Heat Network Detailed Project Development Resource:

Strategic and Commercial Case

**Template Heat Network Heads of Terms**

**HoT 1 – Shareholders’ Agreement**

**WARNING: This document is intended only to serve as a prompt to discussion of some of the key issues likely to arise in the context of the subject matter of this document. Substantive commercial and legal consideration will need to be given to a heat network scheme in order to develop the principles flagged below and others relevant to that particular scheme, and before the parties commit, in principle, to a set of “heads of terms” or develop and enter into a fully binding legal agreement. This document is no substitute for taking proper legal advice from lawyers experienced in district heating.**

|  |  |
| --- | --- |
| **Shareholders’ Agreement: *[Local Authority]* (1) and *[JV Partner]* (2)** | |
| **Assumptions** | * The Local Authority wishes to be directly involved in the delivery of and control of a DHS, together with a delivery partner, in a JV structure[[1]](#footnote-1) (“**JVC**”). * The JV is likely to own substantial interests in the DHS (for example assets) * Either the Local Authority and/ or its delivery partner will substantially fund[[2]](#footnote-2) the procurement and delivery of the DHS. * The Shareholder’s Agreement sets out the terms on which the Local Authority and the delivery partner as shareholders, will govern the JVC. |
| **Parties** | (1) *[Local Authority]*  (2) *[JV Partner][[3]](#footnote-3)* |
| **Recitals** | (A) *[Background to Project]*  (B) *[Role of Party (1)]*  (C) *[Role of Party (2)]*  (D) *[Intention and role of this Agreement in context of Project]* |
| **Business of the JVC** | *[Describe DHS Project and the JVC’s intentions in relation to the DHS]* |
| **Representations and Warranties** | *[Standard representations and warranties from both Parties including:*   * *incorporation* * *powers* * *enforceability of obligations* * *conflicts with law/ other obligations]*   *[Warranty that the JVC at the date of the Agreement and has not carried on any business, has no assets/ liabilities]* |
| **Completion** | *[Parties to procure shareholder/ board meetings necessary to:*   * *adopt Articles of the Company;* * *give directors authority to allot shares[[4]](#footnote-4);* * *appoint relevant directors and secretary;* * *undertake relevant administrative necessities (registered office, appointment of bankers auditors etc);* * *issue shares to the Parties;* * *[in consideration of share issue, Parties to:*   + *[provide technical support/ pay [£ ] to the JVC/ [ ][[5]](#footnote-5)*   + *adopt the Business Plan, including strategic masterplan].[[6]](#footnote-6)* |
| **Conditions** | *[Insert relevant conditions to Completion][[7]](#footnote-7)*  *[Obligation on the Parties to have satisfied the Conditions by [ ]]*  *[If Conditions are not met, agreement to cease, except [ ][[8]](#footnote-8)]* |
| **Matters requiring consent of shareholders** | *[Include a list of Reserved Matters which the JVC cannot carry out without the consent of the Shareholders][[9]](#footnote-9)* |
| **Directors and management** | *[Composition of board to be detailed – with [x] number of Directors from the JV Partner, [y] number from the Local Authority]*  *[Consider, if the shareholding is 50/50, that the Chairman will need to have a casting vote and whether such Chairman will be a Local Authority or JV Partner representative]*  *[Include relevant details on replacement of Directors, conduct of meetings, (etc)]* |
| **Finance for the JVC** | *[Include relevant details on how the JVC will be funded][[10]](#footnote-10)* |
| **Anti-corruption** | *[Parties undertake that they will not and will procure that the JVC will not engage in activities that would constitute an offence under the Bribery Act 2010][[11]](#footnote-11)* |
| **Restrictions on the Parties** | *[Include relevant restrictions on the Parties in relation to e.g. undertaking a competing business, soliciting away services or employees from the JVC]* |
| **Business Plan** | *[The Business Plan for the DHS will be prepared by the Board for the JVC and should include, e.g. cashflow statements, monthly projected profits and losses for the DHS, operating budget, financial report, etc]* |
| **Accounting and other information** | *[JVC should maintain accurate and complete accounting and financial records]* |
| **Dividend policy** | *[Include agreed dividends policy][[12]](#footnote-12)* |
| **Tax Matters** | *[Include agreed treatment of taxes]* |
| **Deadlock resolution** | *[If the JV is 50/50, include relevant processes for resolving “deadlock” on decisions]* |
| **Transfer/ sale of shares and issue of further shares** | *[Include relevant restrictions on share issue, transfer and sale. Given the longevity of a DHS, share issues, transfers and sales should be carefully controlled]* |
| **Termination and liquidation** | *[Where one Party ceases to hold shares or becomes insolvent]*  *[Include any other events that should lead to termination]* |
| **Confidentiality** | *[Standard confidentiality, subject to any obligations placed on the Local Authority,, eg FOI]* |
| **Boilerplate**: | * Status of the Agreement * No partnership or agency * Rights and remedies * Third Party Rights * Force Majeure * Change in Law * Notices * Variation and Waiver * Invalidity and Severability * Entire Agreement * Governing Law |

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**HoT 2 – Energy Centre Lease and Network Easements**

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|  |  |
| --- | --- |
| **Energy Centre Lease: *[Tenant]* (1) and *[Landlord]* (2)** | |
| **Assumptions** | * Local Authority may be:   + Landlord;   + Delivering a DH scheme and wishes oversight over its sub-contractor’s leasing arrangements. * Easements over Primary Network (running from the Energy Centre) will be granted pursuant to the Energy Centre Lease (rather than as a separate legal agreement)[[13]](#footnote-13). |
| **Parties** | (1) [Tenant]***[[14]](#footnote-14)***  (2) Landlord |
| **Lease Particulars** | *[Land Registry required particulars, including:*   * *title numbers;* * *parties;* * *any prohibitions or restrictions on disposal;[[15]](#footnote-15)* * *restrictive covenants;* * *easements;[[16]](#footnote-16)* * *permitted use[[17]](#footnote-17).]* |
| **Demise** | *[The Energy Centre]* |
| **Rent** | *[£1.00] [[18]](#footnote-18)*  *[Plus usual additional rents such as costs incurred by the Landlord as a result of any breach of the Tenant’s covenants.]* |
| **Tenant’s Covenants** | *Tenant Covenants including:*   * *payment of outgoings* * *VAT* * *Utilities[[19]](#footnote-19)* * *Repair* * *Conduits* * *Prohibited Uses;* * *Permitted Uses;* * *Alterations;[[20]](#footnote-20)* * *Preservation of Easements;* * *Alienation;* * *Statutory Requirements and Regulations;* * *Planning;* * *Notices;* * *Entry by the Landlord;* * *Landlord’s Costs;* * *Indemnity in relation to Tenant breaches;* * *Yielding Up;* * *Encumbrances.* |
| **Landlord’s Covenants** | *Landlord’s Covenants, including:*   * *Quiet Enjoyment;* * *Landlord to Maintain;* * *Restrictions in relation to Adjoining Property;[[21]](#footnote-21)* * *Grant of easements;[[22]](#footnote-22)* * *Assignment of Reversion;[[23]](#footnote-23)* |
| **Insurance** | *Landlord will normally insure the building in which the Energy Centre is located.*  *Tenant will normally insure the contents of the Energy Centre.* |
| **Termination** | *[Automatic termination on termination of [eg DBOM Contract/ Concession Agreement]][[24]](#footnote-24)* |
| **Limitation on Liability** | *[ ][[25]](#footnote-25)* |
| **Boiler Plate[[26]](#footnote-26)** | * Subcontracting/ assignment * Notices * Third Party Rights * Change in Law * Waiver * Invalidity and Severability * Entire Agreement * Governing Law |
| **Schedule 1** | Easements[[27]](#footnote-27) |

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**HoT 3 – Concession Agreement**

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|  |  |
| --- | --- |
| **Concession Agreement: *[Local Authority]* (1) and *[Concessionaire]* (2)** | |
| **Assumptions** | * The Local Authority does not wish to be directly involved in the delivery of the DHS (for example in a JV structure with a delivery partner) and is outsourcing the full concession for design, build, operation, maintenance and service provision (including heat supply, metering and billing) to a Concessionaire in respect of a retrofit or new-build Development. * The Concessionaire will be the heat supplier, will grant heat supply agreements and will be the recipient of revenues from heat sales. [NB. This contrasts with the DBOM arrangement described elsewhere under which the Local Authority retains this role] * The Local Authority has some degree of control over the Development which is served by the DHS (for example, is the ultimate landlord and as a pre-condition to Developer build out, requires connection to the DHS, or is a Residential Social Landlord, or has a Local Authority owned estate requiring heat) and can therefore give some assurances to the Concessionaire with regards to property rights, access, connection to the DHS and heat consumption. * The Local Authority may part fund the DHS (with the Concessionaire funding the remainder), either through a loan[[28]](#footnote-28) or through the payment of connection charges (eg where the Local Authority is landlord of relevant blocks being connected to the DHS) * The Local Authority is willing to have a hands on role in governing (including monitoring performance in) the delivery of the Concession by the Concessionaire for the (potentially long) concession term. * The Local Authority wishes to have some controls over the terms and conditions and price at which the heat is delivered to consumers |
| **Parties** | (1) *[Local Authority]*  (2) *[Concessionaire] [The party to whom the concession is granted]* |
| **Recitals** | (A) *[Background to Project]*  (B) *[Role of Party (1)]*  (C) *[Role of Party (2)]*  (D) *[Intention and role of this Agreement in context of Project]* |
| **Representations and Warranties** | *[Standard representations and warranties including:*   * *incorporation* * *powers* * *enforceability of obligations* * *conflicts with law/ other obligations* * *authorisations in place* * *no claims or litigation* * *no disposal or rights or assets used in connection with the Agreement without notification]* |
| **Term** | * *[Conditions Precedent[[29]](#footnote-29)]* * *Term[[30]](#footnote-30)* |
| **Concessionaire Obligations** | ***[Note: this list is non-exhaustive and general]***  **Finance**  For finance of works and services, see Payments/Capital Contributions section below.  **Works**   * *[Support for Developer planning applications][[31]](#footnote-31)* * *[Design, procure, construct, install] [and/or adopt][[32]](#footnote-32) the District Heating System (including Energy Centre(s), Primary Heating Network, [Secondary Heating Network], [ancillary equipment, including HIUs, Meters])[[33]](#footnote-33):*   + *in accordance with Good Industry Practice, (including CIBSE Code of Practice and the London Heat Network Manual and any Local Authority Best Practice requirements);*   + *in accordance with the Metering and Billing Regulations 2014 and other applicable law;*   + *that complies with the conditions set out in the s106 Planning Agreement relating to the provision of energy to the Development, in particular in relation to connectivity between development blocks;*   + *that enables Developer compliance with the [Planning Permission(s)];*   + *[in order to ensure Connections are Carbon Compliant as at the date of Connection, as required under the s106 Planning Agreement];*   + *in accordance with the Energy Centre/ Plant Room Leases;*   + *in accordance with relevant specifications/ Authority Requirements (for example, covering minimum technical requirements and “future proofing” i.e. ensuring that expansion of the scheme is possible in the future);* * *[adopt] [[34]](#footnote-34), commission the plant, equipment and ancillaries;* * *[liaise with the [Developer’s]/[Local Authority’s] contractors to ensure correct interface between the heat exchange units and [Secondary]/[Tertiary] networks within Units][[35]](#footnote-35);* * *produce records, drawings and operation and maintenance manuals;* * *provide an appropriate warranty package in relation to any outsourced element of the Works/ in respect of design of any plant and equipment;* * *[enter into Connection Agreements in respect of each block][[36]](#footnote-36)* * *[enter into Energy Centre Plant Room Leases][[37]](#footnote-37)*   **Services**   * *operate, maintain, repair, replace and upgrade (as necessary) the District Heating System (comprising Energy Centre, Primary Distribution Network, Secondary Distribution Network and, in some cases, meters and heat interface units)[[38]](#footnote-38):*   + *in accordance with Good Industry Practice (including CIBSE Code of Practice and the London Heat Network Manual);*   + *in compliance with all Authorisations and all applicable law;*   + *to enable Developer compliance with the [Planning Permission] and the s.106;*   + *to enable compliance with the standards set out in the Customer Supply Agreements;*   + *in accordance with [the Technical Performance Specification][[39]](#footnote-39)*   + *[to ensure a minimum further [5] year working life from the Expiry date for all plant and equipment.][[40]](#footnote-40)* * *enter into Customer Supply Agreements[[41]](#footnote-41);* * *[maintain a plant replacement fund in respect of major plant or network replacement which shall be transferred to the Local Authority on a Termination event, with sufficient funds to ensure plant replacement in accordance with good industry practice for the following [ x ] years][[42]](#footnote-42);* * *[have no responsibility for the Tertiary Network (heating plant and equipment (such as piping, radiators and thermostats)) within housing units (or Secondary Network (depending on the contractual arrangements)][[43]](#footnote-43);* * *report periodically on the state of repair and condition of the energy plant and heat network and shall make the plant accessible for such inspection as may be required from time to time;* * *provide temporary facilities suitable to ensure continuity of heat services;* * *provide customer metering and billing services;* * *[arrange, manage and collect revenue in respect of the export of electricity from the operation of the CHP plants][[44]](#footnote-44);* * *operate a call out system which will operate for the Term of the concession, with compensation paid to all customers on loss of Heat supply over a continuous period of time;* * *provide heat to unoccupied blocks prior to first occupation [on a reasonable and agreed tariff][[45]](#footnote-45);* |
| **Performance regime** | *[Dependent on level of controls the Local Authority requires. Can range from basic output spec based (minimum heat temperatures, heat availability), to detailed specification requirements. Increased reporting and controls may be required where the Local Authority has a lender role/ supplier of last resort role and/or heat off-take role. Appropriate service failure points regime may be developed with rectification plan mechanism, followed by escalation to Major Default on failure to rectify in accordance with plan.]* |
| **Local Authority Obligations** | *[Will be dependent on Local Authority role on the Development (i.e. whether the Local Authority is the Developer/ Landlord/ is carrying out Works, or is simply procuring the Concession for a particular Development. Obligations may include:*   * *Carry out [x] Works, including build of the [Energy Centre Plant Room]/[Secondary]/[Tertiary] network to minimum standards;* * *[grant]/ [procure] the grant of exclusivity to the Concessionaire in respect of the delivery of Heat and space heating, with limited exceptions eg small commercial units and temporary units]* * *Allow the Concessionaire to operate the district heating system without material disruption or impediment.]* |
| **Payments for works** | *[Funding options for works/assets typically include:*   * *Capital costs being borne in some split between Local Authority/Developer and Concessionaire, with Concessionaire recovering capital costs it incurs through Connection Charges and/or fixed charges charged to heat customers;* * *Concessionaire potentially paying adoption payments if/when it adopts existing, valuable district heating assets;* * *Local Authority loan to Concessionaire* * *Revenue sharing arrangement]*   *NB: Operating costs are normally recovered from customers.]*  *[Concessionaire should provide transparent financial model, (reported on on a regular basis), covering, e.g:*   * *Capex – including: utility connection costs, refurbishment/replacement, design, installation, commissioning* * *Opex – including: utility consumption costs and standing charges, personnel, sub-contracted services* * *Financing cost* * *Depreciation* * *Revenue – including: assumptions on connection charges and numbers of connections, consumption charges and volumes, standing charges and number of consumers* * *Anticipated return on investment]* |
| **Access/ Ownership** | *[Appropriate property rights will need granted to the Concessionaire, according to Local Authority role:*   * *[Provide]/[procure] the necessary rights of access to the Concessionaire during the Works phase;* * *[Provide]/[procure] licences/ leases/ easements/ title to assets to the Concessionaire in respect of use of and access where relevant.]* |
| **Liability** | *[Will be dependent on: role of parties, capital injected, impacts of non-performance, performance regime and whether there is an aggregated level of liability across a suite of documents which may include the Concession, Connection Agreements and Supply Agreements]* |
| **Insurance** | *[Concessionaire required to provide evidence of:*   * *Contractor’s All Risk* * *Property Damage (will be largely dependent on ownership structures, with owner of asset responsible for insurance)* * *3rd Party (during construction and operational phases)* * *Professional Indemnity]* |
| **Termination** | *[Grounds for termination of the Concession, will include:*   * *insolvency/administration/liquidation;* * *material breach;* * *unauthorised change in control]*   *[Consequences of Termination:*   * *liability for costs of procuring replacement party;* * *transfer of assets/contracts/IP/ shares;* * *consideration will be required as to supplier of last resort if a replacement concessionaire cannot be procured]* |
| **Subcontracting/ Assignability/Transfer** | *[Generally no subcontracting (etc) without notification and consent, except within limited circumstances.]*  *[Transfer subject to financial Security Tests.]* |
| **Change Management** | *[Restriction on changes with certain impacts. According to risk allocation, Local Authority/ Concessionaire to pick up changes in law. Ability to change contract scope with agreement, for example to expand the scheme/ add more on-site or off-site connections, with agreement as to costs taking into account any additional capex requirements/ additional risks.]* |
| **Confidentiality/ IP** | *[Standard confidentiality, subject to any obligations placed on Local Authority, eg FOI]*  *[Any IP in specific DHS systems should be protected for person developing, depending on commercial arrangements]* |
| **Security** | * *[Parent Company Guarantees]* * *[Performance Bonds]* * *[Collateral Warranties]* |
| **Dispute Resolution Procedure** | *[DRP provisions to be Construction Act 2011 compliant]* |
| **Boilerplate**: | * Third Party Rights * Force Majeure * Change in Law * Notices * Waiver * Invalidity and Severability * Entire Agreement * Governing Law |

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**HoT 4 – Collateral Warranty**

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|  |  |
| --- | --- |
| **Collateral Warranty: *[Local Authority]* (1) and *[Sub-Contractor/ design consultant]* (2)** | |
| **Assumptions** | * The Local Authority is directly involved in the delivery/ management of the DHS and is outsourcing individual packages (such as D&B). * The Contractor is a sub-contractor to the main works contractor (eg D&B Contractor). * The Local Authority wishes to obtain security that sub-contractors involved in the delivery of e.g. design elements of the Project, have performed their obligations and that the Local Authority has direct recourse against such sub-contractors. |
| **Parties** | (1) *[Local Authority] (“****Beneficiary****”)*  (2) *[Contractor] (“****Contractor****”)* |
| **Recitals** | (A) *[Background to Project and role of main contractor]*  (B) *[Role of Party (1)]*  (C) *[Role of Party (2)] (i.e. description of appointment by the main contractor and nature of the professional services they are carrying out)*  (D) *[Intention and role of this Agreement in context of Project]* |
| **Warranty** | *[Contractor warranty that in carrying out the relevant professional services pursuant to their appointment, it has exercised and continued to exercise all reasonable skill, care and diligence expected]* |
| **Prohibited Materials** | *[Contractor warranty that they will not use “Prohibited Materials”[[46]](#footnote-46) in the performance of the Services]* |
| **Copyright Licence** | *[Contractor to grant to the Beneficiary with full title guarantee a royalty free, irrevocable, perpetual non-exclusive licence to use, adapt and copy the “Documents”[[47]](#footnote-47)]*  *[Contractor warrants and undertakes no infringement of copyright or other intellectual property or design rights]* |
| **Insurance** | *[Contractor to effect and maintain professional indemnity insurance in the amount of [ ][[48]](#footnote-48) from date of appointment until [12][[49]](#footnote-49) years after practical completion of the relevant works]* |
| **Enquiries** | *[Obligations/ liabilities of the Contractor not to be released or diminished by any inspection/ enquiries made by the Beneficiary]* |
| **Assignment** | *[Right of Beneficiary to assign the Collateral Warranty on [two] occasions without consent of the Contractor][[50]](#footnote-50)* |
| ***Limitation*** | *[No action/ proceedings under the Collateral Warranty to be commenced against the Contractor in connection with the Services after 12 years from the date of practical completion of the Services]*  *[Contractor to be entitled in any action/ proceeding by the Beneficiary, to rely on any limitation in the Appointment with the main contractor and to raise equivalent rights in defence of liability]* |
| **Boilerplate**: | * Notices * Waiver * Entire Agreement * Governing Law |

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**HoT 5 – D&B Contract**

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|  |  |
| --- | --- |
| **D&B Contract[[51]](#footnote-51): *[Local Authority]* (1) and *[Contractor]* (2)** | |
| **Assumptions** | * The Local Authority is directly involved in the delivery/ management of the DHS and is outsourcing individual packages, including Design & Build. * The Local Authority has some degree of control over the new build or refurbishment (Development) and its access which is served by the element of the DHS being constructed and can therefore give some assurances to the Contractor with regards to access in order to carry out the Works. |
| **Parties** | (1) *[Local Authority]*  (2) *[Contractor]* |
| **Recitals** | (A) *[Background to Project]*  (B) *[Role of Party (1)]*  (C) *[Role of Party (2)]*  (D) *[Intention and role of this Agreement in context of Project]* |
| **Representations and Warranties** | *[Standard representations and warranties including:*   * *incorporation* * *powers* * *enforceability of obligations* * *conflicts with law/ other obligations* * *authorisations in place* * *no claims or litigation* * *no disposal or rights or assets used in connection with the Agreement without notification]* |
| **Term** | * *[Conditions Precedent[[52]](#footnote-52)]* * *Term[[53]](#footnote-53)* |
| **Contractor Obligations** | ***[Note: this list is non-exhaustive and general]***  **Works**   * *[Support for Developer planning applications][[54]](#footnote-54)* * *[Design, procure, construct, install] the [District Heating Scheme][[55]](#footnote-55) (including Energy Centre(s), Primary Network, [Secondary Network], [ancillary equipment, including HIUs, Meters])[[56]](#footnote-56):*   + *in accordance with Good Industry Practice, (including the CIBSE Code of Practice and the London Heat Network Manual);*   + *[in accordance with the Metering and Billing Regulations 2014 and other applicable law];*   + *that enables [Developer]/[Local Authority] compliance with the [Planning Permission(s)];*   + *[in order to ensure Connections are Carbon Compliant as at the date of Connection, as required under the s106 Planning Agreement];* * *[commission the plant, equipment and ancillaries][[57]](#footnote-57);* * *[liaise with the [Developer’s]/[Local Authority’s] contractors to ensure correct technical interface between the heat exchange units and [secondary]/[tertiary] networks within Units][[58]](#footnote-58);* * *produce records, designs, specifications, drawings, documentation related to commissioning [and operation and maintenance manuals (etc) for provision to the O&M Contractor][[59]](#footnote-59);* * *provide an appropriate warranty package in relation to any outsourced element of the Works/ in respect of design of any plant and equipment;* * *[provide Performance Guarantees][[60]](#footnote-60)* * *in accordance with relevant specifications/ Authority Requirements (for example, covering minimum technical requirements and “future proofing” i.e. ensuring that expansion of the scheme is possible in the future) and any Local Authority Best Practice requirements.* |
| **Local Authority Obligations** | *[Will be dependent on Local Authority role on the Development (i.e. whether the Local Authority is the Developer/ Landlord/ is carrying out works, or is simply procuring the works for a particular Development. Obligations may include carrying out [x] Works, including build of the [Energy Centre Plant Room]/[Secondary]/[Tertiary] Network)* |
| **Payment** | *[Construction Act 2011 compliant payment for works]*  *[Retention of sums from final works payments as security for warranties/ snagging list, if appropriate]*  *Deduction of liquidated damages for delay* |
| **Access/ Licence for Works** | *[Appropriate access rights will need granted to the Contractor,*  *during the Works phase]* |
| **Liability** | *[Will normally be based on a multiple of the Works sum.]* |
| **Insurance** | *[Contractor required to provide evidence of:*   * *Contractor’s All Risk* * *Property Damage* * *Third Party* * *Professional Indemnity]* |
| **Termination** | *[Grounds for termination of the Contract, will include:*   * *insolvency/administration/liquidation;* * *material breach* * *unauthorised change in control]* |
| **Subcontracting/ Assignability/Transfer** | *[Generally no subcontracting (etc) without notification and consent, except within limited circumstances.]* |
| **Change Management** | *[Restriction on changes with certain impacts. According to risk allocation, Local Authority/ Contractor to pick up changes in law. Ability to change contract scope with agreement.]* |
| **Confidentiality/ IP** | *[Standard confidentiality, subject to any obligations placed on Local Authority, eg FOI]* |
| **Security** | * *[Parent Company Guarantees]* * *[Performance Bonds]* * *[Collateral Warranties]* |
| **Dispute Resolution Procedure** | *[DRP provisions to be Construction Act compliant]* |
| **Boilerplate**: | * Third Party Rights * Force Majeure * Change in Law * Notices * Waiver * Invalidity and Severability * Entire Agreement * Governing Law |

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**HoT 6 – DBOM Contract**

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|  |  |
| --- | --- |
| **DBOM Contract: *[Local Authority/ SPV/JV]* (1) and *[DBOM Contractor]* (2)** | |
| **Assumptions** | * The Local Authority wishes to directly procure the delivery of the DHS (potentially through an SPV or a JV structure) and is procuring the design, build, operation, maintenance and service provision in one package (which may or may not include heat supply, metering and billing) to a DBOM Contractor in respect of a retrofit or new-build Development. * The Local Authority has some degree of control over the Development and its access which is served by the DHS (for example, is the ultimate landlord and as a pre-condition to Developer build out, requires connection to the DHS, or is a Residential Social Landlord) and can therefore give some assurances to the DBOM Contractor with regards to property rights and access (in order to carry out the Works), connection to the DHS and heat consumption. * The Local Authority will substantially fund or procure funding for the DHS, for example, through external debt funding, through a Local Authority loan[[61]](#footnote-61) or through the payment of connection charges (where the Local Authority is landlord of relevant blocks being connected to the DHS). * The Local Authority is willing to have a hands on role in governing the delivery of the DHS by the DBOM Contractor. * The Local Authority (or a special purpose vehicle) will be the heat supplier, will grant heat supply agreements and be the recipient of heat sales revenues [NB. This contrasts with the Concession Agreement where the Concessionaire performs this role in addition to design, build, operation and maintenance] |
| **Parties** | (1) *[Local Authority]*  (2) *[DBOM Contractor]* |
| **Recitals** | (A) *[Background to Project]*  (B) *[Role of Party (1)]*  (C) *[Role of Party (2)]*  (D) *[Intention and role of this Agreement in context of Project]* |
| **Representations and Warranties** | *[Standard representations and warranties including:*   * *incorporation* * *powers* * *enforceability of obligations* * *conflicts with law/ other obligations* * *authorisations in place* * *no claims or litigation* * *no disposal or rights or assets used in connection with the Agreement without notification]* |
| **Term** | * *[Conditions Precedent[[62]](#footnote-62)]* * *Term[[63]](#footnote-63)* |
| **DBOM Contractor Obligations** | ***[Note: this list is non-exhaustive and general]***  **Works**   * *[Support for Developer planning applications][[64]](#footnote-64)* * *[Design, procure, construct, install] [and/or adopt][[65]](#footnote-65) the District Heating Scheme (including Energy Centre(s), Primary Network, [Secondary Network], [ancillary equipment, including HIUs, Meters])[[66]](#footnote-66):*   + *in accordance with Good Industry Practice, (including CIBSE Code of Practice and the London Heat Network Manual);*   + *in accordance with the Metering and Billing Regulations 2014 and other applicable law;*   + *that complies with the conditions set out in the s106 Planning Agreement relating to the provision of energy to the Development, in particular in relation to connectivity between development blocks;*   + *that enables Developer compliance with the [Planning Permission(s)];*   + *in order to ensure Connections are Carbon Compliant as at the date of Connection, as required under the s106 Planning Agreement.*   + *in accordance with the Energy Centre/ Plant Room Leases;*   + *in accordance with relevant specifications/ Authority Requirements (for example, covering minimum technical requirements and “future proofing” i.e. ensuring that expansion of the scheme is possible in the future)* * *[adopt] [[67]](#footnote-67), commission the plant, equipment and ancillaries;* * *[liaise with the [Developer’s]/[Local Authority’s] contractors to ensure correct technical interface between the heat exchange units and [Secondary]/[Tertiary] Networks within Units][[68]](#footnote-68);* * *produce records, designs, specifications, drawings, documentation related to commissioning and operation and maintenance manuals;* * *provide an appropriate warranty package in relation to any outsourced element of the Works/ in respect of design of any plant and equipment;* * *[provide Performance Guarantees] [[69]](#footnote-69);* * *in accordance with relevant specifications/ Authority Requirements (for example, covering minimum technical requirements and “future proofing” i.e. ensuring that expansion of the scheme is possible in the future) and any Local Authority Best Practice requirements;* * *[enter into Connection Agreements in respect of each block/ Development][[70]](#footnote-70)* * *[enter into Energy Centre Plant Room Leases][[71]](#footnote-71)*   **Services**   * *operate, maintain, repair, replace and upgrade (as necessary) the District Heating System:*   + *in accordance with Good Industry Practice (including CIBSE Code of Practice and the London Heat Network Manual);*   + *in compliance with all Authorisations and all applicable law;*   + *to enable Developer compliance with the [Planning Permission] and the s.106;*   + *to enable compliance with the standards set out in the Customer Supply Agreements[[72]](#footnote-72);*   + *in accordance with [the Technical Performance Specification][[73]](#footnote-73)*   + *[to ensure a minimum further [5] year working life from the Expiry date for all plant and equipment.][[74]](#footnote-74)* * *[maintain a plant replacement fund in respect of major plant or network replacement which shall be transferred to the Local Authority on a Termination event, with sufficient funds to ensure plant replacement in accordance with good industry practice for the following [5] years[[75]](#footnote-75)]* * *[have no responsibility for the Tertiary Network (heating plant and equipment (such as piping, radiators and thermostats)) within housing Units[[76]](#footnote-76) and in some cases, Secondary Network];* * *report periodically on the state of repair and condition of the energy plant and heat network and shall make the plant accessible for such inspection as may be required from time to time;* * *provide temporary facilities suitable to ensure continuity of heat Services;* * *[provide customer metering and billing Services][[77]](#footnote-77);* * *[arrange, manage and collect revenue in respect of the export of electricity from the operation of the CHP plants][[78]](#footnote-78);* * *provide heat to unoccupied blocks prior to first occupation [on a reasonable and agreed tariff][[79]](#footnote-79);* |
| **Performance regime** | *[Detailed performance requirements (KPIs regime) will be needed for governing DBOM Contractor performance. Appropriate service failure points regime may be developed with rectification plan mechanism, followed by escalation to Major Default on failure to rectify in accordance with plan.]* |
| **Local Authority Obligations** | ***[Note: this list is non-exhaustive and general]***  *[Will be dependent on Local Authority role on the Development (i.e. whether the Local Authority is the Developer/ Landlord/ or is simply procuring the Contract for a particular Development. Obligations may include:*   * *[grant]/ [procure] the grant of access to all parts of the DHS] [[80]](#footnote-80)* * *Allow the DBOM Contractor to operate the district heating system without material disruption or impediment.]* |
| **Payment** | *[Construction Act 2011 compliant payment for Works]*  *[Retention of sums from final Works payments as security for warranties/ snagging list, if appropriate]*  *[Deduction of liquidated damages for delay]*  *[O&M element based on scope of delivery of Services]* |
| **Access/ Licence/ Lease/ Ownership** | *[Appropriate property rights will need granted to the DBOM Contractor, according to Local Authority role:*   * *[Provide]/[procure] the necessary rights of access to the DBOM Contractor during the Works phase;* * *[Provide]/[procure] licences/ leases/ easements/ title to assets to the DBOM Contractor in respect of use of and access where relevant]* |
| **Liability** | *[Will normally be based on the Capex during the Works phase and a multiple of the annual Services payment sum during the O&M phase]* |
| **Insurance** | *[DBOM Contractor required to provide evidence of:*   * *Contractor’s All Risk* * *Property Damage (will be largely dependent on ownership structures, with owner of asset responsible for insurance.)* * *3rd Party (during construction and operational phases)* * *Professional Indemnity]* |
| **Termination** | *[Grounds for termination of the Contract, will include:*   * *insolvency/administration/liquidation;* * *material breach* * *unauthorised change in control]*   *[Consequences of Termination:*   * *liability for costs of procuring replacement party* * *transfer of assets/contracts/IP/ shares* * *consideration will be required as to supplier of last resort if a replacement DBOM Contractor cannot be procured]* |
| **Subcontracting/ Assignability/Transfer** | *[Generally no subcontracting (etc) without notification and consent, except within limited circumstances.]* |
| **Change Management** | *[Restriction on changes with certain impacts. According to risk allocation, Local Authority/ DBOM Contractor to pick up changes in law. Ability to change contract scope with agreement, for example to expand the scheme/ add more on-site or off-site connections, with agreement as to costs taking into account any additional capex requirements/ additional risks]* |
| **Confidentiality/ IP** | *[Standard confidentiality, subject to any obligations placed on LA, eg FOI]* |
| **Security** | * *[Parent Company Guarantees]* * *[Performance Bonds]* * *[Collateral Warranties]* |
| **Dispute Resolution Procedure** | *[DRP provisions to be Construction Act compliant]* |
| **Boilerplate**: | * Third Party Rights * Force Majeure * Change in Law * Notices * Waiver * Invalidity and Severability * Entire Agreement * Governing Law |

Heat Network Detailed Project Development Resource:

Strategic and Commercial Case

**Template Heat Network Heads of Terms**

**HoT 7 – O&M Contract**

**WARNING: This document is intended only to serve as a prompt to discussion of some of the key issues likely to arise in the context of the subject matter of this document. Substantive commercial and legal consideration will need to be given to a heat network scheme in order to develop the principles flagged below and others relevant to that particular scheme, and before the parties commit, in principle, to a set of “heads of terms” or develop and enter into a fully binding legal agreement. This document is no substitute for taking proper legal advice from lawyers experienced in district heating.**

|  |  |
| --- | --- |
| **O&M Contract: *[Local Authority]* (1) and *[Contractor]* (2)** | |
| **Assumptions** | * The Local Authority is directly involved in the delivery/ management of the DHS and is outsourcing individual packages, including Operation & Maintenance. * The Local Authority has some degree of control over the Development which is served by the DHS (for example, is the ultimate landlord and as a pre-condition to Developer build out, requires connection to the DHS, or is a Residential Social Landlord) and can therefore give some assurances to the Contractor with regards to property rights, access, connection to the DHS and heat consumption. * The Local Authority is willing to have a hands on role in governing the delivery of the Contract by the Contractor for the (potentially long) Contract term. |
| **Parties** | (1) *[Local Authority]*  (2) *[Contractor]* |
| **Recitals** | (A) *[Background to Project]*  (B) *[Role of Party (1)]*  (C) *[Role of Party (2)]*  (D) *[Intention and role of this Agreement in context of Project]* |
| **Representations and Warranties** | *[Standard representations and warranties including:*   * *incorporation* * *powers* * *enforceability of obligations* * *conflicts with law/ other obligations* * *authorisations in place* * *no claims or litigation* * *no disposal or rights or assets used in connection with the Agreement without notification]* |
| **Term** | * *Term[[81]](#footnote-81)* |
| **Contractor Obligations** | ***[Note: this list is non-exhaustive and general]***  **In respect of pre-built assets**   * *[accept plant, equipment and ancillaries] [[82]](#footnote-82);* * *maintain operation and maintenance manuals;* * *[enter into Connection Agreements in respect of each development block][[83]](#footnote-83)* * *[enter into Energy Centre Plant Room Leases][[84]](#footnote-84)*   **Services**   * *[operate, maintain, repair, replace and upgrade (as necessary) the District Heating Scheme[[85]](#footnote-85):*   + *in accordance with Good Industry Practice (including the CIBSE Code of Practice and the London Heat Network Manual) and any Local Authority Best Practice requirements;*   + *in compliance with all Authorisations and all applicable law;*   + *to enable compliance with the standards set out in the Customer Supply Agreements;*   + *in accordance with [the technical performance specification][[86]](#footnote-86)*   + *[to ensure a minimum further [3] year working life from the Expiry date for all plant and equipment.] [[87]](#footnote-87)* * *[maintain a plant replacement fund in respect of major plant or network replacement which shall be transferred to the Local Authority on a Termination event, with sufficient funds to ensure plant replacement in accordance with good industry practice for the following [3] years[[88]](#footnote-88)]* * *[have no responsibility for the Tertiary Network (heating plant and equipment (such as piping, radiators and thermostats)) within housing Units[[89]](#footnote-89) and in some cases, Secondary Network];* * *report periodically on the state of repair and condition of the energy plant and heat network and shall make the plant accessible for such inspection as may be required from time to time;* * *[provide temporary facilities suitable to ensure continuity of heat Services][[90]](#footnote-90);* * *[provide customer metering and billing Services][[91]](#footnote-91);* * *operate a call out system which will operate for the Term of the Contract, [with compensation paid to all customers on loss of thermal energy supply over a continuous period of time][[92]](#footnote-92);* * *provide heat to unoccupied blocks prior to first occupation [on a reasonable and agreed tariff][[93]](#footnote-93);* |
| **Performance regime** | *[Detailed performance requirements (KPIs regime) will be needed for governing O&M Contractor performance. Appropriate service failure points regime may be developed with rectification plan mechanism, followed by escalation to Major Default on failure to rectify in accordance with plan.]* |
| **Local Authority Obligations** | ***[Note: this list is non-exhaustive and general]***    *[Will be dependent on Local Authority role on the Development (i.e. whether the Local Authority is the Developer/ Landlord/, or is simply procuring the Contract for a particular Development. Obligations may include:*   * *[grant]/ [procure] the grant of exclusivity to the Contractor in respect of the delivery of Heat and space heating, with limited exceptions eg small commercial units and temporary units][[94]](#footnote-94)* * *Allow the Contractor to operate the district heating scheme without material disruption or impediment;]* |
| **Service Payment** | *[Based on scope of delivery of Services][[95]](#footnote-95)* |
| **Access/ Licence/ Lease/ Ownership** | *[Appropriate property rights will need granted to the Contractor, according to Local Authority role, including [providing]/[procuring] licences/ leases/ easements/ title to assets to the Contractor in respect of use of and access where relevant]* |
| **Liability** | *[Will normally be based on a multiple of the annual Services payment sum.]* |
| **Insurance** | *[Contractor required to provide evidence of:*   * *Contractor’s All Risk* * *Property Damage (will be largely dependent on ownership structures, with owner of asset responsible for insurance.)* * *3rd Party* * *Professional Indemnity]* |
| **Termination** | *[Grounds for termination of the Contract, will include:*   * *insolvency/administration/liquidation;* * *material breach* * *unauthorised change in control]* |
| **Subcontracting/ Assignability/Transfer** | *[Generally no subcontracting (etc) without notification and consent, except within limited circumstances.]* |
| **Change Management** | *[Restriction on changes with certain impacts. According to risk allocation, Local Authority/ Contractor to pick up changes in law.*  *Ability to change contract scope with agreement.]* |
| **Confidentiality/ IP** | *[Standard confidentiality, subject to any obligations placed on Local Authority, eg FOI]* |
| **Security** | * *[Parent Company Guarantees]* * *[Performance Bonds]* * *[Collateral Warranties]* |
| **Dispute Resolution Procedure** | *[DRP provisions to be Construction Act compliant]* |
| **Boilerplate**: | * Third Party Rights * Force Majeure * Change in Law * Notices * Waiver * Invalidity and Severability * Entire Agreement * Governing Law |

Heat Network Detailed Project Development Resource:

Strategic and Commercial Case

**Template Heat Network Heads of Terms**

**HoT 8 – Use of System Agreement**

**WARNING: This document is intended only to serve as a prompt to discussion of some of the key issues likely to arise in the context of the subject matter of this document. Substantive commercial and legal consideration will need to be given to a heat network scheme in order to develop the principles flagged below and others relevant to that particular scheme, and before the parties commit, in principle, to a set of “heads of terms” or develop and enter into a fully binding legal agreement. This document is no substitute for taking proper legal advice from lawyers experienced in district heating.**

|  |  |
| --- | --- |
| **Use of System Agreement: *[Local Authority]* (1) and *[System User]* (2)** | |
| **Assumptions** | * The Local Authority wishes to support and obtain value from a DHS by owning and taking risk in pipework [Note: this could also include the wider DHS infrastructure (including the Energy Centre)] (“**Energy System**”) in respect of which it grants rights of use to the operator of Energy System, in return for a fee. * The Local Authority is likely to own the land in which the Energy System is situated. |
| **Parties** | (1) *[Local Authority]*  (2) *[System User]*[The System User is most likely to be either a generator or a supplier or someone with a combination of those roles, although an entirely separate distributor function is possible] |
| **Recitals** | (A) *[Background to Project]*  (B) *[Role of Party (1)]*  (C) *[Role of Party (2)]*  (D) *[Intention and role of this Agreement in context of Project]* |
| **Representations and Warranties** | *[Standard representations and warranties including:*   * *incorporation* * *powers* * *enforceability of obligations* * *conflicts with law/ other obligations* * *authorisations in place* * *no claims or litigation* * *no disposal or rights or assets used in connection with the Agreement without notification]* |
| **Term** | *[Term][[96]](#footnote-96)* |
| **Right to use the Energy System** | *[Local Authority to grant to System User the right to [use, alter, modify, replace and upgrade][[97]](#footnote-97) the Energy System]*  *[Local Authority not to interfere with the System User’s rights provided the System User complies with its obligations under the UoS Agreement]* |
| **[Obligation to maintain the Energy System [and provide the Service]]** | *[Maintenance responsibility should be allocated appropriately. Dependent on wider contractual suite, the System User may be obligated under the UoS Agreement to operate, maintain, replace, repair, modify and upgrade the Energy System and provide operational services][[98]](#footnote-98)* |
| **Use of System Charges** | *[System User to pay the Local Authority a use of system charge][[99]](#footnote-99)* |
| **Local Authority Obligations** | *[Dependent on wider contractual suite and arrangements, the Local Authority may be obliged to procure, for the benefit of the System User, the design, supply, installation and commissioning of the Energy System]* |
| **Security** | *[Dependent on wider contractual suite and arrangements, if the Local Authority has procured the delivery of the Energy System, collateral warranties may be required by the System User from each of the Local Authorities main contractors in relation to the design, supply, installation and/or commissioning of the Energy System]* |
| **Insurance** | *[System User is likely to be required to provide evidence of:*   * *Contractor’s All Risk* * *Property Damage* * *3rd Party (during construction and operational phases)]* |
| **Limitations on Liability** | *[Parties’ caps on liability will be dependent on the value of the Agreement and the wider contractual arrangements.]* |
| **Termination** | *[Grounds for termination of the Agreement:*   * *insolvency/administration/liquidation;* * *material breach* * *unauthorised change in control]*   *[Consequences of Termination:*   * *requirement to ensure smooth transfer in the manner in which heat is provided* * *transfer of assets/contracts* * *payment of outstanding charges]* |
| **Subcontracting/ Assignability/Transfer** | *[Restrictions on subcontracting (etc) without notification and consent]*  *[Transfer subject to financial Security Tests]* |
| **Confidentiality/ IP** | *[Standard confidentiality, subject to any obligations placed on LA, eg FOI]*  *[Any IP in specific DHS systems should be protected for person developing, depending on commercial arrangements]* |
| **Boilerplate**: | * Third Party Rights * Force Majeure * Change in Law * Notices * Waiver * Invalidity and Severability * Entire Agreement * Governing Law |

Heat Network Detailed Project Development Resource:

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**Template Heat Network Heads of Terms**

**HoT 9 – Connection & Adoption Agreement**

**WARNING: This document is intended only to serve as a prompt to discussion of some of the key issues likely to arise in the context of the subject matter of this document. Substantive commercial and legal consideration will need to be given to a heat network scheme in order to develop the principles flagged below and others relevant to that particular scheme, and before the parties commit, in principle, to a set of “heads of terms” or develop and enter into a fully binding legal agreement. This document is no substitute for taking proper legal advice from lawyers experienced in district heating.**

|  |  |
| --- | --- |
| **Connection & Adoption Agreement: *[ESCO]* (1) and *[Developer]* (2)** | |
| **Assumptions** | * The Local Authority:   + is either the Developer/ Landlord of a particular block in a development to be connected to the DHS and served with heat;   + or has directly procured the delivery of the DHS and wishes oversight of the connection agreement entered into by e.g. the DBOM Contractor. * Secondary Network has been constructed by the Developer within the block being served by heat. * The Connection & Adoption Agreement will cover the physical connection of the DHS to a block requiring heat supply and the adoption of internal Secondary Network assets. * A “Framework Supply Agreement” may be entered into on or about the date of the Connection & Adoption Agreement, dealing primarily with (i) supply to the Development of heat prior to entry into Customer Supply Agreement by customers in domestic or commercial Units; (ii) risk in void periods; and (iii) governance of the terms on which heat is supplied to Customers. * Note that in some cases a combined Connection/ Adoption/ Framework Supply Agreement may be developed. Where the parties to the agreement are the same and are intended to be the same for the life of the Agreements, this may be a more suitable option. |
| **Parties** | (1) *[ESCO]*  (2) *[Developer[[100]](#footnote-100)]* |
| **Recitals** | (A) *[Background to Project]*  (B) *[Role of Party (1)]*  (C) *[Role of Party (2)]*  (D) *[Intention and role of this Agreement in context of Project]* |
| **Representations and Warranties** | *[Standard representations and warranties including:*   * *incorporation* * *powers* * *enforceability of obligations* * *conflicts with law/ other obligations* * *authorisations in place* * *no claims or litigation* * *no disposal or rights or assets used in connection with the Agreement without notification]* |
| **Term** | * *[Conditions Precedent[[101]](#footnote-101)]* * *Term[[102]](#footnote-102)* |
| **ESCO Obligations** | ***[Note: this list is non-exhaustive and general]***  **Connection & Adoption**   * *[Ensure that a connection of the required heat capacity is provided at the point of connection for the Development, by the relevant date of connection, in accordance with relevant technical specifications]* * *[Adopt the Secondary Network (and other relevant ancillary equipment)][[103]](#footnote-103)*   **District Heating Scheme**   * *[Ensure that design of the DHS is such that it can deliver heat to the capacity set out in the Connection & Adoption Agreement and has required flow temperatures at the Point of Connection]* * *[Provide heat to Customers under Customer Supply Agreements][[104]](#footnote-104)* * *[Ensure that the DHS is designed, installed, operated and maintained so as to not cause damage to the Development]*   **Provision of Operation and Maintenance Services**   * *[Ensure that operation and maintenance services are provided in relation to the Connection, from the date of connection, in order to enable the supply of heat to required standards]* * *[Ensure that operation and maintenance services are provided in relation to the Secondary Network, from the date of Adoption, in order to enable the supply of heat to required standards]* |
| **Developer Obligations** | ***[Note: this list is non-exhaustive and general]***  *[Install Secondary Network in accordance with relevant specifications][[105]](#footnote-105)*  *[Where the Developer maintains ownership of certain equipment, e.g. meters or HIUs within customer dwellings, the Developer may be under an obligation to ensure that such equipment is operated and maintained in a manner not to adversely affect the DHS]*  *[Where part of the DHS continuity of supply solution, provide suitable spaces for housing temporary boilers]*  *[Undertake not to install or permit the installation of other forms of heat generation (including gas) or connect to another district heating scheme][[106]](#footnote-106)* |
| **Ownership** | *[Include relevant description of ownership structure of DHS within the block[[107]](#footnote-107)]* |
| **Access** | *[Appropriate property rights will need granted to the ESCO:*   * *[Provide]/[procure] licences/ easements/ title to assets to the ESCO in respect of use of and access where relevant during works to complete Connection]* * *[ESCO right to access without notice in an Emergency]*   *[Site rules should be provided to and followed by the ESCO]*  *[Developer to grant a [non-exclusive] licence to exercise permissions[[108]](#footnote-108):*   * *right to free, safe and uninterrupted access to the DHS within the Development:*   + *to maintain, read, repair (etc) the DHS;*   + *at any time in the case of an Emergency;*   + *for any purposes required by a relevant law;*   + *at all reasonable times to enable the ESCO to comply with its obligations under the Agreement]* * *right to install and retain equipment following variations.]*   *[In return for the benefit of the licence, the ESCO covenants with the Developer that it shall:*   * *ensure the DHS is kept in good repair;* * *comply with all Laws;* * *not do anything that renders the Developer’s insurances void;* * *insure the relevant sections of the DHS;* * *not do anything that creates a nuisance, annoyance (etc) to the Developer or occupiers of adjoining site;* * *observe and perform Site Rules]*   *[In respect of the licence granted, the Developer shall:*   * *be responsible for damage to any part of the DHS caused by the Developer;* * *ensure that no structures/ plant are placed above the pipe routes;* * *ensure that in the event of an Emergency relating to the pipework, the piperoute is made free of materials and vehicles that would prevent access by the ESCO]* |
| **Variations** | *[Ability for the Developer to request changes to the Connection (for example, location, capacity). Obligations should be placed on the Developer to provide all relevant information to the ESCO in order for the ESCO to appropriately cost and quote for the variation]* |
| **Payment** | *[Developer to pay for cost of Connection][[109]](#footnote-109)* |
| **Compensation** | *[Appropriate compensation mechanisms should be included to offer the ESCO relief where the ability to make the Connection is impacted by the Developer’s actions – for example, a delay in the Developer’s programme]* |
| **Liability** | *[Will be dependent on: impacts of non-performance, performance regime and whether there is an aggregated level of liability across a suite of documents which may include the Concession Agreement, Connection Agreements and Customer Supply Agreements]* |
| **Insurance** | *[ESCO required to provide evidence of:*   * *contractor’s all risks* * *public liability;* * *employer’s liability;* * *property damage]* |
| **Damage and Defects** | *[Clear allocation of liability for damage should be detailed. Responsibility for damage arising from failure of Secondary Networks will be dependent on the adoption process and the extent of liability being taken by the ESCO]*  *[Costs of damage to the DHS caused by the Developer should be reimbursed to the ESCO]*  *[Costs of damage to the DHS caused by customers may be shared between the Developer and the ESCO][[110]](#footnote-110)*  *[Liability for costs arising in defects in the Secondary Network will depend on wider commercial arrangements and what risks were passed on adoption]* |
| **Termination** | *[Grounds for termination of the Agreement, will include:*   * *insolvency/administration/liquidation;* * *material breach/ major default* * *unauthorised change in control]*   *[Consequences of Termination:*   * *if termination by Developer for ESCO default, relevant transfer of assets (such as Secondary Distribution Network) back to the Developer* * *ESCO removal/ decommissioning of their equipment (as agreed according to the broader commercial arrangements)[[111]](#footnote-111)* * *[other consequences relevant to commercial arrangements, including those addressing Supplier of Last Resort]* |
| **Subcontracting/ Assignability/Transfer** | *[Generally no subcontracting (etc) without notification and consent, except within limited circumstances.]*  *[Developer transfer normally subject to financial Security Tests]* |
| **Confidentiality/ IP** | *[Standard confidentiality, subject to any obligations placed on Local Authority, eg FOI]*  *[Any IP in specific DHS systems should be protected for person developing, depending on commercial arrangements]* |
| **Security** | * *[Parent Company Guarantees][[112]](#footnote-112)* * *[Collateral Warranties][[113]](#footnote-113)* |
| **Dispute Resolution Procedure** | *[DRP provisions to be Construction Act 2011 compliant]* |
| **Boilerplate**: | * Third Party Rights * Force Majeure * Change in Law * Notices * Waiver * Invalidity and Severability * Entire Agreement * Governing Law |

Heat Network Detailed Project Development Resource:

Strategic and Commercial Case

**Template Heat Network Heads of Terms**

**HoT 10 – Connection Agreement**

**WARNING: This document is intended only to serve as a prompt to discussion of some of the key issues likely to arise in the context of the subject matter of this document. Substantive commercial and legal consideration will need to be given to a heat network scheme in order to develop the principles flagged below and others relevant to that particular scheme, and before the parties commit, in principle, to a set of “heads of terms” or develop and enter into a fully binding legal agreement. This document is no substitute for taking proper legal advice from lawyers experienced in district heating.**

|  |  |
| --- | --- |
| **Connection Agreement: *[ESCO]* (1) and *[Developer]* (2)** | |
| **Assumptions** | * The Local Authority:   + is either the Developer/ Landlord of a particular block in a development to be connected to the DHS and served with heat;   + or has directly procured the delivery of the DHS and wishes oversight of the connection agreement entered into by e.g. the DBOM Contractor;   + or has set up an SPV to operate as an ESCO and is entering into the Connection Agreement via its ESCO. * The Connection Agreement will cover the physical connection of the DHS to a block requiring heat supply Block but with no adoption of internal Secondary (or Tertiary) Networks (which will remain the responsibility of the Developer/ Landowner to operate and maintain). * A “Framework Supply Agreement” may be entered into on or about the date of the Connection Agreement, dealing primarily with (i) supply to the Development of heat prior to entry into Customer Supply Agreement by customers in domestic or commercial units; (ii) risk in void periods; and (iii) governance of the terms on which heat is supplied to Customers. * Note that in some cases a combined Connection/ Adoption/ Framework Supply Agreement may be developed. Where the parties to the agreement are the same and are intended to be the same for the life of the Agreements, this may be a more suitable option. |
| **Parties** | (1) *[ESCO]*  (2) *[Developer[[114]](#footnote-114)]* |
| **Recitals** | (A) *[Background to Project]*  (B) *[Role of Party (1)]*  (C) *[Role of Party (2)]*  (D) *[Intention and role of this Agreement in context of Project]* |
| **Representations and Warranties** | *[Standard representations and warranties including:*   * *incorporation* * *powers* * *enforceability of obligations* * *conflicts with law/ other obligations* * *authorisations in place* * *no claims or litigation* * *no disposal or rights or assets used in connection with the Agreement without notification]* |
| **Term** | * *[Conditions Precedent[[115]](#footnote-115)]* * *Term[[116]](#footnote-116)* |
| **ESCO Obligations** | ***[Note: this list is non-exhaustive and general]***  **Connection**   * *[Ensure that a connection of the required heat capacity is provided at the Point of Connection[[117]](#footnote-117) for the Development, by the relevant date of connection, in accordance with relevant technical specifications]*   **District Heating Scheme**   * *[Ensure that design of the DHS is such that it can deliver heat to the capacity set out in the Connection Agreement and has required flow temperatures at the Point of Connection]* * *[Provide heat to Customers under Customer Supply Agreements][[118]](#footnote-118)* * *[Ensure that the DHS is designed, installed, operated and maintained so as to not cause damage to the Development]*   **Provision of Operation and Maintenance Services**   * *[Ensure that operation and maintenance services are provided in relation to the Connection, from the date of connection, in order to enable the supply of heat to required standards]* |
| **Developer Obligations** | ***[Note: this list is non-exhaustive and general]***  *[Design. Install, operate and maintain equipment downstream from the Point of Connection in such a manner as to be compatible with and not adversely affect the DHS]*  *[Where temporary boilers part of the DHS continuity of supply solution, provide suitable spaces for housing such boilers]*  *[Undertake not to install or permit the installation of other forms of heat generation (including gas) or connect to another district heating scheme][[119]](#footnote-119)* |
| **Ownership** | *[Include relevant description of ownership structure of DHS within the development block][[120]](#footnote-120)* |
| **Access** | *[Appropriate property rights will need granted to the ESCO:*   * *[Developer to [provide]/[procure] licences/ easements/ title to assets to the ESCO in respect of use of and access where relevant during works to complete the Connection]* * *[ESCO right to access without notice in an Emergency]*   *[Site rules should be provided to and followed by the ESCO]*  *[Developer to grant a [non-exclusive] licence to exercise following permissions[[121]](#footnote-121):*   * *right to free, safe and uninterrupted access to the DHS within the Development:*   + *to maintain, read meters, repair (etc) in relation to the DHS;*   + *at any time in the case of an Emergency;*   + *for any purposes required by a relevant Law;*   + *at all reasonable times to enable the ESCO to comply with its obligations under the Agreement]* * *right to install and retain equipment following variations.]*   *[In return for the benefit of the licence, the ESCO covenants with the Developer that it shall:*   * *ensure the DHS is kept in good repair;* * *comply with all Laws;* * *not do anything that renders the Developer’s insurances void;* * *insure the relevant sections of the DHS;* * *not do anything that creates a nuisance, annoyance (etc) to the Developer or occupiers of adjoining site;* * *observe and perform Site Rules]*   *[In respect of the licence granted, the Developer shall:*   * *be responsible for damage to any part of the DHS caused by the Developer;* * *ensure that no structures/ plant are placed above the pipe routes;* * *ensure that in the event of an Emergency relating to the pipework, the piperoute is made free of materials and vehicles that would prevent access by the ESCO.* |
| **Variations** | *[Ability for the Developer to request changes to the Connection (for example, location, capacity). Obligations should be placed on the Developer to provide all relevant information to the ESCO in order for the ESCO to appropriately cost and quote for the variation.]* |
| **Payment** | *[Developer to pay for cost of Connection.][[122]](#footnote-122)* |
| **Compensation** | *[Appropriate compensation mechanisms should be included to offer the ESCO relief where the ability to make the Connection is impacted by the Developer’s actions – for example, a delay in the Developer’s programme]* |
| **Liability** | *[Will be dependent on: impacts of non-performance, performance regime and whether there is an aggregated level of liability across a suite of documents which may include the Concession Agreement, Connection Agreements and Customer Supply Agreements]* |
| **Insurance** | *[ESCO required to provide evidence of:*   * *contractor’s all risks* * *public liability;* * *employer’s liability;* * *property damage]* |
| **Damage and Defects** | *[Clear allocation of liability for damage should be detailed.]*  *[Costs of damage to the DHS caused by the Developer should be reimbursed to the ESCO]* |
| **Termination** | *[Grounds for termination of the Agreement, will include:*   * *insolvency/administration/liquidation;* * *material breach/ major default* * *unauthorised change in control]*   *[Consequences of Termination:*   * *ESCO removal/ decommissioning of their equipment (as agreed according to the broader commercial arrangements)[[123]](#footnote-123)* * *other consequences relevant to commercial arrangements, including those addressing Supplier of Last Resort]* |
| **Subcontracting/ Assignability/Transfer** | *[Generally no subcontracting (etc) without notification and consent, except within limited circumstances.]*  *[Developer transfer normally subject to financial security tests]* |
| **Confidentiality/ IP** | *[Standard confidentiality, subject to any obligations placed on Local Authority, eg FOI]*  *[Any IP in specific DHS systems should be protected for person developing, depending on commercial arrangements]* |
| **Security** | * *[Parent Company Guarantees][[124]](#footnote-124)* * *[Collateral Warranties][[125]](#footnote-125)* |
| **Dispute Resolution Procedure** | *[DRP provisions to be Construction Act 2011 compliant]* |
| **Boilerplate**: | * Third Party Rights * Force Majeure * Change in Law * Notices * Waiver * Invalidity and Severability * Entire Agreement * Governing Law |

Heat Network Detailed Project Development Resource:

Strategic and Commercial Case

**Template Heat Network Heads of Terms**

**HoT 11 – Framework Supply Agreement**

**WARNING: This document is intended only to serve as a prompt to discussion of some of the key issues likely to arise in the context of the subject matter of this document. Substantive commercial and legal consideration will need to be given to a heat network scheme in order to develop the principles flagged below and others relevant to that particular scheme, and before the parties commit, in principle, to a set of “heads of terms” or develop and enter into a fully binding legal agreement. This document is no substitute for taking proper legal advice from lawyers experienced in district heating.**

|  |  |
| --- | --- |
| **Framework Supply Agreement: *[ESCO]* (1) and *[Developer]* (2)** | |
| **Assumptions** | * The Local Authority:   + is either the Developer/ Landlord of a particular block in a development to be served with heat;   + or has directly procured the delivery of the DHS and wishes oversight of the Framework Supply Agreement for the Development entered into by e.g. the DBOM Contractor;   + or has set up an SPV to operate as an ESCO and is entering into the Framework Supply Agreement via its ESCO. * The Framework Supply Agreement will cover the terms on which supply of heat is to the Developer/ Landlord during the construction period and void periods, supply of heat is made to Customers on the Development and ancillary heating services are provided. * The ESCO is providing heat supplies and metering and billing services to Customers. * Note that in some cases a combined Connection/ Adoption/ Framework Supply Agreement may be developed. Where the parties to the agreement are the same and are intended to be the same for the life of the Agreements, this may be a more suitable option. |
| **Parties** | (1) *[ESCO]*  (2) *[Developer[[126]](#footnote-126)]* |
| **Recitals** | (A) *[Background to Project]*  (B) *[Role of Party (1)]*  (C) *[Role of Party (2)]*  (D) *[Intention and role of this Agreement in context of Project]* |
| **Representations and Warranties** | *[Standard representations and warranties including:*   * *incorporation* * *powers* * *enforceability of obligations* * *conflicts with law/ other obligations* * *authorisations in place* * *no claims or litigation* * *no disposal or rights or assets used in connection with the Agreement without notification]* |
| **Term** | * *[Conditions Precedent[[127]](#footnote-127)]* * *Term[[128]](#footnote-128)* |
| **ESCO Obligations** | ***[Note: this list is non-exhaustive and general]***  **Heat Supply**   * *[The ESCO shall supply heat to residential units, commercial units and/or common parts in accordance with the relevant Residential Customer Supply Agreement or Commercial Customer Supply Agreement][[129]](#footnote-129)* * *[The ESCO shall supply heat to the Developer [for the purposes of construction supplies][[130]](#footnote-130) [and during void periods][[131]](#footnote-131)]*   **Heating Services**   * *[The ESCO shall provide Metering and Billing Services and undertake maintenance and repair of the HIUs and Meters][[132]](#footnote-132)* |
| **Developer Obligations** | ***[Note: this list is non-exhaustive and general]***  *[Enter into Void Supply Agreements][[133]](#footnote-133)*  *[Undertake not to install or permit the installation of other forms of heat generation (including gas) or connect to another district heating scheme][[134]](#footnote-134)*  *[Include within leases/ tenancies/ purchase agreements:*   * *(to the extent permitted by law) the obligation on tenants to enter into Customer Supply Agreements and on sale, a restrictive covenant on freehold title covenanting to permit access and not to obtain heat from alternative sources[[135]](#footnote-135);* * *the obligation on tenants to permit access to enable the ESCO to undertake its obligations under the Concession Agreement/ Framework Supply Agreement/Connection Agreement]*   *[Provide information to the ESCO in relation to Customer identities and reasonable assistance in relation to eg obtaining meter readings]*  *[Ensure temporary boiler space is made available][[136]](#footnote-136)* |
| **System resilience/ Heat Interruptions** | *[Obligations on the ESCO to provide heat by way of back up boilers may be included to boost system resilience]*  *[Liability may be placed on Developer where the failure of heat arises due to their omission or default][[137]](#footnote-137)*  *[Suspension of heat permissible to undertake planned maintenance][[138]](#footnote-138)*  *[Permission for ESCO to suspend heat in an Emergency]* |
| **Access** | *[Site rules should be provided to and followed by the ESCO]*  *[Developer to grant free, safe and uninterrupted access to the ESCO in relation to the DHS situated within the Development:*   * + *to maintain, read meters, repair (etc) in relation the DHS;*   + *at any time in the case of an Emergency;*   + *for any purposes required by a relevant Law;*   + *at all reasonable times to enable the ESCO to comply with its obligations under the Agreement][[139]](#footnote-139)* |
| **Variations** | *[Ability for the Developer to request changes to the Services. Obligations should be placed on the Developer to provide all relevant information to the ESCO in order for the ESCO to appropriately cost and quote for the variation.]* |
| **Payment** | *[Dependent on wider commercial arrangement, there may be no direct payments made under this agreement (other than in relation to damages))[[140]](#footnote-140)* |
| **Relief Events** | *[Appropriate relief mechanisms should be included to offer the ESCO relief where the ability to provide heat is impacted by the Developer’s actions]* |
| **Liability** | *[Will be dependent on: impacts of non-performance, performance regime and whether there is an aggregated level of liability across a suite of documents which may include the Concession Agreement, Connection Agreements and Customer Supply Agreements]* |
| **Insurance** | *[ESCO required to provide evidence of:*   * *contractor’s all risks* * *public liability;* * *employer’s liability;* * *property damage]* |
| **Damage and Defects** | *[Clear allocation of liability for damage should be detailed.]*  *[Costs of damage to the DHS caused by the Developer should be reimbursed to the ESCO]*  *[Costs of damage to the DHS caused by customers may be shared between the Developer and the ESCO][[141]](#footnote-141)* |
| **Termination** | *[Grounds for termination of the Agreement, will include:*   * *insolvency/administration/liquidation;* * *material breach* * *unauthorised change in control]*   *[Where contractual suite connected, the Framework Supply Agreement is likely to be co-terminus with the Connection Agreement]* |
| **Subcontracting/ Assignability/Transfer** | *[Generally no subcontracting (etc) without notification and consent, except within limited circumstances.]*  *[Developer transfer normally subject to financial Security Tests]* |
| **Confidentiality/ IP** | *[Standard confidentiality, subject to any obligations placed on Local Authority, eg FOI]*  *[Any IP in specific DHS systems should be protected for person developing, depending on commercial arrangements]* |
| **Security** | *[Parent Company Guarantees][[142]](#footnote-142)* |
| **Dispute Resolution Procedure** | *[DRP provisions to be Construction Act 2011 compliant]* |
| **Boilerplate**: | * Third Party Rights * Force Majeure * Change in Law * Notices * Waiver * Invalidity and Severability * Entire Agreement * Governing Law |

Heat Network Detailed Project Development Resource:

Strategic and Commercial Case

**Template Heat Network Heads of Terms**

**HoT 12 – Bulk Heat Supply Agreement**

**WARNING: This document is intended only to serve as a prompt to discussion of some of the key issues likely to arise in the context of the subject matter of this document. Substantive commercial and legal consideration will need to be given to a heat network scheme in order to develop the principles flagged below and others relevant to that particular scheme, and before the parties commit, in principle, to a set of “heads of terms” or develop and enter into a fully binding legal agreement. This document is no substitute for taking proper legal advice from lawyers experienced in district heating.**

|  |  |
| --- | --- |
| **Bulk Heat Supply Agreement: *[Supplier]* (1) and *[Customer]* (2)** | |
| **Assumptions** | * The Local Authority is either:   + the Bulk Heat Supplier; or   + has procured a contractor to deliver Heat supplies (whether via a Concession or via a suite of disaggregated contracts managed by the Local Authority); or   + is the counterparty to the Bulk Heat Supply Contract; * The Local Authority wishes to control the content of the Bulk Heat Supply Agreement; * Connection (i.e. physical connection of the district heating scheme to the relevant building or development) is dealt with under separate agreement. |
| **Parties** | (1) Heat Supplier  (2) Bulk Heat Customer |
| **Heat Supply and Ancillary Services** | *[To include:*   * + *Provision of heat to be made available within agreed operating parameters (and subject to emergency disconnection, requirements of Law, planned maintenance and disconnection due to non-payment) to the delivery point[[143]](#footnote-143), with the following parameters:*      - *[ ]kWh of heat during [relevant periods];*     - *[ ]kWh of heat over [relevant period]*     - *heat at [relevant flow/ return/ pressure etc]*   + *maintenance of bulk heat supply meter.]* |
| **Billing/ Pricing** | *[To include invoicing for energy use based on the meter reading[[144]](#footnote-144) and in accordance with the commercial deal reached between the Heat Supplier and Bulk Heat Customer.]* |
| **Customer Protection** | *[To include:*   * + *ability to challenge meter readings and request testing of meter;*   + *data protection and confidentiality;*   + *appropriate dispute resolution procedures.]* |
| **Fault Rectification/ Performance Regime** | *[To include:*   * + *provision of response regime for fault rectification of plant and networks;*   + *appropriate standards of performance and compensation regime for breach, guaranteed minimum standards of Heat supply will be dependent on the type of Bulk Heat Customer and their bargaining power*.*]* |
| **Bulk Heat Customer responsibilities** | *[To include:*   * + *payment;*   + *not obtaining heat from another supplier during term of the Agreement (unless during a period of heat suspension that does not result from non-payment);*   + *not damaging Heat Supplier’s equipment.]* |
| **Non- Payment** | *[To include clear procedure following non-payment, with disconnection only after a minimum of non-payment for [x] days, followed by a minimum of [x] reminders and continued non-payment for a further [x] days after the last reminder.]* |
| **Disconnection** | *[Disconnection only following non-payment, in an emergency (including emergency repairs to the network), for planned notified maintenance or where required to do so by Law.]* |
| **Limitation on Liability** | *[The Heat Supplier will likely choose to limit their liability to the Bulk Heat Customer and exclude any liability to any end consumers taking heat from the Bulk Heat Customer. The limitation should be reasonable in the circumstances.*  *Limitations on Bulk Heat Customer liability may also be included.]* |
| **Termination by Customer** | *[Right for Bulk Heat Customer to terminate should be clearly set out.]* |
| **Boiler Plate** | * Subcontracting/ assignment * Notices * Third Party Rights * Change in Law * Waiver * Invalidity and Severability * Entire Agreement * Governing Law |

Heat Network Detailed Project Development Resource:

Strategic and Commercial Case

**Template Heat Network Heads of Terms**

**HoT 13 – Residential Heat Supply Agreement**

**WARNING: This document is intended only to serve as a prompt to discussion of some of the key issues likely to arise in the context of the subject matter of this document. Substantive commercial and legal consideration will need to be given to a heat network scheme in order to develop the principles flagged below and others relevant to that particular scheme, and before the parties commit, in principle, to a set of “heads of terms” or develop and enter into a fully binding legal agreement. This document is no substitute for taking proper legal advice from lawyers experienced in district heating.**

|  |  |
| --- | --- |
| **Residential Heat Supply Agreement: *[Supplier]* (1) and *[Customer]* (2)** | |
| **Assumptions** | * The Local Authority:   + is either the heat supplier; or   + has procured a an ESCO to deliver heat supplies (whether via a Concession or via a suite of disaggregated contracts managed by the Local Authority). * The Local Authority wishes to control the content of the Residential Heat Supply Agreement. * If the Heat Supplier is not the Local Authority, detailed form of Residential Heat Supply Agreement to be approved by Local Authority. Changes to forms of agreement to be subject to complying with law, maintaining performance standards, honouring pricing protection and fairness and Local Authority approval. |
| **Parties** | (1) Heat Supplier  (2) Domestic Customer |
| **Acceptance Form/ Key Terms** | *[A front sheet may be used to set out the key contract terms (flagging any onerous terms the Domestic Customer should note) and for the Domestic Customer to fill out their contact details, chosen methods of payment and a section for the Domestic Customer to sign and return, indicating acceptance of the terms]* |
| **Heat Supply and Ancillary Services** | *[To include:*   * + *provision of heat to be made available 24 hours per day for the duration of the supply agreement (subject to emergency disconnection, requirements of Law, planned maintenance and disconnection due to non-payment);*   + *provision of customer query management facilities for end users to query energy invoices, service interruptions, maintenance/ repairs (etc);*   + *provision of appropriate customer communication to initial new occupiers to advise of energy provision arrangements and benefits;*   + *maintenance and/or replacement of meters, customer interface units and heat interface units.* |
| **Billing/ Pricing** | *[To include:*   * + *invoicing for energy use based on meter readings[[145]](#footnote-145), pricing comprising:*     - *Heat Price*     - *Maintenance and Replacement Service Charge[[146]](#footnote-146)*     - *Fixed Standing Charge*   + *providing pricing protection (in respect of heat/hot water/total energy costs), with regular price comparator review;*   + *pricing to be clearly explained and statements to set out breakdown of costs;*   + *[offer of dual fuel discounts to Domestic Customers][[147]](#footnote-147);*   + *associated revenue collection with customer choice of methods (including pre-payment meters) [[148]](#footnote-148);*   + *provision of customer query management facilities for end users to query energy invoices.]* |
| **Customer Protection** | *[To include:*   * + *provision of additional services/ protections for vulnerable Domestic Customers;*   + *[compliance with the standards set out in Heat Trust Scheme Scheme Rules and Scheme Bye-Laws][[149]](#footnote-149);*   + *access to Domestic Customer premises only by prior arrangement or in an emergency and the obligation not to cause any damage (and any damage caused to be satisfactorily rectified);*   + *ability to challenge meter readings and request testing of meters;*   + *data protection/ limitations on use of personal data[[150]](#footnote-150).]* |
| **Fault Rectification/ Performance Regime** | *[To include:*   * + *provision of emergency call out services/response regime for fault rectification of plant and networks[[151]](#footnote-151);*   + *appropriate standards of performance and compensation regime for breach, guaranteed minimum standards of Heat supply could be[[152]](#footnote-152):*      - *restoration of Heat supply within [x] hours for a vulnerable Domestic Customer [(x hours if between hours of [ ]pm and [ ] am)]*     - *restoration of Heat supply within [x] hours for all other Domestic Customers (provided hours between [[ ]pm and [ ]am] are excluded)*     - *heat at a minimum of [x] degrees centigrade delivered to Domestic Customer’s home, with restoration to that temperature within a minimum of [x] hours during Winter months, [x] hours during summer months*     - *rectification of serious leaks within [x] hours of notification*   + *priority given to resumption of services for Domestic Customers over Commercial Customers.]* |
| **Domestic Customer responsibilities** | *[To include:*   * + *payment (by direct debit/ prepayment/ monthly billing etc);*   + *not damaging / not tampering with the heating system within the home;*   + *[responsibility for payment when home is let, unless arrangement put in in place with incoming tenant][[153]](#footnote-153)]* |
| **Non- Payment** | *[To include:*   * + *clear procedures for those having difficulty paying;*   + *clear procedure following non-payment, with disconnection only after a minimum of non-payment for [x] days, followed by a minimum of [x] reminders and continued non-payment for a further [x] days after the last reminder[[154]](#footnote-154).]* |
| **Disconnection** | *[Disconnection only following non-payment in line with the above non-payment procedure, in an emergency (including emergency repairs to the network), for planned notified maintenance or where required to do so by Law.]* |
| **Limitation on Liability** | *[The Heat Supplier may choose to limit their liability to the Domestic Customer. The limitation should be reasonable in the circumstances.]* |
| **Termination by Domestic Customer** | *Right for Domestic Customer to terminate should be clearly set out.* |
| **Boiler Plate/ General** | *[Note: the boilerplate provisions should be as simple as possible and drafted in clear English]*   * *Subcontracting/ assignment* * *Notices* * *Third Party Rights* * *Change in Law* * *Waiver* * *Invalidity and Severability* * *Entire Agreement* * *Governing Law* |

Heat Network Detailed Project Development Resource:

Strategic and Commercial Case

**Template Heat Network Heads of Terms**

**HoT 14 – Housing Association Heat Supply Agreement**

**WARNING: This document is intended only to serve as a prompt to discussion of some of the key issues likely to arise in the context of the subject matter of this document. Substantive commercial and legal consideration will need to be given to a heat network scheme in order to develop the principles flagged below and others relevant to that particular scheme, and before the parties commit, in principle, to a set of “heads of terms” or develop and enter into a fully binding legal agreement. This document is no substitute for taking proper legal advice from lawyers experienced in district heating.**

|  |  |
| --- | --- |
| **Housing Association Heat Supply Agreement: *[Supplier]* (1) and *[Customer]* (2)** | |
| **Assumptions** | * Heat supply is made to a Residential Social Landlord (“**RSL**”) and its tenants * The Local Authority is either:   + the Heat supplier;   + has procured a contractor to deliver Heat supplies (whether via a Concession or via a suite of disaggregated contracts managed by the Local Authority); **or**   + is acting as a RSL. * The Local Authority wishes to control the content of the RSL Supply Agreement.[[155]](#footnote-155) * If the Heat Supplier is not the Local Authority, detailed form of RSL Agreement to be approved by Local Authority. Changes to forms of agreement to be subject to complying with law, maintaining performance standards, honouring pricing protection and fairness and Local Authority approval. * The RSL will take some credit risk in respect of heat supply to its residential tenants. * The RSL will pay a proportion of its tenants’ heat standing charges. * The form of residential customer supply agreement will be appended to the RSL Agreement (giving the RSL control over its content). |
| **Parties** | (1) Heat Supplier  (2) RSL |
| **Heat Supply and Ancillary Services** | *[To include:*   * + *provision heat to be made available 24 hours per day for the duration of the supply agreement (subject to emergency disconnection, requirements of Law, planned maintenance and disconnection due to non-payment);*   + *provision of appropriate customer communication to initial new tenants of the RSL units to advise of energy provision arrangements and benefits;*   + *provision of customer query management facilities for end users to query energy invoices, service interruptions, maintenance/ repairs (etc);*   + *maintenance and/or replacement of meters, customer interface units and heat interface units.]* |
| **Billing/ Pricing** | *To include:*   * + *invoicing of RSL tenants for energy use based on meter readings[[156]](#footnote-156), pricing comprising:*     - *Heat Price*     - *Maintenance and Replacement Service Charge*     - *Fixed Standing Charge[[157]](#footnote-157)*   + *providing pricing protection (in respect of heat/hot water/total energy costs), with regular price comparator review;*   + *pricing to be clearly explained and statements to set out breakdown of costs;*   + *[offer of dual fuel discounts to customers][[158]](#footnote-158);*   + *associated revenue collection (including pre-payment meters) [[159]](#footnote-159);*   + *provision of customer query management facilities for end users to query energy invoices.* |
| **Customer Protection** | *To include:*   * + *provision of appropriate customer communication to initial RSL tenants to advise of energy provision arrangements and benefits;*   + *provision of additional services/ protections for vulnerable RSL tenants;*   + *[compliance with the standards set out in Heat Trust Scheme Scheme Rules and Scheme Bye-Laws][[160]](#footnote-160);*   + *access to RSL tenant premises only by prior arrangement or in an emergency and the obligation not to cause any damage (and any damage caused to be satisfactorily rectified);*   + *ability to challenge meter readings and request testing of meters;*   + *appropriate dispute resolution procedures;*   + *data protection/ limitations on use of personal data[[161]](#footnote-161).* |
| **Fault Rectification/ Performance Regime** | *To include:*   * + *provision of emergency call out services/response regime for fault rectification of plant and networks[[162]](#footnote-162);*   + *appropriate standards of performance and compensation regime for breach, guaranteed minimum standards of Heat supply could be[[163]](#footnote-163):*      - *restoration of Heat supply within [x] hours for a vulnerable customer [([x] hours if between hours of [ ]pm and [ ]am)]*     - *restoration of Heat supply within [x] hours for all other customers (provided hours between [[ ]pm and [ ]am] are excluded)*     - *heat at a minimum of [x] degrees centigrade delivered to customers home, with restoration to that temperature within a minimum of [x] hours during Winter months, [x] hours during summer months*     - *rectification of serious leaks within [x] hours of notification* |
| **RSL specifics** | *To include:*   * + *RSL payment for Standing Charge/ heat consumption (if any) during void periods[[164]](#footnote-164);*   + *RSL payment of proportion of Standing Charge/ Maintenance and Replacement Service Charge;*   + *RSL obligation to notify Heat Supplier of incoming tenants (whereupon liability for void periods for that particular residential unit should cease);*   + *not obtaining heat from another supplier during term of the Agreement (unless during a period of heat suspension that does not result from non-payment).* |
| **Non- Payment** | *To include in relation to RSL tenants:*   * + *clear procedures for those having difficulty paying;*   + *clear procedure following non-payment, with disconnection only after a minimum of non-payment for [x] days, followed by a minimum of [x] reminders and continued non-payment for a further [x] days after the last reminder[[165]](#footnote-165).* |
| **Disconnection** | *Disconnection only following non-payment, in an emergency (including emergency repairs to the network), for planned notified maintenance or where required to do so by Law.* |
| **Limitation on Liability** | *The Heat Supplier will likely choose to limit their liability to the RSL. The limitation should be reasonable in the circumstances.*  *Limitations on RSL liability may also be included.* |
| **Termination by Customer** | *Right for RSL to terminate should be clearly set out.* |
| **Boiler Plate** | * Subcontracting/ assignment * Notices * Third Party Rights * Change in Law * Waiver * Invalidity and Severability * Entire Agreement * Governing Law |

Heat Network Detailed Project Development Resource:

Strategic and Commercial Case

**Template Heat Network Heads of Terms**

**HoT 15 – Commercial Heat Supply Agreement**

**WARNING: This document is intended only to serve as a prompt to discussion of some of the key issues likely to arise in the context of the subject matter of this document. Substantive commercial and legal consideration will need to be given to a heat network scheme in order to develop the principles flagged below and others relevant to that particular scheme, and before the parties commit, in principle, to a set of “heads of terms” or develop and enter into a fully binding legal agreement. This document is no substitute for taking proper legal advice from lawyers experienced in district heating.**

|  |  |
| --- | --- |
| **Commercial Heat Supply Agreement: *[Supplier]* (1) and *[Customer]* (2)** | |
| **Assumptions** | * The Local Authority is either:   + the Heat Supplier; or   + has procured a contractor to deliver heat supplies (whether via a Concession or via a suite of disaggregated contracts managed by the Local Authority); or   + a Commercial Customer, purchasing heat for supply to is buildings.      * The Local Authority wishes to control the content of the Commercial Heat Supply Agreement. * Where the Heat Supplier is not the Local Authority, (and the Local Authority is the Commercial Customer) the detailed form of Commercial Heat Supply Agreement is to be approved by Local Authority. Changes to forms of agreement to be subject to complying with law, maintaining performance standards, honouring pricing protection and fairness and Local Authority approval. |
| **Parties** | (1) Heat Supplier  (2) Commercial Customer |
| **Heat Supply and Ancillary Services** | *[To include:*   * + *provision of heat to be made available 24 hours per day for the duration of the supply agreement (subject to emergency disconnection, requirements of Law, planned maintenance and disconnection due to non-payment);*   + *provision of customer query management facilities for end users to query energy invoices, service interruptions, maintenance/ repairs (etc);]*   + *[maintenance and/or replacement of meters, customer interface units and heat interface units][[166]](#footnote-166).* |
| **Billing/ Pricing** | *[To include:*   * + *invoicing for energy use based on meter readings[[167]](#footnote-167), pricing comprising:*     - *Heat Price*     - *Maintenance and Replacement Service Charge*     - *Fixed Standing Charge*   + *providing pricing protection (in respect of heat/hot water/total energy costs), with regular price comparator review;*   + *pricing to be clearly explained and statements to set out breakdown of costs;*   + *[offer of dual fuel discounts to customers][[168]](#footnote-168);*   + *provision of customer query management facilities for end users to query energy invoices]* |
| **Customer Protection** | *[To include:*   * + *access to customer premises only by prior arrangement or in an emergency and the obligation not to cause any damage (and any damage caused to be satisfactorily rectified);*   + *ability to challenge meter readings and request testing of meters;*   + *data protection and confidentiality;*   + *appropriate dispute resolution procedures]* |
| **Fault Rectification/ Performance Regime** | *[To include:*   * + *provision of emergency call out services/response regime for fault rectification of plant and networks[[169]](#footnote-169);*   + *appropriate standards of performance and compensation regime for breach. Guaranteed minimum standards of Heat supply will be dependent on the type of Commercial Customer and their bargaining power[[170]](#footnote-170)]* |
| **Customer responsibilities** | *[To include:*   * + *payment;*   + *[operation and maintenance of, and] preventing damage to / not tampering with the heating system within the Commercial Unit;*   + *not obtaining heat from another supplier during term of the Agreement (unless during a period of heat suspension that does not result from non-payment).]* |
| **Non- Payment** | *[To include clear procedure following non-payment, with disconnection only after a minimum of non-payment for [x] days, followed by a minimum of [x] reminders and continued non-payment for a further [x] days after the last reminder[[171]](#footnote-171).]* |
| **Disconnection** | *[Disconnection only following non-payment, in an emergency (including emergency repairs to the network), for planned notified maintenance or where required to do so by Law.]* |
| **Limitation on Liability** | *[The Heat Supplier will likely choose to limit their liability to the Customer. The limitation should be reasonable in the circumstances.*  *Limitations on Customer liability may also be included.]* |
| **Termination by Customer** | *[Right for Customer to terminate should be clearly set out.]* |
| **Boiler Plate** | * Subcontracting/ assignment * Notices * Third Party Rights * Change in Law * Waiver * Invalidity and Severability * Entire Agreement * Governing Law |

1. Note that where a Local Authority wishes to undertake activities for profit, it must undertake them through an incorporated vehicle. This could be a wholly owned SPV, or as detailed under this Agreement, a jointly owned vehicle, usually with a private sector delivery vehicle. [↑](#footnote-ref-1)
2. This could be debt or equity. [↑](#footnote-ref-2)
3. The JV Partner is likely to be a private sector delivery partner, who will manage and/or undertake the delivery of the DHS and potentially the long term management. [↑](#footnote-ref-3)
4. Note, consideration will need given as to the split in shareholdings of the Parties. Does the Local Authority want to be the majority decision maker? Or will the JV Partner lead? Or alternatively, will this be a 50/50 JV? Note that the level of control will have procurement implications. [↑](#footnote-ref-4)
5. Insert relevant contributions that Parties are making to the JVC. This could include for example, already constructed assets (eg pre-existing heat generation kit), money, expertise (etc). [↑](#footnote-ref-5)
6. This should be the relevant Business Plan for the DHS. [↑](#footnote-ref-6)
7. These could relate, for example, to third party consents having been obtained, any relevant asset transfer agreements having become unconditional, no legislation or regulation having passed or be proposed that could prohibit or materially restrict the implementation of the proposed DHS business. [↑](#footnote-ref-7)
8. Insert relevant provisions which shall survive expiry (such as confidentiality). [↑](#footnote-ref-8)
9. Include all relevant matters which the Authority (and its JV Partner) would wish to retain decision making control over. Note that the extent of the Authority control will also depend on its shareholding. There are relatively standard Reserved Matters (such as altering Articles, increasing Share Capital, making borrowings over a certain amount (etc)), however any specific DH related matters should also be included (for example, entering into off-site connection agreements, varying heat pricing). [↑](#footnote-ref-9)
10. This could be debt or further equity. [↑](#footnote-ref-10)
11. This will be particularly relevant for the Local Authority. [↑](#footnote-ref-11)
12. Note that this should take into account the wider objectives of the Parties. For a Local Authority, this should include, for example, wider considerations of environmental benefits, fuel poverty, strategic ambition for the DHS. Maximising dividend payments will of course impact on these wider objectives. [↑](#footnote-ref-12)
13. Note that in some cases a licence or alternatively a lease may be granted, however an Easement is more common as it offers sufficient security of rights, without the complexity of separate leasing arrangements. [↑](#footnote-ref-13)
14. Note that the counterparty to the Energy Centre Lease may be any of the ESCO, Concessionaire, DBOM Contractor or O&M Contractor, depending on the wider contractual matrix. [↑](#footnote-ref-14)
15. Note that the Tenant may require some protections against disposal, if they have a long concession period under which they are bound to supply heat. [↑](#footnote-ref-15)
16. Note, easements for the piperuns are often included in the Energy Centre lease. [↑](#footnote-ref-16)
17. This should include the proposed use of the Energy Centre demise for constructing (if the lease is entered into prior to practical completion), operating, repairing, renewing, replacement, use and removal of the relevant heat generation equipment and for all relevant ancillary purposes. [↑](#footnote-ref-17)
18. Often a peppercorn, if the “commercial deal” is being dealt with under, for example, a Concession Agreement or a DBOM Contract. [↑](#footnote-ref-18)
19. Note that payment for utilities (gas, electricity, water etc) will depend on the wider commercial deal. [↑](#footnote-ref-19)
20. Note that alterations that are permitted under e.g. a Concession Agreement or a DBOM Contract in relation to the DHS should be expressly permitted under the Lease, to avoid conflict. [↑](#footnote-ref-20)
21. Relevant restrictions should be placed on the Landlord to ensure that activities on neighbouring land does not affect the DHS (for example, excavation works or tree planting). [↑](#footnote-ref-21)
22. The routes over which the easements are granted may be covered in Schedules added to the Lease through deeds of variation (see note 15) [↑](#footnote-ref-22)
23. As above, the Tenant may require some protections against disposal, if they have a long concession period under which they are bound to supply heat. [↑](#footnote-ref-23)
24. Dependent on the wider contractual framework, the Lease may be co-terminus with the contracts granting the right of the tenant to operate the equipment within the Energy Centre. [↑](#footnote-ref-24)
25. This will be a matter for commercial negotiation. If the Parties to the Lease and other “governing” agreements such as a Concession Agreement or a DBOM, liability may be capped out under such “governing” agreements. [↑](#footnote-ref-25)
26. Note, dependent on wider contractual framework and the identity of the relevant counterparties, boiler plate provisions may be referred back to e.g. a Concession Agreement or a DBOM Contract. [↑](#footnote-ref-26)
27. As piperun routes are established, deeds of variation can be entered into to add Easements and easement routes to the Lease [↑](#footnote-ref-27)
28. Investment via equity is considered under the Shareholder Agreement. [↑](#footnote-ref-28)
29. May include obtaining planning, permits, completion of construction of certain assets. [↑](#footnote-ref-29)
30. Concession term will depend on the Development being served, however it is normal for concessions to be from between 30 – 50 years, giving a sufficient period of time for the Concessionaire to recoup costs from revenue streams (where the Concessionaire has part or wholly funded the Capex) and giving sufficient comfort as to security of supply. [↑](#footnote-ref-30)
31. Relevant dependent on timing of entry into the Concession. [↑](#footnote-ref-31)
32. Relevant where there are pre-built assets that will be adopted by the Concessionaire (for example on a retrofit) [↑](#footnote-ref-32)
33. Scope of build will depend on physical characteristics of the project, pre-existing pipework/ kit, any own build within Buildings served by the DHS etc. [↑](#footnote-ref-33)
34. Relevant where there are pre-built assets that will be adopted by the Concessionaire (for example on a retrofit). [↑](#footnote-ref-34)
35. Required where the Developer of a block builds out Secondary or Tertiary network. [↑](#footnote-ref-35)
36. Required where the DHS is connected on a built block by built block basis and there is a potential for separate block ownership from original Developer. [↑](#footnote-ref-36)
37. Relevant where a long term property interest is granted to the Concessionaire in respect of the siting of the heat generation equipment. [↑](#footnote-ref-37)
38. NB: It is unusual for a DHS Concessionaire to be responsible for the Tertiary Network (heating plant and equipment (such as piping, radiators and thermostats) within a domestic unit, however this could of course be offered as part of broader estate management services, depending on the broader contractual relationships on the Development [↑](#footnote-ref-38)
39. Technical specifications may be set by a Local Authority, or on a more output based Concession, minimum requirements as to heat delivery quantity/ quality/ safety etc. Alternatively, the Local Authority could request the Contractor provides their own specifications based on their understanding of the Local Authority requirements and the Development being serviced by the DHS. [↑](#footnote-ref-39)
40. This may be a requirement to ensure a minimum longevity of plant following the end of the Concession/ to assist in the procurement of a replacement contractor. [↑](#footnote-ref-40)
41. Note that the Local Authority may wish to have approval rights over the form/ content of the Customer Supply Agreements, including minimum performance standards, appropriate recourse afforded to Customers, maximum pricing charged for heat (for example, as against a gas comparator), or limits on standing charge as a proportion of heat bills). [↑](#footnote-ref-41)
42. Will be dependent on the financial standing of the concessionaire and security package obtained. This could be converted into a termination payment obligation instead. [↑](#footnote-ref-42)
43. It is unusual for a DHS Concessionaire to be responsible for heating pipework within a domestic unit, however this could of course be offered as part of broader estate management services, depending on the broader contractual relationships on the Development. [↑](#footnote-ref-43)
44. Dependent on technology and commercial arrangements in respect of electricity. [↑](#footnote-ref-44)
45. This may be required on a new-build development where heat is required for drying out units. [↑](#footnote-ref-45)
46. E.g. substances which are identified in relevant reports e.g. identified as hazardous in the BCO report entitled “Good Practice Selection of Construction Materials’, or generally known to be deleterious to health and safety [↑](#footnote-ref-46)
47. E.g. designs, drawings, models, plans, specifications, photographs, CAD materials etc. [↑](#footnote-ref-47)
48. Insurance levels will be dependent on size of project and scope of the Sub-contractor’s Services. [↑](#footnote-ref-48)
49. It is normal for a collateral warranty relating to a works contract to be for 12 years (the statutory limitation on liability under a deed). [↑](#footnote-ref-49)
50. Assignment may be to e.g. a Lender or a subsequent purchaser of the DH scheme, who wishes to have a direct right of recourse against the contractor [↑](#footnote-ref-50)
51. The form of contract could be based on a construction industry standard, such as JCT or NEC, or alternatively could be bespoke. [↑](#footnote-ref-51)
52. May include obtaining planning, permits, completion of construction of certain assets. [↑](#footnote-ref-52)
53. Will normally expire on conclusion of the Works, however is is normal to request a minimum of 12 – 24 months defects liability from the Contractor. Note that on a phased project, defects liability should run from practical completion of the relevant sections of the DHS works. [↑](#footnote-ref-53)
54. Relevant dependent on timing of entry into the Contract. [↑](#footnote-ref-54)
55. Dependent on the scope of the procured works. [↑](#footnote-ref-55)
56. Scope of build will depend on physical characteristics of the project, pre-existing pipework/ kit, any own build within Buildings served by the DHS etc. [↑](#footnote-ref-56)
57. Note that on larger scale new developments it is likely that the build out of the heat network will be phased, as heat load is built out. Practical completion of sections of the network may occur, with commissioning on a phased basis. [↑](#footnote-ref-57)
58. Required where the Developer of a block builds out Secondary or Tertiary network and dependent on scope of procured works [↑](#footnote-ref-58)
59. Relevant where specific kit has specific O&M manuals (mainly relevant for generation kit) [↑](#footnote-ref-59)
60. The requirement to provide of performance guarantees will be project specific [↑](#footnote-ref-60)
61. Investment via equity is considered under Partnering/ Joint Delivery Agreement [↑](#footnote-ref-61)
62. May include obtaining planning, permits, completion of construction of certain assets. [↑](#footnote-ref-62)
63. DBOM Contract term will depend on the Local Authorities’ preferences for management of the contract suite and the potentials for price savings/ benchmarking in re-tendering O&M Services after a set period of time (for example, 10 years). List isial model will not be premised on revenue streams from customers (see Concession Agreement for such a structure). procur [↑](#footnote-ref-63)
64. Relevant dependent on timing of entry into the DBOM. [↑](#footnote-ref-64)
65. Relevant where there are pre-built assets that will be adopted by the DBOM Contractor (for example on a retrofit). [↑](#footnote-ref-65)
66. Scope of build will depend on physical characteristics of the project, pre-existing pipework/ kit, any own build within buildings served by the DHS etc. [↑](#footnote-ref-66)
67. Relevant where there are pre-built assets that will be adopted by the DBOM Contractor (for example on a retrofit) [↑](#footnote-ref-67)
68. Required where the Developer of a block builds out Secondary or Tertiary network [↑](#footnote-ref-68)
69. The requirement to provide of performance guarantees will be project specific [↑](#footnote-ref-69)
70. Required where the DHS is connected on a built block by built block basis and there is a potential for separate block ownership from original Developer [↑](#footnote-ref-70)
71. Relevant where a long term property interest is granted to the DBOM Contractor in respect of the siting of the heat generation equipment [↑](#footnote-ref-71)
72. Note that the Local Authority may wish to have approval rights over the form/ content of the Customer Supply Agreements, including minimum performance standards, appropriate recourse afforded to Customers, maximum pricing charged for heat (for example, as against a gas comparator), or limits on standing charge as a proportion of heat bills). [↑](#footnote-ref-72)
73. Technical specifications may be set by a Local Authority, or minimum requirements as to heat delivery quantity/ quality/ safety etc. Alternatively, the Local Authority could request the Contractor provides their own specifications based on their understanding of the Local Authority requirements and the Development being serviced by the DHS. [↑](#footnote-ref-73)
74. This may be a requirement to ensure a minimum longevity of plant following the end of the term/ to assist in the procurement of a replacement contractor. [↑](#footnote-ref-74)
75. Depending on the financial standing of the DBOM Contractor and security package obtained. This could be converted into a termination payment obligation instead. [↑](#footnote-ref-75)
76. It is unusual for a DHS DBOM Contractor to be responsible for heating pipework within a domestic unit, however this could of course be offered as part of broader estate management services, depending on the broader contractual relationships on the Development. [↑](#footnote-ref-76)
77. This obligation may or may not be included, dependent on the wider contractual framework. The Local Authority may undertake this role directly (taking advantage of pre-existing back-office infrastructure and tenant relationships, or they may subcontract to a dedicated Metering and Billing Contractor). [↑](#footnote-ref-77)
78. Dependent on technology and commercial arrangements in respect of electricity. [↑](#footnote-ref-78)
79. This may be required on a new-build development where heat is required for drying out units. [↑](#footnote-ref-79)
80. Relevant where the DBOM Contractor is also the heat supplier. [↑](#footnote-ref-80)
81. Contract term will depend on broader contract framework. The Local Authority may wish to go out to procurement on a rolling basis to procure the best price for O&M Services. Terms may range from 5 – 15 years. [↑](#footnote-ref-81)
82. Where the assets have been built out by another Contractor, the O&M Contractor may be required to review the condition of the built assets before commencing services, in order to set a benchmark for performance (and to exclude liability where relevant – eg for defects). [↑](#footnote-ref-82)
83. May be required where the DHS is connected on a built block by built block basis and there is a potential for separate block ownership from original Developer and the obligation to “connect” is passed from the Local Authority to the O&M Contractor. [↑](#footnote-ref-83)
84. Relevant where a long term property interest is granted to the Contractor in respect of the siting of the heat generation equipment which is operated and maintained by the Contractor. [↑](#footnote-ref-84)
85. It is assumed that the O&M is for all elements of the DHS (generation kit and distribution pipework to the point of connection to tertiary networks within residential units) [↑](#footnote-ref-85)
86. Technical specifications may be set by a Local Authority, or on a more output based Contract, minimum requirements as to heat delivery quantity/ quality/ safety etc. Alternatively, the Local Authority could request that the O&M Contractor provide their own specifications based on their understanding of the Local Authority requirements and the Development being serviced by the DHS. [↑](#footnote-ref-86)
87. This may be a requirement to ensure a minimum longevity of plant following the end of the Contract/ to assist in the procurement of a replacement contractor [↑](#footnote-ref-87)
88. Depending on the financial standing of the Contractor and security package obtained and term of the O&M (on short term O&M contracts this requirement would be unusual). This could be converted into a termination payment obligation instead [↑](#footnote-ref-88)
89. It is unusual for an O&M Contractor to be responsible for heating pipework within a domestic unit, however this could of course be offered as part of broader estate management services, depending on the broader contractual relationships on the Development. [↑](#footnote-ref-89)
90. This may or may not be within the role of an O&M Contractor [↑](#footnote-ref-90)
91. This may or may not be within the role of an O&M Contractor – it could be outsourced to a separate metering and billing contractor. [↑](#footnote-ref-91)
92. Dependent on the role of the O&M Contractor (i.e. whether they are also Customer facing) this may or may not be within the scope of the O&M Contractor. However, appropriate service payment deductions will likely be needed if the O&M Contractor does not directly compensate Customers. [↑](#footnote-ref-92)
93. This may be required on a new-build development where heat is required for drying out units. Dependent also on role of O&M Contractor. [↑](#footnote-ref-93)
94. Relevant where the O&M Contractor is also the heat supplier [↑](#footnote-ref-94)
95. Note, consideration needs given to party paying fuel costs, who bears risk, (etc) and any consequent impact on Heat pricing. [↑](#footnote-ref-95)
96. The Use of System term is likely to be in line with the overarching agreements, such as Concession or DBOM. [↑](#footnote-ref-96)
97. Scope of rights granted will be dependent on wider contractual framework and the scope of ownership of the Local Authority [↑](#footnote-ref-97)
98. See Operation and Maintenance Agreement Heads of Terms for details of requirements [↑](#footnote-ref-98)
99. Detailed charge can be included or agreed between the parties from time to time. [↑](#footnote-ref-99)
100. Note that a Connection & Adoption Agreement could be entered into by the Developer or the subsequent Landlord of a block being served by heat. [↑](#footnote-ref-100)
101. May include completion of construction of certain assets, completion of the Secondary Network within the block [↑](#footnote-ref-101)
102. Term will be dependent on commercial negotiation between Developer and ESCO, however will need to recognise Developer’s long term requirements for connection to the DHS in order to enable heat supply to the Development. [↑](#footnote-ref-102)
103. The details of the adoption process should be scheduled. Normally, adoption will occur after detailed inspection of the kit to be adopted is undertaken, including establishing whether the kit has been built according to the required specifications. [↑](#footnote-ref-103)
104. This obligation may also sit under the Framework Supply Agreement [↑](#footnote-ref-104)
105. Dependent on the wider contractual framework, these may be ESCO’s specifications. [↑](#footnote-ref-105)
106. These exclusivity obligations may be tempered by the inclusion of exclusions for certain types of heat – e.g. to temporary buildings or the provision of gas for cooking to commercial units such as restaurants. [↑](#footnote-ref-106)
107. Depending on the wider contractual and commercial arrangements, the division on ownership may vary from scheme to scheme. Consideration should be given to whether “adoption” of the Secondary Distribution Network results in the full passing of title, and whether there are any assets that stay within the Developer’s ownership [↑](#footnote-ref-107)
108. Note that these are examples only and are not intended to be comprehensive or suitable for all circumstances. [↑](#footnote-ref-108)
109. Pricing will depend on the commercial deal and variables such as capacity, unit numbers served, the number of Heat Interface Units being installed (if relevant). [↑](#footnote-ref-109)
110. Risk sharing profile will depend on the wider commercial deal. [↑](#footnote-ref-110)
111. Note, the Developer may wish to take over the running of the DHS on their development, therefore there may be an option to purchase the DHS from the ESCO on termination [↑](#footnote-ref-111)
112. Dependent on the covenant strengths of the Parties, PCGs may be required. [↑](#footnote-ref-112)
113. As part of the adoption process, the ESCO will require collateral warranties from sub-contractors undertaking the design, installation, commissioning (etc) of the Secondary Distribution Network [↑](#footnote-ref-113)
114. Note that a Connection Agreement could be entered into by the Developer or the subsequent Landlord of a block being served by heat. [↑](#footnote-ref-114)
115. May include completion of construction of certain assets, eg completion of the Secondary Network within the block [↑](#footnote-ref-115)
116. Term will be dependent on commercial negotiation between Developer and ESCO, however will need to recognise Developer’s long term requirements for connection to the DHS in order to enable heat supply to the Development. [↑](#footnote-ref-116)
117. This may be, for example, the input valve to a substation [↑](#footnote-ref-117)
118. This obligation may also sit under the Framework Supply Agreement [↑](#footnote-ref-118)
119. These exclusivity obligations may be tempered by the inclusion of exclusions for certain types of heat – e.g. to temporary buildings or the provision of gas for cooking to commercial units such as restaurants. [↑](#footnote-ref-119)
120. Depending on the wider contractual and commercial arrangements, the division on ownership may vary from scheme to scheme. This Connection Agreement assumes that ownership, operation and maintenance of the Secondary Distribution Network is by the Landlord/ Developer. [↑](#footnote-ref-120)
121. Note that these are examples only and are not intended to be comprehensive or suitable for all circumstances. [↑](#footnote-ref-121)
122. Pricing will depend on the commercial deal and variables such as capacity and unit numbers served. [↑](#footnote-ref-122)
123. Note, the Developer may wish to take over the running of the DHS on their development, therefore there may be an option to purchase the DHS from the ESCO on termination [↑](#footnote-ref-123)
124. Dependent on the covenant strengths of the Parties, PCGs may be required. [↑](#footnote-ref-124)
125. As part of the adoption process, the ESCO will require collateral warranties from sub-contractors undertaking the design, installation, commissioning (etc) of the Secondary Network [↑](#footnote-ref-125)
126. Note that a Framework Supply Agreement could be entered into by the Developer or the subsequent Landlord of a block being served by heat. [↑](#footnote-ref-126)
127. May include completion of construction of certain assets such completion and/or adoption of the Secondary Network within the block. [↑](#footnote-ref-127)
128. Term will be dependent on commercial negotiation between Developer and ESCO, however will need to recognise Developer’s long term requirements for heat supply to the Development. [↑](#footnote-ref-128)
129. The forms of these agreements may be scheduled in order to govern content/ changes (in particular in relation to governance of heat pricing). [↑](#footnote-ref-129)
130. Note that a separate supply agreement could be entered into, or it could be a schedule to this Framework Supply Agreement. [↑](#footnote-ref-130)
131. In order to ensure that there is ultimate responsibility for payment for heat and relevant standing charges (for example if a unit is vacated and prior to re-letting) the ESCO may wish to ensure that the Developer signs up to a void supply arrangement (either pursuant to this Framework Supply Agreement or a separate supply agreement. [↑](#footnote-ref-131)
132. Note that metering & billing may be undertaken by a separate contractor, however this agreement assumes that it is also undertaken by the ESCO. It is also assumed that the obligation to operate and maintain Secondary Distribution Network assets will be covered under a Connection & Adoption Agreement (or indeed, a Concession Agreement). [↑](#footnote-ref-132)
133. In order to share some risk of voids with the ESCO, a Void Supply Agreement may be entered into by the Developer/ Landlord. Alternatively, the Framework Supply Agreement may act itself as a Void Supply Agreement. [↑](#footnote-ref-133)
134. These exclusivity obligations may be tempered by the inclusion of exclusions for certain types of heat – e.g. to temporary buildings or the provision of gas for cooking to commercial units such as restaurants. [↑](#footnote-ref-134)
135. Note, including restrictive covenants is not always a preferred approach, as it can be viewed as anti-competitive. [↑](#footnote-ref-135)
136. Such an obligation may be included where the wider infrastructure provision includes temporary boilers [↑](#footnote-ref-136)
137. This may include failure to comply with obligations relating to the Secondary Network. [↑](#footnote-ref-137)
138. This will be in accordance with parameters established under the Supply Customer Agreements. [↑](#footnote-ref-138)
139. Note that these provisions could also be included under a Connection Agreement, where parties are the same. Alternatively, a licence may also be granted. [↑](#footnote-ref-139)
140. If heat is supplied to the Developer pursuant to this Agreement (rather than a Void Supply Agreement and/or a separate Construction Supply Agreement) payment for heat will be made pursuant to this Agreement. [↑](#footnote-ref-140)
141. Risk sharing profile will depend on the wider commercial deal. [↑](#footnote-ref-141)
142. Dependent on the covenant strengths of the Parties, PCGs may be required. [↑](#footnote-ref-142)
143. This will be a metered bulk heat supply point (with no delivery across a secondary network). [↑](#footnote-ref-143)
144. Metering and Billing Regulations will apply, which will normally require the meter to be “smart” and therefore capable of remote reading. [↑](#footnote-ref-144)
145. Metering and Billing Regulations will apply, which will normally require the meters to be “smart” and therefore capable of remote reading. [↑](#footnote-ref-145)
146. Note that in respect of Customers which are on short term leases (less than 7 years), the element of the bill that relates to maintenance of pipework and equipment within their Unit and building must be paid by their landlord to the Heat Supplier (this can of course then be recovered by the landlord pursuant to their Lease with the Customer). This is subject to certain exceptions. See section 11 and 13 of the Landlord and Tenant Act 1985. [↑](#footnote-ref-146)
147. This will only be relevant where the Heat Supplier is either a licensed supplier and able to also offer electricity, or where the Heat Supplier is able to provide electricity from a CHP within licence exemptions (pursuant to the Electricity Order 2001 and the Electricity Act 1989). [↑](#footnote-ref-147)
148. Some schemes may opt for pre-payment as a default payment method to reduce credit-risk. [↑](#footnote-ref-148)
149. It may be beneficial from a reputational perspective to include compliance with the Heat Trust standards. [↑](#footnote-ref-149)
150. Including in compliance with the Data Protection Act 1998 [↑](#footnote-ref-150)
151. Note that depending on the contractual framework, the Heat Supplier may or may not be the operator of the DHS. If they are a separate entity, a coherent customer facing offering must still be provided, with a help desk provided by eg Local Authority, O&M Contractor, Metering and Billings Contractor, Concessionaire, DBOM Contractor (etc), from which complaints are appropriately dealt with and the relevant parties notified in order to rectify any problems. [↑](#footnote-ref-151)
152. Note that these minimum standards are not prescribed and may vary on a scheme by scheme basis, depending on technology and partners. [↑](#footnote-ref-152)
153. This protection may be added by the Heat Supplier as an additional protection against credit risk/ non-payment. [↑](#footnote-ref-153)
154. Depending on the split of contractual responsibilities and the share in risk and reward that the Heat Supplier is taking (for example, if they are also Concessionaire), they may also take the credit risk for non-payment of consumers. Note that where there is a Housing Association landlord, an element of credit risk normally lies with this Housing Association. [↑](#footnote-ref-154)
155. Either pursuant to an overarching “governance” agreement (such as a Concession or DBOM (where billing and customer services are included) or as Local Authority acting as counterparty to the RSL Agreement. [↑](#footnote-ref-155)
156. Metering and Billing Regulations will apply, which will normally require the meters to be “smart” and therefore capable of remote reading. [↑](#footnote-ref-156)
157. Note that the RSL will pay some element of this. [↑](#footnote-ref-157)
158. This will only be relevant where the Heat Supplier is either a licensed supplier and able to also offer electricity, or where the Heat Supplier is able to provide electricity from a CHP within licence exemptions (pursuant to the Electricity Order 2001 and the Electricity Act 1989). [↑](#footnote-ref-158)
159. Some schemes may opt for pre-payment as a default payment method to reduce credit-risk. [↑](#footnote-ref-159)
160. It may be beneficial from a reputational perspective to include compliance with the Heat Trust standards. [↑](#footnote-ref-160)
161. Including in compliance with the Data Protection Act 1998 [↑](#footnote-ref-161)
162. Note that depending on the contractual framework, the Heat Supplier may or may not be the operator of the DHS. If they are a separate entity, a coherent customer facing offering must still be provided, with a help desk provided by eg Local Authority, O&M Contractor, Metering and Billings Contractor, Concessionaire, DBOM Contractor (etc), from which complaints are appropriately dealt with and the relevant parties notified in order to rectify any problems. [↑](#footnote-ref-162)
163. Note that these minimum standards are not prescribed and may vary on a scheme by scheme basis, depending on technology and partners. [↑](#footnote-ref-163)
164. The level of risk that an RSL will take on void periods will be a matter for commercial negotiation between the RSL and the Heat Supplier. [↑](#footnote-ref-164)
165. Note that the RSL may choose to take over payments for certain customers following non-payment and will always require notification from the Heat Supplier on any threatened disconnection for non-payment. [↑](#footnote-ref-165)
166. Commercial Customers may undertake this role, rather than the Heat Supplier, however where these units are owned by the Heat Supplier, maintenance obligations will usually lie with the Heat Supplier. [↑](#footnote-ref-166)
167. Metering and Billing Regulations will apply, which will normally require the meters to be “smart” and therefore capable of remote reading. [↑](#footnote-ref-167)
168. This will only be relevant where the Heat Supplier is either a licensed supplier and able to also offer electricity, or where the Heat Supplier is able to provide electricity from a CHP within licence exemptions (pursuant to the Electricity Order 2001 and the Electricity Act 1989). [↑](#footnote-ref-168)
169. Note that depending on the contractual framework, the Heat Supplier may or may not be the operator of the DHS. If they are a separate entity, a coherent customer facing offering must still be provided, with a help desk provided by eg Local Authority, O&M Contractor, Metering and Billings Contractor, Concessionaire, DBOM Contractor (etc), from which complaints are appropriately dealt with and the relevant parties notified in order to rectify any problems. [↑](#footnote-ref-169)
170. For example, a hotel may have a greater costs exposure for failure to provide heat, therefore they would request a higher compensation. [↑](#footnote-ref-170)
171. Depending on the split of contractual responsibilities and the share in risk and reward that the Heat Supplier is taking (for example, if they are also Concessionaire), they may also take the credit risk for non-payment of consumers. [↑](#footnote-ref-171)