

# Southern Gas Networks Connections terms for below 7Barg infrastructure works

Effective from 20<sup>th</sup> July 2019



**SGN**

Your gas. Our network.

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**These terms and conditions, form part of a legally binding Contract the Customer will be entering into with SGN. If the Customer is unsure about its rights and obligations under this Contract, please obtain independent legal advice before sending SGN an Order. Advice may be obtained from a solicitor or the Citizen's Advice Bureau.**

## **PARTIES**

This Contract is made between

- (1) Southern Gas Networks plc, a company incorporated in England and Wales (company No. 05167021) and having its registered office at St Lawrence House, Station Approach, Horley Surrey, RH6 9HJ ("**SGN**"); and
- (2) the person(s) to whom the Quote is addressed ("**Customer**").

Please note that SGN uses SGN Connections Limited to act as its agent for the administration parts of this Contract. The Works will be performed by SGN. SGN Connections Limited is a company incorporated in England and Wales (company No. 05618886) and having its registered office address at St. Lawrence House, Station Approach, Horley, Surrey RH6 9HJ.

## **1 DEFINITIONS**

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

**"Abortive Meter Worker Charge"** shall mean the sum specified as such in the Quote. Where no such sum is specified in the Quote, then **"Abortive Meter Worker Charge"** shall mean the sum published as such by SGN from time to time;

**"Acceptance Acknowledgement"** shall have the meaning given in Clause 2.5;

**"Actual Supply Meter Point Reference Number"** shall mean the Supply Meter Point Reference Number entered into the Supply Point Register in respect of the Supply Meter Point in question;

**"Additional Work"** means any Works required to be carried out by SGN pursuant to clause 7 or clause 8 (as applicable).

**"Affiliate"** shall mean Group Companies from time to time of either party where "Group Companies" or "Group" means in relation to either party, that party, that party and any holding company, parent company, any joint venture and any subsidiary and any subsidiary undertaking of that party or such companies and "Group Company" means any one of them. Where "holding company" has the meaning set out in section 1159, Companies Act 2006, "parent company" has the meaning set out in Section 1173 Companies Act 2006 and "subsidiary" has the meaning set out in Section 1159, Companies Act 2006;

**"Application"** shall have the meaning set out at clause 2.1.

**"SGN's System"** shall mean the gas transportation pipeline system owned and operated by SGN Limited for the conveyance of gas which is authorised by the SGN' Licence;

**“Commissioning”** shall mean the purging with natural gas of that element of the Equipment that is designed to convey or contain natural gas, and its pressurisation so as to create a pressure of natural gas immediately upstream of the Supply Meter Point equal to or greater than Working Pressure, and **“Commission”** and **“Commissioned”** shall be construed accordingly;

**“Competent Authority”** shall mean the Gas and Electricity Markets Authority, 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) or the European Union which has jurisdiction over SGN or the Customer or the subject matter of these Connections Terms or a Contract;

**“Connection”** shall mean the physical connection of the Works to the SGN’S System;

**“Connection Works”** shall mean the connection of a Service (or any part thereof) for the establishment of a new Supply Meter Point on to the SGN’S System;

**“Consumer”** shall mean the person or persons who consume(s) or it is intended shall consume natural gas offtaken from the Supply Meter Point or, where no natural gas is being consumed or is likely to be consumed in the near future at the Supply Meter Point, the owner or developer of the Site;

**“Consumer Premises”** shall mean the premises of the Consumer;

**“Contract”** shall have the meaning given in Clause 2.10;

**“Contract Sum”** shall mean the amount payable by the Customer to SGN under this Contract;

**“Contracts Act”**: shall mean the Contracts (Rights of Third Parties) Act 1999;

**“Customer Works”** shall mean the works (if any) to be carried out by or on behalf of the Customer and specified as such in the Quote, the Order and/or the Relevant Annex (as the case may be);

**“Daily Liquidated Damages”** shall mean the sum specified as such in the Quote or the Order (as the case may be). Where no such sum is specified in the Quote, then **“Daily Liquidated Damages”** shall mean the sum published as such by SGN from time to time;

**“Data Protection Legislation”** means: (a) European Union Directives 95/46/EC and 2002/58/EC (as amended by Directive 2009/139/EC) and any legislation and/or regulation implementing or made pursuant to them including but not limited to the UK’s Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2013; (b) from and including 25 May 2018, the General Data Protection Regulation (Regulation (EU) 2016/679) (the "GDPR"); and (c) any applicable associated or supplementary data protection laws, regulations, codes of practice or guidance, as updated, amended or replaced from time to time;

**“Disconnection”** shall mean activities to be carried out by SGN pursuant to a Contract in relation to the disconnection of a Service for the purpose of securing that gas cannot be offtaken from the SGN’S System at a Supply Meter Point;

**“Domestic Consumer”** shall mean a person supplied or requiring to be supplied with gas at Domestic Premises (but excluding such a person in so far as he is supplied or requires to be supplied at premises other than those referred to above);

**“Domestic Premises”** shall mean premises at which a supply of gas is taken wholly or mainly for domestic purposes;

**“Equipment”** shall mean such regulators, pipework, valves and associated apparatus to be installed by SGN pursuant to a Contract upstream of and including, if appropriate, the Supply Meter Point as more particularly described in the Quote or the Order (as the case may be);

**“Final Completion”** shall mean the completion of all Works and the clearance of, boards, barriers all surplus SGN’ material (including any Unused Materials and any material excavated by or on behalf of SGN (and not by any other person) from a trench and not utilised by or on behalf of SGN in the backfilling of such trench) from the Site;

**“Final Completion Target Date”** shall mean the date that SGN intends to achieve Final Completion, as advised by SGN to the Customer, as may be adjusted by agreed variations or as may be extended in accordance with the provisions of these Connections Terms;

**“Gas Distribution Networks”** shall mean a gas distribution network of SGN (Gas Transporter) the ownership of which has been transferred to another person;

**“Gas Transporter”** shall mean a person holding a gas transporter’s licence issued, or deemed to issued, pursuant to section 7 of the Gas Act 1986;

**“Granting Party”** shall have the meaning given in Clause 17.3;

**“Highway”** shall mean in respect of Works being conducted in Scotland “road” and in respect of Works being conducted in England and Wales “street” as such terms are defined in the glossary in the Code of Practice for the New Roads and Street Works Act 1991;

**“Installation Pipework”** shall mean all pipe and gas consuming facilities installed or to be installed downstream of any Metering Equipment;

**“Instruction”**: shall mean any present or future directive, request, requirement, instruction, code of practice, direction or rule of any Competent Authority and any modification, extension or replacement thereof;

**“Key Dates”** shall mean the Physical Commencement Target Date, the Substantial Completion Target Date, the Final Completion Target Date as the context requires and as notified to the Customer in accordance with clause 2.11;

**“Legal Requirement”**: shall mean any Act of Parliament, regulation, licence, or Instruction of a Competent Authority;

**“Liquidated Damages Amount”** shall have the meaning given in Clause 6.5.2;

**“Liquidated Damages Cap”** shall mean the maximum sum payable in respect of liquidated damages as ascertained from the Quote or the Order (as the case may be). Where no such maximum sum is ascertainable from the Quote, then **“Liquidated Damages Cap”** shall mean the maximum sum payable in respect of liquidated damages as published by SGN from time to time;

**“Main”** shall mean any pipe specified as such in the Quote or the Order (as the case may be) which constitutes or will constitute part of the SGN’S System and which is designed to convey gas to more than two Supply Meter Points;

**“Meter”** shall mean a measuring instrument to measure the volume of natural gas passing through it, with a specified badged capacity that is in accordance with Schedule 2B of the Gas Act 1986;

**“Meter Housing”** shall mean such protective housing and/or compound designed to accommodate the Metering Equipment to IGE/GM1, edition 2 (Gas meter installations for pressure less than 100 Bar) or such other superseding specifications as may be determined from time to time by the Institution of Gas Engineers and Managers for the Metering Equipment;

**“Meter Housing Base”** shall mean an unobstructed level area constructed of concrete or other suitable material on which any Metering Equipment and (where appropriate) Meter Housing are to be installed;

**“Metering Equipment”** shall mean the Meter installed or to be installed at the Consumer’s premises and associated equipment between the Supply Meter Point and the next downstream valve (which for Meters with a badged capacity of less than 11 m<sup>3</sup> /h shall be the outlet of the Meter and for all other Meter shall be the downstream valve or outlet of the bypass tee downstream of the Meter);

**“Network Code”** shall mean the network code prepared by SGN pursuant to its Gas Transporter’s licence, as such network code may be amended from time to time;

**“Normal Working Hours”** shall mean the hours between 8.00am and 5.00pm on each Working Day;

**“Order”** shall mean the order form sent by the Customer to SGN requesting SGN to carry out the Works;

**“Party”** shall mean either SGN of the one part or the Customer of the other part, or their permitted successors or assigns, and **“Parties”** shall be construed accordingly;

**“Physical Commencement Target Date”** shall mean the date that SGN intends to commence physical works on the Site, as advised by SGN to the Customer as amended pursuant to Clause 7;

**“Quote”** shall mean the document referring to these Connections Terms produced by SGN and addressed to the Customer containing, amongst other things, details of the Works and the Contract Sum, together with any other documents or information expressly incorporated therein;

**“Reasonable and Prudent Operator”** and **“RPO”** shall mean 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 person 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;

**“Receiving Party”** shall have the meaning given in Clause 17.3;

**“Registered User”** shall mean the person or persons whose name is registered in respect of the Supply Meter Point or any other Supply Meter Point at the Site pursuant to the terms of the Network Code;

**“Relevant Annex”** shall mean the Annex or Annexes attached hereto identified as such in the Quote;

**“Service”** shall mean the pipe, together with the associated valves and other equipment (if any), installed or to be installed between any Main and a Supply Meter Point;

**“Shipper”** shall mean a gas shipper licensed under Section 7(A)(2) of the Gas Act 1986 (and acting in such capacity) to arrange with a Gas Transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that Gas Transporter;

**“Site”** shall mean such premises or land owned or occupied by the Customer and/or the Consumer to which SGN reasonably requires access in connection with the Works;

**“Siteworks Procedures”** shall mean the collection of documents published as such by SGN from time to time (as such collection of documents is referred to in the guidance notes published by SGN from time to time relating to these Connections Terms);

**“Connections Terms”** shall mean these terms and conditions, including the annexes attached hereto;

**“Substantial Completion”** shall mean that the Equipment has been installed, Commissioned and left safe;

**“Substantial Completion Target Date”** shall mean the date that SGN intends to achieve Substantial Completion, as advised by SGN to the Customer as may be adjusted by agreed variations or as may be extended in accordance with the provisions of these Connections Terms;

**“Supply Meter Point”** shall mean the downstream flange or outlet of the nearest emergency control valve installed by SGN or to be installed by SGN upstream of the location or proposed location of the Metering Equipment or the Connection (as the case may be);

**“Supply Meter Point Reference Number”** shall mean the distinctive registration number allocated by SGN to the Supply Meter Point in accordance with the Network Code;

**“Supply Point Register”** shall have the meaning given in the Network Code;

**“Unused Materials”** shall mean all plant, equipment and materials supplied by SGN which have not been incorporated into the Works on termination or Final Completion of the Contract (as applicable);

**“Variation Acceptance Form”** shall mean the form detailing the Additional Work and any additional costs above what was provided in the Quote (or such other form as may from time to time be agreed by the Parties) by which the Customer accepts any changes or variations to this Contract (including the Works).

**“Working Day”** shall mean any day other than a Saturday, a Sunday, Christmas Day, Good Friday, or a day which is a bank holiday in England and Wales within the meaning of the Banking and Financial Dealings Act 1971;

**“Working Pressure”** shall mean a pressure of natural gas of twenty one (21) millibars above atmospheric pressure or such greater pressure as may be specified as such in the Quote or the Order (as the case may be); and

**“Works”** shall be the works as set out in Clause 3, the Relevant Annex and/or the Quote or Order (as the case may be).

1.2 In these Connections Terms unless the context otherwise requires:

1.2.1 headings and sub-headings are for convenience only and shall not affect the interpretation of these Connections Terms;

1.2.2 all references to any:

(a) statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall



include any orders, regulations, codes of practices, instruments or other subordinate legislation made thereunder and any conditions attaching thereto; and

(b) technical procedure, technical standard and technical specification shall be deemed to include references to any technical procedure, technical standard and technical specification which amends, extends, consolidates or replaces the same;

1.2.3 reference to contractors shall be interpreted as referring to contractors and subcontractors of any tier;

1.2.4 reference to the word “includes” or “including” are to be construed without limitation;

1.2.5 where general words are followed by specific examples, the nature of the specific examples shall not restrict or qualify the natural meaning of the general words and the rule that where particular words are followed by general words the general words are limited to the same kind as the particular words shall not apply;

1.2.6 reference to times of the day (whether a Working Day or a calendar day) in these Connections Terms are to official time in the United Kingdom, and except where otherwise provided:

(c) where anything is to be done under these Connections Terms by or not later than a day (whether a Working Day or a calendar day) or any period under these Connections Terms is to run to a day (whether a Working Day or a calendar day) such thing may be done or such period shall run up to the end of such day (whether a Working Day or a calendar day); and

(d) where anything is to be done under these Connections Terms from or not earlier than a day (whether a Working Day or a calendar day) or any period under these Connections Terms made pursuant hereto is to run from a day (whether a Working Day or a calendar day), such thing may be done or such period shall run from the start of such day (whether a Working Day or a calendar day).

1.3 In the event of any conflict between the Clauses of these Connections Terms and the Annexes attached hereto, the Annexes attached hereto shall prevail. In the event of any conflict between a Quote or Order (as the case may be) and the Clauses of these Connections Terms or the Annexes attached hereto, the Quote or Order (as the case may be) shall prevail.

1.4 Unless the context otherwise requires, references to a Clause or Annex are to a Clause or Annex in these Connections Terms, and references in an Annex or part of an Annex to a paragraph or sub-paragraph are to a paragraph or sub-paragraph of that Annex or that part of that Annex.

## 2 HOW THE CONTRACT IS FORMED

2.1 The Customer shall make an application for Works either by email or by pre-paid post (**Application**).

2.2 On receipt of the Application, SGN Connections Limited (on behalf of SGN) will either email and/or post (whichever the Customer requests) to the Customer, the Quote, these Connections Terms, an Order Form, and any other documents relevant to the Application. If the Customer wishes to place an order on the terms of the documents which have been sent to the Customer (“**Order**”), the Customer is required to fully complete, sign, date and return the form (“**Order Form**”) and send any other document requested by SGN in the Quote, either by email or by pre-paid post to SGN Connections Limited (on

behalf of SGN). The Customer should retain the Quote and these terms and conditions for its records.

- 2.3 Placing an Order by any of the methods set out in Clauses 2.2 will constitute an offer by the Customer to SGN to carry out the Work. If the Customer does not fully comply with any of the requirements of placing an Order as set out in Clause 2.2, the Customer will not have placed a valid Order and SGN will not be able progress the Customer's Order until such times as the requirements in Clause 2.2 are met provided that the Quote is still valid in accordance with Clause 2.9.
- 2.4 The Order will only be capable of acceptance by SGN where the following has happened:
- 2.4.1 when SGN has received the fully completed, signed and dated Order Form by email or by pre-paid post, which confirms that the Customer has read, understood and agreed to all of the documents and would like to proceed with the Order;
  - 2.4.2 SGN has received, in cleared funds, full payment of the Contract Sum set out in the Order (unless the Customer is a credit customer and have agreed different payment arrangements with SGN);
  - 2.4.3 SGN has been provided with the signed written consent of the legal owner of any third party land (other than a public highway) that the service pipe will cross (if relevant);
  - 2.4.4 SGN has been provided with signed written consent of the other legal owners of the land that the service pipe will cross (if relevant);
  - 2.4.5 SGN has been provided with listed buildings consent from the local authority to carry out the Work (if relevant);
  - 2.4.6 SGN has been provided with conservation area consent from the local authority to carry out the Work (if relevant);
  - 2.4.7 SGN has checked the Order to determine if the Work set out in the Quote is within SGN's standard charge criteria as detailed in the SGN Connections Service Charges (**Southern**) document (which can be found on SGN's website at <https://www.sgn.co.uk/Publications/Connections/> or a paper copy can be sent to You in the post if You request it);
  - 2.4.8 SGN has checked the Order against the SGN Connections Charging Methodology and Standard Condition 4B Statement (which can be found on SGN's website at the following link <https://www.sgn.co.uk/Publications/Connections/> (or a paper copy can be sent to You in the post if You request it)); and
  - 2.4.9 SGN has received any other documents requested in the Quote (if relevant).
- 2.5 Where the requirements of Clause 2.4 have been met, SGN Connections Limited (on behalf of SGN) will send the Customer an acknowledgement by email or by pre-paid post to confirm that the Order has been accepted ("**Acceptance Acknowledgement**").
- 2.6 The Order will be declined if SGN Connections Limited (on behalf of SGN) determines:
- 2.6.1 that the property falls within an area which is operated by an independent gas transporter, or another gas distribution network;
  - 2.6.2 that the pressure of the pipe to which the connection is being made is 7 barg or more;

- 2.6.3 that SGN has previously accepted an Order for the same Work from a third party; or
- 2.6.4 that there are elements of the costing that are missing or incorrect within the Quote.
- 2.7 In the event that the Order is declined SGN Connections Limited (on behalf of SGN) will contact the Customer to discuss alternative options available to the Customer or explain why the Work cannot take place.
- 2.8 If SGN has received payment before the Order has been accepted and the Order is declined, SGN will refund the payment they have received from the Customer by the same method from which the payment was made (e.g. if payment was made by credit card then SGN will refund the Customer on that credit card), unless payment was made by BACS, in which case this will be refunded by cheque.
- 2.9 Any Quote given by SGN will not constitute an offer (and is subject to change if SGN identifies any reason to change the Quote), and is only valid for a period of 90 days from its date of issue, unless SGN agrees to extend the 90 day period at its sole discretion.
- 2.10 The contract between the Customer and SGN will comprise of the following documents:
  - 2.10.1 the Quote;
  - 2.10.2 these Connections Terms;
  - 2.10.3 the Relevant Annex;
  - 2.10.4 the Order Form (if applicable); and
  - 2.10.5 the Acceptance Acknowledgement (“**Contract**”).
- 2.11 In respect of the Works, either SGN or SGN Connections Limited (on behalf of SGN) will:
  - 2.11.1 except in the circumstances where Clause 6.2 applies, issue to the Customer (in such form as may be agreed by the Parties from time to time) a notice confirming:
    - (e) the Key Dates; and
    - (f) the proposed Supply Meter Point Reference Number(s) pursuant to Clause 11.1; or
  - 2.11.2 in the circumstances where Clause 6.2 applies, within the period specified in Clause 2.12 (unless otherwise notified in writing), issue to the Customer (in such form as may be agreed by the Parties from time to time) a notice confirming:
    - (g) the date or dates on which SGN intends to commence and finish installing and Commissioning the Service or Services in question;; and
    - (h) the proposed Supply Meter Point Reference Number(s) pursuant to Clause 11.2.
  - 2.11.3 The notice referred to in Clause 2.11.1 shall be issued:  
within the number of days of SGN Connections Limited (on behalf of SGN) sending the Customer the Acceptance Acknowledgement specified in the relevant business rules published by SGN from time to time pursuant to the Gas (Standards of Performance) Regulations 2005 (or any amendment or replacement thereto); or

2.11.4 in the absence of any such business rules as referred to in clause 2.11.3, within twenty (20) working Days.

2.12 The notice referred to in Clause 2.11.2 shall be issued:

2.12.1 within the number of days of receipt by SGN Connections Limited (on behalf of SGN) sending the Customer the Acceptance Acknowledgement of a notice pursuant to Clause 6.2 specified in the relevant business rules published by SGN from time to time pursuant to the Gas (Standards of Performance) Regulations 2005 (or any amendment or replacement thereto); or

2.12.2 in the absence of any such business rules as referred to in clause 2.12.1 , within twenty (20) Working Days of receipt by SGN of a notice pursuant to Clause 6.2.

### **3 THE WORKS**

3.1 The Works shall comprise, and exclude, the matters set out in paragraph 1 of the Relevant Annex.

3.2 The Contract, the Works, the Contract Sum, and the Key Dates are based upon:

3.2.1 the following assumptions (unless the Quote expressly provides to the contrary):

(i) that the Site is owned by the Consumer or that, where the Site is not owned by the Consumer, the Consumer has the permission of the owner of the Site for the Works to be carried out;

(j) that the Customer (if it is not the Consumer) has obtained the permission of the Consumer for the Works and the Customer Works to be carried out;

(k) that the Works do not cross or take place over, in or on any land not owned by the Consumer or not forming part of the Highway, and that therefore no easements or other permissions, consents or rights in land are required in respect of the Works;

(l) that no unreasonable, unusual or unduly onerous planning requirements or other conditions, or site rules, regulations or requirements shall be imposed on SGN (or its contractors, or their personnel) in the conduct of the Works (unless identified in the Quote); and

(m) that SGN will be the principal contractor (for the purposes of the Construction (Design and Management) Regulations 2015 (where applicable)) on the Site in respect of the Works; and

(n) that the property shown on the plan is the correct property; and

3.2.2 any other assumptions stated in the Quote.

3.3 In the event that the Customer advises SGN at or after receiving the Acceptance Acknowledgement that any of the above assumptions are incorrect, SGN and the Customer shall each use reasonable endeavours to agree a variation to the Works, the Contract Sum, any or all of the Key Dates or any other element of the Contract to take account of the actual circumstances in question. Where the Customer and SGN are unable to agree such a variation, then either Party shall be entitled to terminate the Contract in accordance with Clause 14.1 or Clause 14.3 as the case may be.

## 4 THE CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall in accordance with the terms and conditions of the Contract pay all amounts to be paid by the Customer under the Contract.
- 4.2 The Customer shall, to the standard of a Reasonable and Prudent Operator:
- 4.2.1 comply with its obligations under a Contract, including those set out in paragraph 2 of Annex 2 (if applicable);
  - 4.2.2 without undue delay or cost to SGN, provide such information, drawings and specifications (including plans of services on or adjacent to the Site that may affect or be affected by the Works) within the possession or reasonable control of the Customer or the Consumer as SGN may reasonably request;
  - 4.2.3 except as provided for in paragraph 1 of the Relevant Annex, by the Physical Commencement Target Date, use reasonable endeavours to obtain all necessary planning permissions, consents and licences for the siting, construction, operation and maintenance of the Customer Works (if any) and any element of the Equipment which is to be constructed or installed on the Site, on any land other than on the Site or in a Highway as part of the Works or in connection therewith;
  - 4.2.4 where the Customer has given notice pursuant to paragraph 1.1.6 of Annex 1, by the Physical Commencement Target Date, use reasonable endeavours to obtain from the relevant owner and/or occupier of the land concerned all necessary permissions, rights and interests in land (the content of which is satisfactory to SGN acting reasonably) required for such of the Equipment (other than any Services as are to be installed in the course of the Works on a Highway or any Mains) as are to be constructed in the course of the Works and which are not on, in or over any property belonging to the Consumer. The Customer shall obtain details of the required extent of such permissions, rights and interests in land from SGN;
  - 4.2.5 subject to any reasonable site rules and regulations (or any other site rules and regulations as may be agreed by SGN and the Customer), facilitate free and unrestricted access and egress for SGN and its contractors to and from the Site and any other land (other than where provided by SGN pursuant to **an easement** under paragraph 1.1.6 of Annex 1, and other than a Highway) over which the Works are to be carried out during Normal Working Hours or at such other times as may be agreed between the Parties to the extent reasonably necessary to enable them to carry out the Works;
  - 4.2.6 subject to any reasonable site rules and regulations (or any other site rules and regulations as may be agreed by SGN and the Customer), facilitate free and unrestricted access and egress for authorised SGN' employees, contractors or agents at all reasonable times during the construction of the Customer Works for the purpose of verifying the construction of the Customer Works;
  - 4.2.7 provide SGN with full details of any relevant health and safety policies, permit to work procedures or other similar matters likely to impact upon the carrying out of the Works on the Consumer's or any third party premises.
  - 4.2.8 so as not to delay the Works, where the Customer or Consumer pre-excavates the trench for the installation of the Equipment, carry out, or procure the carrying out of, such work to SGN' reasonable standards as notified to the Customer and as shall apply from time to time, and

provide fine fill as required by SGN to allow SGN to comply with its obligation to cover the Equipment in any such trench with such fine fill;

- 4.2.9 so as not to delay the Works, where it is intended by the Customer or any third party to alter the ground level of the areas of the Site in which the Equipment is to be installed subsequently to Acceptance, provide details of the proposed finished ground level;
  - 4.2.10 where the Works comprise Connection Works but not the installation of a Meter Housing or a Meter Housing Base, so as not to delay the Connection Works, provide and construct, in accordance with the date or dates agreed by the Customer and SGN (or, in the absence of such agreement, specified by SGN), those parts of the Meter Housing and/or the Meter Housing Base identified by SGN being required to be constructed on the Site prior to SGN commencing the Connection Works;
  - 4.2.11 so as not to delay the Works undertake and perform the Customer Works and those other works or matters specified in the Quote, or the Relevant Annex as being the responsibility of the Customer in accordance with the reasonable requirements of SGN and provide all equipment and materials that the Customer is required by the Quote or the Relevant Annex to provide in connection with the Works;
  - 4.2.12 following Final Completion of the Works, use reasonable endeavours to ensure that suitable measures are in place to prevent interference with the Equipment on the Site and report any suspected interference promptly to SGN; and
  - 4.2.13 comply with any obligations specified in the Relevant Annex and/or the Quote by no later than the date specified therein for so doing or, where no such date is specified, without undue delay;
- 4.3 Provided that the Customer acting as an RPO shall not be in breach of any provision of Clause 4.2 in circumstances where such breach would not have occurred but for a failure by SGN to comply with any provision of Clause 5.
- 4.4 The Customer shall inform the Consumer and the Registered User(s) that the Works have been requested by the Customer and will be undertaken by SGN. The Customer shall be liable for and shall reimburse SGN for any amounts paid by SGN to the Registered User(s) pursuant to Section J of the Network Code in respect of a failure to make gas available for offtake at the Supply Meter Point in question or any other Supply Meter Point(s) on the Site as a result of the performance of the Works.

## 5 SGN'S OBLIGATIONS

- 5.1 SGN shall, to the standard of a Reasonable and Prudent Operator:
  - 5.1.1 without additional cost to the Customer provide without undue delay such information within the possession or control of SGN that is reasonably required by the Customer for the performance of its obligations under Clause 4;
  - 5.1.2 undertake, perform and complete the Works in the manner provided for in the Contract subject always to its obligations as a Gas Transporter;
  - 5.1.3 make all undisputed payments reasonably and properly due by it under the Contract;

- 5.1.4 in the course of the Works comply with site rules and regulations reasonably imposed in the course of the Works or otherwise agreed in writing by the Parties;
- 5.1.5 in the course of the Works, and subject to the provisions of the Contract, perform changes to the Works agreed with the Customer pursuant to Clause 8; and
- 5.1.6 in its conduct of the Works not cause a breach of any permission, licence or consent obtained by the Customer pursuant to its obligations under Clause 4, provided that SGN has been provided with a copy of such permission, licence or consent prior to such conduct.

5.2 SGN will not be liable in the event that any breach is due to the Customer's fault.

## 6 TIMESCALES

- 6.1 SGN will, acting as a Reasonable and Prudent Operator and subject to unavoidable or unforeseeable circumstances, commence the Works on or before the Physical Commencement Target Date.
- 6.2 Where the Works involve the laying of more than one (1) Service and the Customer has advised SGN that it does not wish SGN to lay all the Services as a single operation, then the Customer shall give SGN as much notice as is reasonably practicable, and in any event at least fifteen (15) Working Days notice of the dates when the Customer wishes SGN to commence the laying of each Service. Provided that the Customer has complied with its obligations arising under the Contract prior to that date, SGN shall notify the Customer in accordance with Clause 2.11.2 (unless agreed otherwise) of the date or dates on which SGN intends to commence and finish installing and Commissioning the Service or Services in question, and shall commence laying and finish such Service on the date or dates so notified (provided that Clause 7 shall apply to such date or dates).
- 6.3 SGN shall use all reasonable endeavours to:
  - 6.3.1 achieve Substantial Completion by the end of Normal Working Hours on the Substantial Completion Target Date; and
  - 6.3.2 issue a notification to the Customer within five (5) Working Days of achieving Substantial Completion, stating the date upon which Substantial Completion was achieved.
- 6.4 SGN shall use all reasonable endeavours to:
  - 6.4.1 achieve Final Completion by the end of Normal Working Hours on the Final Completion Target Date; and
  - 6.4.2 issue a notification to the Customer within ten (10) Working Days of achieving Final Completion, stating the date upon which Final Completion was achieved.
- 6.5 If SGN fails to achieve Substantial Completion of the Works by the end of Normal Working Hours on the Substantial Completion Target Date, then:
  - 6.5.1 where the Works are included in the scope of the relevant business rules published by SGN from time to time pursuant to the Gas (Standards of Performance) Regulations 2005 (or any amendment or replacement thereto), SGN shall pay the Customer the amount specified as due for payment in such circumstances pursuant to the said business rules; and

6.5.2 where the Works are not included in the scope of the relevant business rules published by SGN from time to time pursuant to the Gas (Standards of Performance) Regulations 2005 (or any amendment or replacement thereto), SGN shall be liable to pay to the Customer an amount (the **“Liquidated Damages Amount”**) equal to the Daily Liquidated Damages per twenty four hour period or part thereof of actual delay, provided that SGN’ liability hereunder shall not under any circumstances exceed the Liquidated Damages Cap.

6.6 The payment referred to in:

6.6.1 Clause 6.5.1 shall be paid in accordance with the relevant business rules published by SGN from time to time pursuant to the Gas (Standards of Performance) Regulations 2005 (or any amendment or replacement thereto); and

6.6.2 Clause 6.5.2 shall:

(o) where no further invoices are to be issued by SGN to the Customer in respect of the Works, be in such form as SGN and the Customer may agree for an amount equal to the Liquidated Damages Amount within thirty (30) calendar days of the occurrence of Substantial Completion; or

(p) where further invoices are to be issued due by SGN to the Customer in respect of the Works, be in the form of a reduction to the next invoice relating to the Works in an amount equal to the Liquidated Damages Amount. Where the amount of the reduction referred to above is greater than the total of all other items on the invoice, the amount by which the reduction exceeds the total of all other items on the invoice shall be paid or credited to the Customer in such form as SGN and the Customer may agree. Any such reductions referred will not affect the amount of value added tax (or equivalent) payable by the Customer in respect of the Contract Sum.

## 7 EXTENSIONS OF TIME AND ADDITIONAL COSTS

7.1 The Key Dates shall be amended as set out in Clause 7.2 in the event of any delay to the Works (irrespective of when the cause of such delay occurs) to the extent that such delay is caused by any of the following matters, save where such delay is directly attributable to SGN’s failure to act as a Reasonable and Prudent Operator:

7.1.1 request of the Customer or the Consumer;

7.1.2 failure or delay of the Customer in carrying out any of its obligations under the provisions of the Contract;

7.1.3 the Customer Works (if any) not being ready and accessible when SGN commences the Works;

7.1.4 any of the assumptions set out in

(q) Clause 3.2;

(r) the Quote (if any); or

(s) the Relevant Annex (if any)



- prove to be incorrect and such incorrect assumption could not, at the date of issue of the Quote, have been verified by SGN;
- 7.1.5 errors in any information, data or design specifications provided by the Customer to SGN in relation to the Works and/or the Customer Works;
- 7.1.6 ground conditions which could not have been reasonably foreseen by an RPO;
- 7.1.7 additional works that would not have been reasonably foreseen at the time of the Quote or the Order (as the case may be);
- 7.1.8 any impediment or prevention in the exercise by SGN of any rights and interests in land obtained by SGN in the course of conducting the Works;
- 7.1.9 delays of which SGN was not aware at the date of issue of the Quote a) imposed under the terms of any licences issued under the New Roads and Streets Work Act 1991; or b) requested or required by any highway authority acting in accordance with its statutory powers;
- 7.1.10 the discovery of items of historical, archaeological or special scientific interest;
- 7.1.11 adverse weather conditions and the effects of such adverse weather conditions, where “adverse weather conditions” are weather conditions which adversely affect the Works and are in excess of those that would have anticipated for the time of year in question;
- 7.1.12 any Event Outside of SGN’s Control;
- 7.1.13 any labour dispute or work stoppage or slow-down involving:
- (t) the Customer and/or the Consumer;
  - (u) the Customer’s and/or the Consumer’s contractors (other than SGN); or
  - (v) any other person;
- 7.1.14 which affects the Works;
- 7.1.14 the imposition of unreasonable site rules and regulations (other than site rules that have been agreed by the Parties) or the interference of the owners or occupiers of the land to which SGN reasonably requires access for the purpose of the Works;
- 7.1.15 unavailability or delays incurred in the delivery of equipment or materials necessary to complete the Works provided that such delays were not reasonably foreseeable by SGN at the time of issue of the notice pursuant to Clause 2.11.1 or 2.11.2 (as the case may be) in respect of that part of the Works in question;
- 7.1.16 any delay in the grant of permissions or delays in the acquisition of any land or interest in or rights over land, including delays in the compulsory acquisition of land;
- 7.1.17 a suspension of the Works by SGN pursuant to Clause 14.2;
- 7.1.18 the requirements of statutory authorities;
- 7.1.19 any suspension of the Works pursuant to Clause 7.5;
- 7.1.20 where the Customer fails to obtain by the Physical Commencement Target Date all necessary

planning permissions, consents and licences for the siting, construction, operation and maintenance of the Customer Works (if any) and any element of the Equipment which is to be constructed or installed on the Site, on any land other than on the Site or in a Highway as part of the Works or in connection therewith (irrespective of whether or not the Customer has complied with its obligation under Clause 4.2.3);

7.1.21 where the Customer has given notice pursuant to paragraph 1.1.6 of Annex 1, and the Customer fails to obtain by the Physical Commencement Target Date from the relevant owner and/or occupier of the land concerned all necessary permissions, rights and interests in land (the content of which is satisfactory to SGN acting reasonably) required for such of the Equipment (other than any Services as are to be installed in the course of the Works on a Highway or any Mains) as are to be constructed in the course of the Works and which are not on, in or over any property belonging to the Consumer (irrespective of whether or not the Customer has complied with its obligation under Clause 4.2.4);

7.1.22 where SGN or its contractors are not permitted free and unrestricted access or egress (subject to any site rules that have been agreed by the Parties) to and from the Site and any other land (other than where provided by SGN pursuant to **an easement** under paragraph 1.1.6 of Annex 1, and other than a Highway) over which the Works are to be carried out during Normal Working Hours or at such other times as may be agreed (irrespective of whether or not the Customer has complied with its obligation under Clause 4.2.5); or

7.1.23 where authorised SGN employees, contractors or agents are not permitted free and unrestricted access or egress (subject to any site rules that have been agreed by the Parties) at all reasonable times during the construction of the Customer Works for the purpose of verifying the construction of the Customer Works (irrespective of whether or not the Customer has complied with its obligation under Clause 4.2.6).

7.2 SGN shall only be entitled to an amendment to the Key Dates under this Clause 7, if it has used and continues to use reasonable endeavours to overcome or minimise any actual or anticipated delay. The amendment to the Key Dates under this Clause 7 shall be for a fair and reasonable period commensurate with the cause of delay, together with any additional period resulting from any re-scheduling of work by SGN a result of the delay. SGN shall:

7.2.1 where such amendment is identified prior to original Physical Commencement Target Date, issue to the Customer a notification of such amendment to all or any of the Key Dates no later than one (1) Working Day after the amendment is identified (or as soon thereafter as is reasonable in the circumstances), but in any case no later than one (1) Working Day prior to the original Physical Commencement Target Date, together with a Variation Acceptance Form; or

7.2.2 where such amendment is identified on or after the original Physical Commencement Target Date (but prior to the Substantial Completion Target Date) issue to the Customer a notification of the requirement for (but not the extent of) such amendment to all or any of the Key Dates (other than the Physical Commencement Target Date) no later than one (1) Working Day after the amendment is identified (or as soon thereafter as is reasonable in the circumstances), together with a Variation Acceptance Form;

unless, in either case, shorter time periods have been agreed with the Customer. SGN will notify the Customer of the revised Key Dates (other than the Physical Commencement Target Date) within the relevant timescales specified in Clause 2.11 after the cause of the delay has passed, or a date has been identified on which the cause of the delay will have passed.

7.3 In the event that SGN believes it will be unable (for whatever reason, including a reason not listed in Clause 7.1) to achieve Substantial Completion by the Substantial Completion Target Date, then SGN shall notify the Customer accordingly not less than one (1) Working Day prior to the Substantial Completion Target Date or the Substantial Completion Target Date (as the case may be). In the event that:

7.3.1 SGN fails to give such notice; and

7.3.2 as a result, the Customer is unable to give sufficient notice to the person installing the Metering Equipment at the premises to which the Works relate that such installation is not to be performed on the agreed date and therefore incurs a charge to such person pursuant to the contractual arrangements it has with such person; then SGN shall be liable to pay to the Customer an amount equal to the Abortive Meter Worker Charge, provided that:

(w) the Customer has complied with all of its obligations under the Contract which require to be complied with on or prior to the Substantial Completion Target Date or the Substantial Completion Target Date (as the case may be);

(x) the Customer has, as soon as it became aware of the fact that SGN would be unable (for whatever reason, including a reason not listed in Clause 7.1) to achieve Substantial Completion by the Substantial Completion Target Date, given notice to the person installing the Metering Equipment at the premises to which the Works relate that such installation is not to be performed on the agreed date; and

(y) the Customer has provided such evidence to SGN, SGN may reasonably request that the Customer has incurred a charge pursuant to the contractual arrangements it has with the person installing the Metering Equipment at the premises to which the Works relate.

7.3.3 The provisions of this Clause 7.3 shall be without prejudice to any provision of Clause 6 or any other provision of this Clause 7.

7.4 SGN shall only be entitled to any additional amounts under this Clause 7, to the extent those amounts SGN could not have minimized or avoided acting as an RPO. Subject to Clause 7.6, in the event that SGN has incurred or expended or will incur or expend any additional amounts as a result of any of the following matters:

7.4.1 any delay resulting from any of the matters referred to in Clause 7.1 (other than those referred to in Clauses 7.1.19, 7.1.22 or 7.1.23);

7.4.2 any increase to the cost to SGN of performing the Works due to any new imposition tax or duty in respect of labour or materials occurring subsequent to the time of the Quote or Order provided that such increase was not reasonably ascertainable at the date of the Quote or Order;

7.4.3 agreed costs and expenses reasonably incurred by SGN in connection with the provision of assistance that may be given to the Customer in connection with the performance of its obligations; or

- 7.4.4 all costs and expenses reasonably incurred by SGN in the course of the procurement and attempted procurement of permissions, rights and interests in land;

then SGN shall notify the Customer as soon as reasonably practicable (and in any case no more than five (5) Working Days) after becoming aware that such additional amount has been or will be incurred or expended of such additional amounts (together with any amounts that have been or will be paid or incurred by SGN a direct result of any suspension pursuant to Clause 7.5 and of recommencing the Works following such suspension) and the reasons for such additional amounts arising.

- 7.5 If SGN is unable to agree such additional amounts with the Customer while SGN is still on Site and SGN is unable to progress any other part of the Works pending such agreement, SGN shall be entitled to immediately suspend all progress on the Works (other than that necessary to make safe those of the Works that have already been completed). The Customer shall notify SGN within ten (10) Working Days (or such other period as may be agreed by the Parties) of whether the Customer accepts such additional amounts by signing, dating and returning the Variation Acceptance Form. If:

- 7.5.1 the Customer notifies SGN that the Customer does not accept such additional amounts or fails to notify with such period, then either Party shall be entitled to terminate the Contract pursuant to Clause 14.1 or 14.3 as appropriate; and

- 7.5.2 the Customer notifies SGN that the Customer accepts such additional amounts by signing dating and returning the Variation Acceptance Form, the Contract shall be deemed to have been varied accordingly, the Contract Sum shall be increased by such additional amounts, and (if SGN has suspended progress on the Works in accordance with this Clause 7.5) SGN shall (as soon as reasonably practicable, having regard to its other scheduled work) recommence progress on the Works.

- 7.6 In the event of:

- 7.6.1 any delay referred to in Clauses 7.1.22 or 7.1.23 arising after SGN has arrived on Site to commence the Works; or

- 7.6.2 SGN being unable to commence the Works on the Physical Commencement Target Date (as a result of the Customer's failure to fulfil its obligations under Clause 4 and the Customer not having cancelled the said date no later than one (1) Working Day prior thereto);

- 7.6.3 the Customer shall pay to SGN an abortive visit charge at a rate as revised and published by SGN from time to time; provided that such failure is not caused by a failure on the part of SGN to fulfil its obligations under Clause 5.

- 7.7 In all cases where SGN has given notice under Clause 7.2, it shall thereafter comply with all reasonable instructions which the Customer shall give in writing in order to overcome or minimise any actual or anticipated delay (unless such compliance would cause SGN to incur extra costs or expenses). If compliance with any such instruction shall cause SGN to incur extra costs or expenses, then SGN shall not comply with such instruction unless and until:

- 7.7.1 SGN has provided the Customer with details of the cost of complying with such instructions; and

- 7.7.2 the Customer has agreed to such cost (in which case the Contract Sum shall be deemed to

have been amended to include such cost).

Provided that SGN shall only be entitled to such cost if such instructions require SGN to take actions which are additional or contrary to those actions taken (or which ought to be taken) by SGN pursuant to Clause 7.2 to overcome or minimise any actual or anticipated delay or additional amount.

In the event that the Customer does not agree to such costs within ten (10) Working Days of receiving the details thereof from SGN, SGN shall be under no obligation to comply with such instruction.

- 7.8 Without prejudice to Clause 6.1, in the event that a change to the Works is agreed pursuant to Clause 8, the Key Dates and/or the Contract Sum will be adjusted to the extent agreed in relation thereto, and SGN shall issue a notice to the Customer confirming the revised Key Dates.

## 8 CHANGES TO THE WORKS

- 8.1 In the course of the Works SGN shall make such changes to the Works whether by additions, modifications or omissions thereto as are from time to time agreed with the Customer, including any changes to the Contract Sum and/or all or any of the Key Dates, all in accordance with the provisions set out below.
- 8.2 In the event that the Customer wishes to request changes to the Works, it shall notify SGN in writing of the requested change.
- 8.3 As soon as reasonably practicable following receipt of a request from the Customer under Clause 8.2 (and in any event within five (5) Working Days of such receipt), SGN shall notify the Customer as to whether or not it is prepared to agree to the request (such agreement not to be unreasonably withheld), and in the event that SGN agrees to the request, SGN shall provide the Customer with a Variation Acceptance Form..
- 8.4 In the event that:
- 8.4.1 SGN does not agree to the Customer's request; or
  - 8.4.2 the Customer does not agree to the additions to or reductions in the Contract Sum and any amendments to the Key Dates required in respect of such change as notified by SGN in accordance with Clause 8.3;

then neither Party shall be under further obligation in respect of such proposed change to the Works, and the existing arrangements under this Contract shall continue to apply.

## 9 VARIATION PAYMENTS

- 9.1 The Customer will be required to pay additional charges to SGN for the Additional Work ("**Additional Charges**").
- 9.2 If the Customer agrees to the Additional Works and Additional Charges:
- 9.2.1 in the case of a variation where the Work has commenced, the Customer shall sign and date the Variation Acceptance Form (which will be provided by the onsite engineering team) and give it to the onsite engineering team. Unless the Customer is a credit customer (in which case different payment arrangements will apply) and if it is possible, the onsite engineering

team will put the Customer on the phone to SGN Connections Limited, who will take payment on behalf of SGN. If it is not possible, SGN Connections Limited (on behalf of SGN) will contact the Customer within 10 Working Days to obtain payment; and

9.2.2 in the case of a variation where the Work has not commenced, the Customer shall send to SGN Connections Limited (either by email or by pre-paid post) a fully completed, signed and dated Variation Acceptance Form within 30 days of the date SGN sends the Variation Acceptance Form to the Customer; and, unless the customer is a credit customer (in which case different payment arrangements will apply) pay SGN the Additional Charges in full and in cleared funds in advance of the Additional Work being carried out.

9.3 If the Customer does not accept the Additional Work in accordance with either Clause 9.2.1 or Clause 9.2.2 (as applicable), SGN will not carry out the Additional Work and SGN will be entitled to cancel the Work, will leave the Site in a reasonable and safe condition, and then terminate the Contract entirely on the basis that SGN will not be able to fulfil its obligations. In such circumstances, SGN will refund the money the Customer has already paid less SGN's reasonable costs incurred up to the date the Contract is terminated. If the Customer is a credit customer, SGN shall be entitled to charge reasonable costs it has incurred up to the date the Contract is terminated. After this point, if the Customer would like SGN to carry out the Works, the Customer will need to re-apply for a new Quote.

## 10 PAYMENT

10.1 SGN will accept payment, in respect of the Work and the Additional Works, by cheque (made payable to SGN Connections Limited) or major debit or credit cards except for:

10.1.1 Visa Electron;

10.1.2 American Express; or

10.1.3 Diners Club.

10.2 If the Customer would like to pay by BACs, please use the BACs details set out in the Quote.

## 11 SUPPLY METER POINT REFERENCE NUMBERS

11.1 SGN will use reasonable endeavours to ensure that the Supply Meter Point Reference Number notified in respect of a new Supply Meter Point in accordance with this Clause 11.1 is the Actual Supply Meter Point Reference Number. Where the works include Connection Works in relation to one Service only, then SGN shall advise the Customer, in the notice issued pursuant to Clause 2.11.1, of the proposed Supply Meter Point Reference Number for the new Supply Meter Point to be established pursuant to the Works.

11.2 SGN will use reasonable endeavours to ensure that the Supply Meter Point Reference Number notified in respect of a new Supply Meter Point in accordance with this Clause 11.2 is the Actual Supply Meter Point Reference Number. Where the Works include Connection Works in relation to more than one Service, then SGN shall advise the Customer, in the notice issued pursuant to Clause 2.11.2, of the proposed Supply Meter Point Reference Number for each new Supply Meter Point to be established pursuant to the Works.

11.3 Notwithstanding the provisions of Clauses 11.1 and 11.2, SGN will have no liability to the Customer in the event that the Supply Meter Point Reference Number notified in respect of a new Supply Meter Point in accordance with Clauses 11.1 or 11.2 differs from the Actual Supply Meter Point Number. Where

the Actual Supply Meter Point Reference Number does differ from that notified in accordance with Clauses 11.1 or 11.2, SGN shall:

- 11.3.1 notify the Customer of the Actual Supply Meter Point Reference Number in accordance with the provisions of the relevant Network code; and
- 11.3.2 where appropriate change the label showing the Supply Meter Point Reference Number such that it shows the Actual Supply Meter Point Reference Number.

## 12 LIABILITY AND INDEMNITY

12.1 Subject to the further provisions of this Clause 12, each Party agrees and acknowledges that:

12.1.1 neither Party shall be liable to the other Party for loss arising from any breach of contract, other than for loss directly resulting from any such breach and which at the relevant date was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:

(z) physical damage to the property of the other Party; and/or

(aa) the liability (in law) of the other Party to any other such person for loss in respect of physical damage to the property of such person.

12.1.2 neither Party shall in any circumstances be liable in respect of any breach of any Contract to the other Party for any one or more of the following:

(bb) any loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill, or increased cost of working; or

(cc) any other loss which is an indirect or consequential loss; or

(dd) loss resulting from the liability of the other Party to any other person howsoever and whensoever arising, except as provided in Clauses 12.1.1(b) and 12.5; or

(ee) loss in respect of Clause 12.1.1 to the extent that it results from the breach or negligent act or omission of the other Party.

12.2 For the purposes of Clause 12.1.1 the “**relevant date**” is the date of Acceptance, except that where the breach in question would not have been a breach of the Contract but for a modification of the Contract, the relevant date shall be the date of such modification.

12.3 Subject to Clause 12.6, the amount or amounts for which either Party may be liable to the other Party pursuant to Clause 12.1.1 in respect of any one event or circumstance constituting or resulting in the first Party’s breach of a provision a Contract shall not exceed as respects the liability of SGN to the Customer or of the Customer to SGN five million pounds sterling (£5,000,000).

12.4 Clause 12.1 is without prejudice to any provision of the Contract which provides for an indemnity, or which provides for any Party to make a payment to another.

12.5 Nothing in the Contract shall exclude or limit the liability of either Party for death or personal injury resulting from the negligence of such Party.

12.6 The limitation of liability under Clause 12.3 in respect of Clause 12.1.1(b) shall not apply where, by virtue

of lack, as at the date of the Contract, of a contractual relationship with such other person referred to in Clause 12.1.1(b) the other Party has been unable to limit its liability.

- 12.7 The rights and remedies of the Parties pursuant to a Contract exclude and are in place of any rights and remedies of any Party in tort (including negligence and nuisance) or misrepresentation (but not fraudulent misrepresentation) in respect of the subject matter of the Contract; and accordingly (but without prejudice to Clauses 12.5 and 12.10) each Party (to the fullest extent permitted by law):
- 12.7.1 waives any such other rights or remedies (other than those pursuant to the Contract); and
- 12.7.2 releases the other Party from any duties or liabilities arising in tort or misrepresentation (but not fraudulent misrepresentation) in respect of the subject matter of the Contract.
- 12.8 Without prejudice to Clause 12.7 and notwithstanding any provision of the Gas (Standards of Performance) Regulations 2005 (or any amendment or replacement thereto), which stipulates time shall be of the essence, where any provision of a Contract provides for any amount to be payable by a Party upon or in respect of that Party's breach of any provision of the Contract, each Party agrees and acknowledges that the such provisions have been the subject of discussion and negotiation and that the remedy conferred by such provision is exclusive of and is in substitution for any remedy in damages in respect of such breach or the event or circumstance giving rise thereto.
- 12.9 For the avoidance of doubt, nothing in this Clause 12 shall prevent or restrict either Party from in enforcing any obligation (including suing for a debt) owed to it under or pursuant to a Contract.
- 12.10 Nothing in this Clause 12 shall constitute a waiver by either Party of any right or remedy it may have (other than pursuant to a Contract) in respect of a breach by the other Party of any Legal Requirement.
- 12.11 Each provision of this Clause 12 shall be construed as a separate and severable contract term, and shall survive the termination or expiry of any Contract.
- 12.12 Each Party acknowledges and agrees that the provisions of this Clause 12 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date of the Contract.
- 12.13 The amount or amounts for which a Party may be liable to the other Party pursuant to any indemnity provided for in a Contract in respect of any one event or circumstance giving rise to liability under such indemnity shall not exceed as respects the liability of SGN to the Customer or of the Customer to SGN one million pounds sterling (£1,000,000).
- 12.14 Any design carried out by SGN pursuant to a Contract is carried out solely for the purpose of allowing SGN to perform its obligations under such Contract. Accordingly, SGN gives no warranty as to the quality or suitability of such design if it is utilised by the Customer or any other person for the purpose of performing the same or similar activities to some or all of those activities comprised in the Works, and SGN shall not be liable for any loss or damage sustained or incurred by the Customer or any third party should the Customer or any other person utilise the design for the purpose of performing the same or similar activities to some or all of those activities comprised in the Works. The Customer shall advise any person to whom the Customer discloses such design of the terms of this Clause 12.14. For the avoidance of doubt, the carrying out of any works in relation to Metering Equipment (whether existing or future) shall not be "the same or similar activities" for the purposes of this Clause 12.14.



## 13 EVENTS OUTSIDE OF SGN'S CONTROL

- 13.1 SGN will not be liable or responsible for any losses suffered by the Customer arising from any failure to perform, or delay in performance of, any of SGN's obligations under a Contract that is caused by an Event Outside Of SGN's Control. An Event Outside Of SGN's Control is defined below in Clause 13.2.
- 13.2 An "**Event Outside Of SGN's Control**" (also known as a force majeure event) means any act or event beyond **SGN** reasonable control, including without limitation, cancellation/suspension of permits, road closures, emergency services instructions, the presence of any scaffolding on the Site which prevents Us from carrying out the Work safely, failure by the Customer or Customer's contractor leaving the Site in a state which prevents Us from carrying out the Work safely, the presence of other contractors working in the vicinity which prevents Us from carrying out the Work safely, health and safety concerns, the presence of hazardous materials, the Customer providing SGN with incorrect or incomplete information at the time of the Application, prevention by third parties from carrying out the Work due to land ownership dispute, strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, extreme weather, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks.
- 13.3 If an Event Outside Of SGN's Control takes place that affects the performance of SGN's obligations under a Contract
- 13.3.1 SGN shall contact the Customer as soon as reasonably possible to notify the Customer of the Event Outside Of SGN's Control; and
- 13.3.2 SGN's obligations under the Contract will be suspended and the time for performance of **SGN's** obligations will be extended for the duration of the Event Outside Of SGN's Control. Where the Event Outside Of SGN's Control affects **SGN's** delivery of the Work, SGN will provide the Customer with a new date when the Work will recommence and any amendments to the Key Dates.

## 14 TERMINATION AND SUSPENSION

- 14.1 Without prejudice to any of its antecedent rights or remedies, SGN may terminate any Contract:
- 14.1.1 forthwith on written notice if the Customer goes into liquidation (either voluntary or compulsory) other than for the purposes of a solvent amalgamation or re-organisation or if any administrator or administrative receiver shall be appointed in respect of the whole or any material part of its assets; or if it shall make or offer to make any arrangement or composition for the benefit of creditors generally;
- 14.1.2 by giving five (5) Working Days notice in writing if SGN is prevented by reason of any Event Outside of SGN's Control from performing any of its obligations under the Contract for a period exceeding sixty (60) calendar days;
- 14.1.3 by giving twenty (20) Working Days notice in writing of a material breach of the Contract by the Customer, provided that the Customer fails to take substantial steps to remedy the breach within that twenty (20) Working Day period of notice;
- 14.1.4 by giving twenty (20) Working Days notice in writing in the event that any permission, rights or interest in land necessary for the conduct of the Works have not been secured prior to the Physical Commencement Target Date, provided that where SGN is (as part of the Works)

- required to secure such permission, rights or interest in land, SGN shall have acted as a Reasonable and Prudent Operator in seeking to secure such permission, rights or interest in land;
- 14.1.5 by giving twenty (20) Working Days notice in writing in the event that SGN is prevented from exercising any permission or right or enjoying any interest in land required for the conduct of the Works (unless due to SGN' breach of its obligations under such permission, right or interest in land) for a continuous period of sixty (60) calendar days or for an aggregate of ninety (90) calendar days in any period of twelve (12) months;
  - 14.1.6 by giving five (5) Working Days notice in writing if Substantial Completion of all of the Works has not occurred within two hundred and seventy (270) calendar days (or such longer period as may be agreed by the Parties in writing) of the date of the Quote (unless due to SGN' breach of its obligations under the Contract);
  - 14.1.7 forthwith on written notice where the Customer indicates that the Works are no longer necessary or required;
  - 14.1.8 forthwith on written notice if Final Completion of all of the Works has not occurred within one (1) year (or such longer period as may be agreed by the Parties in writing) of the date of the Quote (unless due to SGN' breach of its obligations under the Contract);
  - 14.1.9 forthwith on written notice if SGN and the Customer are unable to agree the costs referred to in paragraph 1.1.6(b) of Annex 1;
  - 14.1.10 forthwith on written notice if SGN and the Customer are unable to agree a variation as referred to in Clause 3.3; or
  - 14.1.11 forthwith on written notice if the Customer refuses to accept, or fails to agree to, the additional amounts referred to in Clause 7.4.
- 14.2 In the event that the Customer is in breach of any of the payment provisions of the Contract, SGN shall be entitled (upon giving the Customer seven (7) calendar days' prior written notice) to suspend all or any part of the Works until the Customer has rectified such breach. In the event of such suspension the Customer shall in addition to all other amounts due reimburse SGN on invoice for all reasonable sums paid or incurred by SGN as a direct result of such suspension.
- 14.3 The Customer may terminate the Contract:
- 14.3.1 forthwith on written notice if SGN goes into liquidation (either voluntary or compulsory) other than for the purposes of a solvent amalgamation or re-organization or if any administrator or administrative receiver shall be appointed in respect of the whole or any material part of its assets; or if it shall make or offer to make any arrangement or composition for the benefit of creditors generally;
  - 14.3.2 by giving five (5) Working Days prior notice in writing if SGN is prevented by reason of any Event Outside of SGN's Control from performing any of its obligations under the Contract for a period exceeding sixty (60) calendar days;
  - 14.3.3 by giving twenty (20) Working Days notice in writing of a material breach of the Contract by SGN, provided that SGN fails to take substantial steps to remedy the breach within the twenty (20) Working Day notice period;

- 14.3.4 by giving twenty (20) Working Days notice in writing in the event that any permission, rights or interest in land necessary for the conduct of the Works have not been secured prior to the Physical Commencement Target Date, provided that where the Customer is (as part of the Works) required to secure such permission, rights or interest in land, the Customer shall have acted as a Reasonable and Prudent Operator in seeking to secure such permission, rights or interest in land;
  - 14.3.5 by giving SGN five (5) Working Days notice in writing. Provided that SGN shall be entitled to notify its receipt of such notice to the Consumer;
  - 14.3.6 forthwith on written notice if SGN and the Customer are unable to agree the costs referred to in paragraph 1.1.6(b) of Annex 1; or
  - 14.3.7 forthwith on written notice if SGN and the Customer are unable to agree a variation as referred to in Clause 3.3.
- 14.4 Where the Contract is terminated under any provision of the Contract, other than Clauses 14.3.1 or 14.3.3, SGN shall:
- 14.4.1 restore and/or reinstate land or buildings and remove of plant, apparatus and equipment which in the reasonable opinion of SGN is necessary as a result of the termination of the Contract taking into account inter alia environmental and safety considerations and contractual commitments; and
  - 14.4.2 be entitled to receive:
    - (ff) reimbursement for all costs and expenses (up to an amount equal to the Contract Sum) reasonably incurred by SGN in performing the Works up to and including the effective date of termination (other than costs and expenses incurred by SGN in relation to the purchase of materials that SGN reasonably believes it will be able to utilise in other works of a similar nature to the Works in the foreseeable future);
    - (gg) any additional sum, relating to the period prior to the date of termination and not included in 14.4.2(a), for which the Customer is liable under any other provision of the Contract;
    - (hh) subject to Clause 14.7, any cost or expense incurred, or for which SGN (acting as an RPO) 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 Contract (insofar as these have not already been paid by the Customer) including without limitation, forfeited deposits and cancellation fees (other than costs and expenses incurred by SGN in relation to the purchase of materials that SGN reasonably believes it will be able to utilise in other works of a similar nature to the Works in the foreseeable future);
    - (ii) any and all costs reasonably incurred or expended in the restoration and/or reinstatement of land or buildings and removal of plant, apparatus and equipment which in the reasonable opinion of SGN is necessary as a result of the termination of the Contract taking into account inter alia environmental and safety considerations and contractual commitments.
- 14.5 Where the amounts paid by the Customer pursuant to this Contract prior to the date of termination of the Contract pursuant to this Clause 14 exceeds the amount due to SGN under Clause 14.4, SGN shall

reimburse the Customer such excess within thirty (30) calendar days of termination of the Contract pursuant to this Clause 14.

- 14.6 All ownership in and rights over all partly installed plant, equipment or materials will continue to vest solely in SGN after termination of the Contract.
- 14.7 Clause 14.4.2(c) shall be ignored for the purpose of calculating SGN' entitlement to payment pursuant to Clause 14.4 in the event that the Contract is terminated by either Party pursuant to Clause 14.1.2 or Clause 14.3.2, other than as a result of an Event Outside of SGN's Control directly affecting the Site or the acquisition or exercise of any permissions, rights or interests in land required for the Works.
- 14.8 Where the Contract is terminated pursuant to Clauses 14.3.1 or 14.3.3:
- 14.8.1 subject to the extent to which that part of the Works performed by SGN prior to the date of termination is of use to the Customer or the Consumer (in which case the provisions of Clause 14.4.2(a) shall apply), SGN shall not be entitled to receive any further payments from the Customer in respect of the Works and refund to the Customer any payments made by the Customer to SGN prior to the date of termination; and
- 14.8.2 SGN shall undertake such restoration and/or reinstatement of land or buildings and removal of plant, apparatus and equipment which in the reasonable opinion of SGN is necessary as a result of the termination of the Contract taking into account inter alia environmental and safety considerations.

## 15 NOTICES

- 15.1 Any notice to be given by one Party to the other under a Contract shall be delivered by first class mail, email or facsimile to the other Party at such address or (as the case may be) such, email address or facsimile transmission number as the Party in question shall from time to time designate by written notice and until such notice shall be given the addresses, email address and facsimile numbers of the Parties shall be as set out in the Order or the Variation Acceptance Form (as the case may be). Notices may be sent in such other manner and may be confirmed in such manner as from time to time may be agreed by the Parties for the service of notices pursuant to a Contract.
- 15.2 All notices delivered or sent in accordance with Clause 15.1 shall be effective:
- 15.2.1 in the case of delivery by post when received at the recipient's address as aforesaid;
- 15.2.2 if sent by email, one Working Day after transmission; or
- 15.2.3 in the case of delivery by facsimile, on acknowledgement by the recipient Party's facsimile receiving equipment or as evidenced by the notifying Party's facsimile transmission report;

Provided always that a notice received after the expiry of Normal Working Hours shall be effective at 9 a.m. on the following Working Day.

- 15.3 For the avoidance of doubt, where a notice is given by facsimile (confirmed by the appropriate answerback) and also confirmed in a notice delivered by first class mail, the date of receipt of the notice shall be the earlier of the dates of valid receipt of the two notices.

## 16 CONFIDENTIALITY AND DATA PROTECTION

- 16.1 Subject to Clause 16.3, the Customer will keep confidential and will not disclose to any third party any

information provided by SGN in connection with the negotiation or performance of any Contract, provided that:

16.1.1 this restriction will 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 the Customer of its obligations under this Clause 16.1 or to any information provided to the Customer by a third party otherwise than as a consequence of a breach by such third party of confidentiality obligations owed to SGN; and

16.1.2 nothing in the Contract will prevent the disclosure of information:

(jj) where SGN has consented in writing to such disclosure;

(kk) to any government department or any governmental or regulatory agency having jurisdiction over the Customer, 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 Contract;

(ll) to the Consumer or to any contractor of the Customer, but then only to the extent reasonably necessary to allow the Consumer or contractor of the Customer to comply with their contractual obligations in relation to the Works; and

(mm) for any purpose contemplated by these Connections Terms and any Contract made hereunder or where appropriate the Network Code;

16.1.3 in the event disclosure to any third party is necessary and permissible under this Clause 16.1, the Customer will use all reasonable endeavours to ensure that such third party will respect the confidentiality of such information and be bound by the terms of this Clause 16 as if a party thereto.

16.2 Subject to Clause 16.3, SGN will keep confidential and will not disclose to any third party any information provided by the Customer in connection with the negotiation or performance of any Contract, provided that:

16.2.1 this restriction will not apply to any information which at the time of the disclosure is in the public domain or thereafter becomes part of the public domain otherwise than as a consequence of a breach by SGN of its obligations under this Clause 16.2 or to any information provided to the SGN by a third party otherwise than as a consequence of a breach by such third party of confidentiality obligations owed to the Customer; and

16.2.2 nothing in the Contract will prevent the disclosure of information:

(nn) where the Customer has consented in writing to such disclosure;

(oo) to any government department or any governmental or regulatory agency having jurisdiction over SGN, 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 Contract;

(pp) to any contractor of SGN, but then only to the extent reasonably necessary to allow such contractor of SGN to comply with their contractual obligations in relation to the Works;  
and

(qq) for any purpose contemplated by these Connections Terms and any Contract made hereunder or where appropriate the Network Code;

16.2.3 in the event disclosure to any third party is necessary and permissible under this Clause 16, SGN will use all reasonable endeavours to ensure that such third party will respect the confidentiality of such information and be bound by the terms of this Clause 16.2 as if a party thereto.

16.3 Where any information provided by either Party to the other under any Contract constitutes personal data (as such term is defined in Data Protection Legislation) the Parties shall abide by the obligations set out in the Data Protection Legislation and shall ensure that any agent, sub-contractor or data processor employed or engaged by them is contractually bound to comply with such obligations to the extent required by law.

16.4 Either Party may notify the Registered User of the proposed Works.

16.5 The provisions of Clauses 16.1 to 16.3 shall continue, for a period of 3 years after termination of the relevant Contract, to bind the Parties irrespective of the reason for such termination.

## 17 INTELLECTUAL PROPERTY

17.1 All patents, copyright and other intellectual property rights (including but not limited to trademarks, registered designs, designs, know-how, inventions and valuable concepts) 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 SGN in connection with the Works will be owned by SGN, and the Customer will on Substantial Completion of the Works deliver up to SGN, or at SGN' request destroy, all copies of such documents whether in the possession of the Customer or a third party to whom the Customer has disclosed them.

17.2 All patents, copyright and other intellectual property rights (including but not limited to trademarks, registered designs, designs, know-how, inventions and valuable concepts) 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 Customer in connection with the Works will be owned by the Customer, and SGN will on Substantial Completion of the Works deliver up to the Customer, or at the Customer's request destroy, all copies of such documents whether in the possession of SGN or a third party to whom SGN has disclosed them.

17.3 Each Party (the "**Granting Party**") by virtue of the Contract hereby grants the other Party (the "**Receiving Party**") a royalty-free, non-exclusive licence (with power to sub-licence) in respect of any such intellectual property of the Granting Party as is reasonably necessary for the performance by the Receiving Party of its obligations under this Contract.

## 18 ENTIRETY OF AGREEMENT

18.1 Each Contract contains or expressly refers to the entire agreement between the Parties with respect to the subject matter thereof, and supersede all previous agreements or understandings between the

Parties with respect thereto; and any warranty, condition or other term implied at law or by custom is (to the fullest extent permitted by law) expressly excluded therefrom.

## 19 SUB-CONTRACTING

- 19.1 SGN shall be entitled to sub-contract the whole or any part of the Works to be performed in accordance with a Contract. Any such sub-contracting by SGN shall not relieve SGN from any liability or obligation under the Contract.
- 19.2 The Customer shall be entitled to sub-contract the whole or any part of its obligations under a Contract. Any such sub-contracting by the Customer shall not relieve the Customer from any liability or obligation under the Contract.

## 20 SGN' WARRANTIES

- 20.1 SGN warrants that on Final Completion, the Works shall be free from defects (excepting fair wear and tear and any damage arising from user abuse) for a period of one (1) year. SGN warrants that on Final Completion, any permanent reinstatement (where included in the Quote or Order and other than in the Highway) will be free from defects (excepting fair wear and tear and any damage arising from user abuse) for one (1) year from the date of Final Completion.
- 20.2 In the event that SGN is in breach of any warranty under this Clause 20, within twenty (20) Working Days of receiving written notification (such notification to be given by the Customer no later than twenty (20) Working Days after the expiry of the relevant warranty period, provided always that the Customer is able to prove that such breach of warranty occurred prior to the expiry of the relevant warranty period and not afterwards) of any defect causing SGN to be so in breach, SGN shall at its own cost rectify any such defect in the Works: provided that:
- 20.2.1 where SGN is unable (acting as a Reasonable and Prudent Operator) to rectify such defect within the period referred to above, then SGN shall notify the Customer accordingly within such period and such notice shall contain SGN' programme for rectifying such defect as soon as reasonably practicable thereafter; and
- 20.2.2 the Customer shall procure such access to the Site as SGN reasonably requires in order to conduct such rectification.

Where SGN rectifies a defect pursuant to this Clause 20.2, SGN warrants that on completion of the rectification, the remedial works shall be free from defects for a period of three (3) months from the date of completion of such rectification or the date of expiry of the original period referred to in Clause 20.1, whichever is the later.

- 20.3 The warranties given in Clauses 20.1 and 20.2 shall not:
- 20.3.1 extend to any items supplied by the Customer except in so far as the defects in such items arise as a result of a failure by SGN to act as a Reasonable and Prudent Operator in conducting the Works;
- 20.3.2 apply in respect of any defects arising as a result of incorrect or misleading information supplied by or on behalf of the Customer or Consumer or any other incorrect or misleading information in relation to the Site;

- 20.3.3 apply in relation to any equipment provided by the Customer reasonably relied upon by SGN in performing the Works;
  - 20.3.4 apply in respect of any defects arising as a result of any unreasonable interference with the Works by the Customer or any third party (including but not limited to the Consumer); or
  - 20.3.5 apply in respect of any defects arising as a result of any defect, unsuitability or inadequacy in the Customer Works and any associated apparatus arising otherwise than by a failure by SGN to act as a Reasonable and Prudent Operator in performing the Works.
- 20.4 Where in respect of SGN' breach of warranty under this Clause 20 the Customer also has a remedy under the Network Code, any action undertaken by SGN in satisfaction of Clause 20.2 above shall also be deemed to satisfy the Customer's remedy under the Network Code.

## **21 CUSTOMER'S WARRANTY**

- 21.1 Unless specified to the contrary on the Order Form, the Customer warrants that it will enter into, or is entering into, a Contract on its own behalf, and not as an agent for the Consumer or any other third party.
- 21.2 The Customer warrants that:
- 21.2.1 the Consumer owns all land (other than that forming part of a Highway) in or over which the Equipment will be installed and over which access will be required in order to perform the Works, or has the necessary permission of the owner(s) of such land; and
  - 21.2.2 the Customer Works (if any) will be free from defect (except user abuse, fair wear and tear, and improper operation) for one (1) year from Final Completion of the Works.
- 21.3 In the event that the Customer is in breach of any warranty under this Clause 21, within twenty (20) Working Days of receiving written notification (such notification to be given by SGN no later than twenty (20) Working Days after the expiry of the relevant warranty period) of any defect causing the Customer to be so in breach, the Customer shall at its own cost rectify any such defect in the Works: provided that, where the Customer fails to rectify such defect within the period referred to above, then SGN shall be entitled to rectify the defect and the Customer shall be liable to pay SGN the costs and expenses incurred by SGN in rectifying the defect, and the Customer shall procure such access to the Site as SGN reasonably requires in order to conduct such rectification. Where the Customer rectifies a defect pursuant to this Clause 21.3, the Customer warrants that on completion of the rectification, the remedial works shall be free from defects for a period of three (3) months from the date of completion of such rectification or the date of expiry of the original period referred to in Clause 21.2, whichever is the later.
- 21.4 In respect of any defect in the Customer Works within the period specified in Clause 21.2.2, the Customer shall indemnify and hold SGN harmless from and against:
- 21.4.1 all reasonable costs and expenses of repairing and making good such defects; and
  - 21.4.2 all costs, claims and expenses howsoever arising (whether directly or indirectly) from such defects.
- 21.5 The warranties given in Clauses 21.1 and 21.2 shall not:
- 21.5.1 extend to any items supplied by SGN except in so far as the defects in such items arise as a



result of a failure by the Customer to act as a Reasonable and Prudent Operator in conducting the Customer Works;

- 21.5.2 apply in respect of any defects arising as a result of incorrect or misleading information supplied by or on behalf of SGN or any other incorrect or misleading information in relation to the SGN' Works;
- 21.5.3 apply in relation to any equipment provided by SGN reasonably relied upon by the Customer in performing the Customer Works;
- 21.5.4 apply in respect of any defects arising as a result of any unreasonable interference with the Customer Works by SGN or any third party (including but not limited to the Consumer); or
- 21.5.5 apply in respect of any defects arising as a result of any defect, unsuitability or inadequacy in the Works and any associated apparatus arising otherwise than by a failure by the Customer to act as a Reasonable and Prudent Operator in performing the Customer Works.

## **22 OWNERSHIP**

- 22.1 Subject to Clause 22.2, SGN shall at all times own outright the Equipment. For the avoidance of doubt, anything downstream of the emergency control valve shall not be owned by SGN.
- 22.2 Where the Works include the provision and/or installation by SGN of the Meter Housing at the Site, then (unless specified otherwise in the Quote) ownership of such Meter Housing shall transfer to the Customer on Final Completion of the Works.
- 22.3 For the avoidance of doubt, the Works or the provisions of this Clause 22 do not affect the ownership of any plant, materials or equipment on the Site prior to the commencement of the Works.

## **23 WAIVER AND MODIFICATION**

- 23.1 No delay by or omission of any Party in exercising any right, power, privilege or remedy under any Contract shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof.
- 23.2 Any single or partial exercise of any such right, privilege or remedy shall not preclude any other or future exercise thereof or the exercise of any other right, power, privilege or remedy.
- 23.3 Without prejudice to the provisions of Clause 7, no amendments to the Contract made thereunder shall be valid unless made in writing and agreed and signed by the duly authorised representatives of the Parties hereto.

## **24 PUBLICITY**

- 24.1 Either Party shall obtain written approval from the other Party prior to taking publicity photographs or issuing publicity releases or announcements regarding either the Contract or the activities of either Party related to its participation in the Contract.

## **25 ASSIGNMENT**

- 25.1 Subject to Clause 25.3, a Party may assign its rights under a Contract:

- 25.1.1 to an Affiliate of such Party, provided that the assigning Party shall continue to be bound by and liable under the Contract;
  - 25.1.2 subject to Clause 25.4, with the prior agreement in writing of the other Party, which shall not unreasonably be withheld or delayed, to any person.
- 25.2 Except as provided in Clause 25.1, a Party shall not assign or transfer and shall not purport to assign or transfer any of its rights or obligations under the Contract.
- 25.3 No assignment shall be made to a person unless:
- 25.3.1 where the assigning Party is SGN, that person holds a gas transporter's licence;
  - 25.3.2 where the assigning Party is the Customer and the Customer is a Shipper, that person holds a Shipper's licence.
- 25.4 Where a Party assigns its rights under a Contract to a person (including an Affiliate) pursuant to Clause 25.1.2:
- 25.4.1 it shall be a condition precedent to such assignment that such person shall enter into an agreement with the other Party covenanting to be bound by these Connections Terms and the Contract made thereunder;
  - 25.4.2 the assigning Party shall be released from obligations under the Contract, arising after the time at which the assignment is effective, but shall remain liable for any obligations accruing up to such time.
- 25.5 A reference in these Connections Terms to any Party shall include a reference to that Party's successors and assigns.

## **26 SURVIVAL**

- 26.1 The provisions of any Contract that by their nature or from their context are intended to, or would naturally, continue to have effect after termination of such Contract shall survive after termination.

## **27 THIRD PARTY RIGHTS**

- 27.1 Except as provided in Clause 27.2 and subject to any rights which may accrue to any successor or permitted assign of the Parties, no provision of any Contract shall or may be construed as creating any rights enforceable by a third party (whether under the Contracts Act or otherwise) and all third party rights as may be implied by law (whether under the Contracts Act or otherwise) are hereby excluded to the fullest extent permitted by law from any Contract.
- 27.2 No consent shall be required from any person having rights under any Contract by virtue only of the Contracts Act to any amendment, variation, waiver or settlement of such Contract or any right or claim arising from or under it which (in each case) has been agreed by any party to it.

## **28 GOVERNING LAW AND JURISDICTION**

- 28.1 This Contract shall be governed by, and construed in all respects in accordance with, English law and the Parties hereby submit to the exclusive jurisdiction of the English Courts in respect thereof.

- 28.2 The Parties irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with any Contract and that accordingly any suit, action or proceedings arising out of or in connection with any Contract may be brought in such courts.

## **29 GAS TRANSPORTATION**

- 29.1 Nothing in these Connections Terms or the Contract shall confer on the Customer or the Consumer or any other party any right or entitlement in respect of the transportation of natural gas to any Supply Meter Point or the offtake of natural gas at any Supply Meter Point for any purpose.

## **30 GENERAL**

- 30.1 Every notice or other communication to be given by one Party to another under a Contract shall be in the English language.
- 30.2 If any provision of a Contract is or becomes invalid, unenforceable or illegal, or is declared to be invalid, unenforceable or illegal by any court of competent jurisdiction or by order of any other Competent Authority, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of such Contract, which shall continue in full force and effect notwithstanding the same.
- 30.3 Subject to the terms and conditions of a Contract, each Party agrees to use its reasonable endeavours at its own cost to do or cause to be done all things necessary, proper or advisable under the applicable laws and regulations to consummate the transactions contemplated by such Contract as expeditiously as possible, including, without limitation, the performance of such further acts or the execution and delivery of any additional deeds, instruments or documents to obtain any permits, approvals, licences or waivers required for the purposes of such Contract and the transactions contemplated thereby.

## Annex 1. GENERAL INFRASTRUCTURE WORKS

### 1 THE WORKS

- 1.1 The Works shall, unless the Quote provides otherwise, comprise:
- 1.1.1 the design, installation, purging, pressure checking, testing and Commissioning and connection to the SGN'S System of the Equipment so as to be capable of providing the capacity specified in the Quote or the Order (as the case may be) at a pressure equal to or greater than Working Pressure at the Supply Meter Point following Substantial Completion;
  - 1.1.2 where the Works involve Connection Works, or relate to an existing Supply Meter Point that currently has no label affixed to it, the affixing of a label showing the Supply Meter Point Reference Number of, and the pressure tier at, the Supply Meter Point;
  - 1.1.3 the excavation, backfill and permanent reinstatement of any trench in an existing Highway excavated by SGN in the performance of the Works;
  - 1.1.4 the excavation, backfill and reinstatement (as set out below) of any trench on any land (other than an existing Highway) excavated by SGN in the performance of the Works, provided that:
    - (rr) reinstatement of unmetalled surfaces shall be temporary and be limited to backfilling and, when necessary, compaction only;
    - (ss) reinstatement of metalled surfaces shall be temporary reinstatement only; and
    - (tt) excavation, backfill and temporary reinstatement of such trenches shall be performed substantially by mechanical means;
  - 1.1.5 where the Customer is to pre-excavate any trench required for the performance of the Works, the covering of the Equipment with material excavated by the Customer from the trench (or, where SGN deems such material to be unsuitable, with fine fill to be provided by the Customer) and the laying of marker tape;
  - 1.1.6 the procurement from the relevant owner and/or occupier of the land concerned of all necessary permissions, rights and interests in land required for such Mains as are to be constructed in the course of the Works (other than Mains to be constructed on the Site) and such Services as are to be installed in the course of the Works on a Highway, and unless or until the Customer has notified SGN in writing otherwise, the procurement of all necessary permissions, rights and interests in land required for such of the Equipment (other than any Services as are to be installed in the course of the Works on a Highway or any Mains) as are to be constructed in the course of the Works and which are not on, in or over the Site: provided, in each case, that:
    - (uu) where a price for such procurement of all necessary permissions, rights and interests in land is incorporated in the Quote or by agreed variation pursuant to Clause 7 or 8 (as applicable) then, unless the Quote or agreed variation expressly states to the contrary, such price shall be a good faith estimate (made by SGN acting as a Reasonable and Prudent Operator) of the costs of procurement and the Customer shall (subject to this paragraph 1.1.6) be liable to pay SGN the actual costs and expenses of procurement (in respect of which SGN shall provide such evidence as the Customer may reasonably request); and

(vv) SGN shall not procure such permissions, rights, and interests at a cost greater than the said estimate without the prior written permission of the Customer. In the event that SGN and the Customer are unable to agree to such costs, then either Party shall be entitled to terminate the Contract in accordance with Clause 14; and

(ww) SGN shall be under no obligation to exercise any rights in respect of the compulsory acquisition of land or any interest in land; and

(xx) where the proposed grantor of any such permission, right or interest in land requires, as a condition of granting any such permission, right or interest in land, that SGN accepts terms (including but not limited to the sums of money payable by SGN) that SGN reasonably determines would adversely prejudice or influence future negotiations (whether related to the Works or otherwise) with the proposed grantor or any other person in relation to the granting of any permission, right or interest in land, then SGN shall advise the Customer accordingly and shall be relieved of its obligation under this paragraph 1.1.6 to obtain such permission, right or interest in land, and the Customer shall be deemed to have given notice to SGN. SGN shall be entitled to suspend the Works until such time as the Customer advises SGN that the Customer has obtained the relevant permission, right or interest in land;

1.1.7 where the Works have caused an interruption of gas supply to a Domestic Premises (and unless specifically requested otherwise by the Customer), the visual inspection, testing and purging of the Installation Pipework and the re-lighting of associated appliances provided that SGN is satisfied that no change has been carried out to Metering Equipment or the Installation Pipework and appliances during the period of such interruption. Where such change has occurred SGN will, in accordance with its procedures as may be adopted from time to time inform, the Consumer how the Consumer may procure such inspection, testing, purging and relighting;

1.1.8 any additional activities specified in the Quote; and

1.1.9 the provision of electrical power for the operation of power driven tools and the testing of the Equipment in connection with the Works.

1.2 For the avoidance of doubt, unless expressly specified otherwise in the Quote or by agreed variation pursuant to Clause 7 or 8 (as applicable), the Works do not include:

1.2.1 making good cosmetic surfaces, plasterwork and decoration;

1.2.2 making good fences, landscaping, special surfaces and/or decorative finishes unless part of a Highway;

1.2.3 the matching of any reinstatement to the existing surface type, colour and finish;

1.2.4 connection of the Equipment to any Metering Equipment or Installation Pipework (as applicable);

1.2.5 where the Customer is to pre-excavate any trench required for the performance of the Works, the provision of any fine fill or other material to cover the Equipment;

1.2.6 where the Customer is to pre-excavate any trench required for the performance of the Works, the excavation, backfill (except to the extent performed by SGN pursuant to

- paragraph 1.1.5) and temporary or permanent reinstatement of any such trench whether in a Highway, on Site or at any other location whatsoever;
- 1.2.7 the conduct of Works outside of Normal Working Hours;
- 1.2.8 the conduct of Works or the design of Equipment so as to avoid interruption to the conveyance of natural gas to the Supply Meter Point during the conduct of the Works or in the course of future maintenance of the Equipment;
- 1.2.9 design, procurement, installation, inspection or alteration of Installation Pipework, any present or future Metering Equipment, any Meter Housing or any Meter Housing Base;
- 1.2.10 the commissioning of Installation Pipework and any present or future Metering Equipment and the provision of natural gas for these activities; and
- 1.2.11 any additional matters specified in the Quote as not forming part of the Works.
- 1.3 Nothing in paragraph 1.2 of this Annex shall absolve SGN or the Customer of its obligations under any relevant legislation.

## Annex 2. DISCONNECTIONS

### 1 THE WORKS

- 1.1 The Works shall comprise the Disconnection.
- 1.2 The Customer may by written notice to SGN given not later than 12.00 hours on the Working Day preceding the day on which the Disconnection is to be carried out cancel the Works and the Customer shall pay to SGN those costs, expenses and charges relating to the Works and the cancellation thereof which SGN has reasonably incurred, provided that such costs, expenses and charges shall not exceed the Contract Sum and SGN shall take all reasonable steps to minimise such costs, expenses and charges. Provided further that if such notice is given after 12.00 hours on the said Working Day then SGN will use its reasonable endeavours not to carry out the Disconnection and the Customer shall pay up to the Contract Sum for the Works as applicable whether or not SGN carries out the Works but if nonetheless SGN carries out the Disconnection then any reconnection shall be pursuant to a separate contract between SGN and the Customer, and the costs of such reconnection shall be borne by the Customer. Other works comprised in the Contract may be cancelled at the same time and in the same manner and on the same conditions.
- 1.3 The Disconnection shall be carried out in such manner as SGN in its absolute discretion shall determine but SGN when it judges it safe, lawful and reasonable to do so will endeavour to effect Disconnection in the manner requested by the Customer.
- 1.4 Where access to the Site or premises or property of a third party is reasonably required to enable the Disconnection to be carried out and such access is to be facilitated by the Customer and is denied to SGN whether by the Consumer or a third party then SGN acting as an RPO shall, if a representative of the Customer is not present, make reasonable efforts to contact the Customer but SGN will cancel the Disconnection if SGN is unable to gain access to the Site (irrespective of whether or not the Customer has complied with its obligations in this paragraph 1.4) within sixty (60) minutes after the appointed time. In such circumstances the Customer shall pay to SGN those costs, expenses and charges which SGN has reasonably incurred in respect of such cancelled Disconnection, provided that such payment will not exceed an amount equivalent to the Contract Sum.
- 1.5 Except in situations where the emergency control valve is downstream of the Metering Equipment, if the Customer fails to disconnect the Metering Equipment from the Service and to render the Installation Pipework safe prior to the Substantial Completion Target Date then the Disconnection will be cancelled and the Customer shall pay to SGN those costs, expenses and charges which SGN has reasonably incurred as a result of attempting to carry out the Disconnection.
- 1.6 Unless specifically stated to the contrary in the Quote or as otherwise agreed between SGN and the Customer, the Disconnection shall include:
- 1.6.1 the excavation, backfill and permanent reinstatement of any trench in an existing Highway excavated by SGN in the performance of the Works;
  - 1.6.2 the excavation, backfill and reinstatement (as set out below) of any trench on any land (other than an existing Highway) excavated by SGN in the performance of the Works, provided that:
    - (yy) reinstatement of unmetalled surfaces shall be temporary and be limited to backfilling and, when necessary, compaction only;
    - (zz) reinstatement of metalled surfaces shall be temporary reinstatement only; and

(aaa) excavation, backfill and temporary reinstatement of such trenches shall be performed substantially by mechanical means;

1.6.3 any additional activities specified in the Quote;

1.6.4 the provision of electrical power for the operation of power driven tools and the testing of the Equipment in connection with the Works; and

1.6.5 the procurement of all items and materials that are to be used in the Disconnection.

1.7 For the avoidance of doubt, unless such works are expressly included in the Quote, or an agreed variation thereof, the Disconnection shall not include:

1.7.1 making good cosmetic surfaces, plasterwork and decoration;

1.7.2 making good fences, landscaping, special surfaces and/or decorative finishes unless part of a Highway;

1.7.3 the matching of any reinstatement to the existing surface type, colour and finish;

1.7.4 where the Customer is to pre-excavate any trench required for the performance of the Works, the excavation, backfill and temporary or permanent reinstatement of any such trench whether in a Highway, on Site or at any other location whatsoever;

1.7.5 the conduct of Works outside of Normal Working Hours;

1.7.6 the inspection, disconnection, alteration or making safe of Installation Pipework or any Metering Equipment; and

1.7.7 any additional matters specified in the Quote as not forming part of the Works.

## 2 THE CUSTOMER'S OBLIGATIONS

2.1 In requesting that SGN carry out the Disconnection, the Customer shall provide SGN with, as a minimum, the information specified in the Siteworks Procedures.

2.2 The Customer warrants that it is lawfully entitled to have SGN carry out the Disconnection, and (where appropriate) to procure entry to the Consumer's Premises with the Consumer's consent. The Customer acknowledges and agrees that SGN and its contractors may rely on the accuracy of such declaration in the performance of the Works.

2.3 The Customer shall be responsible for providing access to the Service to be disconnected as part of the Works and to the Consumer's Premises as necessary for the conduct of the Works.

## 3 ADDITIONAL CONDITIONS

3.1 In Clause 1.1 the definition of "**Substantial Completion**" shall be replaced with "**Substantial Completion**" shall mean completion of the Disconnection";