

## Terms and conditions

### 1. Definitions

The following capitalised words or expressions shall have the following meanings with the single including the plural and vice versa.

**We/us/our** – Kensa Utilities Limited, a company registered in England and Wales. Our company registration number is and our registered office is Mount Wellington Mine, Chacewater, Truro, Cornwall, TR4 8RJ, our agents, subcontractors and affiliate companies.

**You/your** - the person or people who have entered into the Contract with us. If this is more than one person, each person will be jointly and severally liable for any obligations under this Contract and any money owed to us. This means we will be entitled to claim all of the money owed from any person.

**Asset Boundary Point** – means the point at which your System connects to our Infrastructure and which is detailed in your Property leasehold or freehold title.

**Contract** - these Terms and Conditions.

**Consents** – any legislative, regulatory or property-related consents required relating to the Infrastructure and Services including planning, building regulation and leasehold/freehold matters as applicable.

**Force Majeure Event** - means any circumstance not within a party's reasonable control including, without limitation:

- a) acts of God, flood, drought, earthquake or other natural disaster;
- b) epidemic or pandemic;
- c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- d) nuclear, chemical or biological contamination or sonic boom;
- e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- f) collapse of buildings, fire, explosion or accident; and
- g) any labour or trade dispute, strikes, industrial action or lockouts
- h) non-performance by suppliers or subcontractors
- i) interruption or failure of utility service.

**Heat** – heat in the form of hot water supplied to your System for your use to provide a primary heat source to feed your heating and hot water systems.

**Heat Pump** – means the heat pump and related equipment to be owned by you for the generation of heat using the Infrastructure.

**Infrastructure** - the ground source loop,

isolation valves, boreholes and monitoring equipment owned and operated by us, connected to your System, and in respect of which we provide the Services to you.

**Initial Term** – the date of this Contract until 31 March 2041.

**Network Operator(s)** - any person appointed by you to maintain the System from the Asset Boundary Point to your Property and at your Property.

**Property** - the address which benefits from the Services.

**Service Company** – means *[insert name of service company for the property]*, or any replacement service company from time to time.

**Services** - the physical connection of your System to our Infrastructure and the use of our Infrastructure to allow your System to supply Heat to the Property

**System** - means the Heat Pump(s) and associated equipment for the generation of Heat at your Property connected to and forming part of the System and associated infrastructure (including electricity and communication) connected to the Infrastructure at the Asset Boundary Point (but excluding the Infrastructure).

**Term** – the period from the date of this Contract until its termination.

**Writing** - when we use the words "writing" or "written" in these terms, this includes emails.

### 2. Contract

This Contract is between you and us for the provision of the Services.

Nothing in this Contract affects your statutory rights.

### 3. Service Charge & Price Review

You will be charged a service charge quarterly in advance for the Services (**Service Charge**). The Service Charge for the first 12 months from the date of this Contract will be payable by you on the date of this Contract and then, subject to any increases under the Contract, quarterly in advance thereafter for the Term (as defined in section 4 below).

The Service Charge for the first 12 months of this Contract is £[●].

This Service Charge is a share of the fixed costs (i.e. non commodity charges) associated with the installation, running and managing of the Infrastructure. This Service Charge is not for the operation and maintenance costs for the plant and equipment comprising your System, wherever located, which is your responsibility.

Unless we otherwise notify you, the Service Charge shall be payable by you to the Service Company.

The Service Charge will be subject to an annual increase each year during the Term

(as defined below). The amount of the increase will be the same percentage as the percentage increases to the Retail Prices Index (or any official index replacing it) for the Initial Term. We will review the prices applicable under this Contract on 1 April in each calendar year during the Term (**the Price Review Date**).

Prior to or within one month of the Price Review Date, we will notify you of the annual Service Charge applicable for the next 12 months.

Upon your request, we will notify you of the cost to pay the Service Charge for the remaining Term in a single lump sum. On payment of such lump sum, this Contract shall continue in full force and effect (in particular obligations regarding the RHI in section 15) save that obligation to pay the Service Charge shall cease.

### 4. Term

This Contract shall continue for the Term. You shall have no right to terminate this Contract prior to the end of the Initial Term unless moving home and the requirements of clause 9 below are complied with or in accordance with clause 13.

We may assign this Contract at any time on giving reasonable written notice to you.

Following the expiry of the Initial Term you may terminate this Contract on three month's written notice.

On termination of the Contract your access to the Infrastructure shall be withdrawn

### 5. Statements and billing

You will receive bills from us or the Service Company detailing your Service Charge payable quarterly unless we tell you otherwise, in which case we will give you at least 20 days' notice of any change to your billing frequency.

We may include details of other charges on your bill in accordance with clause 7.

### 6. Payment

You agree to pay us the Service Charges detailed in section 3 and any additional charges in accordance with clauses 6 and 7, unless agreed otherwise in writing.

You must have a continuous payment method set up with us at all times (Direct Debit or continuous credit/debit card mandate), which we will use to take your payment on or around the date stated on your bill.

We may alter your Direct Debit or Credit Card instruction if the Services Charges change under the Contract. We may also charge any other payment due under this Contract under your Direct Debit or Credit Card instruction together with any other payments which you agree we may charge under that instruction. We will notify you at least 10 working days in advance if there is to be a Change to the Direct Debit or Credit Card instruction.

Payment is due immediately if we send you a bill.

Querying or disputing your bill or statement: If you dispute a bill or statement please contact us immediately. We will work with you to resolve the issue. You must pay or arrange to pay any undisputed amount.

What happens if you do not pay: If you do not pay promptly we may:

- ask you to pay by another method;
- charge you interest on overdue amounts from the due date at a rate of 4% above the base lending rate of HSBC Bank plc (as amended from time to time) whether before or after judgment;
- ask you for a security deposit;
- change the frequency that we send you bills.

We may charge you our reasonable costs to recover any money you owe us. These costs may include but are not limited to:

- returned cheques or unpaid Direct Debits;
- visiting a Property to collect money you owe; or
- obtaining a warrant;
- disconnecting or reconnecting your System from our Infrastructure.

## 7. Other charges

We may charge you our reasonable costs if:

- you damage the Infrastructure, our equipment or equipment provided by your Network Operator unless this damage could not have reasonably been prevented;
- you fail to take reasonable steps to protect our Infrastructure or equipment or equipment provided by your Network Operator; or
- you ask us or our agents to visit your Property unnecessarily.

## 8. Data protection

We may share details about your application and how you conduct your account, including payment details with credit reference agencies (**CRAs**) who will record this information. If you fail to pay your bills in full and on time, or as arranged we will share this information with a CRA who will record the outstanding debt. CRAs may share this information with other organisations who may perform similar checks to trace your whereabouts and recover debt. Records remain on file for six years after they are closed whether settled or defaulted.

This information will also be used by us and others to recover debt, trace debtors and prevent money laundering and fraud. If you give us false or inaccurate information we will record this and may pass this information to organisations involved in crime and fraud prevention.

If you are making a joint application or tell us that you have a spouse or financial associate, we will link your records together so you must be sure that you have their agreement to disclose information about them. CRAs also link your records together and these links will remain on your and their

files until such time as you or your partner successfully files for a disassociation with the CRAs to break that link.

We will only use your personal information as set out in our Privacy Policy which you can find on our website (<https://www.kensaheatpumps.com/terms-conditions/>)

## 9. Moving Property

If you move or otherwise dispose of your interest in the Property:

- (a) You must give us at least 28 days written notice. We will continue to charge you, and the other conditions of this Contract shall continue to apply, until another person takes responsibility for your obligations under this Contract in accordance with (b) below.
- (b) On or prior to completion of your disposal of the Property, you must ensure the new owner of your Property either enters into a deed agreeing to comply with the terms and conditions of this Contract or enters into a new Contract with us (upon which time this Contract shall immediately terminate).
- (c) We will close your account and you must pay the balance of any sums owed to us under this Contract in full.

You must give us a forwarding address so that we can contact you about any amounts that we may owe you or any charges that you may owe us. Even after ending this Contract, you still have to pay all charges that you owe. If you fail to transfer the Contract to the new owner of the Property this would be a material breach and you will remain responsible for performing the obligations set out in the Contract for the Initial Term.

## 10. Access to your Property

You must allow us and/or persons authorised by us safe access to your Property, at all reasonable times, to carry out services including but not limited to:

- (a) installing or working on equipment relating to the System and/or the Infrastructure;
- (b) reading, replacing, exchanging or inspecting your System;
- (c) reconnecting or disconnecting your System from our Infrastructure; or
- (d) in an emergency.

We will take reasonable care when working in and around your Property.

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

- (a) you do not give us access at the agreed time (or rearrange with us a different time giving us at least four (4) hours' notice); and
- (b) we can evidence that we could not gain access,

then an "abortive visit" will have occurred.

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

## 11. Your Equipment

During the Term you shall be responsible for the continued running of the System, and for the maintenance and repair of the same.

If you take, or attempt to use Heat by interfering with our Infrastructure, your System or otherwise we may disconnect your System from our Infrastructure, calculate how much you owe us, bill you for any charges incurred by us or our agents.

You must maintain the System in good working order, to the standards, as defined below, and the manufacturer's instructions and engage a professional and accredited service engineer to do so.

We may install and operate equipment which monitors the usage of the Infrastructure by your System.

You are not to install permanent heating alternatives at the Property during the Term.

## 12. Liability

We do not exclude or limit in any way our liability to you where it would be unlawful to do so. We are liable for:

- (a) death or personal injury caused by our negligence or by the negligence of our employees, agents or subcontractors;
- (b) for fraud or fraudulent misrepresentation; and
- (c) for any loss that is a foreseeable consequence of our breach of this Contract, negligence or breach of statutory duty. Loss or damage is foreseeable if it is either obvious that it will happen or if, at the time that you enter into this Contract, both we and you knew it might happen.

If we are in/on your Property, we will make good any damage to your Property caused by us while inside/outside. However, we are not responsible for the cost of repairing any pre-existing faults or damage to your Property that we discover.

We are not liable for any other loss including:

- a) loss caused by an event or circumstances beyond our reasonable control;
- b) any loss or damage that is unforeseeable; and
- c) commercial or business losses including loss of profit, loss of business, business interruption or loss of business opportunity.

Only the warranties and conditions expressly stated in the Contract, or required or implied by statute, shall apply. All other warranties and conditions (whether implied by statute or otherwise) are excluded to the fullest extent permitted by law.

You must compensate us if you breach the Contract. If we terminate the Contract for your material breach or you terminate or purport to terminate the Contract before the end of the Term we will refund any Service Charge you have paid in advance for Services we have not provided, but we may deduct and/or charge you reasonable compensation for the net costs we will incur as a result of your breaking the Contract (or our termination of the Contract for your

material breach) which will include within that an amount equal to the total sum of the RHI payments and Service Charge payments we would otherwise have received for the remainder of the Term had the Contract continued, as compensation for the losses we will incur as a result.

### 13. Infrastructure and System Responsibilities and rights

In consideration of you carrying out your obligations in accordance with the Contract, we shall provide the Services to you and you shall accept the Services and use our Infrastructure to assist and allow your System to take Heat. The ownership and risk in the System remains yours at all times.

During installation we shall be responsible for securing any Consents required at our expense. In the event that the terms for securing Consents in our opinion (and at our entire discretion) render the Contract commercially unviable for us, we have the right to terminate the Contract on written notice to you. Both we and you shall in such circumstances be released from the Contract and have no further obligations to each other.

You will be provided with an information pack on commissioning of the System that provides full documentation and user guides including any related to Consents. The information pack will be needed for prospective purchasers of the Property and we will not charge for any communications with your solicitors in the event of a sale in connection with information required regarding the System, the contractual arrangements relating to it and Consents.

Your System will remain connected to our Infrastructure in accordance with this Contract and any applicable English law.

Details of the Infrastructure and how it links to your System have been provided to you with the freehold or leasehold title documentation of your Property.

We will maintain and keep our Infrastructure in operational repair and condition (including the rectification of any defects) in a good and workmanlike manner with good and proper materials (where applicable, using reputable and experienced contractors) and in accordance with prudent operating practice (**Repairs**).

We are responsible for ensuring that our Infrastructure is operating correctly in order to be capable of supplying Heat where connected to an appropriate heat pump system. We shall not be responsible for your System, for any provision of Heat to you, or for any failure of your System to provide your demand for Heat at the Property, unless the failure is as a result of breach of our obligations under this Contract.

We will not be liable for any failure to effect a Repair if we can't gain access to your

Property when arranged with you or as we are otherwise entitled under this Contract and this prevents us from making any Repair.

If your System fails to provide your demand for Heat at the Property you must first attempt to resolve the issues with your Network Operator and maintenance providers. If your maintenance providers consider, after physical inspection, that the System issues are caused by our failure to Repair our Infrastructure you must then contact us in writing as soon as reasonably practicable, detailing the concerns of, and evidence from, your Network Operator and maintenance provider, regarding our Infrastructure and Repair failures.

If we fail to undertake the Repairs in a timely manner and this causes any failure of your System to provide your demand for Heat at the Property we will provide temporary alternative heating. This is your only remedy for our failure to Repair in these circumstances. You must disconnect such temporary heating and return it to us as soon as the Repairs are completed so that the Infrastructure is operating in accordance with this Contract.

If, during the first ten years following installation of the Infrastructure, there is a prolonged failure of our Infrastructure, or our obligation to Repair, which materially affects your use of the Heat Pump(s) and which lasts for more than [4] months after you notify us in writing of the failures, then:

- (a) we will provide you with a suitable alternative form of permanent heating at our cost. The type of heating system installed will be at our discretion and will be designed and installed to the relevant standards; or
- (b) at your option you have the right to terminate the Contract by giving us written notice and thereafter may install permanent heating alternatives at the Property.

In each case any further obligations we have to each other under this Contract will end upon either installation of the alternative form of heating or termination.

Ownership and risk in the thermal energy contained in the Heat and the water comprising the Heat shall at all times remain with you and be your responsibility.

You must not make any change to your System, its connection, your hot water or central heating system or related equipment, or do anything else that could affect your System and/or affect our Infrastructure or require alterations to the connection between our Infrastructure and your System, or to the Network Operator's equipment without our written consent. This a very important term of the Contract and you agree that if you breach this term we may be able to terminate the Contract and claim damages from you.

We do not guarantee that our Infrastructure will allow for the delivery of Heat through your System or that Heat will be delivered through your System, or that the Heat will be free of brief variations.

This Contract will end when any one or more of the following occurs:

- a) you permanently stop having Heat delivered to the Property by the System and we terminate the Contract in accordance with its terms;
- b) you have correctly assigned this Contract to a third party in accordance with section 9(b);
- c) we terminate the Contract in accordance with its terms; or
- d) any circumstances arise which legally entitle us to cut off the connection of your System to our Infrastructure and we write to you advising you that the Contract is ended. You are not entitled to transfer this Contract to another person without our written consent.

### 14. Disconnection

We may disconnect your System from our Infrastructure:

- (a) if we are required to do so by law;
- (b) in case of an emergency;
- (c) if we or your Network Operator needs to inspect, alter, maintain or repair your System; or
- (d) if we need to inspect, alter, maintain or repair our Infrastructure.

You must pay our reasonable expenses incurred in disconnecting and reconnecting your System from our Infrastructure where this arises from:

- a) your request
- b) your Network Operator's request for us to do so
- c) your negligence
- d) breach of this Contract.

You must restrict or stop your use of Heat if we tell you to do so because we are so required by law, or for operational safety reasons.

### 15. Alternative heat sources

You shall not install alternative heating systems, including, but not limited to, the addition of further renewable energy or heat generating equipment or apparatus to (or affecting) the Property, without our prior written consent, or unless you are allowed to under the Contract.

If you use an alternative heat source you shall comply with our reasonable instructions (at your cost) for the implementation of additional metering equipment which may be required to measure heat usage from the Heat Pump and the Infrastructure, and you shall be liable to us for the costs, losses and expenses incurred as result of the usage of such alternative source of heat.

### 16. General Matters

**How to contact us:** You can contact us by telephoning our service team at [NUMBER]

or by writing to us at [EMAIL ADDRESS AND POSTAL ADDRESS].

**Contract transfer:** We may transfer this Contract to someone else. We may transfer our rights and obligations under this Contract terms to another organisation. We will always tell you in writing if this happens and we will ensure that the transfer will not affect your rights under the Contract.

**Rights:** Nobody else, other than a Network Operator, has any rights under the Contract.

**Illegality:** If a court finds part of this Contract illegal, the rest will continue in force. Each of the sections and paragraphs of this Contract operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining sections and paragraphs will remain in full force and effect.

**Delay:** Even if we delay in enforcing this Contract, we can still enforce it later. If we do not insist immediately that you do anything you are required to do under the Contract, or if we delay in taking steps against you in respect of your breaking the Contract, that will not mean that you do not have to do those things or prevent us taking steps against you at a later date.

**Force majeure:** if we are prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event, we shall not be

in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

We shall:

- a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than 5 days from its start, notify you in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
- b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

If the Force Majeure Event prevents, hinders or delays our performance of our obligations for a continuous period of more than 25 weeks, you may terminate the Contract by giving 5 weeks' written notice to us.

**Entire agreement:** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation,

assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

**Notice:** Any notice given to a party under or in connection with this Contract shall be in writing and shall be:

- a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- b) sent by email to the address specified in this clause 16.

Any notice shall be deemed to have been received:

- a) if delivered by hand, at the time the notice is left at the proper address;
- b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the fourth day after posting; or
- c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

**Law:** These terms are governed by English law and you can bring legal proceedings in respect of the Services in the courts of England and Wales.