

MINIMUM CONNECTION AGREEMENT CONDITIONS

FOR THE DESIGN AND CONSTRUCTION OF A

NETWORK ENTRY FACILITY



Legal Services,
St Lawrence House,
Station Approach,
Horley,
Surrey,
RH6 9HJ

1. DEFINITIONS

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

“Acceptance” shall mean the signing and returning of a copy of the Offer Letter along with receipt of full payment of the first installment of the Budget Estimate to Network Operator;

“Actual Costs” shall mean the actual costs reasonably and properly incurred by Network Operator pursuant to this Agreement which shall be paid for by the Company in accordance with Clause 13.2;

“Additional Charges” shall have the meaning given in Clause 13.2;

“Adoption” shall mean the transfer of ownership of the Network Operator Facility (or any part thereof) from the Company to Network Operator in accordance with the terms of this Agreement, and **Adopt** shall be construed accordingly;

“Affiliate” shall mean any holding company or subsidiary of a Party or any company which is a subsidiary of any holding company of a Party and the expression “holding company” and “subsidiary” shall have the meanings respectively ascribed thereto by Sections 1159 of the Companies Act 2006 (as amended);

“Agreement” shall mean means the documents referred to in Clause 2.1;

“Associated Person” shall have the meaning ascribed to it in section 8 of the Bribery Act;

“Bribery Act” shall mean means the Bribery Act 2010 (including any amendment thereto or re-enactment thereof);

“Budget Estimate” shall mean the estimate of the charges to the Company for the anticipated costs which Network Operator reasonably considers it will incur pursuant to this Agreement as set out in Annex 5 of the Offer Letter as may be amended from time to time;

“Capacity Study” shall mean the study enclosing the network analysis undertaken by Network Operator at the Site as further defined at Annex 1 of the Offer Letter;

“Commissioning” means the undertaking of the requisite processes, procedures, works and/or tests required to achieve the Validation;

“Company” shall have the meaning given to it in the Offer Letter;

“Company Manager” shall mean the person nominated in Annex 6 of the Offer Letter as such person may be replaced from time to time by notice in writing to Network Operator;

“Company’s Specific Obligations” shall mean the obligations set out in Annex 2 of the Offer Letter;

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

“Completion” shall mean that the Works have been completed, Validation has been

achieved and Network Operator has Adopted the Network Operator Facility forming part of on the Network Entry Facility completing the Minimum Network Connection;

“Completion File” shall mean the file of documents to be provided by the Company to Network Operator in accordance with this Agreement the details of which are set out in Annex 2 of the Offer Letter;

“Commencement Date” shall mean the date on which Acceptance is received by Network Operator;

“Connection” shall mean the physical connection between the Production Facility, Delivery Facility and the Network Operator Facility at the Site which shall be undertaken by the Company in accordance with the Specification;

“Consequential Loss” shall mean any:

- (a) loss of profit,
- (b) loss of revenue,
- (c) loss of use,
- (d) loss of production,
- (e) business interruption; or
- (f) or any similar damage or for consequential or indirect losses of any kind,

arising out of or in connection of this Agreement and whether or not foreseeable at the date of Acceptance howsoever caused and irrespective of whether caused by the negligence or breach of duty (whether statutory or otherwise) of Network Operator or the Company or by any other tortious act or omission or breach of the Agreement by Network Operator or the Company;

“Correction Notice” shall mean a notice served by Network Operator which requires the Company to amend and re-submit the Completion File (or any part thereof) to Network Operator for approval of the same;

“Date for Completion” shall mean the intended date for Completion, as set out in Annex 1 of the Offer Letter or such later date as may be agreed;

“Delivery Facility” shall mean the Company’s equipment as further described in Annex 1 of the Offer Letter forming part of the Network Entry Facility;

“Design” shall mean the design of the Network Entry Facility undertaken by the Company in accordance with the Specification;

“Dispute” shall mean any significant difference of view which has not been resolved by discussion between the Parties as to the interpretation or performance of the Agreement or any of its terms and conditions;

“Force Majeure Event” means:

- (a) any cause beyond the reasonable control of a Party which alone prevents or delays a Party from complying with its obligations under this Agreement;
- (b) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (c) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosion, or other hazardous

properties of any explosive nuclear assembly or nuclear component thereof;

- (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed;
- (e) rebellion, revolution, insurrection, military or usurped power or civil war;
- (f) riot, civil commotion or disorder;
- (g) tempest, earthquake or any other natural disaster;
- (h) strike or lock out (other than one solely amongst a Party's representatives, workmen or agents); or
- (i) abnormal prevailing weather conditions having regard to the location and typical weather conditions at the site;

"Gas" shall mean any hydrocarbons or mixture of hydrocarbons and other gases consisting primarily of methane which at Standard Temperature and Standard Pressure are or is predominantly in the gaseous state;

"Gas Act" shall mean the Gas Act 1986 as amended and any regulations made there under as amended or re-enacted from time to time;

"Good Industry Practice" shall mean using standards, practices, methods and procedures conforming to law and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably be expected from a RPO;

"Information" shall mean the information set out in Annex 2 of the Offer Letter;

"Information Cut-off Date" shall mean the date, set out in Annex 2 of the Offer Letter, by which the Company shall provide the Information to Network Operator;

"Initial Enquiry" shall mean the initial enquiry which the Company has submitted to Network Operator requesting a capacity study for network entry;

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

"Kiosk" shall mean the protective housing kiosk for the Network Entry Facility as further described in the Specification;

"Minimum Network Connection" shall mean the connection of the Network Entry Facility to the Network Operator System in accordance with the Agreement;

"Network Code" shall mean the network code prepared by Network Operator, as modified from time to time, pursuant to Network Operator Licence;

"Network Entry Agreement" shall mean a Network Entry Agreement as such term is defined in the Network Code;

"Network Entry Facility" shall mean both the Delivery Facility and Network Operator Facility which together contain the equipment necessary to enable Gas to be injected into the Network Operator System, further to a Network Entry Agreement, as further defined in Annex 1 of the Offer Letter;

"Network Operator" shall have the meaning given to it in the Offer Letter;

"Network Operator Facility" shall mean Network Operator equipment as further described in Annex 1 of the Offer Letter forming part of the Network Entry Facility

which Network Operator shall Adopt, in accordance with Clause 9 and own, operate and maintain in accordance with Clause 26 of this Agreement;

“Network Operator Licence” shall mean the Gas Transporters Licence as granted to Network Operator, as modified from time to time, under Section 7(2) of the Gas Act 1986 (as amended);

“Network Operator Manager” shall mean the person nominated in the Offer Letter as such person may be replaced from time to time by notice in writing to the Company;

“Network Operator System” shall mean the pipeline system operated by Network Operator for the conveyance of gas which it is authorised by Network Operator Licence;

“Offer Letter” shall mean the letter referring to these Minimum Connection Conditions of Contract naming the Company containing *inter alia* details of the Works and the Budget Estimate and such other matters as may be specified in these Minimum Connection Conditions, together with any other documents attached to or expressly incorporated therein;

“Overhead Charge” shall mean the percentage uplift applied on Actual Costs as detailed in Annex 5 of the Offer Letter;

“Party” shall mean Network Operator on the one part and the Company of the other part and **“Parties”** shall be construed accordingly;

“Permanent Facilities” shall mean the permanent facilities detailed at Annex 2 of the Offer Letter which are to be provided to Network Operator in accordance with this Agreement;

“Point of Connection” shall mean the point at which the Production Facility is connected to the Network Entry Facility as detailed in the Offer Letter;

“Production Facility” means the Company or third party facility which produces Gas to be conveyed to the Network Entry Facility so that it can be injected into Network Operator System in accordance with a Network Entry Agreement;

“Protected Information” shall mean any confidential information relating to the affairs of Network Operator or the Company gained pursuant to or in the course of the negotiation, implementation or performance of the Agreement;

“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, timeliness and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator complying with applicable law engaged in the same type of undertaking in the same or similar circumstances and conditions, and any reference to the standard of a Reasonable and Prudent Operator shall be construed accordingly;

“Signals” shall have the meaning given in Annex 1 of the Offer Letter;

“Site” means the site occupied by the Company or a third party on which the Network Entry Facility is to be located as further described in Annex 1 of Offer Letter;

“Specification” shall have the meaning given in Annex 2 of the Offer Letter;

“Standard Pressure” shall mean one decimal zero one three two five (1.01325) Bar;

“Standard Temperature” shall mean fifteen degrees Celsius (15°C);

“Telemetry Testing” shall mean the completion by Network Operator of all

necessary functional testing of (a) communication between Network Operator telecoms and data interface housing(s) and the relevant Network Operator control centre; and (b) the satisfactory remote operation value (ROV);

“**Validation**” shall mean that the requirements listed in Annex 4 of the Offer Letter have been achieved;

“**Works**” shall mean the Design, installation and Commissioning of the Network Entry Facility to achieve Validation; and

“**Working Day**” shall mean a day (not being a Saturday or Sunday) on which the clearing banks in the city of Edinburgh are normally open for business.

- 1.2. References in the Agreement to Clauses are to Clauses of these Standard Conditions of Contract, except where otherwise stated.
- 1.3. Any reference to statutes, statutory instruments, codes of practice, standards or Network Operator documents in these clauses or the Offer Letter are intended to refer to current statutes, statutory instruments, codes of practice, standards or Network Operator documents as may be amended, extended, re-enacted or replaced from time to time.
- 1.4. Words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and neuter and vice versa.

2. THE AGREEMENT

- 2.1. This Agreement comprises the following documents and if there is any ambiguity or inconsistency in or between these documents the priority of the documents shall be in accordance with the following sequence:
 - (a) the Offer Letter;
 - (b) the Annexes to the Offer Letter;
 - (c) the Budget Estimate;
 - (d) the Specification;
 - (e) these Minimum Connection Conditions; and
 - (f) any other document forming part of the Agreement.
- 2.2. This Agreement shall commence on the Commencement Date and shall continue until the Completion unless otherwise terminated in accordance with the terms of this Agreement.
- 2.3. The termination of this Agreement shall not affect any rights or obligations which may have accrued to either Party prior to such termination.
- 2.4. The Offer Letter and Budget Estimate are based upon:
 - (a) the Initial Enquiry;
 - (b) the Capacity Study;
 - (c) the Information;
 - (d) any other assumptions set out in the Offer Letter and Budget Estimate; and
 - (e) the assumptions in these Minimum Connection Conditions.
- 2.5. In the event that the Company advises Network Operator on or after Acceptance that any of the information detailed at Clause 2.2 is incorrect, then Network Operator and the Company shall each use reasonable endeavours to agree a

variation to the Offer Letter and the Budget Estimate as necessary. Where the Company and Network Operator are unable to agree such a variation, then either party shall be entitled to terminate the Contract in accordance with Clause 18.

3. THE COMPANY'S OBLIGATIONS

- 3.1. The Company, in respect of the Works, and in accordance with the terms and conditions of the Agreement:
- (a) shall make or procure the making of all payments due under the Agreement in accordance with the provisions set out in the Agreement;
 - (b) shall provide the Information by the Information Cut-off Date and without undue delay, and such further information as:
 - (i) Network Operator may reasonably request (having regard to the extent of the information requested and the timing of the request) for the proper completion of the Works and or safe and efficient operation of the Network Operator System; and
 - (ii) the Company has in its control that the Company believes may be relevant and necessary to the Works and or safe and efficient operation of the Network Operator System or any part thereof;
 - (c) agrees that such Information as it provides under paragraph (b) is accurate and may be relied on by Network Operator and its subcontractors in connection with the performance of Network Operator's obligations under the Agreement and or safe and efficient operation of the Network Operator System;
 - (d) shall cooperate at all times with Network Operator in carrying out of all or any part of the Works;
 - (e) shall comply with the Company's Specific Obligations by the dates (if any) specified in the Agreement for doing so or, where no date is specified, without undue delay;
 - (f) shall ensure that the Network Entry Facility satisfies the requirements set forth in the Offer Letter and complies to the fullest extent with the Specification;
 - (g) shall provide free, safe and unrestricted access for Network Operator and its subcontractors at all times (subject to reasonable site rules and regulations) to and from the company facilities and any other area(s) within the control of the Company, its agents, contractors and sub-contractors in which the Works or any part there of are to be carried out;
 - (h) shall comply with all relevant legislation in the performance of the Company's obligations under the Agreement;
 - (i) shall ensure that no works are commenced in the Network Operator System before, during or after the Works without formal consultation with Network Operator in accordance with Network Operator specification T/SP/SSW22 for "Safe Working In The Vicinity Of Network Operator High Pressure Gas Pipelines and Associated Installations – Requirements For Third Parties" (as amended from time to time) (a copy of which the Company acknowledges it has received) and without having first provided Network Operator with risk assessments in respect of the proposed works;
 - (j) acknowledges the importance of maintaining the integrity, safety and security of the Network Entry Facility and Network Operator System, and

the Company confirms that it (and its employees, agents and sub-contractors) shall not do any act or omission which may cause harm to the Network Entry Facility and or Network Operator System or jeopardise or threaten to jeopardise any proprietary rights and interests which Network Operator has from time to time in the routes and land through which the Network Entry Facility and or Network Operator System passes;

- (k) nominate a competent and suitably qualified person to act as the Company Manager and use reasonable endeavours to ensure that the same person acts as the Company Manager throughout the term of this Agreement and shall further ensure to promptly inform Network Operator of the absence (or anticipated absence) of the Company Manager and where applicable provide a suitably qualified replacement; and
- (l) procure all necessary permissions, rights and interests in and over any land required for the Network Operator Facility and (if necessary) shall assist Network Operator in obtaining easement (as necessary).

4. NETWORK OPERATOR'S OBLIGATIONS

- 4.1. Network Operator shall perform its obligations set out in this Agreement to the standard of a RPO.
- 4.2. Network Operator shall cooperate with the Company and provide it with information within the possession or reasonable control of Network Operator as the Company may reasonably request in order to fulfil the Company obligations under the Agreement.

5. THE WORKS

- 5.1. The Company shall, acting as an RPO and in accordance with the terms and conditions of the Agreement:
 - (a) carry out the Works;
 - (b) ensure that the Works are fit for purpose and are undertaken in accordance with the Specification;
 - (c) ensure that the Works are undertaken with the consent of the land owner; and
 - (d) comply with the Company obligations under this Agreement.
- 5.2. The Company shall not commence the Works until the Commencement Date.
- 5.3. The Parties agree that the Company shall be responsible for appointing the "principal contractor" and the "CDM Co-ordinator" for the purposes of the Works in accordance with the Construction (Design and Management) Regulations 2007.
- 5.4. Network Operator may (at its sole discretion) require a Network Operator representative to attend the Site for the purpose of monitoring and/or auditing the Works. The Network Operator representative shall not supervise the Company nor shall any such monitoring and/or auditing of the Works relieve the Company of its obligations or liabilities under this Agreement. The Company shall permit the Network Operator representative access to the Site and the Works at all reasonable times.
- 5.5. The Company shall be responsible for all utilities and consumables required for the Works.

6. COMMISSIONING

- 6.1. The Company will, at its cost, have control and responsibility for Commissioning.
- 6.2. Network Operator will undertake, in conjunction with the Company the Commissioning with a view to achieve Validation which shall include the Telemetry Testing.
- 6.3. The Company shall commence Commissioning, within a mutually acceptable timeframe with Network Operator, after:
 - (a) the Permanent Facilities detailed have been provided to the reasonable satisfaction of Network Operator;
 - (b) the Commissioning requirements detailed in Annex 2 have been satisfied;
 - (c) a Commissioning procedure has been agreed with Network Operator;
 - (d) the Connection has been made;
 - (e) if applicable, the Point of Connection has been registered under the Network Code;
 - (f) a Network Entry Agreement has been executed in respect of the Point of Connection;
 - (g) a sale and purchase agreement between the Customer and a gas shipper licensed under Part 1 of the Gas Act 1986 has been executed for the sale and purchase of Gas produced by the Production Facility; and
 - (h) Gas is available from the Production Facility.
- 6.4. If the Company has not started Commissioning within twelve (12) months of Acceptance, Network Operator shall not be obliged to commence Commissioning under this Agreement and any such Commissioning may be the subject of a separate agreement between the Parties (unless otherwise agreed in writing).
- 6.5. Nothing in the Agreement shall confer any right or entitlement on the Company or any other person to inject Gas through the Network Entry Facility and any such right or entitlement shall be the subject to a Network Entry Agreement.

7. VALIDATION

- 7.1. The Company shall demonstrate to the reasonable satisfaction of Network Operator that the Validation has been achieved.
- 7.2. In the event that:
 - (a) successful Validation has not taken place as a result of the Company's failure either to commence Commissioning or to comply with its obligations under this Agreement;
 - (b) as a result, Gas has not been injected into the Network Operator System; and
 - (c) in consequence Network Operator is required to make payment to one or more persons pursuant to Network Operator Network Code (or any applicable statutory standards of service) as a result of a failure to accept Gas tendered for delivery from, the Production Facility,

then the Company shall hold harmless and indemnify Network Operator from and against any and all amounts paid by Network Operator pursuant to Network Operator Network Code (or any applicable statutory standards of service) as a result

of a failure to accept Gas tendered for delivery from, the Company System due to the circumstances set out above.

8. COMPLETION FILE

- 8.1. The Company shall provide Network Operator the Completion File within twenty (20) Working Days of achieving Validation.
- 8.2. Network Operator hereby undertakes to notify the Company within ten (10) Working Days of receiving the Completion File as to whether (acting reasonably) it shall accept or reject the Completion File. Where Network Operator rejects the Completion file it shall issue a Correction Notice to the Company in respect of the Completion File which shall detail its reasons for the Correction Notice. The Company shall then be required to, within ten (10) Working Days of receiving the Correction Notice, amend the Completion File to address the reasons detailed in the Correction Notice and re-submit the amended Completion File to Network Operator for Acceptance.
- 8.3. The Parties agree that the provision of this Clause 8.2 shall continue to apply until such time that Network Operator accepts the Completion File in writing.
- 8.4. Network Operator shall only be obliged to accept the Completion File whereby it is (acting reasonably) satisfied with the contents of the Completion File.
- 8.5. Any acceptance by Network Operator of the Completion File shall not in any way relieve the Company of its obligations or liabilities under this Agreement.

9. ADOPTION

- 9.1. Network Operator shall Adopt the Network Operator Facility forming part of the Network Entry Facility upon acceptance of the Completion File in accordance with Clause 8.
- 9.2. The Company warrants that upon acceptance of the Completion File it shall procure at its own expense that full ownership of the Network Operator Facility and the ancillary rights relating thereto shall transfer to Network Operator.
- 9.3. The Company warrants that the Network Operator Facility shall be free from all defects for a period of two (2) years from the date of acceptance of the Completion File.
- 9.4. Should any defect in the Network Operator Facility arise during the period referred to in clause 9.3, then the Company shall:
 - (a) remedy such defects, including taking any reasonable remedial action that may be notified to them by Network Operator, save for remedial action which the Company is prevented from taking for reasons beyond its reasonable control which it shall request Network Operator to undertake on its behalf;
 - (b) ensure that such remedial action is taken as soon as is reasonably practicable and in any event no later than five (5) Working Days of such defect being notified (unless otherwise agreed in writing), save for remedial action which is immediately required for emergency or security of gas supply reasons or where the Company has failed to take such remedial action within five (5) Working Days (unless otherwise agreed in writing) in which case Network Operator shall be entitled to undertake the remedial action without notice to the Company; and

- (c) pay all of Network Operator's reasonable costs incurred as a result of the defects in the Network Operator Facility.
- 9.5. Without prejudice to any other rights or remedies that may accrue to Network Operator, if the Company fails to comply with the provisions of Clause 9.4 or does not effect all necessary remedial work to the reasonable satisfaction of Network Operator, or where Network Operator is required to take remedial action pursuant to Clause 9.4, then Network Operator shall be entitled to perform the remedial work, or part thereof, or make arrangements for the remedial work to be performed by a third party, and the costs of so doing shall be payable by the Company on demand by Network Operator.

10. COMPLETION DATES

- 10.1. The Company shall use reasonable endeavours to complete the Works by Date for Completion.
- 10.2. Following Completion, Network Operator shall give notice to the Company confirming the date of Completion.
- 10.3. The Company shall procure that gas must flow, and be injected through the Network Entry Facility within 12 months of the date of Completion, failing which Network Operator shall be entitled to abandon such Network Entry Facility and shall be entitled to refuse to undertake reconnecting the infrastructure to the Network at a later date.

11. EMERGENCIES

- 11.1. In the event of an emergency situation arising in relation to any of the Works or any part thereof at a time when a Network Operator representative is on Site, the Company shall, notwithstanding any other Clause in this Agreement, temporally pass over all control over such Works to the Network Operator representative. The Company shall take all action, as a RPO, to safeguard life and property and shall ensure that its employees, servants or agents remain on Site at the disposal of the Network Operator representative until released by the Network Operator representative. The Company shall follow all instructions and directions (whether oral or written) given by the Network Operator Representative during such emergency.
- 11.2. In the event of an emergency situation arising in relation to the Works or any part thereof at a time when a Network Operator representative is not in attendance, the Company shall contact the Network Operator national emergency telephone helpline, and shall cease all Works immediately and shall follow all instructions and directions (whether oral or written) given by Network Operator. In addition, the Company shall take all action, as a RPO, to safeguard life and property and shall ensure that its employees, servants or agents remain on Site at the disposal of the Network Operator emergency personnel until released by the Network Operator emergency personnel.

12. BUDGET ESTIMATE

- 12.1. The Company hereby acknowledges that the costs, expenses and fees set out in the Budget Estimate should only be regarded as a guide. The Company hereby agrees that charges will be based on the Actual Costs. Increase in costs will be advised at the time of occurrence or as soon as reasonably practicable thereafter however any failure or delay to advise the Company of any increases in costs shall not permit the

Company to withhold payment.

12.2. The Parties agree that Overhead Charges will be added to the Actual Costs.

13. PAYMENT

13.1. The Company shall make payment (including VAT when applicable) of the amount of the Budget Estimate in full on Acceptance or at such times and amounts as are stated in the Offer Letter or Budget Estimate (as the case may be).

13.2. Where the Actual Costs incurred during the carrying out of Works is:

(a) more than the Budget Estimate amounts paid to date, Network Operator shall be entitled to make, and the Company shall pay, additional charges ("**Additional Charges**") in respect of such work including for the avoidance of doubt the Overhead Charge on any such Additional Charges; or

(b) less than the Budget Estimate amounts paid to date, Network Operator shall refund (within thirty (30) days of termination of the Agreement or Completion (as appropriate)) the amount by which the Budget Estimate amounts paid to date exceeds the Actual Costs incurred during the carrying out of Works, and the provisions of Clause 13.7 shall apply mutatis mutandis to such a refund.

13.3. The Additional Charges shall be calculated in accordance with the Clause 12.

13.4. The Company shall make payment of the Additional Charges within 30 days after the date of submission of an invoice by Network Operator. Such Additional Charges will be invoiced to the Company monthly in arrears.

13.5. Payment shall be made by the Company in pounds sterling free from any right of set-off, counterclaim or deduction by direct bank transfer or equivalent instantaneous transfer of funds within thirty (30) days of receipt of each invoice issued pursuant to the Budget Estimate (in each case, the "**Due Date**") and (to the extent permitted by law) free from any right of set-off, counterclaim, deduction, retention, reservation or withholding in respect of tax PROVIDED ALWAYS that in the event that any payment is subject in law to deduction, retention or withholding the Company shall forthwith pay to Network Operator such further amount as is necessary to ensure that Network Operator receives as cleared funds an amount equivalent to the amount which would have been received if no deduction, retention or withholding had been made.

13.6. The Company shall pay, upon presentation of proper VAT invoices, all VAT charges properly payable in connection with the Works.

13.7. Any amounts reasonably and properly incurred becoming due under the Agreement shall bear interest (payable by the Company) from the Due Date at an annual rate of three percent (3%) per annum above the Barclays Bank plc base rate in force from time to time, compounded quarterly, until the date of payment. The Parties agree that the provisions of this Clause 13.7 constitute a substantial remedy for late payment of any sum due under the Agreement. The Parties further agree that the provisions of the Late Payment of Commercial Debts (Interest) Act 1998, and any orders or regulations made pursuant thereto, as to rates of interest or credit periods shall (insofar as is possible) not apply to the Agreement.

13.8. In the event any undisputed amount properly invoiced remains unpaid after the Due Date, Network Operator may thereafter, upon giving not less than seven (7) calendar days' (such period to include not less than five (5) Working Days) prior written notice and without prejudice to any other of its termination or remedial rights, suspend work on the Works pending receipt of payment due.

- 13.9. Invoices, and the statements referred to in this Clause 13, shall be sent to the address specified in the Offer Letter, or such other address as the Company may from time to time notify to Network Operator.

14. LIABILITY

- 14.1. This clause sets out the entire financial liability of the Parties (including any liability for the acts or omissions of its employees, agents and sub-contractors) in respect of:
- (a) this Agreement; and
 - (b) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 14.2. Nothing in this Agreement is intended to limit or restrict the liability of either Party for death or personal injury caused by its negligence or for fraudulent misrepresentation.
- 14.3. Network Operator shall not be liable to the Company for any Consequential Loss, howsoever caused and whether arising in contract, tort (including in negligence) or otherwise and whether foreseeable or not.
- 14.4. If Network Operator's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Company, its agents, sub-contractors or employees, then Network Operator shall not be liable for any claims, costs, charges, or losses whatsoever sustained or incurred by the Company arising directly or indirectly from such prevention or delay.
- 14.5. Subject to Clause 14.3, the maximum aggregate liability of Network Operator under the Agreement to the Company whether in contract, or tort (including in negligence) or otherwise for any loss or damage suffered by the Company to the extent caused by Network Operator or as a result of any breach of contract or negligence of Network Operator (or of its agents or employees) shall be limited to the aggregate of the Actual Costs and Overhead Charges.
- 14.6. The Company shall be under a duty to take all necessary measures to mitigate and minimise any loss or damage which may arise from breach of contract, or by reason of tort (including, without limitation, negligence) by Network Operator.
- 14.7. The Company shall indemnify Network Operator against all liabilities, costs, expenses, damages and losses (including any direct, indirect or Consequential Losses) suffered or incurred by Network Operator arising out of or in connection with:
- (a) any breach of any term or provision of this Agreement by the Company;
 - (b) any of the Company, its employees, agents breach or negligent or wilful acts, negligent or wilful omissions arising by reason of or in consequence of the construction the Works;
 - (c) any subsidence of the Network Operator System resulting from the Works;
 - (d) any damage caused to any property of Network Operator including damage caused to the Network Operator System resulting from the Works;
 - (e) any claim and or fine made against Network Operator by a third party arising by reason or in consequence of the Works to the extent that such claim or fine arises out of the breach, negligent performance or failure or delay in performance of the Works by the Company, its employees or agents;

- (f) any claim and/or cause of action for injury to or death of Network Operator's employees, directors, servants or agent or third party arising out of or in connection with the Works;
- (g) any claim and/or cause of action for any breach of any statutory approval, licence or regulation or any permission, right or interest in land granted to or held by Network Operator arising out of or in connection with the Works; and
- (h) any breach of any terms of Network Operator's Network Code, gas transporter licence and/or statutory standards of service arising out of or in connection with the Works.

15. INSURANCE

- 15.1. The Company shall effect and maintain a:
 - (a) construction all risk policy or policies of insurance in respect of the Network Entry Facility to the full reinstatement value; and
 - (b) operations all risk policy or policies of insurance in respect of the Delivery Facility to the full reinstatement value.
- 15.2. Both Parties shall be required to maintain insurance cover with insurers of good repute carrying out business in the United Kingdom to the value of £5,000,000 (FIVE MILLION POUNDS STERLING) in respect of any one event for the following: (a) public liability; (b) product liability; (c) employers liability insurance; and (d) professional indemnity insurance.
- 15.3. The Company shall provide to Network Operator within ten (10) Working Days of Acceptance evidence of the insurance policies as is required by this Clause 15 are being maintained.
- 15.4. The Company shall hold harmless and indemnify Network Operator against any losses, charges, liabilities, claims, fines, penalties, costs or expenses (including but not limited to legal expenses) incurred as in connection with or resulting from any breach of the Company's obligations as to insurance under this Agreement.

16. BRIBERY, GIFTS AND PAYMENT OF COMMISSION

- 16.1. The Parties shall (and shall procure that any Associated Person shall) in connection with this Agreement:
 - (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act;
 - (b) undertake that they will not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act; and
 - (c) not authorise or acquiesce in or turn a blind eye to, and undertake that they have not authorised or acquiesced in or turned a blind eye to, any bribery, extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering, or any similar activity.
- 16.2. Each Party shall indemnify the other Party against any losses, liabilities, damages, costs or expenses and other liabilities (including but not limited to legal fees) incurred by, or awarded against, the other Party as a result of any breach of this Clause 16.

- 16.3. Regardless of any other provision in this Agreement, neither Party shall be obliged to do, or omit to do, any act which would, in its reasonable opinion, put it in breach of any of the requirements of Clause 16.1 above.
- 16.4. Neither Party shall:
- (a) offer, give or agree to give to any person in the service of the other Party or any other person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the obtaining or execution of this Agreement, or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement; or
 - (b) enter into this Agreement or any other contract with the other Party in connection with which commission has been paid or agreed to be paid by it or on its behalf, or to its knowledge, unless before the Agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in Writing to the other Party and the approval in Writing of the other Party has been obtained.
- 16.5. In the event of any breach of this Clause 16 shall be deemed to be a material breach, and without prejudice to any other rights or remedies, either Party may (acting reasonably) require the other to remove any person or persons responsible for breaching this Clause from any further involvement with this Agreement.

17. FORCE MAJEURE

- 17.1. If either Party is rendered unable wholly or in part by Force Majeure Event to carry out its obligations (other than payment of money) under the Agreement it shall as soon as reasonably practicable after becoming aware of the occurrence of the event or circumstances of Force Majeure Event give written notice to the other Party giving full particulars of the event or circumstances constituting Force Majeure Event and of the obligations which cannot as a result be performed. The Party giving notice shall thereafter be excused from liability for non-performance of such obligations, subject to the provisions of Clause 17.2 below, to the extent and for so long as the inability to perform the obligations as a result of the event or circumstances of Force Majeure Event may continue. For the avoidance of doubt, the relief from liability for non-performance of any obligation under this Clause 17 shall not affect the existence of that obligation for the purposes of any other provision of the Agreement.
- 17.2. A Party relieved from liability for the non-performance of any obligations under the Agreement as a result of Force Majeure Event shall use all reasonable endeavours to overcome or circumvent such Force Majeure Event and shall on request in writing from the other Party give full details of the measures it is taking in that regard.

18. TERMINATION

- 18.1. Without prejudice to any of its antecedent rights or remedies, Network Operator may terminate the Agreement without liability to the Company:
- (a) forthwith on written notice if:
 - (i) the Company goes into liquidation (either voluntary or compulsory);

- (ii) any administrator or administrative receiver shall be appointed in respect of the whole or any part of the Company's assets;
 - (iii) the Company makes or offers to make any arrangement or composition for the benefit of creditors generally; or
 - (iv) Network Operator acting as a RPO considers there are circumstances which may lead to the endangerment of life or property;
- (b) by giving fourteen (14) calendar days' notice in writing:
- (i) if the Parties have been unable to agree (acting reasonably) a variation to the Works in accordance with Clause 2.5;
 - (ii) if either Party is prevented by reason of Force Majeure from performing any of its obligations under the Agreement for a period exceeding six (6) months;
 - (iii) where Network Operator delivers written notice to the Company that it has committed a breach of the Agreement and the Company has failed to remedy such breach within twenty-eight (28) days of being notified;
 - (iv) if the Company has not started Commissioning within twelve (12) months of Acceptance; or
 - (v) if the Company has not achieved Completion within eighteen (18) months of Acceptance.
- 18.2. The Company may terminate the Agreement for any reason whatsoever by fourteen (14) calendar days' notice in writing to Network Operator.
- 18.3. Where the Agreement is terminated under any provision of this Clause 18, Network Operator shall be entitled to receive:
- (a) payment of all amounts due at the time of termination;
 - (b) any Additional Charges for which the Company is liable under Clause 13.2;
 - (c) any cost or expense reasonably incurred, or for which Network Operator is liable and is unable lawfully or contractually to avoid or recover from third parties in connection with any contracts placed in connection with the Agreement (insofar as these have not already been paid by the Company) including without limitation, forfeited deposits, cancellation fees and legal expenses; and
 - (d) any and all reasonable costs incurred or expended in the restoration and/or reinstatement of land or buildings and removal of plant, apparatus and equipment which in the opinion of Network Operator is necessary as a result of the termination of the Agreement taking into account inter alia environmental considerations and contractual commitments.
- 18.4. Any termination of the Agreement pursuant to any provision of this Clause 18 shall be without prejudice to any rights or obligations of the Parties that accrued prior to the effective date of such termination.
- 18.5. In the event any government or governmental supranational state agency or regulatory body shall:
- (a) rule or direct that the Agreement (or any part thereof) should not be performed by Network Operator;
 - (b) institute, threaten or thereafter take any action, suit or investigation to

restrain, prohibit or otherwise challenge the rights or obligations contemplated by the Agreement; or

- (c) thereafter to take any other action as a result of or in anticipation of the implementation of the Agreement which would have adverse effects on the rights of the parties hereto,

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

19. CONFIDENTIALITY

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

- (a) this restriction shall not apply to any information which at the time of disclosure is in the public domain or thereafter becomes party of the public domain otherwise than as a consequence of a breach by a Party of its obligations under this Clause 19;
- (b) nothing in the Agreement shall prevent the disclosure of information to any government department or any governmental or regulatory agency having jurisdiction over any Party (including but not limited to the Gas and Electricity Markets Authority), or as required by law or any lawful subpoena or recognised stock exchange or other process in connection with any judicial arbitration or administration proceeding, or where reasonably necessary to effect the purpose of the Agreement; and
- (c) in the event disclosure to any third party is necessary in order to give effect to the purposes of the Agreement or permissible under this Clause 19, the disclosing Party shall use all reasonable endeavours to ensure that such third party shall respect the confidentiality of such information and be bound by the terms of this Clause 19 as if a party thereto.

19.2. Nothing in Clause 19.1 shall apply to the disclosure of Protected Information to any:

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

19.3. The disclosing Party, pursuant to Clause 19.2 shall:

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

20. INTELLECTUAL PROPERTY

20.1. All Intellectual Property and, to the extent that Intellectual Property is embodied

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

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

21. DISPUTES RESOLUTION PROCEDURE

- 21.1. Any Dispute shall be resolved in accordance with the procedure set out in this Clause.
- 21.2. Either Party shall give to the other notice in writing ("**Dispute Notice**") of the Dispute, setting out its nature and full particulars, together with relevant supporting documentation.
- 21.3. Within 14 days of service of the Dispute Notice, the Network Operator Manager and Company Manager shall meet and attempt in good faith to resolve the Dispute.
- 21.4. If the Network Operator Manager and Company Manager are for any reason unable to resolve the Dispute within 21 days of service of the Dispute Notice, the Dispute shall be referred to the Network Director of Network Operator and a senior representative of one or more of the Members of the Company (the "**Executives**") who shall attempt in good faith to resolve it.
- 21.5. If the Dispute remains unresolved within 21 days of it being referred to the Executives, either Party may refer the Dispute to mediation in accordance with the CEDR Model Mediation Procedure.
- 21.6. The mediation shall be conducted in accordance with the following procedure:
 - (a) unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve;
 - (b) to initiate the mediation, a Party must serve a notice in writing ("**Mediation Notice**") to the other Party requesting mediation, with a copy of the Mediation Notice being sent to CEDR Solve;
 - (c) the mediation will start not later than 14 days after the date of the Mediation Notice;

- (d) unless otherwise agreed by the Parties, the place of mediation shall be nominated by the mediator; and
- (e) the commencement of mediation shall not prevent the Parties commencing or continuing court proceedings or adjudication in respect of the Dispute.

22. NOTICES

- 22.1. Any notice or other document to be given under the Agreement shall be in writing and shall be deemed to have been duly given if left or delivered by hand or sent by registered post or given by facsimile to a Party at the address set out in the Offer Letter for such Party, or such other address as the receiving Party may from time to time designate by written notice to the other.
- 22.2. Any such notice or other document shall be deemed to have been received by the addressee two (2) Working Days following the date of dispatch if the notice or other document is sent by registered post or upon delivery if left or delivered by hand or upon confirmation by the recipient's facsimile machine of transaction in the case of notice sent by facsimile. Any notice given by facsimile shall be subsequently confirmed by letter sent by post or hand but without prejudice to the validity of the original notice if transmitted.

23. ENTIRETY OF AGREEMENT

- 23.1. This Agreement shall constitute the entire agreement between the Parties with respect to its subject matter and supersedes all previous agreements and understandings between the Parties with respect thereto.
- 23.2. Each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or warranty or other undertaking not fully reflected in the terms of this Agreement, provided that this clause shall not have the effect of excluding liability on the part of either Party for any fraudulent misrepresentation.

24. ASSIGNMENT

- 24.1. Subject to Clause 24.2, Network Operator or the Company may assign all or any of its rights and obligations under the Agreement with the consent of the other Party such consent should not be unreasonably withheld.
- 24.2. In the event that the Company proposes to assign all or any of its rights and obligations under the Agreement or the future operation of the Delivery Facility, the Company shall procure that the transferee formally accedes to this Agreement prior to such assignment.

25. SUB-CONTRACTING

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

26. OWNERSHIP, OPERATION AND MAINTENANCE

- 26.1. The Parties agree that:
 - (a) on Adoption Network Operator shall own outright, operate and maintain

the Network Operator Facility;

- (b) the Company shall own outright, operate and maintain the Delivery Facility unless otherwise agreed in writing;
- (c) Network Operator shall have no right or obligation to operate and/or maintain, and shall have no responsibility for the operation and/or maintenance of, the Delivery Facility; and
- (d) the Company shall have no right or obligation to operate and/or maintain, and shall have no responsibility for the operation and/or maintenance of, the Network Operator Facility.

26.2. The Parties hereby agree that the ongoing operational requirements of the Network Entry Facility will be subject to separate Network Entry Agreement which shall be entered into prior to Commissioning.

27. WAIVER AND AMENDMENTS

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

27.2. No amendments to the Agreement shall be valid unless made in writing and agreed and signed by the duly authorised representatives of the Parties.

28. PUBLICITY

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

29. SURVIVAL

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

30. THIRD PARTY RIGHTS

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

31. SEVERABILITY

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

32. GOVERNING LAW

The Agreement shall be governed by and construed in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the Courts of England.