

NDES SERVICING AGREEMENT

THIS AGREEMENT dated for reference the ___ day of _____, 2015,

BETWEEN:

[DEVELOPER], a company existing under the laws of [British Columbia], with an address at [ADDRESS]

(the “Developer”)

AND:

CORIX MULTI-UTILITY SERVICES INC., a company existing under the laws of British Columbia, with an address at 1160 - 1188 West Georgia Street, Vancouver, British Columbia V6E 4A2

(“Corix”)

WHEREAS:

- A. The Developer has entered into an Agreement with the with University of British Columbia (“UBC”), for its development of the Developer Lands (the “Project”);
- B. Pursuant to an Infrastructure Agreement dated September 2014 (the “Infrastructure Agreement”), Corix has been engaged by UBC to develop the NDES and to design, construct, own, operate and maintain the related Infrastructure; and
- C. The Parties wish to enter into this Agreement to record the terms and conditions on which the Infrastructure will connect to Buildings constructed on the Developer Lands.

NOW THEREFORE the Parties covenant and agree as follows:

1. INTERPRETATION

1.1 Definitions. In this Agreement, the following terms have the meanings set out below:

- (a) “Adjusted Target Date” has the meaning ascribed to it in section 3.2;
- (b) “Affiliate” has the meaning ascribed to it in the British Columbia *Business Corporations Act*;
- (c) “BCUC” means the British Columbia Utilities Commission or its successor entity;
- (d) “Building” means each permanent residential or other structure or building on or to be constructed on the Developer Lands and which will receive Energy Services;
- (e) “Building System” means the complete HVAC system and domestic hot water system and / or storage equipment to be installed and used for distributing and storing Thermal Energy in a Building, connected to but downstream of and excluding the Service Connection and Energy Transfer Station for that Building;
- (f) “Building System Commissioning” means, in relation to a Building System, the process by which the Building System is tested by the Developer (including operational and performance testing)

to verify and confirm that it performs in accordance with the final Building System specifications agreed and approved pursuant to Section 3.1;

- (g) “Business Day” means any day except a Saturday, Sunday, statutory holiday in the Province of British Columbia or any other day on which banks are generally not open for business in Vancouver, British Columbia;
- (h) “CEP” means a central energy plant for the generation of Thermal Energy, including any or all of the following: natural gas boilers, wood waste boiler equipment, wood waste storage facilities and other energy equipment and all associated mechanical and electrical interconnections, control systems and structures;
- (i) “Changes of Law” means any change in, or the introduction of new, applicable Laws, industry standards or conditions affecting (i) the performance, operation, maintenance or routine repair of the Infrastructure; (ii) the provision of Energy Services; and/or (iii) the creation and provision of Thermal Energy;
- (j) “Contaminants” means any radioactive materials, asbestos materials, urea formaldehyde, underground or above ground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive, or toxic substances, hazardous waste, waste, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour, heat, sound, vibration, radiation, or combination of any of them, the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation, or Release into the Environment of which is now or hereafter prohibited, controlled, or regulated under Environmental Laws;
- (k) “Community Energy Covenant” means an agreement made between UBC and a Developer and thereafter assigned to Corix, or between Corix and a Developer; pursuant to which such Developer grants to UBC or Corix, as the case may be, (i) a covenant under Section 219 of the Land Title Act (British Columbia) governing the construction, heating and occupancy of a Building and (ii) a statutory right of way under Section 218 of the Land Title Act (British Columbia) permitting the grantee, or a third party appointed by the grantee, to provide to the Building service from a community energy system and to access the Building and the lands on which it is built in connection with the provision of such service,.
- (l) “Contaminated Site” has the meaning ascribed to it in the *Environmental Management Act* (British Columbia);
- (m) “Customers” means any Persons who receive Energy Services pursuant to a Customer Agreement;
- (n) “Customer Agreement” means the agreement between a Customer and Corix that sets out the terms and conditions on which Energy Services will be provided to a Building or Buildings (a current copy of the standard form of this agreement, as approved by the BCUC, is attached as Schedule A), as amended in accordance with the terms;
- (o) “DCCP” means UBC's Department of Campus & Community Planning in its capacity as regulatory, inspection and permitting authority for UBC’s Vancouver Campus or such other department of UBC as becomes responsible for this function from time to time.
- (p) “Deadline” has the meaning ascribed to it in Section 3.6;

- (q) “Design Guide” means the Design Guide for Compatibility with District Energy, as administered and issued by Corix, and as amended from time to time, a current version of which is attached to this Agreement as Schedule B.
- (r) “Development Areas” means, collectively, the Wesbrook Place, Acadia Road (including the Acadia West Neighbourhood and Acadia East student housing precinct), East Campus and Stadium neighbourhoods of UBC’s Vancouver Campus, all as designated in UBC’s Land Use Plan;
- (s) “Developer’s Engineer” means a professional engineer engaged by the Developer at the Developer’s sole cost and expense, which engineer must be acceptable to Corix, acting reasonably;
- (t) “Developer Group” means the Developer and its shareholders, directors, officers, employees, agents, successors, and permitted assigns;
- (u) “Developer Lands” means those lands subject to the Offer to Lease and Ground Lease and legally described as:

[INSERT LEGAL DESCRIPTION]
- (v) “Distribution System” means, collectively, the system of hot water pipes, fittings and ancillary components connecting the CEP to the Service Connections;
- (w) “Encumbrance” means any mortgage, lien, pledge, judgement, execution, charge, security interest, restriction, claim or encumbrance of a financial nature, including, without limitation, builders liens and claims of the Workplace Safety and Insurance Board, Canada Revenue Agency and any other Governmental Authority;
- (x) “Energy Services” means the provision by Corix of Thermal Energy via the Infrastructure;
- (y) “Energy Services Commencement” has the meaning ascribed to it in Section 7.1;
- (z) “Energy Transfer Station” means, collectively, the system of separate heat exchangers for space heating and domestic hot water (excluding domestic hot water storage tanks), energy meter equipment (including temperature sensors and flow meter), control panel and all pipes, fittings and ancillary equipment and facilities necessary to measure and control the transfer of Thermal Energy from the Service Connection to a Building System;
- (aa) “Environment” includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and “Environmental” has a corresponding meaning;
- (bb) “Environmental Credits” means any income, credit, right, benefit or advantage, whether in the form of greenhouse gas (GHG), monetary value or some other form or character, relating to Environmental matters including type and level of Environmental emissions, input sources and compliance with Environmental Laws, and any market instrument, including without limitation any Environmental emission allowances and Environmental emission reduction credits that

accrue to businesses that perform better than certain government, industry, trade organization or Environmental international emission reduction guidelines;

- (cc) “Environmental Laws” means any and all applicable statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority now or hereafter in force relating to or for the Environment or its protection, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;
- (dd) “Fees” means the fees to be charged by Corix and paid by Customers for Energy Services, as approved by the BCUC from time to time;
- (ee) “Force Majeure” has the meaning ascribed to it in Article 16;
- (ff) “Functional” means, in relation to a Building System, when that Building System fully complies with Article 3, has satisfied Building System Commissioning and is performing the function for which it was designed;
- (gg) “Governmental Authority” means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority, including without limitation the DCCP and the BCUC.
- (hh) “Ground Lease” means the lease between the Developer and UBC dated [INSERT DATE] for the Developer Lands;
- (ii) “Infrastructure” means, collectively, the CEP, Distribution System, Energy Transfer Stations, Service Connections, connections to alternate energy source(s), and any ancillary equipment and facilities;
- (jj) “Infrastructure Agreement” has the meaning set forth in Recital B;
- (kk) “Laws” means any law, statute, regulation, bylaw, code, Permit, order or legal requirement of or issued by or under the direction or authority of any Governmental Authority having jurisdiction;
- (ll) “NDES” means the neighbourhood district energy utility system developed or being developed by Corix to provide Energy Services to the Development Areas (including the Developer Lands);
- (mm) “Offer to Lease” means the offer to lease between the Developer and the UBC dated [INSERT DATE] for the Developer Lands;
- (nn) “Party” means either the Developer or Corix and “Parties” means both of them;
- (oo) “Permits” means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority for the Project Infrastructure or the provision of Energy Services;
- (pp) “Person” means an individual or his or her legal personal representative, an unincorporated organization or association, or a corporation, partnership, trust, trustee, syndicate, joint venture, limited liability company, union, Governmental Authority or other entity or organization;

- (qq) “Project” has the meaning ascribed to it in Recital A;
- (rr) “Project Infrastructure” means those portions of the Infrastructure located on the Developer Lands;
- (ss) “Project Infrastructure Work” means the design, engineering, installation and verification by Corix of Project Infrastructure on the Developer Lands;
- (tt) “Release” includes any release, spill, leak, pumping, pouring, emission, emptying or discharge, injection, escape, leaching, migration, disposal, or dumping;
- (uu) “Scheduled Target Date” has the meaning ascribed to it in section 3.2;
- (vv) “Service Connection” means the system of hot water pipes, all ancillaries and all fittings necessary to connect a Building to the Distribution System via an Energy Transfer Station;
- (ww) “Statutory Right of Way” means a statutory right of way agreement, substantially in the form attached as Schedule D, which permits Corix access to the Developer Lands for the purpose of performing its obligations under this Agreement and Customer Agreements;
- (xx) “Target Date” has the meaning ascribed to it in Section 3.2;
- (yy) “Thermal Energy” means thermal energy for space heating and domestic hot water;
- (zz) “UBC” means the University of British Columbia, a corporation continued under the *University Act*, R.S.B.C. 1196, c. 468.
- (aaa) “UBC’s Land Use Plan” means the land use plan adopted by the Minister of Community and Rural Development pursuant to Part 10-2010 of the Municipalities Enabling and Validating Act (No.3) [SBC 2001], c.44.
- (bbb) “UBC’s Vancouver Campus” means the lands within the boundaries described in the Point Grey Campus Lands Regulation (195/2010); and
- (ccc) “Zoning Regulation” means the Development and Building Regulations of the DCCP, as amended and replaced from time to time.

1.2 Interpretation. Unless otherwise expressly provided, in this Agreement:

- (a) “this Agreement” means this Agreement as it may from time to time be supplemented or amended by the Parties, and includes the attached Schedules;
- (b) all references in this Agreement to a designated “Article”, “Section”, “subsection” or “Schedule” is to the designated Article, Section or subsection of or Schedule to this Agreement;
- (c) the headings are for convenience only, do not form a part of this Agreement and are not intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof;

- (d) the singular of any term includes the plural, and vice versa; the use of any term is equally applicable to any gender and, where applicable, a body corporate;
- (e) the word “including” is not limiting whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto;
- (f) references to time of day or date mean the local time or date in the city of Vancouver, British Columbia; and
- (g) all references to amounts of money mean lawful currency of Canada.

1.3 Governing Law. This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with, the laws of British Columbia and the laws of Canada applicable in British Columbia which will be deemed to be the proper law of the Agreement.

1.4 Severability. Each provision of this Agreement is severable. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement, or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction, except that if:
 - (i) on the reasonable construction of this Agreement as a whole, the applicability of the other provision presumes the validity and enforceability of the particular provision, the other provision will be deemed also to be invalid or unenforceable, and
 - (ii) as a result of the determination by a court of competent jurisdiction that any part of this Agreement is unenforceable or invalid and, as a result of this section, the basic intentions of the parties in this Agreement are entirely frustrated,

the Parties will use all reasonable efforts to amend, supplement or otherwise vary this Agreement to confirm their mutual intention in entering into this Agreement.

1.5 Time of Essence. Time is of the essence of this Agreement.

1.6 Statutory References. Unless otherwise specified, each reference to a statute is deemed to be a reference to that statute and to the regulations made under that statute as amended or re-enacted from time to time.

1.7 Schedules. The following are the Schedules to this Agreement:

Schedule A	Form of Customer Agreement
Schedule B	Design Guide for Compatibility with District Energy
Schedule C	Thermal Energy Delivery Parameters Document
Schedule D	Form of Statutory Right of Way
Schedule E	Developer-Provided Energy Transfer Station Requirements
Schedule F	Supplementary Terms and Conditions of Construction Use

2. DEVELOPMENT OBLIGATIONS OF DEVELOPER

- 2.1 Development of Project. The Developer will, at its own cost and expense, develop the Project in accordance with the lease agreement with UBC, applicable zoning, applicable Laws (including without limitation the Zoning Regulation), the Design Guide, the Community Energy Covenant and this Agreement. The Developer will, forthwith upon Corix's request, provide Corix with a copy of all sections of the lease agreement that pertain to the design, construction or operation of the Infrastructure or the Building System or the provision of Energy Services and any other portions of the lease agreement that Corix reasonably requests. The Developer may redact any commercially-sensitive financial information contained therein.
- 2.2 No Alternate System or Service Provider. The powers and rights granted to Corix under this Agreement are exclusive to Corix and, except as expressly provided hereunder, the Developer will not itself perform, provide, install or realize, nor allow any other Person to perform, provide, install or realize any other system to provide primary domestic hot water and space heating to any Building, nor use or allow or consent to any other Person supplying or distributing Thermal Energy or Energy Services to the Developer Lands. Fireplaces located in individual residential units are not prohibited by this Section 2.2, nor are other supplemental heating system(s) in any areas of a Building where Thermal Energy is either: prohibited by applicable Laws; or is not feasible, as mutually agreed by the Parties, each acting reasonably.
- 2.3 Sources of Energy. Corix and UBC may, without the need to obtain any approval from the Developer and without any recourse by the Developer, from time to time incorporate other sources of energy or other energy supply systems into the NDES, if Corix is still able to meet its obligations to the Developer.

3. BUILDING SYSTEMS

- 3.1 Review and Approval of Specifications. To achieve compatibility between each Building System and the Infrastructure and to achieve appropriate energy loads, the Developer will:
- (a) before installation of a Building System, review the Design Guide attached hereto at Schedule B and submit the specifications for each Building System, including all design and engineering components and the Developer's proposed energy loads, temperatures and any connection requirements, for review by Corix. The Developer will allow Corix a reasonable opportunity to discuss and comment on such specifications and where Corix, acting reasonably, determines that any change(s) to any specifications are necessary to achieve compatibility with the Infrastructure, such additions, repairs or alterations will be promptly made by the Developer at its sole expense. The final energy loads (at peak design conditions) and the maximum supply and return temperatures (at such peak design conditions) for the Building System will be mutually agreed between the Developer and Corix and approved by the Developer's Engineer, in each case as evidenced by their respective signature on a completed final Thermal Energy delivery parameters document in the form attached as Schedule C;
 - (b) at any time and from time to time provide Corix, in a timely manner, with such access and copies of specifications, drawings and other information as Corix may reasonably require to confirm that the Building Systems conform to the final Thermal Energy delivery parameters as agreed and approved pursuant to subsection (a) above. Where, acting reasonably, Corix determines additions, repairs or alterations to any portion of a Building System are necessary to achieve compatibility with the Infrastructure, such additions, repairs or alterations will be promptly made by the Developer at its sole expense; and
 - (c) except pursuant to subsection (b) above in relation to additions, repairs or alterations identified by Corix, not amend the final Thermal Energy delivery parameters agreed and approved pursuant to subsection (a) above in any manner that does or may affect Corix under this Agreement without

the prior written consent of Corix, not to be unreasonably withheld. In all cases, the Developer will provide to Corix written notice of any proposed or contemplated amendment to such agreed and approved final Thermal Energy delivery parameters. In connection with any proposed or contemplated amendment to such agreed and approved final Thermal Energy delivery parameters that Corix determines will or may affect its rights hereunder, the Parties will review and agree on any amendments to the final Thermal Energy delivery parameters and this Agreement that may be necessary to:

- (i) reflect necessary or desired, consequential alterations to any part of the Building System or the Project Infrastructure and the manner in which such alterations are executed;
- (ii) adjust the timing of any of the Project Infrastructure Work; and
- (iii) compensate Corix for any costs incurred or to be incurred by it in connection with such amendments. The Developer will pay or reimburse (as applicable) Corix for any additional costs reasonably incurred by Corix in connection with such amendments.

3.2 Construction and Installation. The Developer will construct and install each Building System in accordance with the Design Guide and with the final Thermal Energy delivery parameters agreed and approved pursuant to Section 3.1. The Developer will keep Corix reasonably informed regarding the progress of construction and installation of each Building System. Without limiting the generality of the foregoing, the Developer will provide at least 270 days' written notice to Corix of the Developer's scheduled target date (the "**Scheduled Target Date**") as part of the Final Thermal Energy Delivery Parameters agreed to by the Parties, by which date: (a) the Developer will have completed the construction and installation of each Building System in accordance with this Section 3.2; (b) the Developer will have each Building System ready for connection to the Energy Transfer Station in accordance with Section 3.3; and (c) each Building will be ready to receive Energy Services from Corix.

The Developer may make a one-time-only adjustment to the Scheduled Target Date by providing notice in writing to Corix up to 90 days before the Scheduled Target Date (such adjusted date, the "**Adjusted Target Date**"). An Adjusted Target Date cannot exceed 45 days past the Scheduled Target Date, unless permitted in writing by Corix. An Adjusted Target Date that is earlier than the Scheduled Target Date is subject to Corix's approval at its sole discretion. The term "**Target Date**" means the Scheduled Target Date, or, if adjusted in accordance with this section, the Adjusted Target Date.

3.3 Connection to Energy Transfer Station. Upon completion of construction and installation of each Building System, the Developer will provide to Corix documentation from the Developer's Engineer (in a form that is satisfactory to Corix, acting reasonably) verifying that the Building System has been designed, constructed and installed in full compliance with the final Thermal Energy delivery parameters agreed and approved pursuant to Section 3.1, has been flushed and cleaned and is capable of performing the function for which it was designed. Each Building System will be connected to the Energy Transfer Station by the Developer, in the presence of a Corix representative, as and when such full compliance of such Building System has been so verified by the Developer's Engineer. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree that a Building System will not be connected to the Infrastructure before the Target Date, unless the Parties mutually agree otherwise in writing.

3.4 Building System Commissioning. Upon connection of each Building System to the Energy Transfer Station pursuant to Section 3.3, the Developer will perform Building System Commissioning. During Building System Commissioning, the Developer will take all required steps to remedy any defects in the design, engineering, construction or installation of the Building System identified by the Developer's Engineer within such period of time as may be reasonably required to remedy such defects and will

promptly provide to Corix documentation from the Developer's Engineer (in a form that is satisfactory to Corix, acting reasonably) verifying that the Building System is Functional.

- 3.5 The Developer's Responsibility. Notwithstanding anything to the contrary in this Article 3, Corix will not be responsible for any aspect of the design, engineering, permitting, construction or installation of any Building System; each Building System has or will be engineered, designed, constructed and installed by the Developer solely at its own expense and in a good and workmanlike manner consistent with industry standards and in compliance with all applicable Laws and this Agreement. The Developer will ensure that each Building includes a Building System that complies with this Article 3.
- 3.6 Delays. If Energy Services Commencement has not occurred within 60 days from the Target Date or such other date that is mutually agreed by the Parties in writing (the "**Deadline**") so that a Building has not commenced receiving Energy Services in accordance with Section 7.1 by the Deadline, the Developer will commence paying Corix the Basic Charge (as specified in the Rate Schedule in the standard form of the Customer Agreement attached as Schedule A) with effect as of the Deadline as if Corix had commenced providing Energy Services to the Building as of the Deadline. The Developer will pay such Basic Charge whether or not it has signed a Customer Agreement by the Target Date or the Deadline. Notwithstanding the foregoing, the Developer will not be required to pay such Basic Charge if Corix is the direct cause of the delay (in which case Corix will use commercially reasonable efforts to commence providing Energy Services as soon as possible, and in any event no later than 30 days from the Deadline).

4. PROJECT INFRASTRUCTURE

4.1 Project Infrastructure Work. Subject to Sections 3.2, 3.6 and 4.2, Corix will:

- (a) at its own cost and expense, perform the Project Infrastructure Work in a good and workmanlike manner, consistent with industry standards and in compliance with all applicable Laws and this Article 4 and will use reasonable efforts to obtain all requisite Permits associated therewith, in all cases based on the final Thermal Energy delivery parameters agreed and approved pursuant to Section 3.1 and in advance of the commencement of any Project Infrastructure Work; and
- (b) to the extent reasonably possible in light of other obligations of Corix under the Infrastructure Agreement and Corix's services, customer and other agreements with other developers and Customers receiving Energy Services, in performing the work set out in subsection (a) above:
 - (i) work in a timely manner compatible with the Developer's construction/installation schedule;
 - (ii) keep the Developer reasonably informed regarding the progress of the Project Infrastructure Work; and
 - (iii) install the Project Infrastructure in utility corridors and other rights of way, and the Developer will for nominal consideration provide access to and space in utility corridors for such purposes.

4.2 Installation Costs Borne by the Developer. The Developer will, at its sole cost and expense, provide the items and fulfil the requirements described in Schedule E to facilitate the Project Infrastructure Work. Additionally, to the extent the Parties are able to coordinate their construction and installation activities on the Developer Lands, the Developer will pay all costs relating to excavation, bedding material and backfilling of trenches where such items and activities are related to both the construction activities of the Developer and installation of the Project Infrastructure.

- 4.3 Ownership. Notwithstanding any degree of annexation or affixation, or rule of law or equity to the contrary, all components of the Project Infrastructure and all additions or extensions will be and remain the property of and vest in Corix. Pursuant to the Infrastructure Agreement, Corix may sell the Infrastructure to the UBC upon termination of that agreement or other specified occurrences.
- 4.4 Permits. Corix will apply for and use commercially reasonable efforts to obtain and maintain all requisite Permits for the Project Infrastructure Work and for the operation of the Project Infrastructure. If requested to do so by Corix, the Developer will use reasonable efforts to assist Corix obtain such Permits.
- 4.5 Grants and Environmental Credits. Any grants from any Governmental Authority, crown corporation or non-governmental authority that may be derived from a reduction in costs for consumption of heat and hot water by the Buildings and all right, title and interest in the potential or actual commercial value of any Environmental Credit that may arise or accrue by virtue of the installation or operation of the Infrastructure (or any portion) or the NDES will be used in accordance with the Infrastructure Agreement to reduce rates for NDES Customers.

5. COOPERATION AND COORDINATION

The Parties will cooperate and coordinate with each other and with any applicable Governmental Authority to permit each Party to perform its obligations under this Agreement. Without limiting the generality of the foregoing, the Developer will work and cooperate with Corix as may be reasonably required to:

- (a) make all applications to and filings with, and otherwise correspond and work together with BCUC and other Governmental Authorities for the Energy Services; and
- (b) make application for all exemptions, reductions and other relief from property taxes related to the Infrastructure as may be available from time to time.

Each Party agrees not unduly to interfere with or interrupt the activities of the other Party or any applicable Governmental Authority on the Developer Lands.

6. ACCESS TO DEVELOPER LANDS

The Developer grants and covenants to secure for Corix and its subcontractors, agents, employees and representatives, by licenses, statutory rights of way, easements, leases or other agreements, and for nominal consideration, non-exclusive access to, on, over and under the Developer Lands for the purposes of performing its obligations under this Agreement and Customer Agreements. Without limiting the generality of the foregoing, the Developer will, forthwith upon Corix's request, grant or cause to be granted to Corix and duly register in the relevant Land Title Office the Statutory Right of Way for each lot comprising a part of the Developer Lands and otherwise as required to allow Corix to perform its obligations under this Agreement and Customer Agreements. Each Statutory Right of Way granted pursuant to this Section 6 will have priority over any Encumbrance. The access granted pursuant to this Section 6 will be adequate, in the sole discretion and determination of Corix, to allow Corix to efficiently and effectively carry out its obligations and pursuant to the Customer Agreements without undue disturbance or interference from the Developer or any of its contractors, agents, employees or representatives.

Each statutory right of way, lease or other registrable interest granted pursuant to this Section 6 may be registered by Corix (at Corix's sole cost) in the relevant Land Title Office, together with any priority agreements as Corix may deem necessary or advisable.

7. PROVISION OF ENERGY SERVICES BY CORIX

7.1 Provision of Energy Services. Corix will provide Energy Services to a Building, subject to and provided that the following conditions have been satisfied:

- (a) that the Building System for such Building has been connected to the Infrastructure in accordance with Article 3; and
- (b) that the relevant Customer Agreement has been completed, executed and delivered in accordance with Section 7.2.

Such conditions are for the sole benefit of Corix and may be waived only by Corix. The date and time when heat is first transferred between the Infrastructure and the Building System will be the “**Energy Services Commencement**”.

7.2 Customer Agreements. The Developer will:

- (a) before Building System Commissioning in accordance with Section 3.4:
 - (i) complete, execute and deliver to Corix a Customer Agreement covering such Building; and
 - (ii) cause any strata corporation then existing or subsequently created by the filing or registration of a strata plan for the applicable Building to complete, execute and deliver to Corix a Customer Agreement covering such Building; provided, however, that there will be only one Energy Transfer Station per Building, and therefore to the extent that there are multiple strata corporations created for a Building, the Developer will cause the strata corporation whose premises include the space occupied by the Energy Transfer Station to complete, execute and deliver to Corix a Customer Agreement for such Building;
- (b) before a strata corporation being created by filling or registration of a strata plan for the Building, forthwith upon Corix’s request, cause any Person to whom the Developer transfers or otherwise disposes, whether directly or indirectly, all or any portion of its interest in the Project to complete, execute and deliver to Corix a Customer Agreement covering such Building; and
- (c) if any such strata corporation or Person referred to in subsections (a)(ii) or (b) above refuses to execute a Customer Agreement for a Building as required by this Section 7.2, forthwith pay to Corix the sum equal to the full cost (including without limitation, the capital investment) of all Infrastructure associated with the provision of Energy Services to such Building (including the applicable Energy Transfer Station and Service Connection) in order to ensure other existing and potential Customers of the NDES are not adversely impacted.

7.3 Construction Heat. The Parties acknowledge and agree that the Developer may, subject to the specific advance approval in writing of Corix (to be granted or not in its sole discretion), use Energy Services for purposes related to its ongoing construction work on the Developer Lands, in lieu of or in addition to the domestic purposes for which the Energy Services are intended. In all cases where the Developer uses Energy Services in connection with any construction or other activities on the Developer Lands that are not usual domestic applications, the terms and conditions of construction use, as set out on Schedule F, will apply in addition to the Thermal Energy Service Terms & Conditions comprising part of the Customer Agreement.

7.4 Permits. Corix will use reasonable efforts to obtain from all Government Authorities all Permits related to the provision of Energy Services. If requested to do so by Corix, the Developer will use reasonable efforts to assist Corix in obtaining such Permits.

8. ENERGY CHARGES

- 8.1 NDES Energy Charges. Subject to Section 3.6, Corix will charge each Customer the applicable Fees, commencing on Energy Services Commencement.
- 8.2 Adjustment to Fees. Subject in each instance to approval by the BCUC, Corix may adjust the Fees at any time and from time to time in accordance with the applicable Customer Agreement(s) so it earns a fair market return.
- 8.3 Recovery of Costs and Expenses through Fees. Corix will, to the extent possible, recover all costs and expenses incurred by it in connection with the Infrastructure or Energy Services, including without limitation design, inspection, construction and operation costs, Permit fees, and all federal, provincial, regional and municipal taxes (including property taxes), levies and fees, through Fees.

Corix will through its applications to BCUC seek an appropriate rate of return for its Energy Services, as determined in light of risks assumed by Corix, number of Customers and other relevant factors, which rate of return may, depending on the circumstances, exceed the standard rate of return allowed by BCUC for large utility companies.

- 8.4 Collection and Use of Data. The parties acknowledge and agree that Corix may from time to time to collect and provide to UBC data regarding the performance of the NDES on a system-wide or specific basis as UBC may reasonably request under the Infrastructure Agreement.

The Developer hereby expressly consents to the following collection and use of data:

- (a) the collection by Corix and provision to UBC of data regarding the performance of the NDES specific to the Building, for purposes relating to the administration or performance of the Infrastructure and the Infrastructure Agreement, and
- (b) the collection by Corix and provision to UBC of data regarding other aspects of the NDES, the Infrastructure or the NDES Customers, for academic research purposes only.

9. REPRESENTATIONS AND WARRANTIES

- 9.1 Representations and Warranties of the Developer. The Developer represents and warrants to Corix the following, and acknowledges that Corix is relying on such representations and warranties in entering into the transactions contemplated by this Agreement.
- (a) *Status of the Developer*. The Developer is a company duly incorporated and validly existing under the laws of the [Province of British Columbia], with full power and authority to enter into and perform all of its obligations under this Agreement.
 - (b) *Litigation*. To the best of its knowledge, the Developer is not a party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to the Developer that might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against the Developer before or by any Governmental Authority, that could affect the Developer's ability to perform its obligations under this Agreement.
 - (c) *No Breach of Agreement*. This Agreement and the performance by the Developer of its obligations does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to the Developer.

- (d) *No Conflict with Constatng Documents.* Neither the entering into of this Agreement nor the consummation of the transactions contemplated hereby will result in a breach of any of the terms or provisions of the constating documents of the Developer or of any indenture or other agreement, written or oral, to which the Developer is a party, and all necessary corporate action on the part of the Developer has been or will be taken to authorize and approve the execution and delivery of this Agreement and the performance by the Developer of its obligations.
- (e) *Resident.* The Developer is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).
- (f) *Offer to Lease.* The Offer to Lease is in full force and effect, has been prepaid in full, and the Developer knows of no breach, condition or circumstance that could affect the validity of or lead to early termination of the Offer to Lease.
- (g) *Ground Lease.* The Ground Lease is in full force and effect, has been prepaid in full, and the Developer knows of no breach, condition or circumstance that could affect the validity of or lead to early termination of the Ground Lease. The Developer is therefore the lawful lessee of the Developer Lands and has authority to enter into this Agreement.

9.2 Corix's Representations and Warranties. Corix represents and warrants to the Developer the following, and acknowledges that the Developer is relying on such representations and warranties in entering into the transactions contemplated by this Agreement.

- (a) *Status of Corix.* Corix is a company duly incorporated and validly existing under the laws of British Columbia, with full power and authority to enter into and perform all of its obligations under the Agreement.
- (b) *Litigation.* To the best of its knowledge, Corix is not a party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to Corix that might give rise to any such action, suit or legal proceeding, and, to Corix's knowledge, there are no actions, suits or proceedings pending or threatened against Corix before or by any Governmental Authority, that could affect Corix's ability to perform its obligations under this Agreement.
- (c) *No Breach of Agreement.* To its knowledge, this Agreement and the performance of the obligations of Corix under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to Corix as of the date of this Agreement.
- (d) *No Conflict with Constatng Documents.* Neither the entering into of this Agreement nor the consummation of the transactions contemplated hereby will result in a breach of any of the terms or provisions of the constating documents of Corix or of any indenture or other agreement, written or oral, to which Corix is a party, and all necessary corporate action on the part of Corix has been or will be taken to authorize and approve the execution and delivery of this Agreement and the performance by Corix of its obligations.
- (e) *Resident.* Corix is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).

10. ENVIRONMENTAL MATTERS

- 10.1 Control and Management of Site. For the purposes of applicable Environmental Laws, the Developer and UBC will be deemed to have control and management of the Developer Lands with respect to their environmental condition except as otherwise expressly provided in this Agreement.
- 10.2 Environmental Condition of the Developer Lands. The Developer represents and warrants to Corix as of the date of this Agreement that:
- (c) the Developer Lands are free of Contaminants, except in amounts that are permissible under Environmental Laws and which have been disclosed in writing to Corix;
 - (d) no part of the Developer Lands is a Contaminated Site;
 - (e) the Developer has disclosed to Corix all site investigations, assessments, audits and reports relating to the Developer Lands conducted by or on behalf of the Developer or of which the Developer has a copy; and
 - (f) there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or to the best of the Developer's knowledge, threatened, that relate to the presence or Release of Contaminants on the Developer Lands.
- 10.3 The Developer Environmental Covenants. The Developer covenants with Corix as follows:
- (a) not to use or permit the Developer Lands to be used for the sale, storage, manufacture, disposal, handling, treatment, use or any other dealing with any Contaminants, except in compliance with Environmental Laws; and
 - (b) to comply with and to continue to comply with, and at its own cost to cause the Developer Lands to comply with Environmental Laws and to use its best efforts to cause any tenants, subcontractors or other occupants or users of the Developer Lands to comply with Environmental Laws in their use and occupancy of the Developer Lands.
- 10.4 The Developer Environmental Indemnity. The Developer will release, indemnify and hold harmless Corix from any and all liabilities, actions, damages, claims (including remediation cost recovery claims), losses, costs, orders, fines, penalties and expenses (including all consulting and legal fees and expenses on a solicitor-client basis) and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Developer Lands and any affected adjacent property which may be paid by, incurred by or asserted against any member of the Corix Group arising from or in connection with:
- (a) any breach of or non-compliance by the Developer with the provisions of this Article 10 that pertain to it;
 - (b) any Release or alleged Release of any Contaminants at or from the Developer Lands related to or as a result of the presence of any pre-existing Contaminants at, on, under or in the Developer Lands, including without limitation surface and ground water at the date of this Agreement or as a result at any time of the operations of the Developer or any act or omission of the Developer or its tenants or other occupants or any person for whom it is in law responsible; or
 - (c) the presence of any Contaminants on, in or under the Developer Lands except to the extent that such presence arises from any breach or non-compliance by Corix with the provisions of this Article 10 that pertain to it.

- 10.5 Corix Environmental Covenants. Corix will not install or use in the Project Infrastructure, or on, in or under the Developer Lands any materials, equipment or apparatus the installation, use or storage of which is likely to cause the generation, accumulation or migration of any Contaminants in contravention of the terms of this Agreement and any applicable Environmental Laws. Without limiting the generality of the foregoing, Corix will in no event use the Developer Lands to dispose of, handle or treat any Contaminants in a manner in whole or in part that would violate applicable Environmental Laws and/or cause the Developer Lands, or any adjacent property to become a Contaminated Site under applicable Environmental Laws.
- 10.6 Corix Environmental Indemnity. Corix will indemnify and hold harmless the Developer Group from any and all liabilities, actions, damages, claims (including remediation cost recovery claims), losses, costs, orders, fines, penalties and expenses (including all consulting and legal fees and expenses on a solicitor-client basis) and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Developer Lands and any affected adjacent property which may be paid by, incurred by or asserted against the Developer Group arising directly and exclusively from any breach of or non-compliance by Corix with the provisions of this Article 10 that pertain to it.
- 10.7 Survival. Notwithstanding any other provision in this Agreement, the indemnities granted in this Article 10 will survive the expiry or termination of this Agreement.

11. COVENANTS OF DEVELOPER

In addition to the other obligations set out in this Agreement, the Developer covenants and agrees with Corix at all times and from time to time as follows:

- (a) Continued Existence. The Developer will maintain its status in good standing with the Registrar of Companies at all times while this Agreement remains in effect.
- (b) Assist in Recovery of Third Party Damage. The Developer will report to Corix any malicious damage or damage to the Infrastructure of which it becomes aware and will assist Corix to recover from and against third parties for such damage to the Infrastructure, to the extent Corix is not able, as if the Developer owned the Infrastructure.
- (c) Compliance with Laws. The Developer will, at its sole cost and expense, abide by and comply with all applicable Laws (including Environmental Laws) in discharging its obligations.
- (d) Compliance with Offer to Lease and Ground Lease. The Developer will at all times abide by and comply with all provisions of the Offer to Lease and the Ground Lease and will immediately give Corix notice of any breach by the Developer with any of the terms and of any change to the terms that is material to the interests of Corix.
- (e) Disclosure Statement. To the extent that the Project will comprise strata lots that are intended to be sold by the Developer, the Developer will ensure that the disclosure statement provided to the Developer's purchasers includes information regarding the NDES and discloses this Agreement, the Customer Agreement and the Statutory Right of Way.

12. INSURANCE

- 12.1 Developer Insurance. The Developer will obtain and maintain at its own expense throughout the term of this Agreement the following insurance coverage:

- (a) Comprehensive General Liability Insurance against claims for personal injury, death or property damage arising out of its operations, in amounts it deems adequate but in any event, not less than \$5 million per occurrence;
- (b) Property Insurance insuring the property of the Developer and property owned by others but for which the Developer is legally responsible, against perils normally included in a standard “all risk” policy, in an amount equal to 100% of the current replacement cost, and adjusted at least annually to reflect changes in replacement value due to inflation or other factors;
- (c) All Risks Builder’s Risk policy covering the Project against fire and other perils from time to time included in such policies affecting similar properties in British Columbia with extended or additional perils supplemental coverage as would be insured against by a prudent owner in an amount not less than 100% of the replacement cost;
- (d) boiler and machinery insurance, written on a comprehensive form, including repair and replacement coverage, in an amount not less than \$5 million per occurrence;
- (e) a standard automobile policy including standard contractual liability endorsement against claims for bodily injury, death and damage to property, in an amount of not less than \$2 million per occurrence; and
- (f) the Developer and/or the Developer’s Engineer will provide errors and omissions liability insurance for a value of not less than \$2 million in the aggregate.

12.2 Responsibility. The Developer will be responsible for the full amount of all premiums and deductibles required under Section 12.1. All policies required must be effective as at the date the Developer commences any construction and/or installation activities on the Developer Lands and must, to the extent obtainable, provide that the insurance will not be cancelled without the insurer giving at least 30 days written notice to Corix. Insurance will be purchased from reputable insurers registered and licensed to underwrite insurance in British Columbia. Where the Developer fails to comply with requirements of this Article 12, Corix may take all necessary steps to effect and maintain the required insurance coverage at the Developer’s expense.

12.3 Evidence of Insurance. The Developer will deliver or cause to be delivered to Corix evidence of all insurance policies required to be obtained and maintained by the Developer under this Article 12 and any amendments, modifications or replacements.

12.4 Corix Insurance. Corix will obtain and maintain at its own expense throughout the term of this Agreement the following insurance coverage:

- (a) Comprehensive General Liability Insurance against claims for personal injury, death or property damage, covering its operations, in an amount not less than \$5 million per occurrence;
- (b) Property Insurance insuring the Project Infrastructure against perils normally included in a standard “all risk” policy, in an amount equal to 100% of the current replacement cost of the Project Infrastructure, and adjusted at least annually to reflect changes in replacement value due to inflation or other factors;
- (c) All Risks Builder’s Risk policy covering the Project Infrastructure against fire and other perils from time to time included in such policies affecting similar properties in British Columbia with extended or additional perils supplemental coverage as would be insured against by a prudent owner in an amount not less than 100% of the replacement cost;

- (d) boiler and machinery insurance covering relevant equipment owned by Corix from time to time, written on a comprehensive form, including repair and replacement coverage, in an amount not less than \$5 million per occurrence;
- (e) a standard automobile policy including standard contractual liability endorsement against claims for bodily injury, death and damage to property, in an amount of not less than \$2 million per occurrence; and
- (f) Corix and/or its prime engineering consultant will provide errors and omissions liability insurance for a value of not less than \$2 million in the aggregate.

12.5 Responsibility. Corix will be responsible for the full amount of all premiums and deductibles required under Section 12.4. All policies required must be effective as at the date that Corix commences the Project Infrastructure Work and must, to the extent obtainable, provide that the insurance will not be cancelled without the insurer giving a least 30 days written notice to the Developer. Insurance will be purchased from reputable insurers registered and licensed to underwrite insurance in British Columbia. Where Corix fails to comply with requirements of this Section 12.5, the Developer may take all necessary steps to effect and maintain the required insurance coverage at Corix's expense.

12.6 Evidence of Insurance. Corix will deliver or cause to be delivered to the Developer evidence of all insurance policies required to be obtained and maintained by Corix under this Article 12 and any amendments, modifications or replacements.

12.7 Additional Insured. Where applicable, each Party will ensure that the other Party is an additional insured under the insurance to be obtained and maintained pursuant to Section 12.1 and Section 12.4 and in the event of a claim the insurance carried by the Party responsible for actions which give rise to such claim will be the primary insurance with respect to such claim.

13. INDEMNITY

13.1 Corix Indemnity. Without limiting any other obligation of Corix provided herein, Corix will indemnify, defend, and save harmless the Developer Group from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid by, incurred by, or asserted against the Developer Group or any one of them arising from or in connection with any negligence or wilful misconduct perpetrated by Corix or those for whom it is in law responsible.

13.2 Developer Indemnity. Without limiting any other obligation of the Developer provided herein, the Developer will indemnify, defend, and save harmless the Corix Group from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid or incurred by, or asserted against the Corix Group, arising from or in connection with any negligence or wilful misconduct perpetrated by the Developer or anyone for whom it is in law responsible.

13.3 Damages Limitation. Notwithstanding any other provision of this Agreement, in no event will either Party be liable to the other Party for any indirect or consequential loss, cost or expense, including any indirect or consequential loss of profits, revenues or other indirect or consequential economic loss and punitive damages, suffered by the other Party or its Affiliates or their respective officers, directors, shareholders, employees, contractors, agents, successors or permitted assigns.

13.4 Survival. Notwithstanding any other provision in this Agreement, the indemnities set out in this Article 13 will survive the termination or expiry of this Agreement.

14. TERMINATION

14.1 Subject to the provisions of Section 14.2 and Article 15, this Agreement and the obligations of the Parties will terminate on the date that:

- (a) the Project, including the installation of all Building Systems has been completed in accordance with this Agreement;
- (b) each Building System has been connected to the Infrastructure in accordance with Section 3.3;
- (c) all required Customer Agreements have been executed and delivered by the appropriate parties for each Building in the Project in accordance with Section 7.2; and
- (d) the Parties have otherwise carried out their respective obligations under this Agreement, except to the extent such obligations are expressly stated to survive termination of this Agreement.

14.2 Notwithstanding anything else in this Agreement to the contrary, this Agreement and the obligations of the Parties will automatically terminate if the Infrastructure Agreement terminates. If this Agreement terminates pursuant to this Section 14.2, then neither Party will have any further obligation to, or recourse against, the other Party for the subject matter of this Agreement.

15. TERMINATION FOR DEFAULT

15.1 Default. A Party (the “Defaulting Party”) will be in default under this Agreement (a “Default”) if:

- (a) it passes a resolution for its winding-up or dissolution, is adjudged bankrupt or insolvent by a court of competent jurisdiction, commences or consents to the institution of bankruptcy proceedings, proposes a compromise or an arrangement, files any petition seeking re-organization, arrangement, composition, liquidation or similar relief for itself, has a receiver or a receiver-manager appointed for its affairs, or makes a general assignment for the benefit of its creditors under any Law relating to bankruptcy, insolvency or other relief for or against debtors generally;
- (b) it is in breach of a material term, covenant, agreement, condition or obligation under this Agreement, the SRW or the Community Energy Covenant, or is in breach of multiple terms, covenants, agreements, conditions or obligations under the SRW or the Community Energy Covenant or this Agreement which in the aggregate are material, and fails to cure such default within 30 days after receipt from the non-Defaulting Party of written notice or, if such default is not capable of being cured within such 30 day notice period, fails to commence in good faith the curing of such default forthwith upon receipt from the non-Defaulting Party of written notice and to continue to diligently pursue the curing of such default until cured; or
- (c) in the case of the Developer, it:
 - (iii) fails or refuses to make to Corix any payment due under this Agreement on the date that such payment is due; or
 - (iv) is in default of any term or condition of any Permit.

In the event of a Default, the non-Defaulting Party may, at its option and without liability therefor or prejudice to any other right or remedy it may have, terminate this Agreement by (further, where applicable) written notice to the Defaulting Party.

In addition, in the event of a Developer Default, Corix may, at its option and without liability or prejudice to any other right or remedy it may have, suspend its work until the default has been fully remedied, and no such suspension or refusal will relieve the Developer from any of its obligations under this Agreement.

- 15.2 Amounts Owning. Upon termination of this Agreement under Section 14.1 or Section 15.1, the Parties will forthwith pay to each other all sums due and owing to the date of termination.
- 15.3 Reimbursement of Corix's Costs. Without limiting the generality of Section 15.2, if this Agreement is terminated by Corix pursuant to Section 15.1, the Developer will, upon request by and receipt of invoices from Corix, reimburse Corix for all of its costs and expenses (including all third party costs and expenses) incurred in connection with the Project Infrastructure Work to the date.
- 15.4 Abandonment. Upon termination of this Agreement, notwithstanding Section 4.3, Corix may, in its sole discretion, abandon and leave all or part of the Project Infrastructure, provided that the Project Infrastructure to be abandoned is safely decommissioned and does not pose or constitute any environmental hazard, and release the rights granted to Corix under this Agreement in relation thereto. Upon the release of the rights granted to Corix by this Agreement, any abandoned Project Infrastructure will belong to the owners of the lands on which the Project Infrastructure is located (except to the extent otherwise expressly agreed with an interested party under the relevant statutory right of way).
- 15.5 Survival. Upon the expiry or termination of this Agreement for any reason, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as of the expiry or termination date and all of the provisions in this Agreement relating to the obligation of either Party to account to or indemnify the other and to pay to the other any amount owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination

16. FORCE MAJEURE

- 16.1 Suspension. Subject to the other provisions of this Article 16, if either Party is unable or fails by reason of Force Majeure to perform in whole or in part any of its obligations or covenants set forth in this Agreement (except an obligation or covenant to pay), such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both Parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.
- 16.2 Definition of Force Majeure. For purposes of this Agreement, "Force Majeure" means any event or occurrence not within the control of the Party claiming Force Majeure, and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of nature, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen's or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe; any delay by or action of any Governmental Authority; and any Changes of Law. For the purposes of this Article 16, a party is deemed to have control over the actions or omissions of those Persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities.
- 16.3 Exceptions. Neither party will be entitled to the benefit of Section 16.1 under any of the following circumstances:

- (a) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;
- (b) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition and/or to resume the performance of such covenants and obligations with reasonable dispatch;
- (c) if the inability or failure was caused by lack of funds or is for any amount due; or
- (d) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the claiming Party will have given to the other Party notice to the effect that the claiming Party is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

16.4 Resumption of Obligations. As soon as possible after the Force Majeure condition is remedied or discontinued, the Party claiming Force Majeure will give notice to the other Party of such remedy, and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations either in whole or in part.

16.5 Settlement of Labour Disputes. Notwithstanding any of the provisions of this Article 16, but subject to Section 16.3, the settlement of labour disputes or industrial disturbances in which a Party is involved is entirely within the discretion of that Party, which Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of Section 16.1.

16.6 No Exemption for Payments. Force Majeure will not in any event relieve or release either Party from its obligations to make payments to the other Party under this Agreement.

17. **DISPUTE RESOLUTION**

17.1 Informal Dispute Resolution. The Parties will make a *bona fide* attempt to settle all disputes that may arise under, out of, in connection with or in relation to this Agreement by amicable negotiations and will provide frank and timely disclosure to one another of all relevant facts and information to facilitate negotiations.

17.2 Arbitration. If any dispute remains unresolved within 15 days of either Party requesting that the other Party engage in negotiations to resolve the dispute, or if the Parties otherwise agree, the dispute may be referred to and resolved by arbitration before a single arbitrator.

In the event the Parties cannot agree on the appointment of an arbitrator within five Business Days, either Party may refer the matter to the British Columbia International Commercial Arbitration Centre, or such mediation or arbitration centre as may be mutually agreed upon. The arbitration will:

- (a) to the extent possible, and with the necessary modifications as determined by the arbitrator, be administered in accordance with the Shorter Rules for Domestic Commercial Arbitration or similar rules; and
- (b) be conducted in Vancouver, British Columbia.

Notwithstanding the above, no one will be nominated to act as an arbitrator who is in any way financially interested in the business affairs of any of the Developer or Corix.

The arbitrator will issue a written award that sets forth the essential findings and conclusions on which the award is based.

If the arbitrator fails to render a decision within 30 days following the final hearing of the arbitration, either Party may terminate the arbitration and a new arbitrator will be appointed in accordance with these provisions. If the Parties are unable to agree on an arbitrator or if the appointment of an arbitrator is terminated in the manner provided for above, then any party to this Agreement will be entitled to apply to a judge of the British Columbia Supreme Court to appoint an arbitrator and the arbitrator so appointed will proceed to determine the matter *mutatis mutandis* in accordance with the provisions of this Article 17.

17.3 Arbitrator's Authority. The arbitrator will have the authority to award:

- (a) monetary damages;
- (b) interest on unpaid amounts from the date due;
- (c) specific performance; and
- (d) permanent relief.

The costs and expenses of the arbitration, but not those incurred by the Parties, will be shared equally, unless the arbitrator determines that a specific party prevailed. In such a case, the non-prevailing party will pay all costs and expenses of the arbitration, but not those of the prevailing party.

17.4 Continuation of Services. Except as otherwise expressly provided herein, each of the Parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that arises from time to time between the Parties for any matter related to this Agreement or during the resolution of any dispute in accordance with this Article 17 except where to do so would threaten public health and safety or the environment.

17.5 Injunctive Relief. Nothing in this Article 17 will preclude either Party from applying to a court of competent jurisdiction for interlocutory or interim relief.

18. GENERAL

18.1 Notices. Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the party for whom it is intended at the following address or such other address in British Columbia as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 18.1:

- (a) if to Corix:
Corix Multi-Utility Services Inc.
Suite 1160, 1188 West Georgia Street
Vancouver, British Columbia V6E 4A2

Attention: Eric van Roon
Facsimile: 604.697.6703

(b) if to the Developer:

Attention: [insert]
Facsimile: [insert]

Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by facsimile, or orally in person or by telephone (to be confirmed by facsimile), to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

18.2 Confidentiality. Each Party (the “Receiving Party”) will treat as confidential the terms of this Agreement and all Confidential Information (as defined below) of the other Party (the “Disclosing Party”) and will at all times during the term of this Agreement and for a period of two years thereafter hold the same in confidence and will not, without the prior written consent of the Disclosing Party, disclose or divulge to any Person the terms of this Agreement or any Confidential Information of the Disclosing Party, provided that nothing in this Section 18.2 will restrict or prevent any Party from making any disclosure of such terms or any Confidential Information:

- (a) that is reasonably necessary or desirable for the Receiving Party to carry out and give full effect to the terms, conditions and intent of this Agreement;
- (b) that is required by any Law or Governmental Authority;
- (c) to an Affiliate of the Receiving Party or to the directors, officers or employees of such Party or its Affiliates;
- (d) to the professional advisors of the Receiving Party;
- (e) that the Receiving Party, in its sole discretion determines is required, prudent or necessary to be disclosed by that Party in connection with any prospectus filing, public securities offering or other applicable securities matters or laws; and
- (f) that is already in the public domain, that was in the possession of the Receiving Party before its receipt of the information from the Disclosing Party or that was disclosed to the Receiving Party by a third party free of any obligation of confidentiality.

For the purposes of this Section 18.2, “Confidential Information” means proprietary information of the Disclosing Party such as data, plans, drawings, manuals, or specifications which have been provided by the Disclosing Party or its employees, contractors, agents, subcontractors or Affiliates to the Receiving Party pursuant to this Agreement, or proprietary information conceived or developed by or for the Disclosing Party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure, but excluding information developed or conceived by the Receiving Party without using the Confidential Information of the Disclosing Party.

18.3 No Waiver. No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults, whether of a like or different character.

18.4 Enurement. This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

- 18.5 Entire Agreement. This Agreement contains the whole agreement between the Parties for the subject matter hereof and supersedes any pre-existing written or oral agreement or understanding, express or implied, between the Parties.
- 18.6 Further Assurances. Each Party will execute and deliver all such further documents and do all such further things as may be reasonably requested by the other Party to give full effect to the intent and meaning of this Agreement.
- 18.7 Counterparts and Facsimile. This Agreement may be executed in counterparts and by facsimile with the same effect as if the Parties had signed the same original document. All counterparts will be construed together and will constitute one and the same agreement and, if signed by facsimile, each Party will promptly dispatch an original to the other Party.
- 18.8 Assignment. The Developer may not assign this Agreement or any of its rights or obligations without the prior written consent of Corix, such consent not to be unreasonably withheld. Corix may assign this Agreement or any of its rights or obligations (including, without limitation, by way of the sale of the majority of its shares or business or its material assets or by way of an amalgamation, merger or other corporate reorganization) to any of its Affiliates or to any other Person without the consent of the Developer, provided such Affiliate or Person is duly qualified to carry out this Agreement and agrees to be bound by the terms and conditions of this Agreement. Forthwith upon such assignment, Corix will be released from its obligations and responsibilities.
- 18.9 Relationship. Nothing in this Agreement will create a partnership or joint venture, or a relationship of landlord and tenant between the Developer and Corix.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

[DEVELOPER]

Per: _____

Name:

Title:

CORIX MULTI-UTILITY SERVICES INC.

Per: _____

Name:

Title:

SCHEDULE A
FORM OF CUSTOMER SERVICE AGREEMENT

See attached.

SCHEDULE B
DESIGN GUIDE FOR COMPATIBILITY WITH DISTRICT ENERGY
Current as of the date of this Agreement - Attached

SCHEDULE C
FORM OF FINAL THERMAL ENERGY DELIVERY PARAMETERS

In accordance with Sections 3.1 and 3.2 of the Corix UBC NDES Servicing Agreement (the “Agreement”) dated the [INSERT] between CORIX MULTI-UTILITY SERVICES INC. (“Corix”) and [NAME OF DEVELOPER] (the “Developer”), Corix and the Developer wish to record their mutual agreement that:

- (a) the design, construction and operation parameters for the Building System will be as provided in the table below;
- (b) the location of the Corix-owned Energy Transfer Station in the Building and the location of the Corix-owned Service Connection routing on the Developer Lands will each be as shown on the attached drawing [INSERT REFERENCE]; and
- (c) the Target Date as defined in the Agreement is [INSERT].

<u>Design Parameters</u>	<u>Space Heating</u>	<u>Domestic Hot Water</u>
Building System required energy loads (at peak design conditions) (kW)	[INSERT]	[INSERT]
Building System to be designed to deliver maximum return temperatures on the Building System side of the heat exchanger(s) at peak design conditions above (°C)	[INSERT]	[INSERT]
Infrastructure servicing the Developer Lands to be designed to deliver maximum supply temperatures on the Building System side of the heat exchanger(s) at peak design conditions above (°C)	[INSERT]	[INSERT]
Building System side space heating Energy Transfer Station temperature reset schedule	[INSERT]°C at [INSERT]°C outdoor air temperature (OAT) and [INSERT]°C at [INSERT] °C (OAT)	N/A

Any capitalized terms used herein which are not otherwise defined will have the meanings given to them in the Agreement.

CORIX MULTI-UTILITY SERVICES INC.

[DEVELOPER]

Per: _____

Per: _____

Name:

Name:

Title:

Title:

Date:

Date:

Approved by **[DEVELOPER'S ENGINEER]**

Per: _____

Name:

Title:

Date:

SCHEDULE D
FORM OF STATUTORY RIGHT OF WAY

See attached.

SCHEDULE E
DEVELOPER-PROVIDED ENERGY TRANSFER STATION REQUIREMENTS

SCHEDULE F
SUPPLEMENTARY TERMS AND CONDITIONS OF CONSTRUCTION USE

Upon use by the Developer of Energy Services for purposes related to ongoing construction work on the Developer Lands, in accordance with Section 7.3, the following terms apply in addition to the Thermal Energy Service Terms & Conditions comprising part of the Customer Agreement (Schedule A).

Not applicable.