**HEAT SUPPLY AGREEMENT FOR COMMERCIAL PREMISES**

|  |  |
| --- | --- |
| **You/Your:** | [ ] |
| **We/Us/Our:** | PEC RENEWABLES LIMITED a community benefit society registered with no. 32286 R whose registered office is at C/o Low Carbon Team, Plymouth City Council, Ballard House, West Hoe Road, Plymouth PL1 3BJ |
| **Heat Supply:** | In accordance with the provisions of this agreement, we shall use reasonable endeavours to supply heat generated by the Heat Equipment to you and you shall take delivery of and purchase such heat. |
| **Property:** | [Address of property which heat is being supplied to]  |
| **Contact** | You would prefer us to contact you by:Email (using your email address above) **Or** Post (using your Billing Address above) **Or**Alternative email or postal address (please specify) …………………………………………………………………………………………….. |
| **Standing Charge (as at the date of this agreement):** | [ ] |
| **Variable Charge (as at the date of this agreement):** | [ ] |
| This agreement for the supply of heat to your Property is governed by the attached terms and conditions of heat supply. Once you have read the terms and conditions please arrange for an authorised representative to sign below to confirm that:1. you would like us to supply heat to the Property on the terms and conditions of this agreement;2. you have read and understand the terms of this agreement and you will comply with them;Please return a signed copy by post or email to us at [ ].  |
| Signed by  |  |
| Duly authorised for and on behalf of  |  |
| Date |  |

**Terms and Conditions of heat Supply For Commercial Premises**

# Interpretation

## Where words and phrases used in this agreement are capitalised they will have the following meanings.

1. **Billing Period**: means the interval of time between each monthly bill.
2. **Customer's Apparatus**: means any electrical Heat Equipment and apparatus operated by you which is connected to the heat delivery point.
3. **Emergency**: a circumstance where injury to life and/or serious damage to the Property are threatened, including but not limited to flood or electrical failure or shock risk.
4. **Final Demand Letter**: the last in a series of requests by us for payment of money owed by you.
5. **Force Majeure Event**: any event or circumstance which is beyond our reasonable control and on the terms set out in clause 2.7(d).
6. **Guaranteed Service Payment**: means the compensation paid by us to you in the event of an interruption to your heat supply on the terms set out in clause 2.
7. **Heat Equipment**: the heat generation and supply equipment listed in Schedule 1 and any additional or replacement Heat Equipment which we may from time to time install on the Property.
8. **Heat Interface Unit**: a unit that controls the transfer of heat between the Heat Equipment and the Property.
9. **Indexed**: in relation to any amount which is expressed to be "Indexed" means such amount multiplied by Index 1/Index2 where Index 1 is the RPIx selected most recently prior to the relevant calculation date. Index 2 is the value of RPIx selected most recently prior to the agreement date.

**Metering System:** the metering Heat Equipment and apparatus to be used to measure the amount of heat supplied from the Heat Equipment to you.

**Planned Interruption**: an interruption in the heat supply where we give you least 48 hours' notice.

1. **Renewable Benefits**: any benefits arising from the installation, use of and/or generation from the Heat Equipment and the environmental benefits of such use and/or generation including any, climate change levy exemption certificates, levy exemption certificates (or any similar certificates) or other carbon savings benefit, whether under the Heat and Gas (Carbon Emissions Reduction) Order 2008 or in accordance with the Heat and Gas (Community Energy Savings Programme) Order 2009 or otherwise howsoever arising (Carbon Saving), the reduction of greenhouse gas emissions, the SEG Scheme and any other benefits including those introduced as a result of a change in law.
2. **RPI**: the Retail Prices Index published by the Office for National Statistics or any successor body.
3. **Unplanned Interruption**: an interruption ion the heat supply where we have not provided you with at least 48 written notice of such interruption.
4. **VAT**: value added tax chargeable under the Value Added Tax Act 1994 or any similar replacement tax.

## Reference to us includes our successors in title and assigns. A person includes a corporate or unincorporated body.

## A working day is a day which is not a Saturday, Sunday or a bank or public holiday in England.

## Unless the context otherwise requires, where the words include(s) or including are used in this agreement, they are deemed to have the words "without limitation" following them.

## Except where a contrary intention appears, reference to a clause or Schedule, is reference to a clause of, or Schedule to, this agreement and reference in a Schedule to a paragraph is to a paragraph of that Schedule.

# Heat supply

## We will supply heat to your Property. Other than during a Planned Interruption or an Unplanned Interruption heat shall be supplied 24 hours a day 7 days a week.

## We will make a Guaranteed Service Payment for any Planned Interruption or Unplanned Interruption to the heat supply caused by something done or not done by us.

## We shall endeavour to provide at least 48 hours written notice to you of any Planned Interruption. Where any Planned Interruption lasts longer than 5 days, from the start time indicated in the written notice, we shall pay you a Guaranteed Service Payment of no less than £30 (Indexed) for each full 24 hour period beginning at 00:00 on the 5th Day following the commencement of the Planned Interruption up to a total limit of no more than £500.

## Where the heat supply is subject to an Unplanned Interruption and the supply is not restored within 24 hours of receipt by us of a notification from you that the heat supply has stopped, we shall pay you a Guaranteed Service Payment of no less than £30 (Indexed) for each full 24 hour period (from hour 24) from the receipt of notification up to a total limit of no more than £500.

## Where you notify us of four or more Unplanned Interruptions to the heat supply during any 12-month period and each Unplanned Interruption is accepted and verified by us and lasts for over 12 hours, we shall pay you a one-off Guaranteed Service Payment of £54 (Indexed). This payment is in addition to any payment due under clauses 2.3 and 2.4 above.

## We shall use reasonable endeavours to ensure that you receive any Guaranteed Service Payments for which you are eligible within 60 days of the event giving rise to a Guaranteed Service Payment or receiving all information required to make payment to you. We may choose to make a Guaranteed Service Payment either as a cash payment or a credit on your account. If we are unable to credit your account or make the payment within such 31 day period we shall prior to the expiry of such period contact you to explain the reasons for delay and to set out a new timeframe for crediting your account or making payment to you.

## We will not make a Guaranteed Service Payment where:

### you inform us prior to the event or circumstances giving rise to the obligation to pay the Guaranteed Service Payment that you do not wish us to take any action (current or future) in regard to such event or circumstances;

### you agree with us that the action taken by us to resolve the event or circumstance giving rise to the obligation to pay the Guaranteed Service Payment shall be treated as the taking by us of the action required to satisfy the relevant minimum performance standard and where the action taken by us includes a promise to perform any action (whether before or after the event or circumstance giving rise to the obligation to pay the Guaranteed Service Payment), we duly perform such promise;

### we have reasonably requested specific information from you and this information has not been provided (by telephone, post or email) within the timeframe specified for receipt of that information by us, such timeframe shall not be less than 1 month;

### it was not reasonably practicable to meet the requisite standard due to a Force Majeure Event which includes but is not limited to:

#### strikes or other industrial disputes excluding strikes or industrial disputes involving our employees or our affiliates and/or the employees of our or their sub-contractors other than such strikes or industrial action which are taking place on a nationwide or industry-wide basis;

#### severe weather;

#### the act or default of a person who is not one of our directors, officers and employees, its contractors, agents or others who act on our behalf and their respective directors, officers and employees;

#### the existence of circumstances which would cause us to break the Law or which would lead to imminent danger of death or personal injury;

#### the effects of an event covered by Part 2 of the Civil Contingencies Act, 2004 (war, terrorism, threat to national security, etc.); or

#### circumstances of an exceptional nature beyond our control, including but not limited to gas and electricity supplies to the Heat Equipment being interrupted due to circumstances beyond the control of the operator of such Heat Equipment; or

#### an epidemic, pandemic, local disease outbreaks, public health emergencies or quarantines.

### we have reasonable grounds to believe that the information provided by you is of a frivolous or vexatious nature,

and we had taken all such steps as it was reasonable to take both to prevent the circumstances from occurring and to prevent or mitigate the effect of the circumstance.

# Your Obligations

## You shall:

### pay for any heat consumed at the Property in accordance with this agreement; and

### not do anything affecting or potentially affecting the Heat Equipment or our rights under this agreement without our prior written consent.

# Metering

## We shall install the Metering System (to the extent it is not already installed) and ensure that it is operated and maintained in accordance with good industry practice.

## Where you do not have a smart meter which provides us with up to date readings, you shall provide us with up to date readings of the Metering System on the last working day of each Billing Period.

## We will ask to check your Metering System at any time if we believe that it is not accurate. You will not have to pay any costs if we ask to check your Metering System, unless you have damaged it.

## [In the event that you do not provide us with a meter reading on the last working day of a Billing Period, we will send you a heat bill and you must pay us on the basis of our reasonable estimate of the amount of heat supply you have used.

## Our reasonable estimates will be based on your current Standing Charge and Variable Charge and either:

### your pattern of energy use in the past; or

### the heat supply you are likely to use given the size of your Property and comparison readings from other properties.]

## We shall provide you with instructions for reading and submitting a reading from the Metering System.

## You shall promptly notify us of any technical faults with the Metering System. Within 7 days of receipt of notification of the fault from you, we will let you know the action that is being taken and the timescales for resolution of the issue. Where a fault is found we will notify you and credit or debit your account any monies due where there is a billing difference. If the fault was caused by you, we will charge you for any reasonable charges arising from resolving the issue. Where no fault is found we will charge you for its reasonable actual costs incurred in investigating the reported problem

## If either of us disputes the accuracy of the Metering System it may give notice in writing to the other whereupon either party shall be entitled to have the Metering System examined and tested by an expert agreed upon by the parties or, in default of agreement, appointed at the request of either party, by the President for the time being of The Institution of Engineering and Technology. The costs of the expert shall be met by us unless you have called for the relevant examination or test and the expert determines that the accuracy of the Metering System is within the aforementioned permitted margins of error, in which case such costs shall be payable by you.

## Once every 2 years we shall:

### take a reading of the kWh of the Metering System;

### check, and if necessary change, the batteries in the Metering System; and

### carry out a visual inspection of the Metering System and Heat Interface Unit to determine whether:

#### there has been any damage to the Metering System or Heat Interface Unit;

#### there has been interference with the Metering System which it prevents it from properly registering the quantity of heat supplied;

#### there has been interference with the Heat Interface Unit which it prevents it from operating efficiently;

#### the Metering System or Heat Interface Unit has deteriorated in any way that might affect its safety or proper functioning; and

#### the Heat Interface Unit is operating in line with design guidelines.

# Access to your Property

## You must give us access to your Property to read the Meter, carry out maintenance or to fix a fault. Other than for emergencies, we shall on requiring access to the Property:

### give you at least 24 hours written notice;

### use reasonable endeavours to arrange a time to access the Property that is convenient for you between the hours of 09:00 and 17:00 Monday to Friday (excluding bank holidays).

## If we agree and confirm a time with you for us to visit your Property for any purpose relating to this agreement and:

### you do not give us access at the agreed time (or rearrange with us a different time giving us at least [four] hours' notice); and

### we can evidence that we could not gain access (e.g. a time stamped photograph of the front of the property and a call logged that you were called at the agreed and confirmed time of the appointment)

### an Abortive Visit will have occurred.

## Where we make more than one Abortive Visit to your Property in respect of the same issue, you will have to pay us an abortive call-out charge for each subsequent Abortive Visit and any reasonable additional costs that we incur in carrying our necessary work without access to your Property.

## If we are unable to get access to your Property when arranged with you, or as we are otherwise entitled under this agreement, and this prevents us from fixing any interruption or reduction in your heat supply, we will not be obliged to provide you with a heat supply until you have provided us with access to your Property to allow us to fix the problem. We will not be liable for service-failure payments in relation to any such period of interruption or reduction until you have provided us with sufficient access to your Property to allow us to fix the problem.

# Subsidy payments

## All heat produced by the Heat Equipment and all rights to receive any Renewable Benefits, , in connection with the Heat Equipment and/or the heat supplied from them shall belong exclusively to us absolutely, and you hereby irrevocably and unconditionally assign to the us:

### any Renewable Benefits arising; and

### any right to receive all and any other incentive, income or benefit in connection with the Heat Equipment or associated with the heat generated by the Heat Equipment;

and shall enter into any deeds or documents necessary to give effect to this clause.

## You shall cooperate with us and supply any information which the we reasonably require in order for us to benefit from any Renewable Benefits and/or incentive, income or benefit.

## You shall not do anything which adversely affects (or could adversely affect) the Renewable Benefits, including but not limited to the addition of further renewable energy-generating equipment or apparatus, without our prior written consent.

# How to contact us

## You can contact us to discuss your heat supply by emailing us at [insert email address] or by calling our telephone customer enquiry line on [insert telephone number] between the hours of 09:00 and 17:00 Monday to Friday excluding bank holidays.

## If your enquiry relates to a fault clause 8 below shall apply.

# Reporting a fault

## You shall report all faults or Emergencies to us as soon as possible following discovery of the fault by calling [ ] or emailing [ ]. The telephone line will be available 24/7.

## Where the fault results in an Unplanned Interruption we will use reasonable endeavours to respond to you within 24 hours of receipt of a fault notification from you and let you know the action that is being taken and the timescales for resolution of the issue.

## On receiving notification of an Emergency, we will ensure that this in investigated within 4 hours from receipt of notification of such Emergency.

# Charges

## On the date of this agreement our charges will be [ ].

## We will review the charges [each year] and may adjust them on [ ]. The new charges will apply until then until the next review date.

## If you are entitled to a refund of any charges, we will refund you within [ten] working days. If you receive a refund you are not entitled to, you must pay it back promptly when we ask you to.

# Payment

## We will send you a monthly bill by email which will set out the total amount payable for that month including VAT where appropriate.

## Where we do not have an accurate meter reading, we will base your bill on estimated consumption data. As soon as we have an accurate meter reading and can determine your actual consumption we will adjust your next bill accordingly.

## If we undercharge you for your heat supply, we will issue a back-bill or reconcile the undercharging by applying a debit on your account.

## If you think your bill is incorrect please contact us to discuss as soon as reasonably possible.

## All bills must be paid within twenty-eight (28) days of receipt.

## You will be responsible for paying the charges for the heat supply until:

### either of us terminate this agreement under Clause 12; or

### we suspend this agreement as allowed under Clause 11.

## Please be aware that if you do not terminate this agreement you will remain responsible for paying our bills if:

### you do not occupy the Property;

### someone at your Property uses the heat supply without your permission; or

### you do not use any of the heat supply (in this case you will still have to pay the Standing Charge).

## Charges are still payable if the heat supply to your Property's heating system is interrupted or unavailable. However, if the interruption or unavailability is due to a service failure, you will be entitled to compensation the form of a Guaranteed Service Payment in accordance with clause 2.

## Bills should be paid for via direct debit unless you contact us to make alternative arrangements.

## If you do not pay your bill within 28 days of receipt, we will send you a late payment reminder letter. If you still fail to pay by the deadline specified in the late payment reminder letter we will call you and will also issue a Final Demand Letter and we will do one or more of the following:

### increase the amount debited from your bank account so that we can recover the difference over a period that is reasonably acceptable to us;

### agree with you a payment plan so that you can pay the money you owe us over a period of time. Any payment plan may include a requirement that you keep your account with us in credit.

### charge you interest on the overdue amount at a rate of [ ];

### ask you for a refundable deposit equivalent to our reasonable estimate of the charges for a period of three (3) calendar months;

### request that a parent company guarantees your payments;

### take court action to recover the debt and our costs;

### suspend or disconnect your heat supply and charge you for our costs incurred effecting the suspension under Clause 11.

# Suspension of heat supply

## We will suspend your heat supply if you:

### fail to pay a bill by the deadline for payment set out in a Final Demand Letter. We will also charge you for all costs reasonably incurred by us in effecting and lifting any such suspension;

### consume or attempt to consume heat by interfering or tampering with a Heat Interface Unit or the Metering System. We will also charge you for any heat which we reasonably consider has been supplied but not otherwise charged to you.

## Suspending your heat supply is a last resort. Before we suspend your heat supply we will first:

### send you a reminder letter; and

### try to contact you by phone to discuss the options available to you.

## Where applicable, we will also tell your landlord that you have not paid our charges and that we will disconnect your heat supply.

## We may charge you a debt processing charge to cover our reasonable costs of sending your reminder letters and taking action to collect the overdue charges.

## Where we have suspended your heat supply for non-payment, we will resume the heat supply with four working hours when either:

### you have paid any unpaid invoices in full; or

### we have agreed a payment plan.

# Termination

## We will terminate this agreement with immediate effect if:

### you commit a material breach of your obligations which is not remedied by you within thirty (30) days following receipt of written notice by us;

### you suspend or threaten to suspend trading or payments of our debts or are unable to pay our debts as they fall due or are deemed unable to pay our debts or a receiver, administrator or liquidator is appointed in respect of you;

### at any time during the agreement, any representations, warranties and undertakings given by you cease to be true and accurate and are not promptly rectified following written notice by us;

### any lease granted to us in connection with the Heat Equipment is terminated; or

### the Heat Equipment ceases to be economically viable to operate.

## You may terminate this agreement on giving 1 month's written notice if:

### you intend to vacate the Property and will therefore no longer require a heat supply to the Property;

### we commit a material breach of our obligations which is not remedied by us within thirty (30) days following receipt of written notice from you; or

### we suspend or threaten to suspend trading or payments of our debts or are unable to pay our debts as they fall due or are deemed unable to pay our debts or a receiver, administrator or liquidator is appointed in respect of us.

## If you do not give us at least 1 month's written notice before vacating the Property we will continue to charge you for heat supplied to the Property until you have demonstrated the date you vacated the Property or relinquished responsibility or another person occupies the Property and registers with us for a heat supply for the Property.

## Any termination of the agreement shall be without prejudice to any right or remedy of either party in respect of any antecedent breach of the covenants or conditions in this agreement.

# Liability

## Nothing in this agreement shall limit or exclude a parties' liability for death or personal injury resulting from a party's negligence, fraud or fraudulent misrepresentation or anything which the parties cannot legally limit or exclude or attempt to limit or exclude from their liability.

## Subject to clause 13.1 of this clause, our total aggregate liability to you for any damages, costs, claims or expenses arising out of our failure to comply with our obligations set out in this agreement (whether by virtue of negligence, breach of statutory duty or otherwise) shall be limited to [£50,000].

## Subject to anything for which the parties cannot legally limit or exclude, neither party shall under any circumstances be held responsible or liable to the other party for any:

### loss of profits;

### loss of business or opportunity;

### loss or corruption of data;

### depletion of goodwill or loss of reputation; or

### any special, indirect or consequential losses, costs, damages, charges or expenses.

## If the Heat Supply is interrupted under this agreement by reason of a Force Majeure Event, we shall not be in breach of such obligations for so long as such reasons shall subsist.

# Data Protection

We will only use your personal information as set out in our Privacy Policy which can be found at [insert link to privacy policy].

#  Disputes

## If any dispute arises in connection with the agreement the parties (by at first a suitable representative from each party, and then senior executives) shall within fourteen (14) calendar days of a written request from one party to the other, meet and act in a good faith effort to resolve the dispute.

## If the dispute is not resolved in those meetings, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must give notice in writing (ADR notice) to the other party requesting mediation. A copy of the request shall be sent to CEDR. The mediation shall start not later than twenty-four (24) calendar days after the date of the ADR notice.

## Commencement of mediation shall not prevent the parties commencing or continuing court proceedings.

# General

## We may assign, transfer, subcontract and/or charge this agreement.

## You shall not assign, transfer and/or charge this agreement without our prior written consent (such consent not to be unreasonably delayed or withheld).

## This agreement constitutes the entire agreement of the parties relating to the transaction contemplated by this agreement and supersedes any previous agreement between the parties relating to the transaction, except to the extent this agreement is a renewal of any previous agreement and except for any lease granted to you in connection with the Heat Equipment. Any additions, amendments and variations to this agreement shall be binding only if in writing and signed by the duly authorised representatives of both parties.

## Except where this agreement specifically states that a notice need not be in writing any notice given pursuant to this agreement shall be in writing.

## A person who is not a party to this agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

## If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.

## Nothing in this agreement is intended to, or shall operate to, create a partnership between the parties.

## No delay or failure to take any action hereunder will constitute a waiver unless expressly waived in writing, signed by the party charged with such waiver, and no single waiver will constitute a continuing or subsequent waiver. The waiver by a party of a breach by the other Party of any of the provisions of this agreement shall not be construed as a waiver of any succeeding breach of the same or other provisions.

## The parties to the agreement agree they shall not do anything which brings or might reasonably be expected to bring into disrepute the other, including its representatives or staff.

## Each party to this agreement warrants that it shall comply with the UK Bribery Act 2010.

## Each party shall notify the other in writing immediately if they undergo any change of control (within the meaning of section 1124 of the Corporation Tax Act 2010).

## Except as expressly set out in this agreement, no assignment of, or licence under any Intellectual Property Rights is granted by us to you.

# Counterparts

## This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

# Governing law

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

## The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

## The provisions of this clause 18 shall survive termination of this agreement.

* 1. The Heat Equipment

[Describe the heat equipment – this will depend on what type of heat pump is used]