



SGN

Your gas. Our network.

**STANDARD CONDITIONS OF
CONTRACT FOR THE DESIGN AND
PERFORMANCE OF ABOVE 7 BAR
WORKS
SCOTLAND GAS NETWORKS PLC**

**STANDARD CONDITIONS OF CONTRACT FOR THE DESIGN AND
PERFORMANCE OF ABOVE 7 BAR WORKS**

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1. DEFINITIONS

1.1 These Terms and Conditions are to be read in conjunction with a firm Quotation issued by SGN and any subsequent Annexes, as a result of completion of an SCJ Feasibility Study.

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

"Acceleration" shall mean acceleration of the Works to achieve Completion prior to the Date for Completion, as the case may be;

"Acceptance" shall have the meaning given in Clause 2;

"Actual Cost" shall mean the total of: -

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

"Adjudicator" shall mean the person agreed between the Parties as such or, in the absence of such agreement, the person appointed as such by the President for the time being of the Institute of Gas Engineers and Managers

"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 Section 1159 of the Companies Act 2006 (as amended);

"Agreement" shall mean the Quotation as accepted by the Company (including the Annexes thereto) and these Standard Conditions of Contract, all of which shall be read as one document;

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

"Company" shall mean the person or entity to whom or to which the Quotation is addressed, and its permitted successors and assignees;

"Company Facilities" shall have the meaning given in the Quotation;

"Company Provided Facilities" shall mean those facilities (if any), whether of a temporary or permanent nature, which the Company is to provide to SGN pursuant to the Agreement, as may be more particularly described in the Quotation

"Company's Specific Obligations" shall have the meaning given in the Quotation;

"Compensation Event" shall have the meaning given in Clause 11;

"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

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person (whether autonomous or not) of the United Kingdom (or the government thereof) or the European Union which has jurisdiction over SGN or the Company or the Agreement;

“Consequential Loss” shall mean:

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

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

“Date for Completion” shall mean the date for the Completion of the Works, being the date identified as such in the quotation letter or such later date as may be established pursuant to Clause 6;

“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;

“Due Date” shall have the meaning given in Clause 7;

“Engineer” shall mean the engineer appointed from time to time by SGN and notified to the Company, to act as Engineer for the purposes of the Agreement;

“Estimate” shall mean SGN's estimate of the total sum for undertaking the Works, such sum being made up of:-

- a) an estimated sum in respect of SGN Internal Works, and
- b) an estimated sum in respect of the remainder of the Works;
- c) as such sum may be amended pursuant to Clause 11;

“Feasibility Study” shall mean the initial >7bar study of anticipated works identified as per the initial SCJ;

“Feasibility Study Works” shall mean the carrying out of a Feasibility Study of the proposed SGN Facilities (including an indication of the cost of designing, constructing and Commissioning the proposed SGN Facilities), and the production of a Feasibility Study Report and such other matters as may be set out in Annex 1 of the quotation;

“Force Majeure” shall have the meaning given in Clause 9;

“Information Cut-off Date” shall have the meaning given in the Quotation;

“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;

“LTS” or Local Transmission System shall mean the Scotland gas distribution network as owned and operated by SGN at pressures >7bar;

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

"NTS" shall mean the national gas transmission system as owned and operated by National Grid Gas plc;

"Overhead Charge" shall have the meaning given in the Quotation;

"Price" shall mean the Actual Cost plus the Overhead Charge;

"Price Paid To Date" shall mean the amount paid by the Company pursuant to Clause 7.2 prior to the date in question;

"Party" shall mean SGN of the one part and the Company of the other part and **"Parties"** shall be construed accordingly;

"Protected Information" shall mean any information relating to the affairs of SGN or the Company gained pursuant to or in the course of the negotiation, implementation or performance of the Agreement and shall, for the avoidance of doubt, include but not be limited to the Feasibility Study Works;

"Quotation" shall mean the letter referring to these Standard Conditions of Contract addressed to the Company containing *inter alia* details of the Works, the Estimate and such other matters as may be specified in these Standard Conditions of Contract, together with any other documents attached to or 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 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;

"SGN" shall mean Scotland Gas Networks plc, a Company incorporated under the Companies Acts (Company Number 05167021) and having its registered office at St Lawrence House, Station approach, Horley, Surrey, RH6 9HJ and its permitted successors and assignees;

"Subcontract" shall mean a contract between SGN and a Subcontractor;

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

"Completion" shall mean that the Works shall be completed as demonstrated in the quotation;

"SGN Facilities" shall mean the equipment necessary to provide a physical connection between the Company's System and the SGN Network;

"SGN Internal Works" shall mean that part or parts of the Works provided and/or to be carried out directly by SGN and not by a Subcontractor, other than:-

- a) project management;
- b) project and quality control;
- c) project health, safety & environmental control;
- d) project accounts;

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e) construction management (head office); and

f) administrative support;

"SGN Licence" shall mean the gas transporter's licence granted, or treated as granted, to SGN from time to time under Section 7(2) of the Gas Act 1986 as amended;

"SGN System" shall mean the Below 7 bar Network and shall (for the avoidance of doubt) include the SGN Facilities;

"SGN Telemetry Testing" shall mean the completion by SGN of all necessary functionality testing of (a) communication between SGN's telecoms and data interface and data interface housing(s) and the relevant SGN control centre and (b) the satisfactory remote operation of the ROV;

"Signals" receive and transmit signals (as specified in the Scotland Gas Networks plc document SGN/SP/INE3 (Requirement Specification for Selection of Telemetered Signals to operate the Scotland Gas Networks plc Gas Supply System)) (the "Signals") to the relevant Scotland Gas Networks control centre;

"Substantial Completion" shall mean the works have been commissioned except where the quotation specifies that the works shall be constructed in stages

"Weather Data" shall mean historical weather data provided by the Met Office

"Weather Measurement" shall mean a measurement, for each calendar month, for the following:-

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

"Working Day" shall mean a day (not being a Saturday or Sunday) on which the clearing banks in the city of London are normally open for business; and

"Works" shall mean the works as set out in the Quotation.

- 1.3 References in the Agreement to Clauses are to Clauses of these Standard Conditions of Contract, except where otherwise stated.
- 1.4 Any reference to statutes, statutory instruments, codes of practice, standards or SGN documents in these clauses or the Quotation are intended to refer to current statutes, statutory instruments, codes of practice, standards or SGN documents as may be amended, extended, re-enacted or replaced from time to time.
- 1.5 Words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and neuter and vice versa.
- 1.6 In the event of an inconsistency between the various provisions of the Agreement (including any documents incorporated herein by reference) the inconsistency shall be resolved by giving such provisions and documents the following order of precedence:
 - (a) the Quotation;
 - (b) the Annexes to the Quotation;

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- (c) the Clauses of these Standard Conditions of Contract;
- (d) any other document forming part of the Agreement.

2. QUOTATION AND ACCEPTANCE

- 2.1 The formation of the Agreement ("Acceptance") shall take effect on the receipt by SGN of the acceptance by the Company of the Quotation, including a confirmation by the Company that no further terms or conditions are required other than those set out in these Standard Conditions of Contract and any additional conditions incorporated in the Quotation.
- 2.2 Acceptance of the Quotation must be accompanied by full or part payment as specified in the Quotation. These funds must be cleared by SGN.
- 2.3 An Acceptance will only be ratified upon the return by SGN of and Acceptance Acknowledgement letter.

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 by the Information Cut-off Date and without undue delay, such information as:-
 - (i) SGN 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
 - (ii) the Company has in its control that the Company believes may be relevant to the Works or any part thereof.

Any information so provided shall be deemed at all times to be subject to the provisions of Clause 13;

 - (c) agrees that such information as it provides under paragraph (b) is accurate and may be relied on by SGN and the Subcontractors in connection with the performance of SGN's obligations under the Agreement;
 - (d) acknowledges that the Completion Date (as set out in the Quotation) and the scope of work set out in the Quotation have been specified on the basis of the information provided by the Company to SGN as at the Information Cut-off Date. Any information provided to SGN by the Company after the Information Cut-off Date shall be a Compensation Event in accordance with Clause 11; and
 - (e) shall not unreasonably interfere with or restrict the carrying out of all or any part of the Works.
 - (f) 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;
 - (g) shall comply with all relevant legislation in the performance of the Company's obligations under the Agreement;

4. SGN'S OBLIGATIONS

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

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- (a) carry out the Works;
- (b) comply with all relevant legislation in performance of all SGN's obligations under the Agreement.

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

5. COMPLETION DATES

5.1 Subject to Clause 6, SGN shall achieve Completion of the Works by the Completion Date.

5.2 The date on which Completion of the Works is achieved shall be [Number of Days as set out in the quotation] after the date of Acceptance.

6. EXTENSIONS OF TIME

6.1 The Date for Completion may be extended by a Compensation Event in accordance with Clause 11.

6.2 In all cases, where SGN has given notice (in accordance with Clause 11) of a Compensation Event arising which may lead to a delay, it shall thereafter comply with all reasonable instructions which the Company shall give in order to overcome or minimise any actual or anticipated delay. Such compliance shall of itself constitute a Compensation Event pursuant to Clause 11.

7. PAYMENT

7.1 In consideration of the Works, the Company shall pay SGN the Price.

7.2 SGN shall invoice the Company in respect of the Price as follows:-

- (a) the percentage(s) of the Estimate plus the percentage(s) of the Overhead Charge on or after the date(s) specified in the Quotation; and
- (b) in respect of a Compensation Event, at any time following implementation of the Compensation Event;

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

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

- (a) the certificate(s) issued by SGN to the Subcontractor under the Subcontract for the main part of the Works, together with confirmation of the fixed price quoted to SGN by the Subcontractor at the award of the Subcontract for the main part of the Works;
- (b) a schedule of all Compensation Events that have occurred during the Works, including SGN's assessments of those Compensation Events and (for information purposes only) the amount quoted by the relevant Subcontractor for such Compensation Events;
- (c) any third party invoices for those parts of the Works not included in the Subcontract for the main part of the Works; and

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- (d) a list (by job title) of the hours incurred by SGN personnel (and the applicable hourly charge out rate) in respect of the SGN Internal Works.
- 7.4. Payment shall be made by the Company in pounds sterling free from any right of setoff, counterclaim or deduction by direct bank transfer or equivalent instantaneous transfer of funds within:-
- (a) thirty (30) Working Days of receipt of each invoice issued pursuant to Clause 7.2(a) or Clause 7.3(a);
- (b) ten (10) Working Days of receipt of any other invoice issued pursuant to this Agreement;
- (in each case, the "Due Date") and (to the extent permitted by law) free from any right of set-off, counterclaim, deduction, retention, reservation or withholding in respect of tax PROVIDED ALWAYS that in the event that any payment is subject to deduction, retention or withholding the Company shall forthwith pay to SGN such further amount as is necessary to ensure that SGN receives as cleared funds an amount equivalent to the amount which would have been received if no deduction, retention or withholding had been made.
- 7.5. The Company shall pay, upon presentation of proper VAT invoices, all VAT charges properly payable in connection with the Works.
- 7.6. Any amounts reasonably and properly incurred becoming due under the Agreement 7.4 shall bear interest (payable by the Company) from the Due Date at an annual rate of three percent (3%) per annum above the Barclays Bank plc base rate in force from time to time, compounded annually, until the date of payment. The Parties agree that the provisions of this Clause 7.6 constitute a substantial remedy for late payment of any sum due under the Agreement. The Parties further agree that the provisions of the Late Payment of Commercial Debts (Interest) Act 1998, and any orders or regulations made pursuant thereto, as to rates of interest or credit periods shall (insofar as is possible) not apply to the Agreement.
- 7.7. In the event any amount properly invoiced remains unpaid after the Due Date, SGN may thereafter, upon giving not less than seven (7) calendar days' (such period to include not less than five (5) Working Days) prior written notice and without prejudice to any other of its termination or remedial rights, suspend work on the Works pending receipt of payment due. Any such suspension shall constitute a Compensation Event pursuant to Clause 11.
- 7.8. Invoices, and the statements referred to in Clauses 7.3 and 7.4 above, shall be sent to the address specified in the Quotation, or such other address as the Company may from time to time notify to SGN.

8. LIABILITY AND INSURANCE

- 8.1 Without prejudice to Clause 5.2 SGN shall not be liable to the Company for any Consequential Loss, howsoever caused and whether arising in contract, delict (including in negligence) or otherwise and whether foreseeable or not.
- 8.2 Without prejudice to Clause 8.1, the maximum aggregate liability of SGN under the Agreement to the Company whether in contract, or delict (including in negligence) or otherwise for any loss or damage suffered by the Company to the extent caused by SGN or as a result of any breach of contract or negligence of SGN (or of its agents or employees) shall be limited to the sum of the Feasibility Study Works Estimate. The Company shall save, hold harmless and indemnify SGN from and against any loss or damage suffered by the Company arising out of or relating to the Agreement howsoever arising and notwithstanding any breach of contract, negligence or breach of duty (whether statutory or otherwise) of SGN, its directors, officers or employees or its contractors to the extent that such loss or damage twice the value of the quotation for the Feasibility Study

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- 8.3 To the extent that the owner ("Asset Owner") of all or any part of the Company Facilities is a person other than the Company, then (without prejudice to Clause 8.1) any liability of SGN to the Asset Owner whether in contract, or delict (including in negligence) or otherwise for any loss or damage suffered by the Asset Owner to the extent caused by SGN or as a result of any breach of contract or negligence of SGN (or of its agents or employees) shall be included in the cap on liability referred to in Clause 8.2. The Company shall save, hold harmless and indemnify SGN from and against any loss or damage suffered by the Asset Owner arising out of or relating to the Agreement howsoever arising and notwithstanding any breach of contract, negligence or breach of duty (whether statutory or otherwise) of SGN, its directors, officers or employees or its contractors to the extent that such loss or damage, when aggregated with any loss or damage of the Company referred to in Clause 8.2, to twice the value of the quotation for the Feasibility Study
- 8.4 Nothing in Clause 8.1 shall limit or exclude the liability of either Party in respect of any death or personal injury caused by the negligence of that Party, its agents or employees.
- 8.5 Any design carried out by SGN pursuant to the Agreement is carried out solely for the purpose of allowing SGN to perform its obligations under the Agreement. Where the Company requests that Works be amended so as not to comprise all elements of works which have been the subject of design, SGN shall not be liable for any loss or damage sustained or incurred by the Company or any third party to whom the Company discloses all or part of such design (whether such disclosure is permitted or not pursuant to the terms of the Agreement) as a result of the Company or such third party relying on that design that is not comprised in the Works. The Company shall hold harmless and indemnify SGN in respect of any claim made against SGN by any such third party to whom the Company discloses all or part of such design (whether such disclosure is permitted or not pursuant to the terms of the Agreement) arising out of or relating to such design.
- 8.6 The Company acknowledges that the level of the Overhead Charge has been calculated on the basis that the liability of SGN will be limited in accordance with this Clause 8.2. The Company may by written notice request SGN to agree a higher limit of liability provided that insurance cover can be obtained therefore and that such request may result in an increase to the Estimate and/or the Overhead Charge. The request and any agreement by SGN thereto shall be treated as an amendment pursuant to Clause 21.2.
- 8.7 Each Party shall also effect and maintain employer's liability insurance for a minimum limit of five million pounds sterling (£5,000,000) per occurrence or series of occurrences arising from any one event or for a higher minimum limit as required to comply with current legislation.
- 8.8 The Company shall save, hold harmless and indemnify SGN against any losses, charges, liabilities, claims, damages, fines, penalties, costs or expenses (including but not limited to legal expenses) incurred by SGN in connection with or resulting from any breach of the Company's obligations as to insurance under this Agreement.

9. FORCE MAJEURE

- 9.1 For the purposes of the Agreement, "**Force Majeure**" means:
- (a) any event or combination of events or circumstance (other than the lack, non-receipt or unavailability of financial resources or funds) which is beyond the control of a party acting and having acted as a Reasonable and Prudent Operator, and which prevents that party from or causes hindrance, delay or impediment to that party in fulfilling all or any of its obligations under the Agreement. For the avoidance of doubt unforeseen adverse weather conditions will not constitute a Force Majeure event.
 - (b) any failure by the Party to perform its obligations hereunder to the extent that such failure was caused by any change in the law or cancellation of any consent, approval or licence rendering it unlawful for a party to comply with its obligations hereunder after the date of Acceptance unless such change or cancellation would not have occurred except

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for any act or omission of the Party concerned in relation to such law, consent, approval or licence unless itself caused by Force Majeure.

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

10. TERMINATION

- 10.1 Without prejudice to any of its antecedent rights or remedies, SGN may terminate the Agreement:
- (a) forthwith on written notice if:-
 - (i) the Company goes into liquidation (either voluntary or compulsory); or
 - (ii) any administrator or administrative receiver shall be appointed in respect of the whole or any part of the Company's assets; or
 - (iii) the Company makes or offers to make any arrangement or composition for the benefit of creditors generally; or
 - (iv) the Company becomes subject to a change in control (as "control" is defined by Section 840 of the Income and Corporations Taxes Act 1988); or
 - (b) by giving fourteen (14) calendar days' prior notice in writing if either Party is prevented by reason of Force Majeure from performing any of its obligations under the Agreement for a period exceeding nine (9) months; or
 - (c) by giving twenty-eight (28) calendar days' notice in writing of a breach of the Agreement by the Company, provided the Company fails to take reasonable steps to remedy the breach within such twenty-eight (28) day period.
- 10.2 The Company may terminate the Agreement by giving twenty eight (28) calendar days' notice in writing to SGN.
- 10.3 Where the Agreement is terminated under any provision of this Clause 10 SGN shall be entitled to receive:
- (a) payment of all amounts due at the time of termination under Clause 7.2
 - (b) any additional sum for which the Company is liable under Clause 7.3 and Clause 7.5;
 - (c) any cost or expense reasonably incurred, or for which SGN 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

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- (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 SGN is necessary as a result of the termination of the Agreement taking into account inter alia environmental considerations and contractual commitments.
- 10.4 For the avoidance of doubt, all ownership in and rights over all partly completed Works, plant and all materials will continue to vest solely in SGN after termination of the Agreement under this Clause.
- 10.5 Any termination of the Agreement pursuant to any provision of this Clause Schedule 10 shall be without prejudice to any rights or obligations of the Parties that accrued prior to the effective date of such termination.
- 10.6 In the event any government or governmental supranational state agency or regulatory body shall:-
 - (a) rule or direct that the Agreement (or any part thereof) should not be performed by SGN; or
 - (b) institute, threaten or thereafter take any action, suit or investigation to restrain, prohibit or otherwise challenge the rights or obligations contemplated by the Agreement; or
 - (c) thereafter to take any other action as a result of or in anticipation of the implementation of the Agreement which would have adverse effects on the rights of the parties hereto,

SGN 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 SGN.

11. COMPENSATION EVENTS

- 11.1 The following are “**Compensation Events**”, which may or may not have a cost and/or time impact:-
 - (a) the Company requests a change to all or any part of the Works after the Information Cut-Off Date;
 - (b) SGN proposes a change (for health, safety or environmental reasons or for operational purposes or to comply with SGN's then current design philosophies) to all or any part of the Works;
 - (c) the Company provides new or additional information to SGN after the Information Cut-off Date, or amends, corrects or replaces any information or specifications previously provided by it to SGN in accordance with the Agreement;
 - (d) the Company does not comply with any of the Company's Specific Obligations by the dates (if any) specified for doing so or, where no date is specified, without undue delay;
 - (e) the Company does not otherwise comply with its obligations under the Agreement;
 - (f) any act or omission of the Company or its contractors and subcontractors (which shall, for the avoidance of doubt, not include SGN and the Subcontractors) which adversely affects the Works;
 - (g) SGN encounters physical conditions which:-
 - (i) affect the land on, over, under or through which the Works are being carried out; and

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- (ii) are not weather conditions or physical conditions resulting from the effects of weather; and
 - (iii) are conditions which a Reasonable and Prudent Operator would have judged at the date of Acceptance to have such a small chance of occurring that it would have been unreasonable to allow for them;
 - (h) a Weather Measurement is recorded at the Weather Measurement Location:-
 - (i) within a calendar month; and
 - (ii) after the date of Acceptance and before the date of Completion

the value of which, by comparison with the Weather Data, is shown to occur on average less frequently than once in ten years;
 - (i) the requirements of any legislation which were not known or could not have been anticipated by SGN acting as an RPO at the date of Acceptance, including but not limited to any changes or amendments to the Gas Act 1986, the Gas Act 1995, the Utilities Act 2000 and/or the SGN Licence;
 - (j) the occurrence of a Force Majeure event;
 - (k) caused by any labour dispute or work stoppage or slow-down involving the Company, the Company's contractors (which shall, for the avoidance of doubt, not include SGN), subcontractors (which shall, for the avoidance of doubt, not include the Subcontractors) or the unions of the workers of the Company or the Company's contractors (which shall, for the avoidance of doubt, not include SGN) or subcontractors (which shall, for the avoidance of doubt, not include the Subcontractors);
 - (l) any action or restraint taken or issued by a Competent Authority or by any person with an interest in land pursuant to occurrences of any agricultural disease which prevents SGN (acting as an RPO) from, or causes hindrance, delay or impediment to SGN in, fulfilling all or any of its obligations under the Agreement;
 - (m) any undue delays by third parties, including but not limited to Health and Safety Executive, Historical Environment Records - England, Nature Conservancy Council, Department of Environment, Food and Rural Affairs (DEFRA), statutory undertakers (including but not limited to the relevant river, water and highway authorities), Network Rail (or any successor of any of the foregoing) in providing any necessary consents for the Works or any part thereof;
 - (n) any delays in the acquisition of any land, or interests in or rights over land, required in connection with the Works or any part thereof, including but not limited to delays in connection with the compulsory purchase of any land or interests in or rights over land;
 - (o) any action taken by SGN to comply with a request from the Company for Acceleration;
 - (p) any action taken by SGN to comply with any instruction from the Company pursuant to Clause 6.2;
 - (q) any suspension of the works by SGN pursuant to Clause 7.7
 - (r) any request by the Company to change the Design and Build Commencement Date;
 - (s) any of the assumptions set out in the Feasibility Study prove to be incorrect; and
 - (t) a breach of contract by the Company which is not one of the events listed above.
- 11.2 In the event of a Compensation Event arising other than pursuant to Clause 11.1(a), (c) to (f), (k), (o), (p), (q), (r), and/or (t), SGN shall:-

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- (a) within fourteen (14) calendar days of SGN becoming aware of the occurrence of the Compensation Event or as soon thereafter as is reasonable in the circumstances, notify the Company of the occurrence of the Compensation Event and request that the appropriate Subcontractor advise SGN as to the impact that the Compensation Event will have on the Works; and
 - (b) within fourteen (14) calendar days of receiving a response from the appropriate Subcontractor as to the impact that the Compensation Event will have on the Works, notify the Company of:-
 - (i) the impact that the Compensation Event will have on the Date for Completion (as the case may be); and
 - (ii) SGN's estimate of the impact that the Compensation Event will have on the Feasibility Study (as the case may be).
- 11.3 In the event of a Compensation Event to which Clause 11.2 applies the Date for Completion (as the case may be) shall be amended as set out in the SGN notification given under Clause 11.2(b) and the Compensation Event shall be implemented immediately. For the avoidance of doubt, any Compensation Event to which Clause 11.2 applies shall have no impact on the Estimate(as the case may be) and, therefore, the Overhead Charge (as the case may be) shall not be adjusted as a result of such a Compensation Event.
- 11.4 In the event of a Compensation Event arising pursuant to Clause 11.1(c) to (f), (k), (q) and/or (t), SGN shall
- (a) within fourteen (14) calendar days of SGN becoming aware of the occurrence of the Compensation Event or as soon thereafter as is reasonable in the circumstances, notify the Company of the occurrence of the Compensation Event and request that the appropriate Subcontractor advise SGN as to the impact that the Compensation Event will have on the Works; and
 - (b) within fourteen (14) calendar days of receiving a response from the appropriate Subcontractor as to the impact that the Compensation Event will have on the Works, notify the Company of:-
 - (i) the impact that the Compensation Event will have on the Date for Completion (as the case may be); and
 - (ii) the impact that the Compensation Event will have on the Estimate (as the case may be).
- 11.5 In the event of a Compensation Event to which Clause 11.4 applies, the Date for Completion (as the case may be) and the Estimate (as the case may be) shall be amended as set out in the SGN notification and the Compensation Event shall be implemented immediately.
- 11.6 In the event of a Compensation Event arising pursuant to Clause 11.1(a), (o), (p), and/or (r), SGN shall within fourteen (14) calendar days of SGN becoming aware of the occurrence of the Compensation Event or as soon thereafter as is reasonable in the circumstances request that the appropriate Subcontractor advise SGN as to whether it is willing or able to implement the change or the Company's request or instruction and, if it is so willing or able, the impact that the Compensation Event will have on:-
- (a) the Date for Completion (as the case may be); and
 - (b) the Estimate (as the case may be).
- 11.7 SGN shall, within fourteen (14) calendar days of receiving a response from the appropriate Subcontractor to its request issued pursuant to Clause 11.6, notify the Company as to whether it is willing or able to implement the change or the Company's request or instruction, and if it is so willing or able, as to the impact that the Compensation Event will have on:-

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

12. NOTICES

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

13. CONFIDENTIALITY

- 13.1 Each Party shall keep confidential and shall not disclose to any third party Protected Information provided that:
- (a) this restriction shall not apply to any information which at the time of disclosure is in the public domain or thereafter becomes party of the public domain otherwise than as a consequence of a breach by a Party of its obligations under this Clause 13;
 - (b) nothing in the Agreement shall prevent the disclosure of information to any government department or any governmental or regulatory agency having jurisdiction over any Party (including but not limited to the Gas and Electricity Markets Authority), or as required by law or any lawful subpoena or recognised stock exchange or other process in connection with any judicial arbitration or administration proceeding, or where reasonably necessary to effect the purpose of the Agreement;
 - (c) in the event disclosure to any third party is necessary in order to give effect to the purposes of the Agreement or permissible under this Clause 13, the disclosing Party shall use all reasonable endeavours to ensure that such third party shall respect the confidentiality of such information and be bound by the terms of this Clause 13 as if a party thereto.
- 13.2 Nothing in Clause 13.1 shall apply to the disclosure of Protected Information to any:
- (a) lending or other financial institution in connection with the financing or the disclosing Party's business or operations;

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- (b) bona fide intending assignee of the whole or any part of the rights and interests of the disclosing Party under the Agreement; or
- (c) person that is considering acquiring shares in either Party or (in the case of the Company) any equity investment in the Company Facilities.

13.3 The disclosing Party, pursuant to Clause 13.2 shall:

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

14. INTELLECTUAL PROPERTY

- 14.1 All Intellectual Property and, to the extent that Intellectual Property is embodied therein, documents (including but not limited to drawings, transparencies, prints, photographs, negatives, tapes, discs, working notes and reports) (including but not limited to the Feasibility Study Report), software or other items created or supplied by SGN in connection with the Works shall be owned by SGN and the originals and all copies of them, if any, supplied to the Company shall be delivered to SGN on completion of the Works and the Company shall be required to certify that none are retained in its possession, (save for one copy of the Feasibility Study Report which may be retained by the Company)
- 14.2 All Intellectual Property and, to the extent that Intellectual Property is embodied therein, documents (including but not limited to drawings, transparencies, prints, photographs, negatives, tapes, discs, working notes and reports), software or other items supplied by the Company in connection with the Works shall be owned by the Company and save for documents required by SGN for the purposes of operating and maintaining the SGN System all the originals and all copies of them, if any, supplied to SGN shall be delivered to the Company on completion of the Works and SGN shall be required to certify that apart from the documents referred to above none are retained in its possession.
- 14.3 SGN 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 SGN under or in connection with the Agreement.

15. DISPUTES PROCEDURE

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

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- 15.4 In the event that the Adjudicator is unwilling or unable to act or does not confirm his appointment within seven (7) days of receiving the submission of the Dispute, then another Adjudicator shall be appointed in accordance with the provisions of Clause 15.3, and this shall continue until such time as an Adjudicator is found that is willing and able to act.
- 15.5 The Adjudicator shall settle the Dispute by notifying the Parties of his decision, together with the reasons for his decision, within the time set out in Clause 15.9. Unless and until there has been such a settlement, the Parties shall proceed as if the Dispute had not been raised. Every decision of the Adjudicator concerning any Dispute shall be implemented by the Parties without delay. The decision of the Adjudicator concerning any Dispute shall be final and binding unless and until it is revised by the Arbitrator.
- 15.6 The Party submitting the Dispute to the Adjudicator shall include a written statement detailing the matter and nature of the Dispute and shall provide such information as it wishes the Adjudicator to consider. A copy of the written statement and such other information shall be provided to the other Party at the same time as it is submitted to the Adjudicator.
- 15.7 Within four (4) weeks of the date of the submission of the Dispute to the Adjudicator, each Party shall provide the Adjudicator with any further information that that Party wishes the Adjudicator to consider and a copy of such information shall be provided to the other Party at the same time as it is submitted to the Adjudicator.
- 15.8 The Adjudicator shall be entitled to request such additional information from either Party as the Adjudicator may require in order to be able to arrive at his decision. A Party shall provide any such information within one (1) week of the Adjudicator's request and shall provide a copy of such information to the other Party at the same time as providing the information to the Adjudicator.
- 15.9 The Adjudicator shall notify the Parties of his decision within eight (8) weeks of the date of the submission of the Dispute to the Adjudicator. This eight (8) week period may be extended at the request of the Adjudicator in view of the nature of the Dispute and if agreed by both Parties.
- 15.10 If a matter disputed under or in connection with a Subcontract is also a matter disputed under or in connection with this Agreement, SGN may submit the dispute under the Subcontract to the Adjudicator to determine together with the Dispute. The Adjudicator shall then settle both disputes together, and references to the Parties in this Clause 15 shall be deemed to be references to the Parties and the relevant Subcontractor.
- 15.11 The Adjudicator shall settle the Dispute as an independent adjudicator and not as an arbitrator. The Adjudicator's decision shall be enforceable as a matter of contractual obligation between the Parties and not as an arbitral award.
- 15.12 The Adjudicator shall be entitled to incur reasonable costs and expenses in coming to his decision. Any such costs and expenses shall be borne equally between the Parties, unless the Adjudicator determines otherwise.
- 15.13 If the Adjudicator resigns, then another Adjudicator shall be appointed in accordance with the provisions of this Clause 15.
- 15.14 If:-
- (a) after the Adjudicator notifies his decision to the Parties, a Party is dissatisfied with the decision; or
 - (b) the Adjudicator fails to notify his decision to the Parties within the time provided for in this Clause 15,
- then either Party may refer the Dispute to the Arbitrator and shall notify the other Party of such reference. The Dispute can not be referred to the Arbitrator unless the reference occurs within

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four (4) weeks of the notification of the Adjudicator's decision or of the time provided for in this Clause 15 for the Adjudicator to notify his decision if he has failed to do so, whichever is the earlier.

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

16. ENTIRETY OF AGREEMENT AND AMENDMENTS

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

17. ASSIGNMENT

- 17.1 SGN or the Company may assign all or any of its rights and obligations under the Quotation (prior to Acceptance) or the Agreement to any:

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

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

18. SUB-CONTRACTING

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

19. WARRANTY

- 19.1 SGN warrants that the Works shall be undertaken with reasonable skill and care and in accordance with the proper standards of good engineering practice.
- 19.2 All other terms and conditions whether express or implied concerning the quality or fitness for purpose of the Works and all such other terms and conditions are hereby excluded to the fullest extent permitted by law.

20. OWNERSHIP, OPERATION AND MAINTENANCE

- 20.1 The Parties agree that at all times:

- (a) SGN shall own outright, and be the operator of, the SGN Facilities;
- (b) the Company shall be the operator of the Company Facilities, and the Company or the Asset Owner (as the case may be) shall own outright the Company Facilities;
- (c) SGN shall have no right or obligation to operate and/or maintain, and shall have no responsibility for the operation and/or maintenance of, the Company Facilities; and
- (d) the Company shall have no right or obligation to operate and/or maintain, and shall have no responsibility for the operation and/or maintenance of, the SGN Facilities.

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- 20.2 In the event that, contrary to Clause 20.1, SGN becomes the operator of the Company Facilities, or any part of the Company Facilities, within the meaning of the Pipelines Safety Regulations 1996 (as amended), or any similar successor legislation, the Company shall provide a full indemnity to SGN in respect of its compliance or attempted compliance with the relevant statutory requirements, including but not limited to: any and all claims, losses, liabilities, fines, penalties, costs (including legal costs) and expenses, whether direct or indirect BUT excluding any of these caused by negligence of SGN, its employees or agents.

21. WAIVER AND AMENDMENTS

- 21.1 None of the provisions of the Agreement shall be considered waived by a Party unless such waiver is given in writing and signed by a duly authorised representative of the Party making the waiver. No such waiver shall be a waiver of any past or future default or breach or modification of any other term, provision, condition or covenant of the Agreement unless expressly set forth in such waiver.
- 21.2 Without prejudice to Clause 11, no amendments to the Agreement shall be valid unless made in writing and agreed and signed by the duly authorised representatives of the Parties.

22. PUBLICITY

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

23. SURVIVAL

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

24. THIRD PARTY RIGHTS

- 24.1 This Agreement is made solely and specifically between and for the benefit of the parties, and is not intended to be for the benefit of, and shall not be enforceable by any person who is not named at the date of this Agreement as a party to it, under the Contracts (Rights of Third Parties) Act 1999 or otherwise and neither party can declare itself as a trustee of the rights under it for the benefit of any third party.

25. SEVERABILITY

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

26. GOVERNING LAW

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