

SCHEMES OF DELEGATION OF FUNCTIONS
RECORD OF DECISION

1. Scheme Information:

- | | |
|--|---------------|
| a. Decision Reference Number: | CMM-ED-19-014 |
| b. Decision Type (Proposed or Actual): | Actual |
| c. Scheme under which decision is to be made | A |
| d. Paragraph Number: | 1.1 |
| e. Does this Decision contain Exempt Information?
If so, provide details with reference to paragraph(s)
12 to 18, Part 4 and paragraphs 19 to 21, Part 5
Schedule 12A, Local Government Act 1972. | No |
| f. Does this Decision contain "Confidential
information: | No |

2. Details of Decision (including: Any public interest test undertaken in relation to Part 1(e) above; equalities implications and details of any assessment undertaken)

BCBC has been investigating heat network opportunities within Bridgend Town since 2012. A high level mapping and planning exercise was completed in 2013 that indicated viable project opportunities centred round the two hospitals within the town (Princess of Wales and Glanrhyd) and the civic buildings close to the town centre.

Detailed feasibility studies were completed for both options in 2016 and an outline business case (OBC) for the civic centre option completed in 2017. The OBC was approved by Cabinet in April 2018 and the project progressed beyond OBC to detailed project design. The project is currently in the pre-commercialisation stage and has a detailed RIBA Stage 3 Design.

The scheme is proposed to supply heat and power (via a CHP unit within the Bridgend Life Centre) to the Bridgend Life Centre, Civic Offices, Bridgend Bowls Hall and the new Wellbeing Centre and heat to residential units within the new Sunnyside Wellbeing Village.

The project has progressed from outline business case (approved by Cabinet April 2018) through detailed project design (RIBA Stage 3) and is preparing a grant application to UK Government to help secure the delivery of the scheme. The deadline for the application is 5th April 2019.

Legal advice for the delivery of the project is being sought currently but it is envisaged that a Special Purpose Vehicle will be created to deliver the project. The SPV will contract a Design Build Operate & Maintain (DBOM) contractor to manage the scheme through the construction and operational phases of the project. It will be the responsibility of the DBOM contractor to agree Heads of Terms and the detailed energy supply contracts with the project customers.

Ahead of the DBOM contractor being appointed draft Heads of Terms have been developed for the project to provide in principle agreement from the various off-takers of heat and power from the project.

The draft Heads of Terms are designed to provide in-principle agreement to taking a supply of heat and power from the scheme and indicative terms around the details of this supply.

The final Heads of Terms agreed for the project will be subject to legal review and the present draft document does not constitute in any way a legally binding contract between any of the parties.

3. Reason for Decision (including any reasons for urgency which led to the implementation of the decision before the preparation of this record or before the expiry of 3 working days after the publication of the decision to which call-in provisions apply):

The decision is being sought on the basis that the Bridgend Town Heat Network Project is developing a grant application to the UK Government HNIP capital grant programme for the delivery of heat network projects.

The deadline for the application is 5th April 2019. Section 5 of the grant application seeks information concerning contractual commitments secured to support the delivery of the project.

The draft Heads of Terms provide an important piece of evidence that there is generally support from all heat and power off-takers for the project.

The documents are draft and provide an in-principle commitment to the project and indicative terms around the detail of the supply arrangement.

The documents do not constitute a commitment to delivery of the scheme at this stage. There are several project milestones to reach prior to delivery commitment. These can be summarised as:

1. Securing sufficient HNIP grant funding for the scheme.
2. Procuring a suitably experienced DBOM contractor to deliver the project.

3. Securing all permissions and licences (e.g. planning permission) for the project.
4. Agreeing Final Heads of Terms with all heat and power off-takers.
5. Presenting a Full Business Case to Cabinet that receives full approval.

4. Details of Consultation undertaken prior to the decision or, if none reasons why none undertaken:

Head of Communities – Operational Services
 Head of Legal and Regulatory Services
 Strategic Asset Management and Investment Manager
 Cllr C Webster, Chairperson, Scrutiny Subject Committee 1
 Cllr C Green, Chairperson, Scrutiny Subject Committee 2
 Cllr J Spanswick, Chairperson, Scrutiny Subject Committee 3

5. Details of any interest declared in relation to the decision:

- a. by any Cabinet Member consulted in relation to the Decision:

None

- b. by any Cabinet Member who would have been the Decision maker except for the declaration of such an interest:

None

- c. details of any dispensation granted by the Standards Committee in respect of interest declared:

None


6. Contact Details:

	Case Officer	Decision-Maker
a. Name:	Michael Jenkins	Cllr Richard Young
b. Job Title/Role:	Team Leader Sustainable Development	Cabinet Member Communities
c. Telephone Number:	01656 643477	01656 643548
d. E-mail Address:	Michael.jenkins@bridgend.gov.uk	Cllr.Richard.Young@bridgend.gov.uk

e. Date Decision made:

Stn April 2019

f. Signature:

A handwritten signature in black ink, appearing to be 'R. King', enclosed in a rectangular box.

Notes:

1. Electronic copies of this form must be sent to Democratic Services - Committees (cabinet_committee)

7. Decision Administration Information (Cabinet & Committee Services use only)

- | | |
|---|-------------------------------------|
| a. Date received | <input type="text" value="5/4/19"/> |
| b. Confirmation of Urgency | <input type="text" value="—"/> |
| c. Date published | <input type="text" value="5/4/19"/> |
| d. End of Call - In period (Scheme A & B1 only) | <input type="text" value="N/A"/> |
| e. Decision Called in. | <input type="text" value="N/A"/> |
| f. Effective date of Decision. | <input type="text" value="5/4/19"/> |

INDICATIVE TERMS – DRAFT

COMMERCIAL SUPPLY AGREEMENT – SUBJECT TO LEGAL REVIEW

As at [5th April] 2019

This indicative term sheet (the “**Term Sheet**”) includes an outline of the main terms and conditions of an agreement to supply Power to commercial units at [Site Name] (“**Agreement**”) pursuant to which the ESCO (as defined below) will connect the Commercial Customer to the private wire system (the “**Private Wire**”), strictly subject to negotiation of full commercial terms between the Commercial Customer (as defined below) and the ESCO (together, the “**Parties**” and, each of them, also a “**Party**”).

The Commercial Tenant is required to enter into a relevant Supply Agreement that will govern all the terms, conditions and charges for the ESCO Services. The following indicative terms are based on current economic and engineering assumptions and do not constitute or imply a commitment from the ESCO to execute the Agreement or from the ESCO to provide any service under these terms.

ESCO	[ESCO Name]
Premises	[Site]
Commercial Customer	BCBC
Recitals	<p>The Customer holds a [leasehold/freehold] interest for the Premises at the [Site Name] (the “Site”) and wishes to buy Power in accordance with and subject to this Agreement.</p> <p>The ESCO is appointed to operate and maintain the Private Wire and to exclusively Power to the Site and to the Customer. Power means electricity carried by private wire generated from / through the Private Wire (this could be via a mains connection to grid at certain times).</p>
Term	[Specific to Customer]
Connection	<p>The ESCO shall connect the Customer to the Supply Point of the Private Wire in order to provide the supply in compliance with the supply parameters and the terms of this Agreement.</p> <p>The Supply Point shall be existing LV distribution panel for the Site, which shall remain the responsibility of BCBC.</p> <p>For the avoidance of doubt the Private Wire up to and including the Supply Point is the responsibility of the ESCO. The Customer’s Installation downstream from the Supply Point is the responsibility of the Customer.</p>
ESCO Supply	<p>The ESCO shall provide the Supply to the Customer's Installation on the terms of this Agreement and in accordance with all best market practice and applicable laws. The Power will be supplied by means of [LV cable through the] Private Wire to the Supply Point.</p> <p>The specific characteristics of the supply will be set out as required and will include:</p> <ul style="list-style-type: none"> • Supply Point [to be the primary LV distribution panel]; • Peak supply capacity; • Anticipated supply profile; • Primacy of supply [Customer will purchase from ESCO before any other]; • [Minimum offtake requirements]; and • [Other supply requirements as required]. <p>In order to provide the Supply to the Customer, the ESCO shall be responsible for the repair, maintenance or replacement of the Private Wire up to and including the Supply Point at its own expense – except where the need for repair, maintenance, replacement etc is caused by the Customer or its employees, agents, contractors, licensees or invitees etc.</p> <p>The ESCO may be required to restrict or disconnect the Supply due to – but not limited to – the following reasons:</p> <ul style="list-style-type: none"> • Emergency or potential emergency situations; • To enable maintenance or repair to be carried out;

	<ul style="list-style-type: none"> • When obliged to do so to comply with applicable law or due to an event of Force Majeure; • If the Customer has failed to properly maintain equipment within its demise which impacts the performance of the Private Wire; and • When the Customer has failed to pay any sum properly due or commits a material breach of this Agreement. <p>The ESCO shall act in accordance with best market practice in relation to the Connection and any restriction or disconnection of Supply. This includes acting reasonably in respect of notification and creating rectification plans as appropriate, to ensure the continued operational use of the building.</p>
Title & Access	<p>The ESCO retains all title to the Private Wire (including any Meters) up to the Supply Point. The Customer will not interfere with, damage or attempt to remove any part of the Private Wire.</p> <p>The Customer retains all title to, and responsibility for, the Customer’s Installation, as described below.</p> <p>The Customer shall procure that the employees, agents, contractors, sub-contractors and/or invitees of the ESCO are entitled to unrestricted access to the Premises for the purposes of carrying out works related to the Private Wire and Supply. Other than in an emergency, advance notice of access / works must be provided.</p>
Customer Installation	<p>The ESCO is only liable for the Private Wire and its interface with the Customer's Installation at the Supply Point. The ESCO shall not be responsible for the adequacy, safety or other characteristics of the Customer's Installation.</p> <p>The Customer shall at all times keep the apparatus and controls forming part of the Customer's Installation set or adjusted to the reasonable satisfaction of the ESCO in such manner as shall not adversely affect, diminish or endanger the Private Wire or the Supply.</p> <p>The Customer shall not install such equipment as will replace the ESCO Supply, without prior agreement.</p>
Security	<p>[ESCO does not require credit security from the Council]</p>
Power Charges	<p>Charging Principles Initial charges have been set to represent a discount against the current costs. In addition, the charges shall be benchmarked and shall be equivalent to a relevant market comparator.</p> <p>The charges to the Customer are made up of:</p> <p>[Connection Charge A charge in relation to the cost of initial Connection of the Site to the Private Wire.]</p> <p>Fixed Charge A Fixed Energy Service Charge to cover the fixed costs associated with running and replacing the Private Wire and meeting the Supply. The Fixed Charge shall be subject to an annual inflationary adjustment each year based on labour and retail price indices.</p> <p>Variable Charge A Power Price charge per kWh of Power consumed, based initially on [a fixed discount against available market pricing]. The Variable Charge shall be subject to an annual inflationary adjustment each year based on the change in the [available market price].</p> <p>Where there is a requirement for Power to be imported by the ESCO for supply to the Customer to meet peak or back-up requirements, the ESCO will charge the Customer per kWh [at the rate of the prevailing ESCO agreement for import of Power], plus an administration charge of [x]%</p>

	<p>The anticipated Charges, based on the date of this Agreement and subject to change, shall be as follows:</p> <table border="1"> <thead> <tr> <th>Connection Charge</th> <th>Fixed Charge</th> <th>Variable Charge (Day)</th> <th>Variable Charge (Night)</th> </tr> </thead> <tbody> <tr> <td>[TBC]</td> <td>£120 /kW / year</td> <td>£0.058-0.062 kWh</td> <td>£0.048-0.052 kWh</td> </tr> </tbody> </table>	Connection Charge	Fixed Charge	Variable Charge (Day)	Variable Charge (Night)	[TBC]	£120 /kW / year	£0.058-0.062 kWh	£0.048-0.052 kWh
Connection Charge	Fixed Charge	Variable Charge (Day)	Variable Charge (Night)						
[TBC]	£120 /kW / year	£0.058-0.062 kWh	£0.048-0.052 kWh						
Payment	<p>Each month the ESCO shall invoice the Customer for all Power supplied to the Premises in the previous month and any other amounts due under this Agreement and any tax (including VAT), levy, duty etc. The metering and billing of the Customer will be compliant with all applicable law and in line with best market practice.</p> <p>The Customer shall be responsible for payment of all charges relating to Power supplied to the Point(s) of Supply. [Payment will be by Direct Debit mandate and collected in arrears].</p> <p>Charges may apply even where Power is not being consumed at the Premises.</p>								
Best Market Practice	<p>The ESCO has been developed and will operate in accordance with best market practice, achieving guaranteed standards of supply for all Customers.</p>								
Termination	<p>This Agreement shall automatically terminate at the end of the Term.</p> <p>Termination provisions to cover:</p> <ul style="list-style-type: none"> • Where the Customer ceases to be the owner or occupier of the Premises (in line with final billing provisions etc); • Redevelopment of the Premises; • Material breach of either Party; • Insolvency, administration of either Party etc; • Customer failure to pay; and • [General Termination provisions in accordance with the final Supply Agreement.] 								
Permits and Consents	<p>Both Parties to comply with relevant authorities, permissions and consents.</p>								
Data Protection and GDPR	<p>Both Parties shall comply with any relevant Data Protection Acts in the performance of this Agreement.</p>								
Insurance, indemnity and Liability	<p>Appropriate insurances to be agreed.</p> <p>Customary limits on liability as required for both Customer and ESCO.</p> <p>[e.g. no indirect or consequential losses, liability caps in aggregate etc. Limits and specifics to be agreed between the Parties]</p>								
Standard Terms and Conditions	<p>Including:</p> <ul style="list-style-type: none"> • Change in Law • Assignment • Confidentiality / Intellectual Property Rights • Dispute Resolution • Representation and Warranties • Cumulative Remedies • Notices • Third Party Rights • Entire Agreement • Waiver • No Variation • Governing Law and Jurisdiction 								

I, [Councillor Richard Young], on behalf of [Bridgend County Borough Council], accept the terms outlined above as indicative commercial terms of supply, subject to final costs, contract terms and legal review.

Signed  _____

INDICATIVE TERMS – DRAFT

COMMERCIAL SUPPLY AGREEMENT – SUBJECT TO LEGAL REVIEW

As at [5th April] 2019

This indicative term sheet (the “**Term Sheet**”) includes an outline of the main terms and conditions of an agreement to supply heat to commercial units at [Site Name] (“**Agreement**”) pursuant to which the ESCO (as defined below) will connect the Commercial Customer to the estate wide heat system (the “**Energy System**”), strictly subject to negotiation of full commercial terms between the Commercial Customer (as defined below) and the ESCO (together, the “**Parties**” and, each of them, also a “**Party**”).

The Commercial Tenant is required to enter into a relevant Supply Agreement that will govern all the terms, conditions and charges for the ESCO Services. The following indicative terms are based on current economic and engineering assumptions and do not constitute or imply a commitment from the ESCO to execute the Agreement or from the ESCO to provide any service under these terms.

ESCO	[ESCO Name]
Premises	[Site]
Commercial Customer	Bridgend Borough & City Council
Recitals	<p>The Customer holds a [leasehold/freehold] interest for the Premises at the [Site Name] (the “Site”) and wishes to buy heat in accordance with and subject to this Agreement.</p> <p>The ESCO is appointed to operate and maintain the Energy System and to exclusively supply Heat to the Site and to the Customer. Heat means the thermal heat carried by hot water and generated from / through the Energy System.</p>
Term	[Up to 50 years]
Connection	<p>The ESCO shall connect the Customer to the Supply Point of the Energy System in order to provide the supply in compliance with the supply parameters and the terms of this Agreement.</p> <p>The Supply Point shall be [the primary plate heat exchanger installed for the Site] which will be installed, maintained and replaced by the ESCO</p> <p>For the avoidance of doubt the Energy System, up to and including the Supply Point is the responsibility of the ESCO. The Customer’s Installation downstream from the Supply Point is the responsibility of the Customer.</p>
ESCO Supply	<p>The ESCO shall provide the Supply to the Customer’s Installation on the terms of this Agreement and in accordance with all best market practice and applicable laws. The Heat will be supplied by means of [circulatory hot water through the] Energy System to the Supply Point.</p> <p>The specific characteristics of the supply will be set out as required and will include:</p> <ul style="list-style-type: none"> • Supply Point [to be the primary plate heat exchanger installed for the Site]; • Peak supply capacity; • Flow and return temperatures; • Water quality parameters; and • [Other supply requirements as required]. <p>In order to provide the Supply to the Customer, the ESCO shall be responsible for the repair, maintenance or replacement of the Energy System up to and including the Supply Point at its own expense – except where the need for repair, maintenance, replacement etc is caused by the Customer or its employees, agents, contractors, licensees or invitees etc.</p> <p>The ESCO may be required to restrict or disconnect the Supply due to – but not limited to – the following reasons:</p> <ul style="list-style-type: none"> • Emergency or potential emergency situations; • To enable maintenance or repair to be carried out;

	<ul style="list-style-type: none"> • When obliged to do so to comply with applicable law or due to an event of Force Majeure; • If the Customer has failed to properly maintain equipment within its demise which impacts the performance of the Energy System; and • When the Customer has failed to pay any sum properly due or commits a material breach of this Agreement. <p>The ESCO shall act in accordance with best market practice in relation to the Connection and any restriction or disconnection of Supply. This includes acting reasonably in respect of notification and creating rectification plans as appropriate to ensure the continued operational use of the building.</p>
<p>Title & Access</p>	<p>The ESCO retains all title to the Energy System (including any Meters) up to the Supply Point. The Customer will not interfere with, damage or attempt to remove any part of the Energy System.</p> <p>The Customer retains all title to, and responsibility for, the Customer’s Installation, as described below.</p> <p>The Customer shall procure that the employees, agents, contractors, sub-contractors and/or invitees of the ESCO are entitled to unrestricted access to the Premises for the purposes of carrying out works related to the Energy System and Supply. Other than in an emergency, advance notice of access / works must be provided.</p>
<p>Customer Installation</p>	<p>The ESCO is only liable for the Energy System and its interface with the Customer’s Installation at the Supply Point. The ESCO shall not be responsible for the adequacy, safety or other characteristics of the Customer’s installation.</p> <p>The Customer shall at all times keep the apparatus and controls forming part of the Customer’s Installation set or adjusted to the reasonable satisfaction of the ESCO in such manner as shall not adversely affect, diminish or endanger the Energy System or the Supply. This shall include – but is not limited to – water quality parameters and return temperatures.</p> <p>The Customer shall not install such equipment as will replace the ESCO Supply, without prior agreement.</p>
<p>Customer Installation Performance Criteria</p>	<p>The Customer Installation Flow and Return Temperatures:</p> <ol style="list-style-type: none"> 1. Recommended flow and return temperatures within the Tenant’s Heat System are on a [x/y]°C basis. 2. Return temperatures must not exceed [z]°C above the designed secondary circuit return temperature. <ul style="list-style-type: none"> ○ Return temperature to be measured on an agreed basis such as Volume Weighted Average Return Temperature (VWART). 3. If the return temperature exceeds the tolerance set out in 2, above, the ESCO reserves the right to adjust the supply of heat until the issue is rectified by the Customer.
<p>Security</p>	<p>[ESCO does not require credit security from the Council]</p>
<p>Heat Charges</p>	<p>Charging Principles Initial heat charges have been set to represent a discount against the current costs. In addition, the heat charges shall be benchmarked and shall be equivalent to a relevant market comparator.</p> <p>The charges to the Customer are made up of:</p> <p>Fixed Charge A Fixed Energy Service Charge to cover the fixed costs associated with running and replacing the Energy System and meeting the Supply. The Fixed Charge shall be subject to an annual inflationary adjustment each year based on labour and retail price indices.</p> <p>Variable Charge</p>

	<p>A Heat Price charge per kWh of heat consumed, based initially on the incoming cost of [gas, industry standard costs and the heat system efficiency / operations]. The Variable Charge shall be subject to an annual inflationary adjustment each year based on the change in the incoming [gas cost / basket of comparable market gas prices].</p> <p>The anticipated Charges, based on the date of this Agreement and subject to change, shall be as follows:</p> <table border="1" data-bbox="639 450 1235 515"> <tr> <td>Fixed Charge</td> <td>Variable Charge</td> </tr> <tr> <td>£23-26 / kW / year</td> <td>£0.022-0.026 / kWh</td> </tr> </table> <p>Market Testing of Charges The ESCO is committed to transparent and fair pricing and will aim to provide pricing and inflationary mechanisms that are in line with, or below the wider energy and heat network market. The charges will be based on the fixed and variable costs to the ESCO and with the customer pricing benchmarked / tested against the wider market and/or an equivalent on-site solution. This is likely to include a mechanism to calculate a maximum unit price of heat.</p>	Fixed Charge	Variable Charge	£23-26 / kW / year	£0.022-0.026 / kWh
Fixed Charge	Variable Charge				
£23-26 / kW / year	£0.022-0.026 / kWh				
<p>Payment</p>	<p>Each month the ESCO shall invoice the Customer for all Heat supplied to the Premises in the previous month and any other amounts due under this Agreement and any tax (including VAT), levy, duty etc. The metering and billing of the Customer will be compliant with all applicable law and in line with best market practice.</p> <p>The Customer shall be responsible for payment of all charges relating to Heat supplied to the Point(s) of Supply. [Payment will be by Direct Debit mandate and collected in arrears].</p> <p>Charges may apply even where Heat is not being consumed at the Premises.</p>				
<p>Best Market Practice</p>	<p>The ESCO has been developed and will operate in accordance with best market practice, achieving guaranteed standards of supply for all Customers. The currently anticipated Standards of Service follow the Heat Trust (www.heattrust.org). The Heat Trust is the accepted standard for market best practice, and is likely to be the basis of upcoming heat market regulation. The proposed Guaranteed Standards of Service mirror the requirements for a domestic supply, which are typically more stringent than commercial supply agreements, and will cover:</p> <ul style="list-style-type: none"> • Unplanned Interruption • Planned Interruption • Multiple Interruptions • Response Times • Refunds • Temporary heating facilities for areas serving vulnerable customers 				
<p>Termination</p>	<p>This Agreement shall automatically terminate at the end of the Term.</p> <p>Termination provisions to cover:</p> <ul style="list-style-type: none"> • Where the Customer ceases to be the owner or occupier of the Premises (in line with final billing provisions etc); • Redevelopment of the Premises; • Material breach of either Party; • Insolvency, administration of either Party etc; • Customer failure to pay; and • [General Termination provisions in accordance with the final Supply Agreement.] 				
<p>Permits and Consents</p>	<p>Both Parties to comply with relevant authorities, permissions and consents.</p>				
<p>Data Protection and GDPR</p>	<p>Both Parties shall comply with any relevant Data Protection Acts in the performance of this Agreement.</p>				
<p>Insurance, indemnity and Liability</p>	<p>Appropriate insurances to be agreed. Customary limits on liability as required for both Customer and ESCO.</p>				

	[e.g. no indirect or consequential losses, liability caps in aggregate etc. Limits and specifics to be agreed between the Parties]
Standard Terms and Conditions	Including: <ul style="list-style-type: none"> • Change in Law • Assignment • Confidentiality / Intellectual Property Rights • Dispute Resolution • Representation and Warranties • Cumulative Remedies • Notices • Third Party Rights • Entire Agreement • Waiver • No Variation • Governing Law and Jurisdiction

I, [Councillor Richard Young], on behalf of [Bridgend County Borough Council], accept the terms outlined above as indicative commercial terms of supply, subject to final costs, contract terms and legal review.

Signed _____

