

TENDER NO Y22008



**Agreement Between**

**Kent County Council**  
and  
**TotalEnergies Gas and Power Ltd**  
for  
**Flexible Procurement and Supply of  
Natural Gas, Daily Metered and Non-  
Daily Metered with Additional  
Services**

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**THIS FRAMEWORK AGREEMENT** is made on 9<sup>th</sup> September 2022

**BETWEEN**

- (1) **The Kent County Council of** County Hall Maidstone Kent ME14 1XQ (the "**Contracting Authority**") of the one part, and
- (2) TotalEnergies Gas and Power Limited (Company No: 02172239) of Bridge Gate, 55-57 High Street, Redhill, Surrey, RH1 1RX (the "**Supplier**")

Each of them a "**Party**" and together the "**Parties**".

**BACKGROUND**

- (A) The Contracting Authority carried out a formal procurement process under the Public Contracts Regulations of 2015, as amended (**PCR15**) on behalf of itself and Participating Authorities to establish a Framework Agreement for the flexible procurement and supply of Gas with additional services.
- (B) On the basis of the Supplier's tender, the Contracting Authority selected the Supplier to enter into this Framework Agreement.
- (C) This Framework Agreement also sets out the rules that the Contracting Authority and the Participating Authorities need to follow to call off contracts under this Framework Agreement either through a mini-competition among the listed Suppliers or through a direct award exercise.
- (D) The Supplier accepts that there is no guarantee of award for them under this Framework Agreement and that there is no obligation on the Contracting Authority and Participating Authorities to award or place orders or procure Services under this Framework Agreement during its Term or at all.
- (E) Participating Authorities shall Call-Off Services under this Framework Agreement by entering into and executing the Call-Off Order Form and Contract set out in Schedule 5 and 6.

**IT IS AGREED** as follows:-

**1. INTERPRETATION AND DEFINITIONS**

- 1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

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<b>"Access Agreement"</b>	
<b>"Agreement"</b>	means the agreement the Participating Authority needs to sign with the Contracting Authority to gain access to this Framework Agreement.
	means this Framework Agreement
<b>"Approval"</b>	means the prior written approval of the Contracting Authority.
<b>"Audit"</b>	means an audit carried out pursuant to Clause 17.
<b>"Auditor"</b>	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires.
<b>"Authorised Representatives"</b>	means officers nominated by the Parties to manage the contract and supervise the provision of the Services.
<b>"Award Criteria"</b>	means the award criteria to be applied to call off processes under this Framework Agreement as set out in Clause 7.
<b>"Call-Off Terms and Conditions of Supply"</b>	means the terms and conditions in <b>Schedule 3</b> .
<b>"Contract Period"</b>	means for Call-Off Contract - the period from the Commencement Date to:  (a) the date of expiry set out in the Order Form;  (b) following an extension, the date of expiry of the extended period; or  (c) such earlier date of termination or partial termination of the Call-Off Contract in accordance with the Law or the provisions of the Call-Off Contract.
<b>"Call-Off Default"</b>	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Call-Off Contract and in respect of which such Party is liable to the other.

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<b>"Commencement Date"</b>	is the date the Framework Agreement or Order Form of the Call-Off is executed.
<b>"Commercial Change"</b>	any price changes that are not relating to industry regulation, central Government policy or amendments to law
<b>"Commercially Sensitive Information"</b>	means any Confidential Information comprised of information:-  (a) which is provided in writing by the Supplier to the Contracting Authority in confidence and designated as Commercially Sensitive Information; and/or  (b) that constitutes a trade secret.
<b>"Commercial Services"</b>	is Commercial Services Kent Ltd ('Commercial Services). Commercial Services is a company wholly owned by Kent County Council. In the event of a status or name change, management of the Agreement will remain with Kent County Council.  means:-
<b>"Confidential Information"</b>	(a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the Data Protection Legislation; and  (b) the Commercially Sensitive Information.
<b>"Contracting Authority"</b>	means Kent County Council acting through Commercial Services Kent Ltd (Commercial Services).
<b>"The Contract"</b>	means the call-off contract
<b>"Customer"</b>	means individual site or Participating Authority
<b>"Daily Metered"</b>	a point where the gas quantity is measured and collected once per gas day (excludes smart meters).
<b>"Data Protection Legislation "</b>	means all relevant personal Data protection legislation and applicable in England

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<b>"Environmental Information Regulations"</b>	mean the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations.
<b>"Extended Period"</b>	means a further period or periods up to a total of 12 Months from the Expiry Date ending on the 30 <sup>th</sup> September 2029
<b>"Expiry Date"</b>	being the expiry date relating to the Framework of 30 <sup>th</sup> September 2028
<b>"FOIA"</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation.
<b>"Force Majeure"</b>	means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; pandemics or any other disaster, natural or man-made, but excluding:  (a) any industrial action occurring within the Provider's or any sub-provider's organisation; or  (b) the failure by any sub-contractor to perform its obligations under any sub-contract.
<b>"Framework Agreement"</b>	means this agreement and all Schedules to this agreement.
<b>"Framework Agreement Term"</b>	means the term of this Framework Agreement, running from the date this Framework Agreement was executed until 30 <sup>th</sup> September 2028 subject to any termination rights pursuant to this Agreement, and may be extended by a further 12 month period to 30 <sup>th</sup> September 2029 subject to the agreement of both parties.

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<b>"Framework Agreement Variation Procedure"</b>	means the procedure set out in <b>Schedule 7</b> .
<b>"Fraud"</b>	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the Contracting Authority.
<b>"Gas Day"</b>	a continuous 24 hour period beginning on one day at 05:00hrs and ending the next day at 05:00hrs
<b>"Goods/Services"</b>	shall mean the goods/services to be provided by the Supplier in accordance with the terms of the Agreement and/or individual Order/Individual Call-Off Contract.
<b>"Guidance"</b>	means any guidance issued or updated by the UK Government from time to time in relation to the Regulations.
<b>"Individual Contracts"</b>	means any contract placed under this Agreement by Participating Authority.
<b>"Information"</b>	has the meaning given under Section 84 of the Freedom of Information Act 2000.
<b>"Intellectual Property Rights"</b>	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
<b>"ITT"</b>	means the invitation to tender, issued by the Contracting Authority in relation to this Framework Agreement.

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<b>“KPI”</b>	Key Performance Indicators applicable under this Agreement, used to measure and evaluate the performance of a Supplier against the standards and requirements set out in this Agreement
<b>“LASER”</b>	LASER is a trading name (brand) used by Kent County Council for its central purchasing body activities relating to energy and related services.
<b>"Law"</b>	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body. “Laws” shall have the same meaning ascribed hereto.
<b>"Management Information"</b>	means the management information specified in <b>Schedule 1</b> Requirements.
<b>"Material Default"</b>	means any breach of Clause 7 (Award Procedures), Clause 11 (Safeguard Against Fraud), Clause 14 (Statutory Requirements), Clause 15 (Non-Discrimination), Clause 16 (Provision of Management Information), Clause 17 (Records and Audit Access), Clause 19 (Data Protection), Clause 20 (Freedom of Information) and Clause 27 (Transfer and Sub-contracting).
<b>“Meter Asset Manager”</b>	Means an agent responsible for the design, installation, commissioning and maintenance of gas supply meters.
<b>"Month"</b>	means a calendar month.
<b>“Non Daily Metered”</b>	A meter where gas quantity is measured less frequently than once per gas day
<b>"Order"</b>	means an order for Services served on the Supplier in accordance with the Ordering Procedures.
<b>"Order Form"</b>	means a document setting out details of an Order in the form set out in Schedule 5.(Call-Off Contract Order Form)

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- "Ordering Procedures"** means the ordering and award procedures specified in Clause 7.
- "Participating Authority"** means a contracting authority under the Public Contracts Regulations 2015, as amended (**PCR2015**) who can access and use this Contract (including the Contracting Authority) via Contracting Authority and who shall take full responsibility for their own individual contracting processes.
- "Parent Company"** means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged in the same or similar business to the Supplier. The term "Holding Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto.



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<b>"Party"</b>	means the Contracting Authority or the Supplier and "Parties" shall mean both the Contracting Authority and the Supplier.
<b>"Primary Supplier"</b>	The highest scoring supplier given first consideration for the direct award of supply business but also included in mini competitions under the Framework
<b>"Purchasing Start Date"</b>	means the date when purchases for the Supply Period may be made and will have the same meaning as the Commencement Date.
<b>"Public Body"</b>	Means a formally established organisation that is (at least in part) publicly funded to deliver a public or government service.
<b>"Rebate"</b>	means any amount that a Participating Authority may request to have added to their charges issued by the Supplier, with the intention of retrospective collection by the Participating Authority.
<b>"Recovery"</b>	means any amount that the Contracting Authority request to have added to the charges issued by the Supplier, with the intention of retrospective collection by the Contracting Authority. This is agreed with the Participating Authority and is to recover the administration costs of the Contracting Authority operating the Framework and operating further processes under the Framework.
<b>"Requests for Information"</b>	means a request for information or an apparent request under the FOIA or the Environmental Information Regulations.
<b>"Regulations"</b>	means the Public Contracts Regulations 2015.
<b>"Secondary Supplier"</b>	A supplier awarded a place on the Framework not in a primary position but available for direct awards and mini competitions carried out under the Framework
<b>"Services"</b>	means the services required from time to time by the Contracting Authority or services to be supplied as specified in the Order Form attached to a Call-Off Contract.

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<b>" Framework Suppliers"</b>	means the Suppliers appointed under the Framework Agreement.
<b>“Service Level Agreements”</b>	outlines a standard level of performance to be adhered to. This is set within the Framework Agreement <b>Schedule 4</b>
<b>“Site”</b>	means any location specified in the site schedule by the Participating Authority. Such sites may be amended from time-to-time by agreement between the Contracting Authority (and/or Participating Authority) and the Supplier.
<b>“Site Schedule”</b>	this is attached to the Access Agreement and Call-Off Contract, it is listing supplies to be included in the Agreement for procurement of gas supply. Listing of sites for any additional services will be detailed separately in additional Call off Contract.
<b>"Staff"</b>	means all persons employed by the Supplier together with the Supplier's servants, agents, suppliers and sub-Suppliers used in the performance of its obligations under this Framework Agreement or Call-Off Contracts.
<b>“Sub Group“</b>	Group of Participating Authorities or individual sites who group together for the purpose of arranging bespoke service requirement under this Framework

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<b>“Supply Start Date”</b>	will be 1 <sup>st</sup> day of October 2024 for all committed for that date via Call-Off Contract. For Participating Authorities committing at a later date a revised Supply Start Date will be advised on Call-Off Contract subject to successful registration.
<b>“Supply Period”</b>	shall be from the 1 <sup>st</sup> day of October 2024 until the 30 <sup>th</sup> day of September 2028 inclusive, subject to any early termination rights pursuant to this Agreement or such other period set out in each Call-Off Contract. Supply Period has anniversaries each 1 <sup>st</sup> day of October or April from 2024 through to 2028.
<b>“Tender”</b>	means the tender submitted by the Supplier to the Contracting Authority in relation to the Services.
<b>"Term"</b>	means the period commencing on the Commencement Date and ending on 30 <sup>th</sup> day of September 2028 inclusive of on earlier termination of this Framework Agreement including any Extended Period.
<b>"Working Days"</b>	means any day other than a Saturday, Sunday or public holiday in England and Wales.
<b>"Year"</b>	means a calendar year.

1.1 Noted above

1.2 The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:-

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and *vice versa*;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent

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enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

- 1.2.6 headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- 1.2.7 references in this Framework Agreement to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause or Schedule to this Framework Agreement so numbered;
- 1.2.8 reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and
- 1.2.9 in the event and to the extent only of any conflict between the Clauses and the remainder of the Schedules, the Clauses shall prevail over the remainder of the Schedules.
- 1.2.10 Reference to the Contracting Authority in this Framework Agreement shall where the context so allows appropriate and applicable mean the Contracting Authorities or a Contracting Authority.

### **2. STATEMENT OF INTENT**

- 2.1 In delivering the Services, the Supplier shall operate at all times in accordance with all of the Contracting Authority's following objectives and statement of intent:-
  - 2.1.1 the Supplier has been appointed and the Contracting Authority has entered into this Framework Agreement on the basis of the Supplier's response to the Authority's published contract notice and ITT and, in particular, the representations made by the Supplier to the Contracting Authority in relation to its competence, professionalism and ability to provide the Services in an efficient and cost-effective manner.
- 2.2 Clause 2 is an introduction to this Framework Agreement and does not expand the scope of the Parties' obligations or alter the plain meaning of the terms and conditions of this Framework Agreement, except and to the extent that those terms and conditions do not address a particular circumstance, or are otherwise ambiguous, in which case those terms and conditions are to be interpreted and construed so as to give full effect to Clause 2.

### **3. TERM OF FRAMEWORK AGREEMENT**

The Framework Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Framework Agreement, or it is otherwise lawfully terminated) shall terminate at the end of the Term.

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### **4. SCOPE OF FRAMEWORK AGREEMENT**

- 4.1 This Framework Agreement governs the relationship between the Contracting Authority and any Participating Authority and the Supplier in respect of the provision of the Services.
- 4.2 The Contracting Authority and Participating Authorities may at their absolute discretion and from time-to-time order Services from the Supplier in accordance with the Ordering Procedure.
- 4.3 The Supplier acknowledges that there is no obligation for the Contracting Authority and/or Participating Authorities to purchase any Services from the Supplier during the Term.
- 4.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Contracting Authority in respect of the total quantities or values of the Services to be ordered by them pursuant to this Framework Agreement and the Supplier acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.
- 4.5 The Contracting Authority shall not in any circumstances be liable to the Supplier with regards to any Participating Authority for payment or otherwise in respect of any Services provided by the Supplier to any Participating Authority.

### **5. SUPPLIER'S APPOINTMENT**

- 5.1 The Contracting Authority appoints the Supplier as a potential supplier of the Services and the Supplier shall be eligible to be considered for the award of Orders for such Services by the Contracting Authority and Participating Authorities during the Term.
- 5.2 In consideration of the Supplier agreeing to enter into this Framework Agreement and to perform its obligations under it the Contracting Authority agrees to pay and the Supplier agrees to accept on the signing of this Framework Agreement the sum of one pound (£1.00) sterling receipt of which is hereby acknowledged by the Supplier.

### **6. NON-EXCLUSIVITY**

The Supplier acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Contracting Authority for Services from the Supplier and that the Contracting Authority is at all times entitled to enter into other contracts and arrangements with other suppliers for the provision of any or all services which are the same as or similar to the Services.

### **7. CALL -OFF CONTRACT AWARD PROCEDURES**

#### **Awards under the Framework Agreement**

- 7.1 If the Contracting Authority and/or a Participating Authority decide to source Services through the Framework Agreement then it can do so following either a mini-competition process among all Suppliers on the Framework Agreement or a

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direct award to a preferred Supplier conducted in accordance with the requirements of the Regulations (PCR2015) and the provisions in this Clause 7.

- 7.2 The Framework Agreement and/or the Call-Off Contract shall not be concluded between the Contracting Authority and / or the Participating Authority and the Supplier until the Supplier has received a written acceptance from the Contracting Authority and/or the Participating Authority. Acceptance shall where applicable be deemed to incorporate specific requirements of the Participating Authority agreed in writing following the Call-Off process and/or requirements including any discussions or correspondence as a result of the same.

### Direct awards

- 7.3 The highest scoring supplier in the procurement process is noted as the “**Primary Supplier**” and will be given first consideration for a direct award of supply business. Lower scoring suppliers in the procurement process bidders will be designated “**Secondary Suppliers**”.
- 7.4 The Contracting Authority may decide to award a contract for its requirements directly to the Primary or a Secondary Supplier on the basis of continuity of supply of existing services or other valid reasons, or on the basis of the ranking of the Supplier in any specific scored areas of the invitation to tender
- 7.5 The Contracting or Participating Authority may award directly to a secondary Supplier, if the Authority considers such supplier to be capable and competent to meet its requirements. In any case they need to use the call-off terms set out in **Schedule 6**.
- 7.6 There may be a requirement in the future for a Sub-Group or individual Participating Authority to make arrangements for their own specific gas requirements, which they may do so using the mini competition, or the direct award process. Following either one of the two processes listed below, the Participating Authority and/or Sub-Group would be required to complete a Call-Off Order Form as set out in **Schedule 5**.

### Award through mini-Competition

- 7.7 Where the Contracting Authority orders Services under the Framework Agreement, it shall:-
- 7.7.1 identify the Suppliers capable of performing the Call-Off Contract for the Services requirements;
- 7.7.2 use the Call-Off terms and conditions in **Schedule 6** and supplement and refine those terms only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;
- (a) invite mini-tenders by conducting a mini-competition for its Services requirements in accordance with the Regulations and in particular:-

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- (i) consult in writing with the Suppliers capable of meeting the Services requirements and invite them within a specified time limit to submit a tender in writing for each specific contract to be awarded;
- (ii) set a reasonable time limit for the receipt of the tenders of the selected Suppliers, which takes into account factors such as the complexity of the requirements; and
- (iii) apply the Award Criteria shown on the mini-competition to the tenders received through the mini-competition as the basis of its decision to award a Call-Off Contract for its Services requirements ;
- (iv) keep each tender confidential until the expiry of the time limit for the receipt by it of tenders;
- (v) The Supplier agrees that the tender submitted by the Supplier in relation to a mini competition held pursuant to this Clause 7 shall remain open for acceptance for thirty (30) days (or such other period specified in the invitation to tender issued in accordance with the Ordering Procedure).

and

7.7.3 award its Services requirements by placing an Order with the successful Supplier, which:-

- (a) states the Services requirements from the mini competition;
- (b) states the price payable for its Services requirements in accordance with the tender submitted by the successful Supplier; and
- (c) incorporates the Call-Off terms and conditions as modified by the Services requirements.

7.8 Notwithstanding the fact that the procedure set out above in this Clause 7 has been followed, the Contracting Authority shall be entitled at all times to decline to make an award for its Services requirements. Nothing in this Framework Agreement shall oblige the Contracting Authority and/or Participating Authority to place any Order for Services.

**Form of Order**

7.9 Subject to Clauses 7.1 to 7.4 above, the Contracting Authority or a Participating Authority or a Sub-Group (as the case may be) may place an Order with a Supplier by serving an order in writing in substantially the form set out in **Schedule 5** or such similar or analogous form agreed with the Supplier including systems of ordering involving facsimile, electronic mail or other on-line communication and/or notification system. The Parties agree that any document or communication



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(including any document or communication in the apparent form of an Order) which is not in the form prescribed by this Clause 7.5 shall not constitute an Order under this Framework Agreement. Time limit for response from the chosen Supplier would be 7 working days following the date the order is issued. All Call off Order will have a unique Call off Order number allocated by the Contracting Authority and will specify a deadline for its acceptance by the Supplier.

### Accepting and Declining Orders

7.10 Following receipt of an Order, the Supplier shall promptly and in any event within the deadline specified by the Authority acknowledge receipt of the Order and either:-

7.10.1 notify the Contracting Authority that it accepts the Order; or

7.10.2 notify the Contracting Authority that it declines to accept the Order by signing and returning the Order Form.

7.11 If the Supplier:-

7.11.1 notifies the Contracting Authority that it declines to accept an Order; or

7.11.2 the time-limit referred to in Clause 7.10 has expired;

then the Contracting Authority or the Participating Authority or the Sub Group (as the case may be) may offer that Order to the Supplier that submitted the next most economically advantageous tender in accordance with the relevant Award Criteria.

7.12 If the Supplier agrees to accept the Order pursuant to Clause 7.10 above shall enter a Call-Off Contract with the Participating Authority and/or the Contracting Authority (as the case may be) for the provision of Services referred to in that Order. A Call-Off Contract shall be formed on the Authority and/or the Participating Authority's receipt of the signed Order Form provided by the Supplier (or such similar or analogous form agreed with the Supplier) pursuant to Clause 7.10.

## 8. WARRANTIES AND REPRESENTATIONS

8.1 The Supplier warrants and represents to the Contracting Authority that:-

8.1.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Framework Agreement;

8.1.2 this Framework Agreement is executed by a duly authorised representative of the Supplier;

8.1.3 in entering into this Framework Agreement, or any Call-Off Contract it has not committed any Fraud;

8.1.4 as at the Commencement Date, all information, statements and representations contained in the Tender for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Contracting Authority prior to the execution of this Framework Agreement and it will promptly advise the Contracting



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Authority of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

- 8.1.5 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of the Framework Agreement;
- 8.1.6 it has not caused or induced any person to enter such agreement referred to in Clause 8.1.5 above;
- 8.1.7 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Services under the Framework Agreement;
- 8.1.8 it has not committed any offence under the Bribery Act 2010;
- 8.1.9 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with the Contracting Authority and/or the Participating Authority;
- 8.1.10 it is not subject to any contractual obligation, compliance with which it is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with the Contracting Authority and/or the Participating Authority;
- 8.1.11 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- 8.1.12 in the three (3) years prior to the date of this Framework Agreement:-
  - (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (b) it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and
  - (c) it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Supplier's position as an ongoing business

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concern or its ability to fulfil its obligations under this Framework Agreement.

**9. CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

9.1 The Supplier also warrants to the Authority that it shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Contracting Authority or of any Participating Authority any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Framework Agreement, any Call-Off Contract or any other contract with the Contracting Authority or any Participating Authority including its award to the Supplier, execution or any rights and obligations contained in it), or for showing or refraining from showing favour or disfavour to any person in relation to any such contract. The attention of the Supplier is drawn to the criminal offences under the Bribery Act 2010.

9.2 The Supplier warrants also that it has not paid commission nor agreed to pay any commission to any person (employee, agent, servant or representative) employed by or on behalf of the Contracting Authority or by any Participating Authority in connection with this Framework Agreement, any Call-Off Contract or any other contract with the Contracting Authority or any Participating Authority.

9.3 If the Supplier, its Staff or any person acting on the Supplier's behalf, engages in conduct prohibited by Clauses 9.1 or 9.2 above or commits any offence under the Bribery Act 2010 the Authority may:-

9.3.1 terminate the Framework Agreement with immediate effect by giving notice in writing to the Supplier and recover from the Supplier the amount of any loss suffered by the Contracting Authority resulting from the termination; or

9.3.2 recover in full from the Supplier and the Supplier shall indemnify the Contracting Authority in full from and against any other loss sustained by the Contracting Authority in consequence of any breach of this Clause, whether or not the Framework Agreement has been terminated.

**10. CONFLICTS OF INTEREST**

10.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any person employed (employee, agent, servant or representative) are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Authority under the provisions of this Framework Agreement or any Call-Off Contract.

10.2 The Supplier shall promptly notify and provide full particulars to the Authority if such conflict referred to in Clause 10.1 above arises or is reasonably foreseeable to arise.

10.3 The Contracting Authority reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Contracting Authority, there is or may be an actual conflict, or a potential conflict, between the

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pecuniary or personal interests of the Supplier and the duties owed to the Contracting Authority under the provisions of this Framework Agreement or any Call-Off Contract. The action of the Contracting Authority pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Contracting Authority.

- 10.4 This Clause shall apply during the Term and for a period of two (2) years after its termination or expiry.

### **11. SAFEGUARD AGAINST FRAUD**

The Supplier shall safeguard the Contracting Authority's funding of the Framework Agreement and any Call-Off Contract against Fraud generally and in particular, Fraud on the part of the Supplier or its Staff. The Supplier shall notify the Contracting Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

### **12. PRICES FOR SERVICES**

- 12.1 The price for units of gas shall be the price per kilowatt hour for the provision of gas to include all costs incurred in supply, metering, transportation, Supplier's fixed management fee, taxes and levies to each Site as particularly set out in the Supplier's tender submission.
- 12.2 The prices offered by the Supplier for Call-Off Contracts for supply or additional services shall be according to the prices submitted in the mini-competition held pursuant to Clause 7 and shall be exclusive of VAT.
- 12.3 Unless otherwise agreed in writing, the Contracting Authority shall not be held responsible for payments due to a supplier from individual Participating Authority.
- 12.4 All invoices presented under this Framework Agreement and Call-Off Contracts are to be submitted in Sterling and will be paid in Sterling and this will only change should the UK currency be changed at any point during the life of the Agreement.

### **13. CALL-OFF CONTRACT PERFORMANCE**

- 13.1 The Supplier shall perform all Call-Off Contracts entered into with the Contracting Authority and/or Participating Authority in accordance with:-
- 13.1.1 the requirements of this Framework Agreement; and
- 13.1.2 the terms and conditions of the respective Call-Off Contracts.
- 13.2 In the event of, and only to the extent of, any conflict between the terms and conditions of this Framework Agreement and the terms and conditions of a Call-Off Contract, the terms and conditions of this Framework Agreement shall prevail

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**14. STATUTORY REQUIREMENTS**

The Supplier shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Framework Agreement and any Call-Off Contract.

**15. NON-DISCRIMINATION AND MODERN SLAVERY**

15.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise).

15.2 The Supplier shall take all reasonable steps to secure the observance of Clause 15.1 by all servants employees or agents of the Supplier and all suppliers and sub-contractors employed in the execution of the Framework Agreement.

15.3 The Supplier shall comply with the Modern Slavery Act 2015

15.4 The Supplier undertakes, warrants and represents that neither the Supplier nor any of its officers, employees, agents or subcontractors:

15.4.1 has committed an offence under the Modern Slavery Act 2015 (a "MSA Offence");

15.4.2 has been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

15.4.3 is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

15.5 The Supplier shall notify the Contracting Authority immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached any requirement noted above.

**16. PROVISION OF MANAGEMENT INFORMATION**

16.1 The Supplier shall submit Management Information to the Contracting Authority in the form set out in **Schedule 3** and **4** throughout the Term on the last day of every Month and thereafter in respect of any Call-Off Contract entered into.

16.2 The Contracting Authority may make changes to the Management Information which the Supplier is required to supply and shall give the Supplier at least one (1) month's written notice of any changes. Change requests will not be unreasonable and will include an explanation of why they are required.

**17. RECORDS AND AUDIT ACCESS**

17.1 The Supplier shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Services provided under it, the Call-Off Contracts entered into and the amounts paid.

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- 17.2 The Supplier shall keep the records and accounts referred to in Clause 17.1 above in accordance with good accountancy practice.
- 17.3 The Supplier shall afford the Contracting Authority and/or the Auditor such access to such records and accounts as may be required from time to time, subject to confidentiality clause.
- 17.4 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Term and for a period of six (6) years after expiry of the Term to the Contracting Authority and the Auditor.
- 17.5 The Contracting Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Services pursuant to the Call-Off Contracts, save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Contracting Authority.
- 17.6 Subject to the Contracting Authority's and/or the Suppliers rights of confidentiality, the Supplier shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:-
- 17.6.1 all information requested by the Auditor within the scope of the Audit;
  - 17.6.2 reasonable access to sites controlled by the Supplier and to equipment used in the provision of the Services; and
  - 17.6.3 access to the Staff.
- 17.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 17, unless the Audit reveals a Material Default by the Supplier in which case the Supplier shall reimburse the Contracting Authority for the Contracting Authority's reasonable costs incurred in relation to the Audit.

**18. CONFIDENTIALITY**

- 18.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Framework Agreement, each Party shall:
- 18.1.1 treat the other Party's Confidential Information as confidential; and
  - 18.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 18.2 Clause 18.2 shall not apply to the extent that:
- 18.2.1 such disclosure is a requirement of Law considered by the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 20.5 (Freedom of Information);

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- 18.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 18.2.3 such information was obtained from a third Party without obligation of confidentiality;
  - 18.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Framework Agreement; or
  - 18.2.5 it is independently developed without access to the other Party's Confidential Information.
- 18.3 The Supplier may only disclose the Contracting Authority's Confidential Information to its Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 18.4 The Supplier shall not, and shall procure that its Staff do not, use any of the Contracting Authority's and/or the Suppliers Confidential Information received otherwise than for the purposes of this Framework Agreement.
- 18.5 Nothing in this Clause 18 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Framework Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

## **19. DATA PROTECTION**

- 19.1 For the purposes of this Clause 19, the terms "Data Controller", "Data Subject", "Data Processor", "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the DPA.
- 19.2 The Supplier shall (and shall procure that all of its Staff) comply with any notification requirements under the Data protection legislation applicable in the United Kingdom and both Parties will duly observe all of their obligations under the Data protection legislation applicable in the United Kingdom which arise in connection with this Framework Agreement.
- 19.3 Notwithstanding the general obligation in Clause 19.2, where the Supplier is Processing Personal Data as a Data Processor for the Contracting Authority the Supplier shall:-
- 19.3.1 Process the Personal Data only in accordance with instructions from the Contracting Authority as set out in this Framework Agreement or as otherwise notified by the Contracting Authority;
  - 19.3.2 comply with all applicable laws;
  - 19.3.3 Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Supplier's obligations under the Framework Agreement;



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- 19.3.4 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure;
- 19.3.5 take reasonable steps to ensure the reliability of its employees and agents who may have access to the Personal Data and use all reasonable endeavours to ensure that such persons have sufficient skills and training in the handling of Personal Data;
- 19.3.6 not cause or permit the Personal Data to be transferred outside the European Economic Area without the prior written consent of the Authority;
- 19.3.7 not disclose the Personal Data to any third Parties in any circumstances other than with the written consent of the Contracting Authority or in compliance with a legal obligation imposed upon the Authority; and
- 19.3.8 co-operate with the Contracting Authority to enable the Contracting Authority to comply with any request under section 7 of the DPA.
- 19.3.9 notify the Contracting Authority within five Working Days if it receives:
  - (a) a request from a Data Subject to have access to that person's Personal Data; or
  - (b) a complaint or request relating to the Contracting Authority's obligations under the DPA.
- 19.4 The provisions of this Clause shall apply during the Term and not be indefinite but subject to suppliers data retention policy (7 years).
- 19.5 The Parties acknowledge that the provisions of the General Data Protection Regulations 2018 (GDPR) shall apply to this Framework Agreement and the Call-Off Contract. The provisions of the GDPR are hereby incorporated into this Framework Agreement and Call-Off Contract by reference to the extent that they apply to the provision of the Services.

## **20. FREEDOM OF INFORMATION**

- 20.1 The Supplier acknowledges that the Contracting Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Contracting Authority to enable the Contracting Authority to comply with its Information disclosure obligations.
- 20.2 The Supplier shall and shall procure that its sub-contractors shall:
  - 20.2.1 transfer to the Contracting Authority all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
  - 20.2.2 provide the Contracting Authority with a copy of all Information in its possession, or power in the form that the Contracting Authority requires

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within five Working Days (or such other period as the Contracting Authority may specify) of the Contracting Authority's request; and

- 20.2.3 provide all necessary assistance as reasonably requested by the Contracting Authority to enable the Contracting Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 20.3 The Contracting Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Framework Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 20.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 20.5 The Supplier acknowledges that (notwithstanding other provisions) the Contracting Authority may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:
  - 20.5.1 in certain circumstances without consulting the Supplier; or
  - 20.5.2 following consultation with the Supplier and having taken their views into account.

## 21. PUBLICITY

- 21.1 Unless otherwise directed by the Contracting Authority, the Supplier shall not make any press announcements or publicise this Framework Agreement in any way without the Contracting Authority's prior written consent.
- 21.2 The Contracting Authority shall be entitled to publicise this Framework Agreement in accordance with any legal obligation upon the Contracting Authority, including any examination of this Framework Agreement by the Auditor or otherwise.
- 21.3 Neither party will do anything which may damage the reputation of the Contracting Parties or bring the Parties into disrepute.

## 22. TERMINATION

### Termination on Default

- 22.1 The Contracting Authority may terminate the Framework Agreement with the Supplier by serving written notice on the Supplier with effect from the date specified in such notice:-
  - 22.1.1 where the Supplier commits a Material Default and:-



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- (a) the Supplier has not remedied the Material Default to the satisfaction of the Contracting Authority within fourteen Working Days, or such other period as may be specified by the Contracting Authority, after issue of a written notice specifying the Material Default and requesting it to be remedied; or
- (b) the Material Default is not, in the reasonable opinion of the Authority, capable of remedy.

**Termination on Financial Standing**

- 22.2 The Contracting Authority may terminate the Framework Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where (in the reasonable opinion of the Contracting Authority), there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which adversely impacts on the Supplier's ability to supply Services under this Framework Agreement.

**Termination on Insolvency and Change of Control**

- 22.3 The Contracting Authority may terminate this Framework Agreement with immediate effect by notice in writing where the Supplier is a company and in respect of the Supplier:-
- 22.3.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
  - 22.3.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a *bona fide* reconstruction or amalgamation); or
  - 22.3.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
  - 22.3.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
  - 22.3.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
  - 22.3.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
  - 22.3.7 being a "small company" within the meaning of Section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

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- 22.3.8 any event similar to those listed in Clause 22.3.1 to Clause 23.3.7 occurs under the law of any other jurisdiction.
- 22.4 The Supplier shall notify the Contracting Authority immediately if the Supplier undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("Change of Control"). The Contracting Authority may terminate the Framework Agreement by giving notice in writing to the Supplier with immediate effect within six Months of:-
- 22.4.1 being notified that a Change of Control has occurred; or
- 22.4.2 where no notification has been made, the date that the Contracting Authority becomes aware of the Change of Control;

but shall not be permitted to terminate where an **Approval** was granted prior to the Change of Control. SAVE that the requirement for the Supplier to obtain the Approval or prior written consent of the Contracting Authority shall not be required where such Change of Control forms part of a bona fide reorganisation or restructuring to an affiliated company of the Supplier.

**Termination by the Contracting Authority**

- 22.5 The Contracting Authority shall have the right to terminate this Framework Agreement, or to terminate the provision of any part of the Framework Agreement at any time by giving three Months' written notice to the Supplier. The Parties acknowledge that if the Contracting Authority exercises its rights under this Clause 22.5, it shall not have to terminate its arrangements with the remaining Suppliers. For the avoidance of doubt this would not impact any Call off Contracts in place with the Supplier under the Framework Agreement.

**Termination under the Regulations**

- 22.6 The Contracting Authority reserves the right to terminate this Framework Agreement under Regulation 73 of the Regulations.

**23. SUSPENSION OF SUPPLIER'S APPOINTMENT**

Without prejudice to the Contracting Authority's rights to terminate the Framework Agreement in Clause 22 above, if a right to terminate this Framework Agreement arises in accordance with Clause 22, the Contracting Authority may suspend the Supplier's appointment to supply Services by giving notice in writing to the Supplier. If the Contracting Authority provides notice to the Supplier in accordance with this Clause 23, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Contracting Authority in writing from time to time.

**24. CONSEQUENCES OF TERMINATION AND EXPIRY**

- 24.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Supplier shall continue to fulfil its obligations under any Call-Off contract already awarded under the Framework Agreement until the date of expiry or termination of the Call-Off contract already awarded under the Framework Agreement or such other date as required under this Clause 24.

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- 24.2 Termination or expiry of the Framework Agreement shall not cause any Call-Off Contracts to terminate automatically and the insurance policies provided by the Supplier will continue to remain in force for 6 years after the termination of the Framework Agreement or the Call - Off contract, whichever is the latest. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 24.3 Within thirty (30) Working Days of the date of termination or expiry of the Framework Agreement, the Supplier shall return to the Contracting Authority any data and Confidential Information belonging to the Contracting Authority in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Contracting Authority (in which event the Contracting Authority will reimburse the Supplier's reasonable data conversion expenses), together with any related documentation, and any other information and all copies thereof owned by the Contracting Authority, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under the Framework Agreement, or such period as is necessary for such compliance.
- 24.4 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.
- 24.5 The provisions of Clauses 8, 9, 10, 11, 17, 18, 19, and 25 shall survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.
- 24.6 Where relevant and applicable at any time upon reasonable notice from the Contracting Authority or (where the request is occasioned by the termination of the Framework Agreement) forthwith the Supplier shall supply to the Contracting Authority a full, complete and accurate list of those Staff members engaged in the Services (whether or not employed by the Supplier), detailing the numbers and composition, for each of the Staff the number of hours of work per week on the Services and the number of hours per week worked for the Supplier, job title, length of continuous Service including the employment start date, current remuneration, benefits and notice periods of the Staff, terms and conditions of employment including but not limited to wages, holiday pay, bonuses and overtime rates, annual leave entitlement and pension scheme details and including any particulars that the Supplier is obliged to give under section 1 of the Employment Rights Act 1996, any current disciplinary or grievance proceedings ongoing and any such proceedings in the preceding two years, any claims, current or which the Supplier has reasonable grounds to believe will be brought by the Staff or their representatives or which have been brought in the preceding two years, all benefit schemes or arrangements (whether contractual or not) applicable in respect of the Staff, information on any collective agreements which will have effect in relation to the Staff and any other employee liability information as specified in the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE Regulations') as amended from time to time and shall warrant the accuracy of such information and shall forthwith notify the Contracting Authority of any change in such information. Any such data will be aggregated and anonymised where it exceeds the Supplier's

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- statutory obligation. Any information provided by supplier relating to employees pursuant to clause 24.7 must be subject to confidentiality.
- 24.7 Where relevant and applicable, the Supplier shall permit the Contracting Authority to use the information provided pursuant to Clause 24.6 for informing any future tenderer(s) for the Service or any part thereof and shall enable and assist the Contracting Authority and such other persons as the Contracting Authority may determine to communicate with and meet the Staff and their trade unions or other employee representatives or staff associations as when and where the Contracting Authority may determine.
- 24.8 Where relevant and applicable, the Supplier shall comply with any reasonable request made by the Contracting Authority for Staff information detailed in Clause 24.6, if such request is made by the Contracting Authority for the purpose of considering the application of, or complying with the requirements of the TUPE Regulations upon the termination of the Framework Agreement or any part thereof. The Supplier shall supply the requested information to the Contracting Authority within a reasonable time following the request and shall use its best endeavours to ensure that such information is accurate. The Contracting Authority shall treat such information as confidential to itself and its advisors, save as required by law, and save that it shall be at liberty to disclose the same (on the like terms as to confidentiality) to any person invited to tender for the provision of the Services in succession to the Supplier.
- 24.9 At the end of the Term (howsoever arising) and/or after the Term, the Supplier shall co-operate free of charge with the Contracting Authority and any new Supplier appointed by the Contracting Authority to continue or take over the performance of the Framework Agreement in order to ensure an effective handover of all work then in progress.
- 25. LIABILITY**
- 25.1 The Parties to this Framework Agreement shall not limit or exclude themselves from liability for:-
- 25.1.1 death or personal injury caused by its negligence, or that of its Staff;
- 25.1.2 fraud or fraudulent misrepresentation by it or its Staff; or
- 25.1.3 breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- 25.2 The Supplier shall indemnify and keep indemnified the Contracting Authority in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any direct and demonstrable losses whatsoever arising out of, in respect of or in connection with the Framework Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss or any other loss which is caused directly or indirectly by any act or omission of the Supplier. This Clause shall not apply to the extent that the Supplier is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its

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- negligence or Default, or the negligence or Default of its Staff or by any circumstances within its or their control.
- 25.3 The Supplier shall not be liable for loss of profit or goodwill resulting from any claims, proceedings, actions, damages, legal costs or expenses. In any event the Contracting Authority will use reasonable endeavours to minimise legal costs incurred as a result of any claim
- 26. INSURANCE**
- 26.1 The Supplier shall obtain and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Supplier under this Framework Agreement and Call-Off Contracts including for death or personal injury, or loss of or damage to property.
- 26.2 The Supplier shall effect and maintain the following insurances for the duration of the Framework Agreement in relation to the performance of the Framework Agreement:-
- 26.2.1 **Product Liability Insurance** – £5 million (five million pounds sterling) per claim or series of related claims;
- 26.2.2 **Public Liability Insurance** – £10 million (ten million pounds sterling) per claim or series of related claims;
- 26.2.3 **Employer's Liability Insurance** – £10 million (ten million pounds sterling) per claim or series of related claims; and
- 26.2.4 **Professional indemnity** – £4 million (four million pounds sterling) per claim or series of related claims
- covering each and every claim.
- 26.3 Any excess or deductibles under such insurance (referred to in Clause 26.1 and Clause 26.2) shall be the sole and exclusive responsibility of the Supplier.
- 26.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under the Framework Agreement.
- 26.5 The Supplier shall produce to the Contracting Authority, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 26.6 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the Framework Agreement, then the Contracting Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 26.7 The Supplier shall maintain the insurances referred to in Clause 26.1 and Clause 26.2 for a minimum of six (6) years following the expiration or earlier termination of the Framework Agreement.

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26.8 Should the Supplier fail to provide upon reasonable notice satisfactory evidence of insurance referred to above the Contracting Authority may remove the Supplier from the Framework Agreement and/or cancel any existing contracts including those with Participating Authorities.

**27. TRANSFER AND SUB-CONTRACTING**

27.1 The Framework Agreement is personal to the Supplier and the Supplier shall not assign, novate or otherwise dispose of the Framework Agreement or any part thereof without the previous consent in writing of the Authority. The Supplier shall not be entitled to sub-contract any of its rights or obligations under this Framework Agreement.

27.2 The Contracting Authority shall be entitled to:-

27.2.1 assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof; or

27.2.2 novate the Framework Agreement to any other public [authority or body] (including any private sector body) which substantially performs any of the functions that previously had been performed by the Authority;

provided that such assignment, novation or disposals shall not increase the burden of the Supplier's obligations under the Framework Agreement.

27.3 In the event of a change as identified in 27.2 above, the Supplier may carry out its own credit checks should the proposed transfer be a private company.

**28. VARIATIONS TO THE FRAMEWORK AGREEMENT**

Any variations to the Framework Agreement, including changes required as a result of a change in the law, must be made only in accordance with the Variation Procedure set out in **Schedule 7**.

**29. RIGHTS OF THIRD PARTIES) ACT 1999 (“CRTPA”)**

29.1 Certain provisions within this Framework Agreement confer benefits on Participating Authorities (“Third Party Beneficiary”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

29.2 Subject to Clause 29.1, a person who is not party to this Framework Agreement has no right to enforce any term of this Framework Agreement under the CRTPA but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA.

29.3 No Third-Party Beneficiary may enforce, or take any step to enforce, any third party provision without Approval, which may, if given, be given on and subject to such terms as the Contracting Authority may determine.

29.4 Any amendments or modifications to this Framework Agreement may be made, and any rights created under Clause 29.1 may be altered or extinguished, by the Parties without the consent of any Third-Party Beneficiary.



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29.5 The Contracting Authority may act as agent and trustee for each Third Party Beneficiary and/or enforce on behalf of that Third Party Beneficiary any third party provision and/or recover any loss suffered by that Third Party Beneficiary in connection with a breach of any third party provision.

**30. SEVERABILITY**

30.1 If any provision of the Framework Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed, and the remainder of the provisions hereof shall continue in full force and effect as if the Framework Agreement had been executed without the invalid provision.

30.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Framework Agreement, the Contracting Authority and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

**31. CUMULATIVE REMEDIES**

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

**32. WAIVER**

32.1 The failure of either Party to insist upon strict performance of any provision of the Framework Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Framework Agreement.

32.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 34.

32.3 A waiver of any right or remedy arising from a breach of the Framework Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Framework Agreement.

**33. ENTIRE AGREEMENT**

33.1 This Framework Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

33.2 Each of the Parties acknowledges and agrees that in entering into this Framework Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Framework Agreement. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Framework Agreement.

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33.3 Nothing in this Clause 33 shall operate to exclude Fraud or fraudulent misrepresentation.

**34. NOTICES**

34.1 Except as otherwise expressly provided within this Framework Agreement, no notice or other communication from one Party to the other shall have any validity under the Framework Agreement, unless made in writing by or on behalf of the Party sending the notice or the communication.

34.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by electronic mail, hand, post (registered post or by the recorded delivery service), or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 34.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, or item of electronic mail.

34.3 For the purposes of Clause 34.2, the address of each Party shall be:

34.3.1 For the Contracting Authority:-

FAO: [Position]

Address: [ ]

Tel: [ ]

Fax: [ ]

Email: [ ]

34.3.2 For Call-Off Contracts the Participating Authority's Contract Manager and the Supplier's authorised representative is as specified in the Order Form

34.3.3 For the Supplier:-

FAO: [Position]

Address: [ ]

Tel: [ ]

Fax: [ ]

Email: [ ]



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34.4 Either Party may change its address for service by serving a notice in accordance with this Clause. The Supplier will notify the Participating Authority (ies).

**35. FORCE MAJEURE**

35.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Framework Agreement (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under this Framework Agreement for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under this Framework Agreement for a period in excess of 6 (six) Months, either Party may terminate this Framework Agreement with immediate effect by notice in writing.

35.2 Any failure or delay by the Supplier in performing its obligations under this Framework Agreement, which results from any failure or delay by an agent, sub-supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.

35.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to, or is likely to give rise to, any such failure or delay on its part as described in Clause 35.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

**36. DISPUTE RESOLUTION**

36.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Framework Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to those persons identified in Clause 34 above.

36.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act, or compelling the other Party to do any act.

36.3 If the dispute cannot be resolved by the Parties pursuant to Clause 35.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 36.5, unless:-

36.3.1 the Contracting Authority considers that the dispute is not suitable for resolution by mediation; or

36.3.2 the Supplier does not agree to mediation.

36.4 The obligations of the Parties under the Framework Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation, and the Supplier and its employees, personnel and associates shall comply fully with the requirements of the Framework Agreement at all times.

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- 36.5 The procedure for mediation and consequential provisions relating to mediation are as follows:-
- 36.5.1 a neutral adviser or mediator ("the **Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other to appoint a Mediator or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Dispute Resolution to appoint a Mediator;
  - 36.5.2 the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with them in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held;
  - 36.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
  - 36.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
  - 36.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Framework Agreement without the prior written consent of both Parties; and
  - 36.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

### **37. LAW AND JURISDICTION**

Subject to where expressly stated, the Contracting Authority and the Supplier accept the exclusive jurisdiction of the English courts and agree that the Framework Agreement is to be governed by and construed according to English Law.

### **38. FURTHER ASSURANCES**

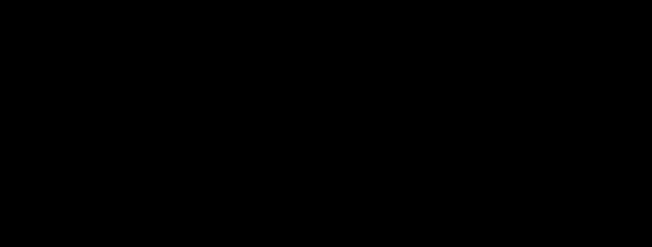
Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Framework Agreement.

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The Framework commencement date shall be from the date of the final signature as noted in the following page. The Agreement period will be as identified in the Interpretation and Definitions section.

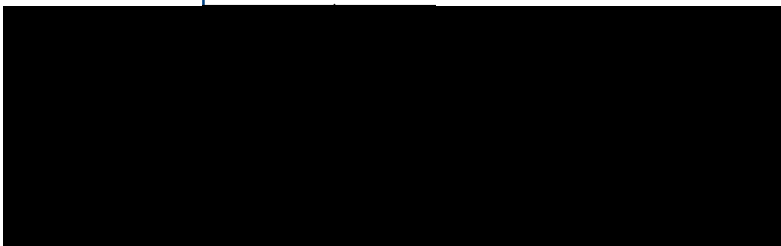
**IN WITNESS WHEREOF** this Framework Agreement has been duly executed by the Parties.

Signed duly authorised for and on behalf of The Kent County Council



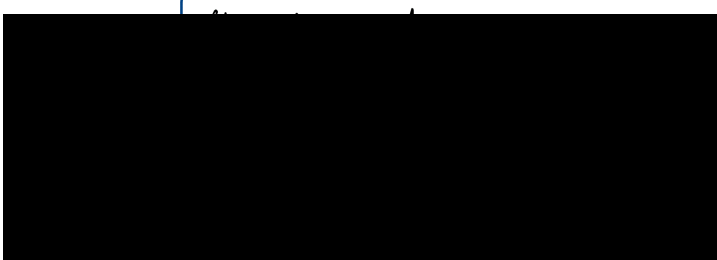
Date .....

Signed duly authorised for and on behalf of The Kent County Council



Date .....

Signed duly authorised for and on behalf of The Kent County Council



Signed for and on behalf of the [SUPPLIER] TotalEnergies Gas and Power Ltd

