to consider form of payment security in the context of their particular circumstances.]*
         5. take court action to recover the debt and ESCO’s costs;
         6. suspend or disconnect the Building Developer’s Heat Supply [and/or Electricity Supply].
      2. [Before ESCO suspends or disconnects the Building Developer’s Heat Supply [and/or Electricity Supply], ESCO shall:
         1. send the Building Developer at least two reminder letters; and
         2. use reasonable endeavours to contact the Building Developer by phone at least twice][[81]](#footnote-82).
      3. ESCO may charge the Building Developer a debt-processing charge to cover ESCO’s reasonable costs of sending the reminder letters and taking action to collect the overdue Heat Charges [and/or Electricity Charges].
   5. **Reconnecting the Building Developer’s supply** 
      1. Where ESCO has suspended or disconnected the Building Developer’s Heat Supply [and/or Electricity Supply] for non-payment, ESCO shall within [ • (• )] working hours’ of a request from the Building Developer make the Heat Supply [and/or Electricity Supply] available to the Building Developer if the Building Developer has, at the time of the request, paid to ESCO (and ESCO has received):
         1. all charges and amounts the Building Developer owes to ESCO including the reconnection charge and debt-processing charge, in full; and
         2. a refundable deposit equal to ESCO’s reasonable estimate of [three (3) months’] Heat Charges [and/or Electricity Charges].
      2. If the Building Developer pays ESCO a deposit, ESCO shall return that deposit once the Building Developer has kept the Building Developer’s payments up to date, in full, for [twelve (12)] months.
2. Compensation And Relief events[[82]](#footnote-83)
   1. Subject to Clause 14.5, to the extent that either Party it is impaired or prevented from performing any of its obligations under this Agreement due to a Compensation Event, such affected Party (“**the claiming party**”) shall be entitled to:
      1. relief from its obligations under this Agreement;
      2. a fair and reasonable extension of time;
      3. payment of reasonable additional costs incurred; and
      4. in respect of delays to Service Readiness of the [Plot Development]/ [Building] such that the relevant Connection Date cannot be achieved, Delay Damages; *[Drafting Note: Parties to consider what delay damages will be payable given their particular circumstances.]*

except to the extent caused or contributed to by the affected Party, its agents or contractors.

* 1. To obtain relief from obligations, an extension of time and/or claim compensation and/or claim Delay Damages the claiming Party must:
     1. as soon as practicable, and in any event within [ten (10)] Business Days after it became aware that the Compensation Event has caused or is likely to cause delay to achieving Service Readiness by the relevant Connection Date, breach of an obligation under this Agreement and/or the claiming Party to incur costs, give to the other Party a Notice of its claim for an extension of time to the relevant Connection Date and / or payment of compensation and/or Delay Damages;
     2. within [ten (10)] Business Days of receipt by the other Party of the Notice referred to in clause 14.2.1 above, give full details of the Compensation Event and the extension of time and/or compensation and/or Delay Damages to be claimed; and
     3. demonstrate to the reasonable satisfaction of the other Party that:
        1. the Compensation Event was the direct cause of the claim for relief, compensation and/or any delay in the achievement of the Connection Date; and
        2. the relief, compensation and/or time lost, could not reasonably be expected to be mitigated by the claiming Party acting in accordance with Good Industry Practice.
  2. In the event that the claiming Party has complied with its obligations in clause 14.2 above, then:
     1. in the case of a delay:
        1. the relevant Connection Date(s) shall be postponed by such period of time as shall be reasonable taking into account the effect of the delay;
        2. Delay Damages shall be payable from the date of the relevant Connection Date until Service Readiness of the [Plot Development]/ [Building] has been achieved, provided that ESCO shall have no liability to pay [Plot Developer]/ [Building Developer] Delay Damages where ESCO is able to provide Satisfactory Alternative Temporary Heating services;
        3. provided that where the delay is longer than [ ] months, the delay shall be considered to be a Project Variation [and the Change Control Procedure shall apply]; and
        4. the Parties acknowledge and agree that subject to Clause 14.3.1(c) above and Clause 26 (Default, Cure and Termination) this Clause 14 shall be the claiming Party’s sole and exclusive remedy under this Agreement or as a matter of Applicable Law in connection with a failure by either Party to achieve Service Readiness by the Connection Date;
     2. in the case of an additional cost being incurred or Delay Damages being claimed by the claiming Party, the other Party shall compensate the claiming Party within [30] days of receipt of a written demand from the claiming Party supported by all relevant information; and
     3. the other Party shall give the claiming Party relief from its obligations under this Agreement.
  3. In the event that information is provided after the dates referred to in clause 14.2 above, then the claiming Party shall not be entitled to any relief, extension of time, compensation or Delay Damages in respect of the period for which the information is delayed.
  4. [Other than in respect of a delay to a Connection Date, during any period of an event falling under Clause 14.1 in which the Heat Supply is affected, ESCO shall comply with its obligations to Customers in relation to the Heat Supply in accordance with the relevant Customer Supply Agreement].
  5. Each of the Parties shall use reasonable efforts to mitigate the impact of a Compensation Event and to remedy its inability to perform.
  6. If, after any payment of compensation and/or Delay Damages pursuant to Clause 14.3.2 it is determined pursuant to Clause 28 (Dispute Resolution) that the claiming Party was not entitled to such compensation and/or Delay Damages, then:
     1. the compensation and/or Delay Damages previously paid or allowed to which the claiming Party was not entitled shall be refunded or re-credited to the other Party; and
     2. interest shall accrue on such amount on a daily basis at [three per cent (3%)] from the date when such payment was paid or allowed (as appropriate).

1. [Intellectual Property[[83]](#footnote-84)
   1. Subject to Clause 16 (Grant of licences):
      1. The [Plot Developer]/[Building Developer] shall not acquire any right, title or interest in or to the IPRs of ESCO or its licensors, including ESCO’s Background IPRs; and
      2. ESCO shall not acquire any right, title or interest in or to the IPRs of the [Plot Developer]/[Building Developer] or its licensors, including the [Plot Developer]/[Building Developer]’s Background IPRs.
   2. Where either Party acquires, by operation of law, title to IPRs of the other referred to in clause 15.1, and this acquisition is inconsistent with the allocation of title set out in that clause 15.1, 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. The [Plot Developer]/[Building Developer] grants to ESCO a royalty-free, non-exclusive, non-transferable licence during the Term to use the [Plot Developer]/[Building Developer]’s Data, including the right to grant sub-licences to its subcontractors, provided that any relevant subcontractor has entered into a confidentiality undertaking with ESCO in a form reasonably acceptable to the [Plot Developer]/[Building Developer].
   2. ESCO grants to the [Plot Developer]/[Building Developer] a royalty-free, non-exclusive, non-transferable licence during the Term to use ESCO’s Data, including the right to grant sub-licences to its subcontractors, provided that any relevant subcontractor has entered into a confidentiality undertaking with the [Plot Developer]/[Building Developer] in a form reasonably acceptable to ESCO.
   3. The licences granted in clause 16.1 and clause 16.2 are granted solely to the extent necessary for the performance of the Works or ESCO Services in accordance with this Agreement. Neither Party shall use the licensed materials for any other purpose.
   4. Neither Party shall have any right to use any of the other Party’s names, logos or trade marks on any of its products or services without the other Party’s prior written consent.
   5. In the event of the termination or expiry of this Agreement, the licence referred to in clause 16.1 and any licence granted in accordance with clause 16.4 shall terminate automatically and ESCO shall deliver to the [Plot Developer]/[Building Developer] all material licensed to ESCO pursuant to clause 16.1 or clause 16.4 in its possession or control. However, the licences granted pursuant to clause 16.2 shall continue in full force and effect].
3. Data processing
   1. The Parties shall at all times handle and use all Personal Data they acquire under or in connection with this Agreement or any Customer Supply Agreement which relates to any individual in accordance with all applicable Data Protection Legislation.
   2. Without prejudice to Clause 17.1, if any Personal Data is transferred from one Party to the other in connection with performance of this Agreement then each of the Parties shall comply with Schedule 12 (Data processing), which sets out in further detail the legal obligations of the parties in relation to such a transfer under Data Protection Legislation, taking into account related guidance from regulators, as at the date of this Agreement.
   3. ESCO shall update the Data Protection Protocol from time to time to reflect any relevant Change in Law as it relates to applicable Data Protection Legislation, taking into account related guidance from regulators.
4. Confidentiality
   1. **Duty of confidentiality**

Save as provided by Clause 18.2 each Party shall:

* + 1. keep confidential all Confidential Information it receives or obtains; and
    2. exercise in respect of the Confidential Information the same controls as that Party employs to protect its own Confidential Information.
  1. **Permitted Disclosure**

A Party (the **Disclosing Party**) may disclose or permit the disclosure of Confidential Information:

* + 1. to its employees to the extent that it is reasonably necessary and to any person (including insurance, legal, technical and financial advisers, auditors and accountants) engaged in providing any goods, works or services to the Disclosing Party in connection with and for the purposes of this Agreement;
    2. in the case of ESCO to any replacement heat supplier or any entity engaged or which may be engaged on or following the termination of this contract to perform any of the obligations of the heat supplier under this contract;
    3. to the extent that the confidential information:
       1. has become publicly available or generally known to the public at the time of such disclosure otherwise than as a result of a breach of this Clause 18.
       2. was already in the unrestricted possession of the Disclosing Party prior to receiving or obtaining such confidential information as a result of entering into or performing this contract; and
       3. was lawfully received or obtained by the Disclosing Party from any person without restriction on its use or disclosure;
    4. to enable a determination to be made under Clause 28 (Dispute Resolution Procedure);
    5. when required to do so in any jurisdiction:
       1. by Applicable Law;
       2. by or pursuant to the rules or any order of any court, tribunal or agency of competent jurisdiction; or
       3. by any securities exchange, Recognised Investment Exchange or regulatory or governmental body having jurisdiction over it wherever situated;
    6. to any regulatory or governmental body (including any Regulatory Body) in any jurisdiction and having jurisdiction over:
       1. the Disclosing Party; or
       2. the obtaining, monitoring and/or enforcement of any Authorisation;
    7. to enable any registration or recording of any Authorisation;
    8. to a relevant tax authority in any jurisdiction to the extent required for the proper management of the taxation affairs of the Disclosing Party;
    9. to insurers for the purpose of obtaining any insurances; and
    10. if such disclosure is expressly permitted by some other provision of this Agreement or if the other Party has given prior written approval to the disclosure (such approval not to be unreasonably withheld or delayed).
  1. **Obligations preserved**
     1. Subject to Clause 18.3.2 and Clause 18.4 if a Party is required to disclose Confidential Information in a manner permitted by Clause 18.2.2, or Clause 18.2.9 then it shall:
        1. inform the person to whom Confidential Information is to be disclosed of the restrictions contained in this Agreement; and
        2. ensure that such person shall observe such restrictions notwithstanding that such person is not Party to this Agreement.
     2. For the avoidance of doubt, a Party is deemed to have satisfied its obligation in Clause 18.3.1(b) if, prior to the disclosure of the Confidential Information, it enters into a contract with the person referred to in Clause 18.3.1(b) which contains an equivalent confidentiality arrangement to this Clause 18.
  2. **Consultation**
     1. If a Party is required to disclose Confidential Information in a manner permitted by Clause 18.2.5, Clause 18.2.6, or Clause 18.2.8, it shall insofar as reasonably practicable:
        1. provide the other Party with advance notice of the requirement and a copy of the information to be disclosed; and
        2. permit the other Party to make representations or objections in relation to it and take into account such reasonable representations and objections that the other Party shall make.
  3. **Exploitation of information**

No Party shall make use of this Agreement or any information (including Confidential Information) issued or provided by or on behalf of either Party in connection with this Agreement otherwise than for the purposes of this Agreement, except with the written consent of the other Party.

* 1. **Continuance of obligations**

The obligations in this Clause 18 shall continue to apply after termination of this Agreement.

* 1. **Return or destruction of confidential information**

On termination of this Agreement for any reason each Party shall, to the extent requested by the other Party who provided them and without retaining copies, destroy all documents or other records containing confidential information or return them to the other Party.

* 1. **Enforcement rights of parties regarding confidential information**

Each Party accepts and agrees that any Confidential Information received or obtained by that Party as a result of entering into or performing this contract is, by its nature, valuable proprietary commercial information, the misuse of or unauthorised disclosure of which would be likely to cause considerable and uncompensatable damage to the Party from whom that information was received or obtained and accordingly the Parties agree that, without prejudice to any other rights or remedies which may be available in respect of any breach of this Agreement that are expressly provided for in this Agreement, each Party will be entitled to relief by way of injunction, including any interim injunction available from any competent court having jurisdiction over its terms.

1. Warranties and representations[[84]](#footnote-85)

Each Party represents and warrants to the other Party as at the date of this Agreement and throughout the term of this Agreement that:-

it is a corporation (which for the purposes of this Clause 19.1 includes a limited liability partnership), duly incorporated and validly existing under the law of its jurisdiction of incorporation;

it has the power to sue and be sued in its own name and to own its assets and carry on its business as that business is being and will be conducted;

the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations;

the entry into and performance by it of, and the transactions contemplated by, this Agreement and the Project Agreements do not and will not conflict with:-

any Applicable Law or Authorisation applicable to it or binding on its assets;

its constitutional documents; or

any agreement or instrument binding upon it or any of its assets;

it has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement, the Project Agreements and the transactions contemplated by each of them;

all Authorisations required or desirable:-

to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Agreement and the Project Agreements;

to make this Agreement and the Project Agreements admissible in evidence in its jurisdiction of incorporation; and

to enable it to carry on its business, trade and ordinary activities;

have been obtained or effected and are in full force and effect;

no claim exists or is being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of that Party, pending or threatened against it or any of its assets directly used in relation to or under the Project Agreements [(other than the Customer Supply Agreements which shall not have been entered into at the date of this Agreement)], which will or might have a material adverse effect on the ability of that Party to perform its obligations under this Agreement or any of the Project Agreements [(other than the Customer Supply Agreements which shall not have been entered into at the date of this Agreement)]; and

no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of that Party, threatened) for its winding‑up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues,

and each Party relies upon the warranties and representations given by the other Party pursuant to this Clause 19.1. *[Drafting Note: Parties to consider amendments required where ESCo does not have full design risk ownership responsibility, and also any amendments that may be required to cater for changes in planning permissions.]*

Subject to Clause 23 (Limitations on Liability) the only claim, right or remedy available to a Party for a breach of warranty or representation expressly set out in this Agreement shall be damages for breach of contract.

Each Party waives all claims, rights and remedies for all representations:-

made to it by any person before entering into this Agreement and each of the Project Agreements; and

not set out in this Agreement or the Project Agreements.

Save as expressly provided in this Agreement and without limiting the operation of Clause 19.6, no warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the performance of the obligations of any Party pursuant to this Agreement is given or assumed by it, and all such warranties, conditions, undertakings and terms are hereby expressly excluded.

Each Party acknowledges that, in deciding to enter into this Agreement and the Project Agreements, it has not relied on any such representation.

All warranties, conditions and terms which would otherwise be implied into this Agreement by reason of it being a contract for the supply of a service within the meaning of section 12 of the Supply of Goods and Services Act 1982 are hereby expressly excluded.

No Party is dealing as a consumer within the meaning of section 12 of the Unfair Contract Terms Act 1977, nor is this Agreement on any Party's written standard terms of business within the meaning of section 3(1) of the Unfair Contract Terms Act 1977.

This Clause 19 does not exclude or restrict liability for fraudulent misrepresentation or fraudulent concealment.

1. Representatives[[85]](#footnote-86)
   1. Appointment of representatives

The [Plot Developer]/[Building Developer] shall appoint up to [two] [Plot Developer]/[Building Developer] Representative(s), the identity of whom shall be subject to the approval of ESCO (such approval not to be unreasonably withheld or delayed) to act in connection with this Agreement.

ESCO shall appoint up to [two] ESCO Representative(s), the identity of whom shall be subject to the prior approval of the [Plot Developer]/[Building Developer] (such approval not to be unreasonably withheld or delayed), to act in connection with this Agreement.

* 1. Appointment of successors to representatives

Without prejudice to Clause 20.1.1, the [Plot Developer]/[Building Developer] may terminate the appointment of the [Plot Developer]/[Building Developer] Representative(s) at any time and shall appoint a successor.

Without prejudice to Clause 20.1.2, ESCO may terminate the appointment of ESCO’s Representative(s) at any time and shall appointment a successor.

The [Plot Developer]/[Building Developer] and ESCO shall at any time be each entitled to appoint a temporary replacement Representative(s) for a period not exceeding twenty (20) Business Days by Notice to the other Party.

Authority of representatives

The [Plot Developer]/[Building Developer] Representative(s) shall have full authority to act on behalf of the [Plot Developer]/[Building Developer] for all purposes arising out of or in connection with this Agreement. ESCO and ESCO’s Representative(s) shall be entitled to treat any act of the [Plot Developer]/[Building Developer] Representative(s) arising out of or in connection with this Agreement as being expressly authorised by the [Plot Developer]/[Building Developer] (save where the [Plot Developer]/[Building Developer] has notified ESCO in writing that such authority has been limited or revoked) and ESCO shall not be required to determine whether any express authority has in fact been given.

ESCO’s Representative(s) shall have full authority to act on behalf of ESCO for all purposes arising out of or in connection with this Agreement. The [Plot Developer]/[Building Developer] and the [Plot Developer]/[Building Developer] Representative(s) shall be entitled to treat any act of ESCO’s Representative(s) arising out of or in connection with this Agreement as being expressly authorised by ESCO (save where ESCO has notified the [Plot Developer]/[Building Developer] in writing that such authority has been limited or revoked) and the [Plot Developer]/[Building Developer] shall not be required to determine whether any express authority has in fact been given.

* 1. Notices

Any notice, information, instructions or public communication given to:-

the [Plot Developer]/[Building Developer] Representative(s) shall be given in writing in accordance with Clause 39 (Notices) and shall be deemed to have been given to the [Plot Developer]/[Building Developer]; and

ESCO’s Representative(s) shall be given in writing in accordance with Clause 39 (Notices) and shall be deemed to have been given to ESCO.

1. Compliance and change in laws
   1. In performing its obligations under this Agreement, each of the Parties shall comply with all Applicable Laws and shall:
      1. inform the other as soon as it becomes aware of any changes in the Applicable Laws that may impact the provision of the Works, [ESCO Services], the Heat Supply [or the Electricity Supply];
      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 Part 2 of Schedule 17 (Change Procedure); and
      5. use all reasonable endeavours to minimise any disruption caused by any changes in Applicable Laws introduced pursuant to this Clause 21.
2. Force majeure
   1. Subject to the remaining provisions of this Clause 22, 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. 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. The affected Party 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.
   5. 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.
   6. The Parties shall endeavour to agree any modifications to this Agreement which may be equitable having regard to the nature of an event or events of Force Majeure.
   7. If, in the circumstances referred to in this Clause 22, the Parties have failed to reach agreement on any modification to this Agreement pursuant to Clause 22.6, and the event of Force Majeure continues for more than [six (6)[[86]](#footnote-87)] calendar months from the date on which the Affected Party served Notice on the other Parties in accordance with Clause 22.2.1 (“**Prolonged Force Majeure**”), and the event of Force Majeure affects all or a substantial part of a Party's material obligations under this Agreement) any Party may, at any time whilst the event of Force Majeure continues, terminate this Agreement by Notice to the other, whereupon the provisions of Clause 27 (Consequences of Termination or Expiry) shall apply.
   8. [During any period of Force Majeure in which the Heat Supply is affected, ESCO shall comply with its obligations to Customers in relation to the Heat Supply in accordance with the relevant Customer Supply Agreement at no additional cost to the Plot Developer].
3. Limitations on liability

**General**

* + 1. Each Party acknowledges and agrees that:
       1. without limiting the operation of Clause 23.1.1(b), the provisions of this Clause 23 are fair and reasonable having regard to the circumstances as at the date hereof and have been subject to full negotiation;
       2. this Agreement satisfies the requirement of reasonableness within the meaning of sections 2(2) and 11 of the Unfair Contract Terms Act 1977; and
       3. the limitations of liability set out in Clauses 23.2 and 23.3 shall, as they apply to a Party, apply to any indemnities given by that Party under this Agreement. *[Drafting Note: The Parties may want to consider whether they want to carve out any indemnities from the liability caps].*
    2. No Party shall be liable to the other under or in connection with this Agreement (including under the Leases and whether in contract, negligence or otherwise) for any Indirect Losses.

Liability of [Plot Developer]/[Building Developer]

* + 1. The [Plot Developer]/[Building Developer]'s liability to ESCO howsoever arising out of or in connection with this Agreement (including under the Leases and whether in contract, negligence or otherwise) shall:
       1. in respect of any Losses recoverable by it under any of the insurances required pursuant to Clause 24 (Insurance), be the amount recovered by the [Plot Developer][Building Developer] under such insurances or that would have been recoverable but for the breach by [Plot Developer][Building Developer] of its obligations under Clause 24 (Insurance); *[Drafting Note: Parties to consider according to the particular circumstances. Parties to consider what losses they would want to claim for and which of these would be recoverable under insurance policies*.*]* or
       2. in the case of ESCO Property Damage, not exceed [ ] ([ ] pounds Sterling) per incident or series of related incidents; or
       3. in the case of all other Losses, not exceed in aggregate [ ] ([ ] pounds Sterling)

(together, the "[**Plot Developer]/[Building Developer] Cap on Liability**").

* + 1. The [Plot Developer]/[Building Developer] may at any time request an increase in the [Plot Developer]/[Building Developer] Cap on Liability by giving written Notice to ESCO of such increase sought, provided that the [Plot Developer]/[Building Developer] Cap on Liability shall only be increased with ESCO’s consent (not to be unreasonably withheld or delayed).

Liability of ESCO

* + 1. ESCO's liability to the [Plot Developer]/[Building Developer] howsoever arising out of or in connection with this Agreement (including under the Leases and whether in contract, negligence or otherwise) shall:
       1. in respect of any Losses recoverable by it under any of the insurances required pursuant to Clause 24 (Insurance), be the amount recovered by ESCo under such insurances or that would have been recoverable but for the breach by ESCo of its obligations under Clause 24 (Insurance); *[Drafting Note: Parties to consider according to the particular circumstances. Parties to consider what losses they would want to claim for and which of these would be recoverable under insurance policies.]*
       2. in the case of [Plot Developer]/[Building Developer] Property Damage, not exceed [ ] ([ ] pounds Sterling) per incident or series of related incidents; or
       3. in the case of all other Losses, not exceed in aggregate [ ] ([ ] pounds Sterling).

(together the "**ESCO Cap on Liability**").

* + 1. ESCO may at any time request an increase in the ESCO Cap on Liability by giving written Notice to the [Plot Developer]/[Building Developer] of such increase sought, provided that the ESCO Cap on Liability shall only be increased with the [Plot Developer]/[Building Developer]'s consent (not to be unreasonably withheld or delayed).

General exclusions

No provision of this Agreement or any of the Project Agreements shall limit the liability of either Party to the other Party in respect of:-

death or personal injury resulting from the negligence of a Party or any of its officers, employees or agents; and

for any Losses resulting from the wilful default of, or fraudulent misrepresentation or fraudulent concealment by, that Party; and

Neither Party shall have any liability to the other Party for any Losses to the extent that the Losses were caused by a breach by that other Party.

To the extent permitted by any Applicable Law, neither Party shall be liable to the other under this Agreement for any Indirect Loss suffered by the other Party, other than to the extent such loss or damage is recoverable:-

as a payment on termination under Clause 27 (Consequences of Termination or Expiry);

[in the form of reasonable interest, break costs or similar charges a Party is bound to pay to a third party under a valid, enforceable and pre‑existing contract with such third party as a direct result of any breach of this Agreement by the other Party];

as loss of profit, loss of use, loss of production, loss of opportunity or loss of contracts (or the opportunity to contract) in respect of any breach by the [Plot Developer]/[Building Developer] of its obligations under Clause 3(Exclusivity); and

as a payment to ESCO following a Project Variation [as determined in accordance with Schedule 17 (Change Procedure)].

[In respect of any Loss suffered by ESCO in respect of which it has a cause of action against the [Plot Developer under any [Registered Provider /[[Plot] Developer Void] Heat Supply Agreement] or Customer under a Customer Supply Agreement, ESCO shall have no separate cause or right of action against the [Plot Developer]/ [Building Developer] under this Agreement in respect of the same Loss].

[The [Plot Developer]/[Building Developer] Cap on Liability shall not limit the liability of the [Plot Developer]/[Building Developer] to ESCO to make payment of the Connection Charges]].

1. Insurance[[87]](#footnote-88)
   1. ESCO shall take out and maintain (or procure the taking out and maintenance of) the insurances described in Schedule 16 (Insurances) and any other insurances as may be required by Applicable Law.
   2. [Plot Developer]/[Building Developer] shall take out and maintain (or procure the taking out and maintenance of) the insurances described in Schedule 16 (Insurances) and any other insurances as may be required by Applicable Law].
   3. No Party to this Agreement shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that Party is an insured, a co‑insured or additional insured person.
   4. Each Party shall provide the Other Party on request:-
      1. reasonable evidence that cover is in place; and
      2. reasonable evidence that the premiums payable under all insurance policies have been paid.
   5. If the [Plot Developer]/[Building Developer] Works in relation to the Substation[s] are damaged or destroyed by any of the Insured Risks before Practical Completion the [Plot Developer]/[Building Developer] shall rebuild, repair or otherwise reinstate the relevant part (which may if appropriate be the whole) of the [Plot Developer]/[Building Developer] Works in a good and substantial manner in accordance with the terms of this Agreement.

Reinstatement

All insurance proceeds received under any policy maintained by ESCO referred to in this Clause 24 insofar as they relate to damage to the Energy System or any part thereof shall be applied to repair, reinstate and replace each part or parts of the Energy System in respect of which the proceeds were received, as soon as is reasonably practicable.

1. **Mitigation and Setoff**

**Mitigation**

If either Party incurs any loss, for any cause arising out of or in relation to this Agreement or any of the Project Agreements, that Party shall take such steps as are reasonable in order to mitigate such loss.

**Right of set‑off**

Whenever any amount shall be agreed or determined to be payable by a Party under this Agreement, such amount may be deducted from or reduced by the amount then due to that Party by the other under this Agreement.

1. Default, Cure and Termination[[88]](#footnote-89)

Notice of Defective Performance

If ESCO is in Major Default of this Agreement, then the [Plot Developer]/[Building Developer], acting reasonably, may issue a Notice specifying that, in its opinion, ESCO's failure to perform its obligations under this Agreement amounts to a Major Default (a "**Notice of Defective Performance**") and giving the reasons for this and, where the position is capable of being rectified, either:-

specifying a reasonable time limit within which ESCO must commence and complete rectification action to rectify the position (the "**ESCO Cure Period**"); or

during the ESCO Works, notifying ESCO that the [Plot Developer]/[Building Developer] shall undertake remedial action itself in accordance with paragraph [ ] Schedule 5Part 2 (Works Obligations), provided the criteria set out therein are satisfied[[89]](#footnote-90); or

[during the ESCO Services, notifying ESCO that the [Plot Developer]/[Building Developer] shall undertake remedial action itself in accordance with Schedule 8 (ESCO Services), provided the criteria set out therein are satisfied.

Right to Serve Warning Notice

If ESCO Termination Grounds occur then ESCO may, in its discretion at any time within three months of the relevant occurrence of ESCO Termination Grounds, give written Notice (an "**ESCO Warning Notice**") to the [Plot Developer]/[Building Developer] of its right to terminate this Agreement.

If [Plot Developer]/[Building Developer] Termination Grounds occur then the [Plot Developer]/[Building Developer] may, in its discretion at any time within three months of the relevant occurrence of [Plot Developer]/[Building Developer] Termination Grounds, give written Notice (a "**[Plot Developer]/[Building Developer] Warning Notice**") to ESCO of its right to terminate this Agreement.

Timing of Service of Final Termination Notice

Notwithstanding service of an ESCO Warning Notice by ESCO or a [Plot Developer]/[Building Developer] Warning Notice by the [Plot Developer]/[Building Developer], this Agreement will only terminate after service of a further notice (a "**Final Termination Notice**") by ESCO (where an ESCO Warning Notice was served) or the [Plot Developer]/[Building Developer] (where a [Plot Developer]/[Building Developer] Warning Notice was served) confirming that it wishes to proceed with termination of this Agreement and subject to the remaining provisions of this Agreement including Clause 27 (Consequences of Termination or Expiry).

Any such Final Termination Notice, if to be served, must be served within three months of service of the ESCO Warning Notice or [Plot Developer]/[Building Developer] Warning Notice (as the case may be).

Following service of a Final Termination Notice, this Agreement shall without prejudice to the provisions of Clause 27 (Consequences of Termination or Expiry) terminate on the relevant date specified therein (which date, other than in the case of an Insolvency Event, shall not be more than [three (3)] months after, the date of the Final Termination Notice) (the “**Termination Date**”).

Exclusive grounds of termination

The [Plot Developer]/[Building Developer] agrees and acknowledges that its right to terminate this Agreement pursuant to the provisions of Clause 26.3 shall be the sole grounds upon which the [Plot Developer]/[Building Developer] may terminate this Agreement due to breach of this Agreement by ESCO.

ESCO agrees and acknowledges that its right to terminate this Agreement pursuant to the provisions of Clause 26.3 shall be the sole grounds upon which ESCO may terminate this Agreement due to breach of this Agreement by the [Plot Developer]/[Building Developer].

* 1. **[Final Inspection[[90]](#footnote-91)**
     1. Between [twenty four (24)] and [twelve (12)] months prior to the Expiry Date or upon service of a Final Termination Notice, the Parties shall instruct an Independent Engineer to conduct an independent inspection of the [Primary Plot Distribution Network], [the Secondary Distribution Network] and [ ][[91]](#footnote-92) (the "**Final Inspection**") to determine whether the [Primary Plot Distribution Network], [the Secondary Distribution Network] and [ ] is capable of continued operation to the standards required under this Agreement for a minimum of [five (5)] years after the Expiry Date or Termination Date (as applicable). The Independent Engineer shall be selected by agreement between the Parties (each acting reasonably) or, failing such agreement within [ten (10)] Business Days, nominated by the President for the time being of the Royal Institution of Chartered Surveyors (or its successor body). The fees applicable to the appointment of the Independent Engineer shall be shared equally between the Plot Developer and ESCO.
     2. The Independent Engineer shall be required:
        1. where the ESCO Services and delivery of the Heat Supply are still being performed, to carry out its inspection in such a manner as to cause as little disruption as reasonably possible to the ESCO Services and the delivery of the Heat Supply, and ESCO shall have no liability to the Plot Developer as a result of any disruption which is caused by such inspection;
        2. to consult with ESCO and the Plot Developer on the results of its inspection before preparing its report; and
        3. to provide a detailed report to ESCO and the Plot Developer within not more than [fifteen (15)] Business Days of the Final Inspection specifying the details of any part of the [Primary Plot Distribution Network], [the Secondary Distribution Network] and [ ] which it believes will need to be rectified or replaced in order to satisfy the requirement in Clause 26.5.1, detailing each piece of equipment to be rectified or replaced, the anticipated cost of rectification or replacement and the timeframe in which rectification or replacement will be required.
     3. In the event that the report provided by the Independent Engineer pursuant to Clause 26.5.2 above specifies that any part of the [Primary Plot Distribution Network], [the Secondary Distribution Network] and [ ] needs to be rectified or replaced in order to satisfy the requirement in Clause 26.5.1:
        1. ESCO shall rectify or replace (at its own cost) any item of equipment specified in the Independent Engineer's report within [three (3)] months of the date of such report; or
        2. at the Plot Developer’s election, the Plot Developer shall undertake or procure such rectification or replacement, and ESCO shall reimburse the Plot Developer for any reasonable and evidenced costs incurred by the Plot Developer in connection with such rectification or replacement (including parts, time and labour) (provided that such payment following service of a Final Termination Notice shall form part of the ESCO Termination Payment).]

1. Consequences of termination or expiry[[92]](#footnote-93)
   1. Termination of this Agreement pursuant to Clause 26 (Default, Cure and Termination) shall have effect in accordance with this Clause 27.
   2. **Termination Payments**
      1. Where this Agreement is terminated for reason of ESCO Termination Grounds, the [Plot Developer]/[Building Developer] shall pay the [Plot Developer]/[Building Developer] Termination Payment to ESCO, subject to the limits on liability set out in Clause 23 (Limitations on Liability).
      2. Where this Agreement is terminated for reason of Developer Termination Grounds, ESCO shall pay to the [Plot Developer]/[Building Developer] the ESCO Termination Payment, subject to the limits on liability set out in Clause 23 (Limitations on Liability).
      3. Without prejudice to Clause 27.5 (Continuing Obligations), where this Agreement is terminated by either Party pursuant to Clause 22.7 (Force Majeure) by reason of prolonged Force Majeure, [neither Party shall have any liability to the other in respect of any Losses arising as a result of the early termination of this Agreement][[93]](#footnote-94).
   3. **Transfer of Infrastructure[[94]](#footnote-95)**
      1. Upon Expiry or Termination, ESCO shall:
         1. transfer to, and there shall vest in, the Plot Developer (or its nominee) such parts of the [Primary Plot Distribution Network], [the Secondary Distribution Network] and [ ] as shall have been Adopted as at the Expiry Date or Termination Date (as applicable). Such transfer shall be made free from all encumbrances, security interests and third party rights but, subject always to Clause 26.5 (Final Inspection) without any warranty, representation or undertaking whatsoever so that the relevant infrastructure shall be transferred "as is" (to the fullest extent permitted by Applicable Law). ESCO shall take such steps and execute such documents as may be necessary to document and perfect such transfer (to the extent that such transfer is not automatic by virtue of termination of the Leases), provided that the Plot Developer shall reimburse ESCO for any costs and expenses (including costs of legal or professional services) reasonably incurred by ESCO in complying with its obligations under this Clause 27.3.1(a) in circumstances where this Agreement is terminated by reason of a ESCO Termination Grounds;
         2. use its reasonable endeavours to procure that each Customer Supply Agreement shall be novated to the Plot Developer (or its nominee) with effect from the Expiry Date or Termination Date (as applicable), and the Plot Developer shall accept, or shall procure that any nominee accepts, such novation;
         3. use all reasonable endeavours to procure that the benefit of any manufacturer's warranties in respect of [Primary Plot Distribution Network], [the Secondary Distribution Network] and [ ] (in respect of which ESCO is the beneficiary) are assigned or otherwise transferred to the Plot Developer (or its nominee); and
         4. as soon as reasonably practicable following the Expiry Date or Termination Date (as applicable), remove from the Plot Development Site all property not acquired by the Plot Developer pursuant to 27.3.1(a). If ESCO does not remove such property within thirty (30) calendar days of any notice received from the Plot Developer requesting it to do so, the Plot Developer may remove and sell any such property and shall hold any proceeds to the credit of ESCO.
      2. Promptly following Expiry or Termination, ESCO shall deliver to the Plot Developer (or its nominee) (as far as not already delivered to the Developer):
         1. "as built" drawings showing all alterations made to any part of the [Primary Plot Distribution Network], [the Secondary Distribution Network] and [ ] since its Adoption;
         2. maintenance, operation and training manuals for the [Primary Plot Distribution Network], [the Secondary Distribution Network] and [ ]; and
         3. such access codes, keys and passwords it has in its possession or control as may reasonably be required for the effective operation of [Primary Plot Distribution Network], [the Secondary Distribution Network] and [ ].
   4. **Termination of Lease[s]**

The Parties acknowledge and agree that the Lease[s] shall terminate on the expiry of any Final Termination Notice served by either Party pursuant to Clause 26.3 (Timing of Service of Final Termination Notice).

* 1. **Continuing Obligations**

Save as otherwise expressly provided in this Agreement the Expiry or Termination of this Agreement shall be without prejudice to:

* + 1. any antecedent or accrued rights, reliefs, remedies or liabilities arising out of or in connection with this Agreement prior to or as at the Expiry Date or Termination Date (as applicable);
    2. any rights of the Parties under any provision of this Agreement which is expressed to survive Termination or which is required to give effect to such termination or the consequences of such Termination;
    3. the continuing rights and obligations of the Parties under Clause 18 (Confidentiality), Clause 23 (Limitations on Liability), Clause 25 (Mitigation and Setoff), this Clause 27 (Consequences of Termination or Expiry), Clause 28 (Dispute Resolution Procedure) Clause 39 (Notices), Clause 41 (Governing Law) and Clause 42 (Jurisdiction).

1. 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 42 (Jurisdiction) which clause shall apply at all times.

**OR**

No Party may commence any court proceedings under Clause 42 (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. ESCO shall not assign, novate, transfer or dispose of any of its rights and/or obligations under the Lease[s] [or Customer Supply Agreements], or this Agreement, other than to an entity that simultaneously accepts a transfer of the whole of ESCO's rights and obligations under the Concession Agreement, including legal and beneficial title to and interest in the Energy System, the Leases [and the Customer Supply Agreements][[95]](#footnote-96).
   2. The [Plot Developer]/[Building Developer] shall not assign, novate, transfer or dispose of any of its rights and/or obligations under the Lease[s] or this Agreement without ESCO’s consent, unless such assignment, novation, transfer or disposal [(a) occurs after the completion and/or sale of all parts of the Plot Development and the obligations of Clause 9 (Connection) and Clause 10 ( Supply Arrangements) have been complied with; and (b)][[96]](#footnote-97) is to an entity that:
      1. simultaneously accepts a transfer of the whole of the [Plot Developer]/[Building Developer]’s rights and obligations under this Agreement, including legal and beneficial title to and interest in the Lease[s] in ESCO's reasonable opinion, has sufficient financial standing or Sufficient Security has been provided; and
      2. demonstrates to ESCO's reasonable satisfaction, has or has procured the technical resources to perform its obligations under this Agreement.
   3. Either Party may subcontract any of its obligations under this Agreement to any third party (including, without limitation, any Affiliate of such Party), provided that such Party shall remain liable in accordance with this Agreement for the acts and omissions of any such subcontractor.
2. Variation
   1. Either Party shall be entitled to request an amendment, change, revision or variation to this Agreement (a “**Project Variation**”) [provided that no variation of this Agreement shall be effective unless it is in writing and signed by both Parties][[97]](#footnote-98) [which shall be subject to the Change Control Procedure.][[98]](#footnote-99)
   2. [Without prejudice to Schedule 17 (Change Procedure), no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).]
3. Waiver

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

1. Rights and remedies

[Except as expressly provided in this Agreement, the **OR** The] rights and remedies of the Parties 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. Publicity
   1. Approval of marketing material
      1. All media releases, public announcements and public disclosures by the Parties in relation to or in connection with this Agreement, the Project Agreements (other than the Customer Supply Agreements) or their subject matter, including but not limited to promotional material (but not including any site specific marketing materials relating specifically to clients, any announcement intended solely for internal distribution or any disclosure required by legal, accounting or regulatory requirements), shall be co‑ordinated with and approved in the first instance by the [Plot Developer]/[Building Developer]’s Representative and ESCO’s Representative prior to release. Such consent shall not be unreasonably withheld or delayed and shall be deemed to have been given by any Party which fails to Notify the other Parties of its refusal to grant approval within 10 Business Days.
      2. For the avoidance of doubt, nothing in this Clause 34 shall restrict the [Plot Developer]/[Building Developer]'s right to publicise or make any announcement about the [Plot Development]/ [Building] provided that no reference is made to this Agreement, the Project Agreements [(other than the Customer Supply Agreements)] or the subject matter of any of those agreements, or to the involvement of ESCO, otherwise than in accordance with Clause 34.1.
   2. [Public relations and press**[[99]](#footnote-100)**

Subject to Clause34.1, the Parties shall comply with their respective obligations in Schedule 13 (Marketing and Public Relations) so as to maximise the marketing opportunities arising in relation to the Energy System].

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 35.1, 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 19.8 (Warranties and Representation)]. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
2. Third party rights
   1. This Agreement does not give rise to any rights under the Contracts (Rights of Third parties) Act 1999 to enforce any terms of this Agreement.
   2. The rights of the Parties to rescind or vary this Agreement are not subject to the consent of any other person.
3. Notices
   1. A notice or communication given to a Party under or in connection with this Agreement shall be in writing and sent to such Party at the address [or email address] given in this Agreement or as otherwise notified in writing to [the **OR** each] other Party.
   2. This clause 39.2 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 39.3.
      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 39.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this clause 39.3, 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 laws 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. : PLANS
2. : Programmes
3. : Technical Specifications
   * 1. : [Primary Plot Distribution Network Specification]

*[Insert detailed specification] OR [Insert outcomes-based approach]*

* + 1. : Substation Specification;

*[Insert detailed specification] OR [Insert outcomes-based approach]*

* + 1. : Secondary Distribution Network Specification;

*[Insert detailed specification] OR [Insert outcomes-based approach]*

* + 1. : [HIU Specification];

*[Insert detailed specification] OR [Insert outcomes-based approach]*

* + 1. : [Commercial Unit Heat Exchanger Specification];

*[Insert detailed specification] OR [Insert outcomes-based approach]*

* + 1. : Heat Meter Specification;

*[Insert detailed specification] OR [Insert outcomes-based approach]*

* + 1. : [Tertiary Heating Systems Technical Specification];

*[Insert detailed specification] OR Insert outcomes-based approach]*

* + 1. : [Electricity Network Specification]

*[Insert detailed specification] OR [Insert outcomes-based approach]*

* + 1. : Drawings

*[Drafting Note: In defining above specifications required, Parties to consider whether to set out detailed specification or to set out an outcomes-based approach – i.e. setting out clearly and exactly what performance results are required.]*

1. : Design & Delivery Process

*[Include appropriate detail of Design & Delivery Process to be undertaken]*

1. : Works Obligations
   * 1. : [Plot Developer]/[Building Developer] Works

*[Include appropriate detail of [Plot Developer]/[Building Developer] Works to be undertaken – for example, construction of the [Secondary Distribution Network] / [Building Heating System]*

* + 1. : ESCO Works

*[Include appropriate detail of ESCO Works to be undertaken, for example, fit out of the Substation, installation of the heat exchangers/ Connection]*

* + 1. : General Works requirements[[100]](#footnote-101)
       1. General

Compliance with Site Rules

This Part 3 shall apply in respect of all ESCO Works provided that if there is a conflict between the terms of this Part 3 and the Site Rules, the Site Rules shall in all cases take precedence.

Use of the Site

ESCO shall:

not use the Site for any purpose other than that of carrying out the ESCO Works and those works contemplated under this Agreement [and any Customer Supply Agreement];

not display advertisements on the Site nor permit advertisements to be displayed without the prior written consent of the [Plot Developer]/[Building Developer];

[arrange deliveries to ensure that there is no need to store excess materials on Site];

provide reasonable details of its health and safety information and policies, quality information, contact information and such other matters as the [Plot Developer]/[Building Developer] may from time to time reasonably request and shall, once such information has been provided, promptly inform the [Plot Developer]/[Building Developer] of any material changes thereto].

* + - 1. Access and Vehicles
         1. ESCO shall:

ensure that vehicles and staff enter the Site as directed by the [Plot Developer]/[Building Developer];

ascertain and comply with all police and traffic regulations and directions, particularly those relating to parking, loading and unloading of vehicles and skips at the Site;

ensure that ESCO’s staff are notified of, and comply with, such regulations and directions; and

arrange deliveries of materials and plant, including the delivery and removal of rubbish skips, to take into account any reasonable restrictions on parking and the passage of vehicles at the Site and obtain approval from the [Plot Developer]/[Building Developer] for the times of deliveries and removal of rubbish, such approval not to be unreasonably withheld or delayed.

* + - 1. Required Equipment

ESCO shall at its own expense provide all its own tools, access equipment and personal protection equipment necessary to perform the ESCO Works (including, without limitation, any works to be performed at height) in conformity with good working practice and ESCO shall use reasonable endeavours to ensure that its staff make full use of such personal protection equipment as the circumstances demand. Where it is part of the Site Rules that such items of equipment are worn, the [Plot Developer]/[Building Developer] shall have the right to require removal from the Site of any person not complying with such rules in this respect.

* + - 1. Lifting Operations
         1. Prior to ESCO undertaking any lifting operation by the use of a machine, it shall produce for inspection by the [Plot Developer]/[Building Developer]:

the appropriate statutory inspection reports and/or certificates in respect of the machine;

evidence that the operator of any crane or lifting machine is trained and competent; and

detailed information on the manner in which the lifting operations are to be carried out and the equipment to be used.

* + - * 1. ESCO shall consult with the [Plot Developer]/[Building Developer] before carrying out any lifting operations with a crane or lifting machine to ensure that:

the ground or place where the crane or lifting machine is standing is suitable and will withstand the weight imposed on it; and

no part of the crane or lifting machine is likely to foul overhead gantries, pipelines, electric lines or adjacent electrical conductors.

* + - 1. Trespass and Nuisance
         1. ESCO shall prevent its staff accessing:

any part of the Site beyond those areas ESCO is entitled to access pursuant to the terms of this Agreement; or

any part of the Site to which access is not reasonably necessary in connection with ESCO Works being performed, without the prior written consent of the [Plot Developer]/[Building Developer]. Only designated entrances and approaches to the area of working shall be used.

* + - * 1. ESCO shall ensure thatthe ESCO Works are conducted in such a way as to, and shall take all necessary precautions to, prevent any disturbance, inconvenience or nuisance to the occupiers and users of the Site and adjoining buildings and to the public in general, consulting with and following the directions of the [Plot Developer]/[Building Developer] in all cases where noisy or otherwise disruptive working may need to be performed. The obligations in this paragraph [5.2] shall not apply to the extent that it is necessary for ESCO to carry out Emergency Works on Site, provided that ESCO shall nevertheless be required to take reasonable steps to minimise any disturbance which may be caused by such Emergency Works.
        2. ESCO shall ensure that all measures to control the emission of dust or fumes produced by its operations on Site required under or by virtue of any enactment or regulation, are strictly complied with.
      1. Noise Control

In accordance with the Control of Noise at Work Regulations 2005, ESCO shall not commence any operation that will result in any person on the Site being exposed to the lower exposure action value (as referred to in such Regulations) or above without first carrying out the risk assessment required by the said Regulations and identifying the measures which need to be taken to meet the requirements of the said Regulations and informing the [Plot Developer]/[Building Developer] in writing accordingly.

* + - 1. Pest Control

ESCO shall ensure that the risk of infestation at the Site is minimised by adequate arrangements for disposal of food waste and other matters attractive to pests which are brought onto the Site by ESCO.

* + - 1. Removal of Rubbish

ESCO shall take all reasonable steps to ensure that the Site is free from all surplus materials, rubbish and debris arising from the execution of the ESCO Works.

* + - 1. Facilities on Site
         1. ESCO shall be responsible for unloading, placing in, removing from store and hoisting all of its own materials including the provision of all necessary unloading and lifting facilities and equipment.
         2. Electric power shall be made available at the Site to ESCO [at no cost to ESCO] with access to such electric power for use as necessary on Site, exclusively to enable ESCO to carry out the ESCO Works and comply with its obligations under this Agreement, including that for use in its own stores if such are provided.
         3. Where necessary for the carrying out of the ESCO Works, [ESCO]/[[the Plot Developer]/[Building Developer]] shall provide and be responsible for the maintenance of temporary electricity supplies from the point of connection to the electricity supply.
         4. Water and drainage shall be made available at the Site to ESCO [at no cost to ESCO] with access to such water and drainage for use as necessary on Site, exclusively to enable ESCO to carry out the ESCO Works and comply with its obligations under this Agreement.
         5. Where necessary for the carrying out of the ESCO Works, [ESCO]/[[the Plot Developer]/[Building Developer]] shall provide and be responsible for the maintenance of temporary water supplies and drainage together with necessary temporary receptacles and plumbing from a source to be agreed with the [Plot Developer]/[Building Developer].
         6. ESCO shall ensure that its staff, at all times whilst employed or engaged on the Site, have identification which clearly identifies them ESCO’s staff.
      2. Surveillance Equipment

ESCO acknowledges and agrees that surveillance equipment is in operation at the Site and that its employees will be subject to monitoring via such equipment while at the Site.

* + - 1. Industrial Relations
         1. The [Plot Developer]/[Building Developer] shall neither encourage nor discourage the participation by ESCO’s staff in an appropriate trade union or staff association.
         2. ESCO shall use reasonable endeavours to ensure, so far as is reasonably practicable and only to the extent that ESCO is able to do so in accordance with the Applicable Law, that if its employees wish to conduct or engage in any industrial relations activities or trade union meetings they do so elsewhere than on the Site and that no trade union or similar posters and/or notices are displayed by its employees anywhere on the Site.
      2. Safety, Health and Welfare
         1. The [Plot Developer]/[Building Developer] shall provide all necessary welfare facilities for ESCO’s staff.
         2. ESCO shall be responsible for its and its staff’s observance of all safety precautions including those required by an Act of Parliament (whether general, local or personal) or any regulation working rules or bye-law of any local authority or body necessary or desirable for the protection of itself, its staff and any other person.
         3. ESCO shall ensure that it and all of its ESCO’s staff are conversant with and abide by all of the [Plot Developer]/[Building Developer]’s safety, fire and security policies and procedures including any requirement to operate permit to work procedures to the extent that these have been provided to ESCO by the [Plot Developer]/[Building Developer] in writing.
         4. ESCO shall ensure that petroleum products and other inflammable or vaporising liquids, gases or solids shall only be used in accordance with the manufacturer’s recommendations and the regulations applicable to the storage and use of these products at the Site and where applicable to the ESCO Works, and shall ensure that when such products are not in use ESCO shall remove them from the area of the ESCO Works to a safe place of storage.
         5. ESCO shall safeguard and take all necessary precautions against damage by fire or explosion when the execution of the ESCO Works may involve the presence of flame or sparks. Where the carrying out of the ESCO Works may involve the presence of heat (other than the Heat), flame or sparks, and the [Plot Developer]/[Building Developer] is operating such a system, ESCO must apply to the [Plot Developer]/[Building Developer] for a ‘Hot Works Permit’ and such permit must be granted before the ‘hot works’ are carried out.
         6. ESCO shall ensure that it and its staff is familiar with all fire precautions, fire alarms, means of escape, emergency evacuation procedures, security requirements and safety procedures in force at the Site, and that fire exits are kept clear at all times, to the extent that such procedures have been notified to ESCO by the [Plot Developer]/[Building Developer] in writing. ESCO shall notify the [Plot Developer]/[Building Developer] immediately of the occurrence of any incident at the Site requiring the help or attention of the police, fire brigade, ambulance or other emergency service and as soon as possible after such incident shall provide the [Plot Developer]/[Building Developer] with full written details of the incident.
         7. Before leaving the Site ESCO shall ensure on each occasion that naked lights and other ignition sources have been extinguished and electrical apparatus where practicable are switched off.
         8. Sufficient, suitable and adequately maintained fire extinguishers shall be provided by the [Plot Developer]/[Building Developer] for use by ESCO in relation to the ESCO Works, to the extent that the need for such fire extinguishers arises directly in connection with the performance of the ESCO Works and not the ordinary operation of the [Plot Development]/ [Building].
         9. All prime movers, transmission machinery and dangerous parts of machinery shall be securely fenced by ESCO in accordance with statutory requirements. ESCO shall make arrangements for compliance with this requirement prior to bringing any such plant or machinery on to the Site.
      3. Existing Service Installations
         1. In this paragraph, ‘Service Installations’ means gas mains, water mains, electricity and control cables and wires, sewers, drains, culverts and ditches and other forms of mains and/or services; anything associated therewith including lagging and protective covering, brackets, posts, fittings, foundations and supporting structures, but excluding the Energy System.
         2. ESCO shall:

not use or interfere with the existing service installations without the prior written consent of the [Plot Developer]/[Building Developer], such consent not to be unreasonably withheld or delayed, and, where applicable, of services and utility authorities and/or private owners, such consent shall not be unreasonably withheld or delayed; and

inform its Staff of the details and locations of existing Service Installations as appropriate and draw their attention to the attendant risks and danger.

* + - * 1. ESCO shall immediately notify the [Plot Developer]/[Building Developer] in writing of any damage caused to public or private services by any action or failure to act of any of its ESCO’s staff or which otherwise comes to its attention.
      1. Other Contractors[[101]](#footnote-102)
         1. ESCO acknowledges that other contractors and/or the [Plot Developer]/[Building Developer]’s staff and/or contractors and/or subcontractors may be working on the Site and ESCO may in such cases be required to work in close co-operation with such persons.
         2. ESCO and the [Plot Developer]/[Building Developer] shall where reasonably possible ensure that all of their staff co-operate and liaise with and do not obstruct any other contractors from time to time carrying out duties on or in the vicinity of the Site.
         3. The [Plot Developer]/[Building Developer] shall take reasonable steps to procure that any other contractors from time to time carrying out duties on or in the vicinity of the Site liaise with and, where reasonably possible, attempt to minimise any disruption that the carrying out of their duties may cause to ESCO in performing its obligations under this Agreement on or in the vicinity of the Site.
    1. : Site Rules

*[insert relevant development Site Rules]*

* + 1. : Form of Collateral Warranty

**[CONTRACTOR]**

‑ and ‑

**[BENEFICIARY]**

**DEED OF COLLATERAL WARRANTY**

‑relating to‑

[   ]

**THIS DEED** is made on 20[ ]

BETWEEN:

1. **[BENEFICIARY]** (Company Number: [ ]), whose registered office is at [ ] (the **"Beneficiary"**, which expression shall include its successors and assigns);
2. **[CONTRACTOR]** [(Company Number: [ ]), whose registered office is at [ ]](the **"Contractor"**)

WHEREAS:

1. The Contractor has entered into an appointment dated *[insert date of the Appointment]* (the **"Appointment"** which term shall include any amendments or revisions thereto from time to time and any new or replacement appointment created by the novation of the Appointment) with *[- insert relevant party]* (Company Number: *[insert the relevant party’s company number]*) whose registered office is at *[insert the relevant party’s registered address]* (the **"Employer")**, which term shall include its permitted assignees or transferees under the Appointment)] for the undertaking of *[state nature of Contractor’s role]* works set out therein (the **"Works"**) in connection with the [ ] district heating scheme (the “**Project**”).
2. The Beneficiary has, as *[insert the nature of the Beneficiary's interest in the Project]*, an interest in the Project.
3. The Contractor has agreed to provide this Deed in favour of the Beneficiary.

**NOW**, in consideration of the payment of Ten Pounds (£10) by the Beneficiary to the Contractor (receipt of which is hereby acknowledged by the Contractor), **THIS DEED WITNESSES** as follows:

* + - 1. INTERPRETATION
         1. Unless the context otherwise requires, terms or phrases which are defined in the [Plot]/[Building] Connection and Supply Agreement shall have the same meanings in this Deed, and a reference to a statute, statutory instrument or other subordinate legislation (**"legislation"**) is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification.
         2. The following definitions shall apply to this Deed:

"**Documents**" means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Works and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Works.

"**Prohibited Materials**" means substances which are either (i)  identified as potentially hazardous in the BCO report entitled ‘Good Practice in the Selection of Construction Materials’ (current edition), other than in accordance with the recommendations as to good practice contained in section 2 of that report; or (ii) generally known at the time of use to be deleterious to health and safety or to durability in the particular circumstances in which they are used.

* + - 1. WARRANTY

The Contractor warrants and undertakes to the Beneficiary that, in respect of the Works and all other obligations performed and to be performed by the Contractor under the Appointment, it has exercised and shall continue to exercise all the reasonable skill, care and diligence to be expected of a prudent, competent and properly qualified district heating provider experienced in the provision of like works for a project of a size, scope, nature and complexity and in a location similar to the Project.

* + - 1. PROHIBITED MATERIALS

Without prejudice to the generality of Clause 2, the Contractor further warrants and undertakes to the Beneficiary that (unless otherwise specifically instructed by the Employer) it has not specified, authorised for use or knowingly caused or allowed to be used, and shall continue not to specify, authorise for use or knowingly cause or allow to be used, in or in connection with the Project any Prohibited Materials.

* + - 1. COPYRIGHT LICENCE
         1. The Contractor with full title guarantee grants to the Beneficiary a royalty‑free, irrevocable, perpetual and non‑exclusive licence to use, adapt and copy the Documents for any purpose whatsoever relating to the Project or including without limitation the construction, completion, maintenance, letting, sale, promotion, modification, advertisement, reinstatement, refurbishment, repair, funding and mortgaging thereof. Such licence shall be transferable to third parties, and the Beneficiary shall be entitled to grant sub-licences. The Contractor shall not be liable to the Beneficiary for any negligent or improper use of the Documents or for any use of the same for purposes other than those for which the same were originally prepared or provided, which purposes shall be deemed to include any purpose permitted by this clause 4.1.
         2. The Contractor irrevocably waives, and shall procure that each of its sub-contractors shall irrevocably waive, any rights it or they may have under Chapter IV (Moral Rights) Part 1 of the Copyright Designs and Patents Act 1988 in relation to the Documents, and the Contractor shall obtain a written irrevocable waiver from its employees, and from the respective employees of each of its sub-contractors, of any such rights which they may have.
         3. The Contractor warrants and undertakes to the Beneficiary that in performing the Services it has not infringed and shall not infringe any copyright or any other intellectual property or design rights.
      2. INSURANCE

Without prejudice to its obligations under this Deed or otherwise at law, the Contractor shall effect and maintain professional indemnity insurance in full force and effect from the date on which it was first consulted and instructed in connection with the Works until the date which is twelve years after the date of practical completion of the Contractor Works in an amount of not less than [*to be inserted*] [(£[ ])] in respect of each and every claim or series of claims arising out of the same originating cause, provided such insurance is available at commercially reasonable rates and on commercially reasonable terms. As and when it is reasonably required to do so by the Beneficiary, the Contractor shall provide to the Beneficiary for inspection documentary evidence to show that such insurance is being properly maintained.

* + - 1. ENQUIRIES

The obligations and liabilities of the Contractor under this Deed will not be released, diminished or in any other way affected by any enquiry or inspection into any matter which may be made or carried out by or on behalf of the [Plot Developer]/[Building Developer], the Beneficiary or any third party or by the appointment of, or the failure to appoint, any person, firm or company to carry out any enquiry or inspection into or otherwise report on any matter, act or omission of any such person, firm or company, whether or not such act or omission might give rise to any independent liability of any such person, firm or company to the [Plot Developer]/[Building Developer], the Beneficiary or any third party.

* + - 1. ASSIGNMENT AND THIRD PARTY RIGHTS
         1. The benefit of this Deed and the rights arising hereunder (whether or not accrued) may be assigned by the Beneficiary on two occasions without the consent of the Contractor. The Contractor shall be given written notice of any such assignment. Except as provided in clause 7.2, no further assignments shall be permitted without the prior written consent of the Contractor (such consent not to be unreasonably withheld or delayed).
         2. Unless expressly stated in this Deed, nothing in this Deed confers or is intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.
      2. LIMITATION
         1. No action or proceedings under or in connection with this Deed shall be commenced against the Contractor in connection with the Works after the expiry of twelve (12) years from the date of practical completion of the Works.
         2. The Contractor shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Appointment and (subject to clause 10.2) to raise equivalent rights in defence of liability (but not any financial claims the Contractor may have against the Employer) to those that it would have had if the Beneficiary had been named as a joint employer with the Employer under the Appointment with the Contractor owing its duties to each employer separately.
      3. NOTICES

Any notice to be given by the Contractor shall be deemed to be duly given if it is delivered by hand at or sent by special delivery or recorded delivery to the Beneficiary at its registered office; and any notice given by the Beneficiary shall be deemed to be duly given if it is delivered by hand at or sent by special delivery or recorded delivery to the Contractor at its registered offices or such other address as the Contractor may notify to the Beneficiary in writing for such purpose. Any notice sent by special delivery or recorded delivery shall be deemed (subject to proof to the contrary) to have been received forty eight (48) hours after being posted.

* + - 1. GOVERNING LAW AND JURISDICTION
         1. This Deed and any non-contractual obligations arising out of or in relation to it shall be governed by English law. Subject to the right to enforce a judgment obtained in the English Courts in any other jurisdiction, the parties hereby irrevocably submit to the exclusive jurisdiction of the English Courts.
         2. Without prejudice to the generality of their powers, the English Courts shall have the power to open up, review and revise any decision, opinion, requirement, direction, certificate, valuation or notice (including any decision of an Adjudicator) and to determine all matters in dispute which shall have been submitted to the English Courts in the same manner as if no such decision, opinion, direction, certificate, valuation or notice had been given.

**IN WITNESS** whereof the parties hereto have executed and delivered this Deed on the date first before written.

1. : Acceptance Procedure[[102]](#footnote-103)

*[Drafting Note: ESCo and Developer to agree secondary network performance and efficiency criteria at the design stage – and, at commissioning, the developer demonstrates to ESCo that it has met such criteria.]*

* + - 1. Interpretation and application
         1. In addition to the definitions set out in the defined terms of this Agreement, the following terms shall have the following meanings when used in this Schedule 6:

"**Acceptance Date**" means the date on which (i) the Secondary Distribution Network is accepted in accordance with paragraph 2.4.1, (ii) the Heat Meters [and CIUs] are accepted in accordance with paragraph 3.4.1, or (iii) the HIUs are accepted in accordance with paragraph 4.4 below.

“**Acceptance Information**” means the information provided to ESCO respectively pursuant to paragraphs 2, 3, and 4 below.

“**ESCO’s Agent”** means any agent or sub-contractor appointed by ESCO to carry out the Acceptance procedure on ESCO’s behalf, the identity of which and contact details of which shall be notified to the [Plot Developer] /[Building Developer].

“**Initial Commissioning[[103]](#footnote-104)**” means, as the context requires, the initial commissioning of (i) the Secondary Distribution Network (ii) the Heat Meters and CIUs, or (iii) the HIUs, by the [Plot Developer] /[Building Developer] in accordance with the Standards and all other relevant British Standards, CIBSE and BSRIA guidance documentation as relevant to the commissioning of the Secondary Distribution Network and associated Heat Meters, [CIUs] and the HIUs.

**“Initial Inspection”** means, as the context requires, the initial inspection of (i) the Secondary Distribution Network (ii) the Heat Meters [and CIUs,] or (iii) the HIUs, in accordance with the Technical Specifications.

“**Final Commissioning**” means, as the context requires, the final commissioning of (i) the Secondary Distribution Network (ii) the Heat Meters [and CIUs,] or (iii) the HIUs, in accordance with the Technical Specifications, including demonstrating the operation of the control and monitoring systems of the Secondary Distribution Network, Heat Meters, [CIUs] and the HIUs.

**“Final Inspection”** means, as the context requires, the final inspection of (i) the Secondary Distribution Network, (ii) the Heat Meters [and CIUs,] or (iii) the HIUs, in accordance with the Technical Specifications.

“**Meter Asset Register**” means a comprehensive register of the Heat Meters[[104]](#footnote-105).

“**Non-Conformities**” means any:

1. items of the Secondary Distribution Network that do not comply with the Technical Specifications; or
2. failure to provide the Acceptance Information.

“**Rectification Plan**” means a plan agreed between ESCO and the [Plot Developer] /[Building Developer] in accordance with the terms of this Schedule 6, setting out any agreed remedial works and/or actions in respect of the Non-Conformities in (i) the Secondary Distribution Network, (ii) the Heat Meters [and CIUs,] or (iii) the HIUs.

“**Schedule of** **Non-Conformities”** means a document drawn up by ESCO after inspecting the Secondary Distribution Network, the Heat Meters, or the HIUs, setting out a list of Non-Conformities in (i) the Secondary Distribution Network, (ii) the Heat Meters [and CIUs,] or (iii) the HIUs.

* + - 1. SECONDARY DISTRIBUTION NETWORK

Inspection and Information

The [Plot Developer] /[Building Developer] shall give ESCO and ESCO’s Agent not less than [twenty one (21)] calendar days prior of the commencement of the installation of the Secondary Distribution Network and shall provide to ESCO and ESCO’s Agent a drawing (or drawings) of the Secondary Distribution Network in AutoCAD and pdf that clearly shows:

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

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

During the installation, the [Plot Developer] /[Building Developer] shall give at least [five (5)] Business Days’ notice to ESCO and ESCO’s Agent prior to any part of the Secondary Distribution Network being concealed to allow ESCO and ESCO’s Agent to inspect those parts of the Secondary Distribution Network being concealed. ESCO agrees that a representative of the [Plot Developer] /[Building Developer] shall be permitted to accompany ESCO and ESCO’s Agent and their representatives on such inspection. If ESCO and/or ESCO’s Agent declines to attend or does not attend on the agreed date, then the [Plot Developer] /[Building Developer] may proceed with the concealment of the installation.

For the purposes of setting quality standards early, ESCO and/or ESCO’s Agent shall undertake an Initial Inspection of the Secondary Distribution Network and highlight where the Secondary Distribution Network has Non-Conformities. The [Plot Developer] /[Building Developer] shall give ESCO and ESCO’s Agent not less than [twenty one (21)] days' notice of this requirement and shall grant ESCO and/or ESCO’s Agent all access reasonably necessary for ESCO and/or ESCO’s Agent to undertake the Initial Inspection. ESCO agrees that a representative of the [Plot Developer] /[Building Developer] shall be permitted to accompany ESCO and/or ESCO’s Agent and their representatives on such Initial Inspection.

Not later than [fourteen (14)] days before the commencement of the Final Commissioning of the Secondary Distribution Network, the [Plot Developer] /[Building Developer] shall provide ESCO and ESCO’s Agent with the following information in relation to the Initial Commissioning of the Secondary Distribution Network:

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

pressure testing records; and

flushing records.

The [Plot Developer] /[Building Developer] shall give ESCO and ESCO’s Agent not less than [twenty one (21)] calendar days’ notice of completion of the Final Commissioning activities. On completion of the Final Commissioning, ESCO and/or ESCO’s Agent shall undertake the Final Inspection of the Secondary Distribution Network, to assess whether the Secondary Distribution Network has been designed and installed in accordance with the Technical Specifications and is free from any Non-Conformities. The [Plot Developer] /[Building Developer] shall grant ESCO and ESCO’s Agent all access reasonably necessary for ESCO and/or ESCO’s Agent to undertake the Final Inspection. ESCO agrees that a representative of the [Plot Developer] /[Building Developer] shall be permitted to accompany ESCO and/or ESCO’s Agent and their representatives on such inspection.

Not later than [fourteen (14)] days before the Final Inspection, the [Plot Developer] /[Building Developer] shall provide ESCO and ESCO’s Agent with the information listed in paragraph 2.1.4 (to the extent it has not already provided the same to ESCO and ESCO’s Agent) and the following information in relation to the Secondary Distribution Network subject to the Final Inspection:

as built drawings in pdf and AutoCAD format;

pressure testing records;

flushing records;

operation and maintenance manuals, including manufacturers’ literature;

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

details of any pipe supports where such supports are installed including,

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

the location and type of each valve.

The [Plot Developer] /[Building Developer] shall provide ESCO and ESCO’s Agent with any updated information listed in paragraph 2.1.6 above if such information is updated, or if new information is available, before the date on which ESCO commences delivery of Heat Supply and provision of the ESCO Services.

Defects and Non-Conformities

Not later than [seven (7)] days after the Initial Inspection (if it has been requested by the [Plot Developer] /[Building Developer]), ESCO or ESCO’s Agent shall provide an initial Schedule of Non-Conformities to the [Plot Developer] /[Building Developer].

Not later than [seven (7)] days after the Final Inspection, ESCO or ESCO’s Agent shall provide a final Schedule of Non-Conformities to the [Plot Developer] /[Building Developer].

Rectification Plan

Within [fourteen (14)] days of ESCO or ESCO’s Agent providing the [Plot Developer] /[Building Developer] with the final Schedule of Non-Conformities in accordance with paragraph 2.2.2 above, the Parties shall meet to mutually agree a Rectification Plan setting out the Non-Conformities and the agreed remedial works and/or actions that the [Plot Developer] /[Building Developer] (or its agents) shall take in respect of the Non-Conformities, including any agreed time scales or other terms.

If, within [twenty one (21)] days of receipt of the final Schedule of Non-Conformities, the [Plot Developer] /[Building Developer] and ESCO do not agree a Rectification Plan, either Party may invoke the dispute resolution procedure in Clause 28 (Dispute Resolution Procedure).

Acceptance

Once:

the final Rectification Plan has been agreed or determined pursuant to paragraph 2.3 above; and

access rights have been granted pursuant to Clause 7.2 (Ownership and Access) in relation to the Secondary Distribution Network;

#### the [Plot Developer] /[Building Developer] and ESCO shall sign an acceptance certificate confirming that ESCO agrees to commence ESCO Services in respect of the Secondary Distribution Network or, as the case may be, subject to the [Plot Developer] /[Building Developer] carrying out, or procuring the carrying out of, its obligations under the Rectification Plan, provided that ESCO shall not be obliged to commence the ESCO Services if any Non-Conformities pose a health and safety risk until such Non-Conformities are remedied by the [Plot Developer] /[Building Developer]. *[Drafting Note: Consider any specific circumstances when ESCo would not want to sign acceptance certificate – e.g. critical defect in the Secondary Distribution Network. See also clause 14 (Compensation and Relief Events) under which ESCo can claim relief if a defect is discovered in the Secondary Distribution Network.]*

Remedial action

The [Plot Developer] /[Building Developer] undertakes to carry out all of its obligations under the Rectification Plan within the timescales set out in the Rectification Plan and to grant ESCO and/or ESCO’s Agent all access reasonably necessary for ESCO to inspect the Secondary Distribution Network to confirm that the [Plot Developer] /[Building Developer]’s obligations under the Rectification Plan have been carried out to ESCO’s reasonable satisfaction. ESCO agrees that a representative of the [Plot Developer] /[Building Developer] shall be permitted to accompany ESCO and its representatives on such inspection.

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

If the [Plot Developer] /[Building Developer] fails to carry out any of its obligations under the Rectification Plan within the timescales set out in the Rectification Plan the [Plot Developer] /[Building Developer] shall be liable for all reasonable Losses that ESCO incurs as a direct result. If such failure persists for more than sixty (60) days after an initial written notice from ESCO to the [Plot Developer] /[Building Developer] of the [Plot Developer] /[Building Developer]’s failure to carry out the relevant obligations under the Rectification Plan ESCO may perform, or procure that a third party performs, the relevant obligations under the Rectification Plan and the [Plot Developer] /[Building Developer] shall be liable for ESCO’s reasonable Losses incurred when doing so.

* + - 1. Heat Meters [and CIUs]

Inspection and Information

For the purposes of setting quality standards early, ESCO shall undertake an Initial Inspection of a sample of Heat Meters [and CIUs] (no greater than [ ( )] Heat Meters [and CIUs]), installed with the Secondary Distribution Network, and highlight where the Heat Meters [and/or CIUs] have Non-Conformities. The [Plot Developer] /[Building Developer] shall give ESCO not less than [twenty one (21)] days' notice of this requirement and shall grant ESCO all access reasonably necessary for ESCO to undertake the Initial Inspection. ESCO agrees that a representative of the [Plot Developer] /[Building Developer] shall be permitted to accompany ESCO and its representatives on such inspection.

Not later than [fourteen (14)] days before the commencement of the Final Commissioning of the Heat Meters [and CIUs] installed with the Secondary Distribution Network, the [Plot Developer] /[Building Developer] shall provide ESCO with the following information in relation to the Initial Commissioning of the Heat Meters [and CIUs]:

MBus wiring schematic;

MBus wiring route drawings;

Meter Asset Register;

[Electrical test records for MBus wiring and power cabling to the CIU]; and

operation and maintenance manuals, including manufacturers’ literature of Heat Meters;

When requested by the [Plot Developer] /[Building Developer] by giving not less than [twenty one (21)] days’ notice, ESCO shall witness the Final Commissioning of the Heat Meters [and CIUs] installed with the Secondary Distribution Network, to assess whether the Heat Meters [and CIUs] have been designed and installed in accordance with the Technical Specifications and are free from any Non-Conformities. The [Plot Developer] /[Building Developer] shall grant ESCO all access reasonably necessary for ESCO to undertake the Final Inspection. ESCO agrees that a representative of the [Plot Developer] /[Building Developer] shall be permitted to accompany ESCO and its representatives witnessing the Final Commissioning.

The [Plot Developer] /[Building Developer] shall provide ESCO with any updated information listed in 3.1.2 above in respect of the Heat Meters [and CIUs] accepted by ESCO if such information is updated, or if new information is available, before the date ESCO commences the ESCO Services.

Defects and Non-Conformities

Not later than [seven (7)] days after the Initial Inspection of the Heat Meters [and CIUs] installed with the Secondary Distribution Network, (if it has been requested by the [Plot Developer]/[Building Developer]), ESCO shall provide an initial Schedule of Non-Conformities to the [Plot Developer] /[Building Developer] for the Heat Meters [and CIUs] inspected.

Not later than [seven (7)] days after the Final Commissioning of the Heat Meters [and CIUs] installed with the Secondary Distribution Network, ESCO shall provide a final Schedule of Non-Conformities to the [Plot Developer]/[Building Developer], clearly scheduling which Heat Meters [and/or CIUs] have Non-Conformities.

Rectification Plan

Within [fourteen (14)] days of ESCO providing the [Plot Developer] /[Building Developer] with the final Schedule of Non-Conformities for the Heat Meters [and CIUs] in accordance with paragraph 3.2.2 above, the Parties shall meet to mutually agree a Rectification Plan setting out the Non-Conformities and the agreed remedial works and/or actions that the [Plot Developer] /[Building Developer] (or its agents) shall take in respect of the Non-Conformities.

If, within [twenty one (21)] days of receipt of the final Schedule of Non-Conformities, the [Plot Developer] /[Building Developer] and ESCO do not agree a Rectification Plan, either Party may invoke the dispute resolution procedure in Clause 28 (Dispute Resolution Procedure).

Acceptance

Once the Rectification Plan has been agreed or determined pursuant to paragraph 3.3 above, the [Plot Developer] /[Building Developer] and ESCO shall sign an acceptance certificate confirming that ESCO accepts the installation of the Heat Meters [and CIUs] installed with the Secondary Distribution Network, excluding those Heat Meters [and/or CIUs] scheduled as having Non-Conformities pursuant to clause 3.2 above.

Remedial Action

The [Plot Developer] /[Building Developer] undertakes to carry out all of its obligations under the Rectification Plan and to grant ESCO all access reasonably necessary for ESCO to inspect the Heat Meters [and CIUs] to confirm that the [Plot Developer] /[Building Developer]’s obligations under the Rectification Plan have been carried out to ESCO's reasonable satisfaction. ESCO agrees that a representative of the [Plot Developer] /[Building Developer] shall be permitted to accompany ESCO and its representatives on such inspection.

ESCO shall accept the inclusion of those Heat Meters [and CIUs] scheduled as having Non-Conformities preventing them being part of ESCO Services once the [Plot Developer] /[Building Developer] has carried out its obligations for that Heat Meter [or CIU] under the Rectification Plan.

If the [Plot Developer] /[Building Developer] fails to carry out any of its obligations under the Rectification Plan within the timescales set out in the Rectification Plan, the [Plot Developer] /[Building Developer] shall be liable for all reasonable Losses that ESCO incurs as a direct result. If such failure persists for more than [sixty (60)] days after an initial written notice from ESCO to the [Plot Developer] /[Building Developer] of the [Plot Developer] /[Building Developer]’s failure to carry out the relevant obligations under the Rectification Plan ESCO may perform, or procure that a third party performs, the relevant obligations under the Rectification Plan and the [Plot Developer] /[Building Developer] shall be liable for ESCO’s reasonable Losses incurred when doing so.

* + - 1. Heat Interface Units

Inspection and Information

For the purposes of setting quality standards early, ESCO shall undertake an Initial Inspection of a sample of HIUs (no greater than [ ( )] HIUs) installed with the Secondary Distribution Network, and highlight where they have Non-Conformities. The [Plot Developer] /[Building Developer] shall give ESCO not less than [twenty one (21)] days' notice of this requirement and shall grant ESCO all access reasonably necessary for ESCO to undertake the Initial Inspection. ESCO agrees that a representative of the [Plot Developer] /[Building Developer] shall be permitted to accompany ESCO and its representatives on such inspection.

Not later than [fourteen (14)] days before the commencement of the Final Inspection of the HIUs installed with the Secondary Distribution Network, the [Plot Developer] /[Building Developer] shall provide ESCO with the following information in relation to the HIUs:

as built drawings in pdf and AutoCAD format of each type of HIU;

pressure testing records of the tertiary (within Unit) network;

flushing records of the tertiary (within Unit) network;

Evidence that tertiary (within Unit) network water has been chemically treated;

electrical testing records and certificates of the HIU;

operation and maintenance manuals, including manufacturers’ literature of the HIU;

control system operation manual of the HIU; and

Serial numbers of each HIU inclusive of heat meter housed within it and the property address or Plot reference.

When requested by the [Plot Developer] /[Building Developer] by giving not less than [twenty one (21)] days’ notice, ESCO shall undertake the Final Inspection of the HIUs installed with the Secondary Distribution Network, to assess whether the HIUs are free from any Non-Conformities. The [Plot Developer] /[Building Developer] shall grant ESCO all access reasonably necessary for ESCO to witness the Final Commissioning. ESCO agrees that a representative of the [Plot Developer] /[Building Developer] shall be permitted to accompany ESCO and its representatives witnessing the Final Inspection.

The [Plot Developer] /[Building Developer] shall provide ESCO with any updated information listed in 4.1.2 above if such information is updated, or if new information is available, before the date ESCO commences the Secondary Distribution Network Services.

Defects and Non-Conformities

Not later than [seven (7)] days after the Initial Inspection (if it has been requested by the [Plot Developer] /[Building Developer]), ESCO shall provide an initial Schedule of Non-Conformities to the [Plot Developer] /[Building Developer].

Not later than [seven (7)] days after the Final Inspection, ESCO shall provide a final Schedule of Non-Conformities to the [Plot Developer] /[Building Developer] clearly scheduling which HIUs have Non-Conformities.

Rectification Plan

Within [fourteen (14)] days of ESCO providing the [Plot Developer] /[Building Developer] with the final Schedule of Non-Conformities for the HIUs in accordance with paragraph 4.2.2 above, the Parties shall meet to mutually agree a Rectification Plan setting out the Non-Conformities and the agreed remedial works and/or actions that the [Plot Developer] /[Building Developer] (or its agents) shall take in respect of the Non-Conformities, including any agreed time scales or other terms.

If, within [twenty one (21)] days of receipt of the final Schedule of Non-Conformities, the [Plot Developer] /[Building Developer] and ESCO do not agree a Rectification Plan, either Party may invoke the dispute resolution procedure in Clause 28 (Dispute Resolution Procedure).

Acceptance

Once the Rectification Plan has been agreed or determined pursuant to paragraphs 4.3 above, the [Plot Developer] /[Building Developer] and ESCO shall sign an acceptance certificate confirming that ESCO accepts the installation of the HIUs installed with the Secondary Distribution Network, subject to the [Plot Developer] /[Building Developer] carrying out, or procuring the carrying out of, its obligations under the Rectification Plan.

Remedial Action

The [Plot Developer] /[Building Developer] undertakes to carry out all of its obligations under the Rectification Plan within the timescales set out in the Rectification Plan and to grant ESCO and/or ESCO’s Agent all access reasonably necessary for ESCO and/or ESCO’s Agent to inspect the HIUs to confirm that the [Plot Developer] /[Building Developer]s obligations under the Rectification Plan have been carried out to ESCO’s and/or ESCO’s Agent’s reasonable satisfaction. ESCO agrees that a representative of the [Plot Developer] /[Building Developer] shall be permitted to accompany ESCO and/or ESCO’s Agent and their representatives on such inspection.

Until the [Plot Developer] /[Building Developer] has carried out its obligations under the Rectification Plan, ESCO shall be relieved from performing those elements of the ESCO Services on the relevant HIUs that ESCO is reasonably prevented from carrying out until such obligations are performed.

If the [Plot Developer] /[Building Developer] fails to carry out any of its obligations under the Rectification Plan within the timescales set out in the Rectification Plan, the [Plot Developer] /[Building Developer] shall be liable for all reasonable Losses that ESCO incurs as a direct result (and for the avoidance of doubt, such costs shall include those of ESCO’s Agent). If such failure persists for more than [sixty (60)] days after an initial written notice from ESCO and/or ESCO’s Agent to the [Plot Developer] /[Building Developer] of the [Plot Developer] /[Building Developer]’s failure to carry out the relevant obligations under the Rectification Plan ESCO and/or ESCO’s Agent may perform, or procure that a third party performs, the relevant obligations under the Rectification Plan and the [Plot Developer] /[Building Developer] shall be liable for ESCO’s reasonable Losses incurred when doing so.

1. : Adoption Procedure[[105]](#footnote-106)
   * + 1. Interpretation and application
          1. In addition to the definitions set out in the defined terms of this Agreement, the following terms shall have the following meanings when used in this Schedule 7:

"**Adoption Information**" means the information provided to ESCO pursuant to paragraphs 2.1.7 and 3.1.7 below.

“**ESCO’s Agent”** means any agent or sub-contractor appointed by ESCO to carry out the Adoption procedure on ESCO’s behalf, the identity of which and contact details of which shall be notified to the Plot Developer.

"**Initial Commissioning[[106]](#footnote-107)**" means, as the context requires, the initial commissioning of [(i) the Primary Plot Distribution Network], and (ii) [the Secondary Distribution Network][[107]](#footnote-108), by the Plot Developer in accordance with the Standards and all other relevant British Standards, CIBSE and BSRIA guidance documentation, and ADE guidance documentation as relevant.

**“Initial Inspection”** means, as the context requires, the initial inspection of [(i) the Primary Plot Distribution Network], and (ii) [the Secondary Distribution Network] in accordance with the Technical Specifications.

"**Final Commissioning**" means, as the context requires, the final commissioning of [(i) the Primary Plot Distribution Network, and (ii) [the Secondary Distribution Network], in accordance with the Technical Specification, including demonstrating the operation of the control and monitoring systems of the [the Primary Plot Distribution Network] and the [Secondary Distribution Network], and including a system proving period of at least [two (2) weeks] after completion of all testing and commissioning.

**“Final Inspection”** means, as the context requires, the final inspection of of [(i) the Primary Plot Distribution Network], and (ii) [the Secondary Distribution Network] in accordance with the Technical Specification.

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

1. items of [(i) the Primary Plot Distribution Network]and (ii) [the Secondary Distribution Network] that do not comply with the Technical Specification; or
2. failure to provide the Adoption Information.

"**Rectification Plan**" means a plan agreed between ESCO and the Plot Developer in accordance with the terms of this Schedule 7 setting out any agreed remedial works and/or actions in respect of the Non-Conformities in the [(i) the Primary Plot Distribution Network], or (ii) [the Secondary Distribution Network].

"**Schedule of** **Non-Conformities"** means a document drawn up by ESCO after inspecting the Secondary Distribution Network, setting out a list of Non-Conformities in [(i) the Primary Plot Distribution Network], or (ii) [the Secondary Distribution Network]

* + - 1. [Primary Plot Distribution Network

Inspection and Information

During the installation, the Plot Developer shall give at least [five (5)] Business Days’ notice to ESCO prior to any section of the Primary Plot Distribution Network being concealed and/or completed, to allow ESCO to inspect those parts of the Primary Plot Distribution Network being concealed and/or completed. ESCO agrees that a representative of the Plot Developer shall be permitted to accompany ESCO and its representatives on such inspection. If ESCO declines to attend or does not attend on the agreed date, then the Plot Developer may proceed with the concealment and/or completion of the installation.

For the purposes of setting quality standards early, ESCO shall undertake an Initial Inspection of the Primary Plot Distribution Network and highlight where the Primary Plot Distribution Network has Non-Conformities. The Plot Developer shall give ESCO not less than [fourteen (14)] days' notice of this requirement and shall grant ESCO all access reasonably necessary for ESCO to undertake the Initial Inspection. ESCO agrees that a representative of the Plot Developer shall be permitted to accompany ESCO and its representatives on such inspection.

Not later than [fourteen (14)] days before the commencement of the Initial Commissioning of the Primary Plot Distribution Network the Plot Developer shall provide ESCO with the following information:

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

manufacturers’ testing and commissioning records; and

method statements for the proposed testing for review.

Upon completion of the Initial Commissioning of the Primary Plot Distribution Network the Plot Developer shall invite ESCO to witness the Initial Commissioning of the Primary Plot Distribution Network.

Not later than [fourteen (14)] days before the commencement of the Final Commissioning of the Primary Plot Distribution Network the Plot Developer shall provide ESCO with the following information:

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

testing and commissioning records; and

method statements for the proposed testing and commissioning for review.

Upon completion of the Final Commissioning of the Primary Plot Distribution Network the Plot Developer shall invite ESCO to witness the Final Commissioning of the Primary Plot Distribution Network.

Not later than [fourteen (14)] days before the Final Inspection, the Plot Developer shall provide ESCO with the information listed in paragraph 2.1.5 (to the extent it has not already provided the same to ESCO) and the following information in relation to the Primary Plot Distribution Network, subject to the Final Inspection:

as built drawings in pdf and AutoCAD format;

testing and commissioning records;

Health and Safety information, including a copy of the Health and Safety File in accordance with the CDM Regulations, including residual risks for operation, maintenance and decommissioning;

operation and maintenance manuals, including manufacturers’ literature specific to the plant and system installed;

manufacturers’ and installers’ guarantees and warranties;

Building Regulation consents and approvals;

all documents to be referenced and recorded on a records log; and

two copies of all information to be provided on CD.

The Plot Developer shall give ESCO not less than [fourteen (14)] calendar days’ notice of completion of the Final Commissioning activities. On completion of the Final Commissioning, ESCO shall, undertake the Final Inspection of the Primary Plot Distribution Network, to assess whether the Primary Plot Distribution Network has been designed and installed in accordance with the Technical Specification and is free from any Non-Conformities. The Plot Developer shall grant ESCO all access reasonably necessary for ESCO and/or ESCO’s Agent to undertake the Final Inspection. ESCO agrees that a representative of the Plot Developer shall be permitted to accompany ESCO and its representatives on such inspection.

The Plot Developer shall promptly provide ESCO and ESCO’s Agent with any updated information listed in paragraph 2.1.7 above if such information is updated, or if new information is available, before the date ESCO commences delivery of Heat Supply and provision of the ESCO Services.

Defects and Non-Conformities

Not later than [seven (7)] days after the Initial Inspection of the Primary Plot Distribution Network (if it has been requested by the Plot Developer ESCO shall provide an initial Schedule of Non-Conformities to the Plot Developer for the Primary Plot Distribution Network inspected.

Not later than [seven (7)] days after the Final Commissioning of the Primary Plot Distribution Network, ESCO shall provide a final Schedule of Non-Conformities to the Plot Developer, clearly scheduling which elements of the Primary Plot Distribution Network have Non-Conformities.

Rectification Plan

Within [fifteen (15)] Business Days of ESCO providing the Plot Developer Customer with the final Schedule of Non-Conformities for the Primary Plot Distribution Network in accordance with paragraph 2.2.2 above, the Parties shall meet to mutually agree a Rectification Plan setting out the Non-Conformities and the agreed remedial works and/or actions that the Plot Developer (or its agents) shall take in respect of the Non-Conformities.

If, within [twenty one (21)] days of receipt of the final Schedule of Non-Conformities, the Plot Developer and ESCO do not agree a Rectification Plan, either Party may invoke the dispute resolution procedure in Clause 28 (Dispute Resolution Procedure).

Adoption

Once the final Rectification Plan has been agreed or determined pursuant to paragraph 2.3.1 above, the Plot Developer and ESCO shall sign an Adoption certificate confirming that ESCO agrees to adopt the Primary Plot Distribution Network, subject to the Plot Developer carrying out, or procuring the carrying out of, its obligations under the Rectification Plan, provided that ESCO shall not be obliged to Adopt the Primary Plot Distribution Network if any Non-Conformities pose a health and safety risk or material risk to providing Heat Supply or the ESCO Services until such Non-Conformities are remedied by the Plot Developer.

Remedial Action

The Plot Developer undertakes to carry out all of its obligations under the Rectification Plan and to grant ESCO all access reasonably necessary for ESCO to inspect the Primary Plot Distribution Network, to confirm that the Plot Developer obligations under the Rectification Plan have been carried out to ESCO's reasonable satisfaction. ESCO agrees that a representative of the Plot Developer shall be permitted to accompany ESCO and its representatives on such inspection.

Until the Plot Developer has carried out its obligations under the Rectification Plan, ESCO shall be relieved from delivery of the Heat Supply and/or performing those elements of ESCO Services that ESCO is reasonably prevented from carrying out until such obligations are performed.

If the Plot Developer fails to carry out any of its obligations under the Rectification Plan within the timescales set out in the Rectification Plan, the Plot Developer shall be liable for all reasonable Losses that ESCO incurs as a direct result. If such failure persists for more than [sixty (60)] days after an initial written notice from ESCO to the Plot Developer of the Plot Developer failure to carry out the relevant obligations under the Rectification Plan ESCO may perform, or procure that a third party performs, the relevant obligations under the Rectification Plan and the Plot Developer shall be liable for ESCO’s reasonable Losses incurred when doing so.

* + - 1. Secondary Distribution Network

Inspection and Information

During the installation, the Plot Developer shall give at least [five (5)] Business Days’ notice to ESCO prior to any section of the Secondary Distribution Network being concealed and/or completed, to allow ESCO to inspect those parts of the Secondary Distribution Network being concealed and/or completed. ESCO agrees that a representative of the Plot Developer shall be permitted to accompany ESCO and its representatives on such inspection. If ESCO declines to attend or does not attend on the agreed date, then the Plot Developer may proceed with the concealment and/or completion of the installation.

For the purposes of setting quality standards early, ESCO shall undertake an Initial Inspection of the Secondary Distribution Network and highlight where the Secondary Distribution Network has Non-Conformities. The Plot Developer shall give ESCO not less than [fourteen (14)] days' notice of this requirement and shall grant ESCO all access reasonably necessary for ESCO to undertake the Initial Inspection. ESCO agrees that a representative of the Plot Developer shall be permitted to accompany ESCO and its representatives on such inspection.

Not later than [fourteen (14)] days before the commencement of the Initial Commissioning of the Secondary Distribution Network the Plot Developer shall provide ESCO with the following information:

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

manufacturers’ testing and commissioning records; and

method statements for the proposed testing for review.

Upon completion of the Initial Commissioning of the Secondary Distribution Network the Plot Developer shall invite ESCO to witness the Initial Commissioning of the Secondary Distribution Network.

Not later than [fourteen (14)] days before the commencement of the Final Commissioning of the Secondary Distribution Network, the Plot Developer shall provide ESCO with the following information:

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

testing and commissioning records; and

method statements for the proposed testing and commissioning for review.

Upon completion of the Final Commissioning of the Secondary Distribution Network the Plot Developer shall invite ESCO to witness the Final Commissioning of the Secondary Distribution Network.

Not later than [fourteen (14)] days before the Final Inspection, the Plot Developer shall provide ESCO with the information listed in paragraph 3.1.5 (to the extent it has not already provided the same to ESCO) and the following information in relation to the Secondary Distribution Network, subject to the Final Inspection:

as built drawings in pdf and AutoCAD format;

testing and commissioning records;

Health and Safety information, including a copy of the Health and Safety File in accordance with the CDM Regulations, including residual risks for operation, maintenance and decommissioning;

operation and maintenance manuals, including manufacturers’ literature specific to the plant and system installed

manufacturers’ and installers’ guarantees and warranties;

Building Regulation consents and approvals;

all documents to be referenced and recorded on a records log; and

two copies of all information to be provided on CD.

The Plot Developer shall give ESCO not less than [fourteen (14)] calendar days’ notice of completion of the Final Commissioning activities. On completion of the Final Commissioning, ESCO shall, undertake the Final Inspection of the Secondary Distribution Network, to assess whether the Secondary Distribution Network has been designed and installed in accordance with the Technical Specification and is free from any Non-Conformities. The Plot Developer shall grant ESCO all access reasonably necessary for ESCO and/or ESCO’s Agent to undertake the Final Inspection. ESCO agrees that a representative of the Plot Developer shall be permitted to accompany ESCO and its representatives on such inspection.

The Plot Developer shall promptly provide ESCO and ESCO’s Agent with any updated information listed in paragraph 3.1.7 above if such information is updated, or if new information is available, before the date ESCO commences delivery of Heat Supply and provision of the ESCO Services.

Defects and Non-Conformities

Not later than [seven (7)] days after the Initial Inspection of the Secondary Distribution Network (if it has been requested by the Plot Developer), ESCO shall provide an initial Schedule of Non-Conformities to the Plot Developer for the Secondary Distribution Network inspected.

Not later than [seven (7)] days after the Final Commissioning of the Secondary Distribution Network, ESCO shall provide a final Schedule of Non-Conformities to the Plot Developer, clearly scheduling which elements of the Secondary Distribution Network have Non-Conformities.

Rectification Plan

Within [fifteen (15)] Business Days of ESCO providing the Plot Developer with the final Schedule of Non-Conformities for the Secondary Distribution Network in accordance with paragraph 3.2.2 above, the Parties shall meet to mutually agree a Rectification Plan setting out the Non-Conformities and the agreed remedial works and/or actions that the Plot Developer (or its agents) shall take in respect of the Non-Conformities.

If, within [twenty one (21)] days of receipt of the final Schedule of Non-Conformities, the Plot Developer and ESCO do not agree a Rectification Plan, either Party may invoke the dispute resolution procedure in Clause 28 (Dispute Resolution Procedure).

Adoption

Once the final Rectification Plan has been agreed or determined pursuant to paragraph 3.3.1 above, the Plot Developer and ESCO shall sign an Adoption certificate confirming that ESCO agrees to adopt the Secondary Distribution Network, subject to the Plot Developer carrying out, or procuring the carrying out of, its obligations under the Rectification Plan, provided that ESCO shall not be obliged to Adopt the Secondary Distribution Network if any Non-Conformities pose a health and safety risk or material risk to providing Heat Supply or the ESCO Services until such Non-Conformities are remedied by the Plot Developer.

Remedial Action

The Plot Developer undertakes to carry out all of its obligations under the Rectification Plan and to grant ESCO all access reasonably necessary for ESCO to inspect the Secondary Distribution Network, to confirm that the Plot Developers obligations under the Rectification Plan have been carried out to ESCO's reasonable satisfaction. ESCO agrees that a representative of the Plot Developer shall be permitted to accompany ESCO and its representatives on such inspection.

Until the Plot Developer has carried out its obligations under the Rectification Plan, ESCO shall be relieved from delivery of the Heat Supply and/or performing those elements of ESCO Services that ESCO is reasonably prevented from carrying out until such obligations are performed.

If the Plot Developer fails to carry out any of its obligations under the Rectification Plan within the timescales set out in the Rectification Plan, the Plot Developer shall be liable for all reasonable Losses that ESCO incurs as a direct result. If such failure persists for more than [sixty (60)] days after an initial written notice from ESCO to the Plot Developer of the Plot Developer’s failure to carry out the relevant obligations under the Rectification Plan ESCO may perform, or procure that a third party performs, the relevant obligations under the Rectification Plan and the Plot Developer shall be liable for ESCO’s reasonable Losses incurred when doing so.

1. : ESCO Services

* + - 1. [operation and maintenance[[108]](#footnote-109)

ESCO shall:

* + - * 1. operate and maintain [the Primary Plot Distribution Network and][[109]](#footnote-110) Secondary Distribution Network in accordance with the provisions of this Agreement and the Project Agreements, including:-

[the replacement of any plant or equipment forming part of the [Primary Plot Distribution Network and] Secondary Distribution Network which has been Adopted, in order for it to comply with its obligations under this Agreement and the Project Agreements][[110]](#footnote-111); and

*[ Include relevant detail* ];

* + - * 1. procure that its obligations are carried out:-

[in accordance with relevant Customer Supply Agreements and Guaranteed Standards for Heat Supply][[111]](#footnote-112);

in accordance with this Agreement and Good Industry Practice;

in compliance at all times with all Applicable Laws and Authorisations;

[in accordance with Heat Trust Scheme Rules]; and

in a manner:-

which as a minimum meets the Service Levels set out under Schedule 15 (Key Performance Indicators);

which meets minimum and maximum flow temperatures in accordance with the design and generally reflecting Good Industry Practice:

so as to enable the Energy System to be kept safe, secure and in good working order and condition; and

so as to comply with the Planning Permissions (as may be varied or updated and as Notified to ESCO);

* + - * 1. provide suitably qualified, experienced and Competent Persons to perform its obligations under this Agreement and the Project Agreements;
        2. generally co‑operate with the [Plot Developer]/[Building Developer] and in the interests of proper management of the [Plot Development]/[Building] as the [Plot Developer]/[Building Developer] shall reasonably request from time to time;
        3. submit to the [Plot Developer]/[Building Developer], on a bi-annual basis or, where this is not possible, upon reasonable prior Notice, details of planned and scheduled outages [provided always that ESCO will preserve the Heat Supply made to Customers in accordance with this Agreement and the Customer Supply Agreements]; and
        4. [ ][[112]](#footnote-113) .
      1. customer services[[113]](#footnote-114)

[ESCO shall:

* + - * 1. [enter into Residential Heat Supply Agreements with Residential Customers and supply Heat to the Residential Customers on the terms of the Residential Heat Supply Agreement, amended as agreed between ESCO and the relevant Customer and updated by ESCO from time to time to accord with Good Industry Practice];
        2. [enter into Commercial Unit Heat Supply Agreements with Commercial Unit Customers and supply Heat to the Commercial Unit Customers on the terms of the Commercial Unit Supply Agreement, amended as agreed between ESCO and the relevant Customer and updated by ESCO from time to time to accord with Good Industry Practice and ESCO’s internal policies];
        3. [deal with any complaints received (whether received orally or in writing) from Customers in a prompt, courteous and efficient manner and provide the results of any Customer satisfaction survey to the [Plot Developer]/[Building Developer];
        4. [provide Customers with telephone contact details that enable Customers to contact ESCO 24 hours] per day in respect of the Heat Supply];
        5. [read the Heat Meters and bill Customers in accordance with the Customer Supply Agreements];
        6. [set up a website for use by Residential Customers];
        7. [maintain a registration with the Heat Trust in order that the Ombudsman for Energy can deal with Residential Customer disputes]; and
        8. [to reduce the risk of bad debt in relation to Residential Customers, use reasonable endeavours to:

minimise billing errors by ensuring billing is based on actual meter readings as opposed to estimates;

identify Residential Customers in difficulty by incoming call management;

demonstrate flexibility in debt recovery; and

offer sustainable solutions to Residential Customers in extreme hardship].

* + - 1. temporary heat solutions
         1. In the event of any material loss of Heat Supply suffered by [the Building Developer] [a Customer at a Unit] caused by a failure in any part of the Energy System ESCO shall (without prejudice to its other obligations under this Agreement), subject to Paragraph 3.4, put in place a Temporary Heat Solution to ensure that the provision of Heat Supply to [the Building Developer] [a Customer at the relevant Unit] is resumed as soon as reasonably practicable, and in any event within [72] hours of notification of such failure. *[Drafting Note: Parties will need to consider what temporary heating solutions, or storage solutions that mitigate against supply interruptions, will be appropriate for any particular district heating system/scheme].*
         2. If ESCO fails to put in place a Temporary Heat Solution within [forty eight (48)] hours of notification of such failure, the [Plot Developer]/[Building Developer] may (without prejudice to its other rights and remedies under this Agreement) put in place a Temporary Heat Solution (excluding the use of any natural gas network) to provide Heat Supply to [the Building Developer] [a Customer at the relevant Unit] until such time as the failure in the Energy System is rectified and the provision of Heat Supply to [the Building Developer] [a Customer at the relevant Unit] can be resumed by ESCO.
         3. ESCO shall reimburse the [Plot Developer]/[Building Developer] for the reasonable costs incurred by the [Plot Developer]/[Building Developer] in putting in place any such Temporary Heat Solution, unless the failure to provide Heat was caused or contributed to by the [Plot Developer]/[Building Developer] or a [Plot Developer]/[Building Developer] Related Party (in which case such costs (or costs proportionate to contribution) shall be borne by the [Plot Developer]/[Building Developer]).
         4. The [Plot Developer]/[Building Developer] shall provide to ESCO all such co-operation and assistance reasonably requested by ESCO in connection with ESCO's installation of a Temporary Heat Solution in the circumstances envisaged by Paragraph 3.1 (including, without limitation, the provision of a suitable location at the [Plot Development]/[Building] at which the Temporary Heat Solution shall be installed and the grant to ESCO of a licence to occupy the same).

1. : Connections
   * 1. : Connection Charges

*[Set out the Parameters for calculating the Connection Charges.]*

* + 1. : Form of Connection and Supply Agreement

*[Include for Plot Developments which have Commercial Buildings requiring a separate Connection and Supply Agreement]*

1. : Customer Supply Agreements
   * 1. : [Residential Supply Agreement]
     2. : [Commercial Unit Supply Agreement]
     3. : [[Registered Provider]/ [[Plot] Developer Void] Supply Agreement]
2. : Customer Charges
   * 1. : [Residential Charges
        1. CHARGES

Heat Charges

The Heat Charges at the Effective Date shall be [ ].

The Heat Charges shall comprise:

[a Standing Charge]

[a Variable Charge]

* + - * 1. ESCO shall be entitled to amend or change the Heat Charges charged to Customers:

if there is a change in Applicable Law, taxation or government levies which directly affects or applies to the Heat supplied or the method by which it is generated; or

in accordance with the Price Review in paragraphs 2 and 3 of this Schedule 11, Part 1. *Drafting Note: Changes in law could lead to increases or decreases in heat charges – e.g. a change in tax of input fuel which ESCo could seek to pass-through to customers. If charges are benchmarked against a comparator, the methodology of that comparator (particularly the cost inputs into that comparator model) would need to be reviewed. It ought to be considered also, that, in the future, district heating schemes could be regulated and new laws introduced.]*

* + - 1. VARIABLE CHARGE CALCULATION AND REVIEW
         1. ESCO shall review the Variable Charge on [1 April] of each Contract Year during the term of this Agreement (the “**Residential Heat Charge Review Date”**) in accordance with the terms of the Concession Agreement.
         2. [The Variable Charge proposed for any Contract Year shall always be [*set as against comparison forms of heating* ] as set out under paragraph 4, and shall be calculated as follows][[114]](#footnote-115):

[ ]

* + - 1. STANDING CHARGES CALCULATION AND REVIEW
         1. In addition to commodity charges for Heat, the Residential Customers will also be charged Standing Charges. These charges are a share of the fixed costs (i.e. non commodity charges) associated with the operation and maintenance of the Energy System[[115]](#footnote-116).
         2. The charges also cover a share in the costs of any plant replacement during the term of this Agreement.
         3. The Standing Charge will be calculated in accordance with the following formula:

[ ]

* + - * 1. subject to an annual inflationary increase of RPIx each Contract Year [and subject to not exceeding the equivalent pricing set out in the Residential Comparator below].
        2. [The Standing Charge shall not exceed the cost to maintain and replace [ ]][[116]](#footnote-117).
      1. RESIDENTIAL COMPARATOR
         1. The basis of the Residential Comparator calculation shall be as follows:

The energy demand will be based on the following table (figures expressed in kWh/m2);

|  |  |
| --- | --- |
| 1 Bed | [ ] |
| 2 Bed | [ ] |
| 3 Bed | [ ] |
| 4 Bed | [ ] |

*[Include details of Residential Comparator]]*

* + 1. : Commercial Charges
       1. CHARGES

Heat Charges

The Heat Charges at the Effective Date shall be [ ]:

The Heat Charges shall comprise:

[a Standing Charge]

[a Variable Charge]

[Electricity Charges]

The Electricity Charge at the Effective Date shall be [ ].

The Electricity Charge for each month shall be calculated as follows:

[ ]

* + - * 1. ESCO shall be entitled to amend or change the Charges charged to the [Commercial Customers]/ [Building Developer]:

if there is a change in Applicable Law, taxation or government levies which directly affects or applies to the Heat Supply [or Electricity Supply] or the method by which it is generated; or

in accordance with the Price Review in paragraphs 2, 3 and 5 of this Schedule 11, Part 2. *[Drafting Note: Changes in law could lead to increases or decreases in heat charges – e.g. a change in tax of input fuel which ESCo could seek to pass-through to customers. If charges are benchmarked against a comparator, the methodology of that comparator (particularly the cost inputs into that comparator model) would need to be reviewed. It ought to be considered also, that, in the future, district heating schemes could be regulated and new laws introduced.]*

* + - 1. VARIABLE CHARGE CALCULATION AND REVIEW
         1. ESCO shall review the Variable Charge on [1 April] of each Contract Year during the term of this Agreement (the Commercial Heat Charge Review Date) [in accordance with the Concession Agreement][[117]](#footnote-118).
         2. [The Variable Charge proposed for any Contract Year shall always be [*set as against comparison forms of heating* ] as set out under paragraph 4, and shall be calculated as follows] :

**[ ]**

* + - 1. STANDING CHARGES CALCULATION AND REVIEW
         1. In addition to commodity charges for Heat, the [Commercial Customers]/ [Building Developer] will also be charged Standing Charges. These charges are a share of the fixed costs (i.e. non commodity charges) associated with the operation and maintenance of the Energy System.
         2. The charges also covers a share in the costs of any plant replacement for the term of the Agreement.
         3. The Standing Charge will be calculated in accordance with the following formula:

**[ ]**

subject to an annual inflationary increase of RPIx each Contract Year [and subject to not exceeding the equivalent pricing set out in the Commercial Comparator below].

* + - * 1. [The Standing Charge shall not exceed the cost to maintain and replace [ ]] .
      1. Commercial COMPARATOR
         1. The basis of the Commercial Comparator calculation shall be as follows:
         2. The energy demand will be based on the following table (figures expressed in kWh/m2);

|  |  |
| --- | --- |
| Type 1 | [ ] |
| Type 2 | [ ] |
| Type n | [ ] |

* + - * 1. *[Include details of Comparator]*
      1. [electricity charge review[[118]](#footnote-119)]
         1. [ ]

1. : Data Processing[[119]](#footnote-120)
   * + 1. DEFINITIONS
          1. In addition to the definitions set out elsewhere in this Agreement, in this Schedule the following words shall have the following meaning:

**Agreed Purposes:** for ESCO shall be to identify, and set up and manage accounts for, tenants of Units, including:

1. setting up tenants of Unit's accounts and making any changes to the terms of providing the services;
2. identifying tenants of Units when tenants of Relevant Units makes enquiries;
3. market research and providing tenants of Units with up-to-date information on the services which ESCO provides;
4. providing information to tenants of Units about other relevant services provided by ESCO and any Affiliate of ESCO;
5. billing and debt recovery;
6. prevention of fraud or loss;
7. quality assurance (including recording communications with tenants of Units);
8. checks with credit reference agencies (who will keep a record of the search); and
9. identifying any vulnerable customers for the purposes of registration on ESCO’s priority Services Register and access to support services and help.

**Agreed Purposes**: for the Plot Developer shall be:

1. to enable the Plot Developer to discharge its obligations under this Agreement;
2. to enable ESCO to connect the Unit to the Heat Distribution Network and provide the Heat Supply to the Customer moving into the Unit; and
3. to enable the Customer occupying the Unit to comply with the terms of its agreement with the Customer and the terms of their Residential Heat Supply Agreement with ESCO.

**Controller, data controller, processor, data processor, data subject, processing and appropriate technical and organisational measures:**shall have the meanings given to them in the Data Protection Legislation in force at the time.

**Permitted Recipients:**means the Parties to this Agreement, any Affiliates of each Party, the employees and contract workers of each Party, any third parties engaged by each Party to perform obligations in connection with this Agreement and credit reference and fraud prevention agencies.

**Shared Personal Data:** means the Personal Data that may be shared between the Parties under this Agreement, which shall be confined to the following categories of information relevant to the following categories of data subject:

1. Category of data subject: Individuals occupying the Units – including freehold, leasehold and shared ownership tenants (current and outgoing tenants);
2. Types of personal data: name, address, phone number, heat use data, KYC data (e.g. recent utility bills/ council tax bills).
   * + 1. Shared Personal Data
          1. This paragraph sets out the framework for the sharing of Personal Data between the Parties as data controllers.
          2. Each Party acknowledges that from time to time one Party will need to disclose Shared Personal Data to the other Party as data controller for the Agreed Purposes. The Parties acknowledge that as at the date of this Agreement the Parties do not consider that either of them acts as data processor for the other, and if that changes during the term of this Agreement then they will need to agree a separate data processing agreement as required by Data Protection Legislation. *[Drafting Note: Parties may want to consider provisions regarding control of shared personal data and also the appointment of third party data processors.]*
       2. Particular obligations relating to data sharing
          1. Each Party shall:

ensure that it has any necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the other Party and their Permitted Recipients for the Agreed Purposes;

process the Shared Personal Data only for the Agreed Purposes;

not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;

ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement;

ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data; and

not transfer any Shared Personal Data outside the EEA unless (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) one of the derogations for specific situations in Article 49 GDPR applies to the transfer. *[Drafting Note: Parties may want to consider additional obligations regarding data sharing.]*

* + - 1. Mutual assistance
         1. Each Party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each Party shall:

promptly inform the other Party about the receipt of any data subject access request in relation to Shared Personal Data received from the other Party;

provide the other Party with reasonable assistance in complying with any data subject access request in relation to Shared Personal Data received from that other Party;

not disclose or release any Shared Personal Data received from the other Party in response to a data subject access request without first consulting the other Party wherever possible;

assist the other Party, at the cost of the other Party, in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

notify the other Party without undue delay on becoming aware of any breach of the Data Protection Legislation in relation to Shared Personal Data received from the other Party; and

maintain complete and accurate records and information to demonstrate its compliance with this Schedule.

* + - 1. Indemnity

Each Party shall indemnify the other from and against all Losses suffered or incurred by the other Party and arising out of or in connection with any breach by that Party or any sub-contractors of this Schedule.

1. : Marketing and Public Relations[[120]](#footnote-121)
   * + 1. Marketing and public relations activities
          1. The Parties agree that to enhance the public perception of the energy provision arrangements for the Plot Development a series of marketing and public relations activities should be carried out for mutual benefit.
          2. The Parties shall comply with their obligations under this Schedule 13 so as to so as to maximise the marketing opportunities arising in relation to the Energy System.
          3. Each of the Parties is to be responsible for the costs of complying with its own obligations contained in this Schedule 13.
       2. activities
          1. Such activities shall include:-

ESCO to provide the [*insert details of general publicity/ overview information provided by ESCO to Customers]* and guidance notes to new purchasers of Residential Units and Commercial Units on the Plot Development.

ESCO to provide at its cost (and keep updated) presentation materials, for use within the Developer's show homes / show suites, demonstrating that the cost of heating and providing hot water to a new homes is [*insert details of relevant comparator/ carbon credentials of energy supplied etc]*.

The Parties to work together to deliver positive PR through local media channels highlighting the benefits and "green" credentials of the Energy System, including, where appropriate, the use of local news media to highlight the benefits of the development to the local community.

The Parties to work together to deliver positive PR through appropriate trade publications.

* + - 1. Approval of marketing materials
         1. Subject to this paragraph 3, all media releases, public announcements and public disclosures by the Parties in relation to or in connection with this Agreement, the Project Agreements (other than the Customer Supply Agreements) or their subject matter, including but not limited to promotional material (but not including any site specific marketing materials relating specifically to clients, any announcement intended solely for internal distribution or any disclosure required by legal, accounting or regulatory requirements), shall be co‑ordinated with and approved in the first instance by the Plot Developer Representative(s) and ESCO’s Representative(s) prior to release. Such consent shall not be unreasonably withheld or delayed and shall be deemed to have been given by any Party which fails to Notify the other Parties of its refusal to grant approval within ten (10) Business Days.
         2. The Parties shall ensure that any agreement with regards to media releases, public announcements and public disclosures aligns with any agreement made by ESCO and the Developer pursuant to the Concession Agreement.
         3. The Plot Developer shall be entitled to use images and marketing literature developed by ESCO for marketing purposes subject to written agreement in each case, such agreement not to be unreasonably withheld.
         4. For the avoidance of doubt, nothing in this Schedule 13 shall restrict the Plot Developer's right to publicise or make any announcement about the Plot Development provided that no reference is made to this Agreement, the Project Agreements (other than the Customer Supply Agreements) or the subject matter of any of those agreements, or to the involvement of ESCO, otherwise than in accordance with this Schedule 13.

1. : Governance, Monitoring and Reporting
   * 1. : Monitoring and Reporting
        1. Annual Report[[121]](#footnote-122)
           1. ESCO shall, by [30 April] each year during the term of this Agreement, provide the [Plot Developer]/[Building Developer] with an annual report containing details of the following matters for the previous year, that year being the period from 1 April in the preceding calendar year to [31 March] in the current calendar year:

progress reports on the ESCO Works as against the agreed ESCO Programme of Works;

[the number of current Customers who are subject to [Residential Heat Supply Agreements and] Commercial Heat Supply Agreements];

[the total annual Heat consumption [and the split between Residential Customers and Commercial Customers];]

the peak demand for the year; and

a report reasonably demonstrating compliance with Clause 5 (ESCO’s Obligations) including calculated CO2 equivalent emissions data including the carbon intensity of heat delivered to [each]/[the] Connection applying carbon factors as applicable at the time of the Connection.

* + - 1. QUARTERLY PERFORMANCE REPORT
         1. ESCO shall compile and submit in writing each quarter a performance report that contains as a minimum the following information for the preceding calendar quarter:

A table showing the quantity of Heat Supply supplied during the period to the Connection.

A report on maintenance and repairs carried out during the period and intended to be carried out in the following three months in relation to [the Primary Plot Distribution Network serving the Plot Development,] [the Secondary Distribution Network and] the Connection;

A record of incidents during the quarter including (as relevant):

any meter found to be faulty, specifying the location of the meter, the cause of the fault and the action taken;

any breakdown that occurred, specifying the cause, duration, impact and the action taken;

any asset damaged, lost or stolen during the period, identifying the asset; and

any other event that affected the delivery of Heat Supply to the Connection;

[a record of any complaints received from Customers, and of the action taken in response;

the number of instances in which ESCO has failed to respond to the Customer fault reports within the required time period under the Customer Supply Agreements; and

the percentage of Customers whose Heat Supply was suspended due to non-payment].

* + - 1. MONTHLY KPI REPORT
         1. ESCO shall compile and submit in writing each month a performance report that contains such data as is reasonably required to establish performance as against the Key Performance Indicators as detailed in Schedule 15 (Key Performance Indicators).
      2. Performance Forecast
         1. ESCO shall, by [30 April] each year during the term of this Agreement, provide the [Plot Developer]/[Building Developer] with a forecast (the "**Performance Forecast**") of the following matters for the next financial year, being [1 May] until the following [30 April]:-

expected progress of the ESCO Works and any proposed deviations as against the ESCO Programme of Works;

[the expected number of Customers which will be subject to [Residential Heat Supply Agreements and] Commercial Heat Supply Agreements];

[the expected Heat Supply demand for the following year [split between Residential Customers and Commercial Customers];] and

details of all proposed repairs, maintenance and material changes to be undertaken in respect of any sections of the Heat Distribution Network and HIUs constructed in relation to the Connection.

* + - 1. [Plot Developer]/[Building Developer] Forecast
         1. The [Plot Developer]/[Building Developer] shall by [30 April] each year during the term of this Agreement, provide ESCO with a forecast of the following matters for the next financial year, being [1 May] until the following [30 April]:

[the expected programme of Unit sales and/or development];

the updated [Plot Developer]/[Building Developer] Delivery Programme; and

any expected changes in the use or operation of the [Plot Development]/ [Building] likely to have an impact on the Heat Supply and/or the Heat Distribution Network including but not limited to changes to the intended use of the [Plot Development]/ [Building] and any other activities which may impact upon the routing or installation of the Heat Distribution Network.

* + 1. : Governance[[122]](#footnote-123)
       1. Meetings
          1. ESCO’s Representative(s) and the [Plot Developer]/ [Building Developer] Representative(s) shall schedule and attend a meeting not less than once every:

[three (3)] months during the undertaking of the ESCO Works; and

thereafter, [six (6)] months during the remainder of the Term.

* + - * 1. The [Plot Developer]/ [Building Developer] Representative(s) shall be responsible for taking meeting minutes at each meeting held between the Parties, unless otherwise agreed. The [Plot Developer]/ [Building Developer] Representative(s) shall circulate meeting minutes of each of the meetings to the Parties within [two (2)] Business Days of the relevant meeting.
        2. Any matter requiring Notice by one Party to the other under this Agreement shall, irrespective of being referred to in any meeting or the minutes thereof, be Notified separately from the relevant meeting in accordance with the terms of this Agreement.
      1. LIAISON COMMITTEE
         1. ESCO and the Plot Developer shall establish and maintain throughout the Agreement a joint liaison committee that will have the following functions:

to provide a means for the joint review of issues relating to all day to day aspects of the performance of the Agreement;

to provide a forum for joint strategic decisions including considering actual and anticipated changes to the market of ESCO and the [Plot Developer]/ [Building Developer] and to consider possible variations to the Agreement to reflect those changes; and

in certain circumstances, pursuant to Clause 28 (Dispute Resolution) to provide a means of resolving disputes or disagreements between the parties amicably.

1. : Key Performance Indicators[[123]](#footnote-124)
2. To the extent that any Failure Event attracts Service Failure Points the levying of such Service Failure Points shall, without prejudice to the provisions of Clause 26 (Default, Cure and Termination ), be the [Plot Developer]/[Building Developer]'s sole remedy in respect of such Failure Event.

|  | **Failure Event[[124]](#footnote-125)** | **Service Failure Points[[125]](#footnote-126)** |
| --- | --- | --- |
|  | Failure to provide Heat Supply to the capacity required for more than [ )] consecutive hours (unless ESCO has agreed an alternative timeframe with the relevant Commercial Customer, in which case such alternative timeframe shall apply for that Commercial Customer) | [ ] points per Commercial Unit or Commercial Building affected per [ ] hour period |
|  | Failure to provide Heat Supply to the capacity required for more than [ )] consecutive hours | [ ] points per [ ] hour period |
|  | [Failure to provide the Electricity Supply to a Commercial Customer for more than [ )] consecutive hours (unless ESCO has agreed an alternative timeframe with the Commercial Customer, in which case such alternative timeframe shall apply for that Commercial Customer)] | [[ ] points per Commercial Unit or Commercial Building affected per [ ] hour period] |
|  | Failure to provide Heat to the capacity required by a Residential Heat Supply Agreement for more than [ )] consecutive hours | [ ] points per Residential Unit affected per [ ] hour period |
| * + - 1. 2. | Failure to provide temporary heaters to Vulnerable Residential Customers where required as per the terms of the Residential Heat Supply Agreement within [ ] hours of notification of the unplanned heat discontinuance or interruption | For every [ ] hour the failure remains unresolved: [ ] points per Vulnerable Residential Customer affected |
| * + - 1. 3. | Failure to respond substantially to a substantiated complaint made in accordance with the Residential Heat Supply Agreement. | [ ] point per complaint |
| * + - 1. 5. | Failure to meet the minimum flow temperatures (+/- [ ] C) at a Heat Meter in accordance with the design of the Energy System as set out under Schedule 3 (Technical Specifications), for a period of more than [ ] hours | For each [ ] period of failure: [ ] points, |
| 6. | Failure to remedy a leak from the Heat Distribution Network in [a Residential Unit or] Commercial Unit that is causing material interference or material physical damage to the Unit within [ ] hours of notification. | [ ] points per Unit affected |
| 7. | Failure to remedy a leak in the Heat Distribution Network that is causing material interference with other building services or material physical damage to [a building on the Plot Development] / [the Building], within [ ] hours of notification, only where and to the extent that such a leak is a result of ESCO’s failure. | [ ] points for every [ ] hour period that fault remains unresolved. |
| 8. | Failure to remedy a leak in the Heat Distribution Network that is causing material interference or physical damage to the public realm and/or infrastructure within [ ] hours of notification, only where and to the extent that such a leak is a result of ESCO’s failure. | [ ] points for every [ ] hour period that fault remains unresolved. |
| 9. | Failure to provide a report (and/or reasonable adequate details within such reports) as required under Schedule 14 (Governance, Monitoring and Reporting), following not less than [fifteen (15)] Business Days’ notice of such failure to ESCO. | [ ] points for each failure |
| 10. | Faulty Heat Meter (i.e. accuracy not within plus/ minus [5%] not replaced within [ ] days after fault identified | [ ] points for each failure |
| 11. | [Faulty Electricity Meter (i.e. accuracy not within plus/ minus [5%] not replaced within [ ] days after fault identified) | [[ ] points for each failure] |

1. The timescales set out in the table above shall be subject to ESCO being granted the necessary access by the [Plot Developer]/[Building Developer or authorised agent of the Building Developer] [or Customer or tenant or authorised agent of the Customer].
2. ESCO shall inform the [Plot Developer]/[Building Developer] of all Failure Events in accordance with Schedule 14 (Governance, Monitoring and Reporting).
3. If ESCO accumulates [ ] Service Failure Points or more in any calendar month a "**Monthly Service Failure**" shall be deemed to have occurred.
4. Where a Monthly Service Failure has not been triggered, but ESCO accumulates more than [ ] Service Failure Points in a [ ] month period an “**Aggregated Service Failure”** shall be deemed to have occurred[[126]](#footnote-127).
5. ESCO shall within [ten (10)] Business Days of the end of a month in which a Monthly Service Failure or Aggregated Service Failure has occurred, provide to the [Plot Developer]/[Building Developer] a rectification plan for the purpose of rectifying the Failure Event(s) which shall include the steps to be taken to rectify the Failure Event(s) and the timetable for rectification.
6. The [Plot Developer]/[Building Developer] shall be entitled to review and provide reasonable amendments to the rectification plan provided such amendments are proportionate in the context of the relevant Failure Event(s).
7. If ESCO and the [Plot Developer]/[Building Developer] are unable to agree whether any amendments proposed by the [Plot Developer]/[Building Developer] are reasonable either Party shall be entitled to refer the matter for resolution pursuant to the provisions of 28 (Dispute Resolution).
8. If ESCO rectifies the Failure Event(s) in accordance with the agreed or determined rectification programme no further action shall be taken by the [Plot Developer]/[Building Developer] in respect of the Monthly Service Failure or Aggregated Service Failure and the Monthly Service Failure or Aggregated Service Failure shall be deemed not to have occurred.
9. If:
   1. [ ] or more Monthly Service Failures occur within the same rolling [ ] month period; or
   2. more than [ ] points accrue in relation to Failure Events within any rolling [ ] month period;

a Major Default shall be deemed to have occurred and the provisions of Clause 26.1 (Termination) shall apply.

1. : Insurances
   * 1. : [PLOT DEVELOPER]/[BUILDING DEVELOPER] INSURANCES
        1. CONTRACTOR'S ALL RISKS INSURANCE

**Insured parties**

The [Plot Developer]/[Building Developer]

ESCO

Contractors and sub-contractors and consultants to the [Plot Developer]/[Building Developer] of any tier to the extent to which that interest is required to be insured jointly with that of the insured by the terms of any contract or agreement entered into between such party and the insured in connection with the [Plot Developer]/[Building Developer].

Insurers have noted a waiver of subrogation against ESCO.

**Insured Interest**

All works and materials of any nature forming the [Plot Developer]/[Building Developer] Works.

**Coverage**

All risks of physical loss or damage to the [Plot Developer]/[Building Developer] Works including terrorism and defects in design.

**Limit**

Full reinstatement value of the [Plot Developer]/[Building Developer] Works calculated as at the time of the relevant occurrence.

**Period of Insurance**

From the date of commencement of any [Plot Developer]/[Building Developer] Works until practical completion of the [Plot Developer]/[Building Developer] Works, followed by 24 months defects liability cover.

* + - 1. PROPERTY DAMAGE

**Insured parties**

The [Plot Developer]/[Building Developer]

**Insured Property**

All property of whatsoever kind that is the responsibility of the [Plot Developer]/[Building Developer] to deliver pursuant to this Agreement and the Lease[s].

**Coverage**

All risks of physical loss or damage including terrorism.

Extension to include machinery breakdown cover.

**Limit**

Full reinstatement value.

**Period of insurance**

From the date of practical completion (in accordance with the relevant construction contract(s)) of the [Plot Developer]/[Building Developer] Works until termination of this Agreement.

* + - 1. THIRD PARTY LIABILITY INSURANCE (DURING CONSTRUCTION PHASE)

**Insured parties**

The [Plot Developer]/[Building Developer]

ESCO

Contractors and sub-contractors and consultants to the [Plot Developer]/[Building Developer] of any tier to the extent to which that interest is required to be insured jointly with that of the insured by the terms of any contract or agreement entered into between such party and the insured in connection with the [Plot Developer]/[Building Developer].

**Insured interest**

* + 1. Death and personal injury of third parties.
    2. Damage or loss to third party property.
    3. Legal risks (e.g. nuisance claims).

**Coverage**

Third party death and bodily injury, loss of or damage to third party real or personal property arising out of or in the course of or by reason of the performance by the [Plot Developer]/[Building Developer] its subcontractors, agents or any party authorised by it under this Agreement or the Leases save for property insured under the Contractor's All Risks Policy.

**Limit**

[ ] (£[ ]) each and every claim arising out of any one occurrence or series of occurrences.

**Period of insurance**

From the date of date of commencement of any [Plot Developer]/[Building Developer] Works until practical completion (in accordance with the relevant construction contract(s)) of the [Plot Developer]/[Building Developer] Works, followed by 24 months defects liability cover.

* + - 1. Third party LIABILITY insurance (during operational Period)

**Insured parties**

The [Plot Developer]/[Building Developer]

**Insured interest**

Death and personal injury of third parties.

Damage or loss to third party property.

Legal risks (e.g. nuisance claims).

**Coverage**

Third party death and bodily injury, loss of or damage to third party real or personal property arising out of or in the course of or by reason of the performance by the [Plot Developer]/[Building Developer], its subcontractors, agents or any party authorised by it under this Agreement, save for property insured under the Property Damage Policy.

**Limit**

[ ] (£[ )] for each and every claim arising out of any one occurrence or series of occurrences.

**Period of insurance**

From the date of practical completion of the [Plot Developer]/[Building Developer] Works until the Expiry or Termination of this Agreement.

* + - 1. professional indemnity insurance (during CONSTRUCTION PHASE)

**Insured parties**

[Plot Developer]/[Building Developer].

**Insured interest**

Any design and/or specification works which are the responsibility of the [Plot Developer]/[Building Developer]

**Coverage**

Legal liability for breach of professional duties in relation to works which are the responsibility of the [Plot Developer]/[Building Developer]

**Limit**

[ ] (£[ ]) in the aggregate during each annual policy period.

**Period of insurance**

From the date of commencement of the [Plot Developer]/[Building Developer] Works and from the date of practical completion of the [Plot Developer]/[Building Developer] Works until twelve (12) years following practical completion of the [Plot Developer]/[Building Developer] Works in respect of the last Plot to be developed.

* + - 1. professional indemnity insurance (during OPERATIONAL PHASE)

**Insured parties**

[Plot Developer]/[Building Developer].

**Insured interest**

Any design and/or specification works or services which are the responsibility of the [Plot Developer]/[Building Developer]

**Coverage**

Legal liability for breach of professional duties in relation to works or services which are the responsibility of the [Plot Developer]/[Building Developer]

**Limit**

[ ] (£[ ]) in the aggregate during each annual policy period.

**Period of insurance**

From the date of practical completion of the [Plot Developer]/[Building Developer] Works until Expiry or Termination of this Agreement.

* + 1. : ESCO INSURANCES
       1. Contractor's All Risks Insurance

**Insured parties**

ESCO.

The [Plot Developer]/[Building Developer].

Contractors and sub‑contractors and consultants to ESCO of any tier.

**Insured Interest**

All works and materials of any nature forming the ESCO Works.

**Coverage**

All risks of physical loss or damage to the ESCO Works including terrorism.

**Limit**

Full reinstatement value of the ESCO Works calculated as at the time of the relevant occurrence.

**Period of Insurance**

From the date of commencement of any ESCO Works until Practical Completion of the ESCO Works.

* + - 1. Property damage

**Insured parties**

ESCO.

**Additional Insured**

The [Plot Developer]/[Building Developer].

Tenants and/or occupants of the buildings which the insured property is situate (or in the alternative, a waiver of subrogation in such individuals favour).

**Insured Property**

All property of whatsoever kind that is the responsibility of ESCO to deliver or Adopt pursuant to this Agreement and the Project Agreements.

**Coverage**

All risks of physical loss or damage including terrorism.

Extension to include machinery breakdown cover.

**Limit**

Full reinstatement value of the insured value of the insured property.

**Period of insurance**

From the date of Practical Completion of the ESCO Works or the date of Adoption (as relevant) until the expiry or early termination of this Agreement.

* + - 1. Third party insurance (during construction Period)

**Insured parties**

ESCO.

**Additional Insured**

The [Plot Developer]/[Building Developer].

Contractors and sub‑contractors and consultants to ESCO of any tier.

**Insured interest**

Death and personal injury of third parties.

Damage or loss to third party property.

Legal risks (eg nuisance claims).

**Coverage**

Third party death and bodily injury, loss of or damage to third party real or personal property arising out of or in the course of or by reason of the performance by ESCO, its sub-contractors, agents or any party authorised by it under this Agreement or the Project Agreements, save for property insured under the Contractor's All Risks Policy.

**Limit**

[ ] (£[ ]) each and every claim arising out of any one occurrence or series of occurrences.

**Period of insurance**

From the date of commencement of any ESCO Works until Practical Completion of the ESCO Works.

* + - 1. Third party insurance (during operational Period)

**Insured parties**

ESCO.

**Additional insureds**

The [Plot Developer]/[Building Developer].

**Insured interest**

Death and personal injury of third parties.

Damage or loss to third party property.

Legal risks (eg nuisance claims).

**Coverage**

Third party death and bodily injury, loss of or damage to third party real or personal property arising out of or in the course of or by reason of the performance by ESCO, its sub-contractors, agents or any party authorised by it under this Agreement or the Project Agreements save for property insured under the Property Damage Policy.

**Limit**

[ ] (£[ ]) each and every claim arising out of any one occurrence or series of occurrences.

**Period of insurance**

From the date of Practical Completion of the ESCO Works until the expiry or early termination of this Agreement.

* + - 1. professional indemnity insurance (during CONSTRUCTION PHASE)

**Insured parties**

ESCO.

**Insured interest**

Any design and/or specification works which are the responsibility of ESCO.

**Coverage**

Legal liability for breach of professional duties in relation to works which are the responsibility of ESCO.

**Limit**

[ ] (£[ ])) each and every claim arising out of any one occurrence or series of occurrences.

**Period of insurance**

From the date of Practical Completion of the ESCO Works until the expiry or early termination of this Agreement.

1. : Change Procedure
   * 1. : Variation Requests
        1. DEFINITIONS
           1. In this Schedule 17 the following terms shall, unless otherwise defined in this Agreement or the context otherwise requires, have the following meanings:

|  |  |
| --- | --- |
| "Consequential Change" | has the meaning given in paragraph 2.7.11; |
| "ESCO Notice of Variation" | has the meaning given in paragraph 3.1; |
| "ESCO Variation" | means any Project Variation proposed by ESCO pursuant to paragraph 3; and |
| "Estimated Change in Costs" | means the aggregate of any estimated additional costs to be incurred by ESCO or the [Plot Developer] / [Building Developer]in carrying out the relevant obligations under this Agreement (whether construction, design, installation, operation, maintenance or supply services) as varied if the Proposed Variation is implemented, less the aggregate of any estimated reduction of such costs; |
| "Estimated Change in Profit" | means the aggregate of any estimated reduction in ESCO's expected financial return in connection with this Agreement and the Customer Supply Agreements (including, without limitation, any decrease in revenue receivable by way of Heat Charges [or Electricity Charges]); |
| "Lump Sum Payments" | means payments of sums of money by either or both Parties to the other for a [Plot Developer] / [Building Developer]Variation or ESCO Variation against a timetable to be agreed between the Parties in accordance with this Schedule 17 or determined pursuant to the Dispute Resolution Procedure; |
| "Outline Proposal" | has the meaning given in paragraph 2.5; |
| "Pricing Change" | has the meaning given in paragraph 2.7.10; |
| "[Plot Developer] / [Building Developer] Notice of Variation" | has the meaning given in paragraph 2.1; |
| "[Plot Developer] / [Building Developer] Variation" | means any Project Variation which is proposed by the [Plot Developer] / [Building Developer]pursuant to paragraph 2; |
| "[Plot Developer] / [Building Developer] Variation Objection Notice" | has the meaning given in paragraph 2.3.1; |
| "[Plot Developer] / [Building Developer] Variation Order" | has the meaning given in paragraph 2.9.4(a); |
| "Proposed Budget" | has the meaning given in paragraph 2.6.1; |
| "Proposed Variation" | means a variation proposed in either a Developer Notice of Variation or an ESCO Notice of Variation (as applicable); and |
| "Variation Report" | has the meaning given in paragraph 2.6.2 (Outline Proposal/Variation Report). |

* + - 1. DEVELOPER VARIATION

Scope of [Plot Developer] / [Building Developer] Variation

If the [Plot Developer] / [Building Developer] wishes to request a [Plot Developer] / [Building Developer] Variation (other than as a result of a Change in Law, in which case the provisions of Part 2 of this Schedule 17 shall apply), the Developer shall serve on ESCO a written notice (a "**Developer Notice of Variation**") in accordance with this Schedule 17 (provided that the [Plot Developer] / [Building Developer] may not request a [Plot Developer] / [Building Developer] Variation which may require anything to be performed by ESCO in a way which infringes any Applicable Law or Authorisations).

[Plot Developer] / [Building Developer] Notice of Variation

If the [Plot Developer] / [Building Developer] requires a [Plot Developer] / [Building Developer] Variation, it shall serve on ESCO a [Plot Developer] / [Building Developer] Notice of Variation setting out:

the date of the [Plot Developer] / [Building Developer] Notice of Variation;

the reason for the [Plot Developer] / [Building Developer] Variation;

sufficient details of the [Plot Developer] / [Building Developer] Variation to enable ESCO to calculate and provide the Estimated Change in Costs and any Estimated Change in Profit in accordance with paragraph 2.7;

full details of any change required to the Connection, the Services or the Service Levels;

the date by which the [Plot Developer] / [Building Developer] wishes the [Plot Developer] / [Building Developer] Variation to have been implemented;

the reasonable date by which ESCO is required to submit its Outline Proposal, being not less than twenty (20) Business Days after the date of service of the [Plot Developer] / [Building Developer] Notice of Variation or, if ESCO issues a [Plot Developer] / [Building Developer] Variation Objection Notice pursuant to paragraph 2.3.1, not less than [ten (10)] Business Days after the date of agreement or determination that such objections are not valid; and

any other information that the [Plot Developer] / [Building Developer] reasonably considers would assist ESCO in preparing its Variation Report including action the [Plot Developer] / [Building Developer] proposes to take.

[Plot Developer] / [Building Developer] Variation Objection Notice

Within fifteen (15) Business Days of receiving a [Plot Developer] / [Building Developer] Notice of Variation ESCO shall either confirm in writing to the [Plot Developer] / [Building Developer] that it will prepare an Outline Proposal for the [Plot Developer] / [Building Developer] or issue a notice setting out in detail the grounds on which ESCO objects to the proposed [Plot Developer] / [Building Developer] Variation (a **"[Plot Developer] / [Building Developer]** **Variation Objection Notice**"), provided that ESCO shall only be entitled to object to a [Plot Developer] / [Building Developer] Variation if:

the [Plot Developer] / [Building Developer] Variation is not technologically feasible in the reasonable opinion of ESCO;

the [Plot Developer] / [Building Developer] Variation would, if implemented, contravene any Applicable Law or Authorisations or require anything to be performed by ESCO in a manner which is inconsistent with Good Industry Practice;

the [Plot Developer] / [Building Developer] Variation would, if implemented, cause an unacceptable health and safety risk to ESCO, an ESCO Related Party, the [Plot Developer] / [Building Developer], a [Plot Developer] / [Building Developer] Related Party or any third parties;

it is not possible to implement the [Plot Developer] / [Building Developer] Variation within the period of time specified in the [Plot Developer] / [Building Developer] Notice of Variation;

the [Plot Developer] / [Building Developer] Variation would, if implemented, cause any Authorisations to be revoked or not renewed or unobtainable (which are not reasonably likely, on a balance of probabilities, to be capable of modification);

the [Plot Developer] / [Building Developer] Variation would, if implemented, result in ESCO being in breach of, or have a material adverse effect on the ability of ESCO to perform, its obligations under any agreement to which it is a party; and/or

the [Plot Developer] / [Building Developer] Variation would, if implemented, result in a reduction in ESCO's expected financial return in connection with this Agreement (including by way of any decrease in Heat Charges) which is not compensated by the [Plot Developer] / [Building Developer]’s payment to ESCO of Lump Sum Payments, including any increase to any amounts payable by ESCO to the Developer pursuant to this Agreement or any decrease to any amounts payable by the Developer to ESCO pursuant to this Agreement.

Dealing with Objections

If the [Plot Developer] / [Building Developer] disagrees with the objections raised by ESCO, the Parties shall meet with a view to establishing whether the objections are valid. If, within ten (10) Business Days of receipt of any [Plot Developer] / [Building Developer] Variation Objection Notice, the validity or otherwise of ESCO's objections remains to be agreed, either Party may refer the question of validity to the Dispute Resolution Procedure.

The Parties shall act reasonably and in good faith to endeavour to agree amendments to the [Plot Developer] / [Building Developer] Notice of Variation such as to resolve ESCO’s objections.

If the [Plot Developer] / [Building Developer] agrees with the objections in the [Plot Developer] / [Building Developer] Variation Objection Notice, or it is determined under the Dispute Resolution Procedure that the objections in the [Plot Developer] / [Building Developer] Variation Objection Notice are valid, the proposed [Plot Developer] / [Building Developer] Notice of Variation shall be deemed to be withdrawn.

The Parties shall bear their own costs incurred in the process of dealing with any [Plot Developer] / [Building Developer] Variation Objection Notice under paragraph 2.3 and this paragraph 2.4.

Outline Proposal

If, following the issue by the [Plot Developer] / [Building Developer] of a [Plot Developer] / [Building Developer] Notice of Variation:

ESCO does not issue a [Plot Developer] / [Building Developer] Variation Objection Notice under paragraph 2.3 within the period specified in that paragraph; or

it is either agreed or determined under paragraph 2.4 that the objections set out in a [Plot Developer] / [Building Developer] Variation Objection Notice are not valid,

then ESCO shall as soon as reasonably practicable and in any event by the date specified in the [Plot Developer] / [Building Developer] Notice of Variation issue a proposal to the [Plot Developer] / [Building Developer] in accordance with paragraph 2.6 (an "**Outline Proposal**").

The Outline Proposal shall specify an estimate of the price, a provisional timetable and a summary of the method of implementation of the [Plot Developer] / [Building Developer] Variation and shall be accompanied by a suggested budget for ESCO to develop the Variation Report.

Variation Report

If, having considered the Outline Proposal, the [Plot Developer] / [Building Developer] wishes to proceed with the [Plot Developer] / [Building Developer] Variation, it shall notify ESCO and confirm (acting reasonably) either that the suggested budget for ESCO to develop the Variation Report is agreed by the [Plot Developer] / [Building Developer] or propose an alternative budget (the "**Proposed Budget**").

Following the notification referred to in paragraph 2.6.1, ESCO shall as soon a reasonably practicable issue a report to the [Plot Developer] / [Building Developer] in accordance with paragraph 2.7 (a "**Variation Report**"). ESCO shall keep the [Plot Developer] / [Building Developer] informed as to the costs reasonably and properly incurred in preparing the Variation Report and also ten (10) Business Days before the anticipated date when those costs exceed the Proposed Budget. If the costs incurred by ESCO in preparing the Variation Report exceed the Proposed Budget, the [Plot Developer] / [Building Developer] shall (acting reasonably):

inform ESCO that it is increasing the amount of the Proposed Budget; or

withdraw the request for the [Plot Developer] / [Building Developer] Variation.

Contents of Variation Report

The Variation Report shall include details of the following:

the date of the relevant [Plot Developer] / [Building Developer] Notice of Variation or ESCO Notice of Variation (as applicable);

ESCO's opinion on any impact of the Proposed Variation on the date of completion of any works;

ESCO's opinion on any other anticipated impact of the Proposed Variation on any ESCO Services, the Heat Supply [or the Electricity Supply];

any amendment required to specific, listed Clauses and/or Schedules of this Agreement as a result of the Proposed Variation;

any Estimated Change in Costs that would result from the Proposed Variation, including:

details of the derivation of the Estimated Change in Costs arising from the Proposed Variation; and

evidencethat ESCO and its subcontractors have used and will use reasonable endeavours to minimise any increase in costs and maximise any reduction in costs;

any Estimated Change in Profit that would result from the ProposedVariation;

ESCO's proposals for Lump Sum Payments to be made by either or both Parties to the other in connection with the ProposedVariation in order to:

reimburse the [Plot Developer] / [Building Developer] for any Estimated Change in Costs (where the relevant costs are expected to decrease as a result of the Proposed Variation);

reimburse ESCO for any Estimated Change in Costs (where the relevant costs are expected to increase as a result of the Proposed Variation); and/or

compensate ESCO for any Estimated Change in Profit that would result from the Proposed Variation,

including details in relation to the timing of payment of any such Lump Sum Payments (reflecting (to the extent applicable) the amount and timing of any relevant capital expenditure to be incurred by ESCO in relation to the Proposed Variation);

the proposed methods of certification of any works required in connection with the Proposed Variation;

any Authorisations which, in the opinion of ESCO, will need to be obtained to give effect to the Proposed Variation including any such Authorisations which are required to be obtained or which it would be Good Industry Practice to obtain prior to the implementation of the Proposed Variation and the extent to which ESCO proposes that the implementation of the Proposed Variation should be conditional on any Authorisation being obtained;

where the proposed Proposed Variation would result in a change to Heat Charges (a "**Pricing Change**"), a general description of the process to be applied pursuant to the Customer Supply Agreements in order to effect the Pricing Change;

any other change to this Agreement (a "**Consequential Change**") which would result from or reasonably be required in order to facilitate the implementation of the proposed Proposed Variation (and if ESCO has identified any Consequential Change, it shall, in providing any information or estimates required pursuant to this paragraph 2.7, take into account and provide for and set out the anticipated effects of any such Consequential Change and references to any Proposed Variation in this paragraph 2 shall be deemed to include any Consequential Change and in particular for the purposes of acceptance or withdrawal, or agreement pursuant to paragraph 2.9, of the Proposed Variation, a Proposed Variation and any related Consequential Changes shall be treated as one Proposed Variation);

the steps and measures (which shall be as detailed as reasonably practicable in the circumstances) ESCO intends to take in order to implement the Proposed Variation, including the length of time and programme for implementing the Proposed Variation, taking into account the length of time required to obtain any Authorisations identified pursuant to paragraph 2.7.9 and to implement any Consequential Change; and

the identity of any subcontractors (if any) which ESCO intends to engage for the purposes of effecting the Proposed Variation.

Additional Information

The [Plot Developer] / [Building Developer] may (subject to paragraph 2.6 at its own cost) request from ESCO such additional information as the [Plot Developer] / [Building Developer] reasonably requires for the purposes of considering the Variation Report and shall make any such request as soon as reasonably practicable after receiving the Variation Report.

ESCO shall provide any information requested by the [Plot Developer] / [Building Developer] in accordance with paragraph 2.8.1 as soon as reasonably practicable after receiving such request.

Agreeing the Variation Report

As soon as reasonably practicable after the [Plot Developer] / [Building Developer] receives the Variation Report or, if the [Plot Developer] / [Building Developer] has requested additional information in accordance with paragraph 2.8.1, as soon as reasonably practicable after the [Plot Developer] / [Building Developer] receives such additional information, the Parties shall meet to discuss and attempt to agree the issues set out in the Variation Report.

The Parties shall act reasonably and in good faith to endeavour to agree amendments to the Variation Report such as to enable the Proposed Variation to proceed. Any agreed amendments shall be incorporated into the Variation Report.

If the Parties cannot agree on the contents of the Variation Report within a period of forty (40) Business Days from the date of the Variation Report, either Party may refer the matter for resolution in accordance with the Dispute Resolution Procedure (on the basis of the principles described in this Schedule 17, including that ESCO should be in no better or worse position in respect of Estimated Changes in Costs and Estimated Changes in Profits).

Within thirty (30) Business Days of a Variation Report being agreed or determined, the [Plot Developer] / [Building Developer] shall:

issue to ESCO an order (a "Developer Variation Order") requiring ESCO to implement the [Plot Developer] / [Building Developer] Variation in accordance with the Variation Report, as agreed or determined. The [Plot Developer] / [Building Developer] and ESCO shall comply with the terms of any such [Plot Developer] / [Building Developer] Variation Order; or

notify ESCO that it is withdrawing the [Plot Developer] / [Building Developer] Notice of Variation.

If the [Plot Developer] / [Building Developer] does not comply with paragraphs 2.9.4 within the time period specified in that paragraph, it shall be deemed to have notified ESCO that it is withdrawing the [Plot Developer] / [Building Developer]Notice of Variation.

Implementation of [Plot Developer] / [Building Developer] Variation

Upon receipt of any [Plot Developer] / [Building Developer]Variation Order (which ESCO shall review and confirm (by counter signature) as being in accordance with the agreed or determined Variation Report):

the Parties shall forthwith implement the relevant [Plot Developer] / [Building Developer] Variation in accordance with the terms of the Variation Report, as agreed or determined, subject to any Authorisation being obtained where the Variation Report specifies that the implementation of the [Plot Developer] / [Building Developer]Variation is conditional on such Authorisation;

the Output Specification shall be deemed to be amended as specified in the Variation Report, as agreed or determined;

this Agreement shall be deemed to be amended to the extent specified in the Variation Report, as agreed or determined;

the [Plot Developer] / [Building Developer]or ESCO shall make any Lump Sum Payments (and any other relevant payments) in accordance with the Variation Report, as agreed or determined; and

the [Plot Developer] / [Building Developer] Programme shall be adjusted in the manner agreed or determined.

Non-implementation of [Plot Developer] / [Building Developer] Variation

The [Plot Developer] / [Building Developer]shall reimburse ESCO its reasonable costs properly incurred in preparing a Variation Report where the relevant [Plot Developer] / [Building Developer]Variation is not implemented, other than where the reason for such non-implementation is that the costs of the [Plot Developer] / [Building Developer]Variation as set out in the Variation Report are materially greater than or otherwise the timetable or methodology of the [Plot Developer] / [Building Developer]Variation is materially different to those set out in the Outline Proposal as a result of the deliberate act or wilful default of ESCO.

* + - 1. ESCO VARIATION

Scope of ESCO Variation

If ESCO wishes to request an ESCO Variation (other than as a result of a Change in Law in which case the provisions of Part 2 of this Schedule 17 shall apply), it shall serve a notice on the [Plot Developer] / [Building Developer](an "**ESCO Notice of Variation**").

ESCO Notice of Variation

The ESCO Notice of Variation shall include all the information which ESCO is required to provide in a Variation Report, as detailed in paragraph 2.7, to the extent that such information is relevant to the proposed ESCO Variation and details of the following:

ESCO's reasons for proposing the ESCO Variation;

any date or dates by which any decision by the [Plot Developer] / [Building Developer]is critical; and

full details of any change required to the Output Specification.

Evaluation of the ESCO Notice of Variation

The [Plot Developer] / [Building Developer]shall evaluate the ESCO Notice of Variation in good faith taking into account all relevant issues, including:

any Lump Sum Payments and/or any other relevant payments required to be made (and the proposed timing of payment of any such Lump Sum Payments and any other relevant payments);

whether the ESCO Variation will affect the quality, timing and/or the likelihood of successful delivery of the ESCO Services;

whether the ESCO Variation will interfere with the relationship of the [Plot Developer] / [Building Developer] with third parties; and/or

whether the ESCO Variation materially affects the risks or costs to which the [Plot Developer] / [Building Developer], Customers and/or Registered Provider are exposed.

As soon as reasonably practicable after the [Plot Developer] / [Building Developer]receives the ESCO Notice of Variation, the Parties shall meet to discuss and attempt to agree the issues set out in the ESCO Notice of Variation (or any modifications to it).

As a result of the discussions undertaken pursuant to paragraph 3.3.2, ESCO may modify the ESCO Notice of Variation and shall notify the [Plot Developer] / [Building Developer]as soon as reasonably practicable of any such modifications.

Rejection of the ESCO Notice of Variation

Notwithstanding paragraph 3.3, the [Plot Developer] / [Building Developer]may (acting reasonably and in good faith) reject the ESCO Notice of Variation by issuing a notice of objection to ESCO listing the specific provision of paragraph 3.3 which applies. If the Parties cannot agree that the grounds of objection are valid, either Party may refer the matter for resolution in accordance with the Dispute Resolution Procedure.

Acceptance of the ESCO Notice of Variation

The [Plot Developer] / [Building Developer]may accept the ESCO Notice of Variation as modified pursuant to paragraph 3.3.3 (if applicable) by notifying ESCO (such acceptance not to be unreasonably withheld or delayed).

Implementation of ESCO Variation

Upon receipt of notification from the [Plot Developer] / [Building Developer]that it accepts the ESCO Notice of Variation:

the Parties shall forthwith implement the relevant ESCO Variation in accordance with the terms of the ESCO Notice of Variation as modified pursuant to paragraph 3.3.3 (if applicable), subject to any Authorisation being obtained where the ESCO Notice of Variation specifies that the implementation of the ESCO Variation is conditional on such Authorisation;

the Output Specification shall be deemed to be amended as specified in the ESCO Notice of Variation as modified pursuant to paragraph 3.3.3 (if applicable);

this Agreement shall be deemed to be amended to the extent specified in the ESCO Notice of Variation as modified pursuant paragraph 3.3.3 (if applicable); and

the [Plot Developer] / [Building Developer] or ESCO shall make any Lump Sum Payments in accordance with provisions specified in the ESCO Notice of Variation as modified pursuant to paragraph 3.3.3 (if applicable).

* + 1. : Change in Law
       1. **CHANGE IN LAW AFFECTING ESCO WORKS AND/OR ESCO SERVICES**
          1. To the extent that any Change in Law requires:-

capital investment in the Energy System; and/or

increases the operational and/or maintenance costs of providing the ESCO Services,

in order for the ESCO Works [and/or ESCO Services] to comply with Applicable Law, ESCO shall notify the [Plot Developer]/[Building Developer] of such Change in Law and shall provide an Impact Assessment in accordance with paragraph 1.2.1. [*Drafting Note: Parties to consider whether there are any circumstances when ESCo would want the right to terminate due to a change in law].*

Impact Assessment

ESCO shall provide, together with a notice of a Change in Law pursuant to paragraph 1.1 an Impact Assessment. In completing the Impact Assessment, ESCO shall act in good faith, be cognisant of procurement law and comply with Good Industry Practice with the objective of mitigating the overall costs of the Change in Law. The Impact Assessment shall set out sufficient detailed information regarding:

details of the impact of the Change in Law on the specification of the Energy System and the scope of the ESCO Works [and/or the ESCO Services] and ESCO's ability to meet its other obligations under the Agreement and any variations that will be required as a result of that impact and including (without limitation) and on an open book basis:-

any variation to this Agreement or the Project Agreements;

any impact on the risk profile as a result of the Change in Law;

details of any changes to the insurance arrangements required to cover any additional (or reduced) risks associated with the Change in Law;

details of any sub‑contracts or any other contract arrangements or consents required as a result of the Change in Law;

any capital expenditure required as a result of the Change in Law;

[any increase in costs of operation and/or maintenance costs of providing the ESCO Services;]

any alteration to the working practices of either Party;

a timetable for the implementation, together with details of any impact on the [Plot Developer]/[Building Developer] Programme or ESCO Programme;

any impact on the Development or [Plot Developer]/[Building Developer] Works being procured by the [Plot Developer]/[Building Developer];

evidence of the methods used or proposed methods to mitigate the impact of the Change in Law;

details of any relief from obligations under this Agreement required by ESCO;

any losses arising from Energy System inefficiencies directly caused by the Change in Law;

proposals in respect of the pass through of such costs [to Customers and/or] the [Plot Developer]/[Building Developer] in accordance with paragraph 1.3.1; and

such other information as the [Plot Developer]/[Building Developer] may reasonably request.

If the [Plot Developer]/[Building Developer] considers that it requires further information regarding the Impact Assessment, then within [ten (10)] Business Days of receiving the Impact Assessment, it shall notify ESCO of this fact and detail the further information and/or additional time that it requires. If the [Plot Developer]/[Building Developer] requests additional information, ESCO shall provide such additional information within [ten (10)] Business Days of receiving the [Plot Developer]/[Building Developer]’s request.

For the avoidance of doubt any impact of a change in Heat demand arising from a Change in Law shall be borne by ESCO.

* + - * 1. **Costs and impacts of the Change in Law**

Following Notification pursuant to paragraphs 1.1 and 1.2.1, the Parties shall seek, acting reasonably and in good faith, to agree:

the quantum of costs evidenced by the Impact Assessment;

Subject to the allocation of costs pursuant to paragraph (c) below only, any agreed variation or modification of this Agreement or the Project Agreements which achieves as closely as possible the effect that the original provision would have achieved but for the Change in Law.

the allocation of the agreed costs, based on the following[[127]](#footnote-128):

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Change in Law type** | **Costs to be passed to:** | | |
| **Customers** | **[Plot Developer]/[Building Developer]** | **ESCO** |
| 1. |  |  |  |  |
| 2. |  |  |  |  |
| 3. |  |  |  |  |

* + - * 1. **Implementing the Change in Law**

Once agreed or determined in accordance with paragraph 1.3, ESCO shall carry out all necessary actions to implement the relevant Change in Law and may pass any additional costs associated with Changes in Law on [to Customers in accordance with their Customer Supply Agreements or] to the [Plot Developer]/[Building Developer] pursuant to [a revised Connection Charge ][[128]](#footnote-129) in accordance with the allocations set out at paragraph 1.3.1 above.

In the event the Parties cannot agree then either Party shall be entitled to refer the matter to dispute resolution pursuant to Clause 28 (Dispute Resolution).

To the extent that any Change in Law or regulatory body ruling (including from the Office of Fair Trade), results in [the Heat Charges charged to Customers under the Customer Supply Agreements being considered unreasonable or] the mechanism of the Comparator being required to change, ESCO shall bear the cost of any decrease in Heat Charges required or increase in capital investment or operation and/ or maintenance costs (as applicable) and shall not be entitled to pass on any consequent increase in costs [either to Customers under Customer Supply Agreements or] to the [Plot Developer]/[Building Developer] under [ a revised Connection Charge ] [[129]](#footnote-130).

1. : Disaster Recovery Plan

*[ESCO to provide, as minimum to include:*

* *System Resilience and Disaster Recovery Strategy*
* *Secondary source of Heat*

*(e.g. back-up boiler plant/ thermal stores when main source of heat is unavailable and any mitigation measures in respect of timing of boiler maintenance)*

* *Tertiary sources of Heat*

*(e.g temporary trailorised boiler plant/ provision of electric heating to vulnerable customers)*

* *Measures to mitigate loss of plant and systems*
* *Zonal design*

*(e.g. measures to enable isolation of elements of the circuit to minimise disruption and management of phasing while different plots are brought on board)*

* *Operation, maintenance and monitoring*

*(e.g. policies in respect of spares/ lifecycle and reliability of components, capability within plant to identify potential issues, preventative and corrective maintenance regimes).]*

|  |  |
| --- | --- |
| Signed by [**PLOT DEVELOPER/ BUILDING DEVELOPER]** 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. Insert details of master developer for the Development (i.e. counterparty to the Concession Agreement) [↑](#footnote-ref-2)
2. Include any other properties to which heat is supplied by ESCO – eg schools, community centres etc. [↑](#footnote-ref-3)
3. Amend as appropriate depending on what components the Plot Developer/ Building Developer is designing and installing/ constructing and which components ESCO is adopting/ accepting. [↑](#footnote-ref-4)
4. Amend as appropriate depending on whether ESCO is accepting any components (i.e. taking partial risk in, rather adopting and taking full risk, including title). If this is a bulk heat supply to a Commercial Building, delete this recital (B)(ii). Note there optionality has been included to cover scenarios where a Building Developer/ Commercial Customer requires ESCO to undertake services in relation to a Secondary Distribution Network within their Commercial Building. [↑](#footnote-ref-5)
5. Amend as appropriate depending on whether ESCO is adopting any components (i.e. taking full risk and title). If this is a bulk heat supply to a Commercial Building, delete this recital (B)(iii). We have assumed that no Secondary Distribution Networks will be adopted within Commercial Buildings. [↑](#footnote-ref-6)
6. Include for Plot Developments with multiple buildings/ ownership structures or a Commercial Building where the Building Developer requires ESCO to undertake O&M services in relation to the Secondary Distribution Network within the Building. [↑](#footnote-ref-7)
7. Include for Plot Developments with multiple buildings/ ownership structures or a Commercial Building where the Building Developer requires ESCO to provide heat supplies to Commercial Unit Customers. [↑](#footnote-ref-8)
8. Include for supplies to a Commercial Building [↑](#footnote-ref-9)
9. Include where the Secondary Distribution Network or any other relevant part of the Energy System on the Plot Development/ in the Commercial Building has been constructed by the Plot Developer / Building Developer and will be accepted by (I.e. partial risk shall pass to) ESCO. Delete for a bulk supply to Commercial Building with no acceptance of equipment by ESCO. [↑](#footnote-ref-10)
10. Include where the Secondary Distribution Networkhas been constructed by the Plot Developer and will be “adopted” by (I.e. full risk and title shall pass to) ESCO. Note it is assumed that the internal Secondary Distribution Network within a Commercial Building will not be Adopted by ESCO (even if there are Commercial Units within the Building). Amend if otherwise. [↑](#footnote-ref-11)
11. Relevant where ESCO pays an Adoption Fee for equipment installed by the Plot Developer. [↑](#footnote-ref-12)
12. Amend according to proposed billing structure for bulk heat supplies to the Building Developer. [↑](#footnote-ref-13)
13. Use terminology where there is a bulk heat supply to the Connection point with no Secondary Heating Network internal to the Building forming part of the Energy System to be operated and maintained by ESCO. [↑](#footnote-ref-14)
14. Include as relevant, where a lease is being granted over substation space within a Commercial Building. [↑](#footnote-ref-15)
15. Include where electricity is supplied to commercial customers. [↑](#footnote-ref-16)
16. Amend as appropriate to reflect technical solution. Note that we would not expect CIUs to be included with Heat Meters for Commercial Unit Customers and have drafted on the basis that CIUs are not relevant to a Commercial Building Connection and Supply Agreement (because such agreement will not cover residential customers). [↑](#footnote-ref-17)
17. Include to the extent relevant to a Plot Development. Note that this drafting applies to Commercial Buildings on a complex development initially owned by one Plot Developer and connected to an off-site energy source **not**  to a Connection and Supply Agreement applying directly to a Commercial Building with its own connection to the district heating network. [↑](#footnote-ref-18)
18. Relevant to Plot Developments with Commercial Unit Customers and a Commercial Building where the Building Developer has sub-let to Commercial Unit Customers which are served by ESCO. [↑](#footnote-ref-19)
19. Where Common Parts are served by a separate meter, the Plot Developer (or relevant Landlord) should enter into A Plot Developer Supply Agreement in relation to such Common Parts. [↑](#footnote-ref-20)
20. Insert comparator according to relevant business case. [↑](#footnote-ref-21)
21. Note the Compensation Event drafting may be considered too complex for inclusion in a bulk heat supply agreement as other than failure to achieve heat on and failure to supply heat, there should be little other recourse required by the Building Developer customer. Remove (together with clause [14] (Compensation and Relief Events) if not considered appropriate. [↑](#footnote-ref-22)
22. Include where the Plot Developer is taking full title risk [↑](#footnote-ref-23)
23. List any project specific Compensation Events [↑](#footnote-ref-24)
24. Include where a Plot Development is being connected to the Heat Distribution Network pursuant to this Agreement. Amend as per configuration of the network. [↑](#footnote-ref-25)
25. Insert to the extent relevant – i.e. ESCO will provide private wire electricity supplies to commercial customers on the Plot Development/ within the Building or directly to the Building Developer. [↑](#footnote-ref-26)
26. Include appropriate delay damages payable to ESCO by the Plot Developer/ Building Developer on Plot Developer/ Building Developer delay to the Connection Date for the relevant Plot Development/ Commercial Building. This could be based upon a lost revenue calculation (netted against cost savings in relation to the delay – eg gas costs – and avoiding double counting in relation to costs payable pursuant to Clause 14 (Compensation and Relief events)). [↑](#footnote-ref-27)
27. NB: representative provisions unlikely to be relevant to a bulk supply agreement. [↑](#footnote-ref-28)
28. Amend as appropriate, depending on responsibility with regards to the Secondary Distribution Network. [↑](#footnote-ref-29)
29. Tailor as appropriate to relevant debt recovery process [↑](#footnote-ref-30)
30. Termination payment to be considered in the context of the commercial arrangements between the parties. If the Plot Developer/ Building Developer has invested significantly in equipment (for example, has constructed all district heating network and ancillaries on the Plot Development which are subsequently adopted by ESCO), there may be a need to compensate the Plot Developer/ Building Developer appropriately. [↑](#footnote-ref-31)
31. The Expiry Date will need to align with the Concession Agreement. [↑](#footnote-ref-32)
32. Include to the extent that the Plot Developer/ Building Developer is subject to FOIA. [↑](#footnote-ref-33)
33. NB IPR provisions are unlikely to be necessary for bulk heat supply agreements [↑](#footnote-ref-34)
34. Calibrate according to KPIs schedule [↑](#footnote-ref-35)
35. Include any other relevant events which should be deemed to be sufficiently severe to constitute “Major Default” [↑](#footnote-ref-36)
36. Include where there is a minimum take or pay for electricity for the Building Developer [↑](#footnote-ref-37)
37. Include where there is a minimum take or pay for heat for the Building Developer [↑](#footnote-ref-38)
38. Insert as relevant with respect to elements of the Energy System that are being Adopted/ Accepted [↑](#footnote-ref-39)
39. Insert as relevant with respect to elements of the Energy System that are not owned by ESCO but which are operated and maintained by ESCO. [↑](#footnote-ref-40)
40. Include specific authorisations for which the Developer is responsible – eg traffic related [↑](#footnote-ref-41)
41. Include appropriate delay damages payable to the Developer by ESCO on ESCO delay to the Connection Date for a relevant Plot/ Commercial Building. This could be based upon eg lost rental value/ need to provide temporary accommodate etc. [↑](#footnote-ref-42)
42. Consider what elements of compensation are appropriate given the commercial arrangement between the Parties. [↑](#footnote-ref-43)
43. Include as relevant, where a lease is being granted over substation space within the Plot Development. [↑](#footnote-ref-44)
44. Include to the extent technical relevant to the solution. [↑](#footnote-ref-45)
45. Include where separate buildings on the Plot are connecting directly to the Heat Distribution Network [↑](#footnote-ref-46)
46. Include where a Registered Provider is landlord of a block of social tenants on the Plot Development [↑](#footnote-ref-47)
47. Include where the Secondary Distribution Network is Accepted rather than Adopted and risk in relation to eg replacement and insurance remains with the Developer. [↑](#footnote-ref-48)
48. It is assumed that each Plot Building or Commercial Building will have its own substation room, within which the heat exchanger between the Primary Distribution Network and the Secondary Distribution Network (or in the case of a bulk heat supply, the internal Building Heating System) will be housed. [↑](#footnote-ref-49)
49. Consider any alternative future debts that will be owed by the parties [↑](#footnote-ref-50)
50. Applicable to bulk heat supplies made pursuant to this Connection and Supply Agreement. [↑](#footnote-ref-51)
51. The extent to which detailed specifications are developed for component of the Energy System on the Plot Development/ Building will depend on how prescriptive the parties need to be and at what point in time detailed design is completed. To the extent that any element of the Energy System is being Adopted or Accepted, a detailed Specification should be included or developed, against which the Adoption criteria will be judged. In addition, any substantive element of the Energy System that will ultimately be passed back/ owned by the Developer should also be built to agreed Specifications. [↑](#footnote-ref-52)
52. Applicable to bulk heat supplies made pursuant to this Connection and Supply Agreement. [↑](#footnote-ref-53)
53. Amend as appropriate [↑](#footnote-ref-54)
54. Include if relevant (i.e. the Plot Development contains Commercial Buildings with their own connection to the Heat Distribution Network). [↑](#footnote-ref-55)
55. Include if commercially agreed [↑](#footnote-ref-56)
56. Include if commercially agreed [↑](#footnote-ref-57)
57. Include where Lease over Substations are being granted to ESCO. [↑](#footnote-ref-58)
58. Include drafting for where there is a bulk supply of heat to a Building. [↑](#footnote-ref-59)
59. For a bulk heat supply agreement this may be unnecessary. Include detail to the extent necessary. [↑](#footnote-ref-60)
60. Include to the extent that electricity supplies are made to Commercial Customers on the Plot Development/ to the Building Developer/ Commercial Unit Customers within the Building. [↑](#footnote-ref-61)
61. Include where elements of the Energy System within the Plot are being Adopted (NB: this is unlikely for a Commercial Building where all internal pipework is normally operated and maintained by the relevant Commercial Customer). [↑](#footnote-ref-62)
62. Include in relation to any elements of the Energy System within the Plot Development / Commercial Building (if any) that are being Adopted or Accepted. [↑](#footnote-ref-63)
63. Drafting is included for the grant of Leases for the Substations on a Plot Development/ at a Commercial Building, plus easements for pipe routes and construction licence access. For a Commercial Building receiving bulk heat supply only, it may not be considered necessary/ practical to obtain a Lease over the Substation, therefore amend as appropriate. [↑](#footnote-ref-64)
64. Include for Plot Developments where access to the Primary Distribution Network is required across the Plot Developer’s land and an Easement (rather than a Lease) of the pipework route is desired. [↑](#footnote-ref-65)
65. Include where the Plot Developer is taking full title risk [↑](#footnote-ref-66)
66. Include where ESCO is required to undertake title due diligence [↑](#footnote-ref-67)
67. Include to the extent it is commercially agreed that the Plot Developer/ Building Developer takes full title risk. [↑](#footnote-ref-68)
68. These provisions may not be relevant to a bulk heat supply to a Commercial Building: include as appropriate (for example if bulk supplies are made to a plant room within the Commercial Building, with the potential for contamination by either party). [↑](#footnote-ref-69)
69. Applicable for Plot Developers only [↑](#footnote-ref-70)
70. Include any additional relevant processes required regarding the entry into Connection and Supply Agreements. [↑](#footnote-ref-71)
71. Include where there is a commercial agreement that the Plot Developer is responsible for residential unit void periods where leases/ tenancies are short term. [↑](#footnote-ref-72)
72. Inclusion of requirements as to the construction and installation of the Energy System may not be deemed necessary (and potentially overburdensome), particularly where this contract is intended to be largely output based. It certainly should not be required in a bulk heat supply agreement to a Commercial Customer. [↑](#footnote-ref-73)
73. For commercial agreement as to whether (and which) Heat Trust standards should be required for Commercial Customers. [↑](#footnote-ref-74)
74. Applicable for Plot Developers/ Building Developers with tenants served under separate Commercial Units Supply Agreements, where Heat Supplies are not charged for pursuant to this Agreement. [↑](#footnote-ref-75)
75. Provisions relevant to supplies of bulk supplies of Heat (and Electricity where relevant) directly to the Building Developer under this Agreement. Note that no supplies of Heat or Electricity are envisaged to be made directly to a Plot Developer under this form of Agreement (rather they would enter into a Developer Heat Supply Agreement) or to a Building Developer with multiple commercial occupiers (where Heat Supplies would be made directly those Commercial Unit Customers under a Commercial Unit Heat Supply Agreement). [↑](#footnote-ref-76)
76. Align with relevant billing year [↑](#footnote-ref-77)
77. It is assumed that heat standing charges will be charged in advance: amend as appropriate [↑](#footnote-ref-78)
78. Include any other relevant information [↑](#footnote-ref-79)
79. Include where there is a minimum “take or pay” [↑](#footnote-ref-80)
80. Include relevant charges where no electricity consumption occurs, but a form of availability charges are still applicable. [↑](#footnote-ref-81)
81. Consider whether such a detailed debt recovery process is required. [↑](#footnote-ref-82)
82. Note the Compensation Event drafting may be considered too complex for inclusion in a bulk heat supply agreement as other than failure to achieve heat on and failure to supply heat, there should be little other recourse required by the Building Developer customer. Remove (together with relevant definition if not considered appropriate. [↑](#footnote-ref-83)
83. These provisions are unlikely to be necessary for bulk heat supply agreements. [↑](#footnote-ref-84)
84. These provisions are unlikely to be necessary for a bulk heat supply agreement to a Commercial Building. Include as appropriate. [↑](#footnote-ref-85)
85. These provisions are unlikely to be necessary for a bulk heat supply agreement to a Commercial Building. [↑](#footnote-ref-86)
86. Period for commercial agreement. Parties may consider a shorter period more appropriate for a bulk heat supply agreement to a Commercial Building. [↑](#footnote-ref-87)
87. Details of required insurances unlikely to be required for a bulk heat supply agreement to a Commercial Building. [↑](#footnote-ref-88)
88. These provisions may be considered too complex for a bulk heat supply agreement. Simplify if necessary. [↑](#footnote-ref-89)
89. NB: provisions to be drafted as appropriate. [↑](#footnote-ref-90)
90. Only relevant in relation to Adopted elements of the Energy System (eg Primary Plot Distribution Network and the Secondary Distribution Network) [↑](#footnote-ref-91)
91. Include any relevant elements of the Energy System that have been Adopted and will be transferred back to the Plot Developer. [↑](#footnote-ref-92)
92. Parties to consider, given their particular circumstances. [↑](#footnote-ref-93)
93. Amend as appropriate, given commercial arrangements between the Parties. [↑](#footnote-ref-94)
94. Only applicable where infrastructure has been Adopted by ESCO and there are no arrangements for ESCO to hold infrastructure in perpetuity. [↑](#footnote-ref-95)
95. Drafting included on the basis that the Connection and Supply Agreements are tied to the Concession Agreement and any transfer/ novation by ESCO must align with the Concession Agreement. [↑](#footnote-ref-96)
96. This may be considered too restrictive on a Plot Developer. Amend as appropriate to enable transfers before completion, however, consider any additional comfort ESCO will require in relation to the transferee. [↑](#footnote-ref-97)
97. A simple change process has been included for a bulk heat supply contract. [↑](#footnote-ref-98)
98. A detailed change procedure can be included to govern how parties wish to manage changes to the Agreement. [↑](#footnote-ref-99)
99. Unlikely to be relevant to a bulk supply agreement. [↑](#footnote-ref-100)
100. Amend as appropriate – standard works provisions for a contractor undertaking works on a development site have been included. [↑](#footnote-ref-101)
101. Consider whether a more detailed Interface Protocol may be required. [↑](#footnote-ref-102)
102. To apply to any element of the Energy System installed by the Plot Developer (or the Building Developer), where it is intended that risk in the asset is shared (e.g. the Plot Developer/ Building Developer retain title to and e.g. obligation to replace/ cover costs of replacement/ insurance, whilst ESCO takes the risk on operation and maintenance).

     Commonly acceptance applies to the Secondary Distribution Network and ancillary equipment within buildings and the schedule has been drafted on this basis. Note that commonly supplies to a single Commercial Building will be on a bulk supply basis and therefore all building network will continue to be owned, operated and maintained by the Building Developer. However, we have added the optionality for the Secondary Network within a Commercial Building to be accepted by ESCO on the basis that some commercial customers would want this optionality (particularly if they have sublet any units to Commercial Unit Customers). [↑](#footnote-ref-103)
103. Initial and final commissioning included: delete as appropriate if procedure considered too administratively burdensome. [↑](#footnote-ref-104)
104. If required, include a detailed list of items required to be detailed, such as property address, manufacturer of meter, model, serial number, details of the automated reading system if installed etc. [↑](#footnote-ref-105)
105. Drafted to apply to any element of the Energy System installed by the Plot Developer and to be adopted by ESCO. Delete relevant sections as appropriate to reflect the elements installed by the Plot Developer and adopted by ESCO. Note that we have assumed that no elements of an internal distribution system within a Commercial Building will be adopted by ESCO. [↑](#footnote-ref-106)
106. Initial and Final Commissioning included: delete Initial if considered unnecessary detail for required inspection process. [↑](#footnote-ref-107)
107. Include as appropriate, depending on which elements of the Energy System have been installed by the Plot Developer and are to be adopted by ESCO. [↑](#footnote-ref-108)
108. Basic O&M provisions included: amend to include additional relevant requirements. Optionality has been provided for Operation and Maintenance Services to Secondary Network within a Commercial Building, noting that this would not be relevant in the case of bulk heat supplies. [↑](#footnote-ref-109)
109. Include to the extent technically relevant. [↑](#footnote-ref-110)
110. Only relevant where elements of the Energy System are Adopted and require replaced. It is assumed that any Secondary Heating Network within a Commercial Building will not be Adopted. [↑](#footnote-ref-111)
111. Include for Plot Developments with multiple customers and where a Commercial Building only where the Building Developer has sub-let to Commercial Unit Customers. [↑](#footnote-ref-112)
112. Include other relevant requirements [↑](#footnote-ref-113)
113. Basic Customer Service provisions included: amend to include additional relevant requirements, taking in account that a Concession is intended to be output based (i.e. delivery of Heat to Customers and achievement of the Service Levels). Note that this would not be relevant to a bulk heat supply agreement. [↑](#footnote-ref-114)
114. Include where the variable unit heat pricing is benchmarked as against a comparator with alternative forms of heating. Parties may also want to consider alternative comparators to show more cost reflective pricing for district heating schemes. [↑](#footnote-ref-115)
115. Insert relevant details re components of the Energy System covered by the Standing Charge, bearing in mind Landlord and Tenant Act. [↑](#footnote-ref-116)
116. Insert comparator. [↑](#footnote-ref-117)
117. It is assumed that charges will be varied under the Concession and rolled out across the Development, rather than any Plot Developers/ a Building Developer/ Commercial Customers having the discretion to agree variations to such charges. [↑](#footnote-ref-118)
118. Include relevant review methodology for electricity charges. [↑](#footnote-ref-119)
119. Applicable to Plot Developers with residential occupiers. Consider applicability if any personal data will be shared in the case of Commercial Unit tenants / Commercial Customer/ a Building Developer. [↑](#footnote-ref-120)
120. Amend as appropriate to include agreed marketing and publicity protocols, or delete Schedule if no publicity required. It is assumed that Commercial Buildings will not require a publicity schedule. [↑](#footnote-ref-121)
121. Suggested details included for a CHP District Heating Scheme. Amend as appropriate for the relevant technology. [↑](#footnote-ref-122)
122. Amend as appropriate to reflect agreed processes for governance. Assumed not necessary for a bulk heat supply agreement. [↑](#footnote-ref-123)
123. Suggested KPIs only. These should follow the Plot Developers/ Building Developer’s requirements vs ESCO’s relevant business models and relevant negotiations. [↑](#footnote-ref-124)
124. Align with thresholds set out under Customer Supply Agreements [↑](#footnote-ref-125)
125. Consider any arrangements for capping to avoid hair trigger escalation of points (eg, to a certain number of points where all units are served by the same Substation) and for avoidance of double counting for trigger purposes (eg between failure to supply heat and for failure to respond to complaints). [↑](#footnote-ref-126)
126. Calibrate points such that this captures systemic failures that are not sufficiently acute to trigger a Monthly Service Failure. [↑](#footnote-ref-127)
127. NB some schemes may choose to allocate costs using a different methodology. Amend as appropriate. [↑](#footnote-ref-128)
128. Include the relevant mechanism by which the Plot Developer / Building Developer bears costs of a Change in Law [↑](#footnote-ref-129)
129. Include the relevant mechanism by which the Plot Developer / Building Developer bears costs of a Change in Law [↑](#footnote-ref-130)