

STANDARD CONDITIONS OF CONTRACT

FOR THE DESIGN AND BUILD OF

NATIONAL GAS FACILITIES



**National Gas Transmission Plc
National Grid House
Warwick Technology Park
Gallows Hill
Warwick
CV34 6DA**

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1. DEFINITIONS

1.1. For the purposes of the Agreement, except as is otherwise expressly provided herein or unless the context otherwise requires, the terms defined in this Clause shall have the following meanings:-

“Acceleration” means acceleration of the Works to achieve Substantial Completion prior to the Date for Substantial Completion, as the case may be;

“Acceptance” has the meaning given in Clause 2.1;

“Adjudicator” means the person agreed between the Parties as such or, in the absence of such agreement, the person appointed as such by the President for the time being of the Institution of Civil Engineers;

“Affiliate” means any holding company or subsidiary of a Party or any company which is a subsidiary of any holding company of a Party and the expression “holding company” and “subsidiary” has the meaning ascribed by Section 1159 of the Companies Act 2006 (as amended);

“Agreement” means

- (i) the Gas Construction Agreement as accepted by the Company (including the Schedules thereto);
- (ii) these Standard Conditions of Contract (including the annexes thereto);
- (iii) the Full Connection Offer;
- (iv) any documents expressly referred to in the Gas Construction Agreement (and its attachments), the Standard Conditions of Contract (and its attachments) and the Full Connection Offer (and its attachments),

all of which shall be read as one document;

“Application” has the meaning given in the Gas Construction Agreement;

“Arbitrator” means the person agreed between the Parties as such or, in the absence of such agreement, the person appointed as such by the President for the time being of the Institution of Civil Engineers;

“Asset Owner” means the owner of all or any part of the Company Facilities as further referred to in Clause 8.3 of this Agreement;

“CV” means the calorific value of the gas measured under metric standard conditions and expressed in mega joules per cubic metre;

“Commissioning” means National Gas bringing the National Gas Facilities (to the isolation

valve immediately prior to the Company's System) up to a minimum pressure of 3 barg;

"Company" means the person or entity which enters in to the Agreement with National Gas, and its permitted successors and assigns;

"Company Facilities": means the Company's System and the Gas Plant;

"Company Provided Facilities" means those facilities (if any), whether of a temporary or permanent nature, which the Company is to provide to National Gas pursuant to the Agreement, as may be more particularly described in Annex 1 of these Standard Conditions of Contract;

"Company Specific Obligations" means the obligations set out in Annex 1 of these Standard Conditions of Contract;

"Company's System" means those facilities (other than any part of the National Gas System), whether or not belonging or to belong to the Company, which are connected to the National Gas Facilities and through which Natural Gas is intended to flow to and/or from the National Gas System, from and/or to the Gas Plant including but not limited to any gas pipeline, metering and pressure reduction apparatus, as the case may be;

"Compensation Event" has the meaning given in Clause 11;

"Competent Authority" means the Gas and Electricity Markets Authority (as such body is amended or replaced from time to time) or any local, national or supra-national agency, authority, department, inspectorate, minister, official, court, tribunal or public or statutory person (whether autonomous or not) of the United Kingdom (or the government thereof) which has jurisdiction over National Gas or the Company or the Agreement;

"Connection" means the physical connection between the Company's System and the National Gas System at the Point of Connection;

"Connection Offer Modification Application" has the meaning given in the Uniform Network Code;

"Consequential Loss" means:

- (a) all losses, damages, costs and expenses (including but not limited to legal expenses) incurred in respect of failure to take, receive or deliver gas arising out of or in connection with the Agreement; and
- (a) indirect or special loss howsoever caused arising out of or in connection with the Agreement and whether or not foreseeable at the date of Acceptance; and
- (b) loss of use, revenue, profit, contract and production), increased cost of working and business interruption howsoever caused arising out of or in connection with the

Agreement and whether or not foreseeable at the date of Acceptance,

howsoever caused and irrespective of whether caused by the negligence or breach of duty (whether statutory or otherwise) of National Gas or the Company or by any other tortious act or omission or breach of the Agreement by National Gas or the Company;

“Date for Substantial Completion” means the date for the Substantial Completion of the Works, being the date identified as such in the Full Connection Offer or such later date as may be established pursuant to Clause 5.1;

“Dispute” means any significant difference of view which has not been resolved by discussion between the Parties as to the interpretation or performance of the Agreement or any of its terms and conditions or arising under or in connection with the Agreement;

“Due Date” has the meaning given in Clause 7.4;

“Engineer” means the engineer appointed from time to time by National Gas and notified to the Company, to act as Engineer for the purposes of the Agreement;

“Force Majeure” has the meaning given in Clause 9;

“Full Connection Offer” means the information provided to the Company in relation to the proposed connection in accordance with the Network Code;

“Gas Construction Agreement” means the agreement for gas connection entered into between National Gas and the Company which is subject to these Standard Conditions of Contract;

“Gas Plant” has the meaning given in the Company's Application;

“Information Cut Off Date” has the meaning given in the Gas Construction Agreement;

“Intellectual Property” means any patent, registered design, copyright, design right, database right, topography right, trade mark, service mark, application to register any of the aforementioned rights, trade secret, right in unpatented know-how, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world;

“MCMD” means million standard cubic metres per day;

“MCMm” means million standard cubic metres per minute per minute;

“National Gas” means National Gas Transmission plc (Company No. 02006000) whose registered office is situated at National Grid House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA and its permitted successors and assigns;

“National Gas Compound” has the meaning given in paragraph 5.1(a) of Annex 1 of these Standard Conditions of Contract;

“**National Gas Drawing**” has the meaning given in the Full Connection Offer;

“**National Gas Facilities**” means the equipment located at the Point of Connection and owned and operated by National Gas which provide a physical connection between the Company’s System and the NTS;

“**National Grid Internal Works**” means [xxxxx]

“**National Gas Licence**” means the licence granted, or treated as granted, to National Gas from time to time under Section 7(2) of the Gas Act 1986 as amended, in respect of the NTS;

“**National Gas Specific Obligations**” means the obligations set out in Annex 2 of these Standard Conditions of Contract;

“**National Gas System**” means the NTS and shall (for the avoidance of doubt) include the National Gas Facilities;

“**National Gas Telemetry Testing**” means the completion to National Gas’s reasonable satisfaction by National Gas of all necessary functionality testing of:-

- (a) communication of the Signals from the Company’s System and the National Gas Facilities to the relevant National Gas control centre via National Gas’s telecoms and data interface and data interface housing(s); and
- (b) the satisfactory remote operation of the National Gas remotely operated valve at or near the Point of Connection;

“**Natural Gas**” means any hydrocarbons or mixture of hydrocarbons and other gases consisting primarily of methane which at a temperature of 15 °C and an absolute pressure of 1.01325 bar are or is predominantly in the gaseous state;

“**Network Agreement**” means a Network Entry Agreement, a Network Exit Agreement, a Storage Connection Agreement, a Supplemental Agreement, an Interconnector Agreement or a CSEP Network Exit Agreement (as the case may be), as defined in the Network Code;

“**Network Code**” means the uniform network code prepared by National Gas and other gas transporters pursuant to their respective gas transporters, as modified from time to time in accordance with the terms set out in the uniform network code;

“**NTS**” means National Gas’s national transmission system;

“**Party**” means National Gas of the one part and the Company of the other part and “**Parties**” shall be construed accordingly;

“**Point of Connection**” means the point at which the Company’s System is connected to the National Gas System;

“Protected Information” means any information relating to the affairs of National Gas or the Company gained pursuant to or in the course of the negotiation, implementation or performance of the Agreement and shall, for the avoidance of doubt, include but not be limited to the Full Connection Offer;

“Reasonable and Prudent Operator” and **“RPO”** means a person seeking in good faith to perform its contractual obligations, and in so doing and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator complying with applicable law engaged in the same type of undertaking in the same or similar circumstances and conditions, and any reference to the standard of a Reasonable and Prudent Operator shall be construed accordingly;

“Signals” has the meaning given in the Full Connection Offer;

“Subcontract” means a contract between National Gas and a Subcontractor;

“Subcontractor” means any person or corporate body who has a contract with National Gas to carry out and/or provide all or any part of the Works, but who shall not be an agent of National Gas for the purposes of the Agreement nor have any rights or obligations under the Agreement;

“Substantial Completion” means that the Works shall be completed as demonstrated by successful Commissioning and (where required) National Gas Telemetry Testing;

“Validation” means National Gas bringing the National Gas Facilities up to the relevant NTS working pressure prevailing on that day in conjunction with the Company bringing up the Company’s System to the relevant NTS working pressure prevailing on that day, all in accordance with the Institution of Gas Engineers and Managers Recommendations IGEM/TD/1 and IGE/TD/13;

“Validation Conditions” means the requirements listed in paragraph 8 of Annex 1 of these Standard Conditions of Contract;

“Weather Data” means historical weather data provided by the Met Office in respect of the Weather Measurement Location;

“Weather Measurement” means a measurement, for each calendar month, for the following:-

- (a) the cumulative rainfall in millimetres (mm);
- (b) the number of days with rainfall of more than five millimetres (5mm);
- (c) the number of days with a minimum air temperature less than zero degrees Celsius (0°C); and
- (d) the number of days with snow lying at 09:00 hours GMT;

“Weather Measurement Location” has the meaning given in the Gas Construction Agreement;

“Working Day” means a day (not being a Saturday or Sunday) on which the clearing banks in the city of London are normally open for business;

“Works” means the design, construction, commissioning and validation of the National Gas Facilities, as more particularly set out in the Full Connection Offer;

“Works Actual Cost” means the total of:-

- (a) the gross amount (ignoring any amounts of retention) certified or re-certified (as the case may be) under the relevant Subcontracts as being payable by National Grid to Subcontractors in respect of the Works (including (for the avoidance of doubt) but not limited to any amounts payable in respect of any Compensation Event);
- (b) the amounts payable to any third parties (including but not limited to any amounts payable in respect of easements or other land rights) in respect of the Works including (for the avoidance of doubt) but not limited to any amounts payable in respect of any Compensation Event); and
- (c) any amounts chargeable by National Grid for National Grid Internal Works that relate to the Works including (for the avoidance of doubt) but not limited to any amounts payable in respect of any Compensation Event) in line with National Grid’s then current policy;

“Works Commencement Date” means the earlier of:-

- (a) the date falling thirty (30) calendar days after the date of the Agreement; or
- (b) such date as the Company may notify to National Gas after the date of the Agreement PROVIDED ALWAYS that the Company shall give National Gas no less than seven (7) calendar days’ (such period to include not less than five (5) Working Days) prior written notice of such date;

“Works Estimate” means National Gas’s estimate (as set out in Schedule 1 of the Gas Construction Agreement) of the total sum for undertaking the Works, such sum being made up of:-

- (a) an estimated sum in respect of National Gas Internal Works, and
- (b) an estimated sum in respect of the remainder of the Works;

as such sum may be amended pursuant to Clause 11;

“Works Rebate” has the meaning given in Clause 4.7;

“**Works Price**” means the Works Actual Cost minus the Works Rebate; and

“**Works Price Paid To Date**” means the amount paid by the Company pursuant to Clause 7.2 prior to the date in question.

1.2. References in the Agreement to Clauses are to Clauses of these Standard Conditions of Contract, except where otherwise stated.

1.3. Any reference to statutes, statutory instruments, codes of practice, standards or National Gas documents in these clauses or the Agreement are intended to refer to current statutes, statutory instruments, codes of practice, standards or National Gas documents as may be amended, extended, re-enacted or replaced from time to time.

1.4. Words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and neuter and vice versa.

1.5. In the event of an inconsistency between the various provisions of the Agreement (including any documents incorporated herein by reference) the inconsistency shall be resolved by giving such provisions and documents the following order of precedence:

- (a) the Clauses of the Gas Construction Agreement;
- (b) Schedules 2 and 3 to the Gas Construction Agreement;
- (c) the Clauses of these Standard Conditions of Contract;
- (d) the Full Connection Offer; and
- (e) any other document forming part of the Agreement.

2. ACCEPTANCE

2.1. The formation of the Agreement (“**Acceptance**”) shall take effect upon both Parties signing the Agreement.

3. THE COMPANY’S OBLIGATIONS

3.1. The Company, in respect of the Works, and in accordance with the terms and conditions of the Agreement:-

- (a) shall make or procure the making of all payments due under the Agreement in accordance with the provisions set out in the Agreement. Any information so provided shall be deemed at all times to be subject to the provisions of Clause 13;
- (b) The Company acknowledges and agrees that the Works Estimate (as set out in the Gas Connection Agreement) and the Date for Substantial Completion

(as set out in the Gas Connection Agreement) have been specified on the basis of the information provided by the Company to National Grid in the Application. The Company further acknowledges and agrees that any information provided to National Grid after such date has, irrespective of the date of the provision of such information, not been considered by National Grid in preparing the Full Connection Offer and in arriving at the Works Estimate and the Date for Substantial Completion. Any information provided to National Grid by the Company after the Information Cut-off Date shall be a Compensation Event in accordance with Clause 11;

- (c) shall not unreasonably interfere with or restrict the carrying out of all or any part of the Works;
- (d) shall comply with the Company's Specific Obligations by the dates (if any) specified in the Agreement for doing so or, where no date is specified, without undue delay;
- (e) shall, as and from the Works Commencement Date until completion of the Works, provide free, safe and unrestricted access and egress for National Gas and its contractors at all times (subject to reasonable site rules and regulations) to and from the Company Provided Facilities and any other area(s) within the control of the Company, its agents, contractors and sub-contractors in which the Works or any part thereof are to be carried out;
- (f) shall comply with all relevant legislation in the performance of the Company's obligations under the Agreement;
- (g) shall not commence any works in the vicinity of the National Gas System before, during or after the Works without formal written consent from National Gas in accordance with National Gas specification T/SP/SSW22 for "Safe Working In The Vicinity Of Pipelines and Associated Installations Operating Above 7 barg" (as amended from time to time) (a copy of which the Company acknowledges it has received) and without having first provided National Gas with risk assessments in respect of the proposed works; and
- (h) acknowledges the importance of maintaining the integrity, safety and security of the National Gas System, and the Company confirms that it (and its employees, agents and sub-contractors) shall not do any act or omission which may cause harm to the National Gas System or jeopardise or threaten to jeopardise any proprietary rights and interests which National Gas has from time to time in the routes and land through which the National Gas System passes; and

- (i) shall, subject to the Company's Specific Obligations, make the Connection.

3.3 Where the Full Connection Offer provides options in respect of any or all of the following matters:-

- (a) the proposed Point of Connection;
- (b) the nature of, extent of and/or method of performing the Works; or
- (c) the Date of Substantial Completion;

then the Company shall notify National Gas in writing within five (5) Working Days of the date of this Agreement of the option(s) it wishes to adopt. The option(s) so adopted shall then be deemed to be part of the Works under the Agreement, and (for the avoidance of doubt) the option(s) not so adopted shall be deemed not to be part of the under the Agreement. Any failure by the Company to comply with the foregoing shall entitle National Gas to terminate the Agreement in accordance with the provisions of Clause 10.1(d).

4. NATIONAL GAS'S OBLIGATIONS

4.1. National Gas shall, acting as an RPO and in accordance with the terms and conditions of the Agreement:-

- (a) carry out the Works;
- (b) comply with the National Gas Specific Obligations; and
- (c) comply with all relevant legislation including the conditions of the National Gas Licence in performance of all National Gas's obligations under the Agreement.

4.2. Nothing in the Agreement shall obligate National Gas to confer any right or entitlement on the Company or any other person to offtake gas from or input gas to or have otherwise gas transported through the National Gas System and any such right or entitlement shall be the subject of a separate agreement or separate agreements.

4.3. Nothing in the Agreement shall obligate National Gas to commence the Works until:-

- (a) the Works Commencement Date, and
- (b) the Company has complied with all of its obligations under the Agreement arising prior to the Works Commencement Date.

4.4. The Parties agree that National Gas shall be the "principal contractor" and the "principal designer" for the purposes of the Works in accordance with the Construction (Design and Management) Regulations 20015.

- 4.5. National Gas shall achieve Substantial Completion of the Works by the Date for Substantial Completion.
- 4.6. The date on which Substantial Completion of the Works is achieved shall be certified by the Engineer.
- 4.7. If National Gas fails to achieve Substantial Completion of the Works by the Date for Substantial Completion, National Gas's liability shall be zero decimal one six six six percent (0.1666%) of the Works Estimate per day of actual delay (the "**Works Rebate**") provided that National Gas's liability hereunder shall not under any circumstances exceed in aggregate an amount equal to five percent (5%) of the Works Estimate and provided further that National Gas (and its contractors, agents and employees) is permitted access to the Company Provided Facilities at all times to perform the Works. A day for the purposes of this Clause 4.7 shall mean a period of twenty-four (24) hours commencing at midnight.

5. THE COMPANY'S SYSTEM AND GAS PLANT

5.1. General

The Company shall install an isolation valve as part of the Company's System as close as reasonably practicable to the Point of Connection

5.2. Measurement System Specification

- (a) The quality of all gas tendered for delivery to the National Gas System and the quantity as both volume and energy of all gas offtaken from or tendered for delivery to the National Gas System shall be measured.
- (b) The measurement system shall be designed, installed, commissioned, validated and operated in accordance with the requirements of T/SP/ME1 and all standards referred to therein, including but not limited to BS EN 1776 and IGE/GM/1 and IGE/GM/4.
- (c) For the purposes of required measurement uncertainty, the measurement systems shall be considered to be within the scope of T/SP/ME1.
- (d) For the avoidance of doubt, any reference to measurement uncertainty shall mean measurement without bias and with an uncertainty better than the stated uncertainty at the ninety five percent (95%) confidence level. This shall be demonstrated to ISO 5168 standards required by TSP/ME1.

- (e) A temporary commissioning meter for measurement of gas flows during commissioning of the Company's System and/or Gas Plant is acceptable provided the uncertainty on energy flowrate meets the above criteria.

5.3. Flow Computation.

The Company shall provide one flow computer per meter stream. The station flow computer information is acceptable provided all points of the totalisation are proved at validation of the metering system.

5.4. Fuel Gas Metering.

- (a) Where any fuel gas is to be offtaken between the Connection and the primary measurement system (i.e. gas for pre-heat) such fuel gas must be measured separately from the main gas flow. Fuel gas meters shall comply with the requirements set out in Clause 5.6, unless such meters fall within the scope of the Gas (Meter) Regulations 1983, in which case the Regulations shall apply.
- (b) The primary measurement system shall take account of any fuel gas offtaken between the primary measurement installation and the Gas Plant to ensure that all flows are only accounted for once.

5.5. Calorific Value Determination.

- (a) The Company warrants that under Regulation 2, paragraphs (3) and (4), of the Gas (Calculation of Thermal Energy) Regulations 1996, that the shipper/consumer has agreed to use equipment for the determination of calorific value (CV) specific to a premises and use the CV so determined for calculating the energy conveyed. Such equipment shall form part of the measurement system. Calorific value is required in the calculation of energy flowrate.
- (b) For clarity any statement regarding the accuracy of CV measurement means the uncertainty of measurement with the apparatus operating without bias.

5.6. Gas Quality

Where the Company's System and/or Gas Plant tenders gas for delivery to the National Gas System the gas quality measurement system shall follow, where applicable, international, national or industry standards that include, without limitation, those standards referenced in Section 6.4 ("Gas Quality Measurement") of T/SP/ME1 ("Specification for Gas Transporter's Requirements for Gas Measurement Systems connected to the National Gas Network") and shall determine the gas contents and characteristics agreed between both parties.

5.7. Communications Interface.

- (a) The Company shall provide the Signals to National Gas at the data and telecoms interface housing within the National Gas Compound. The Company shall transmit the Signals to National Gas by a data link.
- (b) The Signals will be passed from the Company's measurement facility to National Gas using RS485 unless otherwise agreed with National Gas. The preferred mode of protocol for National Gas is Modbus RTU.

5.8. Reconciliation Data

- (a) All metering errors will be documented in a mis-measurement report and the reconciliation of the metering errors will be in accordance with reconciliation procedures that will be agreed with National Gas.
- (b) The reconciliation data will be required by National Gas for reconstruction of the flowrate should a metering fault occur. It will contain all live field Signals for the metering system as given in T/SP/ME1.
- (c) Reconciliation data shall be held by the Company and made available to National Gas if required. The above Signals shall be logged at a period not exceeding 30 minutes to allow for re-calculation of the volume and energy flows and stored for six (6) months or from the last validation whichever is the longest.

6. EXTENSIONS OF TIME

- 6.1. The Date for Substantial Completion may be extended by a Compensation Event in accordance with Clause 11.
- 6.2. Where National Gas has given notice (in accordance with Clause 11) of a Compensation Event arising which may lead to a delay, it shall thereafter comply with all reasonable instructions which the Company shall give in order to overcome or minimise any actual or anticipated delay. Such compliance shall of itself constitute a Compensation Event pursuant to Clause 11.

7. PAYMENT

- 7.1. In consideration of the Works, the Company shall pay National Gas the Works Price.
- 7.2. National Gas shall invoice the Company in respect of the Works Price as follows:-
 - (a) the percentage(s) of the Works Estimate on or after the date(s) specified in the Gas Construction Agreement; and

- (b) in respect of a Compensation Event, at any time following implementation of the Compensation Event;

provided that National Gas may (in its absolute discretion) elect not to issue an invoice in respect of a Compensation Event but instead to recover the sums due via the statement and reconciliation referred to in Clause 7.3.

Any invoice issued in respect of a Compensation Event shall be accompanied by such supporting information as may be reasonably required by the Company

- 7.3. Within thirty (30) calendar days of (a) National Gas receiving a final invoice from all Subcontractors and/or the parties to whom payment is to be made in respect of the Works, or (b) the final determination of any dispute between National Gas and one or more of its Subcontractors in respect of the Works, or (c) as soon as reasonably practicable following a termination of the Agreement to which Clause 10.3 applies, National Gas shall provide a statement to the Company showing the Works Price. Such a statement shall be supported by:-

- (a) the certificate(s) issued by National Gas to any Subcontractor under its Subcontract for the main part of the Works;
- (b) a schedule of all Compensation Events that have occurred during the Works;
- (c) any third party invoices for those parts of the Works not included in any Subcontract for the main part of the Works; and
- (d) a list (by job title) of the hours incurred by National Gas personnel (and the applicable hourly charge out rate) in respect of the National Gas Internal Works.

Where the Works Price is greater than the Works Price Paid To Date, the statement shall be accompanied by an invoice from National Gas in respect of the amount by which the Works Price exceeds the Works Price Paid To Date.

Where the Works Price is less than the Works Price Paid To Date, National Gas shall refund (within thirty (30) Working Days of the date of the statement or the date of receiving the Company's relevant bank account details, whichever is the later) the amount by which the Works Price Paid To Date exceeds the Works Price, and the provisions of Clause 7.6 shall apply *mutatis mutandis* to such a refund.

- 7.4. Payment shall be made by the Company in pounds sterling free from any right of set-off, counterclaim or deduction by direct bank transfer or equivalent instantaneous transfer of funds within:-

- (a) thirty (30) Working Days of receipt of each invoice issued pursuant to Clause

7.2(a);

- (b) ten (10) Working Days of receipt of any other invoice issued pursuant to this Agreement;

(in each case, the “**Due Date**”) and (to the extent permitted by law) free from any right of set-off, counterclaim, deduction, retention, reservation or withholding in respect of tax PROVIDED ALWAYS that in the event that any payment is subject to deduction, retention or withholding the Company shall forthwith pay to National Gas such further amount as is necessary to ensure that National Gas receives as cleared funds an amount equivalent to the amount which would have been received if no deduction, retention or withholding had been made.

- 7.5. The Company shall pay, upon presentation of proper VAT invoices, all VAT charges properly payable in connection with the Works.
- 7.6. Any amounts reasonably and properly incurred becoming due under the Agreement shall bear interest (payable by the Company) from the Due Date at an annual rate of three percent (3%) per annum above the Barclays Bank plc base rate in force from time to time, compounded annually, until the date of payment. The Parties agree that the provisions of this Clause 7.6 constitute a substantial remedy for late payment of any sum due under the Agreement. The Parties further agree that the provisions of the Late Payment of Commercial Debts (Interest) Act 1998, and any orders or regulations made pursuant thereto, as to rates of interest or credit periods shall (insofar as is possible) not apply to the Agreement.
- 7.7. In the event any amount properly invoiced remains unpaid after the Due Date, National Gas may thereafter, upon giving not less than seven (7) calendar days’ (such period to include not less than five (5) Working Days) prior written notice and without prejudice to any other of its termination or remedial rights, suspend work on the Works pending receipt of payment due. Any such suspension shall constitute a Compensation Event pursuant to Clause 11.
- 7.8. Invoices, and the statements referred to in Clause 7.3 above, shall be sent to the address specified in the Agreement, or such other address as the Company may from time to time notify to National Gas.

8. LIABILITY AND INSURANCE

- 8.1. Without prejudice to Clause 4.7 and Clause 8.4, neither Party shall be liable to the other for any Consequential Loss, howsoever caused and whether arising in contract, tort (including in negligence) or otherwise and whether foreseeable or not.

- 8.2. Without prejudice to Clause 8.1 and 8.4, the maximum aggregate liability of National Grid under the Agreement to the Company whether in contract, or tort (including in negligence) or otherwise for any loss or damage suffered by the Company to the extent caused by National Grid or as a result of any breach of contract or negligence of National Grid (or of its directors, officers, agents or employees or its contractors) shall be limited to one million pounds (£1,000,000). The Company shall save, hold harmless and indemnify National Grid from and against any loss or damage suffered by the Company arising out of or relating to the Agreement howsoever arising and notwithstanding any breach of contract, negligence or breach of duty (whether statutory or otherwise) of National Grid, its directors, agents, officers or employees or its contractors to the extent that such loss or damage exceeds one million pounds (£1,000,000).
- 8.3. To the extent that the owner ("**Asset Owner**") of all or any part of the Company Facilities is a person other than the Company, then (without prejudice to Clause 8.1) any liability of National Gas to the Asset Owner whether in contract, or tort (including in negligence) or otherwise for any loss or damage suffered by the Asset Owner to the extent caused by National Gas or as a result of any breach of contract or negligence of National Gas (or of its agents or employees) shall be included in the cap on liability referred to in Clause 8.2. The Company shall save, hold harmless and indemnify National Gas from and against any loss or damage suffered by the Asset Owner arising out of or relating to the Agreement howsoever arising and notwithstanding any breach of contract, negligence or breach of duty (whether statutory or otherwise) of National Gas, its directors, officers or employees or its contractors to the extent that such loss or damage, when aggregated with any loss or damage of the Company referred to in Clause 8.2, exceeds one million pounds (£1,000,000).
- 8.4. Nothing in this Clause 8 shall limit or exclude the liability of either Party in respect of any death or personal injury caused by the negligence of that Party, its agents or employees or to any extent not permitted by law.
- 8.5. Any detailed design carried out by National Gas pursuant to the Agreement is carried out solely for the purpose of allowing National Gas to perform its obligations under the Agreement. Where the Company requests that the Works be amended so as not to comprise all elements of works which have been the subject of detailed design, National Gas shall not be liable for any loss or damage sustained or incurred by the Company or any third party to whom the Company discloses all or part of such detailed design (whether such disclosure is permitted or not pursuant to the terms of the Agreement) as a result of the Company or such third party relying on that detailed design that is not comprised in the Works. The Company shall hold harmless and indemnify National Gas in respect of any claim made against National Gas by any such third party to whom the Company discloses

all or part of such detailed design (whether such disclosure is permitted or not pursuant to the terms of the Agreement) arising out of or relating to such detailed design.

- 8.6. The Company acknowledges that the maximum level of the Works Rebate has been calculated on the basis that the liability of National Gas will be limited in accordance with this Clause 8. The Company may by written notice request National Gas to agree a higher limit of liability provided that insurance cover can be obtained therefor and that such request may result in an increase to the Works Estimate. The request and any agreement by National Gas thereto shall be treated as an amendment pursuant to Clause 21.2.
- 8.7. Each Party shall also effect and maintain employer's liability insurance for a minimum limit of five million pounds sterling (£5,000,000) per occurrence or series of occurrences arising from any one event or for a higher minimum limit as required to comply with current legislation.
- 8.8. Without prejudice to Clauses 8.1 to 8.5, National Grid shall effect or cause one of its Subcontractor to effect (in the names of National Grid and its Subcontractors) a single policy of insurance which subject to its terms and conditions and other than any risks excluded from the terms of the policy will provide insurance cover relating to the design (other than design carried out as part of the works undertaken to produce the Full Connection Offer), supply, delivery, construction, erection and/or setting to work, testing, Commissioning and Validation of the National Grid Facilities together with temporary works and associated materials and plant for incorporation in the National Grid Facilities, to the full replacement value thereof against loss or damage thereto. The said policy shall remain in force from the Works Commencement Date, or the date on which the activities referred to above commence if later, until a date no earlier than (i) Validation or (ii) where National Grid is not obliged (pursuant to the Agreement) to commence Validation under the Agreement, the date twelve (12) months following the date of Substantial Completion (whichever is the earlier). National Grid shall use all reasonable endeavours to procure that:
- (a) the policy contains a waiver of subrogation rights against the Company or any of its sub-contractors for work carried out in connection with the Agreement; and
 - (b) the Company is notified to the relevant insurer on the said policy.
- 8.9. The Company shall effect a material damage policy of insurance which subject to its terms and conditions and other than any risks excluded from the terms of the policy will provide insurance cover relating to the design, supply, delivery, construction, erection and/or setting to work, testing and commissioning of the Company's System and the Gas Plant together with temporary works and associated materials and plant for incorporation into the Company's System and the Gas Plant, to the full replacement value thereof against

loss or damage thereto. The said policy shall remain in force from the Works Commencement Date, or the date on which the activities referred to above commence if later, until a date no earlier than (i) Validation or (ii) where National Gas is not obliged (pursuant to the Agreement) to commence Validation under the Agreement, the date twelve (12) months following the date of Substantial Completion (whichever is the earlier). The Company shall procure that:

- (a) the policy contains a waiver of subrogation rights against National Gas or any of its sub-contractors for work carried out under the Agreement; and
- (b) National Gas is notified to the relevant insurer on the said policy.

8.10. Each of National Grid and the Company shall maintain for the period from the Works Commencement Date until a date no earlier than (i) Validation or (ii) where National Grid is not obliged (pursuant to the Agreement) to commence Validation under the Agreement, the date twelve (12) months following the date of Substantial Completion (whichever is the earlier) , public liability cover in an amount of not less than ten million pounds sterling (£10,000,000) for any one occurrence or series of occurrences arising from any one event against death and personal injury and loss or damage to property (other than in the case of National Grid the property insured pursuant to Clause 8.8 above and in the case of the Company the property insured pursuant to Clause 8.9 above). Each Party shall provide to the other proof that such Party has, in accordance with this clause, adequate insurance cover within seven (7) calendar days of the Works Commencement Date together with evidence of payment of the premiums as soon as reasonably practicable after these payments have been made.

8.11. The Company shall save, hold harmless and indemnify National Gas against any losses, charges, liabilities, claims, damages, fines, penalties, costs or expenses (including but not limited to legal expenses) incurred by National Gas in connection with or resulting from any breach of the Company's obligations as to insurance under this Agreement.

8.12. Nothing in this Clause 8 shall constitute a waiver by either Party of any right or remedy it may have (other than pursuant to this Agreement) in respect of a breach by the other Party of any Legal Requirement (as such expression is defined in the Network Code) or the Network Code.

9. FORCE MAJEURE

9.1. For the purposes of the Agreement, "**Force Majeure**" means:

- (a) any event or combination of events or circumstance (other than the lack, non-receipt or unavailability of financial resources or funds) which is beyond the control of a party acting and having acted as a Reasonable and Prudent

Operator, and which prevents that Party from or causes hindrance, delay or impediment to that party in fulfilling all or any of its obligations under the Agreement. For the avoidance of doubt unforeseen adverse weather conditions will not constitute a Force Majeure event.

- (b) any failure by the Party to perform its obligations hereunder to the extent that such failure was caused by any change in the law or cancellation of any consent, approval or licence rendering it unlawful for a party to comply with its obligations hereunder after the date of Acceptance unless such change or cancellation would not have occurred except for any act or omission of the Party concerned in relation to such law, consent, approval or licence unless itself caused by Force Majeure.

9.2. If either Party is rendered unable wholly or in part by Force Majeure to carry out its obligations (other than payment of money) under the Agreement it shall as soon as reasonably practicable after becoming aware of the occurrence of the event or circumstances of Force Majeure give written notice to the other Party giving full particulars of the event or circumstances constituting Force Majeure and of the obligations which cannot as a result be performed. The Party giving notice shall thereafter be excused from liability for non-performance of such obligations, subject to the provisions of Clause 9.3 below, to the extent and for so long as the inability to perform the obligations as a result of the event or circumstances of Force Majeure may continue. For the avoidance of doubt, the relief from liability for non-performance of any obligation under this Clause 9 shall not affect the existence of that obligation for the purposes of any other provision of the Agreement.

9.3. A Party relieved from liability for the non-performance of any obligations under the Agreement as a result of Force Majeure shall use all reasonable endeavours to overcome or circumvent such Force Majeure and shall on request in writing from the other Party give full details of the measures it is taking in that regard.

10. TERMINATION

10.1. Without prejudice to any of its antecedent rights or remedies, National Gas may terminate the Agreement:

- (a) forthwith on written notice if:-
 - (i) the Company goes into liquidation (either voluntary or compulsory); or
 - (ii) any administrator or administrative receiver shall be appointed in respect of the whole or any part of the Company's assets; or
 - (iii) the Company makes or offers to make any arrangement or

- composition for the benefit of creditors generally; or
- (iv) the Company becomes subject to a change in control (as “control” is defined by Section 840 of the Income and Corporations Taxes Act 1988), such right to be exercised reasonably; or
 - (b) by giving fourteen (14) calendar days’ prior notice in writing if either Party is prevented by reason of Force Majeure from performing any of its obligations under the Agreement for a period exceeding nine (9) months;
 - (c) by giving twenty-eight (28) calendar days’ notice in writing of a breach of the Agreement by the Company, provided the Company fails to take reasonable steps to remedy the breach within such twenty-eight (28) day period; or
 - (d) forthwith on written notice if the Company fails to provide notice in accordance with Clause 3.3.
- 10.2. The Company may terminate the Agreement by giving twenty eight (28) calendar days’ notice in writing to National Gas, and National Gas shall use reasonable endeavours to cease the Works following receipt of such termination notice.
- 10.3. Where the Agreement is terminated under any provision of this Clause 10 (other than Clause 10.1(d)), National Gas shall be entitled to receive:
- (a) payment of all amounts due at the time of termination under Clause 7.2;
 - (b) any additional sum for which the Company is liable under Clause 7.3;
 - (c) any cost or expense reasonably incurred, or for which National Gas is liable and is unable lawfully or contractually to avoid or recover from third parties in connection with any contracts placed in connection with the Agreement (insofar as these have not already been paid by the Company) including without limitation, forfeited deposits, cancellation fees and legal expenses; and
 - (d) any and all reasonable costs incurred or expended in the restoration and/or reinstatement of land or buildings and removal of plant, apparatus and equipment which in the opinion of National Gas is necessary as a result of the termination of the Agreement taking into account inter alia environmental considerations and contractual commitments.
- 10.4. For the avoidance of doubt, all ownership in and rights over all partly completed Works, and all plant and materials to be incorporated in, or used by, National Gas in carrying out the Works will continue to vest solely in National Gas after termination of the Agreement under this Clause.

- 10.5. Any termination of the Agreement pursuant to any provision of this Clause 10 shall be without prejudice to any rights or obligations of the Parties that accrued prior to the effective date of such termination.
- 10.6. In the event any government or governmental supranational state agency or regulatory body shall:-
- (a) rule or direct that the Agreement (or any part thereof) should not be performed by National Gas; or
 - (b) institute, threaten or thereafter take any action, suit or investigation to restrain, prohibit or otherwise challenge the rights or obligations contemplated by the Agreement; or
 - (c) thereafter to take any other action as a result of or in anticipation of the implementation of the Agreement which would have adverse effects on the rights of the parties hereto,

National Gas and the Company shall immediately commence negotiations in good faith with a view to agreeing provisions, actions and measures which as far as reasonably practicable retain the economic and commercial effect of the rights or obligations set out in the Agreement which shall include but is not limited to the assignment of the Agreement to an Affiliate of National Gas.

11. COMPENSATION EVENTS

- 11.1. The following are “**Compensation Events**”, which may or may not have a cost and/or time impact:-
- (a) the Company requests a change to all or any part of the Works;
 - (b) National Gas proposes a change (for health, safety or environmental reasons or for operational purposes or to comply with National Gas’s then current design philosophies) to all or any part of the Works;
 - (c) the Company provides new or additional information to National Gas, or amends, corrects or replaces any information or specifications previously provided by it to National Gas in accordance with the Agreement or pursuant to the Application, whether such amendment correction or replacement occurs pursuant to a Connection Offer Modification Application or otherwise;
 - (d) the Company does not comply with any of the Company’s Specific Obligations by the dates (if any) specified for doing so or, where no date is specified, without undue delay;

- (e) the Company does not otherwise comply with its obligations under the Agreement;
- (f) any act or omission of the Company or its contractors and subcontractors (which shall, for the avoidance of doubt, not include National Gas and the Subcontractors) which adversely affects the Works;
- (g) National Gas encounters physical conditions which:-
 - (i) affect the land on, over, under or through which the Works are being carried out; and
 - (ii) are not weather conditions or physical conditions resulting from the effects of weather; and
 - (iii) are conditions which a Reasonable and Prudent Operator would have judged at the date of Acceptance to have such a small chance of occurring that it would have been unreasonable to allow for them;
- (h) a Weather Measurement is recorded at the Weather Measurement Location:-
 - (i) within a calendar month; and
 - (ii) after the Works Commencement Date and before the date of Substantial Completion

the value of which, by comparison with the Weather Data, is shown to occur on average less frequently than once in ten years;
- (i) the requirements of any legislation which were not known or could not have been anticipated by National Gas acting as an RPO at the date of Acceptance, including but not limited to any changes or amendments to the Gas Act 1986, the Gas Act 1995, the Utilities Act 2000 and/or the National Gas Licence;
- (j) the occurrence of a Force Majeure event;
- (k) any labour dispute or work stoppage or slow-down involving the Company, the Company's contractors (which shall, for the avoidance of doubt, not include National Gas), subcontractors (which shall, for the avoidance of doubt, not include the Subcontractors) or the unions of the workers of the Company or the Company's contractors (which shall, for the avoidance of doubt, not include National Gas) or subcontractors (which shall, for the avoidance of doubt, not include the Subcontractors);
- (l) any action or restraint taken or issued by a Competent Authority or by any person with an interest in land which prevents National Gas (acting as an RPO)

from, or causes hindrance, delay or impediment to National Gas in, fulfilling all or any of its obligations under the Agreement;

- (m) any undue delays by third parties, including but not limited to Nature Conservancy Council, Department of Environment, Food and Rural Affairs (DEFRA), statutory undertakers (including but not limited to the relevant river, water and highway authorities), Network Rail Limited (or any successor of any of the foregoing) in providing any necessary consents for the Works or any part thereof;
- (n) any delays in the acquisition of any land, or interests in or rights over land, required in connection with the Works or any part thereof, including but not limited to delays in connection with the compulsory purchase of any land or interests in or rights over land;
- (o) any action taken by National Gas to comply with a request from the Company for Acceleration whether this request occurs pursuant to a Connection Offer Modification Application or otherwise;
- (p) any action taken by National Gas to comply with any instruction from the Company pursuant to Clause 6.2;
- (q) any suspension of the works by National Gas pursuant to Clause 7.7;
- (r) any request by the Company to change the Works Commencement Date whether this request occurs pursuant to a Connection Offer Modification Application or otherwise;
- (s) any of the assumptions set out in the Full Connection Offer prove to be incorrect;
- (t) a breach of contract by the Company which is not one of the events listed above;
- (u) any delay in the completion and commissioning of an extension to the NTS, or any change to the termination point of an extension to the NTS, where such an extension is required in order that the National Gas Facilities can be connected to the NTS; and
- (v) any other change or amendment arising whether such change or amendment occurs pursuant to a Connection Offer Modification Application or otherwise.

11.2. In the event of a Compensation Event arising other than pursuant to Clause 11.1(a), (c) to (f), (k), (o), (p), (q), (r), and/or (t), National Gas shall:-

- (a) within twenty-eight (28) calendar days of National Gas becoming aware of the occurrence of the Compensation Event or as soon thereafter as is reasonable in the circumstances, notify the Company of the impact that the Compensation Event will have on the Works, notify the Company of:-
 - (i) National Gas's reasonable estimate of the impact that the Compensation Event will have on the Date for Substantial Completion (as the case may be); and
 - (ii) National Gas's reasonable estimate of the impact that the Compensation Event will have on the Works Actual Cost (as the case may be).
- 11.3. In the event of a Compensation Event to which Clause 11.2 applies, the Date for Substantial Completion (as the case may be) shall be amended as set out in the National Gas notification given under Clause 11.2(a) and the Compensation Event shall be implemented immediately. For the avoidance of doubt, any Compensation Event to which Clause 11.2 applies shall have no impact on the Works Estimate.
- 11.4. In the event of a Compensation Event arising pursuant to Clause 11.1(c) to (f), (k), (q),(t) and/or (u), National Gas shall
 - (a) within twenty-eight (28) calendar days of National Gas becoming aware of the occurrence of the Compensation Event or as soon thereafter as is reasonable in the circumstances, notify the Company of the impact that the Compensation Event will have on the Works, notify the Company of:-
 - (i) National Gas's reasonable estimate of the impact that the Compensation Event will have on the Date for Substantial Completion (as the case may be); and
 - (ii) National Gas's reasonable estimate of the impact that the Compensation Event will have on the Works Estimate (as the case may be).
- 11.5. In the event of a Compensation Event to which Clause 11.4 applies, the Date for Substantial Completion and/or the Works Estimate (as the case may be) shall be amended as set out in the National Gas notification and the Compensation Event shall be implemented immediately.
- 11.6. In the event of a Compensation Event arising pursuant to Clause 11.1(a), (o), (p), and/or (r), National Gas shall within twenty-eight (28) calendar days of National Gas becoming aware of the occurrence of the Compensation Event or as soon thereafter as is reasonable in the circumstances notify the Company as to whether it is willing or

able to implement the change or the Company's request or instruction, and if it is so willing or able, as to the impact that the Compensation Event will have on:-

- (a) the Date for Substantial Completion (as the case may be); and
- (b) the Works Estimate (as the case may be).

11.7. In the event of a Compensation Event to which Clause 11.6 applies, the Company shall, provided National Gas has confirmed that it is willing or able to implement the Company's request, within seven (7) calendar days of receiving notification from National Gas as set out in Clause 11.6, notify National Gas whether or not it wishes the Compensation Event to be implemented. If the Company fails to so notify National Gas, the Compensation Event shall not be implemented by National Gas. In the event that the Company requests National Gas to implement the Compensation Event, the Date for Substantial Completion and the Works Estimate shall be amended as set out in the National Gas notification and the Compensation Event shall be implemented immediately.

12. NOTICES

12.1. Any notice or other document to be given under the Agreement shall be in writing and shall be deemed to have been duly given if left or delivered by hand or sent by registered post or email to a Party at the address for such Party set out in the Gas Construction Agreement, or such other address as the receiving Party may from time to time designate by written notice to the other.

12.2. Any such notice or other document shall be deemed to have been received by the addressee two (2) Working Days following the date of dispatch if the notice or other document is sent by registered post, or upon delivery if left or delivered by hand, or at the time of sending if sent by email (except that if (i) the email is sent outside of 9am to 5pm or on a non-Working Day it shall be deemed to have been received by the address at 9am on the next Working Day, or (ii) an automatic notification is received by the sender sending the email informing the sender that the email has not been delivered to the recipient or that the recipient is out of the office that email will be deemed not to have been served).

13. CONFIDENTIALITY

13.1. Each Party shall keep confidential and shall not disclose to any third party Protected Information provided that:

- (a) this restriction shall not apply to any information which at the time of disclosure is in the public domain or thereafter becomes part of the public domain otherwise than as a consequence of a breach by a Party of its obligations under

this Clause 13;

- (b) nothing in the Agreement shall prevent the disclosure of information to any government department or any governmental or regulatory agency having jurisdiction over any Party (including but not limited to the Gas and Electricity Markets Authority), or as required by law or any lawful subpoena or recognised stock exchange or other process in connection with any judicial arbitration or administration proceeding, or where reasonably necessary to effect the purpose of the Agreement;
- (c) in the event disclosure to any third party is necessary in order to give effect to the purposes of the Agreement or permissible under this Clause 13, the disclosing Party shall use all reasonable endeavours to ensure that such third party shall respect the confidentiality of such information and be bound by the terms of this Clause 13 as if a party thereto.

13.2. Nothing in Clause 13.1 shall apply to the disclosure of Protected Information to any:

- (a) lending or other financial institution in connection with the financing or the disclosing Party's business or operations;
- (b) bona fide intending assignee of the whole or any part of the rights and interests of the disclosing Party under the Agreement; or
- (c) person that is considering acquiring shares in either Party or (in the case of the Company) any equity investment in the Company Facilities.

13.3. The disclosing Party, pursuant to Clause 13.2 shall:

- (a) keep the disclosure of the Protected Information to the minimum necessary for the purpose for which it is disclosed; or
- (b) obtain an undertaking from the person to whom the Protected Information is disclosed, satisfactory to the non-disclosing Party acting reasonably to maintain the confidentiality of the Agreement.

14. INTELLECTUAL PROPERTY

14.1. All Intellectual Property and, to the extent that Intellectual Property is embodied therein, documents (including but not limited to drawings, transparencies, prints, photographs, negatives, tapes, discs, working notes and reports), software or other items created or supplied by National Gas in connection with the Works shall be owned by National Gas and the originals and all copies of them, if any, supplied to the Company shall be delivered to National Gas on completion of the Works and the Company shall be required to certify that none are retained in its possession.

- 14.2. All Intellectual Property and, to the extent that Intellectual Property is embodied therein, documents (including but not limited to drawings, transparencies, prints, photographs, negatives, tapes, discs, working notes and reports), software or other items supplied by the Company in connection with the Works shall be owned by the Company and save for documents required by National Gas for the purposes of operating and maintaining the National Gas System all the originals and all copies of them, if any, supplied to National Gas shall be delivered to the Company on completion of the Works and National Gas shall be required to certify that apart from the documents referred to above none are retained in its possession.
- 14.3. National Gas shall have by virtue of the Agreement a royalty-free, non-exclusive licence (with power to sub-licence) for the purposes only of designing, constructing, commissioning, testing, operating and maintaining pipelines, metering and pressure reduction equipment, in respect of any such Intellectual Property of the Company as forms part of any invention or development made by National Gas under or in connection with the Agreement.

15. DISPUTES PROCEDURE

- 15.1. Any Dispute shall be submitted to and settled by the Adjudicator in accordance with the provisions of this Clause 15.
- 15.2. This Clause 15 shall not impose any pre-conditions on any Party or otherwise prevent or delay any Party from commencing proceedings in any court of competent jurisdiction in relation to any Dispute where that Party requires either:-
- (a) an order (whether interlocutory or final) restraining the other Party from doing any act or compelling the other Party to do any act; or
 - (b) a judgement for a liquidated sum to which there is no arguable defence.
- 15.3. A Dispute may be submitted to the Adjudicator by either Party at any time between two (2) and four (4) weeks after notification of the Dispute to the other Party. The Adjudicator shall be the person agreed by both parties or, in the event that the Parties are unable to so agree within four (4) weeks of the Dispute being notified by one Party to the other then the Adjudicator shall be selected by the President for the time being of the Institution of Civil Engineers of England and Wales.
- 15.4. In the event that the Adjudicator is unwilling or unable to act or does not confirm his appointment within seven (7) days of receiving the submission of the Dispute, then another Adjudicator shall be appointed in accordance with the provisions of Clause 15.3, and this shall continue until such time as an Adjudicator is found that is willing and able to act.

- 15.5. The Adjudicator shall settle the Dispute by notifying the Parties of his decision, together with the reasons for his decision, within the time set out in Clause 15.9. Unless and until there has been such a settlement, the Parties shall proceed as if the Dispute had not been raised. Every decision of the Adjudicator concerning any Dispute shall be implemented by the Parties without delay. The decision of the Adjudicator concerning any Dispute shall be final and binding unless and until it is revised by the Arbitrator.
- 15.6. The Party submitting the Dispute to the Adjudicator shall include a written statement detailing the matter and nature of the Dispute and shall provide such information as it wishes the Adjudicator to consider. A copy of the written statement and such other information shall be provided to the other Party at the same time as it is submitted to the Adjudicator.
- 15.7. Within four (4) weeks of the date of the submission of the Dispute to the Adjudicator, each Party shall provide the Adjudicator with any further information that that Party wishes the Adjudicator to consider and a copy of such information shall be provided to the other Party at the same time as it is submitted to the Adjudicator.
- 15.8. The Adjudicator shall be entitled to request such additional information from either Party as the Adjudicator may require in order to be able to arrive at his decision. A Party shall provide any such information within one (1) week of the Adjudicator's request and shall provide a copy of such information to the other Party at the same time as providing the information to the Adjudicator.
- 15.9. The Adjudicator shall notify the Parties of his decision within eight (8) weeks of the date of the submission of the Dispute to the Adjudicator. This eight (8) week period may be extended at the request of the Adjudicator in view of the nature of the Dispute and if agreed by both Parties.
- 15.10. If a matter disputed under or in connection with a Subcontract is also a matter disputed under or in connection with this Agreement, National Gas may submit the dispute under the Subcontract to the Adjudicator to determine together with the Dispute. The Adjudicator shall then settle both disputes together, and references to the Parties in this Clause 15 shall be deemed to be references to the Parties and the relevant Subcontractor.
- 15.11. The Adjudicator shall settle the Dispute as an independent adjudicator and not as an arbitrator. The Adjudicator's decision shall be enforceable as a matter of contractual obligation between the Parties and not as an arbitral award.
- 15.12. The Adjudicator shall be entitled to incur reasonable costs and expenses in coming to his decision. Any such costs and expenses shall be borne equally between the Parties, unless the Adjudicator determines otherwise.

15.13. If the Adjudicator resigns, then another Adjudicator shall be appointed in accordance with the provisions of this Clause 15.

15.14. If:-

- (a) after the Adjudicator notifies his decision to the Parties, a Party is dissatisfied with the decision; or
- (b) the Adjudicator fails to notify his decision to the Parties within the time provided for in this Clause 15,

then either Party may refer the Dispute to the Arbitrator and shall notify the other Party of such reference. The Dispute can not be referred to the Arbitrator unless the reference occurs within four (4) weeks of the notification of the Adjudicator's decision or of the time provided for in this Clause 15 for the Adjudicator to notify his decision if he has failed to do so, whichever is the earlier.

15.15. The Arbitrator shall determine the Dispute in accordance with, and the Parties shall comply with, the Institution of Civil Engineers Arbitration Procedure (England and Wales) 1997.

16. ENTIRETY OF AGREEMENT

16.1. The documents forming the Agreement shall be read as one and shall constitute the entire express agreement between the Parties with respect to the Works and shall prevail and supersede all prior agreements, understandings, statements, representations, commitments, warranties and communications between the Parties hereto with respect to the Works and neither Party shall rely on or be bound by any of the foregoing not appearing in or incorporated by specific reference into the Agreement. Nothing in this Clause shall operate to exclude either Party's liability to the other for fraudulent misrepresentation.

17. ASSIGNMENT

17.1. National Gas or the Company may assign all or any of its rights and obligations under the Agreement (prior to Acceptance) to any:

- (a) Affiliate; or
- (b) in the case of the Company, person that is considering acquiring any equity investment in the Company Facilities;

with the consent of the other Party, and such consent should not be unreasonably withheld.

18. SUB-CONTRACTING

- 18.1. National Gas shall be entitled to sub-contract the whole or any part of the Works. Any such sub-contracting shall not relieve National Gas from any liability or obligation that it has, or may have, in connection with the Agreement.

19. WARRANTY

- 19.1. National Gas warrants that the Works shall be undertaken with reasonable skill and care and in accordance with the proper standards of good engineering practice.
- 19.2. National Gas warrants that, on completion of the Works, the National Gas Facilities shall have been designed and constructed in so far as reasonably practicable in accordance with the parameters set out in the Full Connection Offer.
- 19.3. All other terms and conditions whether express or implied concerning the quality or fitness for purpose of the Works and all such other terms and conditions are hereby excluded to the fullest extent permitted by law.
- 19.4. The Company warrants to National Gas that the Company's System and the Gas Plant will be safe and suitable to receive and/or deliver (as the case may be) Natural Gas in accordance with the parameters set out in the Full Connection Offer prior to Validation and will remain so thereafter, provided this warranty shall cease from such a time as National Gas enters into a Network Agreement in respect of the Company Facilities.

20. OWNERSHIP, OPERATION AND MAINTENANCE

- 20.1. The Parties agree that at all times:
- (a) National Gas shall own outright, and be the operator of, the National Gas Facilities;
 - (b) the Company shall be the operator of the Company Facilities, and the Company or the Asset Owner (as the case may be) shall own outright the Company Facilities;
 - (c) National Gas shall have no right or obligation to operate and/or maintain, and shall have no responsibility for the operation and/or maintenance of, the Company Facilities; and
 - (d) the Company shall have no right or obligation to operate and/or maintain, and shall have no responsibility for the operation and/or maintenance of, the National Gas Facilities.
- 20.2. In the event that, contrary to Clause 20.1, National Gas becomes the operator of the Company Facilities, or any part of the Company Facilities, within the meaning of the Pipelines Safety Regulations 1996, or any similar successor legislation, the Company

shall provide a full indemnity to National Gas in respect of its compliance or attempted compliance with the relevant statutory requirements, including but not limited to: any and all claims, losses, liabilities, fines, penalties, costs (including legal costs) and expenses, whether direct or indirect BUT excluding any of these caused by negligence of National Gas, its employees or agents.

21. WAIVER AND AMENDMENTS

21.1. None of the provisions of the Agreement shall be considered waived by a Party unless such waiver is given in writing and signed by a duly authorised representative of the Party making the waiver. No such waiver shall be a waiver of any past or future default or breach or modification of any other term, provision, condition or covenant of the Agreement unless expressly set forth in such waiver.

21.2. Without prejudice to Clause 11, no amendments to the Agreement shall be valid unless made in writing and agreed and signed by the duly authorised representatives of the Parties.

22. PUBLICITY

22.1. Each Party shall obtain written approval from the other, which will not be unreasonably withheld, prior to taking publicity photographs or issuing publicity releases or announcements regarding the Agreement or the Works.

23. SURVIVAL

23.1. The provisions of the Agreement which by their nature or from their context are intended to, or would naturally, continue to have effect after termination of the Agreement shall survive after termination.

24. THIRD PARTY RIGHTS

24.1. Subject to any rights which may accrue to any successor or permitted assign of the Parties, no provision of the Agreement shall or may be construed as creating any rights enforceable by a third party and all third party rights as may be implied by law are hereby excluded to the fullest extent permitted by law from the Agreement.

25. SEVERABILITY

25.1. If any term or provision in the Agreement shall be held to be illegal or unenforceable in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of the Agreement but the validity and enforceability of the remainder of the Agreement shall not be affected.

26. GOVERNING LAW

- 26.1. The Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit (subject to Clause 15) to the exclusive jurisdiction of the Courts of England and Wales in respect thereto.

Annex 1

Company Specific Obligations

1. Specification of the Company's System

1.1 The Company shall design the Company System to comply with the requirements in the Full Connection Offer and the Agreement.

2. Company System design and commissioning information required to be provided to National Gas

2.1 The Company shall, by the date or dates specified in the Full Connection Offer, provide:

- (a) the Company's proposed basis for design of the Company's System including but not limited to the metering system and associated uncertainty calculations; such design to be based upon the requirements set out in Clause 5 of the Standard Conditions of Contract;
- (b) a preliminary design diagram of the Company's System;
- (c) procedures for the testing of the Signals (to be made available as set out in Clause 5.8(a) of the Standard Conditions of Contract) provided by the Company to ensure that they meet National Gas's requirements;
- (d) procedures for the checking of the primary and secondary instrumentation on site to ensure that the uncertainty calculations set out by the Company pursuant to Clause 5 of the Standard Conditions of Contract are being achieved. Such procedures will form the basis of procedures for the ongoing periodic checking of the primary and secondary instrumentation on site into the future to ensure that the requirements (including but not limited to uncertainty levels) set out in this Annex 1 continue to be met;
- (e) the method statement for completing the Connection; and
- (f) reasonable proposals for a procedure for purging and commissioning the Company's System so as to ensure that such purging and commissioning shall not prejudice the safe and efficient operation of the National Gas System, for consent by National Gas, such consent not be unreasonably withheld or delayed.

3. Temporary facilities to be provided by the Company

3.1 The Company shall procure or provide for National Gas, at no cost to National Gas and with all necessary consents and permissions, the following temporary facilities for the duration of the Works by the date specified in the Gas Construction Agreement:-

- (a) an area or areas of land (of such size or sizes as may be specified in the Full Connection Offer) for the main construction contractor's fabrication area, site accommodation, security fencing, temporary plant storage and car parking for National Gas and its sub-contractors with suitable access from the highway. It is understood this will be situated adjacent to the National Gas Compound;
- (b) all site preparation which may be required within the areas of land provided to National Gas for the Works in accordance with the Agreement and the associated Full Connection Offer;
- (c) temporary 25 millimetre diameter potable water supply within the area provided in accordance with paragraph 3.1(a) above suitable for domestic use;

- (d) two (2) PSTN telephone lines to National Gas's site office establishment area within the area provided in accordance with paragraph 3.1(a) above for the duration of the Works; and
- (e) twenty (20) kilowatt, 230 volts, single phase electricity supply. Such electrical supply to be made available at a location to be agreed.

4. Permanent facilities to be provided by the Company

4.1 The Company shall provide for National Gas without charge the following permanent facilities by the date specified in the Gas Construction Agreement:-

- (a) A freehold interest of land with vacant possession and free of encumbrances (as such land is shown on the National Gas Drawing) in, upon and over which the proposed National Gas Facilities can be sited (the "**National Gas Compound**") with full planning permissions (including any conditions as required by the local planning authority) for the Works, with the land for the National Gas Compound cleared, levelled and as far as the Company is aware free of hazardous substances and historical, archaeological or special scientific interest or restriction and suitable for construction and having unhindered rights of access to and egress from the National Gas Compound for National Gas and/or its employees, agents and contractors over and along the access road and any land of the Company and/or any third party as deemed required by National Gas.

The dimensions of the National Gas Compound are conditional on the following:

- (i) the Connection will be at a location shown on the National Gas Drawing;
 - (ii) the exact location for National Gas Facilities in relation to the existing NTS feeder main being shown to be suitable by means of prior excavation and inspection;
 - (iii) the access road shall enter the National Gas Compound at the location shown on the National Gas Drawing;
 - (iv) the National Gas Compound is situated at the location specified in the Full Connection Offer; and
 - (v) any design changes pursuant to Clause 10 of the Standard Conditions of Contract may necessitate a larger area of land.
- (b) a 3 metre wide sterile area outside the boundary of the National Gas Compound on all sides (as shown on the National Gas Drawing) which will include for the right to open any gates for the purpose of access to and egress from the National Gas Compound. Under conditions of a permit to work issued by the Company, where venting is required, the hazardous area (associated with such venting) may exceed the boundary and infringe the National Gas Compound, but is not otherwise expected to do so;
 - (c) an electricity supply interface housing, containing an independent single phase, 230V, 10kVA electrical power supply with surge protection at the location shown on the National Gas Drawing. Independent earthing should be utilised. The supply must not cause a drain on the cathodic protection system or cause a short across the insulated joint;
 - (d) a site storm water drainage system into which National Gas may connect its storm water drainage system (150mm diameter). The storm water manhole will be immediately adjacent to the National Gas Compound boundary, the precise location to be agreed;
 - (e) telecoms and data interface housing(s), at the location shown on the National Gas Drawing, and facilities necessary to enable Signals to be transmitted between National Gas and the Company;

- (f) a direct exchange Integrated Services Digital Network (ISDN) telecommunications line to terminate in the telecoms and data interface housing.
- (g) a suitable security fence (2400mm high) and post and rail fence for security of National Gas assets to the specification to be contained in the Full Connection Offer ; and
- (h) a suitable access road, entrance (minimum four (4) metres wide) and hard standing capable of carrying normal maintenance vehicles;

5. Conditions to be met before the Connection can take place

- 5.1 The Company shall be not permitted to make the Connection of the Company's System to the National Gas Facilities, nor purge and commission the Company's System unless and until the Company has:
- (a) certified to National Gas that the Company's System and Gas Plant is safe and suitable to receive natural gas in accordance with
 - (i) the parameters set out in the Agreement;
 - (ii) the Gas Safety (Management) Regulations 1996;
 - (iii) the Pipeline Safety Regulations 1996;
 - (iv) the Pressure Systems Safety Regulations 2000;
 - (v) the Construction (Design and Management) Regulations 2015;
 - (vi) the Health and Safety at Work etc Act 1974;
 - (vii) the Electricity at Work Regulations 1989; and
 - (viii) all other relevant statutes and statutory instruments which were known to, or could have reasonably been anticipated by, the Company to apply to the Company's System at the Works Commencement Date;
 - (b) warranted in writing to National Gas and provided copies of all necessary certification to confirm the viability of the Company's System to include:-
 - (i) The name of the 'User' and 'Competent Person' for the purposes of the Pressure System Safety Regulations 2000;
 - (ii) the Safe Operating Limit (as defined in the Pressure System Safety Regulations 2000) of the Company's System, otherwise specified as the Maximum Incidental Pressure (MIP) as defined in IGE/TD/1 Edition 4;
 - (iii) the Maximum Operating Pressure (MOP) of the Company System;
 - (iv) certification that the Company System and all downstream equipment are designed to cater for the Safe Operating Limit pressure specified in the Full Connection Offer which could be witnessed at the Point of Offtake;
 - (v) a time table for the commissioning of the Company's System, defining the commissioning profile, maximum and minimum instantaneous flows and hourly and daily consumption; and
 - (vi) an as built diagram of the Company's System as it exists immediately prior to the Connection taking place;

- (c) certified to National Gas that the valve referred to in Clause 5.1 of the Standard Conditions of Contract has been installed in accordance with the requirements of that paragraph; and
- (d) provided National Gas with copies of:-
 - (i) weld procedure specifications;
 - (ii) non destructive test procedures;
 - (iii) procedure qualification records;
 - (iv) mechanical test results;
 - (v) consumable certifications;
 - (vi) welder test certificates;
 - (vii) post weld treatments (if applicable); and
 - (viii) a completed "Commissioning Acceptance Certificate" (Form No. NTS/A1/AA/12); and
- (e) given National Gas not less than sixty (60) calendar days' notice (or such shorter notice as may be agreed between the Parties) of the time and date on which the Company will so conduct such Connection, purging and commissioning of the Company's System;
- (f) provided National Gas with copies of all relevant certificates including but not limited to:-
 - (i) the dossier of certificates that record that all primary and secondary instrumentation comprised in the metering system has been certified by a United Kingdom Accreditation Service accredited laboratory, or similar, stating the actual levels of uncertainty for that instrument; and
 - (ii) [evidence to demonstrate the suitability of any gas quality measurement system] ; and
 - (iii) the procedures referred to in paragraph 2.1 (c) and 2.1(d) of this Annex 1for each meter including but not limited to primary meter, fuel gas meter, auxiliary gas meter and commissioning meter.
- (g) warranted in writing to National Gas and provided copies of all necessary certification to confirm the viability of the metering system comprised in the Company's System to include:-
 - (i) an as built measurement system design specification;
 - (ii) anticipated measurement uncertainty;
 - (iii) measurement system design limits (qmin - qmax);
 - (iv) OFGEM COP/1C approval; and
 - (v) GT Appraisal where required;
- (h) obtained a permit to work from National Gas pursuant to the then current version of the National Gas document "National Gas's procedure for the Safe Control of Operations T/PR/SCO1", which permit allows the Company to perform the Connection (and it shall be

the Company's obligation to ensure that it obtains such a permit in a sufficiently timely manner to allow it to perform the Connection at the time it wishes to);

- (i) has certified to National Gas that it has complied, and will continue to comply, with the provisions and requirements of the then current version of the National Gas document "National Gas's procedure for the Safe Control of Operations T/PR/SCO1" (and in giving such certification, the Company will be deemed to have acknowledged that it has obtained a copy of, and is aware of the provisions and requirements of, such National Gas document); and
- (j) has certified to National Gas that, in performing the Connection, the Company will comply with the provisions and requirements of the permit to work issued to the Company pursuant to paragraph (h) above.

6. Information required to be provided to National Gas upon completion of the Connection

6.1 Within fourteen (14) calendar days of making the Connection, the Company shall provide National Gas with copies of all relevant non destructive test procedures.

7. Commissioning and Validation of the mechanical components of the Company System

7.1 Prior to the commencement of Validation, the Company shall:

- (a) provide a procedure for the commissioning of the mechanical components of the Company System; and
- (b) make Signals available to National Gas at the telecoms and data interface housing(s) specified in paragraph 1.1 of Annex 1; such interfacing telemetry systems must be fully compatible and comply with National Gas's requirements, including but not limited to, demonstrating that simulated values generated at the Company's primary measurement system are received at the relevant National Gas control centre.

8. Notification of validation of the Company's measurement system

8.1 The Company shall give National Gas not less than fourteen (14) days notice of, and allow National Gas to witness, the measurement system validation referred to in Clause 5.2(b) of the Standard Conditions of Contract and any calibrations or performance tests on its components.

9. Site Occupier Responsibility at shared sites

9.1 Where National Gas and the Company are to share a single compound; the Company will accept Site Occupier responsibility for the purposes of the Construction (Design and Management) Regulations 2015.

Annex 2

National Gas's Specific Obligations

[LOCATION OF ANNEX TBC]

1. General

- 1.1 Subject to Substantial Completion of the Works being achieved, National Gas shall commence Validation, within a mutually acceptable timeframe, after receiving written notification from the Company that:-
- (a) the Connection has been made; and
 - (b) if applicable, the Point of Connection has been registered under the Network Code; and
 - (c) if applicable, a Network Agreement has been executed in respect of the Point of Connection; and
 - (d) the Validation Conditions have been satisfied by the Company.
- 1.2 Written notification given by the Company to National Gas pursuant to paragraph 1.1 shall be given at least sixty (60) calendar days in advance of the proposed date for Validation and specify the date (to be mutually agreed by the Parties with both parties acting reasonably) upon which Validation is to occur.
- 1.3 National Gas shall use reasonable endeavours to carry out the Validation in such manner and at such time as the Parties may agree.
- 1.4 If National Gas is not requested, or is not given sufficient notice by the Company, to commence Validation within twelve (12) months of the Date for Substantial Completion, National Gas shall not be obliged to commence Validation under the Agreement and any such Validation would be the subject of a separate agreement between the Parties.