

DATED

202[0]

[ENERGY SOLUTIONS OXFORDSHIRE]

AND

[CONTRACTOR]

AGREEMENT

FOR WORKS RELATING TO ENERGY IMPROVEMENT MEASURES TO BE CARRIED OUT AT
[]

ENERGY SOLUTIONS OXFORDSHIRE TEMPLATE CONTRACT

Draft: 3rd September 2020

TABLE OF CONTENTS

Clause/Schedule	Page No:
1. Definitions and Interpretation	1
2. Contractor’s General Obligations	11
3. Drawings, Details, Documents and Information	19
4. Obligations in Respect of Contractor’s Proposals and Information	20
5. Access by ENERGY SOLUTIONS OXFORDSHIRE’s Representative.....	20
6. Supervision of the Works by the Contractor	20
7. Title to Property, Contractor’s Indemnities and Insurance.....	21
8. ENERGY SOLUTIONS OXFORDSHIRE’s representative’s Power to Issue Instructions.....	24
9. Sub-Contracting.....	25
10. Commencement and Delays in the Execution of the Works.....	26
11. Completion and Defective Work	28
12. ENERGY SOLUTIONS OXFORDSHIRE’s M&V Services and Energy Savings Assurance.....	33
13. The Contract Sum	34
14. Payment.....	34
15. Effect of Breach or Termination of Energy Services Agreement.....	35
16. Collateral Warranty	36
17. Liability	37
18. Termination	38
19. Consequences of Termination.....	40
20. CIS – Finance Act 2004	41
21. CDM Regulations	41
22. Force Majeure	42
23. Confidentiality	44
24. Announcements	46
25. Further Assurance	46
26. Costs and Payments	47
27. Interest	47
28. Entire Agreement	47
29. Invalidity	48
30. Amendments, Waivers and Rights	48
31. Assignment	49
32. Third Party Rights	49
33. Notices.....	49

34. Counterparts	50
35. Dispute Resolution	50
36. Governing Law and Jurisdiction.....	53
37. Execution	53
SCHEDULE 1 : Works Specification	54
SCHEDULE 2 : Contractor’s Proposals.....	55
SCHEDULE 3 : Works Programme	56
SCHEDULE 4 : Site Access/Security Protocol.....	57
SCHEDULE 5 : Completion Tests	58
SCHEDULE 6 : Energy Savings Assurance	59
SCHEDULE 7 : Approved Sub-Contractors	61
SCHEDULE 8 : Change Protocol.....	62
SCHEDULE 9 : Payment Milestones for Contract Sum.....	64
SCHEDULE 10 : Notices	65
SCHEDULE 11 : Template of Weekly Report	66
SCHEDULE 12 : Manufacturer’s Warranties	67
SCHEDULE 13 : Form of Collateral Warranty	68
SCHEDULE 14 : Limitation Amount	69
SCHEDULE 15 : Client Policies	70

THIS AGREEMENT is dated 202[0] and made between:

- (1) **[Insert name of ENERGY SOLUTIONS OXFORDSHIRE]**, a company incorporated and registered in England and Wales with company number **[Insert]** whose registered office is at **[Insert]** ("**ENERGY SOLUTIONS OXFORDSHIRE**"); and
 - (2) **[Insert name of Contractor]**, a company incorporated in England and Wales with company number **[Insert]** whose registered office is at **[Insert]** (the "**Contractor**"),
- (each a **Party** and together the **Parties**)

INTRODUCTION

- (A) Under the terms of the Energy Services Agreement between ENERGY SOLUTIONS OXFORDSHIRE and its Client, ENERGY SOLUTIONS OXFORDSHIRE is obliged to procure the carrying out of certain installation works and completion tests so as to implement various energy improvement measures at the Site that will deliver energy savings to the Client, and to provide to the Client certain measurement and verification services and a performance assurance in relation to the savings to be achieved (together the "**Project**").
- (B) Under the terms of the Energy Services Agreement, ENERGY SOLUTIONS OXFORDSHIRE is entitled to sub-contract the installation works in relation to the implementation of the Project and the Client has approved the appointment by ENERGY SOLUTIONS OXFORDSHIRE of the Contractor.
- (C) The Contractor shall provide equipment that is suitable for the Site based on its location and site conditions and other requirements defined in this Agreement.
- (D) Accordingly, ENERGY SOLUTIONS OXFORDSHIRE has requested the Contractor to execute and complete the Works to fulfil the implementation by ENERGY SOLUTIONS OXFORDSHIRE of the Works under the Energy Services Agreement.
- (E) The Contractor shall provide the Works to ENERGY SOLUTIONS OXFORDSHIRE in accordance with the terms and conditions of this Agreement.

IT IS AGREED that:

1. DEFINITIONS AND INTERPRETATION

1.1 Defined terms

In this Agreement and in the Introduction:

"**First Year Performance Evaluation**" has the meaning given to it in Schedule 6;

"**Applicable Law**" means:

- (a) any applicable statute, directive, byelaw, regulation, rule, order, delegated legislation or subordinate legislation;

- (b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;
- (c) mandatory guidelines and measures issued by a competent public authority; and
- (d) any applicable judgement of a relevant court of law which is a binding precedent in England and Wales, in each case in force in England and Wales, relevant to the Works and the Works Specification;

"**Business Day**" means a day (not being a bank holiday, Saturday or Sunday) when banks generally are open in the City of London for the transaction of general banking business;

"**CDM Regulations**" means Construction (Design & Management) Regulations 2015 and any statutory regulations re-enacting, modifying or replacing them and any codes of practice and guidance published in connection with them;

"**CEDR**" means the Centre for Effective Dispute Resolution;

"**Change**" means any change, variation, addition, deletion or modification to the Works or the Works Programme that is initiated by ENERGY SOLUTIONS OXFORDSHIRE by submitting a Change Request;

"**Change Request**" means a written request submitted by ENERGY SOLUTIONS OXFORDSHIRE requesting a Change in accordance with Schedule 8 and setting out the specific Change proposed in respect of the Works;

"**Client**" means *[Insert name of client]*, being the client of ENERGY SOLUTIONS OXFORDSHIRE under the Energy Services Agreement and the owner or lessee of the Site;

"**Client CDM Policy**" means the Client's CDM policy included within the Site Access/Security Protocol as updated and notified by the Client or ENERGY SOLUTIONS OXFORDSHIRE to the Contractor from time to time;

"**Client Policies**" means the policies of the Client set out in Schedule 15 that must be taken into account by the Contractor under clause 2.11;

"**Client's Representative**" means *[Insert name and title]*, or such replacement person or firm notified in writing by the Client or ENERGY SOLUTIONS OXFORDSHIRE to the Contractor from time to time to act as Client's representative;

"**Completion**" has the meaning given to it in clause 11.3(a);

"**Completion Date**" means *[Insert the proposed Completion Date]*;

"**Completion Notice**" has the meaning given to it in clause 11.3(a);

"**Completion Tests**" means the tests to be carried out in respect of the EIMs to enable Completion as set out in Schedule 5;

"**Confidential Information**" has the meaning given to it in clause 23.1;

"**Confirmation Notice**" means a notice signed by ENERGY SOLUTIONS OXFORDSHIRE pursuant to Schedule 8 setting out the agreed details of a Change;

"**Consents**" means all permissions, consents, approvals certificates, permits, licences, agreements and authorities (whether statutory, regulatory, contractual or otherwise) required for the Contractor to perform its obligations under this Agreement including without limitation any Planning Consents;

"**Construction Industry Scheme**" and/or "**CIS**" means the mandatory tax payment requirements set out in the Finance Act 2004 and amended by SI 2005/2045;

"**Construction Phase Plan**" has the meaning given to it in the CDM Regulations;

"**Contract sum**" has the meaning given to it in clause 13;

"**Contractor Related Party**" means the Contractor's directors, officers, servants, employees, agents (in that capacity including the Contractor's Representative), workmen, suppliers and contractors of any tier and their directors, officers, servants, employees or agents acting in that capacity in relation to the Works and any person on or at the Site at the express or implied invitation of the Contractor (other than ENERGY SOLUTIONS OXFORDSHIRE or any ENERGY SOLUTIONS OXFORDSHIRE Related Party);

"**Contractor's Group**" means the Contractor, its affiliates, subsidiaries from time to time and any holding company of the Contractor from time to time and all other subsidiaries of any such holding company from time to time and, in each case, "**member of the Contractor's Group**" shall be construed accordingly;

"**Contractor's Proposals**" means the Contractor's detailed proposals for meeting the requirements of the Works Specification as set out in Schedule 2 or as amended from time to time in accordance with this Agreement;

"**Contractor's Representative**" means [*insert name of individual*] or such replacement person or firm notified in writing by the Contractor to ENERGY SOLUTIONS OXFORDSHIRE from time to time to act as Contractor's representative;

"**Defect**" means any defect, shrinkage or other fault in respect of the Works which arises out of any breach of this Agreement by the Contractor and/or failure of the Contractor to comply with its obligations under this Agreement, including where the Works do not meet the Works Specification or function or operate in accordance with the Energy-related Technical Performance Outputs, but for the avoidance of doubt does not include any defect, shrinkage or other fault to the extent caused by:

- (a) misuse caused by the Client;
- (b) operating the Site, or equipment at the Site which forms part of the Works, in a manner that breaches or is outside the instructions for use or operating instructions and parameters contained in the Handover Documents or the Manufacturer's Warranties;

- (c) modifications not approved or executed by the Contractor or its subcontractors; or
- (d) normal wear and tear.

"**Defects Liability Period**" for the Works shall commence on Completion and continue for two (2) years;

"**Delay Event**" has the meaning given to it in clause 10.9;

"**Delay Liquidated Damages**" has the meaning given to it in clause 10.4;

"**ENERGY SOLUTIONS OXFORDSHIRE Related Parties**" means ENERGY SOLUTIONS OXFORDSHIRE's directors, officers, servants, employees, agents (in that capacity including ENERGY SOLUTIONS OXFORDSHIRE's Representative), workmen, suppliers and contractors of any tier (other than the Contractor or any Contractor Related Party) and their directors, officers, servants, employees or agents acting in that capacity in relation to the Works and any person on or at the Site at the express or implied invitation of ENERGY SOLUTIONS OXFORDSHIRE (other than the Contractor or any Contractor Related Party);

"**ENERGY SOLUTIONS OXFORDSHIRE's Group**" means ENERGY SOLUTIONS OXFORDSHIRE, its affiliates, subsidiaries from time to time and any holding company of ENERGY SOLUTIONS OXFORDSHIRE from time to time and all other subsidiaries of any such holding company from time to time and, in each case, "**member of ENERGY SOLUTIONS OXFORDSHIRE's Group**" shall be construed accordingly;

"**ENERGY SOLUTIONS OXFORDSHIRE's Insurance Policies**" means those insurance policies to be taken out and maintained by ENERGY SOLUTIONS OXFORDSHIRE as provided in clause 7;

"**ENERGY SOLUTIONS OXFORDSHIRE's Representative**" means [*insert name of individual*] or such person or firm notified in writing by ENERGY SOLUTIONS OXFORDSHIRE to the Contractor from time to time to act as ENERGY SOLUTIONS OXFORDSHIRE's Representative;

"**Energy Improvement Measures**" or "**EIMs**" and each one an "**EIM**" means the applicable measures to improve energy performance (in terms of cost, carbon and/or resilience at the Site as set out in the Works Specification and/or Contractor's Proposals);

"**Energy-related Technical Performance Outputs**" means the energy related performance levels and outputs that each EIM is expected to deliver or perform to, as set out in the Works Specification;

"**Energy Savings Shortfall**" has the meaning given to it in Schedule 6;

"**Energy Services Agreement**" means the agreement between ENERGY SOLUTIONS OXFORDSHIRE and the Client dated [*insert date*] pursuant to which ENERGY SOLUTIONS OXFORDSHIRE will procure the carrying out of certain installation works and completion tests so as to implement various energy improvement measures at the Site that will deliver energy savings to the Client, and will provide to the Client certain measurement and verification services and a performance assurance in relation to the savings to be achieved;

"**Expert**" means a person appointed and acting in accordance with clauses 35.5 to 35.11 inclusive;

"**Expert Determination Notice**" has the meaning given to it in clause 35.5;

"**Final Completion**" has the meaning given to it at clause 11.7;

"**Final Completion Notice**" has the meaning given to it in clause 11.7;

"**Finance Act**" has the meaning given to it in clause 20.1;

"**Finance Agreement**" means any agreement between a Finance Provider and the Client setting out the terms on which the Finance Provider will advance funds to ENERGY SOLUTIONS OXFORDSHIRE to make payment to the Contractor pursuant to this Agreement;

"**Finance Provider**" means any company, bank or institution providing finance (directly or indirectly) to the Client to pay for the cost of installing the EIMs and the Works;

"**First Contract Year**" means the period of approximately 12 months, starting on or within 10 days of the date of Final Completion, which shall be used as the verification period under the First Year Performance Evaluation.

"**First Year Performance Evaluation**" has the meaning given to it in Schedule 6.

"**Force Majeure Event**" has the meaning given to it in clause 22.2;

"**Good Faith**" means observing commercial standards of fair dealing in accordance with actions which relate to this Agreement and faithfulness to the agreed common purpose, provided that the Parties shall not be obliged to subordinate their own interests in undertaking an obligation of Good Faith;

"**Good Industry Practice**" means, in relation to any activity conducted by or obligation of a Party, the exercise of that degree of skill, diligence, prudence, and foresight which would reasonably be expected from a skilled and experienced person engaged in the same type of undertaking and under the same or similar circumstances;

"**Handover Documents**" means all drawings, details, documents and information relating to the EIMs and the Works (including, without limitation, operation and maintenance manuals, those required for the health & safety file (whether or not complete) and any licences relating to the Site and/or the Works) prepared by or on behalf of the Contractor for the Works, presented in a standard and readily-used format which is capable of use by ENERGY SOLUTIONS OXFORDSHIRE and/or Client and/or a new contractor together with detailed instructions as to the extent to which occupier/operator of the Site should not alter any settings or otherwise intervene in the Works so as to avoid a reduction in the energy savings performance or technical output performance of the EIMs;

"**Hazardous Materials**" means any products or articles or substances that are capable of posing a significant risk to human health, safety or property or the environment including without limitation all pollutants, toxic or hazardous waste, when transported, stored or during any handling or use;

"**Insolvent**" means in relation to a Party any of the following:

- (a) a Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts under the Insolvency Act 1986; or
- (b) a Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of a Party; or
- (d) an application is made to court, or an order is made for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over a Party; or
- (e) the holder of a qualifying floating charge over the assets of a Party has become entitled to appoint or has appointed an administrative receiver; or
- (f) a person becomes entitled to appoint a receiver over the assets of a Party or a receiver is appointed over the assets of a Party; or
- (g) a creditor or encumbrance of a Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within 14 days; or
- (h) any event occurs, or proceeding is taken, with respect to a Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) above (inclusive);

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Liabilities" includes, in relation to any matter, judgement, proceeding, internal cost (excluding any loss of the type set out at clause 17.3) or demand: any and all direct costs, charges, claims, expenses, fines, debts, losses, penalties, demands, damages, proceedings and other liabilities (including but not limited to legal costs, out-of-pocket costs, court fees, counsel fees and other professional charges and expenses) by a person in relation to such matter;

"Lien" means any lien, encumbrance or restriction of any nature, including but not limited to any mortgage, charge (fixed or floating), pledge, lien, warrant, option, right to acquire, right of pre-emption, assignment by way of security or trust arrangement for the purpose of providing security

or other security interest of any kind (including any retention arrangement), or any agreement to create any of the foregoing;

"**Limitation Amount**" means, in respect of each Party, the amount set out in Schedule 14;

"**Longstop Date**" means [*Insert the proposed Longstop Date (see clause 10.7)*];

"**Make Good Corrections**" shall have the meaning given to it in clause 11.4;

"**Manufacturer's Warranties**" means any warranty, guarantee (including performance guarantees) or similar contractual assurance given by the relevant supplier in respect of the specification, performance, quality or fitness for purpose of any equipment, device, materials, software or component of the EIMs (including any associated assurances as to repair or replacement of such equipment, device, materials, software or component and/or payment of damages or other compensation in certain circumstances) including those listed at Schedule 12;

"**Mechanical Completion**" means the completion of the Works in relation to all of the EIMs, in accordance with clause 11;

"**Mechanical Completion Certificate**" has the meaning given to it in clause 11.3(a);

"**Notice**" means a written notice, demand, request, statement, instrument, certificate or other communication given, delivered or made by either Party to the other under, or in connection with this Agreement and "**Notify**" "**Notifies**" "**Notified**" and "**Notification**" shall be construed accordingly;

"**O&M Agreement**" means any agreement for the operations and maintenance services in relation to any of the EIMs comprised in the Works, between Client and the O&M Contractor, between or ENERGY SOLUTIONS OXFORDSHIRE and the O&M Contractor;

"**O&M Contractor**" means a contractor (which may be the Contractor under this Agreement or may be a third party contractor) employed by Client or ENERGY SOLUTIONS OXFORDSHIRE to supply operations and maintenance services in relation to any of the EIMs comprised in the Works;

"**Planning Consents**" means all planning permissions, listed building consents or building control consents or permissions required for the Contractor to perform its obligations under this Agreement;

"**Principal Contractor**" shall mean the Contractor or in the event of the Contractor ceasing to be the Principal Contractor, such other contractor (as defined by the CDM Regulations) as the Contractor shall appoint as Principal Contractor in consultation with ENERGY SOLUTIONS OXFORDSHIRE and the Client;

"**Prohibited Materials**" means:

- (a) any Hazardous Materials; or

- (b) any materials or substances not in accordance with the relevant British Standards Specification Code or recognised building practice at the time of specification or use or in conflict with any approved relaxation thereof current at the time of specification or use; or
- (c) any other goods, materials, substances or products which at the time of specification or use (given the state of knowledge generally within the construction industry at that time) are known or reasonably thought to be:
 - (i) deleterious or likely to become deleterious; or
 - (ii) deleterious if used under certain physical or atmospheric marine conditions; or
 - (iii) likely to degrade prematurely or require an excessive level of maintenance within the context of the life expectancy of the Works,

and for the purposes of this definition a deleterious material or product is a material or product which by itself or combined with other materials or products:

- (iv) poses a threat to the health and safety of those involved in the construction or use of the Works;
- (v) poses a threat to the structural integrity durability or performance of the whole or part of the EIMs and/or Works and/or the Site; or
- (vi) will reduce prematurely the life expectancy of any of the EIMs and/or any part of the Works;

"Project" has the meaning given to it in clause (A) of the Introduction section above;

"Recognised Investment Exchange" means any recognised investment exchange (as such term is defined in s285 Financial Services and Markets Act 2000, as amended) or an investment exchange that has been recognised by the UK Financial Conduct Authority as a designated investment exchange;

"Regulatory Requirements" means the requirements, directions, practice notes, manuals and/or guidance issued from time to time by those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of either Party;

"Representation" means representation, warranty, statement, assurance, covenant, undertaking, indemnity, guarantee or commitment (whether contractual or otherwise);

"Site" means the premises owned or leased by the Client at **[Insert address of site]**;

"Site Access/Security Protocol" means the information provided by Client regarding arrangements and restrictions relating to access, security, safety and storage at the Site set out in Schedule 4.

"Snagging Matters" means, notwithstanding that:

- (a) the Contractor has installed the EIMs and completed the Works in accordance with the terms of this Agreement; and
- (b) all of the Completion Tests of all aspects of the Works have been passed in accordance with clause 11.2,

minor items of outstanding work which would not materially impair operation of the EIM's and/or the Works in accordance with this Agreement, and as specified by ENERGY SOLUTIONS OXFORDSHIRE's Representative in the Snagging Notice;

"Snagging Notice" means has the meaning given to that term in clause 11.8(b);

"Subcontractors" means the subcontractors to which the Contractor may subcontract a portion of the Works to be performed under the Agreement pursuant to the provisions of clause 9 and as set out in Schedule 7;

"Tax" means any form of tax, levy, impost, duty, charge, contribution or withholding of any kind imposed, collected or assessed by, or payable to, a Tax Authority and all penalties, charges, surcharges, fines, costs and interest included in or relating to any of the foregoing or to any obligation in respect of any of the above;

"Tax Authority" means any government, state or municipality or any local, state, federal or other fiscal, revenue, customs or excise authority, body or official in the United Kingdom or elsewhere;

"Technical Adviser" means any technical adviser appointed by the Finance Provider to, amongst other duties, witness the Completion Tests;

"Termination Payment" has the meaning given to it in the Energy Services Agreement;

"Termination Sum" has the meaning given to it at Clause 15.3;

"Third Party" shall mean such third parties (including but not limited to the Client) notified by ENERGY SOLUTIONS OXFORDSHIRE to the Contractor as having an interest in the Site or the Project;

"VAT" means value added tax or any similar tax from time to time replacing it or performing a similar fiscal function imposed by the Value Added Tax 1994;

"Weekly Report" has the meaning given to it in clause 4.4;

"Wilful Misconduct" means a deliberate, intentional and conscious or reckless disregard of a material obligation by a Party and/or any employee (of the rank of manager or supervisor or above) agent or contractor of a Party. The expression shall not however include any error of judgement or mistake made in Good Faith in the exercise of any function or authority of a Party;

"Works" means the design, supply, installation, testing and commissioning, of the EIMs and rectification of defects therein, as described in the Works Specification and more fully detailed in the Contractor's Proposals;

"**Works Programme**" means the programme for implementation of the Works as set out in Schedule 3 or as amended from time to time in accordance with this Agreement;

"**Works Specification**" means the specification for the performance of the Works as set out in Schedule 1 or as amended from time to time in accordance with this Agreement;

1.2 **Contents page and headings**

In this Agreement the contents page and headings are included for convenience only and do not affect the interpretation or construction of this Agreement.

1.3 **Clauses and schedules**

In this Agreement:

- (a) the **Introduction** and **schedules** form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement and any reference to this Agreement shall include the Introduction and the schedules;
- (b) any reference to the **Introduction** is a reference to the statements about the background to this Agreement made above; and
- (c) any reference to a clause or **schedule** is a reference to a clause of, or schedule to, this Agreement and any reference in a schedule to a **part** or **paragraph** is to a part or paragraph of that schedule.

1.4 **Meaning of references**

In this Agreement, unless the context requires otherwise, any reference to:

1.5 The headings of clauses of this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

1.6 References to a clause, Schedule or paragraph are (unless otherwise stated) references to clauses of or Schedule to this Agreement or a paragraph of the relevant Schedule.

1.7 A person includes a natural person, firms, partnerships, limited liability partnerships, companies, corporations, unincorporated associations, local authorities, governments, states, foundations and trusts (in each case whether or not having separate legal personality) and any agency of any of the above and that person's permitted successors and assigns (unless the succession in title was in breach of this Agreement).

1.8 In computation of periods of time from a specified day to a later specified day, from means from and including and until or to means to and including.

1.9 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.10 Words in the singular shall include the plural and vice versa.

- 1.11 A reference to one gender shall include a reference to the other genders.
- 1.12 A reference to any Party shall include that Party's permitted successors and assigns (unless the succession in title or assignment was in breach of this Agreement).
- 1.13 A reference to a statute, statutory provision or subordinated legislation ("**legislation**") (except where the context otherwise requires) shall be: (i) deemed to include any bye-laws, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made under that legislation and (ii) construed as referring to any legislation that replaces, re-enacts, amends or consolidates such legislation (with or without modification) at any time.
- 1.14 A reference to a document is a reference to that document as amended, supplemented, substituted, novated or assigned (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.15 Any phrase introduced by the expressions **including, include, in particular** or any similar expressions shall be construed as illustrative and not limit the sense of the words preceding those terms.
- 1.16 The words in this Agreement shall bear their natural meaning. The Parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed contra proferentem.
- 1.17 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that these provisions do not expressly state this.
- 1.18 Where one provision of this Agreement imposes upon either Party a standard, duty or obligation which is more onerous than, or additional to, that imposed by another provision of this Agreement, the more onerous standard, duty or obligation shall apply.

2. **CONTRACTOR'S GENERAL OBLIGATIONS**

General

- 2.1 In consideration of the payment of the Contract Sum to be made by ENERGY SOLUTIONS OXFORDSHIRE to the Contractor under this Agreement in accordance with Schedule 9 and subject to Clause 10.1, the Contractor shall as soon as practicable following execution of this Agreement, carry out and complete the Works in strict accordance with this Agreement and in a good and workmanlike manner such that the Works will on Completion comply in all respects with the requirements of this Agreement and the Contractor shall:
- (a) use only materials and goods of the kinds and standards specified or described in the Works Specification and/or Contractor's Proposals or where not specified or described of good and suitable quality;

- (b) exercise all the reasonable skill, care and diligence to be expected of a competent contractor experienced in carrying out similar EIMs and Works for a project of the same size, scope and complexity as the EIMs and Works in the design of the EIMs and Works or any part thereof insofar as the same have been or will be designed by the Contractor or by the Contractor's servants; and
- (c) comply with all Applicable Laws and Consents and adhere strictly to ENERGY SOLUTIONS OXFORDSHIRE's Representative's instructions issued under this Agreement or instructions issued by the Client in accordance with the Site Access/Security Protocol.

- 2.2 The Contractor hereby undertakes to use all reasonable endeavours to complete the Works and achieve Completion on or before the Completion Date in accordance with, and within the time periods established in, this Agreement and the Works Programme. The Contractor shall Notify ENERGY SOLUTIONS OXFORDSHIRE immediately if any circumstances arise that may cause a delay in the completion of Works or any part of them and the Contractor shall include within such notification a recovery plan stating how the effects of such delay will be mitigated.
- 2.3 The Contractor shall procure all components required for the installation of the Works in accordance with this Agreement and shall at all times maintain a sufficient level of components and equipment in order to meet its obligations under this Agreement.
- 2.4 The Contractor shall provide any temporary structures and/or mobile access facilities required for the performance of the Works.
- 2.5 The provisions of this Agreement shall apply in relation to any part of the Works carried out prior to the date of this Agreement.

Contractors Proposals

- 2.6 The Contractor's Proposals set out the manner in which the Contractor proposes to satisfy the requirements detailed in the Works Specification to achieve the Energy-related Technical Performance Outputs. No deviation from the Contractor's Proposals shall be permissible and if the Contractor considers that such deviation is necessary it shall only be permissible if the ENERGY SOLUTIONS OXFORDSHIRE agrees in writing to an updated Contractor's Proposals as an amendment to this Agreement in accordance with clause 30.1. The Contractor shall be responsible for verifying the adequacy of all design contained within the Works Specification and accepts full responsibility in all respects for the whole of the design of the Works.
- 2.7 The Contractor shall notify ENERGY SOLUTIONS OXFORDSHIRE if at any time it becomes aware of any inadequacy, discrepancy or divergence in or between the Works Specification, the Contractor's Proposals and any other design documents.

Standard of Skill and Care

- 2.8 Without prejudice to any express or implied warranties or conditions, the Contractor shall exercise all the skill, care and diligence to be expected of an independent specialist professional designer of the applicable discipline experienced in carrying out design work of a similar scope, nature and size

to the Works in all work of design carried out by the Contractor in accordance with clause 3.1 or otherwise pursuant to this Agreement.

- 2.9 If the Contractor shall subcontract any part of the Works or shall subcontract (whether to a consultant or Subcontractor or otherwise) or otherwise delegate any of the work of design or other obligations laid upon the Contractor by this Agreement, then the Contractor shall be liable to ENERGY SOLUTIONS OXFORDSHIRE in respect of any failure by the Subcontractor, consultant or delegate or its or their respective servants or agents to use the standards of skill, care and diligence required by this Agreement as though such failure were the failure of the Contractor itself.
- 2.10 The Contractor undertakes and agrees to carry out the Works in a co-ordinated manner agreed with ENERGY SOLUTIONS OXFORDSHIRE's Representative and the Client's Representative within all public areas and services and acknowledges the sensitivities of the Client's business operations and the need to minimize disruption to the Client's business operations.
- 2.11 The Contractor acknowledges that it has received and understands the Client Policies and agrees to carry out the Works in a manner consistent with the Client Policies.

General Warranties and Representations

- 2.12 Each Party warrants and represents to the other Party that:
- (a) entry into and its performance of this Agreement shall not breach any other agreement or obligation (including any law, regulation, licence provision, order, judgement or decree) by which it is bound nor shall its performance be affected by those agreements or obligations or by any litigation or dispute in which it is, or any of its personnel are, involved; and
 - (b) it shall comply with all applicable laws, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

2.13 Applicable Laws and Consents

- 2.13.1 The Contractor shall be responsible for obtaining and maintaining, at its sole cost, all Consents required to implement the EIM's and the Works. The Contractor shall comply fully with all Consents and Applicable Laws without any entitlement to an adjustment to the Contract Sum.
- 2.13.2 Any breach of any Consent or Applicable Law that arises in connection with the Works shall be promptly rectified by the Contractor at its own expense to the satisfaction of ENERGY SOLUTIONS OXFORDSHIRE and the Client, and the Contractor shall immediately on demand indemnify ENERGY SOLUTIONS OXFORDSHIRE and ENERGY SOLUTIONS OXFORDSHIRE Related Parties against any and all damages, losses and liabilities it incurs as a result of a breach of any Consent or Applicable Law.
- 2.13.3 The Contractor shall provide ENERGY SOLUTIONS OXFORDSHIRE with any assistance, information, details and documentation as ENERGY SOLUTIONS OXFORDSHIRE may reasonably request in connection with the Works including but not limited to assistance, information, details and documentation reasonably requested in connection with any

applications made by the Contractor to obtain any necessary Consents or in order for the Contractor to meet any Regulatory Requirements.

Site - Condition, Suitability, Access, Occupation and Related Works

- 2.14 The Contractor has had an opportunity of inspecting the physical conditions and any other services conditions and constraints of or affecting the Site and shall be deemed to have fully acquainted itself with the same and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the execution of the Works. No failure on the part of the Contractor to discover or foresee any such condition, risk, contingency or circumstance, whether the same ought reasonably to have been discovered or foreseen or not, shall entitle the Contractor to an addition to the Contract Sum or to an extension of time. The Contractor shall not be entitled to rely upon any survey, report or other document prepared by or on behalf of ENERGY SOLUTIONS OXFORDSHIRE or the Client regarding any such matter as is referred to in this clause and ENERGY SOLUTIONS OXFORDSHIRE makes no representation or warranty as to the accuracy or completeness of any such survey report or document. ENERGY SOLUTIONS OXFORDSHIRE shall have no liability arising out of or in relation to any such survey, report or document or from any representation or statement, whether they were negligently or otherwise made, therein contained.
- 2.15 The Contractor shall liaise directly with the Client's Representative (keeping ENERGY SOLUTIONS OXFORDSHIRE's Representative fully informed) in relation to gaining access to the Site as is reasonably required for the execution of the Works having regard to the Site Access/ Security Protocol. The Contractor acknowledges that such access shall not be exclusive and the Contractor shall not object to the use and occupation of any part of the Site by any other person engaged by the Client in connection with its business operations or maintenance of the Client's premises.
- 2.16 The Contractor shall permit and facilitate the execution of work on the Site not forming part of the Works by other contractors carrying out any work which adjoins, interfaces with, depends upon, or in any way relates to the Works and shall, where necessary or where directed by ENERGY SOLUTIONS OXFORDSHIRE's Representative, arrange and/or attend meetings with other contractors on the Site and use reasonable endeavours to see that no interruption or interference is caused by or to such other contractors in or by the execution and completion of the Works. For the avoidance of doubt there will be no addition to the Contract Sum and/or extension of time arising from compliance with the obligations of clause 2.15 and this clause 2.16.

Nuisance to Third Parties

- 2.17 The Contractor shall at all times prevent any unnecessary nuisance or other interference with the rights of any adjoining landowner, tenant or occupier or any statutory undertaker of which the Contractor is or ought reasonably to have been aware arising out of the carrying out of the Works. The Contractor shall be responsible for and shall hold harmless and indemnify on demand ENERGY SOLUTIONS OXFORDSHIRE and ENERGY SOLUTIONS OXFORDSHIRE Related Parties from and against any and all Liabilities resulting from any failure or default by the Contractor in performing its obligations under this clause 2.17 and shall assist ENERGY SOLUTIONS OXFORDSHIRE in the defence of any such action, claim or proceedings.
- 2.18 The Contractor shall use reasonable endeavours not to interfere unnecessarily or improperly with:

- (a) the convenience of the public; or
- (b) the access to and use and occupation of all common areas of the Site including all roads and footpaths in or around the Site, irrespective of whether they are public or in the possession of the Client or of others,

and shall indemnify on demand ENERGY SOLUTIONS OXFORDSHIRE and ENERGY SOLUTIONS OXFORDSHIRE Related Parties from and against any and all Liabilities resulting from any failure by the Contractor in performing any of its obligations under this clause 2.18.

Sites Access, Security Protection & Storage

- 2.19 The Contractor shall comply at all times with the Site Access/Security Protocol (including Client CDM Policy) and any other security policies and/or access policies or arrangements as identified to the Contractor by ENERGY SOLUTIONS OXFORDSHIRE at the date of this Agreement and shall allow for the proper and sufficient protection of the Works to the reasonable satisfaction of ENERGY SOLUTIONS OXFORDSHIRE to prevent damage to the Works howsoever arising, including but without limitation, from weather conditions, construction or other contractors until the Works have been completed. The Contractor shall be responsible for Notifying ENERGY SOLUTIONS OXFORDSHIRE's Representative of any damage to the temporary or permanent works as soon as it becomes apparent.
- 2.20 The Contractor shall take all reasonable steps to prevent damage to the Site and shall forthwith either rectify or reimburse ENERGY SOLUTIONS OXFORDSHIRE for the costs of rectification of any damage caused to the Site arising out of the use thereof by the Contractor or Contractor Related Parties. The Contractor shall be responsible for and shall indemnify ENERGY SOLUTIONS OXFORDSHIRE and ENERGY SOLUTIONS OXFORDSHIRE Related Parties from and against any and all Liabilities resulting from any failure or default by the Contractor in performing its obligations under this clause 2.20 and shall assist ENERGY SOLUTIONS OXFORDSHIRE in the defence of any such action, claim or proceedings.
- 2.21 Any arrangements for storage of the Contractor's materials, goods and plant on the Site shall be set out in the Site Access/Security Protocol. Where necessary, the Contractor shall be responsible for procuring access to and the use of any off-site storage needed for the Contractor's materials, goods and plant. It shall remain the Contractor's responsibility to protect and secure its materials, goods and plant while so stored.

Hazardous Materials and Prohibited Materials

- 2.22 If the Contractor becomes aware of, discovers, or suspects the presence of Hazardous Materials at the Site (not being Hazardous Materials that have previously been disclosed to the Contractor) during the performance of the Works and the Contractor reasonably determines that such Hazardous Materials will prevent the safe continuation of the Works, the Contractor will immediately cease work in the affected area and give Notice to ENERGY SOLUTIONS OXFORDSHIRE. If the discovery of the Hazardous Materials prevents the completion of the Works, then:
 - (a) ENERGY SOLUTIONS OXFORDSHIRE shall have ten (10) Business Days to give Notice to the Contractor that the Client has elected to procure at its own cost the performance of such

remedial works as are reasonably necessary to remove or manage such Hazardous Materials from or at the Site, in which case the performance of the Works at that Site shall be suspended until such remedial works have been completed;

- (b) in the event the Client elects not to procure the performance of reasonably necessary remedial works pursuant to Clause 2.22(a) or ENERGY SOLUTIONS OXFORDSHIRE fails to give any Notice to the Contractor pursuant to Clause 2.22(a) within ten (10) Business Days, the Parties shall have a further twenty (20) Business Days to agree in writing, acting reasonably and in Good Faith, amendments to the scope of the Works that are necessary as a result of the discovery of the Hazardous Substances in which case:
 - (i) the Parties shall agree corresponding adjustments to the Contract Sum so as to put the Parties in a position that is neither better nor worse than the position they would have been in had the Contractor not discovered any Hazardous Materials at the relevant Site; and
 - (ii) in respect of EIMs that are not possible to install at the Site as a result of the amendment to the Works, the Contractor shall, at ENERGY SOLUTIONS OXFORDSHIRE's cost, remove any such EIMs that have not achieved Completion and reinstate the relevant part of the Site to the condition that it was in prior to the installation of the EIMs.
- (c) in the event the Parties fail to agree amendments to the scope of the Works in accordance with Clause 2.22(b) within twenty (20) Business Days, either Party shall be entitled to terminate this Agreement in respect the Site immediately on written notice in which case:
 - (i) in respect of any EIMs for which, in the reasonable opinion of ENERGY SOLUTIONS OXFORDSHIRE, it is able to complete the Works, the Contractor shall complete the Works for such EIMs and upon Completion in respect of those EIMs, ENERGY SOLUTIONS OXFORDSHIRE shall pay to the Contractor the relevant portion of the Contract Sum; and
 - (ii) in respect of any EIMs that are not possible to install at the Site, the Contractor shall, at ENERGY SOLUTIONS OXFORDSHIRE's cost, remove such EIMs that have not achieved Completion and reinstate the relevant part of the Site to the condition it was in prior to the installation of such EIMs.

2.23 The Contractor warrants that it has not and will not use and, where it is responsible for any of the design of the Works, has not and will not specify for use or install any Prohibited Materials.

2.24 The Contractor shall hold harmless and indemnify ENERGY SOLUTIONS OXFORDSHIRE and ENERGY SOLUTIONS OXFORDSHIRE Related Parties against any and all Liabilities in any way arising out of or in connection with the release of any Hazardous Materials into the air, soil or any water system or water course, that has been caused as a consequence of any negligent act or omission, breach of this Agreement or failure to comply with Applicable Law, by the Contractor or Contractor Related Parties.

- 2.25 If any Prohibited Materials are discovered at the Site attributable to any act or omission by the Contractor or Contractor Related Parties, then the Contractor shall immediately and properly remove such Prohibited Materials and the Contractor shall dispose of such Prohibited Materials and perform any and all other remedial action required by Applicable Law and/or ENERGY SOLUTIONS OXFORDSHIRE. In such case, the Contractor shall hold harmless and indemnify on demand ENERGY SOLUTIONS OXFORDSHIRE and ENERGY SOLUTIONS OXFORDSHIRE Related Parties against any and all Liabilities in any way arising out the presence on the Site of such Prohibited Materials attributable to any act or omission by the Contractor or Contractor Related Parties.

Intellectual Property

- 2.26 The Contractor hereby grants to ENERGY SOLUTIONS OXFORDSHIRE, the Client and all persons authorised by them a royalty-free irrevocable, perpetual, non-exclusive, sub-licensable licence to copy and use all documents and the designs contained within them which have been or will be prepared pursuant to this Agreement by or on behalf of the Contractor for any purpose connected with the EIMs and the Works, including the construction, completion, maintenance, reinstatement, repair, promotion and advertisement, sale, extension, operating, monitoring, dismantling, removing, insuring or funding of the EIM's and the Works or any part thereof. Where the Contractor does not have the copyright it shall procure that a royalty-free, irrevocable, perpetual, non-exclusive, sub-licensable licence to reproduce and use any drawings, plans, specifications, schedules, designs, reports, calculations, setting out dimensions and other work forming part of the Works prepared by any consultant or Subcontractor shall be granted to ENERGY SOLUTIONS OXFORDSHIRE and the Client.
- 2.27 The Contractor warrants that any documents or designs furnished or given by it in relation to this Agreement will not be such as will cause ENERGY SOLUTIONS OXFORDSHIRE or the Client to infringe any Intellectual Property Rights of any third party. The Contractor shall immediately on demand indemnify ENERGY SOLUTIONS OXFORDSHIRE against any and all Liabilities resulting from any failure or default by the Contractor in performing its obligations under this clause 2.27 and shall assist ENERGY SOLUTIONS OXFORDSHIRE in the defence of any such action, claim or proceedings.
- 2.28 For the avoidance of doubt all Intellectual Property Rights in relation to the Project or otherwise in any jurisdiction worldwide owned by or licensed to ENERGY SOLUTIONS OXFORDSHIRE (including, without limitation, the form of this Agreement) at the date of this Agreement are and shall remain the exclusive property of ENERGY SOLUTIONS OXFORDSHIRE.

Contractor Warranties

- 2.29 The Contractor warrants to ENERGY SOLUTIONS OXFORDSHIRE that the Works shall:
- (a) comprise new plant and materials;
 - (b) utilise components listed in the Works Specification and/or Contractor's Proposals
 - (c) be carried out in accordance with the Works Specification and/or Contractor's Proposals;
 - (d) be installed and completed in a good and workmanlike manner and in accordance with Good Industry Practice;

- (e) comply with all Applicable Laws and Consents;
- (f) be of satisfactory quality and fit for purpose; and
- (g) otherwise comply with the requirements of this Agreement.

2.30 The Contractor warrants as at the date of this Agreement that:

- (a) it is a company duly incorporated and validly existing under the laws of England and Wales;
- (b) it is not Insolvent;
- (c) it has the power to enter into and perform this Agreement and the transactions contemplated by it;
- (d) all material, corporate and other authorisations required by it in connection with the entry into and the performance of this Agreement have been obtained;
- (e) the entry into and performance of this Agreement does not and will not conflict with:
 - (i) any contract or obligation entered into by it;
 - (ii) its constitutional documents; and
 - (iii) any law or regulation applicable to it;
- (f) this Agreement constitutes legally binding, valid and enforceable obligations enforceable against it in accordance with its terms;
- (g) the entry into and performance of the Agreement is in its commercial interest and to its corporate benefit and the competent corporate bodies have assessed and satisfied themselves as to the existence of such corporate benefit;
- (h) no material litigation, arbitration or proceedings before any court, arbitral body or agency have been started or are pending or threatened (in writing) against it, nor any other issue has been raised that, if successful, could impair the performance of this Agreement and the transactions contemplated by it;
- (i) it has access to adequate resources, including financial resources, to perform all its obligations under this Agreement; and
- (j) neither the Contractor, nor any subcontractor (to the Contractor's knowledge) have paid, promised to pay or offered to pay, or authorised the payment of, any commission, bribe, pay-off or kickback related to the Project or Contractor's obligations under this Agreement that violates any Applicable Law (including the Bribery Act 2010) or entered into any agreement pursuant to which any such commission, bribe, pay-off or kickback may have been paid or will at any time be paid; nor have they offered or given anything of value to influence the action of a public official or threatened injury to person, property or reputation, related to

the Project or Contractor's obligations under this Agreement, in order to obtain or retain business or other improper advantage in the conduct of business.

3. DRAWINGS, DETAILS, DOCUMENTS AND INFORMATION

Design Obligations - General

3.1 The Contractor shall carry out at its own expense all design in the Works:

- (a) required for the development of the design of the Works;
- (b) required for the resolution or rectification of any ambiguity, discrepancy or omission contained in or revealed by the Works Specification;
- (c) made necessary by any limitation imposed by the existing buildings (if any);
- (d) stated in the Works Specification or Contractor's Proposal to be an obligation for the Contractor;
- (e) otherwise required for the completion of the Works;
- (f) required by any reasonable instruction issued by ENERGY SOLUTIONS OXFORDSHIRE's Representative.

Contractor Design Warranties

3.2 The Contractor shall be fully responsible for all aspects of the design of the Works and warrants that:

- (a) the design of the Works shall be carried out with all reasonable skill, care and diligence to be expected of a competent and suitably qualified designer undertaking design of works of a similar size, scope and complexity to the Works and shall be fit for purpose;
- (b) it, and (if applicable) its designers and/or Subcontractors, have the experience and capability necessary for the design of the Works;
- (c) it or the Contractor's Representative shall be available to attend discussions with ENERGY SOLUTIONS OXFORDSHIRE and/or the Client on reasonable notice; and
- (d) the design, the execution of the design, and the completed Works shall comply with the technical standards, building, construction, and environmental Applicable Laws and Consents applicable to the Works in the UK at the date of this Agreement.

3.3 The Contractor shall prepare, keep up-to-date, and make available to ENERGY SOLUTIONS OXFORDSHIRE at Final Completion:

- (a) a complete set of "as-built" records of the execution of the Works, showing the exact as-built locations, sizes, and details of the work as executed; and

- (b) an operation and maintenance manual in sufficient detail for ENERGY SOLUTIONS OXFORDSHIRE to operate and maintain the EIMs.

4. OBLIGATIONS IN RESPECT OF CONTRACTOR'S PROPOSALS AND INFORMATION

Errors in Drawings and Documents

- 4.1 The Contractor shall be responsible for all mistakes, inaccuracies, discrepancies and omissions in all drawings, details, documents and information provided by it in accordance with the provisions of clause 3.3.

Obligation to provide information

- 4.2 The Contractor shall make available to ENERGY SOLUTIONS OXFORDSHIRE and the Client all documentation relating to the details and the operation and maintenance of the EIMs and the Works, which is or was acquired or brought into existence by and on behalf of the Contractor for the purposes of this Agreement. Such documentation shall be provided by the Contractor to ENERGY SOLUTIONS OXFORDSHIRE within fifteen (15) Business Days of Final Completion.
- 4.3 The Contractor shall from commencement of Works on the Site prepare a weekly report on the progress of the performance of the Works, any accidents or damage on the Site that have occurred, and the degree of compliance with the Works Programme (the "**Weekly Report**"). The Weekly Report will be delivered to ENERGY SOLUTIONS OXFORDSHIRE within the first two (2) calendar days of the following week, substantially in the form of the template attached at Schedule 11.
- 4.4 The Contractor shall respond to any reasonable requests for information addressed to it by ENERGY SOLUTIONS OXFORDSHIRE (and its advisors) or the Technical Adviser .
- 4.5 The Contractor shall communicate any accidents or any damages on the Site in writing to ENERGY SOLUTIONS OXFORDSHIRE within two (2) calendar days.

5. ACCESS BY ENERGY SOLUTIONS OXFORDSHIRE'S REPRESENTATIVE

- 5.1 The Contractor shall give, and shall procure that any of its servants, agents, suppliers or sub-contractors give, to ENERGY SOLUTIONS OXFORDSHIRE's Representative and its appointee and the Client and its appointee full access to the Works and to the workshops or other places where design or work is being prepared or goods or materials are being stored or installed so that they may test, inspect or examine the same.

6. SUPERVISION OF THE WORKS BY THE CONTRACTOR

Contractor's Duty to Inspect

- 6.1 The Contractor shall undertake all necessary inspection, superintendence, supervision, planning and management for the duration of this Agreement to ensure the proper performance of the Contractor's obligations under this Agreement.

Contractor's Representative

- 6.2 As and when requested to do so by ENERGY SOLUTIONS OXFORDSHIRE's Representative, the Contractor's Representative and such other of the Contractor's servants, agents, suppliers or Subcontractors as may from time to time be necessary shall attend meetings convened by ENERGY SOLUTIONS OXFORDSHIRE's Representative in connection with the Works. The Contractor's Representative shall keep complete and accurate records and shall make the same available for inspection by ENERGY SOLUTIONS OXFORDSHIRE's Representative at all reasonable times.
- 6.3 The Contractor shall employ for the purposes of the Works such persons as are so skilled, qualified and experienced in their respective trades and calling as may be necessary properly and fully to discharge the Contractor's obligations under this Agreement.

Trespass

- 6.4 Without prejudice to the obligations of the Contractor under clause 2.19, the Contractor shall at all times ensure that there is no trespass by the Contractor, its servants, agents, sub-contractors or suppliers (including without limitation the oversailing of crane jibs) on or over any adjoining or neighbouring property arising out of or in the course of or caused by the carrying out of the Works and shall take all reasonable safety and other measures to prevent damage or injury to any persons (including without limitation the occupiers of adjoining or neighbouring property and members of the public). The Contractor shall be responsible for obtaining any such consent and for all costs and expenses associated therewith.
- 6.5 The Contractor shall comply with the terms of any oversailing licence relating to the Works and/or the Site and shall indemnify ENERGY SOLUTIONS OXFORDSHIRE and ENERGY SOLUTIONS OXFORDSHIRE Related Parties against the consequences of any breach by the Contractor or Contractor Related Parties of any such terms (which shall include but not be limited to any and all Liabilities arising from such breach).
- 6.6 In carrying out the Works the Contractor shall make proper provision for the support and use of any land, walls, buildings, roads and footpaths upon, adjacent or near to or on the Site and which are affected by the Works.

7. TITLE TO PROPERTY, CONTRACTOR'S INDEMNITIES AND INSURANCE

Title to Goods and Materials

- 7.1 Subject to the provisions of clause 19.7, title to each component, material and equipment to be delivered by the Contractor under this Agreement or intended for the Works shall pass to ENERGY SOLUTIONS OXFORDSHIRE (or at ENERGY SOLUTIONS OXFORDSHIRE's direction directly to Client) free and clear of any Lien on the earlier of the date when the Contractor receives payment for such component, material or equipment from ENERGY SOLUTIONS OXFORDSHIRE pursuant to clause 14 or the delivery of such component, material or equipment to the Site.
- 7.2 The risk of loss or damage to the Works and to any goods and materials intended for the Works shall remain with the Contractor until the issue of the Final Completion Notice pursuant to clause 0. The Contractor shall ensure that such materials are not removed from the Site or from any other

place where they are situated (except for delivery to the Site for incorporation into the Works) from the date ownership is vested in ENERGY SOLUTIONS OXFORDSHIRE (or Client) and that they are clearly marked as owned by ENERGY SOLUTIONS OXFORDSHIRE (or at ENERGY SOLUTIONS OXFORDSHIRE's direction owned by Client) and are stored separately and securely and are insured for their full value against all customary risks in the name of the Contractor until Final Completion.

Indemnities

7.3 The Contractor shall be liable for, and shall hold harmless and indemnify ENERGY SOLUTIONS OXFORDSHIRE and ENERGY SOLUTIONS OXFORDSHIRE Related Parties on demand against:

- (a) any and all Liabilities under any statute or at common law in respect of personal injury to or the death of any person arising out of or in connection with the carrying out and completion of the Works, and whether arising on or off the Site, provided always that the Contractor's liability to indemnify ENERGY SOLUTIONS OXFORDSHIRE and ENERGY SOLUTIONS OXFORDSHIRE Related Parties shall be reduced proportionately to the extent that the negligence, omission or default of ENERGY SOLUTIONS OXFORDSHIRE or any ENERGY SOLUTIONS OXFORDSHIRE Related Party may have contributed to the injury or death; and
- (b) any and all Liabilities in respect of injury, loss or damage to any property real or personal, arising out of or in connection with the design and/or carrying out and completion of the Works, and whether arising on or off the Sites, provided always that the Contractor's liability to indemnify ENERGY SOLUTIONS OXFORDSHIRE and ENERGY SOLUTIONS OXFORDSHIRE Related Parties shall be reduced proportionately to the extent that the negligence, omission or default of ENERGY SOLUTIONS OXFORDSHIRE or ENERGY SOLUTIONS OXFORDSHIRE Related Party may have contributed to the injury or damage; and
- (c) any and all Liabilities associated with any third party actions, claims and/or demands brought against ENERGY SOLUTIONS OXFORDSHIRE or any ENERGY SOLUTIONS OXFORDSHIRE Related Party arising out of or in connection with the design and/or carrying out and completion of the Works, and whether arising on or off the Site, provided always that the Contractor's liability to indemnify ENERGY SOLUTIONS OXFORDSHIRE and any ENERGY SOLUTIONS OXFORDSHIRE Related Party shall be reduced proportionately to the extent that the negligence, omission or default of ENERGY SOLUTIONS OXFORDSHIRE or any ENERGY SOLUTIONS OXFORDSHIRE Related Party may have contributed to the third party action, claim and/or demand.

Insurance of the Project and the Works

7.4 The Contractor shall effect and maintain throughout this Agreement the following insurances:

- (a) employer's liability insurance as required by applicable law with a sum insured of no less than £10,000,000 (ten million pounds);
- (b) professional indemnity insurance with a sum insured of no less than £5,000,000 (five million pounds) in the aggregate;

- (c) public liability insurance with a sum insured of no less than £10,000,000 (ten million pounds) in the aggregate;
- (d) products liability insurance with a sum insured of no less than £5,000,000 (five million pounds) in the aggregate;
- (e) contractors' all risks insurance with a sum insured of no less than £3,000,000 (three million pounds) in the aggregate (which shall include business interruption insurance with a sum insured of no less than £500,000); and
- (f) any other insurance that the Contractor is required to obtain or maintain under Applicable Law in terms and levels satisfactory to ENERGY SOLUTIONS OXFORDSHIRE,

(the "**Contractor's Insurances**"),

in terms reasonably satisfactory to ENERGY SOLUTIONS OXFORDSHIRE, and in amounts adequate to cover everything a reasonably prudent contractor would insure acting in accordance with Good Industry Practice. The Contractor shall ensure that (i) ENERGY SOLUTIONS OXFORDSHIRE is named as joint insured or multiple insured on the contractors' all risk insurance; (ii) the Contractor's public liability insurance includes an indemnity to principals clause; and (iii) in respect to the public liability insurance that full disclosure has been made to the insurer that existing property on the Site is third party property.

- 7.5 The Contractor shall Notify ENERGY SOLUTIONS OXFORDSHIRE as soon as it becomes reasonably likely that it shall exhaust any of the limits of cover that it has under the insurance policies set out at Clause 7.4. Following such Notification, the Contractor acknowledges and agrees that ENERGY SOLUTIONS OXFORDSHIRE shall be entitled, at its own cost, to take out additional insurance cover with the Contractor's insurers in excess of the limits set out in Clause 7.4 solely for ENERGY SOLUTIONS OXFORDSHIRE's benefit.
- 7.6 The Contractor shall not do or allow to be done any act or thing which shall invalidate, or fail to do any act or thing the failure of which shall invalidate, any of the insurances listed at this clause 7 or to prejudice ENERGY SOLUTIONS OXFORDSHIRE's entitlement under those policies.
- 7.7 The Contractor shall provide to ENERGY SOLUTIONS OXFORDSHIRE, on the date of this Agreement, certificates from the Contractor's insurers or their duly authorised agents showing that insurance in accordance with the provisions of this clause 7 has been effected. Upon request by ENERGY SOLUTIONS OXFORDSHIRE, the Contractor shall provide any additional satisfactory written evidence that all of the insurances required to be maintained under this clause 7 are current and in effect and all premiums have been paid.
- 7.8 Without prejudice to any other rights or remedies available, if the Contractor shall fail to effect and keep in force any policy of insurance pursuant to its obligations under this clause 7, ENERGY SOLUTIONS OXFORDSHIRE may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for the purpose in which event the amount of any such premiums, together with an administration charge of ten percent (10%) of the premiums, shall be deducted from amounts due to the Contractor pursuant to this Agreement or recoverable as a debt. The Contractor shall Notify ENERGY SOLUTIONS OXFORDSHIRE as soon as reasonably practicable

following the Contractor becoming aware of any cancellation, change, lapse, non-renewal or modification of the Contractor's Insurances.

- 7.9 The obligations contained in this clause 7 in respect of product liability insurance shall continue notwithstanding termination of this Agreement, or determination of the Contractor's engagement hereunder, in either case for any reason whatsoever, including (without limitation) breach by ENERGY SOLUTIONS OXFORDSHIRE.
- 7.10 The Contractor and ENERGY SOLUTIONS OXFORDSHIRE hereby acknowledge that the Client shall be responsible for maintaining insurances required for any property damage (other than that caused by the Works) in relation to the Site and the Contractor shall not be responsible for any such insurances other than those set out in this clause 7 above.

ENERGY SOLUTIONS OXFORDSHIRE's Insurances

- 7.11 ENERGY SOLUTIONS OXFORDSHIRE shall effect and maintain at its own cost the following insurance policies:
- (a) employer's liability insurance as required by applicable law with a sum insured of no less than £10,000,000 (ten million pounds);
 - (b) public liability insurance with a sum insured of no less than £10,000,000 (ten million pounds) in the aggregate; and
 - (c) any other insurance that ENERGY SOLUTIONS OXFORDSHIRE is required to obtain or maintain under Applicable Law,
- (the "**ENERGY SOLUTIONS OXFORDSHIRE's Insurances**").

8. ENERGY SOLUTIONS OXFORDSHIRE'S REPRESENTATIVE'S POWER TO ISSUE INSTRUCTIONS

- 8.1 ENERGY SOLUTIONS OXFORDSHIRE's Representative shall have authority to issue to the Contractor reasonable instructions at any time up to Final Completion of the Works and the Contractor shall comply with such reasonable instructions, in regard to any of the following matters:
- (a) the removal from the Site of any work, materials or goods which are not in accordance with this Agreement;
 - (b) the dismissal from the Works of any person employed on them if, in the reasonable opinion of ENERGY SOLUTIONS OXFORDSHIRE's Representative, such person misconducts himself or herself or is incompetent or negligent in the performance of his or her duties;
 - (c) the opening up for inspection of any work covered up or the carrying out of any test of any materials or goods or of any executed work;
 - (d) the addition, alteration or omission of any obligations or restrictions in regard to any limitations of working space or working hours, access to the Site or use of any parts of the Site;

- (e) the alteration or modification of the design, quality or quantity of the Works as described in the Works Specification and/or Contractor's Proposals, including the addition, omission or substitution of any work, the alteration of any kind or standard of any materials or goods to be used in the Works and the removal from the Site of any materials or goods brought on to it by the Contractor for the Works; and
- (f) any matter connected with the Works.

8.2 The power of the ENERGY SOLUTIONS OXFORDSHIRE's Representative to issue instructions under clause 8.1 above shall be without prejudice to the Contractor's rights under this Agreement and where any instruction issued under clauses 8.1 (c), (d), (e) or (f) above shall require the Contractor to undertake work or do any other thing not provided for in, or to be reasonably inferred from, the Works Specification and/or Contractor's Proposals, or shall require the omission of any work or of any obligation or restriction, and provided the same shall not have arisen out of or in connection with, or shall not reveal, any negligence, omission or default of the Contractor, or its servants or agents, the provisions of Schedule 8 shall apply and the ENERGY SOLUTIONS OXFORDSHIRE's Representative shall follow the process set out therein.

Emergency Instructions

8.3 Notwithstanding the provisions of clause 33 (Notices), in an emergency ENERGY SOLUTIONS OXFORDSHIRE's Representative may issue an oral instruction under clause 8.1. Such oral instruction shall be confirmed in writing by ENERGY SOLUTIONS OXFORDSHIRE's Representative within five (5) Business Days of being issued. The Contractor shall immediately comply with such oral instruction.

Delegation

8.4 ENERGY SOLUTIONS OXFORDSHIRE's Representative may delegate all or any of its duties under this Agreement to any number of persons or firms. ENERGY SOLUTIONS OXFORDSHIRE's Representative shall Notify the Contractor of the names of and the authority of any such persons or firms and their authority shall continue in force until such time as ENERGY SOLUTIONS OXFORDSHIRE's Representative shall Notify the Contractor that the same is terminated. Any act of any such person or firm within the scope of this authority shall for the purposes of this Agreement be treated as an act of ENERGY SOLUTIONS OXFORDSHIRE's Representative.

9. SUB-CONTRACTING

Sub-Contracting

9.1 ENERGY SOLUTIONS OXFORDSHIRE hereby authorises the Contractor to subcontract any or all of the Works to be performed under the Agreement to one or more Subcontractors listed under Schedule 7. Should the Contractor or an authorised Subcontractor wish to use a subcontractor not listed under Schedule 7, the Contractor shall submit to the approval of ENERGY SOLUTIONS OXFORDSHIRE the name of the subcontractor to which it intends to subcontract a portion of the Work and the part of the Work it intends to subcontract to that subcontractor. It is forbidden for the Contractor or any Subcontractor to use or subcontract to any other subcontractor without the prior written consent of ENERGY SOLUTIONS OXFORDSHIRE. The presence on the Site of any personnel or employees not directly salaried by the Contractor or any of the Subcontractors shall

be Notified to ENERGY SOLUTIONS OXFORDSHIRE's Representative and shall only and be permitted if approved by ENERGY SOLUTIONS OXFORDSHIRE with the same procedure above described for new subcontractors.

- 9.2 The Contractor undertakes to engage only technical personnel with proven capabilities and experience. The Contractor shall be liable to ENERGY SOLUTIONS OXFORDSHIRE for any acts and omissions of its employees, the Subcontractors and their employees, as well as for any work, activity and supply performed by the Subcontractors. Neither the act of subcontracting nor any approval of the Subcontractors by ENERGY SOLUTIONS OXFORDSHIRE shall release the Contractor from any obligation or liability.
- 9.3 The Contractor hereby undertakes to ensure that the work of each and every one of its Subcontractors meets the standards and specifications set forth in the Agreement and complies with the Applicable Law and Consents, as well as with the Contractor's and ENERGY SOLUTIONS OXFORDSHIRE's and/or Client's environmental and health and safety procedures. The Contractor hereby undertakes to reject equipment, materials, or assemblies from its Subcontractors that do not meet the provisions of this Agreement and that do not ensure the proper and safe operation of the EIMs and the Works.
- 9.4 The Contractor shall enter into written contracts with all of the Subcontractors which shall be consistent with the relevant terms and conditions of this Agreement and Applicable Law.

Sub-Contractors - Responsibility of Contractor

- 9.5 Where any consultant, Subcontractor or supplier carries out any design of any work, materials or goods, the Contractor shall be fully responsible for that design and, where appropriate, for compliance with any performance specification, and for the co-ordination of that design and the execution and completion of such work or the supply of such materials and goods with the design, execution and completion of the Works.
- 9.6 No subcontracting by the Contractor and no consent of ENERGY SOLUTIONS OXFORDSHIRE's Representative under clause 9.1, and nothing contained in the Works Specification and/or the Contractor's Proposals requiring the Contractor to subcontract any work to or obtain any materials and/or goods from any person or persons named therein shall in any way relieve the Contractor from its responsibility for the due execution and completion of the Works in accordance with this Agreement for the Contract Sum.

10. COMMENCEMENT AND DELAYS IN THE EXECUTION OF THE WORKS

Commencement

- 10.1 Subject to clause 19.4, ENERGY SOLUTIONS OXFORDSHIRE shall procure that the Client shall permit the Contractor in common with other parties to access the Site, or such part or parts of it as may be specified, on the date or dates stated in the Works Programme and/or Site Access/Security Protocol. The Contractor shall then immediately commence the execution of the Works and shall proceed with the same regularly and diligently and in accordance with the Works Programme so that the Works achieve Final Completion in accordance with the provisions of clause 11.1 on or

before the Completion Date subject to any alteration to the Works Programme pursuant to clause 10.2.

Alteration to Works Programme

- 10.2 ENERGY SOLUTIONS OXFORDSHIRE's Representative may at any time, but not unreasonably, issue an instruction to request that the Contractor bring forward or postpone the dates shown on the Works Programme for the completion of the Works, or any part of the Works. Any such request for an alteration to the Works Programme shall be dealt with in accordance with Schedule 8.

Delay Damages

- 10.3 The Contractor shall be liable to pay to ENERGY SOLUTIONS OXFORDSHIRE liquidated damages equal to £[500] for each day of delay in the event that the Works have not achieved Final Completion, and a Final Completion Notice has not been issued in accordance with clause 11, on or before the Completion Date ("**Delay Liquidated Damages**"). ENERGY SOLUTIONS OXFORDSHIRE shall be entitled to deduct any such Delay Liquidated Damages from the amount which would otherwise be payable to the Contractor under clause 13 or ENERGY SOLUTIONS OXFORDSHIRE may recover such Delay Liquidated Damages from the Contractor as a debt.
- 10.4 The payment of Delay Liquidated Damages shall not release the Contractor from its obligation to complete the Works or from any other duty, obligation or responsibility under this Agreement.
- 10.5 Any payment of any Delay Liquidated Damages by the Contractor shall be without prejudice to ENERGY SOLUTIONS OXFORDSHIRE's right to terminate this Agreement pursuant to clause 18.
- 10.6 The Delay Liquidated Damages payable are calculated by reference to a genuine pre- estimate of the loss that ENERGY SOLUTIONS OXFORDSHIRE would suffer as a result of delay to achieving Final Completion on or before the Completion Date.
- 10.7 In the event that the Final Completion Notice has not been issued on or before the Longstop Date, subject to the Parties agreeing an extension to the Longstop Date in writing, ENERGY SOLUTIONS OXFORDSHIRE shall be entitled to terminate this Agreement on providing Notice to the Contractor.

Extension of time

- 10.8 The Contractor shall be entitled to request an adjustment to the Completion Date to the extent that Completion of the Works is or is likely to be delayed as a result of:
- (a) a material breach by ENERGY SOLUTIONS OXFORDSHIRE of its obligations under this Agreement;
 - (b) an instruction from ENERGY SOLUTIONS OXFORDSHIRE, provided that such instruction is not required as a result of any breach, act or omission of the Contractor; or
 - (c) a Force Majeure Event,

(a "**Delay Event**") provided that there shall be no adjustment to the Completion Date in respect of any matter where it is specifically stated by this Agreement that such matter will not give rise to an

extension or change.

- 10.9 Whenever the Contractor becomes aware that Completion is not likely to be achieved by the Completion Date due to a Delay Event, it shall immediately notify ENERGY SOLUTIONS OXFORDSHIRE of the cause of the delay and its anticipated effect on Completion.
- 10.10 Where the Contractor considers that it is entitled to request an adjustment to the Completion Date under clause 10.9, it shall also provide supporting documentation to demonstrate to ENERGY SOLUTIONS OXFORDSHIRE the actual or anticipated effect upon Completion.
- 10.11 Where the Contractor has notified ENERGY SOLUTIONS OXFORDSHIRE under clause 10.10 and the cause of the delay is identified as being a Delay Event, ENERGY SOLUTIONS OXFORDSHIRE shall within twenty (20) Business Days, either:
- (a) notify the Contractor of such adjustment to the Completion Date as it calculates to be reasonable and fair based upon any supporting documentation it has been provided with and any other information available to ENERGY SOLUTIONS OXFORDSHIRE; or
 - (b) notify the Contractor why it considers that the Completion Date should not be adjusted.
- 10.12 Any adjustment given in accordance with clause 10.11 may be revised by ENERGY SOLUTIONS OXFORDSHIRE at any time in the light of further documentation or information that it becomes aware of, or when the effects of any identified cause of delay become more apparent.

11. COMPLETION AND DEFECTIVE WORK

Completion of each EIM

- 11.1 In respect of each EIM, when the Contractor has completed the Works (including any commissioning works) to implement the EIM, the Contractor shall perform the relevant Completion Tests (as described in Schedule 5). The Completion Tests shall determine whether the Works in respect of each EIM meet all minimum and/or performance requirements set out in the Works Specification (including Energy-related Technical Performance Outputs) and that they properly link and/or integrate as a whole. The Parties agree that the Client's Representative and, if applicable, the Technical Adviser, shall be entitled to witness the Completion Tests and the Contractor shall invite them to do so providing reasonable notice.
- 11.2 Within five (5) Business Days of having successfully performed the Completion Tests in respect of each EIM, the Contractor shall issue a certificate that the EIM has achieved Mechanical Completion and is ready for taking-over by ENERGY SOLUTIONS OXFORDSHIRE or the Client (a "**Mechanical Completion Certificate**") and shall provide the Handover Documents for the EIM to the ENERGY SOLUTIONS OXFORDSHIRE and Client.
- 11.3 On receipt of the Mechanical Completion Certificate in respect of each EIM, ENERGY SOLUTIONS OXFORDSHIRE's Representative (and, if applicable, the Technical Adviser) shall either:
- (a) issue to the Contractor a notice that it considers the EIM has passed the Completion Tests and achieved Mechanical Completion and is ready for taking-over by ENERGY SOLUTIONS

OXFORDSHIRE or the Client (a "**Completion Notice**") in which case "**Completion**" shall have been achieved in respect of the relevant EIM; or

- (b) notify the Contractor of any items of work which are in ENERGY SOLUTIONS OXFORDSHIRE's Representative's (and/or (if applicable) the Technical Adviser's) reasonable opinion required to render the Works for such EIMs practically complete and ready for taking-over by ENERGY SOLUTIONS OXFORDSHIRE or Client, including any aspects of the Work in relation to the EIMs which have yet to be completed.

11.4 If any items of work are required under clause 11.3(b), the Contractor shall immediately carry out all such items of work, which shall include but not be limited to corrections, repairs, replacements and remedial work and make good all defects, shrinkages or other faults in the Works which have been identified during the Completion Tests ("**Make Good Corrections**"). Such Make Good Corrections shall be completed within ten (10) Business Days following the failure of such Completion Test.

11.5 All Make Good Corrections shall be carried out by the Contractor at its own expense unless the necessity for such work shall, in the opinion of ENERGY SOLUTIONS OXFORDSHIRE's Representative, be due to ENERGY SOLUTIONS OXFORDSHIRE's or Client's use or occupation of the Works or to any negligence, omission or default on the part of ENERGY SOLUTIONS OXFORDSHIRE or Client or ENERGY SOLUTIONS OXFORDSHIRE Related Parties, in which case ENERGY SOLUTIONS OXFORDSHIRE's Representative shall ascertain and certify a fair and reasonable adjustment to the Contract Sum in respect of such work.

11.6 Within three (3) Business Days from the Contractor having informed ENERGY SOLUTIONS OXFORDSHIRE (and the Technical Adviser if applicable) that the Make Good Corrections have been completed, or, at the latest, after twenty (20) calendar days from the failure of the Completion Test, the relevant Completion Tests shall be repeated at the exclusive costs of the Contractor (including, for the avoidance of doubt, all costs associated with the Technical Adviser for such repeated tests). Should such repeated Completion Tests:

- (a) be satisfactorily passed, the ENERGY SOLUTIONS OXFORDSHIRE's Representative shall issue a Completion Certificate, in which case "**Completion**" shall have been achieved in respect of the relevant EIM; or
- (b) not be satisfactorily passed, then ENERGY SOLUTIONS OXFORDSHIRE shall have the right to require the Contractor to repeat the process in clauses 11.3(b)11.2 to 11.6 in respect of the relevant EIM and repeated Completion Tests.

Final Completion

11.7 If:

- 11.7.1 all of the Completion Tests in respect to all of the EIMs comprised in the Works have been successfully completed;

11.7.2 the Handover Documents for all of the EIMs comprised in the Works have been provided to the Client and ENERGY SOLUTIONS OXFORDSHIRE (the receipt of which shall be acknowledged by the Client and ENERGY SOLUTIONS OXFORDSHIRE); and

11.7.3 any O&M Agreement in relation the EIMs (or any of them) comprised in the Works that the Parties have agreed will be entered into with the Contractor has been signed by the Contractor;

then immediately following the issue of the final Completion Notice in relation to the EIMs comprised in the Works, ENERGY SOLUTIONS OXFORDSHIRE shall provide the Contractor with a notice stating that all Completion Tests have been passed ("**Final Completion Notice**"), and upon issuing of the Final Completion Notice, "**Final Completion**" shall have occurred.

Snagging

11.8 In relation to Snagging Matters:

(a) ENERGY SOLUTIONS OXFORDSHIRE's Representative shall be entitled to issue a Completion Notice and/or Final Completion Notice notwithstanding that at the relevant time any Snagging Matters exist;

(b) within ten (10) Business Days of the date ENERGY SOLUTIONS OXFORDSHIRE's Representative issues a Final Completion Notice, it shall also issue a Notice which shall specify the Snagging Matters (the "**Snagging Notice**"); and

(c) upon receipt of the Snagging Notice the Contractor shall ensure that all of the Snagging Matters are rectified within ten (10) Business Days of the issue of the Snagging Notice.

11.9 If, within ten (10) Business Days of it issuing the Snagging Notice, the Contractor has failed to rectify the Snagging Matters specified in the Snagging Notice, then the Contractor acknowledges that ENERGY SOLUTIONS OXFORDSHIRE shall be entitled either to carry out itself, or to engage any other person to carry out, the works necessary to rectify all of the Snagging Matters, and the Contractor shall:

(a) cooperate with, and provide reasonable assistance and necessary rights of access to, ENERGY SOLUTIONS OXFORDSHIRE and any person engaged by ENERGY SOLUTIONS OXFORDSHIRE pursuant to this clause 11.9; and

(b) subject to clause 12, reimburse ENERGY SOLUTIONS OXFORDSHIRE for any reasonable and documented costs and expenses incurred by ENERGY SOLUTIONS OXFORDSHIRE in carrying out the Contractor's obligations pursuant to this clause 11.9.

ENERGY SOLUTIONS OXFORDSHIRE's right to engage other Contractors

11.10 Without prejudice to its other rights and remedies, if the Contractor shall be in breach of or shall neglect or fail to carry out any of its obligations under this Agreement, ENERGY SOLUTIONS OXFORDSHIRE shall be entitled to employ and pay other persons to carry out the same and all Liabilities suffered or incurred by ENERGY SOLUTIONS OXFORDSHIRE in so doing shall be borne by the Contractor and may be deducted from the Contract Sum, provided that ENERGY SOLUTIONS

OXFORDSHIRE shall give the Contractor Notice of such breach, neglect or failure and if the Contractor fails to remedy or take steps to remedy the same within five (5) Business Days of service of such Notice, or if the Contractor at any time after service of such notice commits any further substantially similar breach, neglect or failure, ENERGY SOLUTIONS OXFORDSHIRE may forthwith employ such other persons.

Defects Liability and Energy Savings Shortfall

11.11 If a Defect becomes apparent during the Defects Liability Period, or if following completion of the First Year Performance Evaluation, ENERGY SOLUTIONS OXFORDSHIRE Notifies the Contractor pursuant to Schedule 6 there is an Energy Savings Shortfall that is determined to be the Contractor's fault, the Contractor shall, promptly following a written request from ENERGY SOLUTIONS OXFORDSHIRE (which may be given within ENERGY SOLUTIONS OXFORDSHIRE's absolute discretion):

- (a) attend the Site to investigate the Defect or Energy Savings Shortfall and determine the resolution process for remedying the Defect or Energy Savings Shortfall (and notify ENERGY SOLUTIONS OXFORDSHIRE of its proposed resolution and timeframes); and
- (b) (as appropriate) replace or repair the relevant component of the Works at no additional cost to ENERGY SOLUTIONS OXFORDSHIRE.

11.12 If the Contractor is not able to repair or replace the relevant component of the Works in order to remedy the Defect or Energy Savings Shortfall within fifteen (15) Business Days of ENERGY SOLUTIONS OXFORDSHIRE's Notice, it shall:

- (a) as soon as is reasonably practicable after such a Defect becomes apparent or ENERGY SOLUTIONS OXFORDSHIRE Notifies the Contractor of the Energy Savings Shortfall, implement a temporary solution until it is able to remedy the Defect or Energy Savings Shortfall, such temporary solution to be of no lower output and to result in the same or better performance as would have been the case had the relevant EIM(s) not been subject to such Defect or failure giving rise to the Energy Savings Shortfall. Temporary solutions shall include but not be limited to procuring the temporary supply of heat or air conditioning from a third party for such time as is required by ENERGY SOLUTIONS OXFORDSHIRE; and
- (b) submit to ENERGY SOLUTIONS OXFORDSHIRE its proposed rectification plan for repairing or replacing the relevant component of the Works detailing:
 - (i) the actions that the Contractor has already taken and will take to mitigate and minimise the duration of the Defect and period of lost energy savings;
 - (ii) the actions that are required in order to permanently rectify the Defect and/or the Energy Savings Shortfall as soon as reasonably practicable;
 - (iii) the anticipated timescales for carrying out such actions; and
 - (iv) the areas of the Site that the Contractor will require access in order to carry out such actions;

(the "**Rectification Plan**"); and

(c) once approved by ENERGY SOLUTIONS OXFORDSHIRE, implement the Rectification Plan.

- 11.13 If the replacement or repairs are of such a character as may affect the operation of an EIM, ENERGY SOLUTIONS OXFORDSHIRE's Representative may by Notice to the Contractor require that the Completion Tests are re-performed in which event such tests shall be carried out in accordance with this clause 11.
- 11.14 If the Contractor is unable or unwilling to remedy any Defect or failure or to provide a temporary solution in accordance with clause 11.11 then without prejudice to any other right or remedy available to ENERGY SOLUTIONS OXFORDSHIRE, ENERGY SOLUTIONS OXFORDSHIRE may arrange for the work to be carried out by a third party, the reasonable costs of which shall be deducted from amounts due to the Contractor or recoverable from the Contractor as a debt.
- 11.15 When all Defects or failures of the Contractor appearing or Notified during the Defects Liability Period have been made good, ENERGY SOLUTIONS OXFORDSHIRE's Representative shall issue a Notice to that effect.
- 11.16 Notwithstanding any other provision in this Agreement to the contrary, the Contractor shall be responsible for carrying out all necessary remedial work promptly and in any event within 60 days and at its own cost and expense in respect of any other Defect or failure for a period equivalent to the period covered by the relevant Manufacturer's Warranty where: (i) the Client or ENERGY SOLUTIONS OXFORDSHIRE is prevented from claiming under the Manufacturer's Warranty because the Contractor has failed to comply with its obligations under this Agreement; or (ii) the Client or ENERGY SOLUTIONS OXFORDSHIRE does not hold the benefit of such Manufacturer's Warranty because of the Contractor's failure to assign or transfer any Manufacturer's Warranty.

Manufacturers' Warranties

- 11.17 The Contractor shall procure the Manufacturer's Warranties from the supplier(s) of any equipment, device, materials, software or component in relation to implementation of the Works and shall procure a right of assignment to ENERGY SOLUTIONS OXFORDSHIRE or the Client of any such Manufacturer's Warranties, and assign all Manufacturer's Warranties to ENERGY SOLUTIONS OXFORDSHIRE or the Client (as directed by ENERGY SOLUTIONS OXFORDSHIRE) upon the request of ENERGY SOLUTIONS OXFORDSHIRE.
- 11.18 Following assignment of all Manufacturer's Warranties, the Client shall be responsible for administering any claim it may have under a Manufacturer's Warranty .
- 11.19 The Contractor guarantees that it has complied with and will comply with the terms of the Manufacturers' Warranties so as not to limit or invalidate the rights under such Manufacturer's Warranties by anything it does or does not do in relation to the Works.
- 11.20 If, as a result of any act or omission of the Contractor in relation the Works or its obligations under this Agreement, a Manufacturer's Warranty in respect of an EIM is voided, the Contractor shall be responsible for any additional costs of remedying Defects that it has to incur as a result of the relevant Manufacturer's Warranty being void.

12. ENERGY SOLUTIONS OXFORDSHIRE'S M&V SERVICES AND ENERGY SAVINGS ASSURANCE

- 12.1 The Contractor acknowledges that pursuant to the Energy Services Agreement, ENERGY SOLUTIONS OXFORDSHIRE has provided an 'energy savings assurance' to the Client, key elements of which are set out in Schedule 6, which relies in part on the Works undertaken by the Contractor meeting the Works Specification and delivering the Energy-related Technical Performance Outputs.
- 12.2 If following completion of the First Year Performance Evaluation, there is an Energy Savings Shortfall as set out in Schedule 6, ENERGY SOLUTIONS OXFORDSHIRE shall assess the cause of the Energy Savings Shortfall and if it determines that this is caused by 'Contractor fault' as specified in Schedule 6, the provisions of clause 11.11 shall apply.
- 12.3 ENERGY SOLUTIONS OXFORDSHIRE shall prepare a report on the First Year Performance Evaluation, which sets out its findings and which it shall share with the Contractor.
- 12.4 The Contractor shall provide all reasonable assistance and cooperation to ENERGY SOLUTIONS OXFORDSHIRE in relation to the First Year Performance Evaluation and shall promptly respond to any reasonable request to provide any information or data that is relevant to undertaking the First Year Performance Evaluation
- 12.5 In the event that the Contractor disagrees with the findings set out in the First Year Performance Evaluation report and/or ENERGY SOLUTIONS OXFORDSHIRE's determination as to the causes of any Energy Savings Shortfall, it shall give Notice of its disagreement (setting out the detailed reasons for such disagreement together with reasonable evidence to support this) within ten (10) Business Days of receiving a copy of the report. The Parties shall act in Good Faith to seek to resolve the disagreement and to agree any revisions to the First Year Performance Evaluation within ten (10) Business Days following the date of the Contractor's Notice, failing which either Party may refer the matter to an Expert pursuant to clause 35.5, but without prejudice to the Contractor complying with the provisions of clause 11.11 pending the Expert's decision.
- 12.6 Each Party agrees to give Notice to the other within ten (10) Business Days of it becoming aware, of:
- (a) any actual or intended change prior to Completion in the use of any facility, building, EIM or condition of the Site;
 - (b) any proposed or actual expansions or additions to the Site or any building or facility on the Site;
 - (c) a change to utility services to all or any portion of the Site;
 - (d) imposition by the Client of any obligations or restrictions communicated to ENERGY SOLUTIONS OXFORDSHIRE in regard to the following matters or the addition to or alteration or omission of any such obligations or restrictions so imposed;
 - (e) any material change to the energy consuming equipment at the Site;
 - (f) any material change to the operational hours of any areas of the Site;

- (g) any material change in the space usage of the Site, particularly in terms of space occupancies and densities;
- (h) access to the Site or use of any specific parts of the Sites;
- (i) limitations of working spaces;
- (j) limitations of working hours; or
- (k) the execution or completion of the work in any specific order.

12.7 The Contractor undertakes to inform ENERGY SOLUTIONS OXFORDSHIRE as soon as reasonably practicable (and in any event no less than five (5) Business Days) after it becomes aware of any adjustments made by the Contractor and/or Client that may materially affect performance of the EIMs, the Actual First Year Energy Consumption and/or the ability of ENERGY SOLUTIONS OXFORDSHIRE to achieve the Energy Savings Assurance as set out in Schedule 6.

13. THE CONTRACT SUM

13.1 The Contractor has agreed to carry out and complete the Works for a fixed lump sum of £[Insert amount] (exclusive of VAT) (the "**Contract Sum**"). The Contract Sum is a fixed and lump-sum amount as full remuneration for the complete execution and performance of this Agreement, including the remedying of any Defects and accordingly, will not be subject to changes or revisions, including, without limitation, due to changes in the prices of labour, materials, exchange rates or any other similar item, or owing to a change in any tax levied on the goods or services that are within the scope of this Agreement, except as otherwise expressly provided in this Agreement and subject to any adjustment to the Contract Sum being agreed in accordance with clause 2.22, or with the change procedure set out in Schedule 8 or determined to be due to the Contractor in accordance with the dispute resolution procedure set out in clause 35. Other than for payment of the Contract Sum (as adjusted in the amount agreed or determined to be due to the Contractor), the Contractor shall not be entitled to any further payment, remuneration or compensation for the performance of its obligations under or in connection with this Agreement.

14. PAYMENT

14.1 The Contractor shall submit an application for payment of the Contract Sum (together with a VAT invoice) to ENERGY SOLUTIONS OXFORDSHIRE following the occurrence of Final Completion. Such application shall set out the sum that the Contractor considers due and the basis on which that sum has been calculated and shall be supported by data substantiating the Contractor's right to payment as ENERGY SOLUTIONS OXFORDSHIRE may reasonably request.

14.2 The due date for payment will be the date ten (10) days after ENERGY SOLUTIONS OXFORDSHIRE receives the Contractor's application and valid VAT invoice together with reasonable supporting documentation (the "**Due Date**").

14.3 No later than five (5) days after the Due Date, ENERGY SOLUTIONS OXFORDSHIRE shall issue the Contractor a notice in writing specifying the sum that ENERGY SOLUTIONS OXFORDSHIRE considers

to be due at the Due Date and the basis upon which that sum was calculated (the "**Payment Notice**").

- 14.4 Subject to any Pay Less Notice, ENERGY SOLUTIONS OXFORDSHIRE shall pay the Contractor the amount stated in the Payment Notice on or before the Final Date for Payment or if ENERGY SOLUTIONS OXFORDSHIRE fails to give a Payment Notice the amount specified in the relevant VAT invoice issued by the Contractor in accordance with Clause 14.1.
- 14.5 The final date for payment in respect of undisputed sums shall (subject to clause 14.6) be thirty (30) days after the Due Date (the "**Final Date for Payment**") and seven (7) days after any disputed amount is finally ascertained.
- 14.6 The Final Date for Payment will be extended where there is a delay in the disbursement of funding by the Finance Provider for any reason outside of ENERGY SOLUTIONS OXFORDSHIRE's control to the date which is the earlier of: (a) three (3) Business Days following the disbursement of funds by the Finance Provider; or (b) sixty (60) days following Final Completion.
- 14.7 If ENERGY SOLUTIONS OXFORDSHIRE subsequently determines that less than the amount stated in the Payment Notice is due to the Contractor, ENERGY SOLUTIONS OXFORDSHIRE shall no later than five (5) days before the Final Date for Payment give notice of the amount ENERGY SOLUTIONS OXFORDSHIRE considers due to the Contractor at the date the notice is issued and the basis on which that sum has been calculated (a "**Pay Less Notice**"). Where a Pay Less Notice has been given the payment to be made on or before the Final Date for Payment shall not be less than the amount stated in the Pay Less Notice.
- 14.8 If any sum payable under this Agreement is not paid by the Final Date for Payment then, without prejudice to the Contractor's other rights under this Agreement, that sum shall bear interest from the Final Date for Payment until payment is made in full, both before and after any judgment, at four per cent (4)% above the base rate of the Bank of England. The Parties agree that this Clause 14.8 is a substantial remedy for late payment of any sum payable under this Agreement in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- 14.9 ENERGY SOLUTIONS OXFORDSHIRE may at any time set off any liability of the Contractor to it under or in relation to this Agreement against any liability of ENERGY SOLUTIONS OXFORDSHIRE to the Contractor under or in relation to this Agreement (in either case however arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency of such liability). Any exercise by ENERGY SOLUTIONS OXFORDSHIRE of its rights under this Clause shall be without prejudice to any other rights or remedies available to ENERGY SOLUTIONS OXFORDSHIRE under this Agreement or otherwise.

15. EFFECT OF BREACH OR TERMINATION OF ENERGY SERVICES AGREEMENT

- 15.1 The Contractor acknowledges that a failure to perform its obligations under this Agreement may cause ENERGY SOLUTIONS OXFORDSHIRE to be in breach of the Energy Services Agreement.
- 15.2 The Contractor shall, subject to the limitations on liability set out in clause 17.5, hold harmless and indemnify ENERGY SOLUTIONS OXFORDSHIRE and ENERGY SOLUTIONS OXFORDSHIRE Related Parties against all Liabilities suffered by ENERGY SOLUTIONS OXFORDSHIRE or any ENERGY

SOLUTIONS OXFORDSHIRE Related Party as a consequence of any breach or non-performance by ENERGY SOLUTIONS OXFORDSHIRE of the Energy Services Agreement where such breach or non-performance is caused by or is in consequence of (and only to the extent caused by or in consequence of) the Contractor's breach or non-performance of its obligations under this Agreement.

- 15.3 The Parties acknowledge and agree that if the Energy Services Agreement is terminated as a direct result of the Contractor's breach of this Agreement, the Contractor shall be liable to ENERGY SOLUTIONS OXFORDSHIRE for a "**Termination Sum**" equal to:

Termination Sum = A+B

Where:

A: is *[where relevant, set out any amounts (or a formula for any amounts) needed to compensate ENERGY SOLUTIONS OXFORDSHIRE for loss of fees due from the Client, for example where there is a monthly service payment from Client to ENERGY SOLUTIONS OXFORDSHIRE for duration of the ESA.]*

B: is *[where relevant set out the amounts (or a formula for any amounts) needed to compensate ENERGY SOLUTIONS OXFORDSHIRE (or to enable ENERGY SOLUTIONS OXFORDSHIRE to compensate the Client) for Liabilities incurred by ENERGY SOLUTIONS OXFORDSHIRE or Client arising from early termination of any O&M Agreement that has been signed in respect of any of the EIMs comprised the Works].*

[Where neither A nor B is relevant, then delete the whole of clause 15.3]

The Termination Sum shall not exceed the Contractor Limitation Amount except as provided for in clause 17.5.

ENERGY SOLUTIONS OXFORDSHIRE shall provide the Contractor with a statement setting out the Termination Sum due from the Contractor calculated in accordance with this Clause 15.3. The statement shall set out the sum that ENERGY SOLUTIONS OXFORDSHIRE considers due, the basis on which that sum has been calculated and shall be accompanied by such reasonable supporting documentation as the Contractor may reasonably request. The Contractor shall pay this Termination Sum in full as a lump sum within twenty (20) Business Days of the date of ENERGY SOLUTIONS OXFORDSHIRE's statement.

- 15.4 The Parties acknowledge and agree that the Termination Sum is a genuine pre-estimate of the loss which will be incurred by ENERGY SOLUTIONS OXFORDSHIRE in the event that this Agreement and/or the Energy Services Agreement is terminated before the end of the Term.

16. COLLATERAL WARRANTY

- 16.1 If requested to do so by ENERGY SOLUTIONS OXFORDSHIRE, within 10 days of such request, the Contractor shall provide a collateral warranty for the benefit of the Client substantially in the form set out in Schedule 13.

16.2 The Contractor shall, within fifteen (15) Business Days of such request, procure the delivery of direct agreements that have been duly signed by the Contractor that provide for certain step-in rights in relation to this Agreement in favour of the Client or Finance Provider in the event of the ENERGY SOLUTIONS OXFORDSHIRE's default under this Agreement, provided always that such step-in rights shall not confer on the Client or Finance Provider any rights beyond those set out in this Agreement (other than the right to replace the ENERGY SOLUTIONS OXFORDSHIRE) nor any obligations or liabilities on the Contractor beyond those set out in this Agreement.

17. LIABILITY

17.1 For the purposes of this clause 17, "**liability**" means any liability, whether pursuant to a claim for contribution or under statute, tort (including but not limited to liability for negligence), contract, misrepresentation, restitution or otherwise arising out of or in connection with this Agreement, and "**liable**" shall be construed accordingly.

17.2 This clause 17 sets out the entire liability of each Party (including any liability for the acts or omissions of that Party's group (being ENERGY SOLUTIONS OXFORDSHIRE's Group in the case of ENERGY SOLUTIONS OXFORDSHIRE and the Contractor's Group in the case of the Contractor) and their respective officers, employees, agents, representatives or subcontractors).

17.3 Subject to clauses 15.3, 17.7 and 19, each Party, its officers, employees, agents, representatives and subcontractors shall have no liability to the other in respect of any actual or expected:

- (a) loss of profits;
- (b) loss of goodwill, loss of opportunity, loss of production, loss of contract or loss of margin; or
- (c) special, punitive, indirect or consequential loss of any type.

17.4 For the avoidance of doubt, the loss referred to in sub-clauses 17.3(a) and 17.3(b)(a) includes both direct and indirect losses.

17.5 Subject to clauses 15.3, 17.3 and 17.7, the aggregate liability of the Contractor, a member of the Contractor's Group and their respective officers, employees, agents, representatives and subcontractors to ENERGY SOLUTIONS OXFORDSHIRE arising out of any act, omission, event or circumstance or series of acts, omissions, events or circumstances relating to this Agreement or with respect to the matters contemplated herein shall in no circumstances exceed the Limitation Amount contained in Part A of Schedule 14 save that this limit of liability shall not apply in relation:

- (a) loss or damage to property (save for the EIMs) for which the Contractor's aggregate liability shall be capped at £10,000,000;
- (b) any design liability covered by the Contractor's professional indemnity insurance for which the Contractor's aggregate liability shall be capped at £[5,000,000]; or
- (c) any other risk or liability the Contractor is required to maintain insurance against under this Agreement, in respect of which the Contractor's liability shall be limited to the insured amount.

- 17.6 Subject to clauses 17.3 and 17.7, the aggregate liability of ENERGY SOLUTIONS OXFORDSHIRE, a member of ENERGY SOLUTIONS OXFORDSHIRE's Group and their respective officers, employees, agents, representatives and subcontractors to the Contractor arising out of any act, omission, event or circumstance or series of acts, omissions, events or circumstances relating to this Agreement or with respect to the matters contemplated herein shall in no circumstances exceed the applicable Limitation Amount contained in Part B of Schedule 14, save that this limit of liability shall not apply in relation to:
- (a) loss or damage to property for which ENERGY SOLUTIONS OXFORDSHIRE's aggregate liability shall be capped at £2,000,000.
- 17.7 Nothing in this Agreement shall be construed as excluding or limiting the liability of a Party, its officers, employees and agents for:
- (a) death or personal injury resulting from the negligence of the Party, its employees, agents or subcontractors; and
 - (b) fraud or Wilful Misconduct; and
 - (c) any indemnity under clauses 2.17, 2.24, 2.25 and 7.3 of this Agreement.
- 17.8 Neither Party shall be entitled to recover damages or obtain payment, reimbursement, restitution or indemnity more than once in respect of the same loss, shortfall, damage, deficiency, breach or any other event or circumstance under this Agreement, the Energy Services Agreement or any O&M Agreement.
- 17.9 The provisions of this clause 17 shall survive expiry or termination of this Agreement.

18. TERMINATION

- 18.1 ENERGY SOLUTIONS OXFORDSHIRE may terminate this Agreement:
- (a) immediately upon Notice from ENERGY SOLUTIONS OXFORDSHIRE to the Contractor, if the Contractor suspends or ceases, or threatens to suspend or cease, carrying on or all or a substantial part of its business; and/or
 - (b) upon Notice from ENERGY SOLUTIONS OXFORDSHIRE to the Contractor, if the Contractor has engaged in Wilful Misconduct in the delivery of the Works and the consequences of such Wilful Misconduct have not been remedied within seven (7) days (or such longer period as specified in that Notice) of receipt of a Notice from ENERGY SOLUTIONS OXFORDSHIRE requiring the Contractor to do so; and/or
 - (c) upon Notice from ENERGY SOLUTIONS OXFORDSHIRE to the Contractor for any serious persistent or serious repeated breach by the Contractor of any obligation of this Agreement where the Contractor fails to remedy such breach (to the extent capable of remedy) within thirty (30) days of Notice from ENERGY SOLUTIONS OXFORDSHIRE to do so; and/or

- (d) upon Notice from ENERGY SOLUTIONS OXFORDSHIRE to the Contractor for any material breach by the Contractor of this Agreement and such material breach has not been remedied within twenty (20) days of receipt of a Notice from ENERGY SOLUTIONS OXFORDSHIRE requiring the Contractor to remedy such material breach; and/or
- (e) immediately upon Notice from ENERGY SOLUTIONS OXFORDSHIRE to the Contractor, if the Contractor is or becomes Insolvent; and/or
- (f) immediately upon Notice from ENERGY SOLUTIONS OXFORDSHIRE to the Contractor, in the event that the Energy Services Agreement is terminated, and such termination has been caused as a result of the act, omission or negligence of the Contractor; and/or
- (g) immediately upon Notice from ENERGY SOLUTIONS OXFORDSHIRE to the Contractor, if the Contractor, without reasonable cause, substantially suspends the execution of the Works before Completion or the taking-over of the same; and/or
- (h) immediately upon Notice from ENERGY SOLUTIONS OXFORDSHIRE to the Contractor, if the Contractor, without reasonable cause, fails to proceed regularly and diligently with the Works; and/or
- (i) immediately upon Notice from ENERGY SOLUTIONS OXFORDSHIRE to the Contractor, if the Contractor refuses or neglects to comply with any reasonable instruction which ENERGY SOLUTIONS OXFORDSHIRE's Representative is empowered by this Agreement to give; and/or
- (j) in accordance with clause 10.7.

18.2 The Contractor may terminate this Agreement:

- (a) immediately upon Notice from the Contractor to ENERGY SOLUTIONS OXFORDSHIRE if at any time there are undisputed monies outstanding from ENERGY SOLUTIONS OXFORDSHIRE totalling in excess of £[25,000] and payment (not being the subject of a bona fide dispute or subject to provisions of clause 35 (Dispute Resolution)) is not made within twenty (20) days of Notice to remedy the same from the Contractor, such Notice not to be issued by the Contractor until after the Final Date for Payment; and/or
- (b) immediately upon Notice from the Contractor to ENERGY SOLUTIONS OXFORDSHIRE for any material breach by ENERGY SOLUTIONS OXFORDSHIRE of this Agreement (other than a payment obligation) and such material breach has not been remedied within thirty (30) days of receipt of a Notice from the Contractor requiring ENERGY SOLUTIONS OXFORDSHIRE to remedy such material breach; and/or
- (c) immediately upon Notice from the Contractor to ENERGY SOLUTIONS OXFORDSHIRE, if ENERGY SOLUTIONS OXFORDSHIRE has engaged in Wilful Misconduct in its performance of this Agreement and the consequences of such Wilful Misconduct have not been remedied within fifteen (15) days (or such longer period as may be specified in that Notice) of receipt of a Notice from the Contractor requiring ENERGY SOLUTIONS OXFORDSHIRE to do so; and/or

- (d) immediately upon Notice from the Contractor to ENERGY SOLUTIONS OXFORDSHIRE, if ENERGY SOLUTIONS OXFORDSHIRE is or becomes Insolvent.

18.3 In the event that:

- (a) pursuant to clause 22 a Party is relieved from the performance of all or a material part of its obligations under this Agreement for a continuous period of six (6) months, then either Party may at any time thereafter while such relief continued immediately terminate this Agreement by giving one (1) calendar months' Notice to such effect to the other Party; or
- (b) the Energy Services Agreement is terminated and such termination has not been caused as a result of the act, omission or negligence of the Contractor and/or a breach of its obligations under this Agreement, then either Party may immediately terminate this Agreement upon Notice to the other.

19. CONSEQUENCES OF TERMINATION

Contractor Default

19.1 If this Agreement is terminated by ENERGY SOLUTIONS OXFORDSHIRE under clause 18.1,

(a) ENERGY SOLUTIONS OXFORDSHIRE shall not be bound to make any further payment to the Contractor until the full and final cost of completion of the Works by a replacement contractor or other persons has been ascertained, and upon such cost being ascertained, ENERGY SOLUTIONS OXFORDSHIRE's Representative shall certify the amount of any Liabilities suffered or incurred by ENERGY SOLUTIONS OXFORDSHIRE, and, if such amount when added to the monies paid to the Contractor before the date of termination exceeds the total amount due to the Contractor calculated in accordance with clause 14 up to the date of termination, the difference shall be a debt payable to ENERGY SOLUTIONS OXFORDSHIRE by the Contractor; and

(b) pursuant to the terms of the Collateral Warranty the Contractor shall remain liable at its own cost to repair or replace and make good all Defects until the expiry of the Defects Liability Period.

ENERGY SOLUTIONS OXFORDSHIRE Default

19.2 If this Agreement is terminated by the Contractor under clause 18.2, ENERGY SOLUTIONS OXFORDSHIRE's Representative shall ascertain and certify under clause 14 the total amount properly due to the Contractor up to the date of termination (including but without limitation, a fair and reasonable part of the price for any element of work separately identified by the Contractor and properly executed but not completed at such date and the Contractor's costs of protecting and securing the Works as required by clause 19.4) and ENERGY SOLUTIONS OXFORDSHIRE shall pay such amount to the Contractor within thirty (30) Business Days of certification of it.

No Fault Termination

19.3 If this Agreement is terminated by either Party under clause 18.3, ENERGY SOLUTIONS OXFORDSHIRE shall pay to the Contractor the amount due to the Contractor for Works installed but not paid (as reasonably verified by the Contractor) within thirty (30) Business Days of Notice from

the Contractor of the amount due (with supporting information). For avoidance of doubt, neither Party shall have any claim against the other for any Liabilities arising out of or in connection with such termination (which for the avoidance of doubt includes any loss of contract loss of profit or loss of chance or opportunity).

Effect of Termination

- 19.4 Upon termination by either Party under clause 18 and notwithstanding that the validity of such termination is disputed by the Contractor, the Contractor shall immediately vacate the Site after properly protecting and securing the Works.
- 19.5 Subject to clause 19.3, termination or partial termination of the Contractor's employment by either Party shall not prejudice the rights of either Party to sue for and recover any Liabilities suffered or incurred by it arising out of or in connection with any breach by the other Party of this Agreement prior to such termination and generally to enforce any of its rights and remedies in relation to anything done prior to such termination.
- 19.6 Upon Notice of termination of this Agreement in accordance with clause 18, the Contractor shall provide to ENERGY SOLUTIONS OXFORDSHIRE or, at ENERGY SOLUTIONS OXFORDSHIRE's request, to any new contractor, copies of the Handover Documents. The Contractor shall also provide ENERGY SOLUTIONS OXFORDSHIRE for a period of three (3) month following termination with such assistance as ENERGY SOLUTIONS OXFORDSHIRE or a replacement contractor shall reasonably require in relation to the handover of the Works provided under this Agreement.
- 19.7 All title in the Works installed or partly installed at the Site as at the date of termination by either Party pursuant to clause 18 shall pass to ENERGY SOLUTIONS OXFORDSHIRE upon the date of a Notice of termination unless otherwise agreed by ENERGY SOLUTIONS OXFORDSHIRE.

20. CIS – FINANCE ACT 2004

- 20.1 This clause 20 shall apply if ENERGY SOLUTIONS OXFORDSHIRE is "a contractor" for the purposes of the CIS under the Finance Act 2004 (the "Finance Act") or if ENERGY SOLUTIONS OXFORDSHIRE becomes "a contractor" at any time before Final Completion. ENERGY SOLUTIONS OXFORDSHIRE shall forthwith Notify the Contractor if he becomes "a contractor".
- 20.2 Where clause 20.1 applies ENERGY SOLUTIONS OXFORDSHIRE shall make the deduction provided by the Finance Act from payments due to the Contractor under this Agreement in accordance with the requirements of the CIS and the Finance Act.

21. CDM REGULATIONS

CDM Principal Contractor

- 21.1 For the purposes of the CDM Regulations the Contractor shall be and perform the duties of Principal Contractor and the Principal Designer under the CDM Regulations. The Contractor warrants that it possesses the degree of competence and knowledge and will employ adequate resources to fulfil its obligations under the CDM Regulations and the Client's CDM Policy.

Contractor's CDM Duties

- 21.2 The Contractor shall comply with the Client CDM Policy.
- 21.3 The Contractor shall prepare and operate its own safety management systems to be agreed by ENERGY SOLUTIONS OXFORDSHIRE taking into account site rules and the Final Specification in relation to health and safety, perceived hazards and any relevant information provided in the Final Specification.
- 21.4 The Contractor shall be responsible for the security, state and condition of:
- (a) the parts of the Site on which the Works are being carried out; and
 - (b) all persons at the Site,

and shall have full regard for the safety of such persons and keep the parts of the Sites on which the Works are being carried out in an orderly state, in accordance with Good Industry Practice, to avoid danger to such persons.

Construction Phase Plan

- 21.5 Notwithstanding the date for commencement of the Works noted in the Works Programme, the Contractor shall not commence its work on Site until it has prepared a Construction Phase Plan complying with the CDM Regulations.

Appointment of successors

- 21.6 If ENERGY SOLUTIONS OXFORDSHIRE by a further appointment replaces Principal Designer and/or Principal Contractor, ENERGY SOLUTIONS OXFORDSHIRE shall immediately upon such further appointment or replacement Notify the Contractor of the name and address of the new appointee.

Health and safety files

- 21.7 The Contractor shall issue to ENERGY SOLUTIONS OXFORDSHIRE one (1) electronic copy of each health and safety file to be prepared by it or by a subcontractor pursuant to the CDM Regulations in relation to the Works and electronic or paper copies of every amendment or update made to such file as soon as such health and safety file or any amendment or update becomes available.

22. FORCE MAJEURE

- 22.1 A Party is relieved from performing this Agreement to the extent and for so long as that performance is prevented or hindered by a Force Majeure Event.
- 22.2 In this Agreement, "**Force Majeure Event**" means any event or circumstance (or a combination of events and circumstances):
- (a) that is beyond the reasonable control of the Party concerned;
 - (b) which is without the fault or negligence of such Party; and

- (c) which such Party could not have prevented (including by reasonable anticipation) or avoided or overcome by acting in accordance with Good Industry Practice, including (but only to the extent that each satisfies the requirements in clauses 22.2(a) to 22.2(b) above):
 - (i) Acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;
 - (ii) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
 - (iii) terrorist attack, civil war, civil commotion or riots;
 - (iv) nuclear, chemical or biological contamination or sonic boom; and
 - (v) any manufacturing, transportation or other supply chain interruptions or delays associated with the outbreak of a pandemic (including Covid-19), epidemic or disease.

22.3 A Party whose performance of this Agreement is prevented or hindered by a Force Majeure Event shall:

- (a) Notify the other Party of the occurrence of a Force Majeure Event as soon as reasonably practicable, describing the Force Majeure Event and its anticipated effect on performance under this Agreement in reasonable detail;
- (b) continue to perform the obligations under this Agreement that are unaffected; and
- (c) as soon as reasonably practicable after cessation of the Force Majeure Event or the effects of it (as appropriate):
 - (i) Notify the other Party in writing;
 - (ii) resume performance of the affected obligations; and
 - (iii) take all reasonable steps to recover any slippage.

22.4 Each Party shall use all reasonable endeavours to avoid or remove the circumstances constituting a Force Majeure Event affecting its performance of this Agreement and to mitigate the effect of a Force Majeure Event affecting its performance of this Agreement whilst such Force Majeure Event subsists and the other Party shall cooperate and provide such assistance as the first Party may reasonably request in connection therewith.

22.5 Where the Contractor's performance of the Works is prevented or hindered by a Force Majeure Event and the Contractor complies with the provisions of clause 22.3, it shall be entitled to an extension to the Completion Date which will be considered a Change and documented in a Confirmation Notice pursuant to Schedule 8.

23. CONFIDENTIALITY

23.1 Confidentiality Agreement

Subject to clause 23.2, each Party shall:

- (a) treat as confidential, and shall not disclose to any person, any data or information obtained from the other Party or a member of ENERGY SOLUTIONS OXFORDSHIRE's or Contractor's Group or any of their directors, employees, agents, advisors or contractors as a result of entering into or performing this Agreement which relates to:
 - (i) the provisions of this Agreement;
 - (ii) the negotiations relating to this Agreement; or
 - (iii) the other Party,such information being "**Confidential Information**";
- (b) make every effort to prevent the disclosure of Confidential Information; and
- (c) ensure that each member of ENERGY SOLUTIONS OXFORDSHIRE's Group, in the case of ENERGY SOLUTIONS OXFORDSHIRE, and each member of the Contractor's Group, in the case of the Contractor, complies with the provisions of clauses (a) and (b) as if the provisions of those clauses were expressed to apply to it.

23.2 Exceptions

Subject to clause 23.3 and notwithstanding the provisions of clause 23.1, either Party may disclose Confidential Information (including by way of a public announcement or the issue of a circular):

- (a) if, and to the extent, required by law or for the purpose of any judicial proceedings;
- (b) if, and to the extent, lawfully required by any Recognised Investment Exchange or regulatory or governmental body to which that Party is subject or reasonably submits, including the London Stock Exchange, the UK Listing Authority or the Takeover Panel;
- (c) if, and to the extent, required for the purpose of any mediation or expert determination pursuant to clause 35 (Dispute Resolution);
- (d) to actual or potential insurers;
- (e) to actual or potential funders (subject always to the prior written consent of the other Party);
- (f) if, and to the extent, required to vest the full benefit of this Agreement in that Party;
- (g) if, and to the extent, such information has already come into the public domain through no fault of that Party;
- (h) if, and to the extent, made to:

- (i) the professional advisers, auditors, contractors, bankers actual or potential funders or insurers of that Party or of any other member of ENERGY SOLUTIONS OXFORDSHIRE's Group (in the case of ENERGY SOLUTIONS OXFORDSHIRE) or of any other member of the Contractor's Group (in the case of the Contractor); or
 - (ii) the directors, officers or employees of that Party or of any other member of ENERGY SOLUTIONS OXFORDSHIRE's Group (in the case of ENERGY SOLUTIONS OXFORDSHIRE) or of any other member of the Contractor's Group (in the case of the Contractor); or
 - (iii) provided that the Party making the disclosure shall procure that each of those persons:
 - A) complies with clause 23.1 in each case as if the provisions of the relevant clause were expressed to apply to it; and
 - B) undertakes to use the Confidential Information disclosed to that person solely in connection with the discharge of that person's duties to that Party; or
- (i) if, and to the extent, the other Party has given its prior written consent to the disclosure, such consent not to be unreasonably withheld or delayed.

23.3 **Disclosure only after notice etc.**

Any disclosure pursuant to clauses (a), (b) or (c) shall, so far as is practicable, be made:

- (a) after Notice to, and consultation with, the other Party (except where such Notice or consultation is prohibited by law); and
- (b) after taking into account the reasonable requirements of the other Party as to the content, timing and manner of such disclosure,

and the disclosing Party shall take reasonable steps to co-operate with any action which the other Party may reasonably elect to take to challenge legally the validity of that requirement.

23.4 **Limit in time**

The provisions of this clause 23 shall apply for a period of six (6) years after Completion or early termination of this Agreement, however determined.

23.5 **Equitable relief**

Without prejudice to any other rights or remedies that the Parties hereto may have, the Parties acknowledge and agree that damages alone would not be an adequate remedy for any breach of the terms of this clause 23. Accordingly, either Party shall be entitled to the remedy of injunction or other equitable relief for any threatened or actual breach of this clause 23.

24. ANNOUNCEMENTS

24.1 No announcement without consent

Subject to clauses 23.2 and 24.2, neither Party may make or send a public announcement, communication or circular concerning the transactions referred to in this Agreement unless it has first obtained the other Party's written consent, which consent may not be unreasonably withheld or delayed.

24.2 Exceptions

24.2.1 Subject to clause 24.2.2, clause 24.1 does not apply to a public announcement, communication or circular:

- (a) required by law; or
- (b) lawfully required by any Recognised Investment Exchange or regulatory or governmental body to which that Party is subject or reasonably submits.

24.2.2 Any public announcement, communication or circular to which clause 24.2.1 applies shall, so far as is practicable, be made:

- (a) after Notice to, and consultation with, the other Party (except where such Notice or consultation is prohibited by law); and
- (b) after taking into account the reasonable requirements of the other Party as to its content, timing and manner of making or despatch,

and the Party making or sending the announcement, communication or circular shall take reasonable steps to cooperate with any action which the other Party may reasonably elect to take to challenge legally the validity of that requirement.

24.3 No limit in time

The provisions of this clause 24 shall apply without limit in time and notwithstanding any termination of this Agreement.

25. FURTHER ASSURANCE

Each Party shall, from time to time, at its own cost, do, perform, sign, execute and deliver all such acts, deeds, documents and things (or procure the doing, performance, signing, execution or delivery thereof) as the other Party may from time to time reasonably require, in a form and in terms satisfactory to the other Party (acting reasonably), to give full effect to this Agreement and to secure to the other Party the full benefit of the rights, powers and remedies conferred upon the other Party in this Agreement.

26. COSTS AND PAYMENTS

26.1 Pay own costs

Except as otherwise stated in this Agreement, each Party shall pay its own costs, charges and expenses relating to the negotiation, preparation, execution and performance of this Agreement.

26.2 Set-off

26.2.1 Provided the Contractor gives ENERGY SOLUTIONS OXFORDSHIRE not less than ten (10) Business Days' Notice of its intention to set-off or deduct a sum, the Contractor will be entitled to set-off its undisputed claims and rights against ENERGY SOLUTIONS OXFORDSHIRE pursuant to this Agreement against any amount which may be (or becomes) due or payable by it to ENERGY SOLUTIONS OXFORDSHIRE pursuant to this Agreement or any O&M Agreement where the Contractor is also the appointed O&M Contractor.

26.2.2 Provided ENERGY SOLUTIONS OXFORDSHIRE gives the Contractor not less than ten (10) Business Days' Notice of intention to set-off or deduct a sum, ENERGY SOLUTIONS OXFORDSHIRE will be entitled to set-off its undisputed claims and rights against the Contractor pursuant to this Agreement, including but not limited to the payment of Delay Liquidated Damages, against any amount which is due or payable by it to the Contractor pursuant to this Agreement or any O&M Agreement where the Contractor is also the appointed O&M Contractor.

26.3 Grossing up

If any amount payable to a Party by the other pursuant to this Agreement will be, or has been, subject to Tax, such additional amounts shall be paid to the recipient Party by the paying Party so as to ensure that the net amount received and retained by the recipient Party is equal to the full amount payable to the recipient Party under this Agreement.

27. INTEREST

If a Party fails to pay on the due date any sum due from it under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise), interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at the rate of four per cent (4) % above the base rate for the time being of the Bank of England. That interest shall accrue on a daily basis and be compounded quarterly.

28. ENTIRE AGREEMENT

28.1 Entire agreement

This Agreement constitutes the whole and only agreement between the Parties in relation to the delivery of the Works and supersedes any previous agreement whether written or oral between the Parties in relation to that subject matter save as provided in clause 28.3.

28.2 **No action regarding previous agreements etc.**

Neither Party shall bring any action against the other or against any other member of the Contractor's Group or ENERGY SOLUTIONS OXFORDSHIRE's Group, as the case may be, in relation to:

- (a) any previous agreement(s) between them relating to the subject matter of this Agreement;
or
- (b) save as provided in clause 28.3, any Representation other than as set out in this Agreement.

28.3 **Fraud etc.**

Nothing in this clause 28 shall have the effect of limiting or restricting any liability arising as a result of any fraud, dishonesty, Wilful Misconduct or wilful concealment.

29. **INVALIDITY**

29.1 **Invalidity**

If at any time all or any part of any provision of this Agreement is found by any court or other authority of competent jurisdiction to be illegal, invalid or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement and the validity and enforceability of the other provisions of this Agreement shall not be affected. If a provision or part-provision is found illegal, invalid or unenforceable, the Parties shall negotiate in Good Faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original commercial intention.

30. **AMENDMENTS, WAIVERS AND RIGHTS**

30.1 **Amendments**

No amendment or variation of the terms of this Agreement shall be effective unless it is made or confirmed in a written document signed by duly authorised representatives for each Party.

30.2 **Delay in exercise/non-exercise of rights**

No delay in exercising, or non-exercise, by either Party of any right, power or remedy provided by law or under this Agreement impairs, or constitutes a waiver or release of, that right, power or remedy.

30.3 **Waivers**

Any waiver or release must be specifically granted in writing signed by the Party granting it and shall:

- (a) be confined to the specific circumstances in which it is given;
- (b) not affect any other enforcement of the same or any other right; and

(c) unless it is expressed to be irrevocable, be revocable at any time in writing.

30.4 Exercise of rights

No single or partial exercise of any right, power or remedy provided by law or under this Agreement prevents any other or further exercise of it or the exercise of any other right, power or remedy.

30.5 Rights and remedies cumulative

The rights, powers and remedies of each Party under this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by general law.

31. ASSIGNMENT

31.1 Benefit of agreement assignable

31.1.1 Subject to clause 31.1.2, neither Party may assign to any person (other than a Finance Provider by way of security) without restriction, in whole or in part, the benefit of, or its rights, claims, obligations or benefits under this Agreement (together with any causes of action arising in connection with any of them) without the prior express written consent of the other Party, such consent shall not be unreasonably withheld or delayed (for the avoidance of doubt, it shall be reasonable for a Party to withhold consent where the proposed assignee does not have a sufficient financial covenant).

31.1.2 In the event that an assignment is consented to in accordance with clause 31.1.1, any assignee of the assigning Party shall be entitled to enforce the same against the other Party as if he were named in the Agreement provided that the liability of the Contractor or ENERGY SOLUTIONS OXFORDSHIRE (as the case may be) as a result of the assignment shall not be greater than its liability had no assignment occurred.

32. THIRD PARTY RIGHTS

32.1 The Parties do not intend that any term of this Agreement should be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Agreement. Nothing in this clause affects any right or remedy of a third party which exists or is available apart from that Act.

33. NOTICES

33.1 A Notice given to a Party under this Agreement:

(a) shall be in writing;

(b) shall be signed by or on behalf of the Party giving it;

- (c) shall be sent to the addresses and persons set out in Schedule 10 (or to such other person or to such other address as a Party may Notify to the other, in accordance with the provisions of this clause 33); and
- (d) shall be:
 - (i) sent by commercial courier; or
 - (ii) sent by special or recorded delivery; or
 - (iii) sent by email.

33.2 In proving service or delivery of a Notice, it shall be sufficient to prove that the other Party has acknowledged the Notice or if a Notice has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows:

- (a) if delivered by commercial courier, on the date and at the time of signature of the receiving Party's receipt; or
- (b) if sent by special or recorded delivery, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at 9.00am on the next Business Day after transmission provided that no notification informing the sender that the message has not been delivered has been received by the sender.

33.3 The provisions of this clause 33 shall not apply to the service of any proceedings or other documents in any legal action.

34. COUNTERPARTS

34.1 Any number of counterparts

This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each of the Parties has executed at least one counterpart.

34.2 Each counterpart an original

Each counterpart constitutes an original of this Agreement, but all the counterparts together constitute but one and the same instrument.

35. DISPUTE RESOLUTION

35.1 If any dispute arises in connection with this Agreement, directors or other senior representatives of the Parties with authority to settle the dispute will, within twenty (20) Business Days of a written request from one Party to the other, meet in a Good Faith effort to resolve the dispute.

35.2 If the dispute is not resolved at that meeting, the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation a Party must give a Notice ("**ADR Notice**") to the other Party to the dispute requesting a mediation. A copy of the request should be sent to CEDR Solve.

The mediation will start not later than twenty (20) Business Days after the date of the ADR Notice.

35.3 No Party may commence any court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other Party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

35.4 Notwithstanding the provisions of clauses 35.1 to 35.3 above, any disputes arising in relation to this Agreement may be referred by either Party to adjudication at any time in accordance with the procedure set out in section 108 of the Housing Grants, Construction and Regeneration Act 1996, as amended.

Expert Determination

35.5 Where it is expressly specified in this Agreement that a Party may refer a matter to an Expert, any of the Parties may refer such matter or dispute to an Expert at any time by giving written Notice (an "**Expert Determination Notice**") to the other Party stating its intention to do so.

35.6 Within two (2) Business Days of receipt by the other Party of the Expert Determination Notice, the Parties shall agree the Expert from the appropriate panel. Where no such agreement can be reached between the Parties, the decision shall be referred to the president from time to time of the Chartered Institution of Building Services Engineers and such decision shall be final.

35.7 Within seven (7) Business Days of appointment of the Expert, the Party referring the dispute or matter to the Expert shall submit:

- (a) a detailed written statement of its position setting out its position and/or the facts on which it relies; and
- (b) all documents and evidence on which it wishes to rely in any subsequent adjudication (such written statement, documents and evidence together referred to as the "**Expert Determination Statement**")

to the Expert copied to the other Party. Within fifteen (15) Business Days of receipt by the other Party of the Expert Determination Statement, the other Party shall submit their respective written response to the Expert copied to the other Party.

35.8 The Expert acting as an expert and not an arbitrator shall provide to the Parties his written decision on the dispute or matter ("**Decision**"), within 28 days of appointment (or such other period as the Parties may agree after the reference, or 42 days from the date of reference if the Party which referred the dispute or matter agrees to such extension at the request of the Expert). The Expert shall set out within the Decision the precise reasoning for his/her conclusions.

- 35.9 Unless and until revised, cancelled or varied by a decision of the courts, the Decision shall be final and binding on the Parties, who shall forthwith give effect to the Decision, in the absence of manifest error or fraud.
- 35.10 In respect of all disputes or other matters referred to the Expert:
- (a) the Expert shall act impartially;
 - (b) the Expert may in their reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate including (to the extent considered necessary) instructing professional advisors to assist them in reaching their determination and including directions for the conduct of concurrent hearings where the Client is joined as a Party;
 - (c) the Expert may exercise jurisdiction with respect to this Agreement and the Energy Services Agreement and has the power, at the request of ENERGY SOLUTIONS OXFORDSHIRE, to join the Client as an additional Party to the reference and to consolidate with the referred dispute a dispute between ENERGY SOLUTIONS OXFORDSHIRE and the Client under the Energy Services Agreement which raises issues substantially the same as, or connected with, or which touch upon issues raised in the dispute between ENERGY SOLUTIONS OXFORDSHIRE and the Contractor so that all the issues can be heard in one procedure and the Decision is binding on all Parties to the reference (even if the Client chooses not to participate in the process);
 - (d) all information, data or documentation disclosed or delivered by the Parties to the Expert in consequence of or in connection with his appointment as the Expert shall be treated as confidential;
 - (e) the Expert shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Expert unless the act or omission is in bad faith. Any employee or agent of the Expert is similarly protected from liability;
 - (f) the Expert may take the initiative in ascertaining the facts and the law and may use his expert knowledge in coming to a decision; and
 - (g) the Expert's costs of any reference shall be borne as the Expert shall specify or, in default, equally by the Parties. Each of the Parties shall bear its own costs arising out of the reference, including legal costs and costs and expenses of any witnesses.
- 35.11 The Parties consent to the consolidation of disputes capable of being referred to expert determination under this Agreement and the Energy Services Agreement.
- 35.12 Nothing in this clause 35 shall restrict the right which either Party may have to seek injunctive relief in respect of a breach of this Agreement.

36. GOVERNING LAW AND JURISDICTION

36.1 This Agreement (and any dispute or claim arising out of, or in connection with it or its subject matter or formation (including non-contractual disputes or claims)) shall be governed by, and construed in accordance with, the law of England and Wales.

36.2 Subject to clause 35, each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales as regards any claim or matter arising under or in connection with Agreement (including non-contractual disputes or claims).

37. EXECUTION

The Parties have shown their acceptance of the terms of this Agreement by executing it (after the Schedules) by the hands of the persons duly authorised on their behalf the day and year first written.

SCHEDULE 1 : Works Specification

SCHEDULE 2 : Contractor's Proposals

SCHEDULE 3 : Works Programme

SCHEDULE 4 : Site Access/Security Protocol

SCHEDULE 5 : Completion Tests

SCHEDULE 6 : Energy Savings Assurance

The Contractor acknowledges that:

- (a) The Client will perform M&V services in accordance with the M&V Plan it has developed in relation to the Energy Improvement Measures in accordance with Good Industry Practice;
- (b) As a part of the M&V Plan the Client will undertake a First Year Performance Evaluation; and
- (c) The Client has given an “Energy Savings Assurance” in relation to expected energy savings at the Site, which relies in part on the Contractor carrying out the Works in accordance with this Agreement such that they meet the Works Specification and function and operate in accordance with the Energy-related Technical Performance Outputs, and this Schedule sets out the relevant parts of that Energy Savings Assurance as between ENERGY SOLUTIONS OXFORDSHIRE and the Contractor.

The table below sets out the “**Baseline Annual Energy Consumption**” for the Site, which is based on [the [3] year average of electricity and gas data provided by the Client for the period [month] [year] to [month] [year] for the Site]:

ENERGY	BASELINE ANNUAL ENERGY CONSUMPTION (kWh)
Electricity	
Gas	

The table below sets out the “**Target First Year Energy Consumption**”, which is the annual gas and electricity consumption expected to be consumed after implementation of all Energy Improvement Measures at the Site if no adjustment parameters (see below) were applied:

ENERGY	TARGET FIRST YEAR ENERGY CONSUMPTION (kWh)
Electricity	
Gas	

The **Baseline Annual Energy Consumption** and the **Target First Year Energy Consumption** shall be adjusted at the end of the **First Contract Year** as part of the **First Year Performance Evaluation**, having regard to:

- degree day adjustments;
- change of use and occupancies and any other material changes made during the verification period; and allowance for non- or partially-operational plant and equipment (which in the Energy Services Agreement are referred to as the “**Site Adjustment Parameters**”);

in order to calculate:

- the “**Adjusted Baseline Energy Consumption**”, being the energy consumption at the Site which would be expected if no EIMs were implemented and adjusting for degree days and the Site Adjustment Parameters during the First Contract Year.
- the “**Adjusted Target First Year Energy Consumption**”, being the electricity and gas consumption at the Site which would be expected after implementation of all the Energy Improvement Measures and adjusting for degree days and the Site Adjustment Parameters during the First Contract Year.

The “**Adjusted Target First Year Energy Savings**” shall be calculated as **Adjusted Baseline Energy Consumption - Adjusted Target First Year Energy Consumption**.

The “**First Year Actual Energy Consumption**” shall be the actual energy consumed at the Site over the First Contract Year, as established at the end of the First Contract Year as part of the First Year Performance Evaluation.

The “**Achieved First Year Energy Savings**” shall be calculated as **Adjusted Baseline Energy Consumption - Actual First Year Energy Consumption**.

If the Achieved First Year Energy Savings are more than 5% lower than the Adjusted Target First Year Energy Savings, ENERGY SOLUTIONS OXFORDSHIRE shall make a good faith assessment as to the cause of the underperformance (“**Energy Savings Shortfall**”) and shall Notify the Contractor if it determines that the Energy Savings Shortfall is caused by the ‘fault’ of the Contractor, being a breach of the Works Contract by the Contractor and/or failure of the Contractor to comply with its obligations under Works Contract, including where the Works do not meet the Works Specification or function or operate in accordance with the Energy-related Technical Performance Outputs, in which case the provisions of clause 11.11 shall apply.

SCHEDULE 7 : Approved Sub-Contractors

NAME	EIM	CONTACT DETAILS		

SCHEDULE 8 : Change Protocol

1. CHANGE PROCESS

ENERGY SOLUTIONS OXFORDSHIRE may request a Change by issuing a Change Request. Such Change shall be processed in accordance with the provisions of paragraph 3 below.

2. LIMITS ON CHANGES

2.1 ENERGY SOLUTIONS OXFORDSHIRE may not propose a Change:

- (a) which requires the Works to be performed in a way that infringes any Applicable Laws or is inconsistent with Good Industry Practice;
- (b) which would materially and adversely affect the Contractor's ability to deliver the Works (except for that part of the Works which has been specified as required to be amended in the Change Notice) in a manner not compensated pursuant to paragraphs 5 and 6;
- (c) which would materially and adversely affect the health and safety of any person;
- (d) whereby ENERGY SOLUTIONS OXFORDSHIRE does not have the legal power or capacity to require the implementation of such Change; and/or
- (e) which would cause the Works to be completed after the Completion Date (unless ENERGY SOLUTIONS OXFORDSHIRE grants an extension of time to the Completion Date).

3. PERMITTED CHANGES

3.1 The Contractor shall, within five (5) Business Days of receipt of a Change Request provide to ENERGY SOLUTIONS OXFORDSHIRE in writing:

- (a) any objection to the Change Request pursuant to the provisions of paragraph 2.1 above;
- (b) in the Contractor's opinion whether any proposed amendments are required to the Change Request;
- (c) an estimate of:
 - (i) the time the Contractor requires to implement the Change requested by ENERGY SOLUTIONS OXFORDSHIRE and the resulting extension to the Completion Date and changes to the Works Programme (if any); and
 - (ii) the additional charges (if any) the Contractor advises are to be paid by ENERGY SOLUTIONS OXFORDSHIRE for implementing the proposed Change.

3.2 ENERGY SOLUTIONS OXFORDSHIRE shall, within five (5) Business Days of receipt of such Notice referred to in paragraph 3.1 above, provide written confirmation that:

- (a) the Change Request is withdrawn; or
- (b) the objection by the Contractor may be referred for determination in accordance with clause 35 (Dispute Resolution); or
- (c) the Change Request is confirmed, the terms of which acceptance shall be recorded by way of a confirmation Notice sent by ENERGY SOLUTIONS OXFORDSHIRE to the Contractor ("**Confirmation Notice**").

4. IMPLEMENTATION

4.1 Upon receipt of a Confirmation Notice by the Contractor in respect of a Change:

- (a) where applicable, the Parties shall execute a deed of amendment to this Agreement;
- (b) the Contractor shall implement any Change within the timescales set out in the Confirmation Notice; and
- (c) the Contractor shall Notify ENERGY SOLUTIONS OXFORDSHIRE when it believes the Change has been completed.

5. PAYMENT FOR CHANGES

5.1 ENERGY SOLUTIONS OXFORDSHIRE shall (save where expressly agreed otherwise in a Confirmation Notice) pay the Contractor the agreed cost for implementing any Change in accordance with paragraph 5.2 below.

5.2 The Parties acknowledge and agree that payments arising under this Schedule may be made by adjustment of the Contract Sum.

6. EXTENSION TO COMPLETION DATE

Where the Contractor must implement any Change pursuant to this Schedule, the Contractor shall be entitled to an extension to the Completion Date as required to implement the Change to be set out in the Confirmation Notice, and the Works Programme shall be amended accordingly.

7. DISPUTES OVER CHANGES

Any dispute arising in respect of this schedule will be resolved in accordance with clause 35 (Dispute Resolution).

SCHEDULE 9 : Payment Milestones for Contract Sum

SCHEDULE 10 : Notices

The addresses of the Parties for the purposes of clause 33 are:

ENERGY SOLUTIONS OXFORDSHIRE:	Contractor:
Attention:	Attention:
Email: Address:	Email: Address:
Copy:	Copy:
Email: Address:	Email: Address:

SCHEDULE 11 : Template of Weekly Report

SCHEDULE 12 : Manufacturer's Warranties

The Contractor undertakes to obtain from third party manufacturers and/or any subcontractors the following manufacturers' warranties for the EIMs:

Warranty Periods

ENERGY IMPROVEMENT MEASURE (EIM)	WARRANTY PERIOD
<i>AHUs</i>	<i>12 months</i>
<i>Boiler Replacement</i>	<i>12 months</i>
<i>Low Energy Lighting</i>	<i>5 years</i>
<i>Voltage Optimisation</i>	<i>12 months</i>

SCHEDULE 13 : Form of Collateral Warranty

SCHEDULE 14 : Limitation Amount

Part A: Limitation Amount of the Contractor

The aggregate Liability of the Contractor shall be capped at the Contract Sum.

Part B: Limitation Amount of ENERGY SOLUTIONS OXFORDSHIRE

The aggregate Liability of ENERGY SOLUTIONS OXFORDSHIRE shall be capped at the Contract Sum.

SCHEDULE 15 : Client Policies

[Insert here any Client policies that the Contractor must take account of when undertaking the Works]

- *[Health and Safety Policy]*
- *Fire Safety Policy*
- *Permit to Work Policy]*

In each case as such policies may be updated by the Client (acting reasonably) from time to time.

