



Regional Approaches to Stimulating Local Renewable Energy Solutions

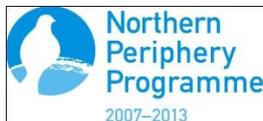
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## Biomass Energy Supply Contract Template

### IMPORTANT NOTICE & DISCLAIMER

The Western Development Commission as a partner in RASLRES has produced template contracts (including this template contract) and accompanying guidance notes (Documents) to assist parties involved in the planning and procurement of biomass heating systems. However, the Documents are not intended to constitute a definitive, complete or up to date statement of the law, nor are the Documents, or any part of them, intended to constitute legal, technical or other professional advice for any specific situation. Accordingly, while you may use this document as a template, you must obtain your own legal, financial and technical advice and adapt this document to your specific requirements.

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This contract template was prepared as part of the Renewable Energy Development Model Pilot Projects element of the RASLRES project. RASLRES is a European bio-energy project led by the Western Development Commission and funded under the INTERREG IVB Northern Periphery Programme. For more information please see [www.raslres.eu](http://www.raslres.eu)

These guidance notes and contract templates have been developed over 2011 and 2012 by RASLRES. They are most applicable for use by larger heat users (businesses) and are intended to enable such users to augment their existing fossil fuel heating systems with biomass fired systems.

The biomass industry was consulted to help develop the contract templates and their views were incorporated. In addition the contract templates were developed and used by several business customers to procure biomass systems and the lessons learnt from that were included. As such the contract templates are designed to offer a model to enable businesses to better determine and then procure and operate biomass heating systems. This contract template should be used in conjunction with the accompanying guidance notes.

# Biomass Energy Supply Contract Template

Terms of the Contract Between:

The Supplier

..... (insert when  
known)

And the Customer

.....  
(insert)

Site Address

.....  
.....(insert)

Dated.....

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## 1. DEFINITIONS AND INTERPRETATION

1.1 The Supplier and the Customer shall agree to the following definitions.

- (a) **The Customer** means the purchaser of the biomass fuel energy services
- (b) **The Supplier** means the supplier of the biomass fuel energy services
- (c) **Subcontractors** means the appointed sub-contractors who will supply services to the Supplier.
- (d) **Contract Documents** means this agreement and all related schedules and customers Invitation to Tender, Suppliers Tender and relevant guidance documents issued.
- (e) **Contract Term** means the duration of this contract and can mean the period over which the capital repayment fee is paid.
- (f) **Metered Heat Energy or Metered Heat** means the hot water supplied by the biomass Equipment.
- (g) **The Equipment** means all the items that the Supplier specifies and installs as part of the biomass heating system. This shall include the biomass boiler and all its ancillary items and controls such as the flue, ash bins, accumulator tanks, heat meters etc. It shall also include the fuel silo and the fuel transfer mechanism. It shall also include the builders' works and civil works required to house and operate all this equipment. It shall also include all the mechanical and electrical works required to connect the biomass system to the Customers heating system up to the connection point.
- (h) **The Customers Premises** mean the location of the site where the Supplier shall supply and install the Equipment – as defined by the schedules to this contract.
- (i) **The Existing Heating Plant** means the fossil fuel boilers that the Customer already owns and operates to provide hot water, that will continue to be operated and maintained by the Customer under this Contract.
- (j) **Customers heating system** mean all pipes, fittings, radiators or similar items installed, on the Site, on the Customer's side of the final heat exchangers at the Connected Points.
- (k) **Biomass Fuel** means boiler fuel derived from virgin timber including forestry thinnings and purpose grown biomass crops such as willow.
- (l) **Defined or negotiated capital contribution** means any monies paid to the Supplier by the Customer intended to reduce the Contract costs or duration or both.
- (m) **MWh** means Megawatt Hours of heat supplied
- (n) **Carbon Tax** means any tax, levy or similar charge on emissions of carbon dioxide and other greenhouse gases, the burning of fossil fuels or on installed capacity or facilities which may give rise to emissions of carbon dioxide and other greenhouse gases.
- (o) **Commencement Date** means the date this Contract commences.

- (p) **Connection Point** mean the points at the final heat exchangers on the Site to which the System pipes will be connected by the Supplier and through and from which the Supplier will provide Heat to the Customer
- (q) **Good Industry Practice** means, at any time, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected at such time from a skilled and experienced supplier seeking in good faith to comply with its contractual obligations, complying with all applicable Laws and engaged in the same type of undertaking and under the same or similar circumstances and conditions.
- (r) **Law or Laws** means (i) all law applicable in Ireland and the European Union and includes, without limitation, common law, statutes, regulations, acts, bylaws, rules, codes, decisions, proclamations, notices, statutory instruments, orders, directives, instruments, rules of court and/or delegated legislation and (ii) any regulatory policies, guidelines or industry codes which apply to the supply of heat pursuant to this Contract; and (iii) any directions, rules or regulations issued by any competent or regulatory authorities.
- (s) **Meter** means the Heat meters installed by the Supplier for the purpose of accurately measuring the quantity of Heat supplied by the Supplier to the Connected Points for the Customer and, if the case, any replacement Meters installed by the Supplier from time to time.
- (t) **Project Manager** means the person appointed by the Supplier as its authorised representative
- (u) **Relevant Consents** mean all permissions, consents, approvals, certificates, permits, licences, agreements and authorities (whether statutory, regulatory, contractual or otherwise) necessary or which would prudently be obtained in connection with, the performance of this Contract.
- (v) **Indexation** means the agreed method of adjusting the cost of the Contract as set out in Schedules to this Contract.
- (w) **Delivery point** means the location where the biomass Equipment shall be installed
- (x) **Suitable vehicle for delivery** means a vehicle that the Supplier uses to transport the biomass fuel to the biomass Equipment.
- (y) **Utilities** means any power, water, gas or other utilities whatever provided, made available or passed through by the Customer to the Supplier from time to time.

**2. PARTIES TO THE CONTRACT**

- 2.1 Customer name and address:  
.....  
.....  
.....(and name and address of registered office if different)
  
- 2.2 Supplier name and address:  
.....  
.....  
.....( and name and address of registered office if different)
  
- 2.3 Subcontractors name and address:  
.....  
.....  
.....( and name and address of registered office if different)

**3. BACKGROUND TO THE CONTRACT**

- 3.1 The Customer owns and operates  
.....  
.....  
.....(name/use of premises) and agrees  
to enter into this Contract  
with.....(name of Supplier)  
who will provide metered heat energy for his premises.
  
- 3.2 The Supplier will plan, secure all consents, fully design, implement, and commission, and  
operate suitable biomass fired boiler plant (the Equipment) at the Customer’s premises.
  
- 3.3 The Supplier will operate and maintain the Equipment and supply enough suitable biomass fuel  
to meet the required heating load.
  
- 3.4 The existing heating plant will be retained and form part of the system that continues to produce  
and supply heat. This will be operated and maintained by the Customer.
  
- 3.5 The Customer agrees to allow the Supplier to install the Equipment necessary to supply such  
metered heat as set out in Schedule 1 – List of Equipment/scope of work.
  
- 3.6 Schedule 2 – Existing Heating Plant provides a description of the existing heating plant.

3.7 Heat is defined as supply of circulating low temperature hot water delivered at a minimum temperature of ..... degrees celsius and pressure of ..... bar gauge (insert as required).

#### 4. BASIS OF THE CHARGES

4.1 There will be three charges:

- (a) A fixed monthly capital repayment fee to be paid monthly in advance by direct debit. This payment shall cover all the costs of planning, installing and commissioning the biomass boiler equipment. This shall be paid irrespective of whether the other 2 charges are due.<sup>1</sup>
- (b) A per MWh monthly heat payment will be charged based on the metered heat provided from the biomass boiler Equipment. This will be paid monthly in arrears. This will include all the costs of operating the Contract.
- (c) O&M charge based on the cost of operating, servicing and maintaining and repairing the new biomass boiler equipment. This will be paid monthly in arrears based upon Schedule 2 of this contract.

4.2 Heat meters will be installed by the Supplier to monitor and accurately record the heat used.

4.3 The cost per MWh will be indexed linked based on conditions laid out in Schedule 4 – Method of Indexation.

4.4 The Supplier will pay for electricity used by the biomass boiler equipment.

- (a) This will be done through a submeter will be connected to a circuit dedicated to the Suppliers Equipment. This will be read monthly as per the heat meter and reconciled at an agreed interval. The cost of this will be deducted from the Suppliers invoice.
- (b) The Customer must supply invoices for the appropriate ESB networks MPRN (Meter Point Reference Number) for the agreed interval. The AUP (Average Unit Price) for the interval will be applied.
- (c) Where it is not possible or cost of submeter is not reasonable, the Supplier will install a separate MPRN and pay this cost directly.

4.5 The Supplier will pay for water used by the biomass boiler equipment. This will be outside the scope of this Contract.

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<sup>1</sup> <sup>1</sup> The terms and duration of this payment must be developed in a bespoke manner and subject to a binding contractual agreement depending upon how the parties intend to finance the project.

- 4.6 The Customer agrees to pay the Charges as set out on the Invoice in cleared funds within the Payment Period.
- 4.7 The Customer shall make all payments without set-off or counterclaim and free of all withholdings and deductions.

**5. DATE AND TERM OF CONTRACT**

- 5.1 This Contract shall last for a period of .....  
(years/months)
- 5.2 The Contract shall commence on.....  
(insert date)
- 5.3 The commencement of the contract is defined as the first day that the biomass equipment is fully operational, fully commissioned and is permanently providing metered heat to the Customers premises.
- 5.4 The Supplier will be responsible for the operation of the biomass heating equipment, however the Supplier may ask the Customer to provide on site assistance when practical and agreed and in line with the terms of this Contract.

**6. HEAT LOAD AND HEAT PROFILES**

- 6.1 The existing annual average heat energy consumption is ..... (insert MWh) from .....(insert date) to .....(insert date). Schedule 3 provides details on the heat load, the heat supply and its seasonal profile.
- 6.2 The biomass boiler equipment will be designed and installed to meet .....(insert %) of average annual heat load.
- 6.3 The Supplier shall submit an annual statement that records the total supply of heat from the biomass equipment.

## **7. BASIS OF THIS CONTRACT**

- 7.1 The Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to this Contract includes the schedules.
- 7.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of this Contract simply as a result of such document being referred to in the Contract.
- 7.3 The Customer and Supplier acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the other party which is not set out in the Contract.
- 7.4 The Customer undertakes not to adjust or change the Equipment unless instructed to do so by the Supplier.
- 7.5 From the date of the commencement of the Contract only the Supplier is authorised to supply biomass fuel into the biomass equipment.
- 7.6 Ownership of the Equipment shall pass to the Customer at the start of the contract term.

## **8. HEAT SUPPLY AND MEASUREMENT**

- 8.1 The total quantity of heat provided by the Supplier to the Customer shall be measured by means of the Heat Meter(s) such measurements being expressed in megawatt hours ("MWh").
- 8.2 The technical specification and location(s) of the Heat Meter(s) is to be provided and agreed by a competent independent Engineer and included in Schedule 1 of this contract.
- 8.3 The quantity of heat measured by the Heat Meter(s) shall be taken to provide a definitive record of the quantity of heat supplied to the Customer unless it has demonstrably ceased to operate effectively.
- 8.4 The Supplier shall provide the Customer with Heat Meter(s) readings taken from the Heat Meters within ten (10) working days of the end of each calendar month. The Customer shall be given access on site to check and record these readings.
- 8.5 The total quantity of Heat supplied by the Supplier to the Customer during any one month shall be calculated by subtracting the previous reading from the current reading.
- 8.6 In the event of failure of the Heat Meter(s) the quantity of heat supplied during the period since the previous Heat Meter Reading shall be agreed between the parties based upon heat supplied during equivalent historical periods adjusted according to the actual number of days during the period in question.

- 8.7 In the event that the Heat Meter(s) has demonstrably ceased to operate effectively the Supplier shall ensure that it is either repaired or replaced as appropriate within thirty (30) working days of such a failure becoming apparent.
- 8.8 The operation and accuracy of the Heat Meter(s) will be verified every 2 years by a means that both the Customer and Supplier agree to.

## **9. INSTALLATION AND COMMISSIONING**

- 9.1 The Supplier shall provide the services of suitably trained and experienced personnel to install and commission the equipment at the delivery point. They must operate to good industry practice.
- 9.2 The Customer shall provide site access and onsite liaison personnel as reasonably required to support the Supplier.
- 9.3 All Equipment supplied the Supplier must be new unless otherwise agreed.
- 9.4 The Supplier shall provide a detailed programme of works and set out how they will prepare and submit all statutory consents. No works shall be commenced without the relevant statutory consent being granted and the Customer being provided with evidence of such unless otherwise agreed.
- 9.5 The Equipment shall be installed at the location agreed between the Customer and the Supplier as shown in drawings included in Schedule 1 – List of Equipment/scope of work. The Customer shall determine and approve site works before the Supplier commences them.
- 9.6 When the Equipment has been installed the Supplier shall carry out its standard test of the Equipment to ensure that the equipment is correctly installed, commissioned and is in satisfactory working order.
- 9.7 The Supplier shall provide such initial training and documentation to the Customer as is agreed with the Customer is appropriate to assist the Supplier. This shall be commensurate with any inspection duties that the Supplier and the Customer agree are required. The Customer shall make available such personnel, equipment (of the Customer) and access that the Supplier may request for this purpose.
- 9.8 The Supplier shall nominate a project manager for the construction phase and for the operational phase. They shall notify the Customer of any changes to these individuals with at least a 4 week notice period.
- 9.9 The Customer shall nominate a suitably qualified client representative to be available for site meetings and to liaise with the Supplier.

**10. OPERATIONS & MAINTENANCE**

- 10.1 The Supplier undertakes to operate the Equipment and store the fuel in accordance with all relevant manufacturers’ instructions and documentation. This is set in Schedule 1.
- 10.2 The Supplier will provide scheduled and unscheduled maintenance for the Equipment during the contract.
- 10.3 The Supplier shall submit a detailed written description of the planned and scheduled maintenance for the Equipment during the contract.

**11. EXISTING HEATING PLANT AND FUEL**

- 11.1 The Customer will provide all scheduled, planned and routine maintenance of the existing heating plant.
- 11.2 Scheduled maintenance will be in accordance to the manufacturer recommendations or the Customers procedures. It will be provided by qualified and approved technicians and will maintain all relevant warranties.
- 11.3 The Customer shall purchase the fuel used in the existing heating plant.

**12. LEASE OR LICENCE OF SITE**

- 12.1 The Customer grants the Supplier an exclusive licence to enter upon and obtain access to the existing plant room for the purposes of carrying out the Services of this Contract. In addition, the Customer grants to the Supplier a non-exclusive licence to access all parts of the Heating Distribution System including, without limitation the underground service routes, for the purposes of carrying out the Services of this Contract. This shall be set out in Schedule 5 – Lease or Licence of the Site.
- 12.2 The Customer is responsible to ensure the Suppliers’ employees have access and egress to the Plantroom and all other service areas in the Facility on a 24 hour a day / seven (7) day a week basis.

**13. CAPITAL CONTRIBUTIONS - OPTIONAL**

- 13.1 The Customer agrees to make a capital contribution of  
€.....(state amount ex VAT).

- 13.2 The Customer will make this payment to the Supplier in two equal amounts. Payment 1 will be made when the Supplier and Customer agree such a payment is due during the installation stage. Payment 2 shall be made on the date of the start of the Contract.
- 13.3 The capital contribution shall enable the Supplier to reduce monthly capital repayment fee to the Supplier.

**14. PAYMENTS AND INVOICING**

- 14.1 The Supplier will fully fund all the costs of planning, designing, purchasing, installing, testing and commissioning the biomass Equipment, including the costs of obtaining all statutory consents and all related civil works.
- 14.2 Separate agreements shall be reached about the payment of any grants if they are available to the Customer.
- 14.3 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 14.4 If the Customer fails to pay the Supplier any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Supplier on such sum from the due date for payment at the annual rate of 2% above EURIBOR accruing on a daily basis until payment is made, whether before or after any judgment.
- 14.5 All payments shall commence on the date that the Supplier and Customer agree is the date when the biomass equipment first supplied metered heat on a permanent basis.
- 14.6 The customer shall pay the Supplier according to the following:

- (a) A fixed capital repayment fee per annum of
  - .....
  - .....(insert value when known) payable in 12 monthly instalments of
  - .....
  - .....(insert value when known) one month in advance by direct debit.
- (b) A variable monthly heat charge
  - of.....
  - .....€(insert value when known) per MWh for heat supplied as read from the heat meter(s) for the duration of the contract.

- (c) A variable monthly O&M charge of.....  
.....€(insert value when known) for the duration of the contract.
- (d) VAT will be applied at the prevailing rate as determined by Irish Revenue.
- (e) The heat meter(s) will be read on a monthly basis and invoiced monthly.
- (f) Invoices will display the carbon savings in kg of CO<sub>2</sub>-equivalent, using the published emissions factor from Sustainable Energy Authority Ireland (SEAI) for the baseline fossil fuel.
- (g) This will be payable within 30 days from date of issuing the invoice.
- (h) The heat covered is the total heat supplied from the biomass fired boilers and the existing heating plant in whatever mix the Supplier decides.
- (i) The heat charge will be indexed at the end of each 12 month period on the anniversary of the start date the Contract. The method of indexation is set out in Schedule 4 – Method of Indexation.

**15. BIOMASS FUEL SUPPLY**

- 15.1 The Supplier shall supply fuel to the biomass boiler system and shall be responsible for monitoring fuel usage and planning all deliveries.
- 15.2 The Customer will assist the Supplier by advising on any unusual changes in heat usage and at the Suppliers request carry out a visual check on the biomass fuel store.
- 15.3 The biomass fuel will be derived from the following sources (delete/retain as appropriate):
  - (a) wood pellets
  - (b) licensed harvested forestry timber;
  - (c) clean sawmill residues;
  - (d) clean arboricultural arisings;
  - (e) short rotation coppice (SRC);
  - (f) clean agricultural arisings (e.g. straw);
  - (g) energy crops, such as miscanthus;
  - (h) clean recycled wood
- 15.4 The Supplier must ensure the biomass fuel is sustainably sourced and is compliant with all national and local environmental regulations and conforms to recognised EU fuel standards. The biomass fuel must be compliant with the biomass Equipment specifications.
- 15.5 The Supplier must comply with the Wood Fuel Quality Assurance Scheme or other approved independent system. For other biomass fuel types a specific quality assurance process will be defined that is mutually agreed between the Customer and Supplier.

15.6 In the event that specification CEN/TS 14961:2005 changes or new grades of biomass product are introduced by any relevant Competent Authority to the exclusion of specification CEN/TS 14961:2005, the Supplier shall notify the Customer and Customer agrees to accept the new grade and where relevant the parties may agree to a new pricing structure for the remaining Contract period.

**16. DELIVERY OF BIOMASS FUEL**

16.1 Biomass fuel will be supplied by a suitable vehicle for delivery into the fuel store. This shall mean the Supplier must show a valid Road Haulage License complying with:

- (a) The Road Traffic (Construction and Use of Vehicles) Regulations 2003
- (b) The EC Road Transport Working Conditions and Road Safety Regulations 2008 (S.I. No. 62/2008)
- (c) All relevant and applicable legislation

16.2 A risk assessment and method statement shall be prepared in advance by the Supplier, to take account of the hazards on site and the risks posed to pedestrians, vehicles and property on the site during biomass fuel delivery and offloading. This shall be formally reviewed annually, or whenever a change to the hazards and risks on site are identified.

16.3 On the dispatch of any consignment of biomass fuel, the Supplier shall send a Delivery Note and a Fuel Quality Declaration to the Customer by electronic mail. A paper copy of the Delivery Note shall be provided to the Supplier at the site with the delivery of each consignment.

16.4 Responsibility for checking levels of biomass fuel within the fuel store rests with the Supplier.

16.5 Unless otherwise agreed in advance with the Customer, deliveries shall be made on the following days of the week (.....insert days) and between the hours of (.....insert times) and (.....insert times), or any other time agreed with the Supplier.

16.6 If a delivery cannot be made within the hours specified and the whole or part of the delivery is not possible due to obstructions on the Customers site that are beyond the control of the Supplier, the Supplier will be entitled to compensation to cover the cost of transport, unless the Customer had informed the Supplier of said obstruction.

16.7 In the event that a compensation claim is warranted the Supplier shall notify the Customer’s representative and the duration of the delay shall be recorded and signed and dated by the Supplier and Customer. An additional fee at a cost of .....(insert amount in €/hour ex VAT) up to a maximum of

.....(insert amount in € ex VAT) will be payable by the Customer to the Supplier.

- 16.8 The Supplier shall be responsible for immediately clearing up any biomass fuel spilt during offloading and shall provide suitable tools for this job.
- 16.9 The Customer may at any time send representative samples of biomass fuel for evaluation, analysis, testing and approval.
- 16.10 The Supplier shall ensure the fuel delivered shall not contain any kind of waste, stone, metal or other foreign bodies which could prevent boiler operation, or any other contaminant.
- 16.11 The Supplier accepts full responsibility for the collection and disposal of ash and any other by-products of the Equipment and in doing so to meet all regulatory and environmental requirements that are associated with its collection and disposal.

**17. INSURANCES**

- 17.1 The Supplier shall procure and maintain such insurances as are necessary to cover the items set out below:
  - (a) Appropriate Public and Employers Liability with indemnities up to €.....(insert amount) and €.....(insert amount) respectively.
  - (b) Appropriate Contract Works insurance for the undertaking of maintenance activities.
- 17.2 The Supplier agrees to produce on request to the Customer copies of the summaries of the insurances, providing a true and fair view of such insurances together with confirmation from the relevant insurance broker that the premiums are fully paid, current, up-to-date and enforceable.
- 17.3 The Supplier will not do anything or omit to do anything which could cause any insurance policy referred to, to become wholly or partly void or voidable, comply with all requirements and recommendations of any such insurers; and give immediate notice to the Customer of any event that might affect any such insurance policy (including any claims made under it).
- 17.4 If the Supplier does not take out and maintain any insurance which it is required to take out and maintain, the Customer may take out the relevant insurance and recover the full cost from the Supplier as a debt.
- 17.5 Both the Supplier and the Customer warrant that it is and will be for all times for the duration of the Contract, in possession of a Tax Clearance Certificate from the Revenue Commissioners.

## **18. LIMITATION OF LIABILITY**

- 18.1 The Customer shall be liable for a breach of the warranty or damage on any Equipment caused if the Customer alters or repairs such Equipment without the written consent of the Supplier.
- 18.2 The following provisions set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of these conditions;
  - (b) any use made or resale by the Customer of any of the Equipment, or of any product incorporating any of the Equipment; and
  - (c) any representation, statement or tortuous act or omission including negligence arising under or in connection with the Contract.
  - (d) All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 18.3 Nothing in these conditions excludes or limits the liability of the Supplier for death or personal injury caused by the Supplier's negligence; for any matter which it would be illegal for the Supplier to exclude or attempt to exclude its liability; or for fraud or fraudulent misrepresentation.
- 18.4 The Supplier will meet all relevant Environmental Regulations in the design, installation and operation the Equipment and in the supply of all fuel.
- 18.5 This Contract, and all liability and obligations of the Supplier pursuant to this Contract and/or any Contract, shall terminate at the end of the Term. For the avoidance of doubt, the Supplier shall be entitled to:
- (a) be paid all sums due to it under this Contract; and
  - (b) take possession of and remove any equipment where the Customer does not honour the contract
  - (c) and this Contract shall remain in force only to the extent necessary to allow the Supplier to do same.

## 19. TERMINATION

- 19.1 Except as previously provided by this Agreement, each Party may only terminate this Agreement pursuant to this clause 19
- 19.2 This Agreement will continue on and from the Commencement Date, and after that, unless terminated earlier in accordance with its terms, and will then automatically expire and terminate on the xxx (xxx) anniversary of the date of Acceptance unless otherwise agreed in writing between the Parties by mutual consent.
- 19.3 Either party shall be entitled to terminate this Contract if the other party is in material breach of any of its obligations under this Contract and has failed to rectify same within thirty days of having received notice to that effect from the other party. Either party may refer a dispute regarding termination to the Expert for dispute resolution in accordance with the terms of this Contract.
- 19.4 The Customer is entitled, at its discretion, to terminate this contract immediately by notice in writing if:
- (a) the Supplier is bankrupt, has a petition presented for its winding up, has a liquidator appointed to it or has a receiver or an examiner appointed to it or over part or all of its assets or enters into a composition with its creditors (save for the purposes of a bona fide reconstruction or amalgamation), is unable to pay its debts as they fall due within the meaning of section 214 of the Companies Act 1963 or any event similar to the foregoing occurs in any other jurisdiction;
  - (b) the Supplier breaches a material term of this contract and, if it is capable of remedy, is not remedied within thirty (30) days of notice from the Customer requiring such breach to be remedied (provided that the Customer is not obliged to issue notice requiring it to be remedied);
  - (c) the Supplier consistently or repeatedly fails to achieve, satisfy or adhere to the Heat Availability Standards and/or Support Standards and/or Heat Failures consistently or repeatedly occur;
  - (d) the Supplier consistently or repeatedly breaches this contract with material or substantial detriment to the Customer;
  - (e) there is a Change of Control of the Supplier, or any Guarantor of the Supplier, without the prior written consent of the Customer and where such Change of Control materially prejudices the Customer.

## 20. DISPUTE RESOLUTION

- 20.1 Despite the existence of a dispute or difference, the parties shall continue to perform their obligations under this Contract in good faith.
- 20.2 If any dispute or difference arises between the parties, the parties shall first make every effort to settle the dispute amicably as follows -
- (a) any dispute or difference is to be notified in writing by the contract manager in one party to the contract manager in the other party.
  - (b) the contract managers will have 6 days in which to resolve the dispute.
  - (c) If the dispute or difference is not resolved either party may give to the other party a written notice of the dispute or difference (a “Dispute Notice”), setting out its nature and such particulars as shall be then available to that party. The Dispute Notice shall be referred to the head of management in (the Supplier) and to the head of management of (the Customer) for conciliation who will endeavour to resolve the dispute.
  - (d) Within five Business Days of the service of a Dispute Notice, each of the parties shall prepare and deliver to each other a memorandum or other form of statement setting out its position on the matter in dispute and its reasons for adopting such position.
  - (e) Each such memorandum or statement shall be considered by each Heads who shall respectively use their reasonable endeavours to resolve such dispute. If they agree upon a resolution or disposition of the matter, they shall jointly execute a statement setting forth the terms of such resolution or disposition and shall procure that such resolution or disposition is fully and promptly carried into effect.
- 20.3 Failing agreement between such persons within 14 Business Days’ after the date of the Dispute Notice the matter can then be referred to Expert, etc The procedure for this dispute resolution is outlined in Schedule 6 – Dispute Resolution.
- 20.4 This Contract shall be subject to the Laws of the Republic of Ireland and adjudication by Courts of the Republic of Ireland and this clause shall be deemed to be a submission and governance to the jurisdiction of the Courts of the Republic of Ireland.
- 20.5 Neither party shall disclose and/or communicate all or any of the terms and provisions of this Contract to any other person or party without the consent in writing of the other party unless:
- (a) Such terms have become public knowledge other than by breach of this provision
  - (b) Disclosure is required by law or court order
  - (c) Disclosure is to a prospective purchaser of the property
  - (d) Disclosure occurring during the registration or filing of any documents in relation to the property or sale thereof in any registry or with any authority

## **21. ASSIGNMENT**

- 21.1 Neither party may assign the Contract or any part of it to any person, firm or company without the prior written approval of the other party, such approval not to be unreasonably withheld.
- 21.2 The parties hereby undertake and agree that this Contract shall be binding on the successors and assigns of the parties.

## **22. FORCE MAJEURE**

- 22.1 Both parties reserve the right to defer the date of delivery or to cancel the Contract or reduce the volume of the equipment ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control, including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of [180] days, either party shall be entitled to give notice in writing to terminate the Contract.

## **23. PUBLIC RELATIONS**

- 23.1 Both Parties agree to manage and coordinate public relations activities on a joint basis, any requests for marketing related exposure from third parties and/ or outside agencies will require the approval of the Supplier and the Customer.
- 23.2 The Supplier shall not disclose the contents of this agreement to any persons other than the Suppliers officers or employees, professional advisors, affiliates and shareholders without the prior written consent of the Customer.

## **24. GENERAL**

- 24.1 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 24.2 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by Irish law and the parties submit to the exclusive jurisdiction of the Irish courts.
- 24.3 This Contract has been entered into on the date stated at the beginning of this Contract.

**25. PENALTIES FOR NON DELIVERY OF HEAT**

- 25.1 It is an accepted principal that heating equipment occasionally fails. The default liability for any loss of business or damages incurred rests with the Customer and their insurance providers.
- 25.2 A penalty payment may arise if the Supplier fails to deliver heat the defined annual % of heat for reasons in their control and associated with the failure to provide the agreed operation and appropriate maintenance of the biomass Equipment.
- 25.3 The Customer shall be entitled to secure a penalty payment of €..... if the Supplier fails to deliver metered heat from the biomass Equipment for reasons in their control and associated with the failure to provide the agreed operation and appropriate maintenance of the existing heating plant and/or new biomass Equipment.
- 25.4 Notwithstanding the amount of the defined penalty, the amount paid shall not exceed the equivalent cost of heating the site with fossil fuel.
- 25.5 The penalty shall be calculated annually so that the defined % of heat the biomass equipment is designed to provide is calculated and can only be applied if total heat supplied has fallen below that %.
- 25.6 The penalty shall be calculated and deducted from the next relevant monthly heat payment.

**26. HEALTH AND SAFETY REQUIREMENT**

- 26.1 The Supplier is required to comply with all health and safety legislation.
- 26.2 Any accidents, injuries or fatalities are to be reported immediately to the Customer and to the Health and Safety Authority (HSA).
- 26.3 A satisfactory health and safety statement must be supplied by the Supplier along with a satisfactory schedule of work to address any health and safety requirements as set out in Schedule 7.

**27. PROJECT MANAGER AND KEY PERSONNEL**

- 27.1 The Supplier shall nominate a Project Manager as the Customer’s primary point of contact in relation to this contract.

- 27.2 The Project Manager is the Supplier's authorised representative for the purposes of this contract and any matter arising out of, related to or connected with this contract.
- 27.3 The Project Manager will (and the Supplier will procure that the Project Manager will):
- (a) act as the Customer's primary point of contact;
  - (b) at all times be available to the Customer and use its best endeavours to resolve any issues which the Customer may have from time to time in relation to this contract.
  - (c) liaise and fully co-operate with the Customer in relation to this contract.
  - (d) attend such meetings at the Site or elsewhere as may be reasonably required by the Customer;
  - (e) comply with the reasonable requirements and recommendations of the Customer
  - (f) act on the Supplier's behalf and as the Supplier's authorised representative
- 27.4 The appointment of the Project Manager as the Customer's primary point of contact is for the benefit of the Customer. The Customer may, at its discretion, liaise and engage with any other Persons within the Supplier on a collective or individual basis in such manner as the Customer considers appropriate despite the appointment of the Project Manager as the Customer's primary point of contact.
- 27.5 The Customer agrees to act reasonably in relation to any requests by the Supplier to replace the Project Manager or any Key Personnel provided that the proposed replacement has no less experience, expertise and qualifications than the person which he or she is replacing and is an employee or officer of the Supplier.
- 27.6 The Customer may acting reasonably, from time to time, request the Supplier to replace the Project Manager or any of the Key Personnel if the Customer finds the person to be undesirable or unsatisfactory. The Supplier will then promptly replace that person with a replacement reasonably acceptable to the Customer who will have no less experience, expertise and qualifications than the person which he or she is replacing and who will be an employee or officer of the Supplier.
- 27.7 Any changes to the Project Manager or Key Personnel will only be effective if agreed to in writing by the Customer.

## **SCHEDULE 1 – LIST OF EQUIPMENT/SCOPE OF WORK AND O&M**

The Supplier shall plan, design, construct and commission the entire biomass fired boiler system. This shall include being responsible for securing all the required statutory consents. The Supplier shall use all reasonable endeavours to ensure that the biomass Boiler Equipment operates cleanly and efficiently and conforms to all emission regulations. The Supplier will provide evidence to the Customer that the equipment has secured all required consents at each stage as required by all relevant laws and regulations.

The Customer will provide a power supply at a suitable location for connection and a water connection at a suitable location for commencement of site works. A separate Supplier MPRN and water metering point will be installed by the Supplier prior to commissioning.

The Supplier will provide all the information before the date of the start of the contract.

Part 1- Breakdown of the cost of works

Inserted by the Supplier

Part 2 -List of equipment installed

Inserted by the Supplier

Part 3 – Scope of Works

Inserted by the Supplier

Part 4: - Schedule of maintenance activities

Inserted by the Supplier

Part 5: List of accompanying drawings and specifications

Inserted by the Supplier

Part 6: Planning Consents

Inserted by the Supplier

## **SCHEDULE 2 – EXISTING HEATING PLANT**

The Customer shall insert a full technical description of the existing heating plant. This should cover its make, specification, age and condition as defined by a competent Engineer.

It should define clearly in writing on scaled drawings the connection point(s) where the Supplier will deliver heat to the Customers heating system.

A competent Engineer shall be defined as a Chartered Engineer or equivalent as determined by Engineers Ireland. They must operate to good industry practice.

Records of the maintenance and servicing should be included if available. This should include ancillary equipment such as oil tanks. This shall take the form of written records, photographs and scaled plans and sections.

The Customer shall be responsible for the insurance of the existing heating plant unless otherwise agreed

### **SCHEDULE 3- HEAT LOAD AND CONSUMPTION CALCULATIONS**

The heat load calculations are to be assessed by a competent engineer using standardised energy audit and heat load assessment methods. Larger projects could employ the International Performance Measurement & Verification Protocol (IPMVP) to monitor and verify energy data.

This data shall accurately record the daily, weekly and seasonal heat load. It must account for all known future changes.

For smaller projects a more appropriate good practice is outlined below. This is not an exhaustive or prescriptive list.

A competent Engineer shall be defined as a Chartered Engineer or equivalent as determined by Engineers Ireland.

The following good practice shall be implemented:

- A minimum of 2 years energy data to be used for analysis and definition of baseline heat use.
- Prevailing climate data (degree days) to be estimated and supplied for the relevant location.
- Building occupancy assumptions to be detailed.
- Calculation of appropriate benchmark (usually kWh/m<sup>2</sup>) and Benchmarking against similar buildings where data is available.
- Estimation of seasonal efficiency of existing heating plant provided.
- Calculation of peak heat load in kW with supporting evidence. This should not be assumed to be the currently installed nameplate heating equipment output.
- Equivalent full load hours for the site to be estimated.
- Opinion provided as to current condition, operation and control of existing heating plant.
- Provide a fuel specification for existing heat plant.
- Identification of energy efficiency gains which are achievable at nominal cost.

## **SCHEDULE 4 – METHOD OF INDEXATION.**

The heat charges will be indexed at the end of each 12 month period on the anniversary of the start date the Contract. This will apply to the full cost of Option B and only to metered heat charge under Option A. This will be for a defined indexation period. Under Option B, to allow for fixed capital costs, indexation shall be upward only and any negative indices shall be read as null cost increase.

### **Defined indexation period**

The heat charges will be adjusted on the annual anniversary of the contract by the prevailing rate of the Consumer Prices Index as set by the Central Statistics Office Ireland. Other publicly available indices may be used by prior agreement.

This method of indexation shall apply for .....(insert number of years).

At the end of the defined indexation period the Customer and the Supplier shall negotiate a new heat charge. That negotiation shall occur on an open book cost change basis as set out below.

### **Open book cost changes**

To establish a baseline for open book indexation the Supplier must submit open book costs at the start of the Contract. These will then form a set of costs that must be re-submitted after the defined indexation period in line with actual cost changes. The open book costs can only be adjusted under the contract after the defined indexation period has expired. The open book review is not to apply retrospectively to any costs incurred prior to the expiry of the defined indexation period.

The Supplier must submit details on how these costs have been calculated and have changed. This must cover:

- The costs of biomass feedstock
- The costs for storage and handling of biomass feedstock
- The costs of chipping
- The costs of haulage and delivery
- The costs of labour
- The costs of all biomass fired boiler Equipment maintenance and ash removal etc
- The costs of electricity
- Any other costs (e.g. insurances etc)

Where the Supplier relies upon a sub-contractor (for fuel supply for example) they can provide written quotes on the costs or changes to those costs.

The Supplier should provide sufficient evidence of cost changes by submitting invoices or revised quotes.

**SCHEDULE 5 – LEASE OR LICENCE OF THE SITE**

This can cover any lease charges, rates liability etc

## **SCHEDULE 6 - DISPUTE RESOLUTION**

In the event of any dispute between the parties hereto on any matter, the parties shall negotiate in good faith to attempt to resolve the dispute. If after 30 days the parties have not resolved the dispute, either party may refer the matter to the Expert for resolution.

An Expert is a person appointed in accordance with this clause to resolve a matter under this agreement. The parties shall endeavour to agree on the appointment of an independent Expert. The Expert shall act as expert and not as an arbitrator and the provisions of the Arbitration Acts, 1954 to 1998 shall not apply. The Expert's written decision on the matters referred to him shall be final and binding in the absence of manifest error or fraud.

If the parties are unable to agree on an Expert within seven days of either party serving details of a suggested expert on the other, either party shall then be entitled to request the President for the time being of the Institute of Chartered Accountants in Ireland to appoint an Expert who is an accountant of repute with relevant experience and experience in acting as an expert.

The Expert is required to prepare a written decision and give notice (including a copy) of the decision to the parties within a maximum of three months of the matter being referred to the Expert.

If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then either party may apply to the President for the time being of the Institute of Chartered Accountants in to discharge the Expert and to appoint a replacement Expert with the required expertise; and this clause applies in relation to the new Expert as if he were the first Expert appointed.

The parties are entitled to make submissions to the Expert including oral submissions. The parties hereto shall provide (and shall procure that such others as the Expert may request or indicate provide) the Expert with such assistance, documents and other information as the Expert reasonably requires, and shall give the Expert access to all documentation and personnel as the Expert requires, for the purpose of reaching a decision.

To the extent not provided for by this clause, the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate, including (to the extent he considers necessary) instructing professional advisers to assist him in reaching his determination.

Each party shall bear its own costs in relation to the reference to the Expert. The Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the parties equally or in such other proportions as the Expert shall direct.

The Parties shall continue to comply with their obligations under the Contract without interruption during any expert determination process.

**SCHEDULE 7 – HEALTH AND SAFETY REQUIREMENTS**