

SCHEDULE 2
MODEL CONTRACT

Homerton University Hospital NHS Foundation Trust

- and -

CORONA ENERGY RETAIL 4 LIMITED

CONTRACT
Relating to
the provision of natural gas and additional services

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FRAMEWORK AGREEMENT FOR NATURAL GAS SUPPLY (NON-DAILY METERED)
AND ADDITIONAL SERVICES

Execution Version

Schedule 2

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THIS AGREEMENT is made on

BETWEEN

- (1) **CORONA ENERGY RETAIL 4 LIMITED**, a company registered in England & Wales under company number 02798334, whose registered office is at Edward Hyde Building, 38 Clarendon Road, Watford, WD17 1JW (the "**Supplier**"); and
- (2) Homerton University Hospital NHS Foundation Trust of Homerton Hospital Hackney Hackney E9 6SR (the "**Customer**").

WHEREAS

- (A) The Authority provides energy contracting services for eligible (public and private) entities, including volume aggregation, competitive price determination and hedging of natural gas supply ("**Services**"), and the Customer is an eligible entity.
- (B) The Authority provides the Services on the basis of the Framework Agreement with the Supplier which regulates, *inter alia*, the aggregation of the Authority's Customer Portfolio, the forward purchasing of natural gas for the aggregated Customer Portfolio, the locking and unlocking of wholesale natural gas prices, related hedging activities and the scheduling of supply of natural gas to the Customers.
- (C) To engage the Authority's Services the Customer has entered into, or is in the process of entering into, the Customer Access Agreement pursuant to which the Authority performs the Services.
- (D) The Supplier wishes to sell and supply natural gas to the Customer and the Customer wishes to buy and take delivery of natural gas from the Supplier using the Authority's Services. Such supply shall be for commercial purposes to manage its costs of purchasing natural gas for its business and not for any speculative or investment purpose.
- (E) It is the intention of the Parties that this Agreement governs the terms and conditions for the sale, delivery and purchase of such supply.
- (F) The Framework Agreement also provides for the ordering of Additional Services in accordance with the Ordering Procedures. The Schedule to this Agreement sets out the model form of the contract that will be agreed between the Parties pursuant to such Ordering Procedures.

WHEREBY IT IS AGREED as follows:

**PART 1 - COMMERCIAL TERMS AND CONDITIONS FOR THE SUPPLY OF
NATURAL GAS**

1. COMMERCIAL TERMS

The Supplier shall supply the Customer with natural gas, and the Customer shall take delivery of such natural gas, on the terms of the commercial conditions in this Part 1 (*Commercial Terms and Conditions for the Supply of Natural Gas*), which together with Part 2 (*General Terms and Conditions for the Supply of Natural Gas*), Part 3 (*Definitions*), Part 4 (*Interruption*) and any schedule, annex or attachments hereto which together form the entire agreement between the Parties (the "**Agreement**"), provided that if there is any conflict between the terms and conditions of Part 1, Part 2 and Part 4, Part 1 shall prevail.

1.1	Initial Contract Period	[1 to 4 years from the Earliest Supply Start Date.]
1.2	Earliest Supply Start Date	1 st April 2012
1.3	Supply Points	Please see attached
1.4	Details of Meter Asset Manager	TBC
1.5	Details of Meter Reading Agency	TBC
1.6	Payment method	[The Customer may elect any one of the following payment options: <ul style="list-style-type: none">• direct debit;• BACS;• CHAPS; or• cheque.]
1.7	Payment date	[The Customer may elect to pay invoices issued under this Agreement: <ul style="list-style-type: none">• on the 7th Day of the Month following the Supply Month;• on the 10th Day of the Month following the Supply Month;• on the 14th Day of the Month following the Supply Month;• on the 21st Day of the Month following the

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Schedule 2, Part 1

- Supply Month;
- on the 24th Day of the Month following the Supply Month;
 - on the 30th Day of the Month following the Supply Month]
- 1.8 **Invoice format** [The Customer may, subject to Applicable Laws, elect any one or more of the following formats for receiving invoices:
- hard copy;
 - e-billing;
 - EDI; or
 - other format agreed between the Parties.]
- 1.9 **Quarterly Billed Supply Points** None
- 1.10 **Supplier's Bank Accounts** *Bank: Barclays Bank*
S.W.I.F.T.: BARCGB22
Sort Code: 20-05-74
Account No.: 30877700
- 1.11 **Customer's Bank Accounts** *Bank:*
S.W.I.F.T.:
Sort Code:
Account No.:
- 1.12 **Customer's Notice Address** *Homerton Hospital Hackney Hackney E9 6SR*
- 1.13 **Supplier's Notice Address** *Edward Hyde Building, 38 Clarendon Road, Watford, WD17 1JW*

Signed for **Customer**

By:

FRAMEWORK AGREEMENT FOR NATURAL GAS SUPPLY (NON-DAILY METERED)
AND ADDITIONAL SERVICES

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Schedule 2, Part 1

Signature:

Signed for **Supplier**

By:

Signature:

**PART 2 - GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF
NATURAL GAS**

2. CONDITIONS PRECEDENT

- 2.1 In relation to each Supply Point, the Supplier's obligation to provide the Supply, and the Customer's obligation to make payment, are conditional at all times upon the following conditions precedent being satisfied:
- 2.1.1 the Supply Point being connected to a Transporter's network such that natural gas can flow directly or indirectly from it;
 - 2.1.2 Agents being appointed for each Metering Point;
 - 2.1.3 the Supplier holding a Licence to supply natural gas in accordance with the Act;
 - 2.1.4 the Supplier being Registered for each Supply Point.
- 2.2 The Customer shall use reasonable endeavours to ensure that the condition in sub-clause 2.1.1 is satisfied by the Earliest Supply Start Date for each Supply Point and that it remains satisfied until this Agreement ends.
- 2.3 The Supplier shall use reasonable endeavours to ensure that the conditions in sub-clauses 2.1.3 and 2.1.4 are satisfied by the Earliest Supply Start Date for each Supply Point and that they remain satisfied until this Agreement ends.
- 2.4 The condition in sub-clause 2.1.1 is for the benefit of, and may only be waived or deferred by, the Supplier. The conditions in sub-clause 2.1.3 and 2.1.4 are for the benefit of, and may only be waived or deferred by, the Customer. The responsible Party in accordance with sub-clauses 7.1 and 7.2 shall use reasonable endeavours to ensure that the condition in sub-clause 2.1.2 is satisfied by the Earliest Supply Start Date for each Supply Point. The condition in sub-clause 2.1.2 is for the benefit of, and may only be waived or deferred by, the Party which is not the responsible Party.
- 2.5 For the avoidance of doubt, the failure of the Parties to satisfy all the conditions precedent for a Supply Point by the Earliest Supply Start Date for that Supply Point does not affect the Supplier's obligation to provide the Supply and the Customer's obligation to make payment in relation to the Supply, in respect of Supply Points in relation to which all the conditions precedent have been satisfied (or waived in accordance with sub-clause 2.4).
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3. REGISTRATION

- 3.1 For the purposes of the Registration, the Supplier shall use the Managed Registration Information which the Authority provides to it in accordance with the Framework Agreement or, in the case of Site Works and Installation Services carried out by the Supplier, the address of any new supply point and the related MPR and Meter serial number obtained by the Supplier in respect of such works.
- 3.2 If the Supplier fails to Register itself in respect of a Supply Point and such failure is attributable to any act or omission of the Supplier:
- 3.2.1 the Supplier shall notify the Customer within two (2) Working Days of the failure;
 - 3.2.2 the Supplier shall use all reasonable endeavours to Register itself in respect of the relevant Supply Point as soon as reasonably practicable; and
 - 3.2.3 any issues arising in relation to the late transfer of the Supply Point between the Supplier and the existing Gas Supplier to the relevant Supply Point ("**Incumbent Supplier**"), including any amounts that may be owed, shall be resolved (and payments made) in accordance with the Inter-Shipper Dispute Mechanism.
- 3.3 The Supplier shall not be liable for any claims, proceedings, losses, liabilities, costs (including legal costs), damages or expenses arising out of any late or failed Registration of a Supply Point and any consequential delay in the Actual Supply Start Date for that Supply Point, if such late or failed Registration or such consequential delay is caused by a Transfer Objection submitted by the Incumbent Supplier.
- 3.4 The Supplier shall use all reasonable endeavours to resolve any Transfer Objection as soon as reasonably practicable and the Parties shall co-operate and do such things as are necessary to resolve such objection and minimise any delays to the Actual Supply Start Date for the relevant Supply Point.
- 3.5 If a Transfer Objection is made by the Customer's Incumbent Supplier and is not resolved within five (5) Working Days then, in accordance with sub-clause 15.1.8, either Party may terminate this Agreement in respect of the affected Supply Point only.
- 3.6 If required by the Uniform Network Code, and following confirmation that the Supplier is Registered in respect of the relevant Supply Point, the Supplier shall provide the

Customer with a NEXA for the Customer to execute. The Customer shall execute the NEXA prior to the Earliest Supply Start Date for the relevant Supply Point.

4. SUPPLY OF GAS PRODUCTS

4.1 Nominated Consumption for DM Supply Meter Points:

4.1.1 As soon as reasonably practicable prior to the start of each Procurement Year, the Customer shall in respect of each of its DM Meters included in Supply Points ("**DM Supply Meter Points**") notify the Supplier of the estimated quantity of natural gas the Customer will require in the upcoming Procurement Year and its likely consumption profile for each Month during that Procurement Year, which estimate shall be, as far as reasonably practicable, based on the Historic Demand of natural gas supplied to the DM Supply Meter Point and take into account any planned shutdowns of the DM Supply Meter Point in the relevant Procurement Year. The Customer's estimate may only deviate from Historic Demand on reasonable grounds and the Customer shall provide the Supplier with its grounds for such deviation ("**Nominated Consumption**").

4.1.2 The Customer shall keep the Nominated Consumption under review and shall notify the Supplier of any actual or anticipated material changes to its Nominated Consumption for a Procurement Year, including any planned shutdowns of a DM Supply Meter Point ("**Revised Nominated Consumption**"). For the purposes of this sub-clause 4.1.2, a "material change" to the Nominated Consumption for a Procurement Year is an increase or decrease of ten percent (10%) or more in the amount of the Nominated Consumption provided by the Customer to the Supplier under sub-clause 4.1.1. In the case of the Day-Ahead Product only, the Customer shall provide Revised Nominated Consumption data in respect of each Day of the Supply Month by 15.30 hours on the immediately preceding Day.

4.1.3 Subject to sub-clause 4.1.4, the Parties acknowledge and agree that the Customer shall have complied with its obligation under sub-clause 4.1.1 in respect of a Procurement Year if the Nominated Consumption for that Procurement Year is agreed between the Authority and the Supplier in accordance with the process set out in the Framework Agreement and the Authority has consulted the Customer as part of that process.

4.1.4 If, after the Nominated Consumption for a Procurement Year has been determined in accordance with sub-clause 4.1.3, the Customer provides to the

Supplier a Nominated Consumption or Revised Nominated Consumption, then the Customer's nomination shall prevail over the Nominated Consumption agreed between the Authority and the Supplier as described in sub-clause 4.1.3 except in the event of manifest error.

4.1.5 If, based on actual Meter readings of the Customer's consumption, the Supplier reasonably considers that the Nominated Consumption or any Revised Nominated Consumption provided by the Customer is materially inaccurate, the Parties shall discuss and use their reasonable endeavours to agree a Revised Nominated Consumption. If the Parties fail to agree a Revised Nominated Consumption, the Nominated Consumption or the Revised Nominated Consumption (as the case may be) provided by the Customer shall apply.

4.1.6 For the purposes of sub-clause 4.1.5, the Nominated Consumption or Revised Nominated Consumption shall be materially inaccurate if the Customer's consumption based on actual Meter readings is greater or less than the relevant Nominated Consumption or Revised Nominated Consumption by an amount equal to or greater than ten percent (10%) of such Nominated Consumption or Revised Nominated Consumption.

4.2 The Supplier shall:

4.2.1 have the exclusive right to sell, and shall sell, supply and deliver (or shall procure the supply and delivery of) at the relevant Delivery Points:

(a) for DM Supply Meter Points, the Nominated Consumption or the Revised Nominated Consumption as the case may be up to the Maximum Consumption in respect of the relevant Supply Points for each Procurement Year; and

(b) for NDM Supply Meter Points, natural gas up to the Maximum Consumption in respect of the relevant Supply Point for each Procurement Year,

("Supply") from the Actual Supply Start Date for that Supply Point for the Term. Where there is more than one Supply Point at a Site, the Actual Supply Start Date may be different for some or all of them; and

- 4.2.2 ensure that the Supply shall be provided on a firm basis except for the Supplier's or the Transporter's rights to interrupt, whether as specified in the Managed Registration Information or otherwise, to reduce or to Isolate the Supply.
- 4.3 Subject to the maximum capacity of a Supply Point, the Customer shall, during the Term, only accept delivery of natural gas up to the Maximum Consumption of each Supply Point from the Supplier.
- 4.4 The Supplier shall not be liable (save to the extent it is able to be compensated therefor, in which case it shall obtain and pass on to the Customer such compensation in full) for any suspension or Isolation of Supply to any Supply Point if arranged by the Supplier or the Transporter to comply with the Act, the Licence and any other law, regulation, or gas industry agreement or code (provided the Supplier is not in breach of the Framework Agreement) or system security, load management or demand control, provided further that:
- 4.4.1 if the suspension or Isolation of Supply is arranged by the Supplier, the Supplier shall give notice to the Customer, and use reasonable endeavours to procure that the Transporter gives as much notice as possible to the Supplier, of any such interruption, reduction or impairment of Supply;
- 4.4.2 if the suspension or Isolation of Supply is arranged by the Transporter, the Supplier shall use reasonable endeavours to procure that the Transporter gives as much notice as possible to the Shipper of any such interruption, reduction or impairment of Supply, and the Supplier, if not the Shipper, shall use reasonable endeavours to procure that the Shipper gives as much notice to the Supplier of any interruption, reduction or impairment of Supply and the Supplier shall in turn give as much notice as possible to the Customer of such interruption, reduction or impairment of Supply; and
- 4.4.3 insofar as it is not the sole responsibility of the Transporter under the Act, the Licence and any other law, regulation, or gas industry agreement or code, the Supplier shall remedy any interruption, reduction or impairment, including by Re-establishing an Isolated Supply Point, as soon as reasonably practicable.
- 4.5 Supply Point Withdrawals and additions:
- 4.5.1 If a Customer:
- (a) vacates a Site;
-

- (b) sells, assigns, transfers or otherwise disposes of its interest in a Site; or
- (c) removes a Metering Point from a Site, or otherwise disconnects a Metering Point from the Transporter's network and/or the Distribution System to which the Metering Point is connected,

as a result of which the Customer no longer wishes the Supplier to provide the Supply to a Supply Point located at such a Site ("**Supply Point Withdrawal**"), the Customer shall give the Supplier no less than sixty (60) Days notice in writing that it no longer wishes the Supplier to provide the Supply to the relevant Supply Point and shall state the date upon which such Supply shall cease ("**Withdrawal Date**"). For the avoidance of doubt, the Customer shall continue to be liable for Fixed Daily Charges in respect of such a Supply Point until the date the Supply Point Withdrawal becomes effective in accordance with sub-clause 4.5.4.

- 4.5.2 Subject to the Supplier's right to lodge a Transfer Objection under Clause 18, where sub-clause 4.5.1(b) applies, the Supplier shall co-operate with the new Gas Supplier and do such things as to enable the Registration of the new Gas Supplier as soon as reasonably practicable.
- 4.5.3 The Customer shall, within two (2) Working Days of the date a Supply Point Withdrawal becomes effective in accordance with sub-clause 4.5.4, provide the Supplier with written notice which shall include:
 - (a) the date when such Supply Point Withdrawal was made;
 - (b) where sub-clause 4.5.1(b) applies, details of the new occupier, of the Supply Point (including contact information);
 - (c) where sub-clause 4.5.1(b) applies, the date the new occupier took occupancy of the Supply Point; and
 - (d) Meter readings on the date on which the Supply Point Withdrawal took effect.
- 4.5.4 For the purposes of sub-clauses 4.5.1 and 4.5.3, a Supply Point Withdrawal shall become effective in relation to a Supply Point when:

- (a) a third party has entered into an agreement with the Supplier for the supply of natural gas at the relevant Supply Point;
- (b) another Gas Supplier has Registered and started supplying natural gas to the relevant Supply Point; or
- (c) the Supplier Isolates the relevant Supply Point because no supply of natural gas is required at the relevant Supply Point.

4.5.5 In the event that the Supply continues at a Supply Point after the Withdrawal Date then until the Supply Point Withdrawal becomes effective in accordance with clause sub-clause 4.5.4:

- (a) the Supplier shall continue to provide the Supply, and
- (b) the Customer shall continue to pay the Charges in accordance with this Agreement save that the Charges shall be calculated by reference to the Supplier's Deemed Contract Rate.

4.5.6 The Parties acknowledge and agree that the Customer may add Supply Points from time to time to this Agreement by giving notice to the Authority in accordance with the Customer Access Agreement, and the Supplier shall Register itself in respect of such additional Supply Points as requested by the Customer and as required by the Authority under the Framework Agreement. The Registration provisions in Clause 3 shall apply to such additional Supply Points.

4.5.7 If a DM Supply Meter Point is added by the Customer in accordance with sub-clause 4.5.6, the Customer shall, as soon as possible after the Supplier's Registration of the additional DM Supply Meter Point, provide the Supplier with the Nominated Consumption for the additional DM Supply Meter Point for the relevant Procurement Year in which the Site is added in accordance with sub-clause 4.1.1, or, if the relevant DM Supply Meter Point is added after the sixth (6th) Month Procurement Round Commitment Point for that Procurement Year, the Nominated Consumption for a period of twelve (12) Months beginning on the date the additional DM Supply Meter Point was Registered by the Supplier. The provisions of sub-clauses 4.1.1 to 4.1.6 shall apply to the Nominated Consumption provided by the Customer to the Supplier under this sub-clause 4.5.7.

- 4.5.8 Unless otherwise agreed by the Authority and the Supplier in accordance with the Framework Agreement, if the Customer adds a Supply Point after the Procurement Round Commitment Point which is six (6) Months prior to the Relevant Procurement Year, then the Customer shall pay the Supplier the Interim Price in respect of Interim Supply to the Supply Points during the Interim Period, including any discount equivalent to those offered by the Supplier to the Customer under sub-clause 9.3 and that may be offered by the Supplier to the Customer in respect of Interim Supply.
- 4.5.9 Any condition, term or obligation in relation to the Supply and Isolation of any of the Supply Points shall arise, subsist and cease individually and separately, so that:
- (a) where new Supply Points are to be added to this Agreement, the conditions, terms and obligations shall apply separately to each such new Supply Point; and
 - (b) where existing Supply Points are to be removed from this Agreement, the conditions, terms and obligations of this Agreement shall cease to apply separately to each such existing Supply Point so removed, and the Supply shall continue for Supply Points not removed.
- 4.6 Any short term consumption in excess of the Maximum Consumption for any of the Supply Points which are specified in the Managed Registration Information as being firm and DM Supply Meter Points, due either to unforeseen emergencies or to any act or omission by the Customer which is rectified without unreasonable delay, will not constitute a breach of this Agreement by the Customer or cause the application of any surcharge which may be provided for in this Agreement, save that the Supplier may pass on to the Customer the costs (if any) imposed on the Supplier directly as a result of such excess consumption.
- 4.7 Subject to sub-clause 4.9, the Customer shall promptly inform the Supplier of any significant variation, whether actual or anticipated, to the information specified in Part 1 or the Managed Registration Information in respect of a Supply Point, including the Customer's Nominated Consumption or Revised Nominated Consumption or Maximum Consumption, where such alteration is not temporary or transitory.
- 4.8 The Supplier shall perform its obligations under this Agreement in accordance with the Act, the Licence and any other law, regulation, or gas industry agreement with the skill and care of a Reasonable and Prudent Operator and applying Good Industry Practice.
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- 4.9 The characteristics of the Supply shall be subject to such variations as are permitted by the Act.
- 4.10 For each Supply Point that has a Nominated Consumption in excess of 732,000 kWh or 25,000 therms, the Customer shall provide the Supplier with emergency telephone and facsimile numbers at which three representatives of the Customer can be contacted for the purpose of reporting or facilitating a response to any Emergency. Where such person can be contacted twenty-four (24) hours a Day, only one set of contact details is required.
- 4.11 Title and risk in the natural gas shall pass to the Customer at the Delivery Point.

5. SUPPLIER OBLIGATIONS

5.1 Account Manager:

5.1.1 The Supplier shall ensure it has an Account Manager who shall be available to deal with Queries and Complaints from the Customer and carry out visits to the Customer and the Customer's Sites, whether at the Customer's request or in accordance with any Site visit arrangements agreed with the Authority pursuant to the Framework Agreement.

5.1.2 Within two (2) Working Days of the Effective Date, the Supplier shall notify the Customer of the name and contact details of the Account Manager. If those details change during the Term, the Supplier shall notify the Customer of the new details of the Account Manager as soon as possible.

5.2 Customer Service Team:

5.2.1 The Supplier shall ensure that, in accordance with the Framework Agreement, it has a Customer Service Team which shall:

- (a) ensure accurate set-up and management of the Customer's account with the Supplier;
 - (b) ensure invoices are billed and, subject to sub-clause 10.5, issued in the format requested by the Customer;
 - (c) be the first point of contact for the Customer if it has a Query and/or Complaint, and deal with and resolve such Queries and Complaints;
 - (d) attend meetings with the Customer as and when required; and
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- (e) prepare all reports, documents and other information required under the Framework Agreement or this Agreement to be provided to the Customer.

5.2.2 The Customer Service Team shall deal with Customer Queries and Complaints in accordance with sub-clauses 5.3 and 5.4 respectively.

5.3 Customer Queries

5.3.1 If the Supplier receives a Query from the Customer it shall:

- (a) Identify whether the Query is:
 - (i) an Invoicing Query;
 - (ii) a General Query; or
 - (iii) a Complaint.
- (b) If the Query is:
 - (i) an Invoicing Query or a General Query, resolve the Query in accordance with sub-clause 5.3.2 below; or
 - (ii) a Complaint, resolve the Complaint in accordance with sub-clause 5.4 below.

5.3.2 If the Supplier receives an Invoicing Query or a General Query from a Customer, the Supplier shall:

- (a) immediately log the Query in its Query Management System;
- (b) within two (2) Working Days of receipt of the Query, send the Customer (by email, facsimile or letter) an acknowledgement of receipt of the Query which specifies what steps the Supplier shall take to resolve the Query;
- (c) subject to sub-clause 5.3.2(d), use all reasonable endeavours to resolve the Query to the Customer's satisfaction within two (2) Working Days of receipt of the Query;

- (d) if the Query is an Invoicing Query, use all reasonable endeavours to resolve the Query to the Customer's satisfaction within two (2) Working Days of receipt of the Query and, if required, the Supplier shall immediately re-issue the amended invoice to the Customer and the Customer shall pay the re-issued invoice in accordance with sub-clause 5.3.4;
- (e) if the Query is not resolved to the Customer's satisfaction within two (2) Working Days, provide the Customer with a written response giving the reason why resolution is not possible and a date when full resolution is expected; and
- (f) if the Query is not resolved to the Customer's satisfaction within five (5) Working Days of receipt of the Query from the Customer, identify and describe the Query in the weekly Performance Report provided to the Authority.

5.3.3 If either an Invoicing Query or a General Query is not resolved within the timeframes required by sub-clause 5.3.2 above, or is not resolved to the Customer's satisfaction, the Customer may request that the Query be dealt with in accordance with the Complaint resolution process described in sub-clause 5.4 below.

5.3.4 If the Supplier cancels an issued invoice ("**Original Invoice**") and re-issues the invoice in accordance with sub-clause 5.3.2(d), the Customer shall:

- (a) if the re-issued invoice is received by the Customer no less than ten (10) Days prior to the due date of the Original Invoice, pay the amount of the invoice by the due date of the Original Invoice; or
- (b) if the re-issued invoice is received by the Customer less than ten (10) Days prior to the due date of the Original Invoice, pay the amount of the invoice within such period as applies pursuant to the Payment Terms after the date the Customer receives the re-issued invoice from the Supplier.

5.4 Customer Complaints

5.4.1 If the Supplier receives a Complaint from a Customer, the Supplier shall:

- (a) log the Complaint in its Query Management System;
- (b) prioritise resolution of the Complaint ahead of General Queries and Invoicing Queries;
- (c) provide the Customer with a written acknowledgement of the Complaint within one (1) Working Day of receipt of the Complaint;
- (d) use all reasonable endeavours to resolve the Complaint to the Customer's satisfaction within ten (10) Working Days of receipt of the Complaint; and
- (e) if the Complaint is not resolved to the Customer's satisfaction at the end of the ten (10) Working Day period described in sub-clause 5.4.1(d), notify the Customer and inform the Customer of the steps the Supplier shall take to resolve the matter.

5.4.2 If the Complaint is not resolved to the Customer's satisfaction, or is not resolved within the timeframe specified in sub-clause 5.4.1 above, or the Supplier's estimated timescale for resolution of the Complaint is not acceptable to the Customer, the Customer may escalate the Complaint in accordance with sub-clause 5.5.

5.4.3 The Supplier shall provide the Customer with regular updates on its resolution of the Complaint throughout the period referred to in sub-clause 5.4.1.

5.4.4 The Parties acknowledge and agree that the Supplier shall, in accordance with the Framework Agreement, notify the Authority of a Complaint and that, if the Complaint is not resolved to the Authority's satisfaction, or the Supplier's estimated timescale for resolution of the Complaint is not acceptable to the Authority, then the Authority may require the Supplier to escalate the Complaint in accordance with the escalation procedure in sub-clause 5.5.

5.5 Escalation procedure

5.5.1 If the Customer is not satisfied that a Complaint has been resolved in accordance with sub-clause 5.4.2, or the Authority is not satisfied that a Complaint has been resolved in accordance with sub-clause 5.4.4, the Customer, or the Authority in accordance with the Framework Agreement, may refer the matter to the Supplier's Head of Sales and Marketing who shall review the Complaint and

provide the results of his or her review to the Customer and the Authority within ten (10) Working Days.

5.5.2 If, following the review of the Complaint by the Head of Sales and Marketing in accordance with sub-clause 5.5.1, the Complaint has not been resolved to the Customer's or the Authority's satisfaction, the Customer may refer the Complaint to the Energy Ombudsman or, if the Energy Ombudsman does not have authority to review the Complaint, to the Dispute resolution process in Clause 22.

5.5.3 The Supplier agrees that a determination of the Energy Ombudsman shall be final and binding in respect of the Supplier save in the case of fraud or manifest error.

5.5.4 The Parties agree that neither Party shall be entitled to refer a Complaint or a Query to the Dispute resolution process in Clause 22 until the process set out in sub-clauses 5.3 to 5.5.3 have been exhausted in respect of that Query or Complaint.

5.6 Customer Survey

5.6.1 The Supplier shall, at least once each Procurement Year, provide the Customer with a written survey document by email, or such other format as agreed by the Parties from time to time, ("**Customer Survey**") which shall enable the Customer to provide comments to the Supplier on matters including:

- (a) the quality, type and scope of the Supply and associated services provided by the Supplier to the Customer under this Agreement;
- (b) any ways in which the Supplier's provision of the Supply and performance of its obligations under this Agreement can be improved; and
- (c) any other matters which the Authority notifies the Supplier should be included.

5.6.2 The Customer Survey shall also enable the Customer to specify if there are new natural gas products or services which the Customer would like the Supplier to provide to the Customer.

- 5.6.3 If the Customer Survey identifies Queries or Complaints, then the Supplier shall immediately resolve such Queries or Complaints to the Customer's satisfaction in accordance with the applicable Query and Complaint resolution procedure in sub-clauses 5.3 and 5.4. To the extent that the Customer Survey identifies that the Customer is dissatisfied with the Supplier's performance of this Agreement but such dissatisfaction is not characterised by the Customer as a Query or a Complaint, the Supplier shall use all reasonable endeavours to resolve to the Customer's satisfaction the cause of the dissatisfaction as soon as possible.
- 5.6.4 The Parties acknowledge and agree that the Supplier shall provide the results of the Customer Survey to the Authority.
- 5.6.5 For the avoidance of doubt, if the Customer has Ordered Additional Services from the Supplier, then the Customer Survey shall include questions relating to the Supplier's provision and performance of the Additional Services and the Supplier shall not be required to conduct a separate Customer Survey in relation to the Additional Services.

5.7 Access

The Supplier shall comply, and shall ensure that the Supplier Personnel (including the Supplier's Agents) comply, with any conditions of access or Site requirements (including security, health and safety requirements) that the Customer may impose in relation to access to a Site. The Customer shall provide the Supplier with details of any such rules and regulations of the establishment from time to time.

6. CUSTOMER OBLIGATIONS

- 6.1 The Customer shall provide the Supplier with such additional information, other than that otherwise provided for in this Agreement, as the Supplier may reasonably request from time to time to enable the Supplier to meet its obligations under this Agreement and the Framework Agreement which information shall include, without limitation, information relating to AQ Reviews. The Customer shall provide and shall notify the Supplier of any changes to such information.
- 6.2 Without prejudice to any statutory power, or other legal right, of entry to the Sites, the Supplier and the Supplier Personnel (including Agents appointed by the Supplier), may, at reasonable times and by giving reasonable notice to the Customer, enter a Site (or where the Meter is installed in any other premises, those premises) for the purpose of carrying out agreed activities related to the Supply under this Agreement, including
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inspecting, reading, testing, (and, where the Supplier is responsible for the Meter, maintaining, repairing and replacing) a Meter.

6.3 Emergencies:

6.3.1 If the Customer believes that there has been or there is likely to be an escape of natural gas at a Site or that any Metering Equipment or other equipment at a Site may be damaged which may result in an escape of natural gas, the Customer must immediately notify the Transporter.

6.3.2 In an Emergency, the Customer shall use its best endeavours to comply with all reasonable requests of the Supplier or the Transporter for the purposes of i) averting or reducing danger to life or property, and ii) securing the safety of, or the safe transportation of natural gas in, the Transporter's natural gas pipeline network and/or the Distribution System to which the relevant Supply Point is connected.

6.3.3 In an Emergency or following a direction made under Section 2(1)(b) of the Energy Act 1976, the Supplier shall be entitled to discontinue or restrict the Supply to the relevant Supply Point and the Customer shall use his best endeavours to refrain from using natural gas immediately upon being notified by the Supplier or the Transporter that the Customer must do so.

7. METERING EQUIPMENT

7.1 Subject to sub-clause 7.2, the Supplier shall be responsible for the Metering Equipment and shall:

7.1.1 provide to the Customer the Metering Services; and

7.1.2 appoint a Meter Asset Manager to carry out the Meter Asset Services and, if necessary, a Meter Reading Agency to provide the Meter Reading Services.

7.2 A Customer may appoint a Meter Asset Manager and Meter Reading Agency to provide the Metering Services in which case the Customer is responsible for the Metering Equipment. If the Customer is responsible for the Metering Equipment, then the Customer shall, as soon as possible after the Effective Date, inform the Supplier if the Metering Equipment is enabled with AMR.

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- 7.3 The person responsible for the Metering Equipment in accordance with sub-clauses 7.1 and 7.2 shall (i) install, inspect, maintain, adjust, repair and replace all such Metering Equipment so as to comply with all requirements under the Act and all relevant Industry Documents and so as to ensure that the Metering Equipment accurately registers the quantity of natural gas supplied, and (ii) ensure that the Metering Equipment is appropriate to supply all apparatus connected to it. If a Party who is not responsible for the Metering Equipment becomes aware that the Metering Equipment does not comply with the requirements of this Clause 7 it shall inform the responsible Party.
- 7.4 The Customer shall:
- 7.4.1 protect the Metering Equipment against weather damage, physical damage and any unauthorised third party interference or adjustment;
 - 7.4.2 provide power as required for the Metering Equipment; and
 - 7.4.3 provide safe and reasonable access to all Metering Points.
- 7.5 The Supplier or, if sub-clause 7.2 applies, the Customer, shall ensure that the Meter Asset Manager and Meter Reading Agency operate at all times in accordance with Good Industry Practice. If the Supplier is responsible for the Metering Equipment in accordance with sub-clause 7.1, the Customer shall pay the Supplier the Meter Asset Charge and Meter Reading Charge for the Metering Services provided and the Customer shall indemnify the Supplier for any costs incurred by the Supplier as a result of damage caused by the Customer to, or removal of, such third party Metering Equipment.
- 7.6 The Customer shall notify the Supplier as soon as reasonably practicable if it believes there has been damage to or interference with the Metering Equipment, and in doing so the Customer shall provide the Supplier with such supporting evidence as is reasonable in the circumstances.
- 7.7 Save to the extent, if any, that any third party may notify the Customer that it accepts responsibility, in which case the Customer shall notify the Supplier that the third party accepts responsibility, or shall procure that the third party notify the Supplier that the third party accepts responsibility, the Customer shall be responsible for all pipes and apparatus installed for the purposes of Supply beyond the Meter.
- 7.8 The Parties may agree to change the Metering Equipment, the arrangements for Meter reading or other Meter-related services at one or more Supply Points. The costs of implementation of any such changes shall be allocated between the Parties as agreed.
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8. METER READING

8.1 The Customer, or a third party Agent acting on behalf of the Customer, may provide NDM Meter readings to the Supplier, and the Supplier shall accept such Meter readings, for the purposes of calculation of invoices in accordance with Clause 10, by any one of the following methods:

8.1.1 the Supplier's Website;

8.1.2 facsimile;

8.1.3 telephone;

8.1.4 email to the address specified by the Supplier from time to time; or

8.1.5 pre-paid postcard.

8.2 Unless the Customer appoints the Meter Reading Agency, the person responsible for reading the Meters shall be the Supplier and the Supplier shall ensure that each Meter is read in accordance with the Uniform Network Code.

8.3 The Metering Equipment shall be deemed to be accurate unless either Party is notified in writing by the other that its accuracy is disputed. Where such notification is given, the Metering Equipment shall be examined in accordance with the Act as soon as practicable. Except where the Supplier appoints the Meter Asset Manager (in which case the costs shall be for the Supplier), the Customer shall be responsible for all costs incurred if the Metering Equipment is found to register inaccurately beyond that permitted under the Act. If the Metering Equipment is found to register accurately then the costs shall be paid by the Party issuing the notification.

9. INVOICE AMOUNT AND CHARGES

9.1 Subject to sub-clauses 9.2 and 4.5.8, the Customer shall pay the Supplier the Charges for the Supply, which shall include the Variable Charges and the Fixed Daily Charges (the "**Invoice Amount**").

9.2 The Customer shall pay the Supplier the Interim Price for any Interim Supply, including any discount which is equivalent to the discount offered by the Supplier and available to the Customer under sub-clauses 9.3 and 9.4.

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9.3 The applicable adjustments (if any) set out in sub-clauses 9.3.1, 9.3.2, 9.3.3, 9.3.4 and 9.3.5 shall apply to the Administration Fee, depending upon the Payment Terms agreed (each adjustment expressed in pence/therm):

9.3.1 Payment Method/Timeframe adjustment for DM Supply Meter Points:

		Payment Timeframe (Day of Month following Supply Month)					
		7	10	14	21	24	30
Payment Method	BACS	-0.060	-0.060	-0.038	0	0.022	0.049
	Direct Debit	-0.097	-0.097	-0.075	-0.037	-0.016	0.011
	Cheque	-0.060	-0.060	-0.038	0	0.022	0.049
	CHAPS	-0.060	-0.060	-0.038	0	0.022	0.049

9.3.2 Payment Method/Timeframe adjustment for NDM Supply Meter Points:

		Payment Timeframe (Day of Month following Supply Month)					
		7	10	14	21	24	30
Payment Method	BACS	-0.080	-0.060	-0.040	0	0.020	0.050
	Direct Debit	-0.120	-0.100	-0.080	-0.040	-0.020	0.010
	Cheque	-0.080	-0.060	-0.040	0	0.020	0.050
	CHAPS	-0.080	-0.060	-0.040	0	0.020	0.050

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9.3.3 Invoicing adjustment for DM Meter Supply Points:

		Per Supply Point Billing	Consolidated Billing
Bill Type	Paper	0	0
	Paper & E-Billing	0	0
	Paper & EDI	0	0
	Paper & E-Billing & EDI	0	0
	E-Billing	0	0
	EDI	0	0
	E-Billing & EDI	0	0

9.3.4 Invoicing adjustment for NDM Meter Supply Points:

		Per Supply Point Billing	Consolidated Billing
Bill Type	Paper	0	0

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	Paper & E-Billing	0	0
	Paper & EDI	0	0
	Paper & E-Billing & EDI	0	0
	E-Billing	-0.02	-0.02
	EDI	-0.02	-0.02
	E-Billing & EDI	-0.02	-0.02

- 9.3.5 In the case of NDM Supply Meter Points only, the Administration Fee shall be increased by the following amount in respect of Quarterly Billed Supply Points:
0.370 p/therm.
- 9.4 If the Customer wishes to receive the discounts referred to in sub-clause 9.3 then the Customer shall:
- 9.4.1 if sub-clauses 9.2 or 4.5.6 apply, notify the Supplier no less than five (5) Working Days after the Effective Date, or, in the case of Interim Supply to new Supply Points, no less than five (5) Working Days after the Supplier is Registered in respect of the new Supply Point and the Supplier shall apply the discounts referred to in sub-clause 9.3 to invoices issued to the Customer in respect of the Interim Supply; or
- 9.4.2 in all other cases, notify the Supplier no less than ten (10) Working Days prior to the beginning of a Procurement Year and the Supplier shall apply the discounts referred to in sub-clause 9.3 to invoices issued to the Customer for the remainder of the Term unless the Customer otherwise notifies the Supplier.

- 9.5 The Parties acknowledge and agree that, in this Agreement, the conversion factor for converting prices expressed as pence per therm to pence per kilowatt hour shall be 29.3071.
- 9.6 If the Supply is Annual Priced Supply, the Supplier shall, in accordance with the timeframes in sub-clause 9.7 below, provide the Customer with an estimate of the Invoice Amount as agreed with the Authority pursuant to the Framework Agreement, which estimate shall specify the estimated amount of each of the Variable Charges and each of the Fixed Daily Charges applicable during the relevant Procurement Year.
- 9.7 The Supplier shall use all reasonable endeavours to provide the estimate referred to in sub-clause 9.6 to the Customer prior to the Supply Start Date of each Procurement Year and in any event within ten (10) Working Days after the final Day of the Purchase Window for the relevant Procurement Year.
- 9.8 The Parties acknowledge and agree that the Annual Priced Supply is subject to an annual reconciliation at the end of each Procurement Year and that, following the reconciliation, an amount shall be credited to or recovered from the Customer (or the Customer Portfolio) as determined by the Authority and the Supplier in accordance with the Framework Agreement.
- 9.9 If the Supply is Monthly Priced Supply, then the Parties acknowledge and agree that (subject to Clause 10.13) the Invoice Amount shall be based on the actual volume of Gas Products offtaken by the Customer each Month in accordance with this Agreement. For the avoidance of doubt, there is no annual reconciliation for Monthly Priced Supply.

10. INVOICING AND PAYMENT

- 10.1 Subject to Clause 10.2, the Supplier shall invoice the Customer on a Supply Point basis; provided that the Customer may elect by notice to the Supplier to receive, and if it so elects the Supplier shall provide, invoices on an aggregate Supply Point basis.
- 10.2 Each Month, the Supplier shall invoice the Customer for Supply during the previous Month in the format and by the payment method prescribed in Part 1 (save that, in the case of Quarterly Billed Supply Points, the Supplier shall invoice the Customer each Quarter for Supply during the previous Quarter).
- 10.3 The Quarterly Billed Supply Points (if any) shall be those Supply Points that are identified as being Quarterly Billed Supply Points in Part 1; save that the Customer may by notice to the Supplier specify additional Supply Points as Quarterly Billed Supply
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Points, or remove Supply Points from the list of Quarterly Billed Supply Points (provided that such addition or removal will, unless otherwise agreed, only take effect from the commencement of the next Procurement Year following such notice).

10.4 If the invoice is to be provided to the Customer:

10.4.1 in hard copy, the Supplier shall use all reasonable endeavours to provide the Customer with the invoice by the tenth (10th) Working Day of the Month immediately following the Supply Month (or, in the case of Quarterly Billed Supply Points, Supply Quarter); or

10.4.2 electronically, the Supplier shall use all reasonable endeavours to provide the Customer with the invoice by the ninth (9th) Working Day of the Month immediately following the Supply Month (or, in the case of Quarterly Billed Supply Points, Supply Quarter),

and any delay in receipt of an invoice by the Customer shall extend the payment terms referred to in the calculation of the Administration Fee by the same number of days.

10.5 The Customer may at any time change the format in which it receives invoices by providing written notice to the Supplier, provided that the new format must be one or more of the following formats:

10.5.1 hard copy;

10.5.2 e-billing;

10.5.3 EDI; and

10.5.4 such other format as the Parties may agree.

10.6 The Customer may at any time request that the Supplier send an invoice or a copy of an invoice to an address that is different to the address identified in the Managed Registration Information provided that the address on the invoice remains the address of the Customer.

10.7 If requested by the Customer, the Supplier shall provide to the Customer a complete EDI version of the Customer's invoice each Month.

- 10.8 The Customer may, prior to the beginning of each Procurement Year, change the method by which it pays an invoice by providing written notice to the Supplier which shall apply throughout that Procurement Year, provided that the new payment method must be one of the following formats:
- 10.8.1 direct debit;
 - 10.8.2 BACS;
 - 10.8.3 CHAPS; or
 - 10.8.4 cheque.
- 10.9 Subject to sub-clause 9.4.2, if the Customer makes no election, the payment method shall be by BACS transfer.
- 10.10 Any change of payment method notified by the Customer to the Supplier in accordance with sub-clause 10.8 shall take effect from the commencement of the relevant Procurement Year and continue for the Term unless otherwise agreed by the Parties or otherwise notified by the Customer in accordance with sub-clause 10.8.
- 10.11 The Supplier shall use NDM Meter readings provided by the Customer, or a third party Agent acting on behalf of the Customer, in accordance with sub-clause 8.1 to calculate the amount of an invoice. If the Customer's Meter reading is received by the Supplier by the 2nd Working Day following the end of the Supply Month (or, in the case of Quarterly Billed Supply Points, Supply Quarter), then the Supplier shall use the Customer's Meter reading to calculate the invoice for that Supply Month (or, if applicable, Supply Quarter). If the Customer's Meter reading is received after that time, then the Supplier shall use the Customer's Meter reading when calculating the invoice for the Supply Month (or, if applicable, Supply Quarter) following the Supply Month (or, if applicable, Supply Quarter) in which such reading is received. If the Supplier receives Meter readings from both the Customer and a third party Agent acting on behalf of the Customer, the Supplier shall use the third party Agent's Meter reading when calculating the amount of an invoice in accordance with this sub-clause 10.11.
- 10.12 If the Customer, or third party Agent of the Customer, does not provide Meter readings to the Supplier for a Supply Month, the Supplier shall use the consumption data recorded by the Meters under Clause 8.

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- 10.13 If an Agent's Meter reading, Customer's Meter reading or actual consumption data is not available, or if the accuracy of a Meter or Meters is disputed, the Supplier shall prepare the invoice or any part thereof using the Supplier's reasonable estimate of the Supply based on historical consumption data and all other relevant information in accordance with Good Industry Practice.
- 10.14 Where an invoice has been prepared under sub-clause 10.13, when actual data is received by the Supplier in respect of the relevant period, any invoices delivered under this Agreement in respect of such period shall be adjusted and any amounts underpaid or overpaid as a consequence shall be paid or refunded between the Parties as the case may be.
- 10.15 Each Month (or, in the case of Quarterly Billed Supply Points, Quarter) the Supplier shall send the Customer the invoice showing and/or providing, unless otherwise agreed with the Customer, the Charges due from the Customer for the Supply taken at the Site during the relevant Supply Month (or, if applicable, Quarter) comprising:
- 10.15.1 the Invoice Amount;
 - 10.15.2 if sub-clause 10.23 applies, charges for Additional Services;
 - 10.15.3 any VAT or other taxes, including CCL, customarily to be paid or reimbursed by the Customer;
 - 10.15.4 any adjustments required under this Agreement or the Framework Agreement;
 - 10.15.5 any reductions or exemptions to the CCL for which the Customer may qualify or any other exemptions or reductions the Customer may be entitled to or qualify for under the Act, the Licence, any legislation or regulation or any relevant Industry Documents or practices in relation to any characteristics of the Supply or the Customer's consumption behaviour, or any change thereof, provided that the Customer has submitted to the Supplier all necessary evidence, relief certificates or information thereof;
 - 10.15.6 any discount offered by the Supplier and available to the Customer under this Agreement, including for prompt payment of sums due; and
 - 10.15.7 any other information or data as may be specified in Part 1 as required from the Supplier.
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- 10.16 Subject to sub-clause 10.18, each invoice shall be paid by the Customer in accordance with the Payment Terms. For the avoidance of doubt, no payment is deemed to be received by the Supplier until it is available as cleared funds in the Supplier's account (providing in the case of cheques that the Supplier shall promptly present such cheques to its bank). Failure to pay any valid invoice, or part of an invoice, that is not the subject of a dispute in accordance with the Payment Terms shall entitle the Supplier to require the Customer to pay interest to the Supplier on the sum overdue. Such interest shall accrue at three per cent (3%) above LIBOR, from time to time, as compounded annually from the date such sum first became due until the date received (as cleared funds) by the Supplier.
- 10.17 The Customer agrees that, notwithstanding any provisions herein or in the Framework Agreement or the Customer Access Agreement, the Supplier shall be entitled to require payment directly from the Customer.
- 10.18 If the Customer does not agree with the amount of an invoice provided pursuant to this Clause 10, the Customer shall notify the Supplier in writing giving reasonable particulars of the fact within ten (10) Working Days of receipt of such invoice or otherwise as soon as reasonably practicable once the issue giving rise to the dispute comes to the Customer's attention. For the avoidance of doubt, the Customer shall only withhold payment of the amount of the invoice that is disputed (the "**Disputed Payment**").
- 10.19 The Parties agree and acknowledge that a Disputed Payment shall be a Complaint and the Supplier shall resolve the Disputed Payment in accordance with the Complaint resolution process in sub-clause 5.4. If, as part of the resolution of a Complaint in accordance with that process, the Supplier re-issues an invoice to the Customer, the Customer shall:
- 10.19.1 if the re-issued invoice is received by the Customer no less than ten (10) Days prior to the due date of the Original Invoice, pay the outstanding amount of the re-issued invoice by the date specified in the Original Invoice; or
- 10.19.2 if the re-issued invoice is received by the Customer less than ten (10) Days prior to the due date of the Original Invoice, pay the outstanding amount of the re-issued invoice within such period as applied pursuant to the Payment Terms after the Customer's receipt of the re-issued invoice from the Supplier,
- 10.19.3 and the re-issued invoice may only require the Customer to pay the outstanding amount.
- 10.20 Subject to sub-clause 10.8, unless otherwise agreed by the Customer and the Supplier, any payment under this Agreement shall be by BACS transfer or cheque or equivalent
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instantaneous transfer of funds to the Party to whom it is due at the bank and to the credit of the account specified in Part 1, or such other account as the receiving Party may notify to the other in writing no later than five (5) Days before the relevant payment is due. All bank charges shall be for the account of the Party making the payment.

10.21 Save as otherwise agreed between the Parties, the Parties acknowledge and agree that the Supplier shall only be entitled to vary the Charges in accordance with the Framework Agreement.

10.22 With effect from the date, if any, that the United Kingdom adopts the Euro as its lawful currency in substitution for Sterling (the “**Euro Effective Date**”):

10.22.1 to the extent relevant, invoiced amounts shall be calculated in Sterling and converted from Sterling to Euro and shall be stated in the invoice in Euro;

10.22.2 payment of all amounts falling due under this Agreement on or after the Euro Effective Date shall be made by the payer to the relevant Euro account of the recipient in Euro as notified between the Parties;

10.22.3 no amounts falling due after the Euro Effective Date which would have been payable in Sterling under this Agreement but for the adoption of the Euro by the United Kingdom as its lawful currency shall be made in Sterling or national currency units; and

10.22.4 conversions from Sterling to Euro shall be at the fixed conversion rate provided for by English law.

10.23 The Parties acknowledge and agree that, if the Supplier is providing Additional Services to the Customer, then the Customer may elect, in accordance with the Additional Services Contract, for invoices issued under this Clause 10 to include the charges for the provision of the Additional Services. If the Customer so elects, then, together with each such invoice issued under this Clause 10, the Supplier shall provide a notice which includes the relevant information required by the Additional Services Contract.

11. DATA PROVISION

11.1 The Supplier shall maintain for each Supply Point the information identified in Part 1, and shall update such information during the Term to reflect any changes to that information, including by adding information for new Supply Points which are added to this Agreement from time to time.

11.2 The Supplier shall, if requested by the Customer, provide a report to the Customer which identifies each of the items listed in schedule 6 to the Framework Agreement (or otherwise agreed between the Supplier and the Customer), in any of the following formats:

11.2.1 EDI format;

11.2.2 on an electronic disc in spreadsheet format;

11.2.3 in hard copy in spreadsheet format; and/or

11.2.4 via e-mail, facsimile or the internet,

in all cases in a format that is compatible with the Customer's computer systems and computer software as notified by the Customer to the Supplier from time to time.

11.3 The Supplier shall, at the Supplier's cost, establish any internet link engines or other services that are required to enable the Customer to accept and read reports provided by the Supplier in accordance with sub-clause 11.2 above, including, without limitation, by negotiating with third party software providers who provide computer software services to the Customer.

12. INTERRUPTION

If supply to the Site is capable of Interruption, then the provisions of Part 4 shall apply.

13. REPRESENTATIONS AND WARRANTIES

13.1 Each Party represents to the other Party that:

13.1.1 it has obtained all corporate authorisations required to empower it to enter into this Agreement and to perform its obligations hereunder in accordance with its terms;

13.1.2 neither the entry into this Agreement nor the obligations contemplated by this Agreement by it shall:

(a) violate or conflict with the provisions of its constitutional documents;

(b) to its knowledge, amount to a violation or breach of any Applicable Laws or regulations in any relevant jurisdiction;

- (c) to its knowledge, amount to a violation or default with respect to any relevant order, decree or judgment of any court or any governmental or regulatory authority in any jurisdiction to which it is a Party or by which it is bound, which violation or default is material in the context of the transactions contemplated by this Agreement; or
- (d) to its knowledge, result in a breach of, or constitute a default under, any instrument to which it is a Party or by which it is bound, which breach or default is material in the context of the transactions contemplated by this Agreement;

13.1.3 it is duly incorporated and validly existing under the laws of the place of its incorporation;

13.1.4 it has not taken any action, nor have any other steps been taken or legal proceedings commenced or, so far as it is aware, threatened against it for its winding-up or dissolution or for any similar or analogous proceedings in any jurisdiction, or for it to enter into any arrangement or composition for the benefit of creditors, or for the appointment of a receiver, administrative receiver, trustee or similar officer;

13.1.5 it has not relied on or been induced to enter into this Agreement by any representation other than those expressly set out in this Agreement; and

13.1.6 the obligations under this Agreement constitute its legal, valid and binding obligations enforceable in accordance with their terms, subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally, and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at law.

13.2 The Customer represents and warrants to the Supplier that:

13.2.1 the Authority has been fully authorised to act on behalf of the Customer in all aspects of the Framework Agreement, including entering into binding Transactions with the Supplier to meet the natural gas requirements of the Customer and upon terms agreed between the Supplier and the Authority;

13.2.2 it is the Customer's intention to consume natural gas only and it is not the Customer's intention to speculate in any way. The Customer acknowledges that

the provision of quotations by the Supplier to the Authority is only the provision of a price and does not constitute a recommendation or advice to accept or reject such quotation; and

13.2.3 it has not and shall not revoke the appointment of the Authority nor appoint an alternative to the Authority otherwise than in accordance with the terms of the Customer Access Agreement.

13.3 The Supplier represents and warrants to the Customer that:

13.3.1 the Authority is not in any way an agent, partner or representative of any kind of the Supplier or any of its associated group of companies;

13.3.2 the Customer and the Supply Points are eligible for Supply by the Supplier under the terms of the Supplier's Licence;

13.3.3 the services provided by the Supplier under this Agreement shall be provided and carried out by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;

13.3.4 it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary for the performance of this Agreement;

13.3.5 it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive element, including any virus, worm and/or Trojan horse, into systems, data, software or Confidential Information held in electronic form owned by or under the control of, or used by, the Customer;

13.3.6 it has secured all necessary third party consents, approvals and permissions, including a Licence, required for the Supplier to supply natural gas to the Customer at the Supply Point;

13.3.7 it has acceded to all applicable Industry Documents and the Supplier undertakes that it shall remain in compliance with all applicable Industry Documents; and

13.3.8 the Customer shall obtain good title to the natural gas received from the Supplier under this Agreement and that, at the respective Delivery Point, the natural gas so received shall be free from all liens, charges and adverse claims of every description.

- 13.4 The Supplier acknowledges that any breach of the warranties in sub-clause 13.3 shall be remedied as a matter of urgency at no cost to the Customer. Failure to remedy (if capable of remedy) such failure so as to comply with sub-clause 13.3 within thirty (30) Working Days of notification by the Customer of the breach of warranty shall constitute a breach of this Agreement entitling the Customer to terminate in accordance with Clause 15.
- 13.5 Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including fitness for purpose) are hereby excluded to the extent permitted by Law.

14. FORCE MAJEURE

- 14.1 If either Party is prevented or delayed in the performance of its obligations to the other by circumstances of Force Majeure it shall forthwith give written notice to the other Party specifying the period for which it believes that such prevention or delay shall continue. The Party giving such notice shall, subject to sub-clause 14.3, be excused from the performance of its obligations from the date of such notice for the period for which such prevention or delay continues.
- 14.2 Notwithstanding sub-clause 14.1, and to the extent the Supplier receives from the owner or operator of any transmission or distribution system through which natural gas is supplied to the Supply Point monies in respect of loss suffered by the Customer, the Supplier shall account to the Customer for the amount so received less any reasonable costs and expenses incurred by the Supplier in connection therewith.
- 14.3 If circumstances of Force Majeure occur then, as soon as practicable following notice being given under sub-clause 14.1, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree whatever action is needed to mitigate the effects of Force Majeure and to facilitate the continued performance of this Agreement.
- 14.4 For the avoidance of doubt, the obligations of the Parties under this Agreement shall not be suspended under this Clause 14 in relation to Supply Points that are not affected by the circumstances of Force Majeure.

15. EARLY TERMINATION AND ADDITIONAL TERMINATION EVENTS

- 15.1 Either Party may by notice immediately terminate this Agreement if:
- 15.1.1 the other Party fails to make, when due, any payment required to be made by it under this Agreement, other than in the case of an unresolved Disputed Payment,

- and such failure is not remedied on or before the twentieth (20th) Working Day after notice of such failure is given to the Party;
- 15.1.2 the other Party fails to observe or perform any of the material terms, conditions or obligations of this Agreement, if such failure is not remedied on or before the thirtieth (30th) Working Day after notice of such failure is given to the Party;
- 15.1.3 any representation or warranty made by the other Party in this Agreement is or becomes untrue, inaccurate or misleading in any material respect;
- 15.1.4 any necessary licence, authorisation or consent of the other Party, including any financial services licence or exemption from holding such a licence, is revoked, not renewed or suspended, or any applicable conditions of such licence are not complied with;
- 15.1.5 a supervisor, liquidator, receiver, administrator, administrative receiver or any other encumbrancer takes possession of or is appointed over, or any distress, execution or other process is levied or enforced upon, the whole or any part of the assets of the other Party;
- 15.1.6 the other Party ceases to carry on business or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
- 15.1.7 an order is made or a petition is presented or a resolution is passed for the making of an administration order or the winding-up, bankruptcy or dissolution of the other Party, other than for the purpose of reorganisation or as part of a scheme of reconstruction or amalgamation which has been approved by the other Party;
- 15.1.8 a Transfer Objection is made by the Customer's Incumbent Supplier and is not resolved in accordance with sub-clause 3.5, in which case such termination shall only apply in respect of the affected Supply Point; or
- 15.1.9 a Supplier of Last Resort is appointed in relation to any Supply Point.
- 15.2 Each of the following events shall constitute an additional termination event ("**Additional Termination Event**"):
- 15.2.1 if Force Majeure continues for a consecutive period of three (3) Months, the Party whose performance under this Agreement is not affected directly by Force Majeure can, by written notice, terminate this Agreement with immediate effect,
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save that the Agreement shall only be terminated in relation to each Supply Point which is affected by the Force Majeure;

15.2.2 if any change in any Applicable Law prevents or prohibits the Supplier from supplying natural gas or if the Supplier ceases to hold a Licence, otherwise than through its own breach or relinquishment, the Customer may terminate this Agreement;

15.2.3 if any of the conditions precedent in sub-clause 2.1 have not been either satisfied or waived in writing by the relevant Party within six (6) Months from the Effective Date or, in the case where the relevant Supply Point was added to this Agreement after the Effective Date by the Customer's or the Authority's notification, the date such notification is received by the Supplier, the relevant Party may terminate this Agreement by written notice provided that the Supplier shall only be entitled to terminate this Agreement in relation to the Supply Points in respect of which the conditions precedent are not satisfied;

15.2.4 if the Authority has terminated the Framework Agreement for Supplier's default and the Authority has not issued a notice requiring the Supplier to assign or otherwise transfer this Agreement to a new Gas Supplier or the Authority has notified the Supplier that it wishes to discontinue or abandon the transfer of this Agreement then either Party may terminate this Agreement;

15.2.5 if the entire Customer Access Agreement or all of the Customer's Energy Product Confirmations relating to the Supply have been terminated by the Authority, either Party may terminate this Agreement; or

15.2.6 if the Supplier is in breach of Clauses 27, 28, 30 or 31, the Customer may terminate this Agreement.

15.3 In the case of termination under:

15.3.1 sub-clauses 15.2.1, 15.2.2 and 15.2.6, the relevant Party may terminate this Agreement by giving fourteen (14) Working Days advance notice.

15.3.2 sub-clauses 15.2.3, the relevant Party may terminate this Agreement by giving ten (10) Working Days advance notice.

15.3.3 sub-clause 15.2.4, this Agreement shall terminate with effect from the date from which the Framework Agreement terminates; and

- 15.3.4 sub-clause 15.2.5, this Agreement shall terminate with effect from the date that the termination of the Customer Access Agreement becomes effective in accordance with its terms.
- 15.4 Termination under sub-clause 15.2 shall not incur any liability for either Party. On termination of this Agreement for any reason:
- 15.4.1 the Supplier shall issue a final invoice to the Customer based on the closing Meter reading for each of the Supply Points or, where appropriate, sub-clause 10.13 shall apply. Where a Supply Point has been transferred to a new Gas Supplier, the Supplier shall use the Meter reading provided by the new Gas Supplier;
- 15.4.2 the Customer shall allow the Supplier's representatives or agents to enter the relevant Site to remove any of the Supplier's Metering Equipment;
- 15.4.3 the Supplier shall, if requested by the Customer, continue to provide the Supply to a Supply Point on terms previously applicable under this Agreement until such Supply Points are Registered with the Customer's new Gas Supplier(s).
- 15.5 Consequences of Early Termination:
- 15.5.1 Where this Agreement is terminated and the Supplier continues to be the Registered Gas Supplier in respect of a Supply Point, the provisions of this Agreement shall continue to apply until:
- (a) a new Gas Supplier is Registered in respect of all of the Supply Points;
 - (b) the Customer and the Supplier enter into a new agreement for the sale and purchase of natural gas; or
 - (c) any Supply Points not falling within (a) or (b) above have been Isolated.
- 15.6 The Parties agree and acknowledge that each Party shall provide the Authority with a copy of any termination notice issued by it under this Clause 15 on the same day as such notice is issued to the other Party.
- 16. LIABILITY, INDEMNITIES AND INSURANCE**
- 16.1 Each Party shall indemnify the other against all claims, proceedings, losses, liabilities, costs (including legal costs and expenses), damages and expenses incurred as a result of
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damage or injury to property or death or personal injury to persons arising out of or in connection with this Agreement to the extent that such physical damage or death or personal injury is directly caused by the default or the negligent or wilful acts or omissions of such Party, its agents or contractors, provided that any compensation payable under this clause for physical damage shall not exceed the higher of one million pounds (£1m) or the price payable for a volume of natural gas equivalent to the aggregate Maximum Consumption of all Supply Points of the Customer in each Procurement Year.

16.2 Without prejudice to sub-clause 16.3, neither Party nor its officers, employees or agents shall be liable to the other Party for any loss of profit, revenue, use, agreement or goodwill or any indirect or consequential loss or loss resulting from the liability of such other Party to any other person.

16.3 The rights and remedies provided by this Agreement to each Party replace all substantive rights or remedies, express or implied, and provided by common law or statute in respect of the subject matter of this Agreement, including any rights either Party might otherwise have in tort (such as, but without limitation, negligence and/or nuisance), provided that nothing in this sub-clause shall exclude or restrict or otherwise prejudice:

16.3.1 any of the rights, powers or duties of the Authority, the Secretary of State or either Party which are conferred by the Supplier's Licence or the Act; or

16.3.2 any liability of a Party in respect of death or personal injury resulting from that Party's negligence.

16.4 Each Party:

16.4.1 shall indemnify and hold harmless the Authority against all claims, proceedings, losses, liabilities, costs (including legal costs and expenses), damages and expenses incurred as a result of any act or omission of that Party arising out of or in connection with this Agreement, including any breach by that Party of its obligations under this Agreement, tort (including negligence and breach of statutory duty), misrepresentation or restitution; and

16.4.2 acknowledges and agrees that it is not entitled to bring any claim or proceedings against the Authority for any claims, proceedings, losses, liabilities, costs (including legal costs and expenses), damages and expenses incurred or suffered by that Party as a result of any act or omission of the other Party arising out of or in connection with this Agreement, including breach of contract by the other

Party, tort (including negligence and breach of statutory duty), misrepresentation or restitution.

16.5 Insurance

16.5.1 The Supplier shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Supplier under this Agreement, including death or personal injury, or loss of or damage to property.

16.5.2 The Supplier shall hold employer's liability insurance in respect of its employees in accordance with any legal requirement for the time being in force.

16.5.3 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Agreement. It shall be the responsibility of the Supplier to ensure that the amount of insurance cover is adequate to enable it to satisfy all its potential liabilities subject to the limit of liability specified in this Agreement.

17. TERM AND RENEWAL

This Agreement shall come into force on the date hereof and shall, subject to early termination in accordance with Clause 15, continue for the Initial Contract Period as specified in Part 1 to this Agreement. This Agreement shall be automatically renewed for successive renewal periods of twelve (12) months (each a "**Renewal Period**") with effect from the end of the Initial Contract Period or the end of the last Renewal Period (as the case may be), unless terminated either by the Supplier or by the Customer giving at least six (6) months notice to the other and to the Authority in advance of the end of the Initial Contract Period or the relevant Renewal Period (as the case may be) (the "**Term**"). For the avoidance of doubt, this Agreement shall not automatically renew if either the Framework Agreement or the Customer Access Agreement has expired or been terminated in accordance with its terms as at the last Day of a Renewal Period. Where either the Supplier or the Customer has given notice terminating this Agreement pursuant to this Clause 17, the date on which this Agreement terminates shall be determined in accordance with sub-clause 15.5.1.

18. OBJECTIONS

18.1 Subject to sub-clause 18.2, the Supplier may enter a Transfer Objection and prevent an alternative Gas Supplier from Registering any of the Supply Points if:

- 18.1.1 the Customer arranges to transfer some or all of the Supply Points to an alternative Gas Supplier before termination of this Agreement in accordance with Clauses 15 or 17;
 - 18.1.2 there are any overdue invoices not paid by the Customer by their due date, such invoices not being subject to a bona fide dispute; or
 - 18.1.3 the new Gas Supplier has been Registered as the supplier of the relevant Supply Points in error.
- 18.2 Save in cases where sub-clause 18.1.2 applies, the Supplier may not enter a Transfer Objection and prevent an alternative Gas Supplier from Registering any of the Supply Points if the Supplier has received a Customer Transfer Notice from the Authority.

19. PROTECTION OF PERSONAL DATA

- 19.1 With respect to the Parties' rights and obligations under this Agreement, the Parties agree that the Customer is the Data Controller and that the Supplier is the Data Processor.
- 19.2 The Supplier shall:
- 19.2.1 Process the Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Customer to the Supplier during the Term);
 - 19.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Supply or as is required by Applicable Law or any Regulatory Body;
 - 19.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - 19.2.4 take reasonable steps to ensure the reliability of any of the Supplier Personnel who have access to the Personal Data;

- 19.2.5 obtain prior written consent from the Customer in order to transfer the Personal Data to any sub-contractors or Affiliates for the provision of the Supply;
- 19.2.6 ensure that all Supplier Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 19;
- 19.2.7 ensure that none of the Supplier Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer;
- 19.2.8 notify the Customer (within five (5) Working Days) if it receives:
- (a) a request from a Data Subject to have access to that person's Personal Data (a "**Data Access Request**"); or
 - (b) a complaint or request relating to the Customer's obligations under the Data Protection Legislation;
- 19.2.9 provide the Customer with full cooperation and assistance in relation to any complaint or request made, including by:
- (a) providing the Customer with full details of the complaint or request;
 - (b) complying with a Data Access Request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;
 - (c) providing the Customer with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and
 - (d) providing the Customer with any information requested by the Customer;
- 19.2.10 permit the Customer (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Supplier's data Processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Supplier is in full compliance with its obligations under this Agreement;

19.2.11 provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by the Customer); and

19.2.12 not Process Personal Data outside the European Economic Area without the prior written consent of the Customer and, where the Customer consents to a transfer of the Personal Data in accordance with sub-clause 19.2.5, comply with:

- (a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
- (b) any reasonable instructions notified to it by the Customer.

19.3 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.

20. CONFIDENTIALITY

20.1 Except to the extent set out in this Clause 20 or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:

20.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

20.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

20.2 Sub-clause 20.1 shall not apply to the extent that:

20.2.1 such disclosure is a requirement of an Applicable Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 21 (Freedom of Information);

20.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

- 20.2.3 such information was obtained from a third party without obligation of confidentiality;
- 20.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
- 20.2.5 such information is independently developed without access to the other Party's Confidential Information.
- 20.3 The Supplier may only disclose the Customer's Confidential Information to the Supplier Personnel who are directly involved in the provision of the Supply and who need to know the information, and shall ensure that such Supplier Personnel are aware of and shall comply with the obligations set out in this Clause 20 in respect of such information.
- 20.4 The Supplier shall not, and shall procure that the Supplier Personnel do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Agreement.
- 20.5 Nothing in this Agreement shall prevent the Customer from disclosing the Supplier's Confidential Information:
- 20.5.1 to any Crown Body or any other Contracting Authority on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
- 20.5.2 to any consultant, contractor or other person engaged by the Customer or any person conducting an Office of Government Commerce gateway review on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
- 20.5.3 for the purpose of the examination and certification of the Customer's accounts;
or

- 20.5.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 20.6 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Supplier's Confidential Information is disclosed pursuant to sub-clause 20.5 is made aware of the Customer's obligations of confidentiality.
- 20.7 Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.

21. FREEDOM OF INFORMATION

- 21.1 The Supplier acknowledges that the Customer is subject to the requirements of the Code of Practice on Government Information, the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer, to enable the Customer to comply with its Information disclosure obligations. The Customer shall pass on to the Supplier payments it receives from the person requesting the information from it, to the extent attributable to the information provided by the Supplier.
- 21.2 The Supplier shall (and shall procure that its sub-contractors shall) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or regulation 5 of the Environmental Information Regulations, to include providing the Customer with a copy of all Information in its possession, or power in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request.
- 21.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether Information deemed commercially sensitive and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.
- 21.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Customer.

- 21.5 The Supplier acknowledges that the Customer may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“**the Code**”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the services provided by the Supplier under this Agreement unless an exemption applies. The Customer may at its discretion consult the Supplier with regard to whether the FOIA applies to the Information or whether an exemption applies.
- 21.6 The Supplier shall ensure that all Information produced in the course of this Agreement or relating to this Agreement is retained for disclosure in a manner agreed by the Parties and shall permit the Customer to inspect such records as requested from time to time.
- 21.7 The Supplier acknowledges that any Information it deems commercially sensitive is of indicative value only and that the Customer may be obliged to disclose it in accordance with sub-clause 21.5.

22. GOVERNING LAW AND DISPUTE RESOLUTION

- 22.1 This Agreement (and all contractual and non-contractual matters arising under or in relation to it) shall be governed and construed in accordance with English law.
- 22.2 Each Party shall use reasonable endeavours to resolve any dispute, difference or disagreement (“**Dispute**”) under this Agreement in good faith. If the Parties are not able to agree a resolution, or if there is a failure to implement the resolution correctly, then, subject to sub-clause 22.4, either Party may pursue any remedies that it may have under this Agreement or at law. This Agreement shall apply during the Dispute resolution process, and the Supplier agrees not to disconnect any Supply Point prior to an award being made in the Supplier's favour.
- 22.3 The Parties agree that neither Party shall be entitled to refer a Complaint or a Query to the Dispute resolution process in this Clause 22 until the process set out in sub-clause 5.4 has been exhausted in respect of that Query or Complaint.
- 22.4 Subject to the provisions of sub-clauses 22.5 and 22.17, any Dispute between the Parties relating to this Agreement shall be dealt with in accordance with this Clause 22, and neither the Customer nor the Supplier shall be entitled to commence or pursue any legal proceedings under the jurisdiction of the courts in connection with any such Dispute until the procedures set out in this Clause 22 have been exhausted.

- 22.5 Sub-clause 22.4 shall be without prejudice to the rights of termination set out in Clause 15 and shall not prevent the Customer or the Supplier from applying for injunctive relief in the case of:
- 22.5.1 breach or threatened breach of confidentiality by the other Party;
 - 22.5.2 infringement or threatened infringement of its Pre-Existing Intellectual Property Rights; or
 - 22.5.3 infringement or threatened infringement of the Intellectual Property Rights of a third party.
- 22.6 All Disputes between the Parties relating to this Agreement shall in the first instance be referred to the Supplier's Key Accounts Sales Manager and the Customer's Director for their consideration with a view to making a decision in relation to the Dispute. If the respective Parties fail to resolve the Dispute within ten (10) Working Days of it being referred to them:
- 22.6.1 it shall be referred to the Supplier's Head of Sales and Marketing and the Customer's Director respectively for their consideration with a view to making a decision in relation to the Dispute. If the respective General Manager and the Customer's Director fail to resolve the Dispute within ten (10) Working Days of it being referred to them;
 - 22.6.2 it shall be referred to the Supplier's Managing Director and the Customer's Chief Executive Officer respectively for their consideration with a view to making a decision in relation to the Dispute.
- 22.7 If any particular manager referred to in this Clause 22 does not exist or is not available, then the relevant Party shall be able to refer the Dispute to another suitable alternative manager of similar status and authority.
- 22.8 In the event that a Dispute cannot be resolved by the Parties in accordance with Clause 22.6.2 within a maximum of ten (10) Working Days after referral, the Dispute shall be further referred to mediation in accordance with the provisions of Clause 22.9.
- 22.9 Mediation
- 22.9.1 The procedure for mediation shall be as follows:

- 22.9.2 a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Customer and the Supplier or, if they are unable to agree upon the identity of the Mediator within ten (10) Working Days after a request by one Party to the other (provided that there remains agreement for mediation), or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“**CEDR**”) to appoint a Mediator;
- 22.9.3 the Customer and the Supplier shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. The Parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure.
- 22.10 Unless otherwise agreed by the Customer and the Supplier, all negotiations connected with the Dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 22.11 In the event that the Customer and the Supplier reach agreement on the resolution of the Dispute, the agreement shall be reduced to writing and shall be binding on both Parties once it is signed by the Customer Director and the Supplier’s General Manager.
- 22.12 Failing agreement, either the Customer or Supplier may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of both Parties.
- 22.13 The Customer and the Supplier shall each bear their own costs in relation to any reference made to the Mediator and the fees and all other costs of the Mediator shall be borne jointly in equal proportions by both Parties unless otherwise directed by the Mediator.
- 22.14 Work and activity to be carried out under this Agreement shall not cease or be delayed during the mediation process.
- 22.15 In the event that the Customer and the Supplier fail to reach agreement in the structured negotiations referred to in sub-clause 22.9.2 within forty (40) Working Days of the Mediator being appointed, or such longer period as may be agreed, then any Dispute
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between them may, subject to the agreement of both Parties, be referred to arbitration in accordance with the provisions of Clause 22.16.

22.16 Arbitration

22.16.1 In the event that a Dispute between the Customer and the Supplier, or a claim by one against the other, pursuant to the terms of this Agreement is not resolved pursuant to sub-clause 22.15, the Parties may refer the matter to arbitration in accordance with this sub-clause 22.16.

22.16.2 The Party seeking to initiate the arbitration shall give a written notice of arbitration to the other Party. The notice of arbitration shall specifically state:

- (a) that the Dispute is referred to arbitration;
- (b) the particulars of this Agreement; and
- (c) a brief summary of the subject of the Dispute.

22.16.3 Unless otherwise agreed in writing by the Customer and the Supplier, the provisions of the Arbitration Act 1996 shall govern the arbitration commenced pursuant to this sub-clause 22.16.

22.16.4 Any Dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, if referred to arbitration in accordance with this sub-clause 22.16 shall be resolved by arbitration under the procedural rules of the London Court of International Arbitration.

22.16.5 It is agreed between the Customer and the Supplier that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996.

22.16.6 For the avoidance of doubt it is agreed by the Customer and the Supplier that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made to any body other than the tribunal, the Customer and the Supplier, their legal representatives and any

person necessary to the conduct of the proceedings, without the agreement of all Parties to the arbitration.

22.16.7 The arbitration proceedings shall take place in London and in the English language and the arbitration proceedings shall be governed by, and interpretations made in accordance with, English law.

22.16.8 The Customer and the Supplier shall each bear their own costs in relation to any reference made to the arbitrator and the fees and all other costs of the arbitrator shall be borne jointly in equal proportions by both Parties unless otherwise directed by the arbitrator.

22.17 In the event that the Customer and the Supplier do not agree to refer the matter to arbitration, the Parties agree to submit to the jurisdiction of the Courts of England and Wales and shall be at liberty to issue proceedings.

22.18 Each Party irrevocably waives any objections which it may have to the choice of venue of any proceedings in any such court and any claim that any such proceedings have been brought in an unconventional forum and further irrevocably agrees that judgment in any proceedings brought in the English courts shall be conclusive and binding upon such Party and may be enforced in the courts of any other jurisdiction.

23. SUB-CONTRACTING AND ASSIGNMENT

23.1 Save as provided by the Framework Agreement and this Clause 23, neither Party shall assign, novate, sub-contract or otherwise transfer or dispose of this Agreement or any part thereof without the previous consent in writing of the other Party, such consent not to be unreasonably withheld.

23.2 The Customer shall not assign, novate or otherwise transfer or dispose of this Agreement or any part thereof to a person who is not a party to a services agreement with the Authority in a form similar to the Customer Access Agreement.

23.3 If the Supplier sub-contracts this Agreement or any part thereof, the Supplier shall remain responsible for the performance of its obligations under this Agreement at all times and shall be responsible for the acts and omissions of the sub-contractor as though they are the Supplier's own.

23.4 Where, pursuant to the Framework Agreement, the Authority has issued a notice to the Supplier requiring the Supplier to assign or transfer the Customer and the Supply Points

to a new Gas Supplier, the Parties shall execute such documents, give such consents, provide each other with such assistance and carry out all other actions as are necessary to enable such transfer as are required under the Framework Agreement, the Act, the Supplier's Licence and applicable Industry Documents (including, where so requested by the Authority, entering into a deed of novation with the new Gas Supplier to novate this Agreement from the Supplier to the new Gas Supplier).

24. MISCELLANEOUS PROVISIONS

- 24.1 No delay or omission by either Party in exercising any right, power or remedy shall impair or be construed as a waiver of such right, power or remedy and any single or partial exercise thereof shall not preclude any future exercise of the same.
- 24.2 The Parties shall provide each other from time to time non-confidential information required by the other Party to perform its obligations under this Agreement, including information about the name and address of the owner and occupier of the Site and any change thereof..
- 24.3 This Agreement except where otherwise expressly specified contains the entire agreement between the Parties in respect of the Supply and supersedes all previous agreements and understandings between them. Each Party acknowledges and confirms that it does not enter into this Agreement in reliance upon any representation or warranty or other undertaking not fully reflected in the terms of this Agreement. Neither Party shall have any liability in respect of warranties, representations or other undertakings made prior to the date of this Agreement unless such warranty, representation or undertaking was made fraudulently or unless there has been any fraudulent concealment.
- 24.4 If any provision of this Agreement is declared invalid, unenforceable or illegal by any court of competent jurisdiction or any Competent Authority such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.
- 24.5 No amendments to this Agreement shall be effective unless made in writing and signed by or on behalf of both Parties, save that sub-clauses 2.1 and 2.2 shall not be amended without the prior written consent of the Authority. Both Parties shall effect any amendment required to this Agreement as a result of any change in the Supplier's Licence, any order made pursuant to the Act, any direction of a Competent Authority, any variation required by the Framework Agreement as a result of a Change Control Request, or any variation of any agreement, licence, code, authorisation or consent
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necessary to permit the Supply. The Parties shall immediately notify the Authority of any amendment to this Agreement.

- 24.6 Expiry or termination (howsoever caused) of this Agreement shall not affect any rights or obligations which may have accrued prior to such expiry or termination or which result from the event giving rise to such termination and shall not affect the coming into force or continuation in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such expiry or termination.
- 24.7 Except where otherwise provided in this Agreement, a person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term or condition of this Agreement, excluding any right or remedy of a third party which is available apart from pursuant to such Act nor any right which is expressly granted in this Agreement.

25. RECOVERY OF SUMS DUE

- 25.1 The Customer shall be permitted to deduct and withhold from any sum due to the Supplier under this Agreement any sum of money due from the Supplier under either:
- 25.1.1 this Agreement;
 - 25.1.2 the Framework Agreement; or
 - 25.1.3 any other agreement between the Supplier and the Customer; provided that the terms of such other agreement provide for sums of money due from the Supplier under that agreement to be recovered by way of a deduction from sums of money due to the Supplier under this Agreement (albeit that this Agreement may not be referenced specifically in that agreement).
- 25.2 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.
- 25.3 Unless otherwise specified in this Agreement, all payments due shall be made within a reasonable time, in cleared funds, to such bank or building society account as the Customer may from time to time direct.

26. NOTICES

26.1 All notices, orders, or other forms of communication (“**Notices**”) under or in connection with this Agreement shall be sent to the relevant Party’s Notices Address as provided in Part 1, or such other address as either Party may specify by giving notice and shall:

26.1.1 be given in writing;

26.1.2 be authenticated by signature or by such other method as agreed between the parties;

26.1.3 be marked for the attention of the appropriate department or officer; and

26.1.4 be marked in a prominent position with the relevant contract number for this Agreement.

26.2 Notices should be delivered by:

26.2.1 hand;

26.2.2 first-class prepaid post (or airmail, in the case of Notices to or from overseas);

26.2.3 recorded delivery post;

26.2.4 facsimile; or

26.2.5 electronic mail, where such a means of communication has been agreed for the purposes of this Agreement.

26.3 Notices shall be deemed to have been received:

26.3.1 if delivered by hand, on the day of delivery if it is the recipient’s Working Day and otherwise on the first Working Day of the recipient immediately following the day of delivery;

26.3.2 if sent by first-class prepaid post (or airmail, if appropriate), on the third (3rd) Working Day (or on the tenth (10th) Working Day, in the case of airmail) after the day of posting;

26.3.3 if sent by facsimile or electronic mail means:

- (a) if transmitted between 9.00am and 5.00pm on a Working Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
- (b) if transmitted at any other time, at 9.00am on the first Working Day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.

26.4 Where either Party requests written confirmation of any communication which does not constitute a Notice such request shall not unreasonably be refused.

27. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

27.1 The Supplier shall not:

27.1.1 offer or give, or agree to give, to any person employed by or on behalf of the Customer any gift or consideration of any kind as an inducement or reward for doing, or having done, or not doing, any act in relation to the obtaining or execution of this Agreement or any other agreement with the Customer, or for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Customer;

27.1.2 enter into this Agreement or any other agreement with the Customer or any other department or office of Her Majesty's Government in connection with which commission has been paid, or agreed to be paid by him or on his behalf, or to his knowledge, unless, before this Agreement is made, particulars of any such commission and the terms and conditions of any agreement for the payment thereof, have been disclosed in writing to any person duly authorised by the Customer to act as its representative for the purpose of this Clause 27.

27.2 Nothing contained in this Clause 27 shall prevent the Supplier paying such commission or bonuses to his own staff in accordance with their agreed contracts of employment.

27.3 Any breach of this Clause 27 by the Supplier, or by anyone employed by him or acting on his behalf (whether with or without his knowledge), or the commission of any offence by the Supplier or by anyone employed by him or acting on his behalf under the Prevention of Corruption Acts 1889-1916, in relation to this Agreement or any other contract with the Customer, shall entitle the Customer to terminate this Agreement with immediate effect and recover from the Supplier the amount of any loss resulting from

such termination and the amount of the value of any such gift, consideration or commission as the Customer shall think fit.

27.4 Any Dispute or question arising in respect of:

27.4.1 the interpretation of this Clause 27 (except so far as the same may relate to the amount recoverable from the Customer under sub-clause 27.3 in respect of any loss resulting from such termination of this Agreement); or

27.4.2 the right of the Customer to terminate this Agreement; or

27.4.3 the amount or value of any gift, consideration or commission,

the matter may be referred by either Party to the Authority, whose decision shall be final and conclusive.

28. OFFICIAL SECRETS

28.1 In this Clause:

28.1.1 “**Secret Matter**” means any matter connected with this Agreement or its performance, which is designated in writing by the Customer as ‘Top Secret’, ‘Secret’ or ‘Confidential’, and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;

28.1.2 “Employee” shall include any person who is an employee or director of the Supplier or who occupies the position of a director of the Supplier, by whatever title given.

28.2 The Supplier shall:

28.2.1 take all reasonable steps to ensure that all Employees engaged on any work in connection with this Agreement have notice that the Official Secrets Acts 1911-1989 applies to them and will continue so to apply after the completion or termination of this Agreement; and

28.2.2 if directed by the Customer, ensure that any Employee shall sign a statement acknowledging that, both during the Term and after the completion or termination, of the Agreement he is bound by the Official Secrets Acts 1911-1989 (and where applicable by any other legislation).

- 28.3 Unless it has the written authorisation of the Customer to do otherwise, neither the Supplier nor any of its Employees shall, either before or after the completion or termination of this Agreement, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:
- 28.3.1 who is not a British citizen;
 - 28.3.2 who does not hold the appropriate authority for access to the protected matter; or
 - 28.3.3 in respect of whom the Customer has notified the Supplier in writing that the Secret Matter shall not be disclosed to or acquired by that person.
- 28.4 If at any time either before or after the completion or termination of this Agreement, the Supplier or any of its Employees discovers or suspects that any authorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Supplier shall forthwith inform the Customer of the matter with full particulars thereof.
- 28.5 If the Supplier proposes to make a sub-contract which will involve the disclosure of Secret Matter to the sub-contractor, the Supplier shall:
- 28.5.1 submit for approval of the Customer the name of the proposed sub-contractor, a statement of the work to be carried out and any other details known to the Supplier which the Customer shall reasonably require;
 - 28.5.2 incorporate into the sub-contract the terms of the Annex to this Part 2 and such secrecy and security obligations as the Customer shall direct.
 - 28.5.3 inform the Customer immediately it becomes aware of any breach by the sub-contractor of any secrecy or security obligation and, if requested to do so by the Customer, terminate the sub-contract.
- 28.6 The Customer shall be entitled to terminate this Agreement immediately if:
- 28.6.1 the Supplier is in breach of any obligation under this Clause 28; or
 - 28.6.2 the Supplier is in breach of any secrecy or security obligation imposed by any other contract with the Crown; or

28.6.3 where the Customer considers the circumstances of the breach authorised the secrecy or security of the Secret Matter.

29. DISCRIMINATION

29.1 The Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of the Sex Discrimination Act 1975, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Age) Regulations 2006 or any statutory modification or re-enactment thereof or any other Applicable Law relating to discrimination in employment.

29.2 The Supplier shall take all reasonable steps to secure the observance of the provisions of Clause 29.1 by the sub-contractors employed in the execution of this Agreement.

30. DISABILITY EQUALITY

The Customer is subject to the Disability Discrimination Act 1995 as amended by the Disability Discrimination Act 2005. The Supplier shall, and shall procure that its sub-contractors, agents and personnel shall, comply with the Disability Discrimination Act 1995 as amended by the Disability Discrimination Act 2005. Upon breaching the Disability Discrimination Act 1995 (as amended), the Customer shall be entitled to terminate this Agreement with immediate effect by notice in writing to the Supplier and without prejudice to any other rights or remedies of either Party in respect of the breach concerned or any other breach of this Agreement.

31. RACE EQUALITY

The Customer is subject to the Race Relations Act 1976. The Supplier shall, and shall procure that its sub-contractors, agents and personnel shall, comply with the Race Relations Act 1976. Upon breaching the Race Relations Act 1976 the Customer shall be entitled to terminate this Agreement with immediate effect by notice in writing to the Supplier and without prejudice to any other rights or remedies of either Party in respect of the breach concerned or any other breach of this Agreement.

32. PREVENTION OF FRAUD & CONFLICTS OF INTEREST

32.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by the Supplier Personnel or the Supplier (including its

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shareholders, members and directors) in connection with the receipt of monies from the Customer.

32.2 The Supplier shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

32.3 If the Supplier commits any Fraud in relation to this or any other agreement with a Contracting Authority or the Customer, the Customer may:

32.3.1 terminate this Agreement with immediate effect by giving the Supplier notice in writing and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Term; and/or

32.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

32.4 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Supplier Personnel are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Supplier Personnel and the duties owed to the Customer under the provisions of this Agreement.

32.5 The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in clause 32.4 above arises or is reasonably foreseeable.

32.6 The Customer reserves the right to terminate this Agreement immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of this Agreement. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

32.7 This clause 32 shall apply during the Term and for a period of two (2) years after expiry of the Term.

33. SUSTAINABLE PROCUREMENT

- 33.1 The Supplier shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to the Supply. Without prejudice to the generality of the foregoing, the Supplier shall promptly provide all such information regarding the environmental impact of the Supply as may reasonably be requested by the Customer.
- 33.2 The Supplier shall meet all reasonable requests by the Customer for information evidencing compliance with the provisions of this Clause 33 by the Supplier.
- 33.3 The Parties shall use all reasonable endeavours to ensure that all written outputs, including reports, produced in connection with this Agreement shall (unless otherwise specified) be produced on recycled paper containing at least 80% post consumer waste and used on both sides where appropriate.

34. CONTRACTOR STATUS

Nothing in this Agreement shall create or be construed as creating a partnership, joint venture, a contract of employment or relationship of employer and employee, or a relationship of principal and agent between the Customer and the Supplier.

35. ACTS BY THE PARTIES

Any decision, act or thing which the Parties are required or authorised to take or do under this Agreement may be taken or done by any person authorised, either expressly or impliedly, by the Parties to take or do that decision, act or thing.

**ANNEX - OFFICIAL SECRETS TERMS AND CONDITIONS TO BE
INCLUDED IN ANY SUPPLIER SUB-CONTRACT**

Provisions to be included in relevant Sub-contracts

Definitions

1. In this Clause:
 - a) **“Secret Matter”** means any matter connected with this Agreement or its performance, which the First Party informs the Second Party in writing has been designated by the Customer as ‘Top Secret’, ‘Secret’ or ‘Confidential’, and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;
 - b) **“Employee”** shall include any person who is an employee or director of the Second Party or who occupies the position of a director of the Second Party, by whatever title given; and
 - c) the **“Customer”** means [].

The Official Secrets Acts

2. The Second Party shall:
 - a) take all reasonable steps to ensure that all Employees engaged on any work in connection with this Agreement have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of this Agreement; and
 - b) if directed by the First Party or the Customer, ensure that any Employee shall sign a statement acknowledging that, both during the Term and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable by any other legislation).

Security Measures

3. Unless it has the written authorization of the Customer to do otherwise, neither the Second Party nor any of its Employees shall, either before or after the completion or termination of this Agreement, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:
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- a) who is not a British citizen;
 - b) who does not hold the appropriate authority for access to the protected matter;
 - c) in respect of whom the Customer has notified the Second Party in writing that the Secret Matter shall not be disclosed to or acquired by that person;
 - d) who is not an Employee of the Second Party; and
 - e) who is an Employee of the Second Party and has no need to know the information for the proper performance of this Agreement.
4. Unless he has the written permission of the Customer to do otherwise, the Second Party and his Employees shall, both before and after the completion or termination of this Agreement, take all reasonable steps to ensure that:
- a) no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of this Agreement; and
 - b) any Secret Matter is at all times strictly safeguarded in accordance with the Manual of Protective Security and upon request, is delivered up to the Customer who shall be entitled to retain it. A decision of the Customer on the question of whether the Second Party has taken or is taking reasonable steps as required by this Clause, shall be final and conclusive.
5. The Second Party shall:
- a) provide to the Customer:
 - (i) upon request, such records giving particulars of those Employees who have had at any time, access to any Secret Matter that is required to be kept in accordance with Sub-Clause 4;
 - (ii) upon request, such information as the Customer may from time to time require so as to be satisfied that the Second Party and his Employees are complying with his obligations under this Clause, including the measures taken or proposed by the Second Party so as to comply with his obligations and to prevent any breach of them; and
 - (iii) full particulars of any failure by the Second Party and his Employees to comply with any obligations relating to Secret Matter arising under this Condition immediately upon such failure becoming apparent; and
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- b) ensure that, for the purpose of checking the Second Party's compliance with the obligation in Sub-Clause 4.b), a representative of the First Party or the Customer shall be entitled at any time to enter and inspect any premises used by the Second Party which are in any way connected with this Agreement and inspect any document or thing in any such premises, which is being used or made for the purposes of this Agreement. Such representative shall be entitled to all such information as he may reasonably require.
6. If at any time either before or after the completion or termination of this Agreement, the Second Party or any of his Employees discovers or suspects that any authorized person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Second Party shall forthwith inform the Customer of the matter with full particulars thereof.

Sub-contracts

7. If the Second Party proposes to make a sub-contract which will involve the disclosure of Secret Matter to the sub-contractor, the Second Party shall:
- a) submit for approval of the Customer the name of the proposed sub-contractor, a statement of the work to be carried out and any other details known to the Second Party which the Customer shall reasonably require;
 - b) incorporate into the sub-contract the terms of this Clause and such secrecy and security obligations as the Customer shall direct; and
 - c) inform the Customer immediately it becomes aware of any breach by the sub-contractor of any secrecy or security obligation and, if requested to do so by the Customer, terminate this Agreement.

Termination

8. The First Party shall be entitled to terminate this Agreement immediately if:
- a) the Second Party is in breach of any obligation under this Clause; or
 - b) the Second Party is in breach of any secrecy or security obligation imposed by any other contract with the Crown; or
 - c) where the Customer considers the circumstances of the breach authorized the secrecy or security of the Secret Matter and notifies its contractor accordingly.

PART 3 – DEFINITIONS AND INTERPRETATION

36. DEFINITIONS

In this Agreement, unless defined (in particular in Part 1), the following expressions shall have the meanings set opposite them below:

Act	means the Gas Act 1986 and the regulations made thereunder.
Account Manager	means the person notified by the Supplier to the Customer from time to time as being the Account Manager.
Actual Supply Start Date	means, in relation to each Supply Point, the first date on or after the Effective Date on which the Supplier is Registered in respect of that Supply Point.
Additional Services	means services provided by the Supplier, other than the provision of Gas Products and Interim Supply, pursuant to the Framework Agreement and an Additional Services Contract.
Additional Services Contract	means a contract between the Customer and the Supplier in respect of particular Additional Services formed in accordance with the Schedule.
Additional Termination Event	has the meaning given in sub-clause 15.2.
Administration Fee	means the fee in respect of the Supplier's administration costs as calculated in accordance with the Framework Agreement.
Affiliate	means any holding company or subsidiary, or any subsidiary of a holding company, of a Party (or other person), in each case within the meaning of the Companies Act 2006.
Agent	means a Meter Reading Agency or Meter Asset Manager.
Agreement	has the meaning given in sub-clause 1.1 of Part 1.
AMR	means automated Meter reading.
Annual Locked Product	means a Gas Product for which the cost of gas component of the Customer's Charges is established prior to the start of the Procurement Year, and not subsequently reconciled on a Customer-specific basis.

At the end of the Procurement Year that cost of gas is reconciled against the actual cost of gas achieved, but any adjustment as a result of such reconciliation is applied across the Charges due from or to that part of the Customer Portfolio on Annual Locked Products for the following Procurement Year.

Annual Priced Supply	means the Annual Locked Product and/or the Annual Variable Product.
Annual Variable Product	means a Gas Product for which the cost of gas component of the Customer's Charges is established prior to the start of the Procurement Year, and then at the end of the Procurement Year that cost of gas is reconciled against the actual cost of gas achieved and any further payment due as a result of such reconciliation is due from or to the Customer.
Applicable Law	means any applicable, national, municipal or state statute, ordinance or other law (including tax), regulation or by-law of England and Wales or any part thereof, or the European Union or any instruction, direction, code of conduct, permit, consent, authorisation, licence (including any gas supply licence) or the directive of a Competent Authority.
AQ Review	means the AQ review process undertaken pursuant to Section G of the Uniform Network Code.
Authority	means the Minister for the Cabinet Office as represented by Buying Solutions being a trading fund of the Cabinet Office without separate legal personality.
Balancing Fee	means the fee of that name calculated in accordance with the Framework Agreement.
CEDR	has the meaning given in sub-clause 22.9.2.
Charges	means the charges payable by the Customer to the Supplier in respect of the Supply as calculated in accordance with the Agreement and the Framework Agreement and as specified in sub-clause 10.15.
Change Control Request	means a request by the Authority or the Supplier to change the Framework Agreement under the change control process in Clause 9 of the Framework Agreement.

Climate Change Levy or CCL	means the tax referred to in Schedule 6 of the Finance Act 2000.
Commission	means the amount to be paid by the Supplier to the Authority and other Governmental authorities as set out in the Framework Agreement as notified to the Supplier by the Authority in accordance with the Framework Agreement.
Competent Authority	means the Secretary of State, GEMA and any local or national agency, authority, department, inspectorate, minister, ministry, official or public, judicial, regulatory or statutory body or person (whether autonomous or not) of the European Community or of the government of the United Kingdom or.
Complaint	means a complaint by the Customer in connection with the Supplier's performance of its obligations under this Agreement.
Confidential Information	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of a Party, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including commercially sensitive information.
Contracting Authority	means any contracting authority as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Authority.
Cost of Gas	means the cost of natural gas supplied to the Customer as calculated in accordance with the Framework Agreement.
Crown Body	means any department, office, agency, or other body which is specified as a Crown Body as set out in a list held and maintained by the Office of Public Sector Information of Her Majesty's Government as amended from time to time, and "Crown Bodies" shall have the same meaning.
Customer Access Agreement	means the arrangement between the Customer and the Authority, in a form specified by the Authority, pursuant to which the Customer has appointed the Authority to act on its behalf in respect of the Supply aspects of this Agreement.

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Customer's Chief Executive Officer	means the person notified by the Supplier to the Customer from time to time as being the Chief Executive Officer.
Customer Contract	means an agreement between the Supplier and a customer in the Customer Portfolio for the supply of Gas Products in accordance with the Framework Agreement.
Customer's Director	means the person notified by the Customer to the Supplier from time to time as being a director.
Customer Portfolio	means the total demand of all Customer Contracts concluded pursuant to the Framework Agreement between the customers of the Authority and the Supplier.
Customer Service Team	means a group of personnel provided by the Supplier for the facilitation of the administration and management of the provision of services to customers of the Authority in accordance with the Framework Agreement.
Customer Survey	has the meaning given in sub-clause 5.6.1.
Customer Transfer Notice	means the notice given by the Authority to the Supplier pursuant to the Framework Agreement where the Authority nominates a new Gas Supplier to provide the Supply to the Customer and requires the Supplier to transfer this Agreement to the nominated Gas Supplier.
Data Access Request	has the meaning given in sub-clause 19.2.8(a).
Data Controller	shall have the same meaning as set out in the Data Protection Act 1998.
Data Processor	shall have the same meaning as set out in the Data Protection Act 1998.
Data Protection Legislation	means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all Applicable Laws and regulations relating to processing of personal data and privacy, including where applicable the codes of practice

	issued by the Information Commissioner.
Data Subject	shall have the same meaning as set out in the Data Protection Act 1998.
Day	means the twenty-four (24) hour period starting at 0600 hours on a day and ending at 0600 hours on the following day.
Day-Ahead Product	means a Gas Product for which the cost of gas component of the Customer's Charges is established by reference to the relevant day-ahead index price for each Day of supply. The Day-Ahead Product is only available in respect of Supply Points with DM Meters.
Deemed Contract Rate	means the deemed rate charged by the Supplier for any Supply provided after the Withdrawal Date in relation to any Supply Point being the rate charged to all customers of the same type as the Customer at the relevant time.
Delivery Point	means each Metering Point at the Site.
Disputed Payment	has the meaning given in sub-clause 10.18.
Disability Equality Scheme	means a scheme established by the Customer in accordance with the Disability Discrimination Act 1995 as amended by the Disability Discrimination Act 2005.
Distribution System	means the system for the distribution of natural gas to which each of the Supply Points is connected.
DM Meter	means a Meter which is read daily as determined in accordance with the Uniform Network Code.
DM Supply Meter Points	has the meaning given in sub-clause 4.1.
Earliest Supply Start Date	means, in relation to each of the Supply Points, the date set out as such in Part 1 of this Agreement (or, where this Agreement is novated to a new Gas Supplier in accordance with clause 23, the date on which such novation is to be effective).
E-billing	means an electronic facility provided by the Supplier which, among other things, allows for invoices to be generated as a pdf document and viewed by a Customer via a secure website.

EDI	means electronic data interface.
Effective Date	means the date of this Agreement (or, where this Agreement is novated to a new Gas Supplier in accordance with clause 23, the date of the deed of novation by which such novation is effected).
Emergency	means circumstances where, in the opinion of the Transporter (i) the safety of the Transporter's natural gas pipe-line system is significantly at risk; (ii) the safe transportation of natural gas by that system is at such pressure or of such a quality as to constitute, when supplied to premises, a danger to life or property.
Energy Product Confirmation	means the document which evidences the Customer joining a Procurement Round in accordance with the Customer Access Agreement and which is substantially in the form set out in the Annex to Part 3 of the Customer Access Agreement.
Energy Ombudsman	means the redress scheme operated by The Ombudsman Service Limited and approved as a statutory redress scheme by GEMA under Section 49 of the Consumers, Estate Agents and Redress Act 2007.
Environmental Information Regulations	means the Environmental Information Regulations 2004 and any codes of practice issued by the Information Commissioner in relation to such regulations.
Euro	means the lawful currency of the member states of the European Union that adopt the single currency in accordance with the Treaty establishing the European Community, as amended by the Treaty on European Union.
European Economic Area	means the economic market created by the Agreement on the European Economic Area on 2 May 1992.
Euro Effective Date	has the meaning given in sub-clause 10.22.
First Procurement Round	means the first Procurement Round for a Gas Product which the Customer joins following the Effective Date.
Fixed Daily Charges	means the charges of that name established in accordance with the Framework Agreement, including the LDZ & NTS Capacity Charge, the Meter Asset Charge, the Meter Reading Charge and the Commission.

FOIA	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any codes of practice issued by the Information Commissioner in relation to such legislation.
Force Majeure	means any event or circumstance which is beyond the reasonable control of either Party which could not have been prevented by Good Industry Practice on the part of the affected Party and which results in or causes the failure of that Party to perform any of its obligations under this Agreement including act of God, strike, lockout or other industrial disturbance, act of public enemy, war declared or undeclared, threat or terrorist act, blockade, riot, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, explosion, fault or failure of plant, apparatus or equipment, governmental restraint, act of parliament, other legislation, bylaw or directive (not being any order, regulation or direction under Section 32, 33, 34 or 35 of the Act), any outage or failure of, or suspension or reduction of transmission or distribution through or constraints affecting a Distribution System, provided that lack of funds shall not be interpreted as an event beyond a Party's reasonable control.
Framework Agreement	means one or more framework agreements for the procurement of natural gas between the Authority and the Supplier, as such agreements may be amended or supplemented from time to time (and includes, where this Agreement is novated to a new Gas Supplier in accordance with clause 23, the framework agreement with that new Gas Supplier).
Fraud	means any offence under any Applicable Laws creating offences in respect of fraudulent acts or in relation to the Misrepresentation Act 1967 or at common law in respect of fraudulent acts in relation to this Agreement or defrauding or attempting to defraud or conspiring to defraud a Contracting Authority or the Customer.
Gas Products	means the supply of natural gas to the Customer on the basis of products which the Authority purchases for such Customers pursuant to the Framework Agreement, such products being specified by:

- (i) the Supply Month during which gas is first to be delivered on the basis of that product;
- (ii) the date on which the Authority may first begin purchasing that product (being the same date as the relevant Procurement Round Commitment Point); and
- (iii) the risk profile for such product being one of: (A) an Annual Locked Product; (B) an Annual Variable Product; (C) a Monthly Product; or (D) (in the case of DM Meters only) a Day-Ahead Product.

Gas Supplier

means a person who is authorised to supply natural gas to customers pursuant to a licence granted to it by GEMA pursuant to Section 7 of the Act, or is exempt from the requirement to hold a licence pursuant to Section 6A of the Act.

GEMA

means the Gas and Electricity Markets Authority established under Section 1 of the Utilities Act 2000, and shall include the Office of Gas and Electricity Markets (as applicable).

General Query

means a Query which is not an Invoicing Query or a Complaint.

Good Industry Practice

means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances.

Head of Sales and Marketing

means the person notified by the Supplier to the Customer from time to time as being the Head of Sales and Marketing.

Historic Demand

means in relation to:

- (a) the First Procurement Round, the volume of natural gas supplied by the previous Gas Supplier to the relevant DM Meter as determined by reference to the invoiced volume of natural gas in respect of a period of a Year ending on the six (6) Month Procurement Round Commitment Point for the First Procurement Round; and
 - (b) subsequent Procurement Rounds, the volume of Gas Products supplied by the Supplier to the relevant DM Meter in the
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previous Procurement Round in the relevant Procurement Year.

Incumbent Supplier	has the meaning given in sub-clause 3.2.3.
Industry Documents	means all agreements, licences, authorisations and codes or procedures applicable to the Supplier and relating to or necessary for the supply of natural gas to the Site.
Information	has the meaning given under Section 84 of the Freedom of Information Act 2000.
Information Commissioner	means the person appointed as Information Commissioner pursuant to section 6 of the Data Protection Act 1998.
Initial Contract Period	means the period specified in Part 1.
Intellectual Property Rights or IPRs	means: <ul style="list-style-type: none">(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and I all other rights having equivalent or similar effect in any country or jurisdiction.
Interim Price	means the price (in pence per kilowatt hours) payable for the Interim Supply as agreed by the Authority and the Supplier in accordance with the Framework Agreement.
Inter-Shipper Agreement	means a voluntary code for resolving issues arising from the late transfer of sites between signatories to the Inter-Shipper Agreement.
Inter Shipper Dispute Mechanism	means a detailed process under the Inter-Shipper Agreement undertaken by signatories to the Inter-Shipper Agreement to resolve issues arising from the late transfer of sites.
Interim Supply	means Supply during the Interim Supply Period.

Interim Supply Period	means, for a Supply Point, the period (if any) from the Actual Supply Start Date until: <ul style="list-style-type: none">(i) (subject to sub-paragraph (ii) below) the Supply Start Date for the First Procurement Round; or(ii) in the case of a Customer adding an additional Supply Point, the Supply Start Date for the Procurement Year relating to the first Procurement Round following the date on which that Supply Point is added to this Agreement.
Interruption	means the interruption of the offtake of natural gas from Metering Point(s) in accordance with Clause 38 of Part 4 and “ Interrupt ” shall be construed accordingly.
Interruption Allowance	has the meaning given in sub-clause 39.1 of Part 4.
Interruption Start Time	has the meaning given in sub-clause 38.4 of Part 4.
Invoice Amount	has the meaning given in sub-clause 9.1.
Invoicing Query	means a question posed by the Customer to the Supplier which relates to an invoice issued by the Supplier to the Customer, and which the Customer raises prior to the payment of any monies by the Customer in respect of the invoice. For the avoidance of doubt, a Disputed Payment is not an Invoicing Query .
Isolation	means where no natural gas can flow directly or indirectly from the Transporter’s network and/or the Distribution System to which the relevant Supply Point is connected, and “ Isolate ” and “ Isolated ” shall be construed accordingly.
LDZ	has the meaning given in the Uniform Network Code; provided that such expression shall include (for the purposes of this Agreement) the networks of any Transporter other than the NTS Transporter (so as to include the networks of independent gas transporters).
LDZ & NTS Capacity Charge	means the capacity charge for use of the LDZ and the NTS as calculated in accordance with the Framework Agreement.

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LDZ & NTS Commodity Charge	means the commodity charge for use of the LDZ and the NTS as calculated in accordance with the Framework Agreement.
LIBOR	means the London Interbank Offered Rate for one (1) month Pound Sterling deposits as published by the Financial Times on the relevant date and if the Financial Times is not published or does not quote a rate, as quoted by the British Bankers Association.
Licence	means a licence granted or treated as granted under the Act for the shipping, supply or transportation of natural gas (as applicable).
Managed Registration Information	means the information provided by the Authority to the Supplier in accordance with the Framework Agreement, as updated by the Supplier from time to time.
Maximum Consumption	in respect of a Supply Point, means the maximum quantities of natural gas to be supplied to such Supply Point in any hour, Month, Day or Year as specified in the Managed Registration Information.
Mediator	has the meaning given in sub-clause 22.9.2.
Meter	means the meter comprised in the Metering Equipment and for the avoidance of doubt includes a Meter enabled with AMR (if applicable).
Meter Asset Charge	means the charge for the provision, installation and maintenance of Meters as calculated in accordance with the Framework Agreement.
Meter Asset Manager	has the meaning given in the Uniform Network Code and, for the purposes of this Agreement, is the person identified in Part 1.
Meter Asset Services	means all services in connection with the provision, installation, maintenance, removal and replacement of Meters and other Metering Equipment.
Meter Reading Agency	means the person appointed by the Supplier or the Customer to conduct Meter reads in accordance with the Uniform Network Code.
Meter Reading Charge	means the charge for the Meter reading as calculated in accordance with the Framework Agreement.
Meter Reading Services	means the services in connection with reading Meters installed at Supply Points including data collection and aggregation.

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Metering Equipment	means any part of the meter installation including Meters, pressure regulators, valves, pipes, data loggers, telecommunications or other equipment downstream of the emergency control valve and up to the final Meter outlet valve.
Metering Point	means the outlet of the control valve for each Meter at each Supply Point.
Metering Services	means Meter Asset Services and Meter Reading Services.
Month	if this Agreement provides for the Customer to be billed on a monthly basis, "Month" means the period from the Supply Start Date to the first normal Meter reading thereafter, or the period of approximately one calendar month from one such reading to the next, or the period from one such reading to the ending of the Supply (as the case may be) and the expressions "Monthly" shall be construed accordingly.
Monthly Product	means a Gas Product for which the cost of gas component of the Customer's Charges is established after the end of each Supply Month on the basis of the actual cost of gas achieved in respect of that Supply Month.
MPR	means for a meter, the meter point reference number as allocated by Xoserve.
NDM Meter	means a Meter which is not required to be read daily as determined in accordance with the Uniform Network Code.
NDM Supply Meter Point	means a Supply Point with a NDM Meter.
NEXA	means the Network Exit Agreement provided by the NTS.
Notices	has the meaning given in Clause 26.1.
Notices Address	means in the case of each Party, as set out in Part 1, as the same may be varied from time to time by the relevant Party giving notice pursuant to this Agreement.
Nominated Consumption	has the meaning given in sub-clause 4.1.
NTS	means the National Transmission System.

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Original Invoice	has the meaning given in sub-clause 5.3.4
Party	means any Party to this agreement, and “Parties” shall be construed accordingly.
Payment Terms	means the payment method, date and invoice format set out in Part 1, or as otherwise agreed between the Parties from time to time.
Personal Data	shall have the same meaning as set out in the Data Protection Act 1998.
Pre-existing Intellectual Property Rights	shall mean any Intellectual Property rights vested in or licensed to the Customer or the Supplier prior to or independently of the performance by the Customer or Supplier of their obligations under this Agreement.
Process	has the meaning given to it under the Data Protection Legislation but, for the purposes of this Agreement, it shall include both manual and automatic processing.
Procurement Round	means the mechanism by which the Authority purchases a Gas Product for delivery by the Supplier to the Customer for a Procurement Year, in accordance with the Framework Agreement.
Procurement Round Closing Date	means the date specified by the Authority in accordance with the Framework Agreement which shall in any event be no later than four (4) Months prior to the Supply Start Date of the Relevant Procurement Year.
Procurement Round Commitment Point	means the specific entry points at which the Customer may join Procurement Rounds for a particular Gas Product from time to time as notified by the Authority to the Supplier in accordance with the Framework Agreement, being, as at the date of this Agreement, thirty (30) Months, eighteen (18) Months and six (6) Months prior to the Supply Start Date of the Relevant Procurement Year.
Procurement Year	means in respect of a Procurement Round, the period of twelve (12) Months commencing on the Supply Start Date of such Procurement Round, being either the first (1 st) April or first (1 st) October, as specified by the Authority in accordance with the Framework Agreement.
Purchase Window	means the period following a Procurement Round Commitment Point until (i) in the case of Annual Locked Products, 06.00 hours on the

Supply Start Date of the Relevant Procurement Year, and (ii) in the case of the Annual Variable Products or the Monthly Products, 06.00 hours on the date of delivery of Gas Products by the Supplier to Customers pursuant to their respective Customer Contracts. For the avoidance of doubt, there is no Purchase Window for the Day-Ahead Products.

Quarter		means a three (3) Month period beginning on 1 st January, 1 st April, 1 st July or 1 st October. The term “Quarterly” shall be similarly construed.
Quarterly Billed Supply Point		means a Supply Point in respect of which the Customer has elected (in accordance with Clause 10) to be billed on a Quarterly basis.
Query		means any type of question posed by the Customer to the Supplier, including a request for information or clarification about any of the Supplier's obligations under this Agreement, and includes a General Query and an Invoicing Query.
Query Management System		means the online database maintained by the Supplier for registering Queries and Complaints from customers.
Race Equality Scheme		means the scheme established by the Customer in accordance with the Race Relations Act 1976 (as amended from time to time).
Reasonable and Prudent Operator		means a person acting in good faith to perform its contractual obligations in compliance with all Applicable Laws, the Licence and Industry Documents and in so doing and in the general conduct of its undertaking, exercising that degree of care, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced material or service provider, as the case may be, engaged in the same type of operation and undertaking in the same or similar locality and under the same or similar circumstances and conditions, and any reference to the standard of a Reasonable and Prudent Operator herein shall be a reference to such degree of care, skill, diligence, prudence and foresight as aforesaid.
Re-establishing		has the meaning given to "Re-establish" in the Uniform Network Code.
Registered		in respect of any particular Gas Supplier (including the Supplier) and in respect of any particular Supply Point, means becoming the Registered User in respect of Supply Points, and the expression

	"Register" or "Registration" shall mean to become registered.
Registered User	has the meaning given to it in the Uniform Network Code.
Regulatory Bodies	means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Authority and " Regulatory Body " shall be construed accordingly.
Relevant Procurement Year	means in relation to a Procurement Round, the Procurement Year in respect of which Gas Products shall be purchased pursuant to that Procurement Round, in accordance with the Framework Agreement.
Renewal Period	has the meaning given in Clause 17.
Request for Information	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.
Revised Nominated Consumption	has the meaning given in sub-clause 4.1.1.
Services	has the meaning given in recitals to this Agreement.
Shipper	means any person with whom the Supplier has an arrangement for the purchase of natural gas and who has an agreement with the Transporter for the transporting of natural gas to the Site and for the avoidance of doubt the Supplier may be a Supplier.
Site	means each of the Customer's sites for supply at each of the Customer's premises, with one or more Supply Points.
Site Works and Installation Services	means site works and installation services, including new natural gas connections, provided by the Supplier to a customer pursuant to the Framework Agreement and an Additional Services Contract.
Sterling, £ and pence	means pounds or pence sterling, the legal currency of the United Kingdom, unless and until the United Kingdom adopts the Euro as its lawful currency in substitution for Sterling.
Supplier of Last	means a licensed supplier of natural gas appointed by GEMA under a

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Resort	last resort direction.
Supplier Personnel	means all employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor.
Supply	has the meaning given in sub-clause 4.2.1.
Supply Month	means a Month during which gas is supplied by the Supplier to the Customer pursuant to this Agreement.
Supply Quarter	means three (3) Supply Months corresponding to a Quarter.
Supply Point	has the meaning given in the Uniform Network Code, and means the Supply Points that are subject to this Agreement from time to time.
Supply Point Withdrawal	has the meaning given in sub-clause 4.5.1.
Supply Start Date	means, in relation to a Procurement Round, the first Day of the Relevant Procurement Year.
Supplier's Website	means the section of the Supplier's website which is dedicated to customer's of the Authority in accordance with the Framework Agreement.
Term	has the meaning as given in Clause 17.
Transaction	means a transaction for the sale and purchase of Gas Products in accordance with the Framework Agreement.
Transfer Objection	means, in relation to a Supply Point, an objection submitted pursuant to the Uniform Network Code to the Registration of a Gas Supplier to the Supply Point.
Transporter	means any person who holds a gas transporter's licence (or is treated as having been granted a licence) under Section 7 of the Act, with whom the Shipper has an agreement for the transporting of natural gas delivered to the Site under this Agreement.
Uniform Network Code	means the document of that name prepared by the Transporter under its Licence as varied, modified or replaced from time to time.
Variable Charges	means the charges of that name established in accordance with the Framework Agreement, including the Cost of Gas, the Balancing Fee,

	Administration Fee and the LDZ & NTS Commodity Charge.
VAT	means the value added tax chargeable under the Value Added Taxes Act 1994 (as amended) or any replacement or analogous tax.
Withdrawal Date	has the meaning given in Clause 4.5.1
Working Day	means any day other than a Saturday or a Sunday and which is not Christmas Day, Good Friday or a statutory Bank Holiday.
Working Hours	means the hours of 9.00am to 5.00pm on any Working Day.

37. INTERPRETATION

37.1 In this Agreement:

- 37.1.1 headings are for convenience only and do not affect interpretation;
- 37.1.2 the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture, a partnership and a trust; a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- 37.1.3 a reference to any document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- 37.1.4 a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- 37.1.5 words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- 37.1.6 references to Parties, clauses, sub-clauses, schedules, exhibits or annexures are, unless otherwise specified, references to Parties, clauses, sub-clauses, articles, schedules, exhibits and annexures to or of this Agreement, and a reference to this Agreement includes any schedule, exhibit or annexure to this Agreement;

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37.1.7 where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and

37.1.8 the word "includes" in any form is not a word of limitation.

PART 4 – INTERRUPTION

38. INTERRUPTION

- 38.1 Upon entering into the Agreement the Customer shall provide to the Supplier at least one (1) telephone number and at least one (1) facsimile number (but not more than four (4) numbers in total) at which the Supplier and/or the Transporter may contact, twenty-four (24) hours a day, a representative of the Customer in respect of an Interruption and the name(s) or job title(s) of not more than two (2) representatives who may be contacted at such numbers. The Customer shall ensure that these details are up to date and shall notify the Supplier of any change in such details before such change takes effect. If the Customer does not provide the information required by this sub-clause 38.1 within five (5) Working Days of entering into this Agreement in the case of the initial information, the Supplier shall put the Customer on firm instead of interruptible supply.
- 38.2 The Customer shall ensure that at all times on each day of this Agreement one (1) representative is available and capable of being contacted both by telephone with access to facsimile and by facsimile.
- 38.3 A notification of a requirement for Interruption given by telephone is a valid notification irrespective of whether it is subsequently confirmed by facsimile.
- 38.4 Where Interruption is required, the Supplier shall give (or shall procure that the Transporter gives) the Customer not less than 4 hours notice before the time from which Interruption is required (the "**Interruption Start Time**"), specifying:
- 38.4.1 the Supply Point to be Interrupted;
 - 38.4.2 the day of Interruption;
 - 38.4.3 the Interruption Start Time; and
 - 38.4.4 an estimate of the time at which the requirement for Interruption will cease to apply.
- 38.5 Where Interruption has been required, as soon as reasonably practicable after notification by the Transporter that the requirement for Interruption no longer applies or shall at a certain time cease to apply, the Supplier shall notify the Customer specifying the time (where later than the time of such notification) at which the requirement for Interruption shall no longer apply.
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39. INTERRUPTIBLE RIGHTS

39.1 The number of Working Days (including parts of a Working Day) in respect of which the Supplier requires the Customer to cease taking natural gas at each of the relevant Supply Points in any Procurement Year shall not exceed the following (the "**Interruption Allowance**"):

39.1.1 45 Working Days in any Procurement Year called at the sole discretion of the Transporter; or

39.1.2 in the case of a Supply Point which is a TNI Supply Point (as such term is defined in the Uniform Network Code), 45 Working Days and such number of days, additional to the usual maximum set by the Transporter for Interruptible Customer Premises, for the time being specified by the Transporter for the relevant premises;

provided that, a Working Day in respect of which the Supplier and or the Transporter gives more than one Interruption notice shall be counted as one (1) Working Day of Interruption only.

39.2 Where the Actual Supply Start Date is part way through a Procurement Year, the Days on which the Transporter requires Interruption at the relevant Supply Point in the Procurement Year before the Actual Supply Start Date (as notified to the Supplier by the Transporter) shall be taken into account in determining the number of Days upon which Interruption may be required of the Customer until the end of the Procurement Year under this Agreement.

39.3 The exercise by the Supplier or the Transporter of a right to require or secure the discontinuance or reduction of offtake at any Supply Point provided for in this Agreement shall not count towards the Interruption Allowance.

40. FAILURE TO INTERRUPT

40.1 If the Customer fails to comply with a direction to Interrupt at a Supply Point (irrespective of whether the failure results from Force Majeure):

40.1.1 if the Transporter determines that such failure results in a significant risk to system security, the Transporter or the Supplier may take any steps available to isolate or disconnect any or all Metering Point(s) at the relevant Supply Point, and the Customer shall be liable to reimburse the Supplier for the costs and expenses

incurred by the Transporter and the Supplier in taking such steps and in any subsequent reconnection or restoration of the Supply;

40.1.2 the Customer shall be liable to the Supplier for any charges imposed on the Supplier by the Transporter as a result of such failure and shall pay for all natural gas taken during a period of Interruption at the System Marginal Price (as defined in the Uniform Network Code);and

40.1.3 the Supplier shall immediately put the Customer on firm instead of interruptible supply.

40.2 If the Customer fails to comply with a direction to Interrupt at the relevant Supply Point as a result of Force Majeure and unless the Transporter otherwise determines, with the effect from the date of such failure, the Supply Point shall be redesignated as firm for the purposes of the Uniform Network Code, and the Charges shall be adjusted to take account of the capacity within the system that the Supplier shall be required to book with the Transporter based upon the Maximum Consumption quantities specified by the Transporter in respect of the Supply Point.

40.3 No Day in which there is a failure to Interrupt at a Supply Point shall count towards the Interruption Allowance in respect of that Supply Point.

40.4 The following circumstances shall not amount to Force Majeure for the Customer:

40.4.1 the unavailability of the representatives referred to in sub-clause 38.1 other than for wholly unforeseeable and unavoidable reasons; and

40.4.2 the fact that there is no facility for the Customer's plant to operate with a supply of fuel or energy alternative to or in substitution for natural gas or such a facility exists but is temporarily unusable or unavailable for reasons within the Customer's control.

SCHEDULE TO THE CONTRACT