

## **DETERMINATION NO RBA/TR/A/DET/182**

### **DETERMINATION BY THE GAS AND ELECTRICITY MARKETS AUTHORITY OF A DISPUTE REFERRED TO IT UNDER SECTION 23 OF THE ELECTRICITY ACT 1989 - The reasonableness of terms included in a connection offer for [REDACTED].**

#### **1. INTRODUCTION**

- 1.1 The Gas and Electricity Markets Authority ("the Authority"<sup>1</sup>) has been asked by [REDACTED] ("the Customer") to determine a dispute between it and [REDACTED] ("the Company"). The dispute concerns the delay in the Company connecting the property in question and whether this delay was reasonable.
- 1.2 The dispute has been referred to us for determination under section 23 of the Electricity Act 1989 ("the Act"), which applies to any disputes arising under sections 16 to 21 of the Act. We are required to determine such disputes once we have been asked to do so.
- 1.3 The dispute was first raised with us in December 2011 when the Customer had not yet been connected. Subsequently, the dispute over terms to be agreed was resolved, the Company made the requested connection and all sites on the property were energised on 15 October 2012.
- 1.4 Notwithstanding the fact that the Company had discharged its statutory obligation under section 16 of the Act to make the connection, the Customer also disputed whether the delay in making the connection was reasonable.
- 1.5 As the initial dispute concerning the making of the connection fell away when the site was energised, the scope of our investigation of the dispute was limited to considering whether the delay in making the connection was reasonable.
- 1.6 Relevant copies of the submissions by the Customer and the Company in relation to this dispute are attached as Appendices 1 and 2 (respectively) to this determination. The responses to the parties' submissions and further comments are part of these appendices.

#### **2. STATUTORY OBLIGATIONS**

- 2.1 Any dispute arising under sections 16 to 21 of the Act, between an electricity distributor and a person requiring a supply of electricity, may be referred to us under section 23 of the Act for determination. The specific sections of the Act that relate to this particular dispute are outlined below.
- 2.2 Section 16 sets out the duty on an electricity distributor to provide a connection upon request.

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<sup>1</sup> In this document the terms the "Authority" and "we" are used interchangeably.

- 2.3 Section 16A of the Act details the procedure for requiring a connection.
- 2.4 Section 17 (1) of the Act outlines the exceptions to the duty of an electricity distributor to make a connection. This includes if:
- a. the electricity distributor is prevented from doing so by circumstances not under his control;
  - b. by doing so, the distributor may be placing himself in breach of regulations under section 29, and he has taken all such steps as it was reasonable to take both to prevent the circumstances from occurring and to prevent them from having that effect; or
  - c. it is not reasonable in all circumstances for the distributor to be required to do so.
- 2.5 Section 21(b) of the Act explains that an electricity distributor may require any person requesting a connection under section 16 to accept any terms that are reasonable in all circumstances for that person to be required to accept.

### **3. FACTS OF THE CASE**

- 3.1 We consider the following to be the facts of the case, based on the assessment of the information submitted to us by the parties to this determination. We have carefully considered the evidence and comments from both parties and have set out the relevant documents relied upon to reach our decision in Appendices 1 and 2 and summarised in this determination.
- 3.2 The property in question falls outside the Distribution Service Area (DSA) of the Company. Therefore, the Company offered the customer a connection outside its regulated distribution area effectively as an Independent Distribution Network Operator (IDNO), creating an embedded network within the DSA of another electricity distributor.
- 3.3 Once the terms of agreement of the connection were finalised, and it was understood by all parties that the Company would be adopting and maintaining the local network for this property<sup>2</sup> the Company, as the authorised electricity distributor, bound itself to the obligations which arise under sections 16 to 21 of the Act.
- 3.4 This was detailed in a notice<sup>3</sup> of terms and payments dated 11 June 2010. A revised version of the notice was issued on 30 March 2011. This notice was accepted and signed by the Customer's solicitor on the Customer's behalf on 4 April 2011.

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<sup>2</sup> See appendix 2 1.

<sup>3</sup> As set out in section 16A(5) of the Act

3.5 On 13 April 2011 the customer paid the Company the sum of £68,162 plus VAT of £13,632.40. However, the parties were not in full agreement on all of the final terms and conditions of the connection. There was disagreement over a number of issues including -

- the terms of the lease of the substation
- the terms of the easements for the electricity cables
- ownership of the transformer and other assets.

3.6 By 11 April 2012 these disputes on the terms and conditions were resolved. The substation at the property was energised on 1 August 2012 and the last connection fully energised on 15 October 2012. Given that the complaint from the customer was first raised to us in December 2011, the time period to request a determination from us would not commence until the connection was made.<sup>4</sup>

3.7 The Customer confirmed through their legal representative on 28 January 2013 that all these disputes had been resolved and that the premises had been connected and fully energised. This letter stated that the outstanding issue between the parties was question of damages for the delay in providing the connection.

3.8 Notwithstanding that the Customer has now been provided with a connection, we have been asked to consider the question of appropriate compensation to be awarded to the Customer for their direct losses incurred as a result of the Company's delay in making the connection.

*Point of dispute*

3.9 According to the terms of the notice issued on 30 March 2011 all works were due to be completed by June 2012. The property was finally connected and energised in October 2012.

3.10 The Customer asserts that this delay cost them a total of £44,331.02, which includes the cost of a temporary supply and other costs incurred as a result of the delay.

3.11 The Company maintains that the property could not be energised before any outstanding legal and contractual issues were resolved and terms agreed. Therefore the question for us is whether the Company was justified in requiring the Customer to accept any terms which it was reasonable in the circumstances to accept and consequently whether the delay in making the connection was reasonable. As set out below, the question of compensation for damages and losses is not an issue which we can determine here.

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<sup>4</sup> Section 23 1C of the Act outlines how a dispute must be referred to us within 12 months of when the connection is made

#### **4. EXTENT AND SCOPE OF THE AUTHORITY'S POWERS OF DETERMINATION UNDER SECTION 23 OF THE ACT**

- 4.1 The Company initially queried our power to make this determination on the grounds that this dispute has arisen in respect of their connection activities undertaken outside of their DSA. The extent and scope of our powers of determination under the Act are set out in section 23 which provides that we may make a determination on any dispute arising under sections 16 to 21 of the Act. For the avoidance of doubt and upon consideration of sections 16 to 21 of the Act, we are satisfied that we are able to make this determination for the reasons set out in paragraphs 3.3.
- 4.2 Given that a connection has now been made the outstanding issue for us to determine is whether the delay in the Company completing the connection and energising the property was reasonable under sections 17(1)(c) and 21(b) of the Act.

#### **5. DISCUSSIONS AND CONCLUSIONS**

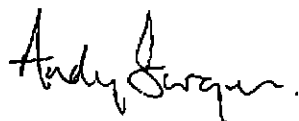
- 5.1 We have scrutinised all the relevant evidence provided to us by both the Customer and the Company.
- 5.2 We consider that, in this circumstance, the Company was acting as an Authorised Distributor under the Act as it would be adopting and operating the assets. The Company, as the Authorised Distributor, bound itself to the obligations which arise under section 16 to 21 of the Act.
- 5.3 There was a delay in making the connection as a result of the parties not being able to agree the commercial arrangements as set out in paragraph 3.5. We note that these have now been agreed to and consequently we have not considered the reasonableness of these terms per se.
- 5.4 Ultimately the Customer is responsible for ensuring that they are satisfied with all terms and conditions before they agree to the terms and costs associated with the connection.
- 5.5 In this case the Customer asked for additional amendments to be made to the terms originally offered. We believe that in this instance it was reasonable for the Company to require that both parties agreed to all the terms and conditions, including those proposed by the Customer, before the connection was completed as per section 21(b) of the Act.
- 5.6 We therefore do not consider that Company acted unreasonably in delaying making the connection until these terms and conditions were agreed.
- 5.7 The Customer has requested compensation for the loss arising as a result of the delayed connection. We have not found in favour of the Customer and so there is no need to consider this issue further in this determination. Nevertheless, we would point out that while the customer has requested an amount of money which they allege they have lost as a result of the delay in the connection being made, we consider this issue generally to be of a

contractual matter for the courts to deal with and make the appropriate orders in that regard.

- 5.8 We do, however, consider that the Company could have made more of an effort to ensure that the Customer fully understood the terms and conditions that they originally agreed. We believe that better engagement and clearer information at this stage of the process would have gone some way to avoiding this dispute prolonging the connection process. We therefore expect the Company to consider and implement the steps that are necessary to avoid similar disputes arising in the future.

## **6. DETERMINATION**

- 6.1 Having reviewed the evidence, we have determined that it was not unreasonable for the Company not to complete the connection and energise the property until all legal agreements were in place and contract terms finalised.
- 6.2 This document constitutes a notice stating reasons for the Authority's decision for the purpose of section 49A of the Act.



**Andrew Burgess**  
**Associate Partner, Transmission and Distribution Policy**  
**Duly authorised on behalf of the Gas and Electricity Markets Authority**

**14 June 2013**

## **Appendices**

Provided as attachments to this document.

### **Appendix one - Evidence provided by the Customer**

- 1.1 Original letter from the Customer's solicitor to us outlining the dispute.
- 1.2 Letter from the Customer's solicitor to us detailing loss to the Customer as a result of delayed reaction and original letter from us.
- 1.3 Correspondence between the Customer and the Company over terms.

### **Appendix two – Evidence provided by the Company**

- 2.1 Revised proposal including notice of payments and terms dated 30 March 2011.
- 2.2 Copy of e-mails detailing completion of the lease and the two deeds.

[REDACTED]  
Ofgem  
9 Millbank  
London SW1P 3GE

[REDACTED]  
By Post and Facsimile

[REDACTED]  
23 December 2011

Dear [REDACTED]  
[REDACTED]

I write to thank you for your telephone call regarding the dispute with [REDACTED] and [REDACTED]

In summary, the matters include the following:-

1. [REDACTED] is constructing 38,000 square feet of new office and shop accommodation at [REDACTED].
2. The original proposal was for electricity (and gas) to be supplied by [REDACTED] but [REDACTED] was persuaded by [REDACTED] for it to supply power.
3. A number of issues remain unresolved with [REDACTED] and this largely arises because [REDACTED] did not supply legal documents before [REDACTED] paid substantial monies to [REDACTED]. [REDACTED]'s intentions with regard to the site were not made clear. [REDACTED] do not agree to [REDACTED]'s proposals.
4. The terms of the lease of the substation constructed by [REDACTED] is not agreed.
5. The terms of the easements for the gas and electricity cables are not agreed.
6. The ability of [REDACTED] to put in another low-voltage cable to supply other premises, disrupting the limited car parking and using [REDACTED]'s premises for its own purposes, is not agreed.
7. Ownership of the transformer and other equipment for which [REDACTED] has paid is now denied by [REDACTED].
8. The present position is that the premises have been constructed and are almost complete. The substantial air-conditioning, lighting and other electrical equipment, including two lifts, cannot be finally tested by the main contractors, as [REDACTED] will not connect power unless their terms are met.

9. Throughout the approach of [REDACTED] has been to engineer a situation where [REDACTED] has no choice but to submit to [REDACTED]'s demands.
10. [REDACTED] use their "statutory obligations" as an excuse for bettering their own position. Particularly:-
  - i. The initial document was "not negotiable".
  - ii. The legal documents (draft lease and draft easements) were not submitted until the initial document had been signed, and all monies paid.
  - iii. No power will be supplied to the premises until the legal documents are signed.
11. [REDACTED] now has a large building, the construction of which is almost complete, but which has no power other than the builder's supply.
12. Even if power is connected, [REDACTED] will not be able to let the premises unless the terms of supply and disruption to the car park are clear. It must be clear that there can be no disruption caused by [REDACTED] replacing the transformer, nor by putting in another cable.
13. The position that [REDACTED] requires is that land that [REDACTED] has paid for; the transformer chamber for which [REDACTED] has paid to be constructed; the transformer and other equipment for which [REDACTED] has paid, is used to profit [REDACTED], whilst [REDACTED] is compromised in its position to attract tenants and obtain income from the property.
14. The continuing ability for [REDACTED] to effectively create a ransom situation is unacceptable to [REDACTED].

I believe that these matters need to be explored in depth.

I look forward to the assistance of Ofgem in this regard.

Again, my thanks.

Yours sincerely

[REDACTED]

[Redacted]

[Redacted]

TEL: [Redacted]  
FAX NO: [Redacted]

[Redacted]

[Redacted]

Ofgem  
9 Millbank  
London SW1P 3GE

By Post and Facsimile  
[Redacted]  
28 January 2013

Dear [Redacted]

[Redacted]

I thank you for your letter of 21 January. I reply to your numbered points as follows:-

3 & 4. The documents are in the form required by [Redacted] [Redacted] having withdrawn their objections to [Redacted]'s proposals.

5. Confirmed.

7. Noted.

The issue that is outstanding is compensation for [Redacted]'s loss arising from the delay of [Redacted] in providing power arising from the following:

- Failure to supply the draft documents above referred to in time.
- [Redacted] claiming inappropriate provisions in those deeds, which were subsequently withdrawn by [Redacted] but having caused delay and loss to [Redacted].

[Redacted]

I confirm details of the loss to [REDACTED] by reason of [REDACTED]'s delay are set out below:-

	£
[REDACTED] (supply of temporary mains)	17,511.19
[REDACTED] — phased completion with temporary supply	5,108.40
[REDACTED] management costs in connection with temporary supply	5,486.40
[REDACTED] — carry out disconnection to temporary supply and reconnection to permanent supply	3,421.73
[REDACTED] — carry out testing of circuits after connection to mains supply	8,352.70
[REDACTED] — management costs in connection with transfer to main supply	<u>4,450.00</u>
	44,331.02

I look forward to hearing further from you.

[REDACTED]



9 Millbank  
London SW1P 3GE



21 January 2013

Dear



Further to my letter of the 18 December 2012, now that we have established that we can determine on this matter, we need further information from both parties.

I refer to your original correspondence with on the 23 December, and have kept the same numbering with regards to the points raised in that letter:

3. Please could you provide signed copies of all the documents to which you refer, and ensure that they are clearly dated, either by highlighting the date on the original or if no date and/or signature is obvious by explaining why;

4. I understand that from the correspondence you have provided between yourself and that this has now been resolved. Please let us know if this is not the case and detail what the outstanding issues are. Your correspondence with refers to the lease, please could you provide a copy of this to us;


5. As with the above, I understand that correspondence you subsequently provided between yourself and that this has now been resolved. Please let us know if this is not the case and detail what the outstanding issues are. Your correspondence with refers to the deed of grant, please could you supply a copy of this;

6 Please advise whether your client and have reached agreement on this point; and

7. I would point out that the matter of ownership of the transformer and other equipment is not within the scope of our powers to determine.

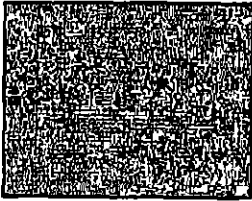
Please inform us whether there are any other issues outside those outlined above.

Please note that under the Act we will only be able to determine whether or not has a duty to connect your client under Section 16-21 of the Electricity Act 1989 and if such a duty is found to exist to consider why this has not yet occurred. We are able to determine whether the charges asked for the connection and or reinforcement of the network as a result of the connection are reasonable but we will not look at disputes of a contractual nature which are within the remits of courts to consider.

I would be grateful if you could send me the information requested by the 8 February.  
Please be aware that I have made a similar request to 

Further guidance on the determination of disputes can be found on our website.

Yours Sincerely



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## Introduction

[REDACTED] has been asked to supply a quotation for Electricity supplies to 3 x offices, 1 x Estate Agent, 1 x restaurant, 2 x retail units and a landlord, and Gas supplies to 1 x restaurant and 3 x retail units.

[REDACTED] has been approached to design, construct, adopt, own and maintain the electricity and gas network at the above site.

[REDACTED] will construct the electricity and gas network for this development. These assets will be adopted by [REDACTED]

and [REDACTED]. These companies are licensed by The Office of Gas and Electricity Markets (Ofgem) to own and operate these networks long term. As a result, any customer connected to these networks will benefit from regulated charges, levels of service and network performance.

Any customer connected to our networks will have the complete freedom of choice of supplier.

This Proposal has been based on our design as derived from your supplied information. We have endeavoured to provide you with as much information as possible about our pricing and underlying assumptions and would be happy to further discuss our proposals with you should you believe any of our assumptions to be incorrect.

This proposal replaces our previous proposal dated 25 June 2010 and is required due to unforeseen cessation of construction on site. Additionally, this proposal also replaces our quotation dated 18 February 2011 and now includes Unit 2 and re-estimate of other project loads.

## Investment

Following the adoption of the electricity and gas assets, [REDACTED] will own, operate and maintain the networks under their respective licence agreements. This enables [REDACTED] to make an investment towards the overall capital cost of the work.

We have set out the value of this investment together with the assumptions used to calculate these asset values below.

### Investment and Client Contribution

Investment (Gas & Electric)	£ 35,525
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This investment is based on full load by December 2013. Alternative investments are detailed in Appendix 3 "Full Demand Variables"

### Client Payment Plan

Total Client Payment to [REDACTED] Gas & Electric (Plus POC estimated = £15,000)	£ 53,162
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Trigger	Payment (Electricity)	Payment (Gas)	Total Payment
On Acceptance	£47,446 + £647*	£5,069	£53,162

\* £647 included for Unit 2

We are happy to discuss alternative payment plans. It should be noted, however, that any changes to this payment plan may impact [REDACTED]'s overall level of investment.

All sums will attract VAT at the relevant rate when paid.

### Investment Payment Schedule

[REDACTED] will make its investment as follows (NB: this assumes that the load assumptions set out below are realised. Where this is not the case, the value and timing of these payments may be impacted):

**Electricity & Gas :**

██████████ will make its investment in the form of deductions from the capital cost of the works at project acceptance.

**Assumptions**

We have based our investment proposals on the loadings and build programme set out below and in the "Network Design" section of this document (page 8).

**Consumption:**

	Electricity	Gas
<b>Total Load by 31 December 2013</b>	1,653,888 kWh/yr	923,104 kWh/yr

**Build Programme:**

Connections	Utility	By June 2012
Commercial	Electric	7
Commercial	Gas	4
Landlord	Electric	1

## Basis of Proposal

Based on the information made available, [REDACTED] has provided you with costs to manage and install the utility infrastructure for your project. It should however be noted that there is one risk element for which true costs cannot be attributed until we receive [REDACTED] POC offer. We have therefore estimated these costs which we will confirm when we receive the offer from [REDACTED].

The price is based on quantities compiled from our designs.

## Client Project Brief

[REDACTED] has been asked to supply a quotation for Electricity supplies to 7 commercial units and a landlord, and Gas supplies to 4 commercial units.

## Basis of Proposal

Site Design	3192/C/4001
Loading of Plots	Based on supplied information (dwg. 3192/E/3001 & RHB Partnership Calculation Sheet dated 11/12/2008)
Off-site works	As detailed in this proposal.
Meetings/Discussions	[REDACTED]
Design Parameters	As discussed on page 8 "Network Design"

## Outline of Scope of Works:

Please note that we have set out respective roles and responsibilities in detail in the responsibilities checklist.

## Health & Safety Management

- CDM Design Responsibilities for our works
- CDM Co-ordination Responsibilities for off site works
- CDM Principle Contractor Responsibilities for off site works
- SHE Plan Development for our works
- SHE Plan Management for our works

## Project Co-ordination

- Client Design Liaison
- Subcontractor Design Liaison
- Progress Meeting (Client)
- Progress Meeting (Delivery Team)
- Progress Meeting (Sub - contractor)

#### **Incumbent Liaison (Gas & Electricity)**

- Connection Design & Specification
- Connection Application Management
- Production of Testing & Commissioning Test Plans
- Connection Delivery & Incumbent Sign Off
- Civil Design Management

#### **Off Site & Contestable Works**

- Specification Management
- Testing & Commissioning Programme
- Wayleaves & Easements Negotiations
- Substation Leases Negotiations

#### **On Site Works**

- MU Design & Drawing Production
- Programme Co-ordination with Site Construction
- Programme Delivery Control - Key Milestones
- Change Control Management
- Installation of Distribution Mains
- Installation of Services

#### **Metering & Agreements**

- Incumbent Agreement Liaison
- MPAN & MPRN Meter Contract Delivery

#### **Handover**

- As laid Drawings (All services) to our standards
- Schematics (All services) to our standards
- SHE Project File
- Account Reconciliation
- Asset Transfer Management
- O & M Sign Off and Adoption

#### **Electricity**

- Supply and installation of on and off site 11kV mains cables, to be adopted by the host DNO
- Supply and installation of 1 x substation.
- Supply and installation of LV mains and services
- Meters supplied and installed by preferred electricity supplier.

#### **Gas**

- Supply and installation of mains infrastructure (including valves and CSEP).
- Supply and installation of services, excluding meters.

## **CDM**

We have assumed that our responsibilities with regard to the CDM regulations extend to that required of a sub-contractor only for all on site works. CDM responsibilities are to be defined by the client. No allowance has been made for information provided at a later date in reference to CDM client provided information.

## **Design**

Please note that the design scope extends only to the provision of schematic drawings and the submission of standard technical detail in line with standard policy and procedures.

## Network Design

### Design Data

We have made our assumptions of the loadings taken from your drawing 3192/E/3001 and RHB Partnership Calculation Sheet dated 11/12/2008.

All utility infrastructures will be to [redacted] standard specification and will be designed and constructed in accordance with all relevant legal and regulatory obligations.

### Points of Connection

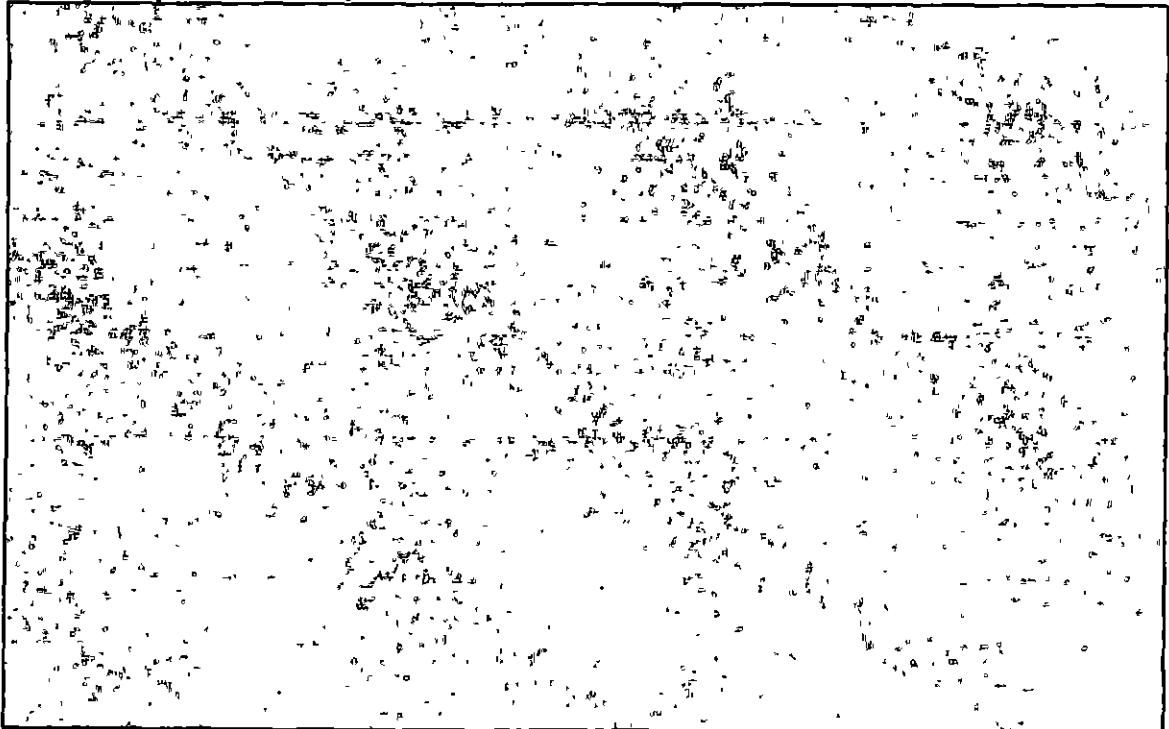
We have based this proposal on information provided by you.

### Electricity:

The POC ("Point of Connection") is assumed to be at 130m from the site or [redacted] based on information you have supplied. The route of the cables will involve footpath excavations only. The POC offer from [redacted] has confirmed these assumptions. We have accepted this POC offer but are awaiting any additional charges from [redacted] due to cessation of site construction works. This proposal is therefore subject to these additional charges, if applicable.

### Gas:

The CSEP ("Connection System Exit Point") is assumed to be 1m from site as shown.



Our proposal is based on the criteria indicated within the following table.

### Property Types and Load Schedule

Property Typea	Units	Electricity <sup>1</sup>	Gas <sup>2</sup>	Gas <sup>3</sup>
First Floor Office	1	166 kVA	0 kw	0 kw
Second Floor Office	1	173 kVA	0 kw	0 kw
Third Floor Office	1	52 kVA	0 kw	0 kw
Restaurant (Unit 1)	1	136 kVA	170 kw	247,520 kw
Retail (Unit 2)	1	18 kVA	93 kw	270,816 kw
Retail (Unit 3)	1	55 kVA	93 kw	270,816 kw
Retail (Unit 4)	1	7 kVA	46 kw	133,952 kw
Landlord	1	102 kVA	0 kw	0 kw
Total	8	729 kVA	402 kw	923,104 kw

<sup>1</sup> electricity – kVA, Simultaneous Maximum Demand

<sup>2</sup> gas – kw, Peak Level

<sup>3</sup> gas – AQ (Annual Quantity) kw

### Electricity Design Additional Information

Our estimated Simultaneous Maximum Demand (SMD) for the development is 729kVA, based on the schedule provided.

## Design Outputs

Electricity	Units
Off Site 11kv cable	130m
Distribution Substation	1
LV Mains and services	100m
House Services	0
Commercial Services	7
Flat Services	0
Landlord supplies	1
Phasing Connections	1yrs

Provisional Electricity	Units
POC	1

Gas	Units
Off-site mains	1m
On-site Mains	29m
Domestic Services	0
Commercial/Retail Services	4
CSEP Connections	1
Phasing Connections	1yrs
Domestic Meters	0
PRS Installation	0

Service Lengths		
Utility	Residential	Commercial
Electricity	20m	15m
Gas	5m	10m

**Scheme Price**

<b>Scheme Price</b>	<b><u>£ 88,687</u></b>
Estimated Sums <u>not</u> included in Total (connection charges from [REDACTED])	<b>£ 15,000</b>

It is proposed that the estimated sums (£15,000) will be "pass through" when we receive the offer from [REDACTED]. This sum excludes reinforcement and diversions (if applicable) and is based on our experience with similar schemes in [REDACTED] area.

We will confirm the Estimated Sums on receipt of [REDACTED] offer.

Electricity and gas supply acquisition contributions are excluded from this offer, enabling you to freely negotiate with your preferred energy supply company.

**Costs Relating to Change(s) to the Overall Scope of Works**

Please refer to clause 4 in our Terms and Conditions.

## Assumptions

This Proposal is based on the following assumptions. Should any of the assumptions be incorrect, this may have an affect on the overall pricing

### General

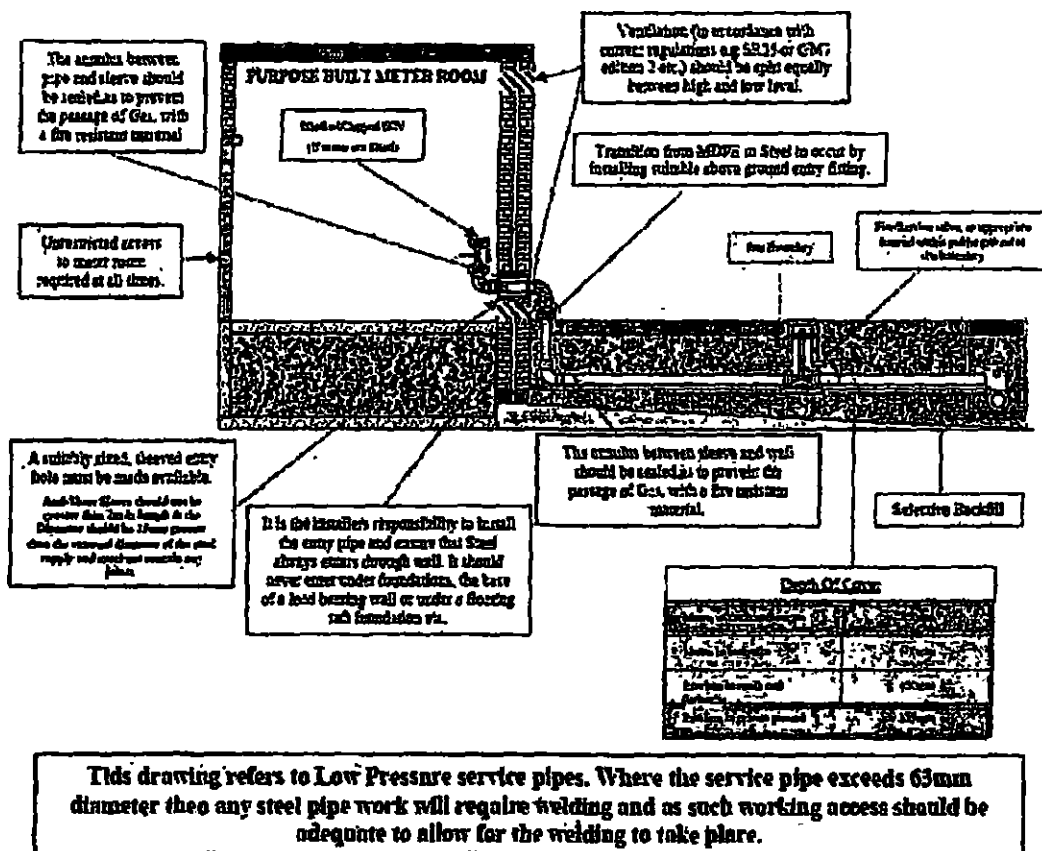
- It is assumed that a suitable connection point & sufficient capacity is available from the existing networks.
- It is assumed that all works from & including the CSEP (gas) and POC (electric) will be in areas adopted (or to be adopted) under The New Roads & Street Works Act (NRSWA).
- No allowance has been made for any works required to confirm the suitability of the Connection Point locations e.g. Trial holes or Excavation to measure /check suitability etc.
- All Electricity and Gas mains are to be laid in adoptable highways and/or dedicated service strips and/or granted easements or wayleave routes on site.
- It is assumed that no easements or permission is required to carry out any of the proposed off site works.
- This proposal does not include any costs for road notices or traffic management other than 2 way traffic lights.
- The price excludes any increase in cost associated with the build/construction program that is greater than one year from the date of submission of this offer. [REDACTED] reserves the right to adjust prices if necessary should the scheme not progress in accordance with the agreed program.
- No allowance has been made for removing or controlling surface water e.g. de-watering trenches
- On site ground has been assumed to be non-contaminated.
- Costs do not take into account or include for any Civil Works or Specialist Works e.g. Bridge Crossings etc, Reinforcement, Diversions or Disconnections.
- [REDACTED] will require 24 hour access for maintenance and installation of its equipment, plant and cables / pipes.
- No allowance has been made for any internal works.
- No allowance has been made for any civil works.
- The Developer is to provide a suitable sized, clear and unobstructed route for all of our operations on site.
- All Kerb races & Haunches must be in place prior to works commencing.

### Electricity

- An estimated allowance of £15,000 has been made for the Point of Connection charges from the local DNO.
- The 11kv cabling between the site and the POC (£17,446 + VAT) is contestable work and the cables will be installed to the incumbent's [REDACTED] requirements.
- Until the PoC offer is received it is unknown if upstream reinforcement charges are applicable. These charges are therefore excluded from this proposal
- All on-site 11kV & LV cable laying - trench excavation, backfilling and reinstatement by others at no cost to [REDACTED]

## Gas

- The offsite connection (CSEP) has been assumed to be carried out in conjunction with the development new works in the footpath and before final reinstatement is completed.
- No allowance has been made for any equipment such as compressors, boosters or other items with non-typical load profiles.
- We have assumed that all existing gas mains and services on site are disconnected and cut back to the site boundary before our works commence.
- All termination locations must be in accordance with all appropriate legislation and these areas must remain accessible at all times.
- The Developer is to install marker tape 300mm above gas mains.
- No allowance has been made for any commercial metering.
- It is assumed that all the commercial plots will be supplied by an individual service which will terminate at each plot with an above ground entry (Suitable sleeved hole to be provided by client to a suitable location) located on the ground floor at point of entry, no more than 10 metres from the new proposed main (no more than 2mtrs from the front of the building).



## Responsibilities Checklist

### General

			Client
1	Drawings are made available to [redacted] in suitable electronic format, for the preparation of necessary project drawings at no cost to [redacted]		✓
2	Temporary Site Electricity and Festoon Lighting, Fixed Scaffolding, Skips, General builders' works in connection, including chasing and making good to surfaces, Congestion charges, Ground and Excavation work		✓
3	Welfare facilities consisting of toilets, water, mess rooms, drying rooms		✓
4	Provision of temporary and hard standing roads required to enable suitable working platform		✓
5	Provision of sufficient space for office and storage accommodation		✓
6	Provision of office and storage accommodation, excluding any provision for the payment of rates	✓	
7	Electrical Supply to [redacted] site accommodation, including connection costs F.O.C	✓	
8	Electrical Supply (110V) for power tools and lighting to within 30 metres of any working position.		✓
9	Provision of temporary safety lighting		✓
10	Provision of temporary task lighting	✓	
11	Site Security		✓
12	Hoisting, distribution and placing into position items of equipment	✓	
13	Provision of skips and removal of rubbish from site		✓
14	Clearing of rubbish to an agreed location	✓	
15	Protection of fixed and installed materials	✓	✓
16	Setting out - i.e. datums, levels, grid references		✓
17	Power for testing and commission F.O.C		✓
18	Preparation of site trenches conforming to [redacted] specifications unless otherwise stated		✓
19	All on site digging, trenching, backfilling and reinstatement to be carried out on an agreed schedule. All materials to be supplied		✓
20	All on site mains and services to be installed on an agreed schedule	✓	

			<i>Client</i>
21	Provisional of suitable fine fill material to bed and surround to cover. This material must be available on site and allowance made for materials movement as required.		✓
22	Supply and installation of any required road crossing and service ducts		✓
23	Provision of suitable easements, wayteaves or land transfers for all on site works as necessary		✓
24	Marker tapes to be installed for electric only (gas by developer)	✓	
25	Provision for removing and controlling surface water e.g. de watering trenches		✓
26	Ensure that kerb races are in place prior to installation of new Infrastructures		✓
27	Forming of enclosures, foundations, plinths and bases		✓
28	Any power, fuel and water charges etc. required for the installation, testing or commissioning by our Sub-Contractors or ourselves		✓
29	Provision of land free of charge to facilitate positioning of Item 27		✓
30	Coring of walls for services		✓
31	All off site digging, trenching and reinstatement to be carried out to an agreed schedule	✓	
32	All off site mains to be installed on an agreed schedule	✓	
33	Movement of materials including cable drums, sand and pipes		✓
34	CAD drawings and utility designs	✓	

### Electricity

			<i>Client</i>
1	Electricity Infrastructure design before meters	✓	
2	Electricity Infrastructure design beyond meters		✓
3	Point of Connection	✓	
4	Provision of sub stations	✓	
5	Provision of sub station location and housing		✓
6	HV and LV mains within site boundary	✓	
7	Provision of Meter Boxes		✓
8	Services including cut out (commercial)	✓	

**Gas**

			<i>Client</i>
1	Gas infrastructure design before meters	✓	
2	Gas infrastructure design beyond meters		✓
3	Gas CSEP	✓	
4	Provision of PRS	N/A	
5	Provision of meter boxes	✓	
6	Provision of commercial meters		✓

## Programme

It should be noted that sufficient lead time for the procurement of equipment is required.

No main contract programme has been included within the tender documents, other than a wish for completion within the project phasing.

We would assume that sufficient time will be made available within an agreed programme, allowing uninterrupted access to complete our works.

We would advise that we would require eight (8) weeks notice to commence in order to ensure mobilisation of adequate resources, following signing of proposal and receipt of client led information.

Key timelines which may impact on energisation include:

Incumbent liaison – 1-3 months  
Off site road opening notices – 1-3 months  
Long lead items (substation) – 3 months  
Customer led variations – indefinite

### Buld Programme:

Connections	Utility	By June 2012
Commercial	Electric	7
Commercial	Gas	4
Landlord	Electric	1

## Commercial Terms

### Capital Rebate Mechanism

The installed electricity and gas utilities will be owned and operated, long term, by [REDACTED]. The capital investment to be made by [REDACTED] is based on revenues received from suppliers and end users utilising the [REDACTED] networks. We have based our investment proposals on the development being built out as detailed on Page 4.

In the event that the construction programme does not progress as expected and consequently results in revenues reaching the forecast level more slowly than expected, [REDACTED] may consider recovering part of its investment. Conversely if the build out is faster than expected and revenues reach the forecast level sooner than anticipated, [REDACTED] would consider making a further contribution to the client. We would be happy to discuss the structure of these mechanisms with you.

### Electricity Network

If, for the calendar year ending 31 December 2013 ("Year 2"), the actual annual consumption of electricity by Customers ("Actual Annual Electricity Consumption") is less than the anticipated value of 1,653,888 kWh ("Anticipated Annual Electricity Consumption"), (other than by reason of the default of [REDACTED]) the Developer shall pay to [REDACTED] if demanded, an amount calculated as follows:

$$A = \left( 1 - \frac{\text{Actual Annual Electricity Consumption [kWh]}}{\text{Anticipated Annual Electricity Consumption [kWh]}} \right) \times a$$

where:

A = Rebate Amount

a = [REDACTED] investment in the electricity network £ 33,616

If, for the calendar year ending 31 December 2013 ("Year 2"), the actual annual consumption of electricity by Customers ("Actual Annual Electricity Consumption") is greater than the anticipated value of 1,653,886 kWh ("Anticipated Annual Electricity Consumption") (other than by reason of the default of [REDACTED]) shall pay to the Developer, if demanded, an amount calculated as follows:

$$A = \left( \frac{\text{Actual Annual Electricity Consumption [kWh]}}{\text{Anticipated Annual Electricity Consumption [kWh]}} - 1 \right) \times a$$

where:

A = Rebate Amount

a = [REDACTED] investment in the electricity network £ 33,616

Under the terms of the Infrastructure Agreement enclosed within the Proposal, it is expected that [redacted] will be utilised by any third party land parcel developers to install, own and operate electricity infrastructure to serve individual premises on each land parcel associated with this project. Where this is not the case and another company owns the electricity network connected to [redacted]'s network, electricity supplied to customers connected to this third party network will not be taken into account when calculating the rebate payment.

### **Gas Network**

If, for the calendar year ending 31 December 2013 ("Year 2"), the actual annual consumption of gas by Customers ("Actual Annual Gas Consumption") is less than the anticipated value of 923,104 kWh ("Anticipated Annual Gas Consumption") (other than by reason of the default of [redacted] the Developer shall pay to [redacted] if demanded, an amount calculated as follows:

$$A = \left( 1 - \frac{\text{Actual Annual Gas Consumption [kWh]}}{\text{Anticipated Annual Gas Consumption [kWh]}} \right) \times a$$

where:

A = Rebate Amount

a = [redacted] investment in the gas network £ 1,909

Under the terms of the Infrastructure Agreement enclosed within the Proposal, it is expected that [redacted] will be utilised by any third party land parcel developers to install, own and operate gas infrastructure to serve individual premises on each land parcel associated with this project. The investment payments set out in the [redacted] "Investment" section of this document (page 3) have been calculated on this basis. For the avoidance of doubt, the client will not receive the pro-rated investment payment for any plot within a parcel of land which is not directly served by [redacted] gas infrastructure.

### **Terms and Conditions**

With reference to the Infrastructure Agreement contained within the Proposal [redacted] would like to draw your attention in particular to the following:

#### **Payment Terms**

[redacted] shall send an invoice to the Developer for the Capital Contributions (subject to Clause 2.3) and, if applicable, the Capital Rebate plus VAT. The Developer shall pay the invoice within 21 days of the date of the invoice.

interest shall be payable on any overdue amount from the date on which payment was due to that on which it is made (whether before or after any judgement) at the rate of 4% over the base rate from time to time of the [redacted]

**VAT**

This quotation does not include the cost of any Value Added Tax chargeable. In accepting our quotation the customer hereby agrees to pay us in addition any VAT chargeable on the work and due from us to HM Customs and Excise.

## Terms and Conditions

### GENERAL CONDITIONS OF CONTRACT FOR CONSTRUCTION OF UTILITY INFRASTRUCTURE

#### 1. DEFINITIONS

In this Agreement the following expressions shall have the following meanings:

**Agreed Contract Price:** The total of the prices stated in the Proposal and any further sums payable by the Customer to [REDACTED] pursuant to the Agreement.

**Agreement:** These conditions of contract and the Proposal.

**Agreement Date:** The date shown in the Proposal.

**Assumptions:** means the assumptions set out in the Proposal

**Customer:** The person, firm or company whose name and address is shown in the Proposal.

**Date for Commencement:** The date for commencement stated in the Proposal.

**Infrastructure Agreement:** The agreement included as part of the Proposal whereby [REDACTED] and the Customer agree terms for the operation of the utility networks constructed pursuant to the Proposal and this Agreement.

**Period for Completion:** The period for completion stated in the Proposal.

**Proposal:** The document setting out [REDACTED] proposal for construction and operation of utility networks of which this Agreement is part

**Site:** The place identified as such in the Proposal and where the Works are to be executed.

**The Works:** The works, including the design of the works, to be carried out by [REDACTED] as detailed in the Proposal.

#### 2. GENERAL

(a) The Proposal is open for acceptance for one calendar month from the Agreement Date hereof unless a longer period is agreed by [REDACTED]. [REDACTED] reserves the right to amend or withdraw the Proposal at any time prior to it being accepted by the Customer.

(b) By his acceptance of this Agreement the Customer shall be deemed to have obtained all such licences and consents as are required for the lawful undertaking of the Works and if he shall have failed to do so will indemnify [REDACTED] for all loss or damage suffered and shall remain responsible for all work done and materials supplied on a quantum meruit basis.

(c) All orders are accepted by [REDACTED] only under these conditions of contract. These conditions of contract may not be altered other than with the express written agreement of [REDACTED]. Any contrary conditions shall be deemed to be excluded from the Agreement, except only where so agreed and specifically stated in the Proposal.

(d) In the case of conflict between these conditions of contract and any other provisions of the Agreement, these conditions shall prevail. Subject thereto, the Proposal shall prevail over any other provisions of the Agreement.

(e) The Customer shall not be entitled to cancel or vary the whole or any part of the Works. [REDACTED] will however make such variations or cancellations of any part of the Works as may be agreed in writing between the Customer and [REDACTED].

(f) Unless otherwise specifically stated in the Proposal, the Works shall be carried out-

(i) during normal working hours; and if overtime is worked at the request of the Customer it shall be paid for as an extra to the Agreed Contract Price;

(ii) under normal conditions; and if through no fault of [REDACTED] conditions are not normal the Customer shall reimburse all additional costs incurred by [REDACTED];

(iii) with opportunity for continuous work; and if through no fault of [REDACTED] his opportunity is at any time denied the Customer shall reimburse all additional costs incurred by [REDACTED];

(iv) in accordance with the Assumptions and if any Assumption proves false through no fault of [REDACTED] then the Customer shall reimburse to [REDACTED] all additional costs incurred by [REDACTED] as a result.

(g) Unless otherwise specifically stated in the Proposal, [REDACTED] shall be entitled to carry out the Works in stages.

(h) The Proposal is subject to obtaining all necessary wayleaves and consents for carrying out the Works. If alternative arrangements are necessary they are likely to have a significant impact on costs. The Proposal assumes all plant and equipment will be placed in public highway or land owned or controlled by the Customer who will provide all necessary wayleaves and consents free of charge. The Customer will pay the full cost of obtaining any necessary wayleaves and/or consents from third parties (including wayleave damage claims) in addition to the Agreed Contract Price provided that where these have a significant impact on the overall cost the Customer shall be entitled to terminate the contract upon written notice to [REDACTED]. In the event of termination the Customer shall pay [REDACTED] reasonable charges for the work done or committed and materials purchased prior thereto and reimburse any costs or expense incurred or committed by [REDACTED] in obtaining any wayleaves and consents.

(i) The Customer will be responsible for all building costs associated with the supply intake and any meter cabinets.

(j) [REDACTED] shall not be responsible for delay due to lack of instructions by the Customer or by his agent. If any such delays involve expense to [REDACTED] the Customer shall reimburse that expense.

(k) The Customer shall provide [REDACTED] with the following on the Site, such as to enable [REDACTED] to properly execute and complete the Works:

(i) safe and suitable access, working areas, hygiene facilities, lockable storage facilities and electricity supplies to the work areas;

(ii) points, lines and levels of reference;

(iii) suitable fixing points for equipment;

(iv) to a satisfactory standard reasonably specified by [REDACTED] all on site cable trenching for services, LV and HV mains cables, pipes other than within substation sites, utilities containment (e.g. ducting), backfilling the trench once [REDACTED] has laid and covered the cables and pipes, reinstatement, and any other design or work specified by [REDACTED] including co-ordination of works on Site;

(v) service termination facilities, in a position acceptable to [REDACTED]

(l) The Proposal excludes:-

(i) builder's work and making good;

(ii) boring of holes in excess of 24mm diameter through walls to accommodate cables, pipes and ducts; and

(iii) all structure reinforcement required to support and accommodate the proposed Works;

(m) Except where otherwise specifically stated in the Proposal, any times or dates given by [REDACTED] for the carrying out of the Works are given in good faith but are approximate only and shall not be of the essence.

### 3. HAZARDOUS MATERIALS

(a) Unless otherwise specifically stated in the Proposal, the Proposal does not allow for working in the vicinity of any hazardous material. If during the execution of the Works any hazardous material is encountered [REDACTED] reserve the right to withdraw their personnel immediately until the site is made safe. The Customer shall reimburse all additional costs incurred by [REDACTED]

(b) Unless otherwise specifically stated in the Proposal, any prices in the Proposal are exclusive of any sums incurred in the handling or disposal of hazardous materials, including, but not limited to polychlorinated biphenyls (PCB), contaminated oil or equipment. If during the progress of Works such materials are encountered their presence will be reported to the Customer for his instructions regarding safe disposal, which if undertaken by [REDACTED] will be chargeable to the Customer as an addition to the Agreed Contract Price.

### 4. ALTERATIONS & ADDITIONS

(a) The Proposal covers only the items specified in the Proposal as forming the Works. Positions of points, equipment and layout are to be agreed with [REDACTED] representative before the Works commence. Requests for alterations and additions to the works shall be issued by the Customer or his agent in writing. [REDACTED] is willing and able to make the alterations and additions to the Works as requested, the [REDACTED] will comply with such request.

(b) Additional charges for the following matters shall be determined in accordance with sub-paragraph (c) below and be paid by the Customer to [REDACTED]

(i) Any extra item referred to or stated in the Proposal or these conditions of contract.

(ii) Variations to the Works pursuant to sub-paragraph (a) above.

(iii) Encountering, and/or dealing with any physical conditions on the Site, including but not limited to the nature or condition of the structure or works in or to which any part of the Works are to be executed, that is not reasonably apparent from the documents forming the Agreement.

(iv) Any change to the Date for Commencement or Period for Completion agreed in writing between the Customer and [REDACTED]

(v) Any delay to the execution of the Works due to any failure of the Customer to comply with any provision of the Agreement.

(c) The additional charge for any matter as referred to in sub-paragraph (b) above shall be as stated in the Proposal; where not so stated, such amount as may be agreed in writing between the Customer and [REDACTED] or, where not so agreed, the amount of loss and/or expense incurred by [REDACTED] including amounts for any delay and/or disruption.

#### 5. UNSPECIFIED ITEMS

Where the Proposal includes a provisional sum for labour or equipment to be provided but not specified, such provisional sum shall be expended according to the reasonable direction of the Customer.

#### 6. DRAWINGS

(a) The Proposal provides for such working drawings as are necessary for the proper execution of the Works. Further or special drawings supplied at the request of the Customer shall be paid for by him as additional items.

(b) The Customer shall provide [REDACTED] with all necessary information (including but not limited to adequately detailed and fully dimensioned drawings) relating to the Works in sufficient time to enable [REDACTED] to properly execute and complete the Works.

#### 7. PRICE ADJUSTMENTS

Whilst every endeavour will be made to maintain the Agreed Contract Price the Proposal is based on material and labour costs prevailing at the Agreement Date. The Agreed Contract Price will accordingly be subject to variation up or down for any rise or fall in material or labour costs subsequent to the Agreement Date unless otherwise stated in the Proposal. Unless otherwise specifically stated in the Proposal, the Agreed Contract Price is net and exclusive of VAT and of any allowances for discount or retention.

#### 8. PAYMENT

(a) Once accepted payment of the Proposal, whether by lump sum or stages, shall be in accordance with the Proposal and the Infrastructure Agreement.

(b) In the event that the Customer fails to meet its payment obligations under the Proposal or the Infrastructure Agreement then [REDACTED] may suspend the Works until such time as the Customer is no longer in default.

#### 9. AVAILABILITY OF SUPPLY

Where the Customer requires [REDACTED] to install either a new supply or reinforce the existing supply to his premises or requires additional connections to the networks built pursuant to this Agreement but which have not been included as part of the Proposal then such further works will form the basis of a separate Proposal.

#### 10. FORCE MAJEURE

[REDACTED] shall not be liable for failure to perform any of its obligations under this Agreement if such failure is due to any cause whatsoever beyond its reasonable control or that of its sub-contractors or agents.

#### 11. VALUE ADDED TAX

The Customer shall pay to [REDACTED] VAT on the price and at the same time as the payment to which the VAT relates.

#### 12. LIABILITY

(a) [REDACTED] shall not be liable to the Customer for any indirect or consequential loss of the Customer arising out of or in connection with the carrying out of the Works.

(b) The total liability of [REDACTED] for any other losses to the Customer arising under or in connection with this Agreement shall not exceed in aggregate the Agreed Contract Price.

(c) [REDACTED] shall have in respect of any defect or insufficiency in the design of the Works the like liability to the Customer, whether under statute or otherwise, as would an engineer who, acting independently or under a separate contract with the Customer, had supplied such design for or in connection with the Works to be carried out by a building contractor not being the supplier of the design.

(d) Nothing in this Agreement shall limit the liability of [REDACTED] its sub-contractors, or agents for death or personal injury resulting from negligence

(e) [REDACTED] may sub-contract the execution of any part of the Works.

(f) [REDACTED] may assign all or any of its rights or benefits under or interests in the Agreement.

(g) Any person who is not a party to the Agreement shall not have any right under or by virtue of the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of the Agreement.

(h) The Customer shall not be entitled to transfer to any other person the Agreement or any part of it or any benefit or right in it or under it.

(i) This Agreement (including any documents referred to herein) represents the entire agreement between the parties and supercedes and replaces any and all other agreements, representation, warranties or understandings whether verbal or written.

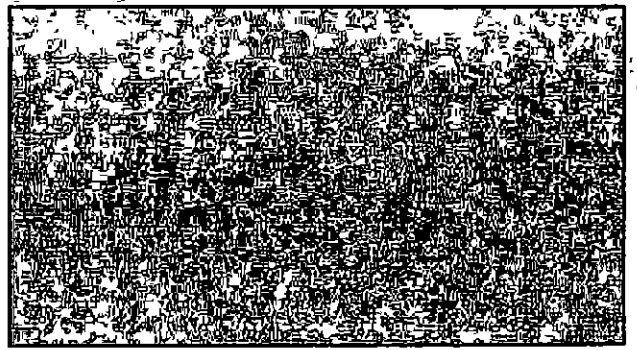
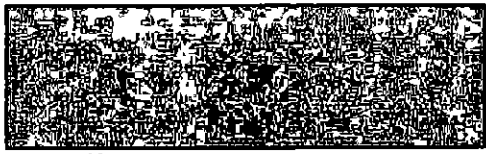
### 13. GOVERNING LAW

The Agreement shall be governed by the law of England, including its construction, validity and performance. The Courts of England shall determine any dispute arising out of or in connection with the Agreement and/or the Works. Provided that [REDACTED] may enforce in any court of competent jurisdiction the Agreement and/or any such determination. For the avoidance of any doubt, this Clause applies irrespective of the location of the Site or Customer.

### 14. HEADINGS

The headings to the clauses of this Agreement are inserted for convenience of reference and shall not affect their interpretation.

**Appendix 1**



# Infrastructure Agreement

## STANDARD INFRASTRUCTURE AGREEMENT

### 1. TERM AND STATEMENT OF PURPOSE

1.1 Notwithstanding the date hereof this Agreement shall take effect from the Commencement Date and shall continue in force for the Term unless terminated earlier in accordance with the terms hereto PROVIDED always that [REDACTED] shall, following the expiry or termination of this Agreement continue to own, operate and maintain the Networks for the benefit of Customers connected to it at such expiry or termination pursuant to the Connection Agreements entered into with such Customers.

1.2 [REDACTED] as defined in Clause 24 enters into this Agreement on the following basis:

(a) [REDACTED] enters into the Agreement in respect of the Electricity Network only;

(b) [REDACTED] enters into the Agreement in respect of the Gas Network only; and

And for the avoidance of doubt no [REDACTED] party shall have any joint and several liability for the acts or omissions of any other [REDACTED] party under this Agreement

1.3 Without prejudice to the responsibility of each Party to solely perform and discharge its duties and obligations pursuant to the terms of this Agreement, each Party hereto agrees to co-operate with the other Party insofar as matters lie within its control and do not extend or increase its duties and obligations as set out herein in achieving the objectives of this Agreement

1.4 Each party warrants to the other that they will proceed without undue delay in the carrying out of their obligations under this Agreement and shall keep the other party informed of any delay, potential or actual, which may or will affect the other party's ability to fulfil its own obligations. The Developer acknowledges that a failure to so inform [REDACTED] may cause [REDACTED] to commit to expenditure on plant and equipment which is subsequently not required.

1.5 Each Party hereto acknowledges that this Agreement does not in any way constitute a legal entity, partnership, joint venture or an association taxable as a corporation in respect of the Parties, and is only entered into for the specific purpose of developing the Networks.

### 2. PROJECT INVESTMENT AND PAYMENT

2.1 The Developer shall pay the Capital Contribution and if required the Capital Rebate to [REDACTED] in accordance with Clause 2.2 below, as a contribution to the cost of the Works and adopting the Networks and, during the term of this Agreement, the Operation of the Networks in accordance with Clause 3 below and further, in consideration of [REDACTED] carrying out its other obligations set out in Clauses 3 and 7.

2.2 [REDACTED] shall send an invoice to the Developer for the Capital Contributions (subject to Clause 2.3) and, if applicable, the Capital Rebate plus VAT. The Developer shall pay the invoice within 21 days of the date of the invoice.

2.3 [REDACTED] shall carry out the Works, Operation and its obligations under Clauses 3 and 7 in consideration of payment of the Capital Contributions. The Capital Contributions are deemed to include the Network Connection Charges. The Capital Contributions shall be varied only as a consequence of:

(a) a significant variation in the Works being requested by the Developer; or

(b) a change in the Network Connection Charges.

2.4 Interest shall be payable on any overdue amount from the date on which payment was due to that on which it is made (whether before or after any judgement) at the rate of 4% over the base rate from time to time of the [REDACTED]

### 3. OBLIGATIONS OF [REDACTED]

3.1 [REDACTED] shall promote the best use of the Networks in any way it deems appropriate consistent with its duties under this Agreement.

3.2 [REDACTED] shall apply for and use all reasonable endeavours to obtain any necessary consents, licences, permissions and approvals required to be obtained from any local public or regulatory authority to enable the Works to be carried out. In the event that such a consent, licence, permission or approval is lost, revoked or otherwise not maintained during the term of this Agreement [REDACTED]

shall take such action as may be reasonably required to renew such consent, licence, permission or approval, provided that the Developer shall provide all reasonable assistance herewith.

3.3 [REDACTED] shall carry out the Works in a good and workmanlike manner and in accordance with its Distribution Licence and thereafter during the term of this Agreement carry out the Operation of the Networks in accordance with Good Industry Practice. All contracts to be entered into in relation to the provision of the Works and Operation will be entered into by [REDACTED]

3.4 During the term of this Agreement [REDACTED] will ensure that the Networks will:

(a) provide and maintain secure electricity and gas capacity for the individual Customer (but without obligation on [REDACTED] to exceed the relevant Demand Capacity in aggregate) provided [REDACTED] shall not be obliged pursuant to this sub-clause (a) to comply with a Customer's or Potential Customer's request more expeditiously than would be required by it acting in accordance with Good Industry Practice; (b) be capable of providing connections from the Networks to the Customer or Potential Customer's premises at the Site,

(c) be connected to such other distribution systems in accordance with terms agreed prior to the date hereof so as to maintain minimum capacity connections or such other capacity necessary to enable [REDACTED] to fulfil its obligations under this Agreement; and

(d) subject to agreement between the Parties as to the terms, including the allocation of costs and the granting of necessary rights, be upgraded by way of constructing further infrastructure in order to provide and maintain connections to the Networks from premises at the Site and provide and maintain secure capacity for the increased demand of any new Customers at the Site who accept offers of connection which [REDACTED] shall provide on request.

3.4 [REDACTED] shall offer to procure the availability of the Networks to Potential Customers in accordance with the Charges as set out in Clause 9 hereof up to the Demand Capacity and shall (to the extent that it is permitted by Law and will not be acting in breach of its Licence) offer to assist with the procurement of the supply of electricity and gas to Customers. 3.6 [REDACTED] if requested, offer Connection Agreements to Customers and Potential Customers. [REDACTED] shall offer, if requested, Use of System Agreements to any licensed supplier wishing to utilise the Networks provided [REDACTED] has access to meter readings via an accredited data collector at the Customer's exit point (being the point where the Customer's meter is connected to the Networks) which [REDACTED] will use reasonable endeavours to obtain by placing an obligation to provide such meter readings from the Customer in the Connection Agreement and (ii) it is recognised by the Parties that it will be the responsibility of third party suppliers who use the Networks to notify the demand of their Customers who are connected to the Networks and to pay any charges resulting from any imbalance and [REDACTED] shall advise third party suppliers accordingly when they apply to use the Networks. For the Gas Network and the Electricity Network [REDACTED] shall offer Utility Services to Customers and suppliers on the basis of the Charges and otherwise in accordance with [REDACTED] standard terms and conditions to the extent that [REDACTED] would not be in breach of the conditions of its Licence or any applicable direction from the Authority.

3.7 in the event that any Potential Customer whose premises are not within the Site (Non-Site Customer) requests an offer of connection to the Networks, and [REDACTED] is obliged under the terms of its Licence to offer terms for connection to such person, the Developer acknowledges that in such circumstances [REDACTED] shall be entitled to permit such person to connect to the Networks and [REDACTED] shall continue to make the relevant Demand Capacity to the Networks to Customers and Potential Customers during the term of this Agreement. Charges to any Non-Site Customer shall so far as is permitted by the Authority be based on the actual cost of connection and shall exclude the benefits of any discounted Charges allowed to Customers within the Site. The Developer shall procure the granting of any additional rights to [REDACTED] which [REDACTED] reasonably requires to comply with its obligations to Non-Site Customers.

3.8 [REDACTED] shall be responsible, unless the Customer requests otherwise, for installation and maintenance of meters at the Metering Points to enable data collection by an accredited data collector for the purposes of billing each of its Customers where [REDACTED] or its Affiliate is the supplier to the Customers and in any other case for the purposes of billing the Use of System Charges to any other suppliers using the Networks.

3.9 Save for replacements and renewals of assets in the ordinary course of operating and maintaining the Networks, [REDACTED] shall not without the consent of the Developer sell, lease or otherwise alienate or transfer any of its rights in relation to the Networks until the expiry of 5 years from the date of this Agreement other than to a wholly owned subsidiary of [REDACTED], such consent not to be unreasonably withheld or conditioned. [REDACTED] shall not in any event assign or dispose of its

interest in this Agreement other than to a party who shall simultaneously take an assignment of [REDACTED]'s interest in the Leases.

3.10 For the avoidance of doubt, [REDACTED] shall be under no obligation to energise or commission the Networks until such time as the Developer has complied with its obligations in Clauses 2.1 and 4.1.

#### 4. OBLIGATIONS OF THE DEVELOPER

4.1 The Developer shall grant to [REDACTED] the Leases and Deeds of Easements at the nominal price of £1. The Developer shall meet its own legal and other fees and expenses, the legal and other fees and expenses of [REDACTED] and the legal and other expenses of any consignor in connection with the conveying to follow hereon. In addition to the grant of the Leases and Deeds of Easement, the Developer hereby agrees to use reasonable endeavours to seek to grant on terms to be agreed between the Parties to (or procure the grant to [REDACTED])

(a) any additional wayleaves, easements and other rights of access over such further areas of ground owned by the Developer within the Site from time to time necessary to allow [REDACTED] to carry out the Works and Operation and any further infrastructure for the purposes of increasing the Demand Capacity (pursuant to Clause 3.3(d) hereof) on the basis that any rents, payments or charges due by [REDACTED] in relation to the grant of such sites, wayleaves, easements or rights of access would be of a nominal amount; and

(b) a lease or leases of such further areas of ground owned by the Developer within the Site from time to time as [REDACTED] reasonably requests to undertake its obligations under Clause 3.3(d) of this Agreement the terms of such lease or leases being intended so far as practicable to be substantially the same as set out in the Leases.

Provided it is acknowledged that, subject to Clause 1.2 hereof, this obligation shall not apply in respect of any land once it has been leased or sold by the Developer as from the date of sale or lease of any such land except where prior to such sale or lease [REDACTED] requested in writing (and on reasonable grounds) the grant of a right over such land in accordance with this Clause 4.1 or were granted such a right.

4.2 The Developer shall notify (to the extent that it becomes aware of the same) Potential Customers and potential occupiers of premises on the Site or any part thereof with whom it is involved in discussions concerning the Site, of the services provided by [REDACTED] pursuant to this Agreement and the Developer shall seek to advise [REDACTED] at the earliest practicable opportunity of the identities of such Potential Customers and potential occupiers of premises on the Site or any part thereof to whom it has given such notice with regard to the Networks, and the procurement of Utility Services.

4.3 Without prejudice to [REDACTED] obligations under Clause 3, the Developer shall have no rights to commit [REDACTED] to provide, assist or procure the provision of Utility Services to any Customer.

4.4 The Developer shall not sell, lease or otherwise alienate or transfer or allow the Site or any part thereof to be occupied whether by the Developer or a third party without reserving non exclusive rights in favour of [REDACTED] to enter upon the Site or any part thereof for the purposes of carrying out the Works and Operation.

4.4 If required by [REDACTED] at the start of or at any time during the term of this Agreement, the Developer shall provide [REDACTED] with a parent company guarantee, bond or other such form of surety as is reasonably acceptable to [REDACTED].

#### 5. MARKETING

In accordance with the terms of this Agreement both Parties shall use reasonable endeavours to market the Networks and the Utility Services to be made available by means of the Networks to any parties developing the Site or occupying the Site and any potential developers or potential occupiers of the Site notified to either Party or which come to the attention of either Party.

#### 6. EXCLUSIVITY

The Developer warrants that pursuant to this Agreement it has granted [REDACTED] the exclusive right to install, provide, operate, maintain and renew the Networks and during the term of this Agreement the Developer shall not except to the extent required by Law, grant to the provider of any utility service any rights to provide and maintain networks at the Site.

#### 7. PROVISION OF UTILITY SERVICES

7.1 [REDACTED] shall:

- (a) promote the best use of the Networks in any way it deems appropriate consistent with its duties under this Agreement; and
- (b) subject to Clause 7.2 below, procure the marketing and provision of the Utility Services to Customers connected to the Networks.

7.2 The provision of the Networks connection element of the Utility Services to Customers connected to the Gas Network or the Electricity Network by [REDACTED] shall be in accordance with Connection Agreements. The provision of Utility Services to suppliers shall be in accordance with Use of System Agreements.

7.3 When a Customer enters into a Customer Agreement for the supply of energy with a supplier, [REDACTED] shall be obliged as soon as reasonably practicable and within 14 days of such request from such supplier to offer terms for the use of the Networks which shall include a quote for the Use of System Charges. In the event the supplier accepts such terms, the use of the Networks shall thereafter be provided to such supplier subject to their signature of a Use of System Agreement and shall be provided in accordance with its terms.

7.4 In the event a Potential Customer requests a connection from [REDACTED] to the Gas Network or the Electricity Network, [REDACTED] shall be obliged as soon as is reasonably practicable and within 28 days of such request, and subject to there being sufficient available capacity on those Networks, to offer terms for such connection which shall include a quote for the Connection Charges and subject thereto in accordance with a Connection Agreement. In the event the Customer accepts such terms the connection to the Networks shall be provided to the Customer subject to their signature of a Connection Agreement and shall be provided in accordance with its terms.

7.5 In the event a Customer requests [REDACTED] to procure a gas or electricity supply, [REDACTED] shall (to the extent that it is permitted by Law and will not be acting in breach of its Distribution Licence), as soon as reasonably practicable and within 28 days of such request, assist the Customer to procure a supplier to offer terms for supply in accordance with a Customer Agreement and the supply shall be provided to the Customer subject to their signature of a Customer Agreement and shall be provided in accordance with its terms.

7.6 If required by [REDACTED] at the start of or at any time during the term of this Agreement, the Developer shall provide to [REDACTED] parent company guarantee, bond or other such form of surety as is reasonably acceptable [REDACTED]

## 8. STANDARDS OF SERVICE

[REDACTED] shall provide the Utility Services in accordance with the Service Standards provided that the compensation payments detailed in the relevant Connection Agreement, Use of System Agreement, by the Authority, or pursuant to legislation shall, in respect of the breach of this Clause only, constitute the Developer's sole remedy and in no circumstances shall a breach of the Service Standards constitute a breach of this Agreement.

## 9. COSTS AND CHARGES

9.1 The level of Use of System Charges to be charged by [REDACTED] to third party suppliers of Customers or Potential Customers whose Connection Agreements relate to the Demand Capacity shall be set at rates which are competitive having regard to the level of services and charges set from time to time by the relevant upstream distributor in respect of use of system charges to its connected customers within that distributor's distribution area. Connection Charges will reflect [REDACTED] estimate of the work to be done and the assets to be installed for the Customer seeking the connection.

9.2 Connection Charges will in respect of any given connection request reflect [REDACTED] estimate of the work required to effect the connection and the value of the connection assets required.

9.3 In the event that the costs to [REDACTED] of the performance of its obligations under the Agreement shall be increased solely by reason of any change in tax, law or as a result of a direction given by the Director, [REDACTED] reserves the right to amend charges to third party suppliers and Customers and to amend the provisions of Clause 9 to reflect the resulting increase in costs.

## 10. LIMIT OF LIABILITY

10.1 A Party shall not be liable to the other Party for any failure to comply with this Agreement resulting from Force Majeure or any act or omission of a third party (except where such third party is contracted to, engaged by or otherwise under the direction or control of the Party). Provided that each Party shall use all reasonable endeavours to mitigate the effect and duration of such Force Majeure.

10.2 Subject always to Clause 10.3 below, a Party shall not be liable to the other Party whether in contract, delict, tort (including negligence) or otherwise for any loss or damage whatsoever in connection with this Agreement (including consequential, indirect or economic loss) resulting from the act, neglect or default of the first-mentioned Party except for:

(a) direct loss (being the cost of repair, replacement or reinstatement of property which has suffered physical damage) which was reasonably foreseeable arising from any breach of this Agreement by the first-mentioned Party; or

(b) for loss arising from the first-mentioned Party's Willful Default, provided that the maximum liability of any Party for any loss or damage under this Clause 10 in each 12 month period from the commencement of this Agreement shall not exceed One Million Pounds (£1,000,000) Sterling.

10.3 Nothing in this Clause 10 shall exclude or limit the liability of any Party for death or personal injury resulting from the negligence of that Party.

## 11. REPRESENTATIONS AND WARRANTIES

11.1 Each Party hereby represents and warrants to the other Party as of the date of execution of this Agreement as follows:

(a) It is a company duly constituted and validly existing in good standing under the laws of the country of its incorporation and has all requisite corporate power and authority to enter into and to perform its obligations hereunder and to carry out the terms hereof and the transactions contemplated hereby.

(b) The execution, delivery and performance by it of this Agreement have been duly authorised by all necessary action on its part and do not require any approval or consent of any shareholder or holder (or any trustee for any holder) of any indebtedness or other obligation of such Party.

(c) Save as provided for or contemplated in this Agreement, no consent, approval, order or authorisation of, or registration, declaration or filing with, or giving of notice to, or obtaining of any licence or permit from, or taking of any other action with respect to, any government, local government or public body, authority or agency is required in connection with the valid authorisation, execution, delivery and performance by it of this Agreement or the transactions contemplated hereby.

## 12. DISPUTES

12.1 If a dispute arising under this Agreement, the Parties shall use reasonable endeavours to resolve in good faith the dispute. If within 7 days starting on the day that one Party notifies the other of the existence of the dispute, the parties have failed to reach an agreement, either Party may refer the matter(s) in dispute to an independent engineer agreed by the parties in writing or, failing agreement on the identity of the engineer within the 7 day period referred to above, an Expert appointed on the application of either Party by the Director (the "Expert").

12.2 The Expert shall act on the following basis:

12.3 the Expert shall act as an expert and not as an arbitrator;

12.4 the Expert's terms of reference shall be to determine the matters in dispute within 7 days of his appointment;

12.5 the Parties shall each provide the Expert with all information which the Expert reasonably requires and the Expert shall be entitled (to the extent he considers appropriate) to base his determination on such information;

12.6 [redacted] and the Developer shall each pay one half of the Expert's costs or as the Expert may determine; and

12.7 the decision of the Expert is, in the absence of fraud or manifest error, final and binding on the Parties.

12.8 This Clause 12 shall not apply to any application for injunctive relief.

## 13. CHANGE OF LAW AND TERMINATION

13.1 Termination of this Agreement shall not affect [redacted] continued ownership and operation of the assets comprising the Networks in accordance with applicable laws and regulation at such date and the Developer shall thereafter have no further rights in relation to the manner of development or operation of the Networks. Termination of this Agreement shall be without prejudice to any claims either Party may have against the other which have accrued on or before termination.

13.2 If it is no longer possible to perform any of the obligations under the Agreement in the manner envisaged in this Agreement solely by reason of any change in Law or as a result of a direction given by the Director then the Parties shall amend this Agreement to the extent necessary (but no further) to

ensure that the relevant obligations are modified so that they are legally capable of performance having regard to such change in law or otherwise provided that for the duration of such inability to perform until the Agreement is so amended [REDACTED] shall not be in breach of the relevant obligations under this Agreement.

13.3 If either Party commits any material breach of the terms and conditions of this Agreement and cannot remedy such breach or if capable of remedy fails to do so within fourteen (14) days after receiving written notice requiring it to do so the other party may terminate this Agreement forthwith.

13.4 If either Party should be adjudged as bankrupt or shall enter into liquidation (save for a members winding up of a solvent company), or shall make an assignment for the benefit of creditors or shall take any similar action for the protection or benefit of creditors or a receiver or administrator shall be appointed for it on the grounds of insolvency or threatened insolvency or such Party shall give notice to any Person or governmental body of its inability to pay its debts or its insolvency or suspension of operations, then unless such Party can demonstrate to the reasonable satisfaction of the other Party that it has the financial and other resources to continue to perform its duties pursuant to this Agreement, then the other Party shall be entitled to terminate this Agreement by giving not less than 30 days written notice in that behalf to the first party.

#### 14. INSURANCE POLICIES MAINTAINED

Each of the Parties shall each take out and maintain throughout the term of this Agreement, with reputable and substantial insurers, full comprehensive insurance cover against such risks and for such amount as would be taken out by a reasonable and prudent person acting in accordance with Good Industry Practice engaged in the same business as that carried on by the relevant Party.

#### 16. CLAUSES TO SURVIVE TERMINATION

On termination this Agreement shall be of no force or effect except for Clauses 10, 17, 19, and 23 and any provision hereof which expressly or by implication is intended to come into or continue in force on or after such termination which shall survive notwithstanding termination.

#### 16. NOTICES

16.1 Any notice under this Agreement shall be in writing and shall refer to this Agreement and shall be deemed to be sufficiently served if addressed to the other Party and sent by:

- (a) First class mail or courier service;
- (b) Registered post; or
- (c) Facsimile transmission to the other Party's registered address or such other address as the Party may from time to time designate by written notice to the other.

16.2 Any notice sent by first class mail, courier service or registered post shall be deemed (in the absence of evidence to the contrary) to have been delivered two (2) business days after posting, exclusive of the day of posting. Any notice by facsimile shall be deemed to have been delivered on the date of successful transmission (as evidenced by a transmission printout) unless such transmission is outwith the hours of 0830 and 1730 hours, Monday to Friday, in which case one hour after commencement of the next working day.

#### 17. CONFIDENTIALITY

17.1 This Agreement is confidential, and the Parties agree to limit disclosure of its contents:

- (a) to employees, financiers, Customers, Potential Customers, intending purchasers or tenants of the whole or any part of the Site and representatives, consultants or other Persons who require disclosure thereof in connection with the performance of such Party of its obligations hereunder but disclosed information shall be limited to the precise extent such information is required by such third party; and
- (b) any recognised stock exchange or governmental authority that requests such information, in which case such disclosure shall be limited to the precise extent required; and
- (c) as required by Law.

17.2 Both Parties hereby agree to maintain the confidentiality of any other information received by it, whether directly or indirectly, relating to or arising from the Agreement, save that this Clause 17 shall not apply to any information which:

- (a) comes into the public domain other than as a result of breach by either Party of its obligations pursuant to this Agreement,
- (b) the recipients can show was in their possession at the time of disclosure and was not acquired directly from the disclosure;

(c) at the time of disclosure was published or otherwise generally available to the public;  
(d) it is necessary for [redacted] solicitors to disclose to the Inland Revenue and HM Land Registry Office for registration of the Leases and Deeds of Easement.

17.3 Clause 17.1 shall not apply in relation to any action taken by the Director or any action taken by either Party in relation to the Director.

**18. ASSIGNMENT**

No Party may assign or transfer any of the rights or obligations under this Agreement or any part thereof without the prior written consent of the other Party which consent shall not be unreasonably withheld or delayed.

**19. EXCLUSIVITY OF REMEDIES**

19.1 The remedies contained in this Agreement for breach of any of its provisions are exclusive and not cumulative and unless stated to the contrary are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law in respect of the subject matter of the Agreement, including any rights in tort (which include actions brought in negligence or nuisance).

19.2 Each Party hereby waives to the fullest extent possible all rights and remedies provided by common law or statute and releases all the other Parties, their officers, employees, agents, sub-contractors and invitees to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in the Agreement and undertakes not to enforce any of the same unless expressly provided herein.

**20. ENTIRE AGREEMENT**

Any previous written or verbal agreement between the Parties in respect of the subject matter hereof is hereby revoked. This Agreement, together with any documents referred to herein including, without limitation, the Proposal, represents the entire Agreement between the Parties and replaces all other agreements, discussions, representations, and understandings between the Parties whether verbal or written. Nothing in this Clause 20 shall prejudice either Party's rights regarding fraudulent misrepresentation made prior to this Agreement.

**21. WAIVER AND VARIATION**

No waiver by a Party of a breach by any other Party hereto shall be deemed to constitute a waiver of similar or other breaches by such other Party. No variation of this Agreement shall be effective unless in writing and signed by both Parties.

**22. THIRD PARTY RIGHTS**

Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or to give to any person other than the Parties and their respective permitted assignees, any right, remedy or claim under or by reason of this Agreement or the Contracts (Rights of Third Parties) Act 1999. This Agreement and all stipulations and agreements it contains are and shall be for the sole and exclusive benefit of the Parties and their respective permitted assignees.

**23. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with English Law and without prejudice to Clause 12 both Parties submit to the exclusive jurisdiction of the English Courts

**24. DEFINITIONS**

24.1 For all purposes of this Agreement the following terms shall have the following meanings:

"Affiliate" means in relation to [redacted] any company which controls, is controlled by, or is controlled by the same company which controls [redacted] and control for these purposes means ownership of 50% or more of the entire issued share capital of a limited company;

"Agreement" means this agreement, the attached Schedules and Appendices;

"Authority" means, the Gas and Electricity Markets Authority appointed for the time being pursuant to section 1(1) of the Utilities Act 2000;

<b>"Business Day"</b>	means any day other than a Saturday, a Sunday or a day on which commercial banks in London are required or authorised to be closed;
<b>"Capital Contribution"</b>	means the sum so named in the Proposal for both the Electricity Network and the Gas Network and the term "Capital Contributions" shall be interpreted accordingly;
<b>"Capital Rebate"</b>	means the sum (if any) to be paid by the Developer to [REDACTED] in the circumstances more fully set out in the Proposal;
<b>"Charges"</b>	means the Connection Charges and/or the Use of System Charges;
<b>"Commencement Date"</b>	means the date so named in the Proposal;
<b>"Connecton Agreement"</b>	means an agreement (as amended by [REDACTED] from time to time in accordance with the terms of the Licence or any replacement thereof), between [REDACTED] and a Customer or Potential Customer, to provide such Customer or Potential Customer a connection to the Networks at premises located on the Site;
<b>"Connection Charges"</b>	means the charges (if applicable) payable by the Customers and Potential Customers for connecting to the Networks;
<b>"Contract Year"</b>	means 12 months from the date hereof and each 12 month period thereafter;
<b>"Customer"</b>	means a tenant, purchaser, owner or occupier of premises on the Site connected to the Networks;
<b>"Customer Agreement"</b>	means the agreement for a supply of electricity, gas or water between the Customer and licensed supplier to the Customer's premises at the Site which is electrically connected to the Networks;
<b>"Deed of Easement"</b>	means a deed, between the Developer and [REDACTED] granting to [REDACTED] rights as stated therein in respect of the routes of the Networks;
<b>"Demand Capacity"</b>	means the Electricity Demand Capacity, the Gas Demand Capacity or any or both as the context demands;
<b>"Director"</b>	means the Chairman for the time being of the Authority;
<b>"Distribution Connection and Use of System Agreement"</b>	means an agreement (as may be amended by [REDACTED] from time to time in accordance with the terms of the Licence) between [REDACTED] and a licensed supplier for the use of the Networks by that supplier to enable it to supply its Customers and Potential Customers;
<b>"Distribution Connection and Use of Syatom Charges"</b>	means the charges payable to [REDACTED] for using the Networks;
<b>"Electricity Demand Capacity"</b>	means the total electrical loads connected to the Electricity Network which shall not at any time exceed the aggregate connected capacity specified in the Proposal;
<b>"Electricity Network"</b>	Means the electrical infrastructure being structures, lines, appliances, ducts, cables, switchgear or other electrical plant or equipment comprising the Electricity Assets and such additional electricity infrastructure to be provided by [REDACTED] to enable the disbibution of electricity in accordance with this Agreement

- "Force Majeure"** means in relation to a Party any event or circumstance which, notwithstanding the performance by such Party of its duties pursuant to this Agreement up to the occurrence of such event or circumstance, is beyond the reasonable control of such Party and could not reasonably have been anticipated and which results in or causes the failure of that Party to perform any of its obligations under this Agreement including (without limitation) acts of God, fire, explosion, flood, acts of terrorism, war, rebellion, riot, acts of Government, damage to or severance of the Networks (or any part or parts of it) caused solely by a third party other than any third party directly or indirectly acting under the control of [REDACTED] or its agents or contractors where such agents or contractors are acting under a contract with or the control or the instructions of [REDACTED] sabotage or official strike or other labour disputes or disturbances other than a strike, dispute or disturbance only affecting [REDACTED] provided that lack of funds or financial resources shall not constitute Force Majeure;
- "Gas Demand Capacity"** means the total volume of gas required in the Gas Network which shall not at any time exceed the aggregated connected capacity specified in the Proposal;
- "Gas Network"** Means the gas infrastructure being structures, pipes, appliances, plant, or other gas equipment comprising the Gas Assets and such additional gas infrastructure to be provided to [REDACTED] enable the transportation of gas in accordance with this Agreement;
- "Good Industry Practice"** means practices which would be adopted by an operator exercising in the general conduct of its undertaking that degree of skill care and diligence which would ordinarily and reasonably be expected from an operator experienced in the design, construction, operation, management, maintenance, rationalisation, refurbishment, renewal and development of a Networks similar to and under the same or similar circumstances to the Networks;
- "Law"** means any law, regulation, order, directive, notification, instruction, bye-law, guideline, code or standard which is legally binding in England from time to time;
- "Leases"** means the leases granted by the Developer to [REDACTED] in respect of the Networks;
- "Licence"** means the Distribution Licence, the Transportation Licence or both of them as the context demands
- "Metering Points"** means such metering points situated at each exit point from the Network;
- "Network Code"** means the document of that name published by [REDACTED] from time to time in accordance with its Transportation Licence and to which gas suppliers must agree before they can supply gas through the Gas Network.
- "Network Connection Charges"** means for each Network the fees if any [REDACTED] the owner of the upstream network to which [REDACTED] the Networks in order to fulfil its obligations under this Agreement.
- "Networks"** means the Electricity Network, the Gas Network or both of them as the context demands;
- "Operation"** means the operating, managing, maintaining, rationalising, refurbishing and renewing of the Networks.

<b>"Party"</b>	means the Developer of [REDACTED] and Parties shall be construed accordingly;
<b>"Person"</b>	means and includes an individual, a partnership, a joint venture, a corporation, a trust, an unincorporated organisation and a government or any department or agency thereof;
<b>"Potential Customer"</b>	means a tenant, purchaser, owner, or occupier of premises on the Site desirous of having such premises connected to the Networks;
<b>"Proposal"</b>	means the document of that name containing the details of the Networks and associated matters of which this Agreement is part.
<b>"Service Standards"</b>	means any standards of performance or best practice guidance approved by the Authority;
[REDACTED]	means [REDACTED] whose registered office is at [REDACTED]
<b>"Site"</b>	means land as more particularly described and shown in the Proposal on which the Networks are to be constructed;
[REDACTED]	means [REDACTED] whose registered office is at [REDACTED]
[REDACTED]	means any or all (as the context requires) of [REDACTED] parties shall be interpreted accordingly;
[REDACTED]	means [REDACTED] whose registered office is at [REDACTED]
<b>"Subsidiary"</b>	means in relation to either party a subsidiary or subsidiaries (as defined by Section 1157 of the Companies Act 2006 of such Party;
<b>"Transportation Licence"</b>	Means a licence to transport gas granted under the Gas Act 1995 as amended by the Utilities Act 2000
<b>"Use of System Agreement"</b>	means an agreement (as may be amended [REDACTED] from time to time in accordance with the terms of [REDACTED]) between [REDACTED] and a licensed supplier for the use of the Networks by that supplier to enable it to supply its Customers and Potential Customers.
<b>"Use of System Charges"</b>	means the charges payable to [REDACTED] for using the Networks;
<b>"Utility Services"</b>	means the provision to Customers of the connection of their premises to the Networks and (to the extent that it is permitted by Law and will not be acting in breach of its Licence) assistance with the procurement on behalf of Customers and Potential Customers (if requested) of a supply to such premises and the provision to other suppliers for use of the Networks for their supply to such premises and of other related services to premises located within the Site.
<b>"Willful Default"</b>	means any act or omission which constitutes an intentional and conscious disregard of the provisions of this Agreement;
<b>"Works"</b>	means the physical works being the design, construction and installation of the Networks as more detailed in Schedule 1.

**Appendix 2**



**Proposal Acceptance Form**

This proposal document represents [redacted] offer to [redacted] [The Developer] to build and thereafter own and operate the utility network infrastructure more fully described in the proposal document (ref 255105/0623 rev 4), dated 30 March 2011 by signing the declaration below you are accepting this offer. Once accepted, the contract so formed will be governed solely by the terms of this proposal document.

For and on behalf of a) [redacted] and b) [redacted] (each of whom enter into this Agreement on its own behalf and not as agent for any other party).

Signed.....  
Name.....  
Position.....  
Date.....

We [redacted] [The Developer] accept the offer represented by the proposal for [redacted] (the "Proposal") (ref 255105/0623 rev 4) and we to be bound by the terms and conditions of the Proposal including (without limitation the General Conditions of Contract for Construction of Utility Infrastructure and the Standard Infrastructure Agreement).

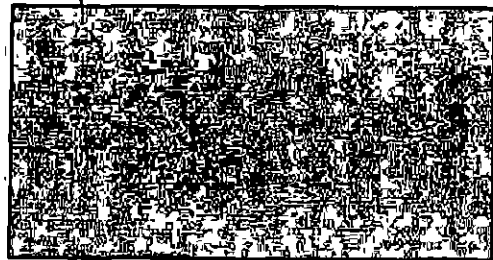
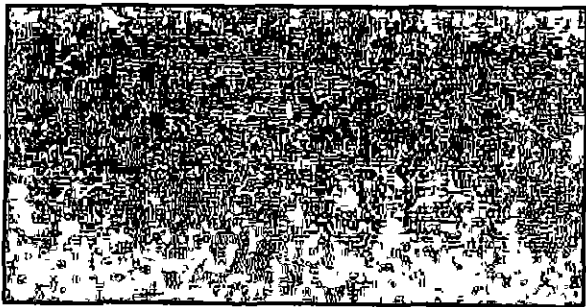
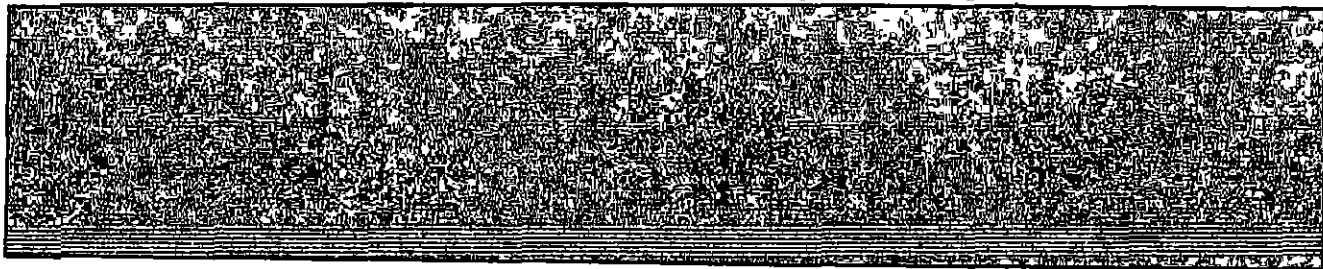
I propose to appoint \_\_\_\_\_ as my Gas Supplier.

I propose to appoint \_\_\_\_\_ as my Electric Supplier.

Signed.....  
Name.....  
Position.....  
Date.....



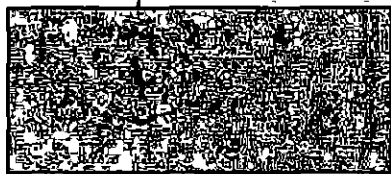
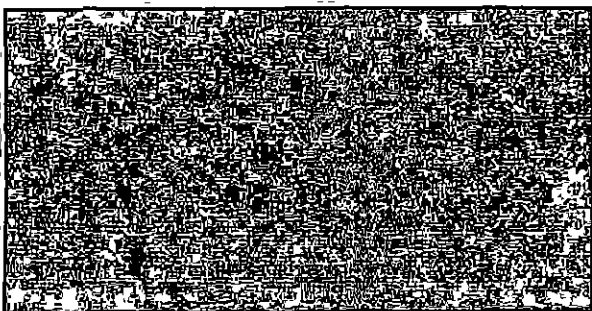
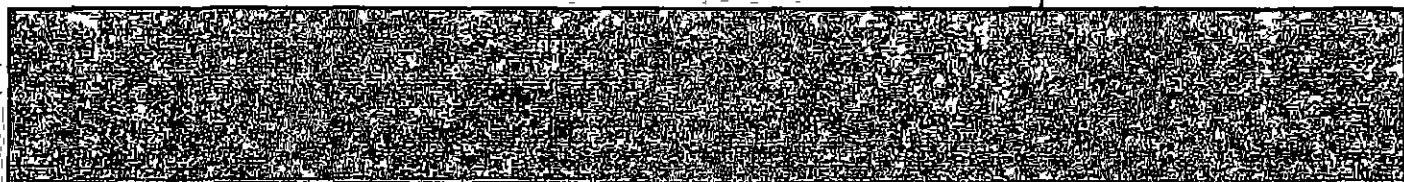
**Appendix 3**



This page details the financial implications if full demand is not achieved by 31 December 2013, as quoted on page 3 of this document.

Effect of delay to final loads - Electric Only

Date Demand Completed by	Investment £	Client Payment	
		Total £ (ex POC)	
Dec-2012	37,939	43,123	
Dec-2013	33,816	47,448	current quotation
Dec-2014	28,748	52,314	
Dec-2015	24,883	58,199	
Dec-2016	21,320	59,742	
Dec-2017	17,773	63,289	
Dec-2018	15,037	68,025	
Dec-2019	12,742	68,320	
Dec-2020	10,808	70,254	
Dec-2021	9,176	71,884	
Dec-2022	7,804	73,258	
Dec-2023	6,587	74,495	





To:

--- Forwarded by [redacted] on 08/02/2013 08:33 ---

[redacted]

Date 06/09/2012 16:16

Subject [redacted]

Dear [redacted]

Thank you for your fax's of today's date

Please see below your e-mail and my response confirming completion of the lease and two deeds which are dated the date of the e-mail (22nd May 2012).

I am currently awaiting the land registry to confirm registration of the same.

Kind regards

[Large redacted block]

[redacted] 06/08/2012 16:14 ---

[redacted]

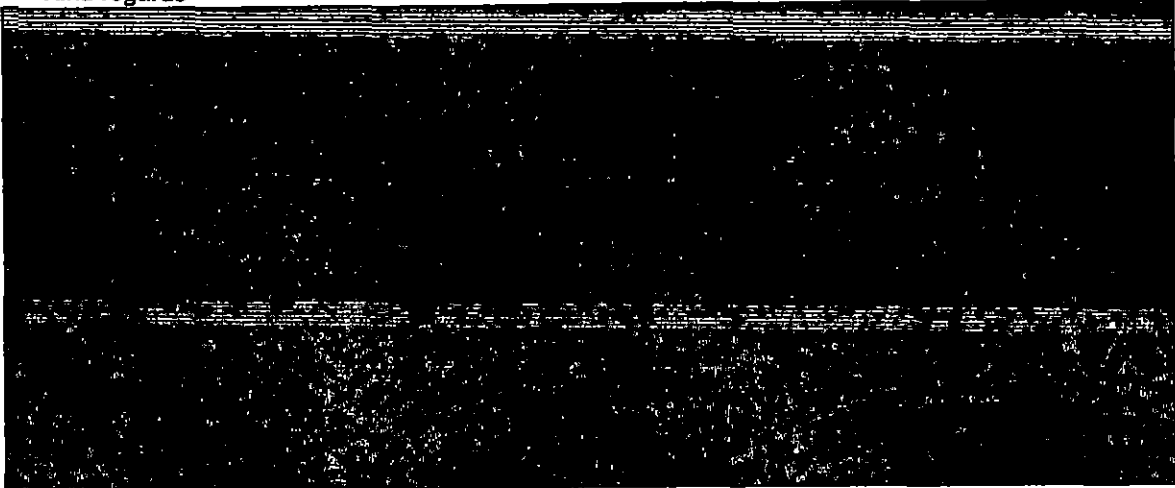
Date 22/05/2012 16:14

Subject [redacted]

Dear [redacted]

Thank you for confirming completion.

Kind regards



[Redacted] -22/05/2012 12:23:07--Dea [Redacted] confirm that you may proceed to complete and date the lease and two deeds of easement



Date: 22/05/2012 12:23

Subject [Redacted]

Dear [Redacted]

I confirm that you may proceed to complete and date the lease and two deeds of easement.

Kind Regards



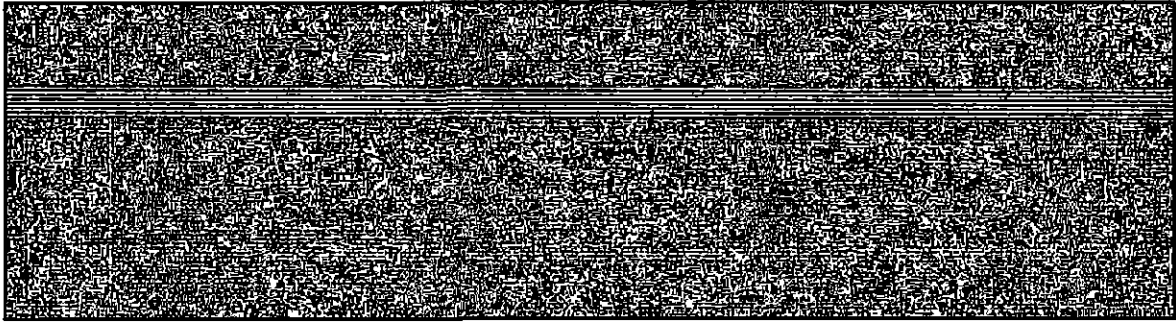
Date: Tue, 22 May 2012 12:15:57 +0100

Dear [Redacted]

I have been advised by [Redacted] the [Redacted] deed has completed.

I would be grateful if you could confirm via e-mail (as I am currently out of the office) that I can proceed to complete and date my client company's Lease, deed of easement for the gas pipe and deed of easement for the electricity cable.



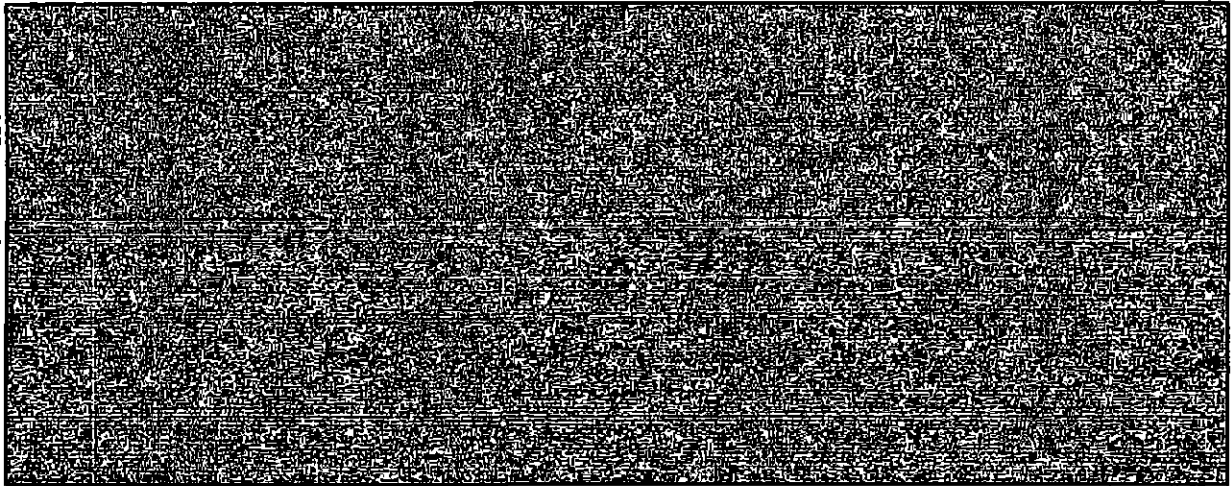


Date: 22/05/2012 12:07

Subject: RE: [redacted]

Thanks [redacted] I have just completed our deed with [redacted] and will send you our AP1

Kind regards



Sent: 21 May 2012 14:40



Dear [redacted]

Apologies I thought I had replied to this. I confirm I will write to the land registry when sending my AP1 to ask your deed is registered before my lease and two easements.

Kind regards

