Dated the [insert date of contract signing]

Wilson's Hospital School 63300Q

Heathlands, Multyfarnham, Co. Westmeath, N91 AX97
&

[insert name of successful Biomass Contractor]

LOCAL ENERGY SUPPLY CONTRACT (LESC)

LOCAL ENERGY SUPPLY CONTRACT

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Note: The ESCO shall provide a planned preventive maintenance regime in accordance with the tasks and durations outlined in the BESA Document SFG20 and manufacturer's requirements, Irish Standards, or Best Practice whichever is more onerous on all items of equipment listed in Schedule 1.

THIS ENERGY SUPPLY CONTRACT made the [insert date of contract signing] between:

(1) **WILSON'S HOSPITAL SCHOOL** having its address at Heathlands, Multyfarnham, Co. Westmeath, N91 AX97 (the "**Client**");

and

(2) **[INSERT SUCCESSFUL BIOMASS CONTRACTOR NAME]** having registered office at [insert Biomass Contractor address] (the "**ESCO**");

each a "**Party**" and collectively the "**Parties**".

WHEREAS:

A The Client is the School Authority and is responsible for the management of the Premises including the procurement of Energy and energy supplies.

B Pursuant to a public procurement process [Via E-Tenders] the Parties wish to enter into:

(i) an agreement pursuant to which the ESCO agrees to construct, install, test and commission Energy supply equipment at the Premises (the subject of a separate ''Works Contract''), and

(ii) an agreement pursuant to which the ESCO agrees to supply Energy to the Agreed Connection Points within the Premises on the terms and conditions contained in this Agreement (the subject of this LESC)

NOW IT IS HEREBY AGREED as follows:-

1 DEFINITIONS AND INTERPRETATION

1.1. The following words and expressions shall have the following meanings respectively:

"Acceptance Date" means the date on which the Client has accepted Substantial Completion and full commissioning of the Works under the Works Contract.

"Actual Consumption" means in respect of each Month the amount of energy consumed in kWh by the Premises in respect of the relevant month as measured by the Energy Meters in accordance with Clause 11.

"Agreed Connection Points" means the connection points (identified in Schedule 1) at which a Supply may flow between the Energy Cabin and the relevant parts of the Premises together with any new connection points agreed pursuant to the Energy Systems Modification Schedule and "Agreed Connection Point" shall be construed accordingly.

"Agreement" means this agreement between the ESCO and the Client including the attached Schedules related to the supply of energy.

"Applicable Laws" means all statutes, laws, codes, rules, regulations, decrees, permits or orders as may be amended, repealed or updated from time to time concerning, relating to or having jurisdiction over the activities to be performed pursuant to this Agreement.

"BMS" means Building Management System, which is an integrated software and hardware platform used to monitor, control, and optimise the mechanical and electrical systems within a building.

"Boiler Capacity" means the maximum useful thermal output (rate of heat delivery) that the boiler is designed to supply under stipulated operating conditions expressed in kilowatts (kW).

"Boiler Efficiency" means the Heat Output relative to the Fuel Energy Input

“Building Regulations” means the Building Control Acts 1990 to 2007 and all associated regulations and amendments.

"Business Day" means a day when banks in Ireland are open for normal business.

“Client” means the School Authority.

“Client Account Manager” means a person representing the Energy Supply Company (ESCO) who acts as the primary point of contact for the Client.

“Client Representative” means a person representing the client

“Client Design Documents” means the element of the Final Design Documents prepared by or on behalf of the Client as set out in Part 2 of Schedule 2.

“Commencement Date” means a date after the Acceptance Date and during the heating season from mid-September to end of June

“**Confidential Information”** means confidential and/or proprietary information including but not limited to systems, services or planned services, suppliers, data, financial information, computer software, processes, methods, knowledge, ideas, marketing promotions, current or planned activities, research, development and other information which should reasonably be considered to be confidential or commercially sensitive with respect to the information holder’s business or operations.

“Construction Regulations” means the Safety, Health and Welfare at Work (Construction) Regulations 2006 to 2012.

“Contracting Authority” means the party assigned the role of the Employer for the purposes of the Works Contract signed with the ESCO.

“Contract Year” means each calendar year or part thereof during the Supply Period.

“De-Energisation” means the movement of any switch, closing of any stop valve or any other step as a result of which no Energy can flow through to the Agreed Connection Point, and “De-Energise” and “De-Energised” shall be construed accordingly.

“Discountable Revenue” means in respect of each Contract Year, the aggregate of the Monthly Payments in respect of all Months within the relevant Contract Year (or such other shorter period calculated on a proportionate basis in the event that the application of discount has been suspended during that Contract Year pursuant to Clause 23 of the Agreement).

“End Date” means the earlier of:

(i) 15 years on and from the Commencement Date (subject to any agreed extension); or

(ii) the date when this Agreement is terminated pursuant to Clause 24.

“Energisation” means the movement of any switch or opening of any stop valve or any other step which enables Energy to flow through to the Agreed Connection Point, and “Energise” shall be construed accordingly.

“Energy” means heat.

“Energy Cabin” means the prefabricated boiler house that contains all plant associated with the Biomass Boiler System and any associated fuel supply and storage systems.

“Energy Meter(s)” means the metering equipment, other measuring equipment and apparatus installed in accordance with the SEAI SSRH scheme and at the agreed location by the Client to measure the Supply made by the ESCO to the Client and which is capable of being read remotely by the ESCO.

“**Energy Requirement**” means [the Client’s actual Energy requirement during the any relevant one Hour period.

“Energy Supply Deficit” means the total amount of energy, measured in kilowatt-hours (kWh), that the biomass boiler failed to supply in order to meet the required heat demand, despite being within its rated capacity.

"Environmental Incentives" means all rights, credits (including tax credits), rebates, grants, benefits, reductions, offsets, and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under national, European or international law, international treaty, trade association membership or the like, to which the Client is directly entitled to, arising from the Works and the resulting reduction of energy usage at the Premises. Without limiting the foregoing, "Environmental Incentives" includes utility rebates or incentive programmes, green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under any state tax credit programme and grants from non-governmental organisations.

For the avoidance of doubt “Environmental Incentives” shall not include any tax deductions which may arise under Section 82 of the Finance Act, 2012 as more particularly set out in Clause 9.2.

“Equipment” means the goods, materials and equipment to be installed at the Premises by the ESCO under the Works contract, and set out in Schedule 1 attached hereto, together with any and all additions and modifications made thereto during the Term.

"ESCO” means the Energy Supply Company that has been appointed to supply & install the Energy Cabin, fuel store & enclosure and is appointed to this local energy supply contract.

“Existing Equipment” means the Client’s pre-existing energy supply equipment at the Premises as set out in Schedule 1.

“Failed Service Credits” means the credits accumulated by the Client as calculated in accordance with the Guaranteed Standards of Performance.

“Failed Service Factor” means a weighted multiplier applied to the Energy Supply Deficit to quantify the financial impact of the biomass boiler failing to meet heat demand within its rated capacity. The weighting is based on the applicable carbon tax rate, reflecting the cost of substituting the unmet energy demand with carbon-intensive alternatives. If the biomass boiler continues to fail to meet the required heat demand within its rated capacity for a period exceeding two calendar weeks, the Failed Service Factor will be tripled, to account for prolonged reliance on carbon-intensive backup systems and the increased environmental and financial burden.

“Final Design Documents” means the final design documentation (including operating instructions) related to the Works as prepared by the ESCO and the Client during its tender submission and set out in Schedule 2.

“Force Majeure” means any of the following events:

(i) war.

(ii) revolution.

(iii) civil commotion.

(iv) labour disputes (save for disputes at the ESCO, its agents or Subcontractors).

(v) floods.

(vi) hurricanes, similar storms or other actions of the elements.

(vii) acts of God or the public enemy.

(viii) vandalism.

(ix) restriction or restraints of governmental authorities whether State or local; or

(x) acts of civil or military authorities

provided that for the purposes of this Agreement such events must be exceptional in nature such that they could not have been avoided or overcome by either Party exercising due and proper care and diligence.

"Fossil Fuel Price" means the cost in cent per kilowatt hours of the back-up fossil fuel supply to the premises, this cost includes all VAT & Carbon Taxes.

"Fuel" means Wood Pellets or Wood Chips and as more particularly specified in Schedule 2.

"Fuel Store & enclosure" means a purpose-built storage facility designed to safely house wood pellets used as fuel in biomass heating systems.

"GSM modem" means a type of modem that allows devices to connect to a mobile network. GSM stands for Global System for Mobile Communications. A GSM modem accepts a SIM card and operates over a subscription to a mobile operator, functioning similarly to a mobile phone.

"Guaranteed Standards" means the guaranteed standards of performance for the Supply set out in the Guaranteed Standards of Performance set out in Schedule 6.

"Hour" means a complete hourly period commencing on the hour every hour.

"Intellectual Property" means any designs, formulas, patterns, devices, secret inventions or processes, copyrights, patents, database rights, moral rights, trademarks, service marks, domain names, know-how, utility model, unregistered design or other intellectual or proprietary rights or similar items of property.

"Maintenance Schedule" means the schedule of maintenance set out in Schedule 5.

"Maintenance Days" means the number of whole days specified in the Maintenance Schedule in each 12-month period of Supply as may be amended by agreement in writing between the Parties acting reasonably.

"Manufacturer Warranties" means any warranties provided by any Original Equipment Manufacturer of Equipment as part of the Works

"Margins of Error" means in respect of the Energy Meter(s) a reading that is within +/- [5%] of actual Energy use over the normal design operating range of the Energy System (minimum use when operating to maximum use when operating).

"Material Change" shall include any change in or to the Premises whether structural, operational or otherwise in nature which could reasonably be expected to decrease annual energy consumption of the heating system at these Premises to below 40w/m2. Actions by the Client which may result in a Material Change include but are not limited to the following:

(i) manner of use of the Premises by the Client.

(ii) hours of operation for the Premises or for any Equipment or Existing Equipment operating at the Premises.

(iii) occupancy of the Premises.

(iv) structure of the Premises.

(v) modification, renovation or construction at the Premises.

"Materials" means any and all reports, data manuals and/or other materials (including without limitation all and any audio- or audio-visual recordings, transcripts, books, papers, records, notes, illustrations, photographs, diagrams) produced for the purposes of this Agreement.

"Maximum Guaranteed Energy Capacity" means the manufacturer's name-plate capacity in kW on the biomass boiler.

"Meter Examiner" means, in respect of a dispute about the accuracy of any Energy Meter, an expert appointed on application of either Party by the President of Engineers Ireland from time to time.

"Month" means a calendar month.

"Monthly Failed Service Credit" means the aggregate amount of Failed Service Credits for a relevant Month which will be deducted from the Monthly Payment in accordance with Clause 15.

"Monthly Payment" means the monthly payment that may be payable by Client to the ESCO as calculated in accordance with Clause 15 for the Services from the Commencement Date.

"Operations Manual" means the operations and maintenance manual setting out the procedures for operating and maintaining the Equipment and/or Works prepared by the ESCO in both electronic and hard copy format.

"Premises" means the Client's premises as more particularly described in Schedule 1.

"Primary side of the plate heat exchanger" means the side of the plate heat exchanger that is connected to the Energy Cabin

"Relevant Legislation" means any relevant environmental or energy related legislation that may be enacted during the Supply Period which has or may have a material impact on the ability of either Party to carry out its obligations under this Agreement.

"School Authority" means the Board of Management or Body responsible for the governance and management of the school.

"SEAI Commercial/Industrial Fuel Energy Cost Comparison" means a Commercial/Industrial Fuels Comparison of Energy Costs that is published quarterly by the SEAI

"SEAI SSRH" means a support scheme for renewable heat offered by the SEAI to the Client

"Services" means the procurement of Fuel for the Equipment, the operation, repair/replace and maintenance of the Energy Cabin, fuel store and enclosure and the provision of the Supply at the Agreed Connection Points as more particularly described in Schedule 4.

"Supply" means the supply of Energy provided by the ESCO to the Client to the Agreed Connection Points.

"Supply Period" means the period from the Commencement Date to the End Date.

"Supply Price" means € ___ /kWh. This figure excludes VAT but includes Carbon Taxes current on the tender date.

"**Supply Temperature**" means the leaving (flow) water temperature (°C) at a given temperature sensor point.

"Tax" means any kind of tax, duty, levy or other charge whether or not similar to any in force at the execution date of this Agreement whether imposed by a local, governmental or other Tax Authority in the Republic of Ireland or elsewhere.

"Tax Authority" means any organisation or body in any country having authority in relation to Tax.

"Tender Date" means the date of the submitted tender as per the Form of Tender.

"Term" means the period from the Commencement Date to the End Date.

"Unplanned Outage" means a failure on the part of the ESCO to provide the Supply in circumstances other than those outlined in Clauses 3 & 4.

"Variation Estimate" means the ESCO's detailed estimate of the impact to this Agreement of a variation to the Works, the Equipment and/or the Existing Equipment and/or an adjustment to the [Supply Price], the Discountable Revenue Threshold and/or the Maximum Capacity requested by the Client or the ESCO in accordance with the provisions of Clause 20 which shall include:

(i) its proposal for implementing the variation to the Works, the Equipment and/or the Existing Equipment.

(ii) a detailed estimate of cost to the ESCO of implementing the proposed variation.

(iii) any proposed extension of the Supply Period

(iv) any proposed adjustment to the Supply Price, the Discountable Revenue Threshold and/or the Maximum Capacity; and

(v) the programme for implementing the proposed variation.

"**Works**" means the management, procurement, design, construction, installation, testing and commissioning of the Energy Cabin, fuel store and enclosure Installation.

"**Works Contract**" means the standalone Public Works Contract (available from Capital Works Management Framework (CWMF)) signed between the ESCO and Contracting Authority for the management, procurement, design, construction, installation, testing and commissioning of the Energy Cabin, fuel store and enclosure Installation.

1.2. Clause headings do not form part of this Agreement and shall not be taken into account in the construction or interpretation of this Agreement.

1.3. References to any statute or statutory provision will be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted.

PART 1 – THE WORKS – NOT APPLICABLE

2 THE WORKS

2.1 The Works are as defined in clause 1.1 and will be carried out under a public works contract which will enable the signing of this Local Energy Supply Contract.

2.2 On the same date of the signing of the public works contract, the successful bidder for the works will also sign this local energy supply contract.

PART 2 – SERVICES & SUPPLY

3 CONNECTION TO THE SUPPLY

3.1 Subject to the terms of this Agreement the ESCO shall provide the Services to the Client from the Commencement Date to the End Date.

3.2 Each Party shall be responsible for its own facilities up to the Agreed Connection Points.

3.3 The Client shall provide access to the following connection points for the ESCO to facilitate the provision of the Services:

3.3.1 electricity.

3.3.2 Fire Alarm cable connection to premise's Fire Detection and Alarm System

3.3.3 hardwired BMS Connection from premises to Energy Cabin

3.3.4 Water

3.3.5 Heating Mains F&R from the heating centre of the building being served.

3.4 Title to and risk in the Supply shall pass to the Client at the Agreed Connection Points.

3.5 Subject to the terms of Clause 2 the ESCO shall ensure connection of the Supply to the Premises at the Agreed Connection Points and the Client shall be entitled to remain connected to the Supply at each Agreed Connection Point until the End Date.

3.6 The Client shall use reasonable endeavours to:

3.6.1 ensure that it uses the Energy System in accordance with such instructions and recommendations relating to the care, safety and use as may from time to time be advised in advance in writing by the ESCO.

3.6.2 protect the Energy System from damage or injury if, due to an emergency, it is not possible or reasonable to contact the ESCO before acting; and

3.6.3 not allow any person other than the ESCO or its authorised representatives to adjust, maintain, repair, replace, move, remove, alter or interfere with the Energy System save in an emergency where the Client may activate an isolation trip or isolation valve on the Energy System at or near the Agreed Connection Points.

3.7 The ESCO shall not specify for use in the provision of the Supply any material known to be deleterious or a material not in accordance with the higher of Irish and European standards or codes of practice or, if no Irish or European standards or codes exist, the relevant British standards and codes of practice. The ESCO shall forthwith report to the Client Representative

if it knows or has reason to suspect that any deleterious materials have been or are intended to be used in the provision of the Supply

3.8 Without prejudice to any other rights available to the ESCO the ESCO may disconnect or reduce the Supply at any of the Agreed Connection Points in the event that:

3.8.1 the Client makes changes to the Agreed Connection Points without the prior written consent of the ESCO.

3.8.2 the Client damages the Agreed Connection Points.

3.8.3 the Client is in default of this Agreement and the ESCO has De-Energised an Agreed Connection Point, and such Agreed Connection Point has remained De-Energised for a period of at least three months continuously from the date of De-Energisation; or

3.8.4 the Client is not in default of this Agreement and the ESCO has De-Energised an Agreed Connection Point, and such Agreed Connection Point has remained De-Energised for a period of at least three months continuously from the date of De-Energisation and the Client has agreed to the disconnection of such Agreed Connection Point, such agreement not to be unreasonably withheld or decision thereon delayed.

3.8.5 it is obliged to do so:

(a) by law.

(b) where it is necessary to do so for safety or to prevent injury or damage to person or property; or

(c) where it is necessary to do so due to an event of Force Majeure.

4 ENERGISATION OF AGREED CONNECTION POINTS

4.1 The ESCO shall Energise the Agreed Connection Points for the duration of the Supply Period and when Energising the Agreed Connection Points it shall do so in accordance with good industry practice and otherwise in terms of this Agreement.

4.2 The ESCO shall De-Energise the Agreed Connection Points or otherwise on the expiry or termination of this Agreement in accordance with Clause 24.

4.3 The ESCO may De-Energise the Points of Supply forthwith:

4.3.1 where it is obliged to do so by law.

4.3.2 where it is necessary to do so for safety or to prevent injury or damage to person or property; or

4.3.3 where it is necessary to do so due to an event of Force Majeure.

4.3.4 in the event that the Client breaches its obligations pursuant to Clauses 3 or 14 under this Agreement following written notice to the Client of such breach and the Client has not remedied such breach within 10 (ten) Business Days of such notice.

4.3.5 on any Maintenance Days in accordance with the Maintenance Schedule

and shall at all times act in accordance with good industry practice and the terms of this Agreement in relation to such De-Energisation.

4.4 If the Client has failed to remedy any breach notified under Clause 4.3.4 within the specified timeframe the ESCO may carry out any repairs, replacements maintenance or reinstatement of the Agreed Connection Points and the Client shall pay to the ESCO on demand all properly vouched costs and expenses reasonably incurred by the ESCO in carrying out such repairs, replacements and maintenance

5 RECONNECTION & RE-ENERGISATION

5.1 If any Agreed Connection Points have been De-Energised or disconnected the ESCO shall affect Energisation or re-connection of the Agreed Connection Points as soon as:

5.1.1 the circumstances giving rise to such De-Energisation or disconnection have been remedied to the ESCO's reasonable satisfaction.

5.1.2 the Client has paid such reasonable amount as the ESCO may require covering the ESCO's costs of the De-Energisation/Energisation or disconnection/reconnection where such De-Energisation or disconnection arises as a result of a default on the part of the Client of its obligations under this Agreement; and

5.1.3 the Client pays such outstanding amounts to the ESCO where the Client is in default of its obligations under Clause 14.

6 GUARANTEED STANDARDS & FAILED SERVICE CREDITS

6.1 Subject to the provisions of this Agreement the ESCO shall provide the Supply to the Agreed Connection Points in accordance with the Guaranteed Standards.

6.2 In the event that the ESCO fails to meet the Guaranteed Standards the Client shall accumulate Failed Service Credits which the Client will deduct from the Monthly Payment in accordance with Clause 15 which shall be determined in accordance with the relevant rates set out in the Guaranteed Standards of Performance at Schedule 6.

6.3 The Client shall not be entitled to Failed Service Credits where it is in material breach of its obligations.

7 EXISTING SCHOOL HEATING EQUIPMENT AND SUPPLY

7.1 The Existing School Heating Equipment shall remain the property of the Client and the ESCO shall have no responsibility for the maintenance of this Equipment.

8 UNPLANNED OUTAGES

8.1 In the event of an Unplanned Outage the ESCO shall notify the Client as soon as possible of:

8.1.1 the interruption.

8.1.2 the likely timescales for the re-establishment of the Supply using the best available information available at the time of notification.

8.2 In the event of an Unplanned Outage which has a duration of over 24 hours the ESCO shall provide regular updates and shall arrange and attend regular meetings and provide such updates as may be reasonably required by the Client in order to keep the Client informed of progress.

8.3 In the event of an Unplanned Outage the ESCO will re-establish the Supply to the Client as soon as reasonably practical.

9 ENVIRONMENTAL INCENTIVES

9.1 The Client shall own, and may assign or sell in its sole discretion, all right, title, and interest associated with the Environmental Incentives.

9.2 The benefit of any tax rebates which may arise under Section 82 of the Finance Act, 2012 shall be awarded to the Client.

9.3 The ESCO will provide to the Client such information in writing as the Client may reasonably require in respect of the environmental characteristics of the Supply in terms of the renewable energy used and the sustainability of its supply chain.

10 OPERATION AND MAINTENANCE OF THE ENERGY SYSTEM

10.1 The ESCO shall operate and maintain the Energy System in accordance with:

10.1.1 good industry practice.

10.1.2 the Law; and

and nothing in this Agreement shall oblige the ESCO to operate the Energy System in any other manner.

10.2 The Client shall be responsible for all utilities connected to the Premises.

10.3 Subject to Clause 10.5 the ESCO shall be responsible for routine maintenance of the Energy System at its own expense and shall carry out such maintenance during the Maintenance Days. The ESCO shall be entitled to use the Maintenance Days for routine maintenance or for renewal, replacement or any other purpose for which is required for the efficient operation of the Energy System.

10.4 Where the ESCO reduces or disconnects the Supply or De-Energises any of the Agreed Connection Points for the purposes of carrying out maintenance under the Maintenance Schedule it shall:

10.4.1 use all reasonable endeavours to minimise such discontinuation or reduction.

10.4.2 (except in the case of emergency or in respect of the prevention of damage to the Energy System) provide written notice to the Client before discontinuing/reducing the Supply; and

10.4.3 use all reasonable endeavours following such a discontinuation or reduction of Supply or De-Energisation of the Agreed Connection Points to:

(a) recommence the Supply or to increase the Supply as soon as reasonably practicable; and

(b) where the Agreed Connection Points have been De-Energised to Re-Energise such Agreed Connection Points as soon as reasonably practicable and in accordance with good industry practice.

10.5 The Client or their agents shall not interfere with the Energy Cabin, fuel store & enclosure Installation for the period of this contract, while all conditions in this contract are being maintained by the ESCO. The Client shall pay to the ESCO (and shall indemnify the ESCO against) all reasonable costs and expenses incurred by the ESCO, including any related to investigation of the cause of any defect or malfunction, in providing spare or replacement components or carrying out any repairs/replacements to the Energy System where damage has been caused to the Energy System as a result of:

10.5.1 works carried by, instructed by or permitted by the Client, its employees, agents and contractors without the ESCO's consent; or

10.5.2 any act or omission of the Client or the Client's employees, agents or contractors or any third party (other than a third party which is an employee, agent or contractor of the supplier).

11 ENERGY METERS

11.1 All Energy supplied by the ESCO to the Client shall be measured by the Energy Meters which shall be provided and installed as part of the Works, and operated, maintained, repaired, replaced and renewed by or on behalf of the ESCO at its own expense, and as per the requirements of the SEAI SSRH Scheme.

11.2 The ESCO shall verify the accuracy of the meters at intervals as recommended by the manufacturer of the meters and in line with industry practice. The ESCO shall carry out at its own expense any recalibration or adjustment of the Energy Meters as may be necessary following such verification.

11.3 Any reading which is within the Margins of Error shall be deemed to be an accurate record of the quantity of Energy supplied to the Client.

11.4 Each Energy Meter shall be deemed to be accurate unless the accuracy of the relevant Energy Meter is disputed by notice in writing given by either Party to the other.

11.5 Unless agreement is reached within ten (10) Business Days after the giving of a notice Clause 11.4 the matter shall be referred by either Party to the Meter Examiner whose report or findings shall be final and binding upon the Parties.

11.6 If the Meter Examiner determines that the inaccuracy of the relevant Energy Meter is outside the prescribed Margins of Error a suitable adjustment shall be made in the invoices rendered by the ESCO and the Energy Meter found to be inaccurate shall be re-calibrated or replaced.

11.7 The cost of such test and re-calibration or replacement under Clause 11.6 shall be paid by the ESCO unless it was found to be inaccurate by reason of any act or default of the Client and its employees, contractors and agents.

11.8 If the Meter Examiner determines that the relevant Energy Meter is accurate within the agreed Margins of Error, the Energy Meter shall be deemed to be accurate and the cost of testing the Energy Meter shall be paid by the Party which served the notice of dispute.

12 FUEL SUPPLY & ACCESS

12.1 The ESCO shall procure all Fuel as necessary for the provision of the Supply and the Client shall provide such reasonable access to the Premises to facilitate the delivery of such Fuel and the ESCO shall be deemed to have satisfied itself as to the suitability and availability of such access provided by the Client.

12.2 The ESCO shall only procure Fuel in accordance with the specification as set out in Schedule 2.

12.3 Fuel may only be delivered to the Premises either by the ESCO or on its behalf at the following times:

[As is necessary for the continual operation and delivery of the service and between the hours of 8.30am to 3.30pm Monday through Friday.]

12.4 The ESCO agrees that Fuel may not be delivered to the Premises either by the ESCO itself or on its behalf outside of the times specified in Clause 12.3 save for with the prior written agreement of the Client.

13 MAINTENANCE, REPLACEMENT AND HANDOVER OF EQUIPMENT

13.1 Subject to Clause 13 the ESCO shall be responsible for the maintenance, repair/replacement and upkeep of the Equipment and is obliged to carry out any technical, administrative and management measures during the lifecycle of any item (including but not limited to any part, component, device, sub-system, functional unit, operating equipment or system which can be looked at discretely) of the Equipment to maintain or restore its operative condition.

13.2 The benefits and rights of any Manufacturer Warranties will be assigned or passed on from the Client to the ESCO, where possible.

13.3 The Client shall incur no cost for the maintenance, servicing or adjustment of the Equipment as detailed in Schedule 1 provided however that when such need arises due to the negligence or misconduct of the Client or any employee or other agent of the Client then the Client shall be liable for the cost of such maintenance, servicing or adjustment insofar as such cost is not covered by any warranty or insurance proceeds.

13.4 Upon the expiry of the Term of this Agreement the ESCO shall hand over the Energy System in a condition which can be regarded as secure and fully operational taking account of normal wear and tear. The condition of the Equipment shall be comparable to the condition which is generally to be expected of similar or equivalent equipment subject to comparable services, comparable service lives and proper maintenance in accordance with relevant Irish & European Standards.

13.5 Prior to handing over the Energy System, the ESCO shall carry out a full re-commissioning[1]and procure an independent end-to-end condition survey of the Energy System and it shall correct at its own cost any deficiencies in the Energy System that may be identified during the re-commissioning procedure.

13.6 In addition to the re-commissioning being carried out under Clause 13.5 the ESCO shall demonstrate to the Client's reasonable satisfaction that the Energy System has been operated and maintained in accordance with all relevant manufacturer recommendations and good industry practice.

13.7 The ESCO shall deliver a written report on the re-commissioning of the Energy System to the Client and shall provide the Client with all appropriate re-commissioning documentation (including re-commissioning certificates) along with all operations and maintenance documentation for the Equipment for the Equipment to the Client upon hand over of the Energy System.

13.8 In addition to its maintenance obligations under this Agreement the ESCO undertakes to replace any item of Equipment at its own expense upon expiry of its life cycle during the Term of this Agreement. The ESCO acknowledges that the life cycle of any item of Equipment and/or Existing Equipment may expire prior to the end of the Term of this Agreement and has taken this into account in the preparation of the Final Design Documents.

PART 3 – PAYMENT

14 PRICES, CHARGING AND PAYMENT

14.1 From the Acceptance Date the Client shall pay to the ESCO the Monthly Payment in accordance with the terms of this Agreement.

14.2 The ESCO shall invoice the Client monthly in respect of the previous Month showing the relevant Monthly Payment payable as calculated in accordance with Clause 15.

14.3 Energy Meter readings shall be taken as proof of Actual Consumption unless any Energy Meter is found to be inaccurate in accordance with Clause 11.

14.4 The ESCO shall read the Energy Meters on a monthly basis utilising a remote reading mechanism.

14.5 The Client shall be entitled to access the Energy Meters for the purposes of verifying any readings provided by the ESCO.

14.6 If an Energy Meter reading is unavailable the ESCO may invoice the Client based on the ESCO's reasonable estimates which shall be supported by written evidence taking into account, all relevant information including historical data relating to and any information available from the Energy Meters and the Client shall be entitled to request any additional evidence as it may reasonably require.

14.7 Without limiting the operation of Clause 15 any subsequent accurate actual Energy Meter readings shall supersede the estimate and the difference between the original estimate and the subsequent actual reading shall be paid by the relevant Party within 10 (ten) Business Days of the date of the subsequent reading.

15 CALCULATION OF THE MONTHLY PAYMENT

15.1 The Monthly Payment in respect of each relevant Month shall be a sum calculated in accordance with the following formula:

Monthly Payment = (Actual Consumption) x (Supply Price) - Monthly Failed Service Credit

16 INDEXATION OF SUPPLY PRICE, CARBON TAXES & DISCOUNTABLE REVENUE THRESHOLD

16.1 The Supply Price shall be updated annually on the anniversary of the Agreement's Commencement Date and shall be indexed linked to the SEAI Commercial/Industrial Fuels Energy Cost Comparison as published by the Sustainable Energy Authority of Ireland (SEAI) on a quarterly basis. The supply price should increase/reduce proportionately with respect to this published table.

16.2 The Supply Price shall be updated to account for any legislative changes related to the Carbon Tax

17 PAYMENT AND INTEREST

17.1 Payment of any invoices shall be made within 30 (thirty) Business Days of receipt by the relevant Party of a properly particularised valid VAT invoice.

17.2 Any payment due by a Party to the other shall be made in Euro by electronic transfer to such bank account (located in the Republic of Ireland) as is specified by the other Party from time to time.

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

17.4 If a Party dispute any or all amount claimed by the other Party pursuant to this Agreement, then the dissenting Party shall immediately provide the other Party a written notice together with reasons advising of the disputed amount.

17.5 Upon the receipt of a notice under Clause 17.4 the Parties must firstly negotiate in good faith to try and resolve the matter within ten (10) Business Days. If the Parties are unable to resolve the matter within that period, then the provisions of Clause 44 shall apply.

17.6 If a Party fails to pay any amount payable by it under this Agreement on its due date interest shall accrue daily on the overdue amount and from the due date until the date of payment.

17.7 Any interest accruing under this Clause shall be immediately payable on demand.

18 TAXES

18.1 Except as otherwise provided in this Agreement each Party shall be responsible for payment of any Tax levied upon it.

18.2 All amounts which are expressed to be payable under this Agreement by any Party which (in whole or in part) constitute the consideration for VAT purposes for any supply of goods or services shall be deemed to be exclusive of any VAT which is chargeable on that supply.

18.3 If VAT is chargeable on any payment made to a Party under this Agreement that Party shall pay (in addition to and at the same time as paying the consideration for the supply) an amount equal to the amount of the VAT (and the supplier shall promptly provide an appropriate VAT invoice to that Party).

19 SET OFF

19.1 The Client shall be entitled to deduct from any payment it may be obliged to make to the ESCO an amount equal to any sum due and owing to the Client from the ESCO under the provisions of this Agreement.

PART 4 – MISCELLANEOUS

20 VARIATIONS

20.1 Where the Client wishes to implement a Material Change at the Premises it shall notify the ESCO in writing as soon as practical and in any event no later than 15 (fifteen) business days before the Material Change is implemented and the ESCO shall deliver a Variation Estimate to the Client within 5 (five) days of receipt of such notice.

20.2 Where the ESCO requires a material variation to the Works, the Equipment and/or the Existing Equipment and/or an adjustment to the Supply Price the Discountable Revenue Threshold and/or the Maximum Capacity due to:

20.2.1 Force Majeure as set out in Clause 26; or

20.2.2 the occurrence of a Material Change which has not been notified by the Client under Clause 20,

it shall submit a Variation Estimate to the Client.

20.3 As soon as practicable after receipt by the Client of a Variation Estimate under either Clause 20.1 or Clause 20.2 the Parties will meet to discuss and agree its contents (with or without modification) and in particular whether any costs that will be incurred by the ESCO as a result of such variation shall be recoverable:

20.3.1 by way of an adjustment to the Supply Price, the Discountable Revenue Threshold and/or the Maximum Capacity (either on a temporary basis or for the remainder of the Supply Period).

20.3.2 by an extension of the Supply Period; or

20.3.3 directly from the Client upon delivery by the ESCO of all relevant invoices and any other information as may reasonably be requested by the Client.

20.4 Where the Parties agree to the final contents of the Variation Estimate following the discussions under Clause 20.2 they shall confirm their agreement in writing at the earliest opportunity and the variation to the Works, the Equipment and/or the Existing Equipment shall have effect from the date of such agreement.

20.5 Where the Parties cannot agree to the final contents of the Variation Estimate the matter shall be referred to dispute resolution in accordance with Clause 43.

21 VALUE ENGINEERING

21.1 The ESCO may give the Client a written value engineering proposal that if adopted will either:

21.1.1 adjust the Supply Price.

21.1.2 adjust the Discountable Revenue Threshold; and/or

21.1.3 extend the Supply Period.

21.2 The ESCO's value engineering proposal shall include any proposed changes to this Agreement and/or the attached Schedules.

21.3 The Client shall as soon as practicable notify the ESCO in writing of its acceptance or rejection of the ESCO's value engineering proposal.

21.4 Where the Client accepts the ESCO's value engineering proposal this Agreement shall be amended accordingly and the ESCO shall implement the value engineering measures from such date as the Parties agree in writing.

22 ESCO AS PRIME CONTRACTOR, PROJECT GOVERNANCE, ASSIGNMENT & SUBCONTRACTING

22.1 The ESCO as prime contractor hereby assumes liability for its employees, agents and subcontractors and undertakes that its employees, agents and subcontractors shall comply in all respects with the relevant terms of this Agreement to the extent that they are retained by the ESCO.

22.2 The ESCO agrees to keep the Client Representative advised of any matter which may materially impact on the ESCO's obligations under this Agreement and to comply with the reporting arrangements and governance protocols required by the Client from time to time. The roles and responsibilities of the parties are detailed in Schedule 7. The ESCO shall advise the Client in writing of any material alterations to its governance, Works and Services delivery and business continuity processes and procedures.

The ESCO shall not subcontract the benefit and/or burden of this Agreement in whole or in part to any third party without the prior written approval of the Client (such approval not to be unreasonably withheld or delayed and subject to the Client's obligations at law) provided always that the ESCO shall remain primarily liable to the Client for the due performance of all of its obligations under this Agreement.

22.3 The ESCO shall require its employees, agents and subcontractors to exercise due skill, care, diligence, efficiency and professional conduct in the carrying out of any obligations allocated, assigned or subcontracted by the ESCO to its employees, agents and subcontractors pursuant to its obligations under this Agreement

22.4 The ESCO shall immediately remove from the Premises any employees, agents or subcontractors if the ESCO becomes aware that they are in breach of Clause 22.4 or upon the reasonable request of the Client.

22.5 The ESCO shall procure that any agreement it enters into for the supply of Fuel for the purposes of this Agreement shall afford step-in rights to the Client, if the client so wish, in the event of termination of this Agreement for any of the circumstances outlined in Clause 24.2 and the ESCO shall provide the Client with a copy of all such fuel supply agreements (with any commercially sensitive terms redacted) within 10 (ten) Business Days of their execution.

23 SUSPENSION

23.1 The Client shall be entitled to suspend this Agreement upon written notice to the ESCO.

23.2 If any suspension under Clause 23.1 lasts for more than 6 (six) months then either Party shall be entitled to terminate this Agreement with immediate effect upon delivery of written notice to the other subject to the provisions of Clause 25.

23.3 If the Client fails to pay any amount due under to the ESCO under Clause 17 the ESCO may submit a written demand for payment to the Client notifying the Client of its intention to De-Energise the Agreed Connection Points and suspend the Agreement if the payment has not been made within 7 (seven) Business Days of the receipt of such written demand.

23.4 A notice from the ESCO under Clause 23.3 shall specify:

23.4.1 the grounds on which the ESCO intends to De-Energise the Agreed Connection Points; and

23.4.2 the date on which the proposed De-Energisation and suspension is to begin.

23.5 The ESCO shall immediately Re-Energise the Agreed Connection Points following payment by the Client of the outstanding amount being the subject of the written demand under Clause 23.3.

23.6 If any suspension under Clause 23.3 lasts for more than 6 (six) months then either Party shall be entitled to terminate this Agreement with immediate effect upon delivery of written notice to the other subject to the provisions of Clause 24.

24 TERMINATION

24.1 The Client shall be entitled to terminate the ESCO's obligations under this Agreement at its election on 20 (twenty) Business Days' notice to the ESCO.

24.2 The Client shall be entitled to terminate this Agreement by written notice to the ESCO if:

24.2.1 the ESCO commits any material breach of the terms hereof and fails to remedy same within 15 (fifteen) days after receipt of written notice of such breach having been served by Client; or

24.2.2 the ESCO becomes bankrupt or makes a composition or arrangement with creditors or has a winding up order made (except for the purposes of amalgamation or restructuring) or has a liquidator (provisional or otherwise), receiver, manager or examiner of its business or undertaking duly appointed.

24.3 The right of the Client to terminate this Agreement shall be without prejudice to any other rights or remedy either Party may have in respect of the breach concerned or any other breach.

25 CONSEQUENCES OF TERMINATION

25.1 The Client shall pay the ESCO:

25.1.1 any outstanding payments due and payable by the Client to the ESCO under this Agreement at the date of such termination.

25.2 Any amounts payable under Clauses 25.1 shall be paid within 30(thirty) Business Days of the date of termination of the Agreement.

25.3 Upon termination of this Agreement under Clause 23.2, Clause 23.6 or Clause 24.1 the Client shall pay the ESCO:

25.3.1 any outstanding payments due and payable by the Client to the ESCO under this Agreement at the date of such termination.

Such payment will be made within 30 (thirty) Business Days of the date of such termination of the Agreement.

25.4 The ESCO shall remove all employees, staff, subcontractors and other persons for whom the ESCO is responsible under this Agreement together with any plant, equipment, machinery, tools and other property of the ESCO from the Premises in an orderly manner as soon as reasonably possible following termination or expiry of this Agreement and shall ensure that those parts of the Premises from which the ESCO removes its plant, equipment, machinery, tools and other property are left in a clean and tidy condition.

26 FORCE MAJEURE

26.1 Notwithstanding any other provisions of this Agreement, neither Party shall be liable to the other for any non-performance or delay in the performance of this Agreement due to Force Majeure

26.2 In the event of any failure, interruption or delay in the performance of either Party's obligations (or of any of them) resulting from Force Majeure the affected Party shall promptly notify the other Party in writing specifying:

26.2.1 the nature of the Force Majeure event.

26.2.2 the anticipated delay in the performance of obligations.

26.2.3 the action proposed to minimise the impact of the Force Majeure event; and

the affected Party shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the other Party provided always that the affected Party shall use all reasonable efforts to minimise the effects of the same and shall resume the performance of its obligations as soon as reasonably possible after the removal of the cause.

26.3 If the Force Majeure event continues for 60 (sixty) days either Party may terminate at 10 (ten) days' written notice. In circumstances where the ESCO is the affected Party the Client shall be relieved from any obligation to make payments under this Agreement save to the extent that payments are properly due and payable for obligations actually fulfilled by the ESCO in accordance with the terms and conditions of this Agreement.

INTELLECTUAL PROPERTY RIGHTS

26.4 Neither Party shall acquire any interest in the Intellectual Property of the other Party by virtue of this Agreement.

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27 LICENCES, PERMITS, APPROVALS & COORDINATION

27.1 Any necessary licences, permits and approvals as the case may be obtained by third parties outside this agreement. The ESCO prior to signing shall satisfy themselves on any matters relating to licences, permits and approvals.

27.2 The ESCO shall coordinate the activities of its employees, subcontractors, equipment installers and service providers with those of the Client, its employees and agents.

28 CLIENT REPRESENTATIVE

28.1 The Client hereby nominates [To Be Confirmed] as the "Client Representative" who will have the authority to act on the Client's behalf in carrying out the Client's obligations under this Agreement and shall act as first point of contact for the ESCO.

29 TAX CLEARANCE CERTIFICATES IN RELATION TO PUBLIC SECTOR CONTRACTS

29.1 The ESCO will comply with all relevant obligations referred to in Section 1095 of the Taxes Act (Tax clearance certificates in relation to public sector contracts) and will provide the Client with an appropriate Tax Clearance Certificate referred to in that Section and will comply with all relevant obligations under the scheme referred to in that Section.

29.2 In the event of any of the foregoing obligations not being complied with or actions not being undertaken or in the event of non-continuation of compliance by the ESCO, the Client may suspend or refuse to make payments under this Agreement until such date as the ESCO demonstrates to the Client's satisfaction that the ESCO is fully in compliance with Section 1095 of the Taxes Act.

30 LIMITATION ON LIABILITY & INDEMNITY

30.1 The Client shall not be liable to the ESCO for any special, indirect, consequential, remote, punitive or exemplary loss or loss of profit or revenue, loss of use or similar damages suffered by the ESCO arising out of, under or in connection with this Agreement.

30.2 The ESCO hereby irrevocably indemnifies and holds harmless the Client from and against any costs, claims, demands, damages, expenses, losses, liabilities, fines, proceedings, actions, charges, penalties directly or indirectly suffered and/or incurred by the Client which arise out of, in connection with, in consequence upon or relate to:

30.2.1 the performance and/or non-performance by the ESCO of its obligations under this Agreement; and/or

30.2.2 the acts, errors, omissions, recklessness or negligence of the ESCO or its officers, contractors, subcontractors, employees, agents or personnel.

30.3 The ESCO shall have no liability in respect of proceedings issued by the Client arising out of, under or in connection with this Agreement after the expiration of 6 months from the expiry of the Supply Period.

30.4 Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

31 INSURANCES

31.1 From the date of execution of this Agreement and throughout the Term the ESCO shall maintain in full force and effect and at its own expense the following insurances from a reputable insurance company with a place of business in Ireland or the United Kingdom and licensed to write business in Ireland:

31.1.1 Public and Products Liability Insurance of €6.5 million (six and a half million euro) for each and every claim for the Term of this Agreement; and

31.1.2 Employer's Liability Insurance of €13.0million (thirteen million euro) for each and every claim for the Term of this Agreement.

31.2 Upon the Client's request the ESCO shall immediately provide documentary evidence satisfactory to the Client to show that the insurance policies required under this clause are being maintained.

31.3 The ESCO shall immediately inform the Client in writing upon any change to its insured status.

32 NO AGENCY

32.1 The ESCO will at all times be an independent contractor and nothing in this Agreement will be construed (and the ESCO will not hold out its relationship) as constituting a partnership, joint venture, representation, agency or employer and employee relationship between the Client and the ESCO or any of the ESCO's or its Subcontractors' employees.

33 REPRESENTATIONS AND WARRANTIES

33.1 The ESCO warrants, represents and undertakes to the Client that:

33.1.1 it has all requisite power, authority, licences, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder.

33.1.2 its execution, delivery and performance of this Agreement have been duly authorised by or are in accordance with its organic instruments and this Agreement has been duly executed and delivered for it by the signatories so authorised and it constitutes its legal, valid, and binding obligation.

33.1.3 its execution, delivery and performance of this Agreement will not breach or violate, or constitute a default under any contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected.

33.1.4 it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any Applicable Laws, which would materially and adversely affect its ability to perform hereunder.

33.1.5 before commencing performance of this Agreement, it shall have provided proof and documentation of required insurance pursuant to this Agreement.

it shall make available, upon reasonable request by the Client, all documents relating to its performance under this Agreement, including all contracts and subcontracts entered into.

33.1.6 the Equipment is or will be compatible with all other mechanical and electrical systems, subsystems, or components with which the Equipment interacts, and that, as installed, neither the Equipment nor such other systems, subsystems, or components will materially adversely affect each other as a direct or indirect result of Equipment installation or operation.

33.2 The Client warrants, represents and undertakes to the ESCO that it shall provide all access to the Premises reasonably required by the ESCO to carry out its obligations under this Agreement. The ESCO shall be granted immediate access to the Premises to make emergency repairs/replacements or corrections as it may in its discretion determine are needed.

34 CHANGE IN LAW

34.1 Where a change in Relevant Legislation occurs or is about to occur either Party may give the other written notice of its opinion as to any adjustment of the Supply Price necessitated by the change in Relevant Legislation.

34.2 The Parties shall meet within 10 (ten) days of the written notice referred to in Clause 34.1 to discuss and agree any of the proposed changes set out in the notice and in the absence of such agreement the Parties shall refer the matter to dispute resolution in accordance with Clause 43.

35 CONFIDENTIALITY

35.1 This Agreement creates a confidential relationship between the ESCO and the Client and both Parties acknowledge that in carrying out their duties and obligations under this Agreement each will have access to Confidential Information of the other.

35.2 Each of the Parties to this Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained arising from their participation in this Agreement and shall not disclose same to any third party unless authorised in writing by the other Party except to:

35.2.1 its professional advisers subject to the provisions of this Clause 35.

35.2.2 as may be required by law.

35.2.3 as may be necessary to give effect to the terms of this Agreement subject to the provisions of this Clause 35; or

35.2.4 in the case of the Client by request of any person or body or authority whose request the Client or persons associated with the Client (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.

35.3 Neither Party shall disclose any Confidential Information to any third party unless authorised in writing by the other Party. The ESCO may only make copies of Confidential Information where necessary for the performance of the Services.

35.4 Upon cessation of the Services, termination or expiration of this Agreement or upon either Party's written request, each Party shall return or destroy to the other Party all Confidential Information in their control and the ESCO shall erase any Confidential Information held by it in electronic form. The ESCO shall furnish written confirmation to that effect as soon as possible if requested by the Client in writing.

35.5 The ESCO undertakes to comply with all reasonable directions of the Client with regard to the use and application of all and any Confidential Information and shall execute the Confidentiality Agreement simultaneously with the execution of this Agreement.

35.6 The obligations in this Clause 35 will not apply to any Confidential Information:

35.6.1 in the ESCO's possession (with full right to disclose) before receiving it from the Client.

35.6.2 which is or becomes public knowledge other than by breach of this clause.

35.6.3 is independently developed by the ESCO without access to or use of the Confidential Information; or

35.6.4 is lawfully received from a third party (with full right to disclose).

35.7 The ESCO undertakes to comply with all directions as to local security arrangements deemed reasonably necessary by the Client including, if required, completion of documentation under the Official Secrets Act, 1963 and comply with any vetting requirements of the Client including by police authorities.

35.8 The ESCO acknowledges that the security of the State and its information is of paramount importance to the Client. Accordingly, the ESCO confirms that it will, from time to time, during the currency of this Agreement as may be requested by the Client submit full personal details (including those of Subcontractors) of persons assigned to provide the Works and/or the Services (or any part thereof) under this Agreement. The ESCO further acknowledges that checks may be carried out in relation to all such personnel by police authorities and the ESCO shall comply with all reasonable directions of the Client arising therefrom.

35.9 In circumstances where the Client is subject to the provisions of the Freedom of Information Acts, 1997 and 2003, then in the event of the Client receiving a request for information related to this Agreement, the Client shall consult with the ESCO in respect of the request. The ESCO shall identify any information that is not to be disclosed on grounds of commercial sensitivity and shall state the reasons for this sensitivity. The Client will consult the ESCO about this sensitive information before making a decision on any Freedom of Information request received.

35.10 The terms of this Clause 35 shall survive expiry, completion or termination for whatever reason of this Agreement for any reason.

36 WAIVER

36.1 Failure of either Party to enforce or exercise at any time or for any period any term of this Agreement does not constitute and shall not be construed as a waiver of such term and shall not affect that Party's right to enforce such term or any other term contained in this Agreement at a later date.

37 NOTICE

37.1 Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail to the address shown below or to such other persons or addresses as are specified by similar notice.

To the ESCO: Attention: [ ]
Include copy to: [ ]

To the Client: Attention: [ ]
Include Copy to: [ ]

38 SEVERABILITY

38.1 The invalidity or unenforceability of any term of or any right arising pursuant to this Agreement shall not adversely affect the validity or enforceability of the remaining terms and rights.

39 COOPERATION

39.1 Each Party will cooperate with and assist the other Party, its advisors, consultants, legal advisors, employees, agents, and representatives at all times during the Term of this Agreement.

39.2 **CONFLICTS, REGISTRABLE INTERESTS AND CORRUPT GIFTS**

39.3 The ESCO confirms that it has carried out a conflicts of interest check and is satisfied that it has no conflicts in relation to the Services and its obligations undertaken under this Agreement. The ESCO hereby undertakes to advise the Client forthwith should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with the Client's directions in respect thereof.

39.4 Any registrable interest involving the ESCO (and any Subcontractor or agent as the case may be) and the Client, the Ceann Comhairle (Speaker), any member of the Government, any member of the Oireachtas or their relatives must be fully disclosed to the Client immediately upon such information becoming known to the ESCO and to comply with the Client's directions in respect thereof to the satisfaction of the Client. The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995 (as amended).

39.5 The ESCO shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract.

39.6 Any breach of Clause 39.5 or the commission of any offence by the ESCO, any subcontractor, agent or employee under the Prevention of Corruption Acts, 1889 to 2005 shall entitle the Client to terminate this Agreement forthwith and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the ESCO of the amount or value of any such gift, consideration or commission.

40 MEDIA

40.1 No media releases, public announcements or public disclosures relating to this Agreement or its subject matter, including but not limited to promotional or marketing material, shall be made by the ESCO without the prior written consent of the Client

41 ENTIRE AGREEMENT AND PRIORITY OF DOCUMENTS

41.1 This Agreement when executed together with all Schedules attached hereto or to be attached hereto as provided for by this Agreement together with the Invitation to Tender shall constitute the entire contract between both Parties and supersedes and replaces any previous agreements, arrangements or understandings between the Parties in respect of the subject matter hereof.

41.2 In the event of any conflict or discrepancy between the provisions of this Agreement and/or the Schedules attached hereto or to be attached hereto and/or the Invitation to Tender the following priority of documents shall apply (in descending order):

41.2.1 this Agreement

41.2.2 the Schedules

41.3 This Agreement may not be amended or modified except by a written agreement signed by both Parties.

42 PAY AND CONDITIONS OF EMPLOYMENT

42.1 The ESCO shall ensure that the rates of pay and the conditions of employment, including pension contributions, comply with all applicable law. This applies to workers who are posted workers (within the meaning of Directive 96/71/EC of the European Parliament and the Council of the 16 December 1996 concerning the posting of workers in the framework provision of services), except that the ESCO's obligation to make pension contributions under registered employment agreements does not apply to posted workers who already contribute, or whose contributions are paid, to a supplementary pension scheme established in another member state of the European Union.

42.2 The ESCO undertakes to observe, in relation to the employment of workers on the Site, the Safety, Health and Welfare at Work Act, 2005 and all employment law including the Employment Equality Act 1998, the Industrial Relations Acts 1946 to 2004, the National Minimum Wage Act 2000, and regulations, codes of practice and legally binding determinations.

42.3 The Client may seek information under this Clause 42. only for the purpose of ensuring the obligations referred to herein in respect of workers have been properly discharged. All documents and records received under this Clause 42. shall be returned to the person providing them or destroyed if the Client is satisfied that the relevant employer has complied with legal obligations to workers.

42.4 If the ESCO has not complied with this Clause 42 the Client shall (without limiting its other rights or remedies) be entitled to estimate the amount that should have been paid to workers and contributions that should have been made on their behalf, and the Client may deduct the estimated amount from any payment due to the ESCO until the Client is satisfied that all proper amounts have been paid.

42.5 If the ESCO does not comply with this Clause, it shall pay to the Client any costs the Client incurs in investigating and dealing with such non-compliance.

43 DISPUTE RESOLUTION

43.1 Subject to the provisions of Clause 44 if a dispute or difference arises between the Parties with regard to or in connection with this Agreement, such dispute shall be referred in writing to senior members of each of the Client and the ESCO who will use good faith efforts to resolve such dispute within 30 (thirty) days of such referral.

43.2 If the Parties are unable to resolve the matter within the thirty (30) day period in Clause 43.1 the Client and the ESCO will attempt to resolve the dispute in question by mediation. Any such mediation will be conducted by a mediator to be mutually agreed upon between the Parties or in the absence of such agreement upon the request of either Party to be appointed by the President for the time being of Engineers Ireland. If a settlement of the dispute is not achieved through the mediation process within three months either Party may refer the dispute to arbitration in accordance with Clause 43.3.

43.3 Where the Parties are unable to resolve any dispute which may arise under or in connection with this Agreement either through good faith efforts or mediation as set out in Clauses 43.1 and 43.2 either Party may by provision of notice in writing refer the matter to arbitration. The final decision of who will act as arbitrator will be mutually agreed upon between the Parties or in the absence of such agreement the decision as to who to appoint as will be referred upon the request of either Party to the President for the time being of Engineers Ireland. Every such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 2010 or any statutory amendment therefore for the time being in force.

44 EXPERT DETERMINATION

44.1 Where a dispute arises under or in connection with this Agreement in relation to the quality of service and performance as required under this contract. The Parties agree in the first instance to use good faith efforts to resolve the dispute within 30 (thirty) days as set out in Clause 43.1. If the dispute is not resolved in that time, then either Party may submit the matter to an independent expert for determination.

44.2 Where a matter is to be referred to an independent expert under this Agreement for determination, the independent expert shall be an independent engineer with a minimum of 10 (ten) years' experience (or other person with relevant expertise) agreed upon by the Parties, or, if agreement is not reached within five days of either Party giving notice to the other that it wishes to refer a matter to an independent expert, such independent engineer or other person with relevant expertise will be nominated by the President for the time being of Engineers' Ireland upon the request of either Party.

44.3 The Parties are entitled to make submissions to the independent expert (including oral submissions) and will provide (or procure that others provide) the independent expert with all such assistance and documents as the independent expert may reasonably require for the purpose of reaching a decision. Each Party shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel as the other Party reasonably requires making a submission under this clause.

44.4 The Parties agree that the independent expert may in its reasonable discretion determine such other procedures to assist with the conduct of the determination as it considers appropriate.

44.5 The independent expert shall act as an expert and not as an arbitrator. The independent expert's decision shall be final and binding on the Parties in the absence of fraud or manifest error.

44.6 Each Party shall bear its own costs in relation to the reference to the independent expert. The independent expert's fees and any costs it properly incurs in arriving at its determination (including any fees and costs of any advisers appointed by the independent expert) shall be borne by the Parties in equal shares or in such proportions as the independent expert shall direct.

44.7 Pending final resolution of any dispute under this Agreement the ESCO will proceed diligently with the performance of its duties and obligations under this Agreement and the Client will continue to make payments of all undisputed amounts in accordance with this Agreement. Any disputed calculation will not take effect until final determination of the dispute in accordance with Clause 33 or 44 (as appropriate).

45 GOVERNING LAW

45.1 This Agreement shall be governed by and confirmed in all respects in accordance with the laws of Ireland.

Schedule 1 – Premises, Equipment & Agreed Connection Point(s)

1. Premises

Wilson's Hospital School 63300Q at Heathlands, Multyfarnham, Co. Westmeath, N91 AX97

2. Equipment

The ESCO will be responsible for operating, maintaining, repairing and replacing all plant and equipment installed within the containerised biomass cabin and fuel store including but not limited to the list of equipment and plant provided below:

- Boilers
- Heat exchanger.
- Buffer vessel
- Pumps
- All associated valves and gauges
- Fuel feed system including Stoke auger and Ash screw
- Fuel Storage
- Biomass MCC.
- Pressurisation units and expansion vessels.

3. Existing Equipment

[*Not applicable]*

4. Agreed Connection Points

The ESCO contractor shall allow for testing and commissioning of the Biomass plant off site and provide certification for client acceptance prior to delivering to site. Post delivery to site, the ESCO contractor shall allow for liaison with the separately appointed Works Contractor and re-testing and re-commissioning of the Biomass plant onsite and provide certification for client acceptance.

The ESCO shall be responsible for the installation of the prefabricated biomass unit and all associated equipment as outlined in the Biomass Performance Specification.

The unit shall be located as indicated on the site layout drawing and delivered as per the Biomass Performance Specification.

Tie-in points for pipework, electrical and controls are provided in the heating contract and detailed in the site plan.

Schedule 2 – Final Design Documents & Fuel Specification

1. ESCO design documents:

Tenderers are requested to review the proposals and are at liberty to make recommendation albeit without prejudice that the Client may consider as being a benefit to the contract.

2. Client design documents:

As per Volume A – Works Requirements included within the Works Contract. The Biomass Boiler Plant will be the Priority/Lead Plant at all times.

3. Energy System Modification Schedule:

4. Note: The Existing Equipment modification schedule should be considered here – what modification or upgrade of the Existing Equipment may be required to accommodate the new Equipment being installed by the ESCO. There are no modifications envisaged as the biomass plant acting as lead/priority boiler has been considered. The ESCO provider is expected to carry out an inspection of the arrangement proposed, particularly with the connection from the biomass plant into the existing LTHW provision.

5. Fuel Specification:

Fuel Type	**Specification**	
Wood Pellet	Produce very high heat – 4.8kWh per kg based on gross CV Produce very low ash ≤ 1% EN Plus A1 certified WFQA Approved & Certified FSC Certified	

Schedule 3 – Not Applicable

Schedule 4 – The Services

- Procurement & delivery of fuel
- Satisfactory Operation of the Energy Cabin, fuel store & enclosure as outlined in this contract
- Removal of residual combustion ash
- Maintenance & Repair/Replacement of equipment within the Energy Cabin and fuel store & enclosure. A minimum of 4 number of annual services will be required.
- Obtain monthly meter readings
- Submission of quarterly meter readings to SEAI as per SSRH Scheme operating guidelines
- Submission of fuel bills to SEAI 2x annually as per SSRH Scheme operating guidelines
- Submission of Operations Reports (2x annually) and Annual Declaration to SEAI as per SSRH
- SSRH operating guidelines
- Respond to any queries from SEAI relating to this site following Periodic Inspections or other, in a timely manner
- Local Energy Supply Contract Administration i.e. issuing invoices, credit control and financial control
- Customer Service/Tech Support based at ESCO and Provision of Client Account Manager from ESCO

Schedule 5 – Maintenance Schedule

The ESCO shall provide a planned preventive maintenance regime in accordance with the tasks and durations outlined in the BESA Document SFG20 and manufacturer's requirements, Irish Standards, or Best Practice whichever is more onerous on all items of equipment listed in Schedule 1.

Where the SFG20 compliance specifications relate to the UK; the parties are required to follow the equivalent Irish statutory requirements, I.S. standards, industry Codes of Practice, and similar.

For the avoidance of doubt, a minimum of 2 number full boiler services is required in each calendar year. At least one service must be at the end of August/beginning of September when school resumes after the summer break.

Maintenance of the biomass boiler shall be carried out a minimum of twice per annum. The first scheduled maintenance visit shall be undertaken approximately two weeks prior to the commencement of the school year in September, ensuring that the boiler is fully operational and ready for the heating season.
The second scheduled maintenance visit shall be undertaken during the Christmas holiday period, when the school is unoccupied, to minimise disruption to normal school operations.

Cost for Maintenance, Servicing and repairs/replacements shall be included with the cost of heat supply in the c/kWhr rate.

Schedule 6 – Guaranteed Standards of Performance

This schedule is to be populated with a table of the technical standards of performance required by the Client from the ESCO e.g. temperature of hot water at Agreed Connection Points, voltage of electricity supply at Agreed Connection points etc. A Failed Service Credit amount should be set out against each – for example, if the temperature of hot water being delivered at an Agreed Connection Point is to be 82degC then a €/degC shortfall amount (or other 'penalty' amount) can be inserted here – this may also be set out on a weekly/monthly/seasonal basis as required.

1. Guaranteed Standards of Performance:

1.1. The ESCO shall provide the Supply in accordance with the Guaranteed Standards of Performance as tabulated below and shall ensure that during the relevant seasonal operating times:

1.1.1. The Maximum Guaranteed Energy Capacity will be continuously available; and

1.1.2. The Minimum Supply Temperature to the primary side of heat exchanger will be continuously maintained when the Clients Energy Requirement is less than or equal to the Maximum Guaranteed Energy Capacity.

1.2. The Guaranteed Standards of Performance will not apply during a pre-agreed Maintenance Day as set out in the Maintenance Schedule.

Season	**Winter:** 1 September to 31 May
Standard School Operating Times*	Monday – Friday 08:00 to 03:30pm and frost protection
Maximum Guaranteed Energy Capacity	100 kW Output
Minimum Supply Temperature to primary side of the plate heat exchanger when energy demand is less than or equal to the Max Guaranteed Energy Capacity	82^{o}C
**This is the standard operating times; however the school may require heat at other times with after hour activities and events*.	

2. Energy Failure:

2.1. An "Energy Failure" shall be deemed to have occurred when one of the following conditions occur over a one Hour period at an Agreed Connection Point:

2.1.1. The Client's Energy Requirement is less than or equal to the Maximum Guaranteed Energy Capacity and the biomass boiler is not able to provide this Energy Requirement.

2.1.2. The Client's Energy Requirement is Greater than the Maximum Guaranteed Energy Capacity and the biomass Boiler is not able to provide the maximum guaranteed energy capacity

2.2. An "Energy Failure" shall be deemed to have occurred when the Minimum Supply Temperature to primary side of the plate heat exchanger cannot be achieved where the energy demand is less than the Maximum Guaranteed Energy Capacity over a one Hour period at the temperature sensor on the primary side of the heat exchanger.

2.3. The Parties acknowledge that an Energy Failure may occur even if the Client has obtained a supply of Energy through a source other than the Agreed Connection Point such as through its independent back-up boilers.

2.4. A failure to achieve the Guaranteed Standards of Performance may occur even though the Client has itself obtained an independent supply of Energy.

3. Failed Service Credits:

3.1. The ESCO is entitled to one Hour grace period in each calendar day up to an aggregate limit of 10 (ten) grace periods in a Month.

3.2. A Failed Service Credit shall apply for each Energy Failure that occurs beyond the one Hour grace period on a given calendar day.

3.3. Failed Service Credits shall be calculated in the following manner:

Failed Service Credit (€) = Energy Supply Deficit X Failed Service Factor*

**Failed Service Factor triples if the failure persists beyond one calendar week.*

4. Energy Failure Monitoring:

4.1. The BMS provided under the works contract will incorporate the facility to monitor, log and report on any Energy Failures. The following parameters must be monitored:

4.1.1. The flow and return temperatures at each Agreed Connection Point.

4.1.2. The flow and return temperatures at the primary side of the plate heat exchanger

4.1.3. The flow rate at each Agreed Connection Point.

4.1.4. From the above compute the energy flow; and

4.1.5. Where a heat exchanger is used the secondary side of the Agreed Connection Point will be used.

4.2. The Energy Supply Deficit will be established using the difference between average Supply Temperature set point over the relevant one Hour period and actual average Supply Temperature over the relevant one Hour period in conjunction with the measured flow rate and the specific heat capacity of water.

4.3. The BMS provided under the works contract will log each Hour in which an Energy Failure occurs and calculate the Energy Supply Deficit for each applicable Hour.

4.4. The BMS provided by the works contract will log all readings and calculations and keep these for 12 months.

4.5. A GSM modem will be provided under the works contract to allow the ESCO the ability to remotely access the BMS for the purpose of monitoring the parameters in clause 4.1 above. Both parties will be entitled to verify readings and BMS values from time to time.

Schedule 7 – Roles & Responsibilities

It will be the role & responsibility of the ESCO to maintain, service, repair/replace and provide heat to the school from the Energy Cabin located on the school grounds and as installed as part of the works contract associated with this tender.

The duration of this agreement is 15 years.

The school will pay for this service on a cent/kWhr basis, based on the heat used.

Schedule 8 - Product Life Cycle Responsibilities

The ESCO shall ensure that all maintenance activities are carried out to a high standard as outlined in Schedule 5.

As part of this agreement, The ESCO is responsible for the efficient operation and upkeep of the equipment outlined in Schedule 1 throughout its life cycle.

As part of this agreement, the ESCO will be required to review the:

- All Circulating Pumps during year seven and replace them prior to the end of year 10.
- 1 No. expansion vessel during year 10 and replace it prior to the end of year 15
- 1 No. plate heat exchanger during year 10 and replace it prior to the end of year 15.

All other equipment outlined in Schedule 1 is not anticipated to reach the end of their lifespan until the conclusion of this Agreement. Should any item or equipment reach the end of its lifespan prematurely, it shall be the responsibility of the ESCO to replace them at their own cost.

IN WITNESS whereof this deed was executed on the day and year first herein written.

GIVEN under the common seal of
the Client

_____
Client Representative

_____
Print name

_____
Witness

_____
Print name

GIVEN under the common seal of
the ESCO

_____
Director/Company Secretary

_____
Print name

_____
Director

_____
Print name