

2021

Agreement relating to the supply of energy services

Leeds City Council

and

The Secretary of State for Work and Pensions

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DATE

PARTIES

- (1) Leeds City Council whose registered address is Civic Hall, Calverley St, Leeds, United Kingdom, LS1 1UR (**Supplier**).
- (2) The Secretary of State for Work and Pensions, acting as part of the Crown (**Customer**).

BACKGROUND

- (A) The Supplier has an agreement with Vital Energi Utilities Ltd (company number 04050190) whose registered office is at Century House, Roman Road, Blackburn, BB1 2LD (**Contractor**) who will operate the Heat Assets on its behalf.
- (B) The Customer and the Supplier have agreed that the Supplier, utilising the Heat Assets, shall supply the Customer with Energy Services to the Point of Connection on the terms set out in this Agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this Clause apply in this Agreement:

Actual Monthly Heat Demand	the actual volume of heat (measured in kilowatt hours (kWh)) used by the Customer at the Premises in the relevant Payment Period, as determined in accordance with Clause 6.
Alternative Dispute Resolution Notice (ADR Notice)	Means a notice served by either Party requesting mediation of a Dispute, setting out the nature and full particulars of a Dispute together with relevant supporting documents.
Agreement	this agreement.
Agreement Term	means a period of 20 years from the satisfaction of all the Conditions Precedent, subject to the provisions relating to early termination.
Annual Heat Quotient	The anticipated amount of heat, in kilowatt hours (kWh) supplied by the Supplier to the Customer.
Authorised Representatives	means representatives nominated by either Party to attempt to resolve a Dispute.
Back-Up System	a system capable of providing heat supply to the Customer as an alternative method of supply should there be any disruption to the Energy Services.
Base Date	15 th October 2021, the date that is exactly one month prior to the Date of Supply.
Base Heat Capacity Fee	means the Heat Capacity Fee applicable at the Base Date.
Base Heat Tariff	means a tariff for the supply of heat based on the Customer's existing cost of heat as at the Base Date, calculated by indexing the Heads of Terms Heat Tariff in accordance with paragraphs 7.2 and 8.3 in Schedule 3.
BEIS Gas Index	<i>Prices of fuels purchased by non-domestic consumers in the UK for an appropriately sized consumer, as published by the</i>

	Department of Business Enterprise and Industrial Strategy or failing such publication or in the event of a fundamental change to the BEIS Gas Index, such other index or adjustment as the Supplier may reasonably determine (in either case with the intention of putting the parties in no better nor worse position than they would have been had the BEIS Gas Index not ceased to be published or the relevant fundamental change not been made).
Building Management System or BMS	the Customer's control system for operating the Customer's Secondary System.
Business Day	a day which is not a Saturday or Sunday or a bank or national holiday in England.
Bribery Act	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
Carbon Reduction Commitment Energy Efficient Scheme	the UK government scheme which requires eligible organisations to purchase carbon allowances in accordance with their recorded carbon emissions (CRC).
CEDR Model Mediation Procedure	Means the most up to date model mediation procedure, as published from time to time, by CEDR Solve
Central Government Body	A body listed in one of the following subcategories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency.
Change	any change to this Agreement.
Change in Law	any change in the Law or the repeal of a Law or the implementation of any new Law or a change in the interpretation, application or enforcement of any Law which relates to the Energy Services and/or impacts on the Energy Services.
Charges	the sums payable pursuant to Part 1 of Schedule 3 (Charges), or any element thereof.
Commencement Date	the date of this Agreement.
Conditions Precedent	those conditions precedent which are set out in Schedule 1 (Conditions Precedent).
Connection Fee	means the connection fee of REDACTED attributable to this Agreement which relates to the Supplier's total cost of supply and installation of plant, which for the avoidance of doubt shall include the cost of laying spur from main spine of network.
Connection Fee Recovery Period	means the period in which the Customer shall remain liable for the Connection Fee, as set out in Schedule 3 Part 2

Customer Breach	<p>an event whereby the Customer:</p> <ul style="list-style-type: none"> (a) fails to pay any relevant Charges in accordance with Clause 6; (b) installs any alternative means of heat (save as required under this Agreement to maintain the Customer's Secondary System or the Back-Up System); (c) interferes with and/or damages any of the Supplier's equipment relating to the Energy Services, including but not limited to Heat Assets; and (d) failure to provide access in accordance Clause 8.
Customer Failure to Pay	means deliberate withholding of undisputed payments legitimately due for over 90 days from the date of invoice
Customer's Secondary System	<p>(a) the whole of the Customer's heating system existing from time to time, within the Premises, which is connected to the Heat Assets, including all Customer heating pipework, boiler plant, pumps and controls systems up to the Point of Connection to the Supplier's plate heat exchanger, but for the avoidance of doubt excluding the Supplier's pipework, plate heat exchanger, heat Meters, pumps and control systems on the Supplier's side of the plate heat exchanger and as indicated in Schedule 5 (Point of Connection and Equipment); and</p> <p>(b) electrical supplies to components within the Customer's Secondary System from the first distribution board upstream and controls relating to the Customer's Secondary System (including but not limited to control panels, control devices, and associated control wiring).</p>
Customer Specification	the specific details and parameters of the Customer's heat supply requirements, as set out in Schedule 6.
Data Protection Legislation	means (i) the UK GDPR and any applicable national implementing Laws as amended from time to time; (ii) the Data Protection Act 2018 and the regulations made under it, and (iii) all applicable Laws and regulations relating to the processing of Personal Data and privacy
Date of Supply	the date for commencement of the provision of the Energy Services, being the date that heat is first delivered to the site, as measured by the Heat Meter and following completion of the construction, installation and commissioning of the Heat Assets
Dispute	has the meaning given to it at Clause 16.1.
Dispute Notice	Means a written notice served by either Party setting out the nature and full particulars of a Dispute together with relevant supporting documents.
Disputed Amount	has the meaning given to it in Clause 6.4.1.
Emergency	any event where the Supplier reasonably considers it necessary to take urgent steps to remedy any matter for reasons of health and safety or security (being in the nature of criminal acts and any acts or events requiring the intervention of the police, emergency services or other authorised third parties or similar

	<p>matters) whether or not this is as a result of the Supplier's failure to comply with any of its obligations under this Agreement.</p>
Energy Services	<p>the provision of heating services to the Premises in the form of the supply of heat at the Point of Connection.</p>
Equipment	<p>the Heat Assets (which shall also, for the avoidance of doubt, include the Meters).</p>
Events	<p>Emergency – faults that result in serious risk to health and safety, cause catastrophic failure to a building's heat supply, cause major damage to the structure of the property, or result in the property being insecure;</p> <p>Priority – faults that have a serious impact on the comfort of the Customers, impact on the delivery of heat to the Customer, or that cause damage to the property;</p> <p>General – other repairs that are required to a Customer's connection.</p>
Expiry Date	<p>the date set out in Clause 2.5.</p>
Fixed Charges	<p>means the Heat Capacity Charge payments calculated in accordance with Schedule 3 paragraph and 4.</p>
Flow Temperature	<p>the Customer's required temperature for the flow of hot water into the Customer's Secondary System from the Heat Assets, as set out at Schedule 6.</p>
Force Majeure	<p>the occurrence after the date of this Agreement of any event beyond the reasonable control of a party affecting its performance of its obligations under this Agreement which cannot reasonably be avoided or overcome by that party and which is not attributable to the actions, neglect or failure to take preventative action by that party, including (but not limited to):</p> <ul style="list-style-type: none"> (a) war, hostilities (whether war be declared or not), invasions, act of foreign enemies, civil war, sabotage or piracy; (b) rebellion, terrorism, revolution, insurrection, military or usurped power, riot, civil commotion or disorder; (c) ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such radiation or radio-activity; (d) operation of the forces of nature such as earthquake, hurricane, lightning, typhoon or volcanic activity; (e) instances of exceptionally adverse weather; (f) explosions, fires or destruction of plant, machinery or premises; (g) strikes, lockouts or labour disputes of all kinds; or (h) failure or interruption of supply in the Supplier's supply chain

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

the standards, practices, methods and procedures conforming to applicable Laws and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar services.

Half Hour Period

each period of thirty (30) minutes during a Payment Period commencing on and from each hour and half hour during the Payment Period. For example:

- (a) the first Half Hour Period in any Payment Period will run on (and from) 00:00:00 up to (but not including) 00:30:00 on the first day of that Payment Period; and
- (b) the last Half Hour Period in any Payment Period will run on and from 23:30:00 on the last day of that Payment Period up to (but not including) 00:00:00 on the first day of the next Payment Period.

Heads of Terms Date

means 21st October 2020, the date that the Heads of Terms Heat Capacity Fee and Heads of Terms Heat Tariff were fixed by both Parties.

Heads of Terms Heat Capacity Fee

means **REDACTED** / kW / year.

Heads of Terms Heat Tariff

means **REDACTED** p/kWh.

Heat

means heat delivered as hot water from the Supplier to the Customer via a plate heat exchanger.

Heat Assets

the heat supply equipment installed and/or supplied at the Premises by or on behalf of the Supplier and owned by the Customer, to include district heating pipework and all equipment contained within the confines of the plate heat exchanger mounting skid (including plate heat exchanger, pipework, valves, heat Meters, pumps and control systems up to the isolation valve on each flow and return pipe where these leave the confines of the mounting skid, but excluding the isolation valves themselves, and connecting pipework from this point to the Customer's Secondary Systems. Supported by diagram at Schedule 5.

Heat Capacity

the agreed level of heat made available to the Customer by the Supplier

Heat Capacity Charge

means a fixed amount calculated in accordance with Schedule 3 paragraph 4.

Heat Capacity Fee

means the charge per kilowatt of Maximum Heat Demand set out in Schedule 3 paragraph 4.1, as Indexed on each Indexation Date in accordance with Schedule 3 paragraph 8.2.

Heat Meter	A metering device to measure the flow of heat, in kilowatt hours, to an accuracy equivalent to a Class 3 device, as defined in the Measuring Instrument Directives (2004/22/EC).
Heat Tariff	the tariff for the supply of heat, applicable in the relevant Payment Period, as calculated in accordance with Schedule 3 paragraph Error! Reference source not found. and adjusted at each Indexation Date.
Indexation Date	means each anniversary of the Date of Supply.
Indexed	means to vary the value of Charges by agreed indices.
Information	has the meaning given under section 84 of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004
Information Legislation	the Freedom of Information Act 2000 and the Environmental Information Regulations 2004
Intellectual Property	any and all intellectual property rights of any nature anywhere in the world whether registered, registerable 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.
Insolvency Event	<p>an event where the relevant person:</p> <ul style="list-style-type: none"> (a) is dissolved (other than pursuant to a solvent consolidation, amalgamation or merger); (b) becomes insolvent or is unable to pay its debts or fails, or admits in writing its inability, generally to pay its debts as they become due; (c) makes a general arrangement or composition with or for the benefit of its creditors; (d) institutes or has instituted against it a proceeding seeking a judgment of insolvency or any other relief under insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up, liquidation or dissolution, and, in the case of any such proceeding or petition instituted or presented against it, that proceeding or petition results in a judgment of insolvency or the entry of an order for relief or the making of an order for its winding-up or liquidation or is not withdrawn, dismissed, discharged, stayed or restrained in each case within thirty (30) days of the institution or presentation of that proceeding or petition; (e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a solvent consolidation, amalgamation or merger);

- (f) seeks or becomes subject to the appointment of an administrator, administrative receiver, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and that secured party maintains possession, or that process is not withdrawn, dismissed, discharged, stayed or restrained, in each case within thirty (30) days of that event; or

causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in Paragraphs (a) to (g) above (inclusive).

Law	any applicable law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union Withdrawal Act 2018 as amended by EU (Withdrawal Agreement) Act 2020, exercise of the royal prerogative, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Customer and/or Supplier as the case may be is bound to comply.
Long Stop Date	27th May 2023 (or such later date as is agreed in writing between the parties).
Maximum Heat Demand	means 3,500 kilowatts, the agreed level of heat made available to the Customer by the Supplier.
Meter(s)	the meter[s] and related equipment used to measure the Energy Services provided to the Point of Connection.
Meter Guidance	the Heat Network (Metering and Billing) Regulations (2014), with additional reference in relation to accuracy of heat meters to the Measuring Instrument Directives (2004/22/EC), as updated from time to time, or such other reference standard that the parties may agree to use for the purposes of this Agreement.
Month/Monthly	Calendar month
Monthly Payment	for each Payment Period, the amount calculated in accordance with Schedule 3 paragraph 2.1 .
Northern Gas Networks or NGN	The regional gas distribution network operator for Yorkshire.
Party/Parties	means the Supplier (Leeds City Council) and/or the Customer
Payment Change Date	the date that any revisions to the Charges (or any element thereof) are made and shall be the date that any Relevant Event becomes operative or, if no date is specified, the date agreed as set out in this Agreement.
Payment Information	the following information relating to any Payment Period:

- (a) (as applicable) the Connection Fee payable in that Payment Period;
- (b) the Heat Capacity Charge for that Payment Period (as Indexed on each Indexation Date in accordance with Paragraph 8 of Part 1 of 0 (Charges)), along with a breakdown of how it has been calculated;
- (b) the Variable Heat Charge for the relevant Payment Period, along with a breakdown of how it has been calculated, such breakdown to include, as a minimum:
 - (i) the applicable Heat Tariff for that Payment Period (as Indexed on each Indexation Date in accordance with Paragraph 8 of Part 1 of 0 (Charges)); and
 - (ii) the Actual Monthly Heat Demand for the relevant Payment Period;
- (d) the Return Temperature Adjustments for that Payment Period (along with a breakdown of how they have been calculated);

Payment Period

each calendar month from the Date of Supply until the Expiry Date (or earlier Termination Date) save that:

- (a) the first Payment Period shall be the period commencing on the Date of Supply and ending on the last day of the calendar month on which the Date of Supply occurs; and
- (b) the final Payment Period shall be the period commencing on the first day of the calendar month in which the Expiry Date (or earlier Termination Date) occurs and ending on the Expiry Date (or earlier Termination Date).

Planned Maintenance

Maintenance of the Equipment that is required by the Supplier at regular intervals, and which can be planned in advance, as set out in section 4.3.

Point of Connection

the demarcation point set out in the drawing at Schedule 5 (Point of Connection and Equipment).

Point of Contact

means a nominated person or other point of contact (notified in writing by the Supplier to the Customer before the Commencement Date) at the Supplier's Contractor with responsibility for operation and maintenance of Heat supply.

Point of Supply

the point at which hot water leaves the Supplier's plate heat exchanger and enters the Customer's Secondary System.

Premises

Quarry House, Quarry Hill, Leeds, LS2 7UA, including the adjacent nursery building as indicated in the plan at Schedule 5 (Point of Connection and Equipment).

Prescribed Rate	four per cent (4%) above the base rate from time to time of the Bank of England.
Prohibited Act	<p>the following constitute Prohibited Acts:</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the other party a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; (c) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; (iii) defrauding, attempting to defraud or conspiring to defraud the Authority. (d) any activity, practice or conduct which would constitute one of the offences listed under Clause (c), if such activity, practice or conduct had been carried out in the UK.
Qualifying Change in Law	has the meaning given to it in Clause Error! Reference source not found.
Receiving Party	has the meaning given to it in Clause 18.1.
Relevant Event	means a Change approved pursuant to Clause 13 of this Agreement, a Qualifying Change in Law, or any other matter as a result of which there may be a revision of the Charges (or any element thereof) in accordance with Schedule 3 (Charges).
Reporting Information	<p>the reporting information and data relating to the Customer's heat and electricity consumption, to include:</p> <ul style="list-style-type: none"> (a) half hourly consumption data, provided through web-based data portal (b) monthly consumption data, provided within monthly bill information) (c) annual consumption, provided within annual statement
Request for Information	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term Request shall apply)

Return Temperature	the Customer's target temperature for the return of heat as set out at Schedule 6.
Return Temperature Adjustment	means the amount calculated in accordance with Schedule 3 paragraph 6 and payable in respect of any Payment Period where the Customer fails to achieve the Return Temperature on more than 7 days in any that Payment Period.
Service Level KPIs	the service level key performance indicators set out more particularly at Schedule 2.
Supplier Breakage Costs	<p>liabilities that have been (or will be) reasonably and properly incurred by the Supplier as a direct result of the termination of this Agreement for Customer breach, but only to the extent that:</p> <ul style="list-style-type: none"> (a) the liabilities are incurred in connection with the Supplier carrying out its obligations under this Agreement, including: <ul style="list-style-type: none"> (i) any materials or goods ordered or subcontracts entered into that cannot be cancelled without such liabilities being incurred; (ii) any expenditure incurred in anticipation of the supply of heat or the completion of related works in the future; (iii) the cost of demobilisation including the cost of any relocation of equipment used in connection with carrying out its obligations under this Agreement; (iv) any administration and legal costs incurred; and
Term	the period from and including the Commencement Date to the Expiry Date or, if earlier, Termination Date.
Termination Date	the date of termination of this Agreement in accordance with its terms.
UK GDPR	the retained European Union law version of the General Data Protection Regulation (EU) 2016/679 as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal Act) 2018, and as amended by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 as in force in the UK from time to time
Unconditional Date	the date on which the last of the Conditions Precedent is satisfied.
Unrecovered Connection Fee	the amount of the Connection Fee as shall be deemed to have not been recovered by the Supplier from the Customer as at the Termination Date (and therefore deemed to be outstanding as at

- the Termination Date) as calculated in accordance with Part 2 of Schedule 3 (Charges).
- Variable Charges** means the payments calculated in accordance with Schedule 3 paragraph 5.
- Variable Heat Charge** means the charge payable for every unit of heat consumed by the Customer, in £ per kWh, calculated in accordance with Schedule 3 paragraph 5.1.
- VAT** all fees and charges are shown exclusive of value added tax. Value added tax is the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994.
- Working Day** means any day other than a Saturday or Sunday or public holiday in England and Wales.
- 1.2 Clause, Schedule and Paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to writing or written includes by letter (sent by hand, post, registered post or by the recorded delivery service), or transmission by electronic mail.
- 1.10 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.12 References to Clauses and Schedules are to the Clauses and Schedules of this Agreement; references to Paragraphs are to Paragraphs of the relevant Schedule.
- 1.13 Where there is any conflict or inconsistency between the provisions of the Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- 1.13.1 the Clauses of this Agreement;
 - 1.13.2 Schedule 6 (Customer Specification);
 - 1.13.3 Schedule 2 (Service Level KPIs) to this Agreement;
 - 1.13.4 the remaining Schedules to this Agreement.

2. CONDITIONS PRECEDENT AND TERM

- 2.1 This Agreement is conditional upon the satisfaction of the Conditions Precedent set out in Schedule 1 by the Longstop Date, save in relation to this Clause 2.1 (Conditions Precedent and Term) and Clauses 1 (Definitions and Interpretation), 18 (Confidentiality), 19 (Information Legislation), 21 (Warranties), 22 (Notices) and 23 (Governing Law and Jurisdiction) which will take effect on the Commencement Date.
- 2.2 The remaining provisions of this Agreement shall take effect on the Unconditional Date.
- 2.3 If the Conditions Precedent have not been satisfied by the Longstop Date, either party shall be entitled to terminate this Agreement by serving written notice on the other party to that effect, and upon service of such notice this Agreement will (without prejudice to any claims available to either party in respect of any prior breach) terminate immediately. Should the Conditions Precedent subsequently be satisfied after the Long Stop Date without either party having terminated the Agreement, this termination right will fall away.
- 2.4 Each party shall use all reasonable endeavours to procure the satisfaction of the Conditions Precedent on or before the Longstop Date and as soon as reasonably practicable after the Commencement Date.
- 2.5 This Agreement shall, subject to earlier termination in accordance with its terms, expire automatically without notice on the 20th anniversary of the Unconditional Date).

3. SUPPLIER OBLIGATIONS

- 3.1 The Supplier shall:
- 3.1.1 provide the Energy Services to the Point of Connection from the Date of Supply;
 - 3.1.2 provide billing, metering and Point of Contact details to the Customer;
 - 3.1.3 operate and maintain the Heat Assets, including routine repair and maintenance and the replacement of any plant or equipment forming part of the Heat Assets as necessary in order for the Supplier to comply with its obligations under this Agreement;
 - 3.1.4 provide the Reporting Information and data to the Customer relating to the Customer's heat consumption. This will include pushing data to the Customer's preferred AMR platform in the appropriate format to ensure compliance with the Customer's energy M&T strategy;
 - 3.1.5 have an ongoing responsibility throughout the Term to identify new or potential improvements to the Energy Services;
 - 3.1.6 perform its obligations under the Agreement in accordance with all applicable law regarding health and safety, and the Customer's health and safety policy whilst at the Premises;
 - 3.1.7 provide the Customer with the average carbon emissions factor within its monthly invoicing. This will be calculated annually and will be accurate, auditable and reflective of all heat sources that have operated across the network during the period; and
 - 3.1.8 provide a manned 24/7 helpline or contact to enable the customer to contact in case of emergency.

until this Agreement expires or otherwise terminates subject to and in accordance with the terms of this Agreement.

- 3.2 Without prejudice to Clause 3.1, the Supplier shall perform its obligations under this Agreement:
- 3.2.1 in accordance with Good Industry Practice;

- 3.2.2 in accordance with all relevant Laws and other statutory requirements;
- 3.2.3 in accordance with the Service Level KPIs including in relation to the availability of heat, and the restoration of supply, set out in Schedule 2 (Service Level KPIs); and
- 3.2.4 subject to Clause 4 (Faults, Energy Services Interruptions and Maintenance), so as to avoid any interruption to the supply of Energy Services to the Customer.

4. FAULTS, ENERGY SERVICES INTERRUPTIONS RESILIENCE AND PLANNED MAINTENANCE

- 4.1 The Supplier shall provide the Energy Services at all times in accordance with this Agreement until it expires or otherwise terminates, however the Customer acknowledges that the Supplier may need to suspend the Energy Services in certain circumstances and that the Energy Services may be otherwise interrupted. The Supplier shall use all reasonable endeavours to mitigate the consequences of any such suspension or interruption, remedy any relevant fault and resume provision of the Energy Services as soon as possible.
- 4.2 If there is a fault or interruption to the Energy Services (other than a fault or interruption that the Supplier has previously notified the Customer of) the Customer shall notify the Supplier as soon as reasonably practicable by contacting the Point of Contact (Vital Energi).
- 4.3 The Supplier shall ensure that as far as reasonably practicable any Planned Maintenance that may cause an interruption to the delivery of the Energy Services shall occur during anticipated periods of low demand for the Energy Services, and the Supplier shall endeavour to minimise such periods of disruption.
- 4.4 The Supplier has a robust contract in place with the Contractor to ensure that all sites continue to receive heat to meet the ongoing operation needs. This covers a range of known factors that may impact on heat delivery and anticipates potential sources of interruption. These are outlined in Schedule 7.
- 4.5 In the unlikely event that heat is interrupted from the district heating network and the contingency arrangements to maintain the energy centre heat cannot be achieved (refer to Schedule 7), the Supplier shall provide, temporary containerised boilers, which shall be used for back up heat generation. In the alternate should the Customer wish to self-supply temporary heating or hot water during a service suspension or interruption, the Supplier will allow this.

5. CUSTOMER OBLIGATIONS

- 5.1 The Customer shall:
 - 5.1.1 grant access to the Supplier in accordance with Clause 8, including facilitating access to the BMS as required;
 - 5.1.2 comply with Schedule 6 (Customer Specification), including in relation to Return Temperature;
 - 5.1.3 undertake maintenance of the Customer's Secondary System;
 - 5.1.4 accept the Supplier as the sole provider of the Energy Services at the Premises (except as noted at 4.5). Should the Customer wish to self-supply temporary heating or hot water during a service suspension or interruption, the Supplier will allow this

until this Agreement terminates subject to and in accordance with the terms of this Agreement.
- 5.2 Without prejudice to Clause 5.1, the Customer shall perform its obligations under this Agreement:
 - 5.2.1 in accordance with Good Industry Practice; and
 - 5.2.2 in accordance with all relevant Laws and other statutory requirements.

6. CHARGES AND PAYMENT

- 6.1 With effect from the Date of Supply, the Customer shall pay all Charges due to the Supplier as detailed in Schedule 3 (Charges).
- 6.2 As soon as practicable after the end of each Payment Period, the Supplier shall issue an invoice to the Customer for the Monthly Payment relating to that Payment Period (together with any VAT payable by the Customer in respect of that amount). Each invoice shall be accompanied by the Payment Information for the relevant Payment Period.
- 6.3 Subject to Clause 6.4, the Customer shall pay the amount stated in any invoice issued under Clause 6.2 within 30 (thirty) Business Days of the date of issue of the relevant invoice. The invoice shall be paid by direct debit to the Supplier's nominated account, unless the Supplier agrees to a different method of payment.

6.4 Dispute

- 6.4.1 If the Customer disputes the Supplier's entitlement to all or any part of the Monthly Payment included within an invoice issued pursuant to Clause 6.2 it shall notify the Supplier in writing within 30 (thirty) Business Days of receipt by the Customer of the relevant invoice of that part of the amount (insofar as at the time of such notice the Customer is reasonably able to quantify it) which the Customer (acting in good faith) disputes (**Disputed Amount**) and submit to the Supplier such supporting evidence as the Customer may have.
- 6.4.2 Should a latent issue emerge following 30 days, the Customer shall notify the Supplier as soon as reasonably practicable and the Supplier shall investigate promptly and any consequent under or overpayments shall be agreed by both Parties acting reasonably and be accounted for in the next Payment Period.

6.5 Determination of Dispute

If the determination of any dispute conducted pursuant to Clause 6.4 shows that:

- 6.5.1 the Customer has withheld any amount which the Supplier was entitled to be paid; or
- 6.5.2 the Supplier has claimed under Clause 6.2 any amount which it was not entitled to be paid,

the Customer shall pay such amount to the Supplier or the Supplier shall repay such amount to the Customer with interest in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of failure to pay by the Customer) or from the date on which over payment was made (in the case of excessive claims by the Supplier) until all relevant monies have been paid in full and whether before or after judgment.

6.6 Set Off

Except as otherwise specified in this Agreement, all amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by Law).

6.7 Late Payments

Save where otherwise specifically provided, where any undisputed payment or sum of money due from the Customer to the Supplier or from the Supplier to the Customer under any provision of this Agreement is not paid on or before the due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgment) until actual payment.

6.8 VAT on Payments

- 6.8.1 All amounts due under this Agreement are exclusive of VAT.
- 6.8.2 If any supply made or referred to in this Agreement is or becomes chargeable to VAT then the Customer shall in addition pay the Supplier the amount of that VAT against receipt by the Customer from the Supplier of a proper VAT invoice in respect of that supply. This will be levied at the prevailing rate of 20%.
- 6.8.3 Where under this Agreement any amount is calculated by reference to any sum which has been or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group), whether by set off or repayment.
- 6.8.4 The Customer shall provide the Supplier with any information reasonably requested by the Supplier in relation to the amount of VAT chargeable in accordance with this Agreement and payable by the Customer to the Supplier.

6.9 Indexation

- 6.9.1 The Fixed Charges and the Variable Charges shall be adjusted in accordance with Paragraph 8 of Part 1 of 0 (Charges).
- 6.9.2 The Supplier anticipates that additional connections will improve the business case and commits to conducting price reviews for existing customers every 3 years to seek to improve heat prices.

6.10 Responsibility for Charges

Notwithstanding any one or more of the events set out in Clauses 6.10.1 to 6.10.2 below, the Customer shall continue to be responsible for such element(s) of the Charges as are set out below:

- 6.10.1 where the Customer does not use the Energy Services for any reason for the whole or part of a Payment Period, the Customer shall remain responsible for the Connection Fee (as applicable) and the Fixed Charges during the relevant Payment Period (or relevant part thereof); or
- 6.10.2 in the event of any break or interruption in, or disruption to, the supply of the Energy Services for reasons beyond the control of the Supplier the Customer shall remain responsible for the Connection Fee (as applicable) and the Fixed Charges during the relevant Payment Period (or relevant part thereof).

7. METERS AND OTHER EQUIPMENT

7.1 The Supplier shall:

- 7.1.1 accurately meter the consumption of the Energy Services at the Meter[s]
- 7.1.2 Install automatic meter readers, to enable remote reading of the Meter[s];
- 7.1.3 carry out periodic testing of the Meter[s] to ensure continued accuracy. Such testing shall be carried out in accordance with Good Industry Practice; and
- 7.1.4 maintain, repair and replace the Meter[s] at all times until the termination or expiry of this Agreement in accordance with Good Industry Practice.
- 7.1.5 at its own expense, carry out any repairs required to the Customer's Secondary System, as a result of any damage caused by the Supplier or its agent(s).

- 7.1.6 At the Supplier's discretion, choose to appoint agent(s) to operate and maintain Meters on its behalf.
- 7.2 The Customer shall:
- 7.2.1 not interfere with, damage or attempt to remove the Meter[s] or any other Equipment. Should the Customer require equipment to be moved, the Supplier will seek to do so if reasonably practicable at the Customer's cost;
- 7.2.2 notify the Supplier as soon as possible if it believes that any of the Equipment has been damaged or destroyed or if anyone other than the Supplier or its agents interferes with or removes such Equipment;
- 7.2.3 in respect of the Customer's Secondary System:
- (a) ensure that the Customer's Secondary System is used and operated in accordance with such instructions and recommendations relating to the care, safety and use of such equipment as may from time to time be advised by the relevant manufacturers;
 - (b) keep the apparatus and controls forming part of the Customer's Secondary System set or adjusted in such manner as shall not adversely affect, diminish or endanger the Energy Services supplied to the Premises or the Equipment and comply with any reasonable directions from Supplier in respect of the same;
 - (c) promptly disconnect any part of the Customer's Secondary System which the Customer is or becomes aware is likely to adversely affect or endanger the Equipment or any person, and keep such part disconnected until the danger is removed;
 - (d) carry out at its own expense all services, repairs and adjustments to any Customer's Secondary System, unless damaged by the Supplier; and
 - (e) at all times ensure that the Customer's Secondary System is appropriate for: receiving and/or using the supply of the Energy Services, and operating the Equipment, including the Meters.
- 7.3 Subject to the cap set out at Clause 11.2, if the Customer causes damage to any Equipment, the Customer shall be liable for the damage caused, including the Supplier's reasonable costs of any repair or replacement of such Equipment which is required due to the damage caused by the Customer.
- 7.4 The Customer will accept as accurate all Meter readings taken by automatic meter readings or estimated by the Supplier pursuant to Clause 7.5 unless it reasonably considers there to be a material error in such readings or estimation or that the Meter is defective.
- 7.5 The Supplier reserves the right to estimate a meter reading, if, for whatever reason, an automatic reading is not possible. As soon as practicable, the Supplier will revert to automatic meter reading.
- 7.6 In the event that, in the reasonable opinion of the Customer, there is a material error in a Meter reading or estimation, the Supplier will take an actual meter reading, from inspecting the meter on site in person, to verify the automatic or estimated meter reading.
- 7.7 In the event that, in the reasonable opinion of the Customer, there is a still a material error in a Meter reading or estimation, and the Supplier disputes such opinion, then Clause 6.4 shall apply in respect of the relevant invoice.
- 7.8 If the Customer does not accept a Meter reading taken pursuant to Clause 7.4 or estimated by the Supplier as accurate then, if the Customer so requests, the Supplier shall appoint an accredited independent third party to verify the accuracy of the Meter. The Customer shall be

responsible for the costs connected with the third party verifying the accuracy of the Meter unless the Meter is found to be below the level of accuracy recommended in the Meter Guidance, in which case the Supplier shall be responsible for the costs connected with the third party verifying the accuracy of the Meter.

- 7.9 Notwithstanding Clause 7.7, if the periodic testing of the Meter pursuant to Clause 7.1.3 identifies measurement errors which are outside the tolerances set out in the Meter Guidance then it shall be deemed to be faulty. If the Meter is faulty, it shall promptly be repaired or replaced at the cost of the Supplier unless the fault is due to the deliberate or negligent act or omission of the Customer and/or the Customer's representatives and/or agents in which case, the Supplier shall be entitled to recover its direct and reasonable costs properly incurred in the repair and replacement of such Meter from the Customer.
- 7.10 If the Meter is defective the Supplier shall adjust the Charges to take into account any error or inaccuracy in the Meter reading. Where this inaccuracy cannot be calculated, the Supplier may adjust an incorrect Meter reading based on the Supplier's reasonable estimate of the amount of Energy Services consumed by the Customer properly estimated from:
- 7.10.1 historical consumption data for the Customer (where available); and
- 7.10.2 energy consumption profiles for similar customers of the Supplier for the relevant period affected by the defective Meter or inaccurate Meter reading.

8. ACCESS

- 8.1 The Customer shall grant and shall, where necessary, procure the grant to, the Supplier, its employees, servants, agents and/or sub-contractors, such access to any equipment owned, operated or maintained by the Supplier as may be reasonably necessary to:
- 8.1.1 allow the Supplier to undertake the construction and installation works which form part of the Conditions Precedent (to the extent required);
- 8.1.2 undertake testing and inspection and where required and in agreement with the Customer, the modification, modernisation or upgrade of the Customer's Secondary System at the Customer's cost;
- 8.1.3 carry out planned maintenance, repair or replacement of any of the Heat Assets (This would require access to the building plantroom at 3 month intervals to complete inspections in line with recommendations);
- 8.1.4 assess and/or attend to an Emergency in connection with the Energy Services; and
- 8.1.5 discharge all statutory obligations relevant to the supply of heat, including compliance with relevant Laws relating to health and safety
- provided that the Supplier shall at all times comply with all reasonable directions from the Customer in respect of its exercise of such access rights.
- 8.2 In an Emergency, the Supplier may with immediate effect and without prior notice to the Customer and/or any other entity with an interest in the relevant Premises, suspend the provision of Energy Services to the Premises, provided that the Supplier:
- 8.2.1 has, prior to such suspension of the Energy Services, used all reasonable endeavours to contact the Customer; and
- 8.2.2 the Supplier gives notice to the Customer of any action taken pursuant to this Clause 8.2, together with reasonably detailed reasons for taking such action, as soon as reasonably practicable after such action is taken.

- 8.3 Where the Supplier has suspended the Energy Services in accordance with Clause 8.2, the Supplier shall resume the supply of Energy Services as soon as reasonably practicable after such Emergency ceases to exist.
- 8.4 Access will be planned with the Customer's nominated person to ensure sufficient notice. In an emergency situation, the Supplier will initially attempt to contact the Customer's nominated person.
- 8.5 The Supplier will ensure that all staff attending the Customer's site comply with all relevant Customer policies and, if required, are subject to satisfactory Enhanced Disclosure and Barring Service checks.

9. TERMINATION

9.1 Termination by the Supplier

9.1.1 To the extent permitted by Law, the Supplier may terminate this Agreement:

- (a) in the event of a Customer Breach which, if capable of being remedied, is not remedied within thirty (30) days of the Customer receiving written notice from the Supplier requiring such breach to be remedied or, if not capable of being remedied, immediately upon written notice from the Supplier;
- (b) with immediate effect if an Insolvency Event occurs in relation to the Customer; and
- (c) in the event that the Customer leaves the Premises and the Supplier acting reasonably and in its absolute discretion does not accept any replacement customer at the Premises and/or any such replacement customer is not willing or able to sign up to an energy services supply agreement with the Supplier on substantially the same terms as this Agreement or (where reasonably required by the Supplier) a novation of this Agreement.
- (d) in the event of the Customer failing to make payment of an undisputed sum due to the Supplier as set out in Schedule 3 and such sum remains outstanding thirty (30) Working Days after receipt by the Customer of a written notice from the Supplier that there has been a Customer Failure to Pay.
- (e) in the event of the Customer installing an alternative means of heat generation, save for that required in order to maintain the Customer's Secondary System or Back-Up System.
- (f) In the event of the customer interfering with and/or damaging the Heat Assets.
- (g) In the event of the customer failing to provide access as set out in clause 8.

9.1.2 In the event that this Agreement is terminated, the Customer shall either:

- (a) provide the Supplier with a final Meter reading on the date of termination; or
- (b) allow the Supplier to enter the Premises to take a final Meter reading on the date of termination.

9.2 Termination by the Customer

9.2.1 To the extent permitted by Law, the Customer may terminate this Agreement:

- (a) if the Supplier fails to provide the Heat at the agreed flow rates and temperatures for a consecutive period of at least 30 days from the day on which the Customer provides notice in writing to the Supplier of such failure and/or the Supplier alerts the Customer; or for periods aggregating 90 days in any period of 1 year; or

- (b) with immediate effect if an Insolvency Event occurs in relation to the Supplier.
- (c) “in the event of a material breach by the Supplier of its obligations under this Agreement which, if capable of being remedied, is not remedied within thirty (30) days of the Supplier receiving written notice from the Customer requiring such breach to be remedied or, if in the opinion of the Customer is not capable of being remedied, immediately upon written notice from the Customer.”

9.2.2 The Customer may terminate the Agreement for any other reason by providing the Supplier with written notice following the process set out in clause 12. Should the, Supplier agree to this termination, this would become a Supplier termination and the provisions of clause 10.1 will apply.

9.3 General termination provisions

9.3.1 Termination of this Agreement for any reason or expiry of this Agreement shall be without prejudice to any rights and remedies either party may have accrued against the other party prior to the date termination or expiry takes effect.

9.3.2 Without prejudice to the generality of the foregoing, in the event of termination or expiry of this Agreement the Customer shall continue to be responsible for paying any Charges incurred prior to such termination or expiry taking effect.

10. CONSEQUENCES OF TERMINATION

10.1 Termination by the Supplier

10.1.1 Save as expressly provided to the contrary, upon termination of this Agreement by the Supplier pursuant to Clause 9.1 or 17.6, the Customer shall be liable to (and shall pay) the Supplier in respect of the following:

- (a) a sum equalling twelve (12) months of Fixed Charges;
- (b) any Unrecovered Connection Fee, as detailed in Part 2 of 0;
- (c) the Supplier Breakage Costs;
- (d) a sum equalling the cost of the repossession of the Heat Assets; and
- (e) any outstanding payments due to the Supplier under this Agreement,

such sums to be paid in accordance with Clause 10.4.

10.1.2 The Customer shall not be liable to the Supplier for any other losses suffered or incurred by the Supplier associated with the termination of this Agreement other than those set out in Clause 10.1.

10.2 Termination by the Customer

10.2.1 Save as expressly provided to the contrary, upon termination of this Agreement by the Customer pursuant to Clause 9.2 or 17.6, the Supplier shall be liable to (and shall pay) the Customer

- (a) any direct losses incurred by the Customer in relation to the termination of the Agreement, but only to the extent that such losses are reasonably and properly incurred in connection with the Customer carrying out its obligations under the Agreement,

such sums to be paid in accordance with Clause 10.4.

10.3 Termination for Force Majeure

- 10.3.1 If this Agreement is terminated by either party in accordance with Clause 2.3 or Clause 15.3, this Agreement shall be deemed to have been terminated on a no fault basis and, subject to Clause 10.3.2, the provisions of Clause 10.1 and Clause 10.2 shall not apply.
- 10.3.2 Notwithstanding Clause 10.3.1, the Customer shall be liable to (and shall pay) the Supplier the Unrecovered Connection Fee (as detailed in Part 2 of Schedule 3 (Charges)) following termination of this Agreement pursuant to Clause 2.3 or Clause 15.3, such sum to be paid in accordance with Clause 10.4.

10.4 Payment of Termination Sums

All amounts payable by a party to the other party pursuant to this Clause 10 shall be paid within 28 (twenty-eight) Business Days of receipt of an invoice demanding payment of the relevant amount. In the event of any failure to make payment in accordance with this Clause, interest shall accrue on any unpaid sum at the Prescribed Rate, from the Termination Date until the date payment is made, and any unpaid sums (including any interest thereon) shall be recoverable as a debt from the party that is liable to make payment.

11. LIABILITY

11.1 Neither party shall be liable to the other for:

- 11.1.1 any loss of goodwill, reputation or opportunity;
- 11.1.2 loss of profit or loss of revenue;
- 11.1.3 any loss or corruption of or any damage to any data or computer software;
- 11.1.4 any account of profits; or
- 11.1.5 any indirect or consequential loss

11.2 arising out of or in connection with this Agreement or any breach or non-performance of it no matter how fundamental (including by reason of that party's negligence). Either party's liability to the other in respect of any losses arising out of or in connection with damage to property (including but not limited to Equipment or Customer's Secondary System) shall not exceed one million pounds sterling (£1,000,000).

11.3 The Supplier's maximum aggregate liability arising out of or in connection with any loss to the Customer's heat supply 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, shall be limited to a sum equalling the compensation offered by the existing gas transporter at the time the liability is incurred. Currently this is:

- (a) £100 for an interruption to supply longer than 24 hours; and
- (b) £50 for every additional 24 hour interruption to supply;

11.4 Neither party excludes or restricts its liability for any of the following:

- 11.4.1 death or personal injury caused by negligence of a party or any of its officers, employees or agents;
- 11.4.2 fraud or fraudulent misrepresentation; nor
- 11.4.3 any matter where liability cannot be excluded or limited as a matter of Law.

- 11.5 The Supplier shall have no liability to pay compensation for loss of heat supply which arises from:
- 11.5.1 A Force Majeure event; or
 - 11.5.2 A fault or failure arising on the gas transporter's network.

12. CHANGE CONTROL

- 12.1 Where either party (**Requesting Party**) wishes to propose a change to this Agreement (**Change**), it must serve a written notice (**Notice of Change**) on the other party (**Other Party**).
- 12.2 The Customer may only propose a Change where:
- 12.2.1 the Customer seeks to extend or reduce the Premises;
 - 12.2.2 the Customer has in the previous year deviated from the Annual Heat Quotient by more than +/- twenty per cent (20%);
 - 12.2.3 there is a relevant Change in Law;
 - 12.2.4 the Supplier has given its prior written consent to the Customer making such a proposal (for the avoidance of doubt, the Supplier shall still be entitled to reject a Notice of Change in accordance with the following provisions in this Clause notwithstanding its consent to the Change being proposed).
- 12.3 The Notice of Change must:
- 12.3.1 set out the proposed Change in sufficient detail to enable the Other Party to evaluate it in full;
 - 12.3.2 specify the Requesting Party's reasons for proposing the Change;
 - 12.3.3 request the Other Party to consult with the Requesting Party with a view to deciding whether to agree to the Change and, if so, what consequential changes the Other Party requires to this Agreement as a result;
 - 12.3.4 specify any implications of the Change to the Energy Services;
 - 12.3.5 specify, in particular, whether a variation to the Charges (or any element thereof) is required (or is likely to be required) as part of the Change (and, if so, give a detailed breakdown of such required change); and
 - 12.3.6 indicate if there are any dates by which a decision by the Other Party is critical.
- 12.4 The Other Party shall evaluate the Notice of Change in good faith, taking into account all relevant issues, including:
- 12.4.1 (where the Other Party is the Supplier) whether:
 - (a) the Change requires the Energy Services to be performed in a way that infringes any Law or is inconsistent with Good Industry Practice;
 - (b) the Change would cause any consent to be revoked (or would require a new consent to be obtained to implement the relevant change in the Energy Services which, after using reasonable efforts, the Supplier has been unable to obtain);
 - (c) the Change would materially and adversely affect the Supplier's ability to deliver the Energy Services (except those Energy Services which have been specified as

requiring to be amended in the Customer's Notice of Change) in a manner not compensated pursuant to this Clause 12;

- (d) the Change would materially and adversely affect the health and safety of any person; or
- (e) the Change materially affects the risk or costs to which the Supplier is exposed in a manner not compensated pursuant to this Clause 12; and

12.4.2 (where the Other Party is the Customer) whether:

- (a) a change in the Charges (or any element thereof) is required or is likely to be required as a result of the Change;
- (b) the Change affects the quality of the Energy Services or the likelihood of successful delivery of the Energy Services;
- (c) the Change would materially and adversely affect the health and safety of any person; or
- (d) the Change materially affects the risk or costs to which the Customer is exposed in a manner not compensated pursuant to this Clause 12.

- 12.5 As soon as practicable after the Other Party receives the Notice of Change, the parties shall meet and discuss the matters referred to in it. During their discussions either party may propose modifications and/or amendments to the proposed Change as it deems appropriate. Following consideration of the change, the Other Party shall either approve or reject the Notice of Change (with or without modification) in accordance with Clause 12.6 below.
- 12.6 The Other Party shall, as soon as practicable following the meeting held pursuant to Clause 12.5, inform the Requesting Party as to whether it approves or rejects the Notice of Change. The Other Party shall at all times act reasonably in considering whether to approve or reject a Notice of Change and, for the avoidance of doubt, shall only be entitled to reject a Notice of Change where (in the case of the Supplier) Clause 12.4.1 applies or (in the case of the Customer) Clause 12.4.2 applies.
- 12.7 If the Other Party approves the Notice of Change (with or without modification), the implementation of the relevant Change shall be commenced within such timeframe as shall be agreed between the parties. Within this period, the parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Agreement which are necessary to give effect to the Change.
- 12.8 If the Other Party rejects the Notice of Change, it shall give the Requesting Party its reasons for such a rejection.
- 12.9 If any change set out in the Notice of Change requires an adjustment to the Charges (or any part thereof) then the Charges (or relevant part thereof) shall be adjusted in accordance with paragraph 9 of Part 1 of Schedule 3 (Charges).
- 12.10 Any dispute relating to a Change and/or to the application of this Clause 12 may be referred by either party for resolution under Clause 16 (Dispute Resolution).
- 12.11 The Customer shall not be entitled to reject a Notice of Change from the Supplier which is required in order to conform to a Qualifying Change in Law. The costs of introducing a change to this Agreement resulting from a Qualifying Change in Law (including any resulting variation in the Charges (or any element thereof)) shall be dealt with in accordance with Clause 13 (Change in Law).

13. CHANGE IN LAW

- 13.1 In the event that a Qualifying Change in Law arises that has cost implications for the retail price of electricity, gas or heat, for district energy projects, for Government incentives for renewable or district heating networks, the Supplier shall have the right to make price adjustments to take account of any increased or reduced costs/ loss or gain of benefits arising from the Change in Law to the extent that these are costs which are paid or incurred by Suppliers on an industry-wide basis in respect of the supply of heat in similar circumstances, in which case the Supplier shall have the right to pass these onto the Customer in full.

14. ASSIGNMENT, NOVATION, SUB-CONTRACTING

- 14.1 Except as provided under Clause 14.2, the Customer shall not assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the Supplier. The Supplier shall have the right to undertake financial checks on the proposed assignee to establish its ability to pay before providing its consent. Such consent shall not be unreasonably withheld.
- 14.2 The Customer shall have the right to assign/novate to any other Central Government Body without the Supplier's consent.
- 14.3 The Supplier may novate its rights, benefits, obligations or liabilities under this Agreement, without the Customer's consent, to any other body which is capable of performing any of the functions performed by the Supplier on providing prior written notice to the Customer.
- 14.4 The Supplier may sub-contract or delegate performance of any of its obligations under this Agreement and may freely assign any of its rights or benefits under this Agreement to any other party. Any such sub-contracting, delegation or assignment shall not relieve the Supplier from its obligations under this Agreement and the Supplier shall remain liable to the Customer for any acts or omissions of any sub-contractor.

15. FORCE MAJEURE

- 15.1 If a party (**Affected Party**) is unable to carry out any of its obligations under this Agreement due to any circumstance of Force Majeure, this Agreement shall remain in effect but, save as otherwise provided in this Agreement, the obligations of the Affected Party which are directly affected by Force Majeure (**Affected Obligations**) shall be suspended without liability, for the period during which the circumstance of Force Majeure prevails, provided that:
- 15.1.1 the Affected Party gives the other party prompt written notice of Force Majeure describing the circumstance of Force Majeure including the nature of the occurrence, its expected duration, and the actions and steps it is taking to remedy such circumstances of Force Majeure. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequence of the Force Majeure;
- 15.1.2 the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the circumstance of Force Majeure;
- 15.1.3 no obligations of either party that arose before the circumstance of Force Majeure causing the suspension of performance are excused as a result of the Force Majeure; and
- 15.1.4 at all times following the occurrence of Force Majeure, and during its subsistence, the Affected Party uses all reasonable endeavours to mitigate the impact of the circumstance of Force Majeure and to remedy its inability to perform as quickly as possible.
- 15.1.5 The Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent the Energy Services (or a part of them) continue to

be performed in accordance with the terms of the Agreement during the occurrence of the Force Majeure event.

- 15.2 Immediately after the end of the circumstance of Force Majeure, the Affected Party shall notify the other party in writing of the same and the Affected Party shall resume performance of its obligations under this Agreement.
- 15.3 If, as a consequence of a circumstance of Force Majeure, the Supplier is not able to supply the Energy Services to the Customer for a period of one hundred and eighty (180) days or more, either party shall be entitled to terminate this Agreement by serving notice in writing on the other party and the provisions of Clause 10.3 shall apply.

16. DISPUTE RESOLUTION

- 16.1 If a Dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it then the parties shall follow the procedure set out in this clause:
- 16.1.1 either party shall give to the other a written Dispute Notice of the Dispute. On service of the Dispute Notice, the DWP Head of Energy and Sustainability of the Customer and the Chief Officer, Sustainable Energy and Air Quality of the Supplier (Authorised Representatives) shall attempt in good faith to resolve the Dispute;
- 16.1.2 if the Authorised Representatives 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 Customer's DWP Commercial Manager and the Supplier's Director of Resources who shall attempt in good faith to resolve it; and
- 16.1.3 if the Customer's Commercial Manager and the Supplier's Director of Resources are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve (www.cedr.com). To initiate the mediation, a Party must serve an Alternative Dispute Resolution Notice (ADR Notice) in writing to the other Party to the Dispute, requesting a mediation. A copy of the ADR Notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR Notice.
- 16.2 The commencement of mediation shall not prevent the parties commencing or continuing proceedings in relation to the Dispute under Clause 23 which clause shall apply at all times.

17. PREVENTION OF FRAUD AND BRIBERY

- 17.1 Both parties represent and warrant that neither it, nor to the best of its knowledge its employees, consultants, contractors, sub-contractors or agents, have at any time prior to the Commencement Date:
- 17.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- 17.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 17.2 Neither party shall during the term of this Agreement:
- 17.2.1 commit a Prohibited Act; and/or
- 17.2.2 do or suffer anything to be done which would cause the other party or any of the other party's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

- 17.3 The parties shall during the term of this Agreement:
- 17.3.1 establish, maintain and enforce, and require that any sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
 - 17.3.2 keep appropriate records of its compliance with its obligations under Clause 17.3.1 and make such records available to the other party on request.
- 17.4 Each party shall immediately notify the other in writing if it becomes aware of any breach of Clause 17.1 and/or 17.2, or has reason to believe that it has or any of the other party's employees, consultants, contractors, sub-contractors or agents have:
- 17.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 17.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 17.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 17.5 If either party makes a notification to the other pursuant to Clause 17.4 (**Notifying Party**), the Notifying Party shall respond promptly to the other party's enquiries, co-operate with any investigation, and allow the other party to audit any books, records and/or any other relevant documentation.
- 17.6 If either party is in default under Clauses 17.1 and/or 17.2, the non-defaulting party may by notice:
- 17.6.1 require the defaulting party to remove from performance of this Agreement any personnel whose acts or omissions have caused the default; or
 - 17.6.2 immediately terminate this Agreement.
- 17.7 Any notice served by a party under Clause 17.6 shall specify the nature of the Prohibited Act, the identity of the party who the non-defaulting party believes has committed the Prohibited Act and the action that the non-defaulting party has elected to take (including, where relevant, the date on which this Agreement shall terminate).

18. **CONFIDENTIALITY**

- 18.1 In this Agreement, **Confidential Information** means all information of a confidential nature relating to one party which is supplied by or on behalf of that party (whether before or after the date of this Agreement), either in writing, orally or in any other form, directly or indirectly from or pursuant to discussions with that party (**Disclosing Party**) or which is obtained through observations made by the receiving party (**Receiving Party**). Confidential Information also includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from such information.
- 18.2 Each Receiving Party shall hold in confidence any Confidential Information, provided that the provisions of this Clause shall not restrict a Receiving Party from passing such information to its professional advisers and insurers, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Agreement.
- 18.3 The obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

- 18.3.1 which the Disclosing Party confirms in writing is not required to be treated as Confidential Information;
 - 18.3.2 which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;
 - 18.3.3 to the extent required to be disclosed for the proper performance of the obligations under his Agreement;
 - 18.3.4 which is disclosed to enable a determination to be made under Clause 16 (Dispute Resolution);
 - 18.3.5 the disclosure of which is required by any applicable Law (including any order of a court of competent jurisdiction), any Parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law or, if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or government or regulatory authority concerned;
 - 18.3.6 which is already in the lawful possession of the Receiving Party prior to its disclosure by the Disclosing Party provided that any subsequent disclosure is not in breach of any restriction, condition or stipulation already applying to that Confidential Information.
- 18.4 The Customer may disclose the other Party's confidential information to any Central Government Body or Parliamentary body undertaking a review of this Agreement (including NAO or BEIS) and in connection with a legal challenge against the Customer arising out of or in connection with this Agreement.
- 18.5 Unless otherwise required by any applicable Law or any regulatory or governmental authority, neither party shall make or permit or procure to be made any public announcement or disclosure (whether for publication in the press, the radio, television screen or any other medium) of any Confidential Information, without the prior written consent of the other party (which shall not be unreasonably withheld or delayed).

19. INFORMATION LEGISLATION

- 19.1 The Parties acknowledges that they are each subject to the requirements of the FOIA and the Environmental Information Regulations and each Party shall assist and cooperate with the other Party to enable it to comply with its Information disclosure obligations.
- 19.2 Where either Party receives a Request for Information relating to the Agreement and/or the Energy Services, it shall and shall procure that any sub-contractors shall;
- (a) transfer to the other Party such Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving such Request for Information;
 - (b) provide the other Party with a copy of all such Information in its possession, or power in the form that the other Party requires within five (5) Working Days (or such other period as the other Party may specify) of the other Party's request; and
 - (c) provide all necessary assistance as reasonably requested by the other Party to enable the other Party to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 19.3 Each Party shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Agreement or any other agreement whether any Information sought in a request for Information made to it is exempt from disclosure

in accordance with the provisions of the FOIA or the Environmental Information Regulations.

19.4 In no event shall either Party respond directly to a Request for Information unless expressly authorised to do so by the other Party.

19.5 Each Party acknowledges that (notwithstanding the provisions of clause 19.4) either Party may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (**the Code**), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the other Party or the Energy Services

- (a) in certain circumstances without consulting the other Party; or
- (b) following consultation with the other Party and having taken their views into account;

provided always that where Clause 19.5(a) applies the Party shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the other Party advanced notice, or failing that, to draw the disclosure to its attention after any such disclosure.

19.6 Each Party shall ensure that all Information is retained for disclosure and shall permit the other Party to inspect such records as requested from time to time.

19.7 Where the Customer is a public authority for the purposes of the Information Legislation and is therefore obliged to act in accordance with the Information Legislation, the obligations of this Clause 19 shall apply mutatis mutandis to the Customer.

20. INTELLECTUAL PROPERTY RIGHTS

20.1 In the absence of prior written agreement by the Supplier to the contrary, all Intellectual Property created by the Supplier or any employee, agent or subcontractor of the Supplier:

20.1.1 in the course of performing the Energy Services; or

20.1.2 exclusively for the purpose of performing the Energy Services,

shall remain with the Supplier on creation.

20.2 The Customer shall indemnify the Supplier against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any right in Intellectual Property by the availability of the Energy Services, except to the extent that they have been caused by or contributed to by the Supplier's acts or omissions.

21. WARRANTIES

21.1 Each party warrants to the other, as at the date of this Agreement, in the following terms:

21.1.1 it has the power to enter into and to exercise its rights and to perform its obligations under this Agreement;

21.1.2 it has taken all necessary action to authorise the execution of and the performance of its obligations under this Agreement;

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

- 21.1.4 neither execution nor performance by it of this Agreement will contravene any provision of:
- (a) any existing law, treaty or regulation;
 - (b) its articles of association; or
 - (c) any material obligation (contractual or otherwise) which is binding upon it, or upon any of its assets;
- 21.1.5 all consents, licences, approvals or authorisations of, exemptions by or registrations with or declarations by, any governmental or other authority required by it with respect to this Agreement have been obtained or made, are valid and subsisting and will not be contravened by the execution or performance of this Agreement;
- 21.1.6 no claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under this Agreement; and
- 21.1.7 no proceedings or other steps have been taken and not discharged (nor, to the best its knowledge threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator or similar officer in relation to any of its assets or revenues.
- 21.2 Each of the warranties set out in Clause 21.1 shall be separate and independent and, save as expressly provided to the contrary, shall not be limited by reference to any of them or by any other provisions of this Agreement.
- 21.3 Each party hereby acknowledges and agrees that compliance by it with the warranties set out in Clause 21.1 (or any of them) shall not itself constitute performance of any of its other obligations under this Agreement.

22. NOTICES

- 22.1 Any notice or other communication to be given under this Agreement shall be in writing and shall be deemed to have been duly served on, given to or made in relation to a party if it is left at the authorised address of that party or posted by registered post addressed to that party at such address and shall if:

- 22.1.1 personally delivered, be deemed to have been received at the time of delivery; or
- 22.1.2 posted to an inland address in the United Kingdom, be deemed to have been received on the second Business Day after the date of posting and if posted to or from an overseas address, be deemed to have been received on the fifth Business Day after the date of posting,

provided that where, in the case of delivery by hand, delivery occurs after 5.00pm on a Business Day or on a day which is not a Business Day, receipt shall be deemed to occur at 9.00am on the next following Business Day.

- 22.2 For the purposes of this Clause the authorised address of each party shall be the address set out below or such other address as that party may give notice to the other party in writing for the purpose of service of notices under this Agreement.

	Supplier	Supplier	Customer
	(Technical / Services)	(Legal)	

Contact	REDACTED	REDACTED	REDACTED
Address	REDACTED	REDACTED	REDACTED
Email	REDACTED	REDACTED	REDACTED

23. GOVERNING LAW AND JURISDICTION

- 23.1 This Agreement and any disputes or claims arising out of or in connection with it shall be governed by, and construed in accordance with, the law of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

24. GENERAL

- 24.1 This Agreement includes everything agreed between the Parties with respect to its subject matter. Anything that happened or was written before about such subject matter is superseded. Neither the Customer nor Supplier has relied upon any representation or warranty that is not written in this Agreement.
- 24.2 The Parties do not intend any third party to have the right to enforce any provision of this Agreement under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 24.3 The relationship between the Parties established by this Agreement is that of independent contractors. Nothing herein shall be construed to create or give rise to any partnership, joint venture or agency relationship between the Parties.
- 24.4 At no time during the performance of this Agreement shall the Supplier or its employees or other representatives be considered to be employees or agents of the Customer, nor shall the Customer or its employees or other representatives be considered to be employees or agents of the Supplier even when designated to receive training from the Supplier or to assist the Supplier in the performance of its obligations under this Agreement.
- 24.5 If any provision of this Agreement is found to be invalid or unenforceable under any applicable Law, then such provision shall be inoperative to the extent necessary to achieve compliance with such Law. Such provision to the extent that it is not invalid or unenforceable and the remaining provisions of this Agreement shall continue to be valid and binding upon the Parties and of like effect as though the inoperative portion of such provision were not included therein.
- 24.6 Any failure by the Supplier or the Customer at any time to enforce their respective rights hereunder or require the strict keeping and performance of any of the terms of this Agreement shall not constitute a waiver of the relevant party's rights under this Agreement in any way nor of the rights of the relevant party at any time to claim or enforce such remedies as either party may have for any breach of this Agreement.
- 24.7 This Agreement may be executed in any number of counterparts, which shall each constitute an original and together constitute one agreement. If this Agreement is executed in counterpart, it shall not be effective unless each party has executed at least one counterpart.

25. HUMAN RIGHTS

- 25.1 The Parties shall not do or permit or allow anything to be done which is incompatible with the rights contained within the European Convention on Human Rights and the Human Rights Act 1998.

25.2 The Parties shall not do or permit or allow anything to be done which may result in the Supplier acting incompatibly with the rights contained within the European Convention on Human Rights and the Human Rights Act 1998.

25.3 The Parties shall indemnify each other against any loss claims and expenditure resulting from the other's breach of this clause 25

26. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS AND POLICIES

26.1 General Compliance

In performing its obligations under the Agreement, the Parties shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
- (b) maintain throughout the term of the Agreement their own policies and procedures to ensure its compliance; and
- (c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
- (d) include in their contracts with its direct subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause.

26.2 Due Diligence

- (a) The Parties represents and warrants that:
 - (ii) neither the Parties nor any of its officers, employees or other persons associated with it:
 - (A) has been convicted of any offence involving slavery and human trafficking; and
 - (B) having made reasonable enquiries, so far as they are aware and to the best of their knowledge, have been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- (b) The Parties shall implement due diligence procedures for their direct subcontractors, and suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

26.3 Reports

- (a) The Parties shall notify the other as soon as they become aware of:
 - (i) any breach, or potential breach, of clause 26.1 (General Compliance); or
 - (ii) any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement.
- (b) The Parties shall prepare and deliver to the other, on an annual basis, an annual slavery and human trafficking report setting out the steps they have taken to

ensure that slavery and human trafficking is not taking place in any of their supply chains or in any part of their business.

26.4 Record Keeping and Audits

The Parties shall:

- (a) maintain a complete set of records to trace the supply chain of all Energy Services provided to the other in connection with the Contract; and
- (b) permit the other on reasonable notice during normal business hours, to have access to and take copies of the other's records and any other information and to meet with the other's personnel to audit the other's compliance with its obligations of this clause; and
- (c) implement annual audits of their compliance and their direct subcontractors' and suppliers' compliance with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.

26.5 Training

- (a) The Parties shall implement a system of training for their employees, suppliers and subcontractors to ensure compliance with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.
- (b) The Parties shall keep a record of all training offered and completed by its employees, suppliers and subcontractors to ensure compliance with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015 and shall make a copy of the record available to the Supplier on request.

26.6 Indemnity

The Parties shall indemnify each other against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the other as a result of any breach of any applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.

26.7 Warranties

The Parties represent warrant and undertakes that they conduct their business in a manner that is consistent with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.

27. SCRUTINY BOARD/EXECUTIVE BOARD ASSISTANCE

27.1 It is a condition of the Agreement that, if required by the Supplier to do so, the Customer shall throughout the term and for a period of six (6) years after expiry of the Agreement give all reasonable assistance to the Supplier including attending the Supplier's Scrutiny and/or Executive Board in order to answer questions pertaining to the Contract should the need arise.

27.2 In the event that the Supplier requires the Customer's assistance after the expiry of the Agreement the Supplier shall pay the reasonable expenses of the Customer arising as a result of providing such assistance.

This Agreement has been entered into on the date stated at the beginning of it.

SCHEDULE 1- CONDITIONS PRECEDENT

The following shall be the Conditions Precedents for the purposes of this Agreement:

1. The Supplier obtaining a satisfactory planning permission for the development of the Heat Assets, with the involvement of the Customer (where required);
2. Satisfactory completion of the construction, installation and commissioning of the Heat Assets to the standards of an installation and commissioning plan to be prepared at the detailed design stage and agreed with the Customer;
3. The Supplier having tested and approved to its satisfaction (including having tested and approved any modifications which it may deem necessary) the Customer's Secondary System, including the Building Management System; and
4. Decommissioning of existing infrastructure/boilers.

SCHEDULE 2 - SERVICE LEVEL KPIS

The following shall comprise the Supplier's Service Level KPIs for the purposes of this Agreement:

1. Flow Temperature of between eighty five to ninety five (85 – 95) degC (with the exception of an agreed reduction of temperatures in the summer).
2. Provision of heat at such times and in such quantities as are necessary to meet the Customer's related demand up to the Heat Capacity of 3,500 kilowatts (kW) (subject to clause 4). Should demand exceed this Heat Capacity, the Supplier will provide additional heat, where available, up to the limit of the installed 2,300kW duty/standby PHEs (i.e. 4,600kW total).
3. For restoration of the heat supply:
 - 3.1 Emergency – respond within 3 hours and resolved within 24 hours,
 - 3.2 Priority – respond as soon as reasonably practicable and resolved within 72 hours,
 - 3.3 General – respond as soon as reasonably practicable and resolved within 4 weeks.
4. In the unlikely event that heat is interrupted from the district heating network and the contingency arrangements to maintain the energy centre heat cannot be achieved (refer to Schedule 7), temporary containerised boilers shall be used for back up heat generation subject to clause 4.5.
5. Provision of data for heat consumption at half hourly intervals (or as otherwise agreed with the Customer).

SCHEDULE 3 - CHARGES

Part 1– Monthly Payment

- 1.1 In this Schedule 3 (Charges), references to amounts expressed as being **Indexed** are references to such amounts as adjusted on each Indexation Date in accordance with the relevant sub-paragraph of paragraph 8 below.

2. MONTHLY PAYMENT

- 2.1 The Monthly Payment (**MP**) for each Payment Period during the Term shall be calculated in accordance with the following formula:

$$\mathbf{MP = HCC + V + RTA}$$

where:

HCC = the Heat Capacity Charge for the relevant Payment Period;

V = the Variable Charges for the relevant Payment Period, calculated in accordance with paragraph 5 below; and

RTA = the Return Temperature Adjustment for the relevant Payment Period, calculated in accordance with paragraph 6 below.

3. CONNECTION FEE

- 3.1 The parties acknowledge and agree that the Connection Fee shall be paid monthly by the Customer to the Supplier in accordance with the activities undertaken by the Contractor in the preceding month. The Contractor shall submit a monthly valuation stating the works undertaken and their value along with supporting evidence to substantiate the payment request, against which the monthly payment will be agreed. The total of each monthly payment shall not exceed the agreed Connection Fee.
- 3.2 For the avoidance of doubt, there will be no indexation of the Connection Fee.

4. HEAT CAPACITY CHARGE

- 4.1 The Heat Capacity Charge (**HCC**) for each Payment Period during the Term shall be calculated as follows:

$$\mathbf{HCC = HCF * MHD / 12}$$

where:

HCF = the Heat Capacity Fee (per kilowatt per year) for the relevant Payment Period (as Indexed on each Indexation Date in accordance with paragraph 8.2 below);

MHD = the Maximum Heat Demand

- 4.2 The Heat Capacity Fee (**HCF**) applicable on the Base Date (Base Heat Capacity Fee) shall be calculated by indexing the Heads of Terms Heat Capacity Fee (HoTHCF of **REDACTED** per kW per year) as described in paragraphs 7.2 and 8.2 below.

5. VARIABLE HEAT CHARGE

- 5.1 The Variable Heat Charge (**VHC**) for each Payment Period during the Term shall be calculated as follows:

$$\text{VHC} = \text{HT} * \text{AMHD}$$

where:

HT = the Heat Tariff applicable in the relevant Payment Period (as Indexed on each Indexation Date in accordance with paragraph 8.2 below); and

AMHD = the Actual Monthly Heat Demand for the relevant Payment Period.

- 5.2 The Heat Tariff (HT) applicable on the Base Date (Base Heat Tariff) shall be calculated by indexing the Heads of Terms Heat Tariff (HoTHT of **REDACTED** /kWh) as described in paragraphs 7.2 and 8.3 below.

6. RETURN TEMPERATURE AND MAXIMUM HEAT DEMAND ADJUSTMENT

- 6.1 Where the Customer fails to achieve the Return Temperature for more than 7 days in the relevant Payment Period, a Return Temperature Adjustment will be payable by the Customer.

- 6.2 The Return Temperature Adjustment (**RTA**) for each Payment Period during the Term shall (where applicable) be calculated as follows:

$$\text{RTA} = \text{VHC} * 10\%$$

where:

VHC = the Variable Heat Charge for the relevant Payment Period as calculated in accordance with paragraph 5.1 above for that Payment Period.

- 6.3 Where the Maximum Heat Demand is exceeded in any year, the actual heat demand, plus 5%, will be used as the new Maximum Heat Demand in future.

- 6.4 Where the Maximum Heat Demand has increased in any year in accordance with 6.3 above, the Supplier shall, acting reasonably, review the new Maximum Heat Demand to look to reduce it back to the Maximum Heat Demand of 3,500kW where it is considered viable to do so, however this cannot be guaranteed.

7. GENERAL PROVISIONS RELATING TO CUSTOMER'S CURRENT CHARGES

- 7.1 For the avoidance of doubt, the Fixed Charges and the Variable Charges were calculated by reference to the current charges/tariffs payable by the Customer to its current heat suppliers as at the Heads of Terms Date.

- 7.2 To establish the Base Heat Capacity Fee and the Base Heat Tariff applicable at the Base Date, a one off Heads of Terms Indexation will occur, applying the methodologies described in paragraphs 8.2 and 8.3 to the time elapsed between the Heads of Terms date and the Base Date.

8. INDEXATION

- 8.1 On (and with effect from) each anniversary of the Date of Supply (**Indexation Date**) the relevant elements of the Charges shall be adjusted in accordance with this paragraph 8.

8.2 Indexation of Heat Capacity Charge

- 8.2.1 The Heat Capacity Charge shall be Indexed on each Indexation Date in accordance with this paragraph 8.2.
- 8.2.2 Such Indexed Heat Capacity Charge shall be calculated by multiplying the Base Heat Capacity Fee by the **RPIx** value published by Treasury covering the period of time between the first Indexation Date and the current Indexation Date.
- 8.2.3 The Base Heat Capacity Fee shall be calculated by multiplying the Heads of Terms Heat Capacity Fee by the **RPIx** value published by Treasury covering the period of time between the Heads of Terms Date and the Base Date.

8.3 Indexation of Variable Heat Charge

- 8.3.1 The Heat Tariff shall be Indexed on each Indexation Date in accordance with this paragraph 8.3.
- 8.3.2 Such Indexed Heat Tariff shall be indexed using the gas prices within the BEIS Gas Index, *Prices of fuels purchased by non-domestic consumers in the UK*¹, for an appropriately sized consumer. The Base Heat Tariff will be adjusted by the following index:

$$\frac{\text{BEIS}_n}{\text{BEIS}_d}$$

where BEIS_n is the average value of the four quarterly BEIS Gas Index figures most recently published prior to the Indexation Date and BEIS_d is the average value of the four quarterly BEIS Gas Index figures most recently published prior to the Base Date.

- 8.3.3 The Base Heat Tariff shall be calculated using the methodology in 8.3.2 where BEIS_n is the value of the four quarterly BEIS Gas Index figures most recently published prior to the Base Date and BEIS_d is the value of the four quarterly BEIS Gas Index figures most recently published prior to the Heads of Terms Date.

9. RELEVANT EVENTS

- 9.1 Where the parties agree that the financial consequences of any Relevant Event or the payment of or release from any sum are best dealt with without a revision to the Charges, they shall agree to make such revision to the Monthly Payment as necessary on a one-off or recurrent basis.
- 9.2 Prior to making any changes to the Charges (subject to any express provision of this Agreement to the contrary), the parties shall agree the Payment Change Date for the change and the basis of the revision to the Charges.
- 9.3 The Charges shall be revised so as to ensure that the Supplier is in no better and no worse position (as defined by paragraph 9.5) than it was prior to the Payment Change Date and the event which gave rise to the need for the revision.
- 9.4 The Supplier shall take reasonable and appropriate steps to mitigate the effects of any revision including, in particular but without limitation, mitigating any adverse impact upon the Customer.
- 9.5 Any reference in this Agreement to “no better and no worse” and to leaving the Supplier in a “no better and no worse position” shall be construed as to ensure that the ability of the Supplier to comply with this Agreement is not adversely affected or improved as a consequence of the Relevant Event.

¹ <https://www.gov.uk/government/statistical-data-sets/gas-and-electricity-prices-in-the-non-domestic-sector>

- 9.6 In adjusting the Charges the individual Heat Capacity Charge and Heat Tariff (as so adjusted) which make up the Charges should reflect the same drivers and methodology used to determine those Heat Capacity Charge and Heat Tariffs as at the Base Date.
- 9.7 Where the Supplier and the Customer are unable to agree the revisions to the Charges within twenty (20) Business Days of submission of a revised proposal by the Supplier to the Customer, then the matter shall be determined in accordance with clause 16 (Dispute Resolution).

SCHEDULE 3: CHARGES

Part 2 – Unrecovered Connection Fee

1. UNRECOVERED CONNECTION FEE

- 1.1 Where the Customer has paid for the Connection Fee in full, within or prior to the first Payment Period, Schedule 3, Part 2 no longer applies.
- 1.2 Where the Supplier has paid upfront for the Connection Fee, the Customer shall remain liable for the Connection Fee for a period of twenty (20) years following the Date of Supply (**Connection Fee Recovery Period**).
- 1.3 In the event that this Agreement is terminated prior to the expiry of the Connection Fee Recovery Period in accordance with Clause 9.1 (Termination by the Supplier) or Clause 15.3 (Force Majeure), the Customer shall be liable to pay the Supplier the Unrecovered Connection Fee.
- 1.4 The Unrecovered Connection Fee is the proportion of the Connection Fee which is deemed to have not been recovered by the Supplier through the Charges paid by the Customer to date, as at the Termination Date, calculated in accordance with the table below.

Termination Date	Unrecovered Connection Fee (as a percentage (%) of the total Connection Fee)
Any date from and including the Date of Supply up to and including the day immediately preceding the first anniversary of the Date of Supply	100%
Any date from and including the first anniversary of the Date of Supply up to and including the day immediately preceding the second anniversary of the Date of Supply	95%
Any date from and including the second anniversary of the Date of Supply up to and including the day immediately preceding the third anniversary of the Date of Supply	90%
Any date from and including the third anniversary of the Date of Supply up to and including the day immediately preceding the fourth anniversary of the Date of Supply	85%
Any date from and including the fourth anniversary of the Date of Supply up to and including the day immediately preceding the fifth anniversary of the Date of Supply	80%
Any date from and including the fifth anniversary of the Date of Supply up to and including the day immediately preceding the sixth anniversary of the Date of Supply	75%
Any date from and including the sixth anniversary of the Date of Supply up to and including the day immediately preceding the seventh anniversary of the Date of Supply	70%

Any date from and including the seventh anniversary of the Date of Supply up to and including the day immediately preceding the eighth anniversary of the Date of Supply	65%
Any date from and including the eighth anniversary of the Date of Supply up to and including the day immediately preceding the ninth anniversary of the Date of Supply	60%
Any date from and including the ninth anniversary of the Date of Supply up to and including the day immediately preceding the tenth anniversary of the Date of Supply	55%
Any date from and including the tenth anniversary of the Date of Supply up to and including the day immediately preceding the eleventh anniversary of the Date of Supply	50%
Any date from and including the eleventh anniversary of the Date of Supply up to and including the day immediately preceding the twelfth anniversary of the Date of Supply	45%
Any date from and including the twelfth anniversary of the Date of Supply up to and including the day immediately preceding the thirteenth anniversary of the Date of Supply	40%
Any date from and including the thirteenth anniversary of the Date of Supply up to and including the day immediately preceding the fourteenth anniversary of the Date of Supply	35%
Any date from and including the fourteenth anniversary of the Date of Supply up to and including the day immediately preceding the fifteenth anniversary of the Date of Supply	30%
Any date from and including the fifteenth anniversary of the Date of Supply up to and including the day immediately preceding the sixteenth anniversary of the Date of Supply	25%
Any date from and including the sixteenth anniversary of the Date of Supply up to and including the day immediately preceding the seventeenth anniversary of the Date of Supply	20%
Any date from and including the seventeenth anniversary of the Date of Supply up to and including the day immediately preceding the eighteenth anniversary of the Date of Supply	15%
Any date from and including the eighteenth anniversary of the Date of Supply up to and including the day immediately preceding the nineteenth anniversary of the Date of Supply	10%

Any date from and including the nineteenth anniversary of the Date of Supply up to and including the day immediately preceding the twentieth anniversary of the Date of Supply	5%
Any date from (and including) the twentieth anniversary of the Date of Supply	0%

1.5 Where this Agreement:

- 1.5.1 is terminated following the expiry of the Connection Fee Recovery Period; or
- 1.5.2 is terminated by the Customer prior to the expiry of the Connection Fee Recovery Period pursuant to Clause 9.2 (Termination by the Customer); or
- 1.5.3 expires by the effluxion of time pursuant to Clause 2.5 (Conditions Precedent and Term)

there will be no Unrecovered Connection Fee payable by the Customer.

- 1.6 For the avoidance of doubt, there will be no indexation of the Connection Fee or the Unrecovered Connection Fee.

SCHEDULE 4 – CONTRACT PARTICULARS

Customer	The Secretary of State for Work and Pensions
Unit Address	Quarry House, Quarry Hill, Leeds. LS2 7AU
Billing Address (if different)	Optimised Energy, 607-609 Castlemead, Lower Castle Street, BS1 3AG
Customer contact and telephone number	REDACTED
Customer technical/maintenance contact and telephone number	Helpdesk: 0870 6060065
Customer out of hours contact and telephone number	Helpdesk: 0870 6060065
Supplier contact and telephone number	Senior Project Manager REDACTED
Supplier technical/maintenance contact and telephone number	Vital Energi 01254 296000
Supplier out of hours contact and telephone number	Vital Energi 0845 0948254
Energy Services to be supplied	Heat
Energy Services capacity required	3,500kW
Date of Supply	15 th November 2021
Billing Period	Monthly
Method of payment	Monthly Invoice

SCHEDULE 5 - POINT OF CONNECTION AND EQUIPMENT

See associated diagram (document 50613-VE-QH-01-SC-M-5601 P1 Quarry House PID) reproduced below, showing demarcation of Customer and Supplier responsibilities for assets, including the point of connection, Heat Assets, Customer Secondary System. The Supplier has responsibility for assets up to the points marked C and D, with the assets beyond these points being the Customer's responsibility.

REDACTED

See associated plan (QH location and site plan) showing the location of the Premises along with the Plan (Official Copy (Title Plan) – WYK530108(70093665_1)).

SCHEDULE 6 - CUSTOMER SPECIFICATION

The following shall comprise the Customer Specification for the purposes of this Agreement.

1. In relation to the Customer's Secondary System, the Customer shall ensure the following temperatures are maintained:

Maximum Flow Temperature	80 degC (secondary side)
Return Temperature	The Parties have agreed that the Customer should use reasonable endeavours to achieve a return temperature of <60 degC particularly during winter months. However, it is acknowledged by both Parties that the secondary system in the Premises was not designed to achieve this temperature and requires extensive works to do so at all times. Therefore, both parties agree that the Return Temperature Adjustment will not apply for any return temperatures in the range between 60 degC and <65 degC. The Customer will use reasonable endeavours to manage and optimise the heating and DHW system to attempt to achieve a <60 degC return temperature. The Customer will also use reasonable endeavours during lifecycle maintenance to improve the performance of the secondary system to achieve a <60 degC return temperature at all times by taking steps, including but not limited to, replacing 3 port valves with 2 port valves and replacing secondary pumps with variable speed pumps.

2. In relation to other requirements, the Customer shall ensure the following levels are maintained:

Maximum Heat Demand	3,500 kilowatts (kW)
Annual Heat Quotient	5,002,905 kilowatt hours (kWh)

SCHEDULE 7 – RESILIENCE

Key risk factors, mitigations and impacts on customers are outlined below:

Risk Factor	Mitigation	Impact on Customer
Planned or unplanned maintenance to the RERF (primary heat source)	The network has strategically located resilient boilers capable of providing 100% of the output of the RERF. These automatically provide heat.	There should be no impact.
Interruption to heat supply due to damage to the pipe.	The precise location of the network will be recorded and shared with Council Highways teams and local utilities to reduce the likelihood of utilities causing damage to the network. If the network is damaged, temporary containerised boilers will be set up at strategic locations on the network.	Short term interruption to heat supply while temporary boilers are connected. Less than 24 hours.
Critical incident (e.g. fire) at an energy centre.	If the energy centre is damaged, temporary containerised boilers will be set up at strategic locations on the network.	Short term interruption to heat supply while temporary boilers are connected. Less than 24 hours. Temperatures and flow rates may be affected until the energy centre is repaired.
Power cut affecting energy centre.	The main energy centre will have a standby generator sized to maintain critical plant in the energy centre in the case of a power cut. There is also space external to the energy centre for additional standby generation plant to be brought to site should it be required.	The impact will be the same as a power cut currently has, in that pumps and boilers will not operate during the power cut. Short term interruption to heat supply. Temperatures and flow rates may be affected until the energy centre is repaired.
Equipment failure within the energy centre (e.g. pump, heat exchanger, boiler)	All key equipment has been designed to incorporate redundancy (i.e. n+ 1 arrangement). Vital Energi will maintain a supply of commonly used consumable items and have supply arrangements in place to replace any failed equipment quickly.	There should be no impact.
Heat exchanger failure within the Customer's building	The Customer will be provided with two heat exchangers, each designed to provide c66% of the peak demand.	Under normal loads, there should be no impact. At peak loads, the Customer's boilers will be fired.

	Vital Energi will maintain a supply of commonly used consumable items and have supply arrangements in place to replace any failed equipment quickly.	If the Customer has no resilient boilers, the Customer will notice a slight reduction in performance for loads above 66% of peak.
Total catastrophic system failure.	<p>Some customers will retain gas fired resilient boilers.</p> <p>Customers without resilient boilers will have a connection point for a temporary containerised boiler.</p>	<p>There should be no impact for Customers with resilient boilers.</p> <p>For those without resilient boilers, short term interruption to heat supply while temporary boilers are connected. Less than 24 hours.</p>

Signed for and on behalf of **Leeds City Council**

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Director

Signed for and on behalf of the Secretary of State
for Work and Pensions

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Name:

Position: