

# Gas Supply Contract (Fixed Term)

## General Terms & Conditions

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# Section A – General Supply Terms

## 1 Definitions

The following definitions shall apply to this Supply Contract:

“**Access Rights**” means our right or our subcontractors' or agents' right to all reasonable access to all Supply Points (subject only to your reasonable requirements as to health and safety and site security) at any time;

“**Act**” means the Gas Acts and any regulations made hereunder both as amended or re-enacted from time to time;

“**Associated Companies**” means any wholly owned subsidiary of GDF SUEZ Energy UK Limited, including GDF SUEZ Marketing Limited, GDF SUEZ Sales Limited and GDF SUEZ Solutions Limited;

“**AMR device(s)**” means the device used to obtain electronic Consumption Data from your Equipment;

“**Automated Meter Reading**” or “**AMR**” means the system of electronically obtaining Consumption Data from your Equipment using an AMR device;

“**Annual Quantity**” or “**AQ**” means the volume of gas expressed in kWh which reflects the historical consumption at any Supply Point as recorded and held by Xoserve;

“**Authority**” means the Gas and Electricity Markets Authority established pursuant to section 1 (1) of the Utilities Act 2000;

“**Capacity Charge**” means the charges payable to the Transporter in relation to the exit capacity required by any Supply Point, including in respect of those Supply Points connected directly to the National Transmission System;

“**Charges**” means the Commodity Charges and other charges specified in the Supply Contract, which shall be charged in respect of the Supply Period plus the applicable Value Added Tax (“**VAT**”) and Climate Change Levy (“**CCL**”);

“**Commodity Charges**” means the element of the Charges charged in respect of the volume of gas consumed at each Meter Point;

“**Consumption Data**” means actual meter readings from the Equipment received by us from you, or the appointed Service Provider, during the Supply Period showing the actual consumption of gas in respect of each Meter Point;

“**Consumption Invoice**” means the invoice we shall send to you on the Invoicing Date setting out the Charges in relation to the Invoicing Period;

“**Consumption Threshold**” means as defined in Clause 6.19.2;

“**Default Contract Rate**” means the rates and charges published on the Website, which shall be payable by you where you continue to consume gas after the Termination Date;

“**Disconnect**” means the permanent disconnection of any structure, switchgear, equipment, line or device used by you at the Supply Point from the Transportation System and “**Disconnection** or **Disconnected**” shall be construed accordingly;

“**Domestic Sites**” means any premises occupied as a private dwelling (including any garden, yard, garage, outhouse, or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling). Where this definition is used to apply to Supply Points located in Scotland, such definition shall be extended to include the word “stair”;

“**Economic Loss**” means loss of profits, revenues, interest, business, goodwill or commercial, market or economic opportunity, whether direct or indirect and whether or not foreseeable. For the avoidance of doubt, our margin, the Administration Fee and any Mark to Market Loss are not Economic Losses and shall not be construed as such;

“**End Date**” means the date stated on the Quotation Document;

“**End User Category (EUC)**” means the group that each Non-Daily Metered (NDM) Meter Point is placed in by the Transporter for demand attribution and invoicing purposes;

“**Equipment**” means any meters, data loggers, mains, pipes, telecommunications, AMR device or other equipment provided for the purpose of supplying and ascertaining the quantity of gas supplied hereunder;

“**Force Majeure**” means any circumstances or event beyond the reasonable control of either Party which directly causes the affected Party to be unable to comply with all or a significant part of their obligations under this Supply Contract, but excluding strikes, lockouts, labour disputes, changes to economic conditions and lack of funds;

**“Framework Agreement”** means any joint, multi-party, or consortium framework agreement, in all cases forming part of the Supply Contract, whether agreed at the same time as the Supply Contract or subsequently agreed in writing between the Parties to be part of the Supply Contract setting out certain matters which vary, amend or are supplementary to the Supply Contract;

**“Gas Acts”** means the Gas Act 1986 as amended by the Gas Act 1995;

**“Independent Network”** means any supply network where the Supply Point is not directly connected to the National Transmission System;

**“Industry Agreements”** means:

- a) The Uniform Network Code;
- b) the Short Form Code;
- c) the Independent Gas Transporters’ (IGT) Codes;
- d) our Licence(s);
- e) the Act; and
- f) any other code, agreement or legally binding obligation imposed on us, or into which it is, or becomes necessary, for us to enter in order to supply gas;

**“Initial Consumption Forecast”** means your first set of best estimates for the consumption of gas as set out in the Quotation Document (and in respect of flexible products, also in Table A of the Product Appendix), which may be either annual or monthly figures, or cover some other specified time period (but excluding the impact of Supply Points added or removed after the original Start Date) which shall comprise forecast information either provided by you to us or our historical consumption data, or the AQ of the Supply Point(s);

**“Invoice(s)”** means Consumption Invoices, Reconciliation Invoices or invoices in respect of any other Charges due to us from you pursuant to this Supply Contract;

**“Invoicing Date”** has the meaning given in the Quotation Document;

**“Invoicing Period”** has the meaning given in the Quotation Document;

**“Irrevocable Offer”** means your irrevocable offer to enter into the Supply Contract by your signing and dating of the Quotation Document;

**“Isolate”** means the securing of a Meter Point so that gas cannot be off-taken from the Transportation System at that point and **“Isolation”** shall be construed accordingly;

**“Licence”** means any Transporter’s Licence, Shipper’s Licence or Supplier’s Licence and **“Licensed”** shall be construed accordingly;

**“Mark to Market Loss”** means the negative difference between the wholesale market price at the date we were contractually obliged or entitled to purchase the gas and the wholesale market price on the date we were contractually obliged or entitled to sell it back to market, after adding all transaction fees and other costs directly associated with the sell back;

**“Mark to Market Gain”** means the positive difference between the wholesale market price at the date we were contractually obliged or entitled to purchase the gas and the wholesale market price on the date we were contractually obliged or entitled to sell it back to the wholesale market after deducting all transaction fees and other costs directly associated with the sell back;

**“Meter Point”** has the meaning given to such expression in the Industry Agreements (including both Daily Metered (DM) and Non-Daily Metered (NDM) Meter Points) and identified by a specific Meter Point Reference Number (MPRN) in the Quotation Document;

**“Metering Costs”** means a component (if any) of the Charges, comprising any charges relating to the installation, provision and maintenance of your Equipment in situ at the Supply Point on the Signature Date;

**“Meter Reading Costs”** means the cost of reading and obtaining Consumption Data from your Equipment;

**“Micro-Business Consumer”** means a company supplied or requiring to be supplied with gas or electricity at non-domestic sites which has any or all of the following; (i) an annual consumption of electricity of not more than 100,000 kWh; or (ii) an annual consumption of gas of not more than 293,000 kWh; or (iii) fewer than ten (10) employees (or their full time equivalent) and an annual turnover or annual balance sheet total not exceeding €2 million;

**“Micro-Business Terms”** means the additional terms and conditions which will be appended to this Supply Contract and applicable to the Supply where you are a Micro-Business Consumer;

**“Offtake Point”** means the outlet of any control valve at any Meter Point;

**“Parties”** means both us and you and **“Party”** is either one of us;

**“Payment Date”** means unless amended in accordance with Clauses 10.9.8 and 10.9.9 (a) in relation to Consumption Invoices, the date as defined in the Quotation Document and (b) in relation to all other Invoices, the date as specified on the Invoice;

**“Payment Method”** means the method of payment set out on your Quotation Document;

**“Pipeline System Emergency”** means where circumstances apply which are not deemed to be a Force Majeure event and are such that in the opinion of the Transporter:-

- (a) the safety of the Transportation System is significantly at risk;
- (b) the safe conveyance of gas by that Transportation System is significantly at risk; or

- (c) gas conveyed by that Transportation System is at such a pressure, or of such a quality, as to constitute, when supplied to premises, a danger to life or property;

and that opinion is not manifestly unreasonable.

**“Product Appendix”** means the appendix detailing the product type, purchasing and sell back mechanism and forming part of the Supply Contract;

**“Quotation Document”** means the document detailing the Supply Point details, Initial Consumption Forecast, and the Charges and forming part of the Supply Contract;

**“Reconciliation Invoice”** means an invoice debiting or crediting your account as a result of a calculation by us of the difference between; (a) the Charges which ought to have been levied; and (b) the actual Charges that were levied during the Reconciliation Period;

**“Reconciliation Period”** means the period to which a Reconciliation Invoice refers, the beginning and end dates of which are stated on the Reconciliation Invoice;

**“Reduced Consumption Periods”** means periods of reduced consumption due to:

- (a) carrying out of maintenance, repair, replacement or extension works including extensions to increase capacity to the Transportation System;
- (b) the exercise of a right or the discharge of a duty under Schedule 2B of the Act or Licences granted under the Act by us or the Transporter involving the Isolation or Disconnection of a Meter or Supply Point or refusal to make gas available at an Offtake Point;
- (c) the pressure of gas immediately downstream of an Offtake Point exceeding such pressure as is applicable pursuant to Section 16 of the Act;
- (d) difficulties encountered by the Transporter in balancing the quantities of gas entering or leaving the Transportation System;
- (e) failure in a Supply Point until the Service Provider effects repair;
- (f) things done or not done in accordance with the provisions of the Industry Agreements or this Supply Contract by the Transporter or us in dealing with emergencies in connection with the Transportation System; or
- (g) any Interruptions (where Section B of these Terms and Conditions applies).

**“Registered Supplier”** means a gas supplier licensed under the Act and registered with the Authority;

**“Relevant Transfer Date”** means:

- (a) the day after the day on which you enter into an gas supply contract (including if relevant this Supply Contract) with any Registered Supplier; or
- (b) if after entering into an gas supply contract there is a period of time within which you may decide not to proceed with the contract (a “Cooling Off Period”), the earlier of –
  - (i) the day after the day on which that Cooling Off Period ends;
  - (ii) fourteen (14) days after the day on which you entered into a new contract.For the avoidance of doubt there is no such Cooling Off Period applicable to this Supply Contract and your entry into this Supply Contract is set out at Clause 3.1.

**“Revised Consumption Forecast”** means your (or pursuant to Clause 4.5, our) on-going written best estimate of your projected future gas consumption for each remaining period (i.e. day/month) after the date of such forecast, estimating gas consumption for each such future period of the Supply Period on an on-going basis (and including for the avoidance of doubt, the impact of any Supply Points added or removed after the Start Date) and which we agree to use to purchase and/or sellback any gas;

**“Security Deposit”** means at our option either (i) a cash amount, together with you and us entering into a deposit agreement in a form acceptable to us; or (ii) a letter of credit from such financial institution and in such form of wording as is acceptable to us; or (iii) such other form of security as we may request or accept, including but not limited to any form of third party guarantee or indemnity; or (iv) a pre-payment or other form of payment plan and in the case of (i) to (iii) inclusive, in an amount which we reasonably consider would constitute the Charges for four (4) calendar months calculated on a reasonable estimate of consumption;

**“Service Providers”** means any meter reading agent, data collector, meter operator, meter asset maintainer, meter asset provider, data aggregator, automated meter reader providers and any other third party appointed to act for or on behalf of either Party;

**“Side Letter”** means any side letter forming part of this Supply Contract, or subsequently agreed in writing between the Parties to be part of this Supply Contract and setting out certain matters which vary, amend or are supplementary to the terms of the Supply Contract;

**“Signature Date”** means the date on which we accept your Irrevocable Offer to enter into the Supply Contract by our signing and dating of the Quotation Document;

**“Start Date”** means the date on which you intend to start to receive a supply of gas from us on the terms of the Supply Contract as set out in the Quotation Document;

**“Supply”** means the provision of gas by us to you under this Supply Contract;

“**Supply Contract**” means the Quotation Document and where applicable the Product Appendix and any Side Letter(s), Framework Agreement(s) and Variation or Amendment Agreements, together with these Terms and Conditions;

“**Supply Period**” means for a Supply Point, the period beginning on the Start Date and ending on the Termination Date;

“**Supply Point**” means a combination of one or more Meter Points at the same location as set out in the Quotation Document;

“**Supply Point Capacity**” means the maximum volume, expressed in kWh, that each Supply Point can accept by way of a volume of gas at any given time and as set out in the Quotation Document;

“**Termination Date**” means (a) the End Date; (b) or such earlier other date where the Supply Contract is terminated in accordance with these Terms and Conditions;

“**Terms and Conditions**” means the terms and conditions set out in this document;

“**Transporter**” means either National Grid plc, the Distribution Network Owners (DNOs), the Independent Gas Transporters (IGTs), any Service Provider and/or any other person or body Licensed to transport gas and which transports gas in connection with this Supply Contract;

“**Transportation Costs**” means a component of the Charges, comprising those charges payable to the Transporter for (a) capacity, commodity and customer charges, (b) Meter Reading Costs and (c) variable throughput charges as applicable from time to time under the Industry Agreements and specified as “Included in the Unit Rate”, “Fixed” or “Pass-Through” in the Quotation Document;

“**Transportation System**” means any pipeline and equipment system or network through which gas is transported by a Transporter, including the National Transmission System and any Independent Network;

“**Unidentified Gas Cost**” means the costs that are levied on us in respect of gas which is taken off the Transportation System and not directly attributed to or paid for by any specific shipper;

“**Unit Rate**” means as set out in the Quotation Document;

“**Variation or Amendment Agreement**” means any variation or amendment agreement entered into by the Parties during the Supply Period which varies or amends the terms of the Supply Contract;

“**Website**” means our website at [www.gdfsuezuk.com](http://www.gdfsuezuk.com) or [www.gdfsuez-energy.co.uk](http://www.gdfsuez-energy.co.uk) or such other address as we notify you of in writing and in each case as updated or amended from time to time;

“**We**” or “**us**” means GDF SUEZ Sales Limited (Registered No. 3814495) whose registered offices are at No 1 Leeds, 26 Whitehall Road, Leeds, West Yorkshire LS12 1BE;

“**Working Day**” means Monday to Friday inclusive but excluding days identified as Bank Holidays in England;

“**you**” or “**your**” means the person or organisation who makes the Irrevocable Offer as identified as the “Customer” in the Quotation Document.

## 2 Interpretation

- 2.1 References to statutory or regulatory provisions or Industry Agreements include any amendments, variations, consolidations or replacements, regulations made there under, re-instatements, or re-enactments made from time to time.
- 2.2 The expression “including” shall be construed without limitation.
- 2.3 Words and expressions used in these Terms and Conditions but not defined in Clause 1 are instead defined in the Quotation Document or Product Appendix.
- 2.4 Words and expressions used in this Supply Contract but not defined shall where appropriate be construed:
  - 2.4.1 as they are defined in the Act or in the Industry Agreements; or
  - 2.4.2 in accordance with their wider usage in the gas industry generally.
- 2.5 Should any conflict arise between the content of this Supply Contract and the Industry Agreements then the Industry Agreements shall take precedence.
- 2.6 Where there is more than one Supply Point in the Quotation Document, then reference to a Supply Point is deemed to mean all the Supply Points each on an individual basis and the Supply Points shall have a combined Initial Consumption Forecast, Revised Consumption Forecast and Consumption Threshold.
- 2.7 The Supply Contract documents shall be construed in the following order of priority in the event of a conflict of terms:
  - 2.7.1 Any Variation or Amendment agreement; then
  - 2.7.2 any Side Letter; then
  - 2.7.3 any Micro-Business terms; then
  - 2.7.4 any Framework Agreement; then
  - 2.7.5 any Product Appendix; then

- 2.7.6 the Quotation Document, then
- 2.7.7 these Terms and Conditions.
- 2.8 Unless the context otherwise requires words in the singular shall include the plural and words in the plural shall include the singular.

### 3 Contract Period

#### Commencement of Supply

- 3.1 We shall accept your Irrevocable Offer and this Supply Contract shall become binding on both Parties in relation to all Supply Points on the Signature Date.

#### Transfer of Supply from your previous Supplier

- 3.2 We shall use our reasonable endeavours to become the Registered Supplier to the Meter Points on the Start Date and in any event, we shall co-operate with your existing supplier to enable the transfer to be completed within thirty (30) Working Days of the Relevant Transfer Date unless:
- 3.2.1 you request that the transfer takes place over a longer time period; or
- 3.2.2 one or more of the conditions in Clause 3.2.3 applies.
- 3.2.3 The conditions applicable to Clause 3.2.2 are that, on or after the Relevant Transfer Date:
- (a) We do not have all of the information required in order to complete the transfer and:
    - (i) we have taken all reasonable steps to obtain the missing information from you and you have not provided that information, or the information you provided is incorrect; and
    - (ii) that information is not readily available to us from another source; or
  - (b) we are prevented from completing the transfer in accordance with Clause 3.2 due to any other circumstance caused by you; or
  - (c) you are receiving gas supply by a distribution exemption holder as defined in section 48 of the Act and
    - (i) you or the supply exemption holder has required a physical connection to be made in accordance with paragraph 7 of Schedule 2AA of the Act and that physical connection has not yet been made; or
    - (ii) the distribution exemption holder has specified, in a notice under paragraph 1(6)(a)(i) of Schedule 2AA of the Act, a metering arrangement which it considers would be required for access to be given to us and that metering arrangement is not yet in place; or
  - (d) your existing supplier enters an objection under the customer transfer process in accordance with the Industry Agreements to prevent us from registering the Supply Point. In this case the thirty (30) Working Day period will commence when the objection is removed.
- 3.2.4 We will not charge you for the transfer of the Supply Point from your existing supplier. However, and for the avoidance of doubt, all other Charges, including any Security Deposit due under the terms of this Supply Contract will be and will remain, due and payable on the transfer of the Supply Points to us.

#### Conditions of Supply at the Start Date

- 3.3 Subject to Clauses 9, 10 and 12, we shall use our reasonable endeavours to provide a supply of gas to all Meter Points for which we become the Registered Supplier in accordance with this Supply Contract for the Supply Period.
- 3.4 Our supply to you pursuant to Clause 3.3 is conditional upon:-
- 3.4.1 us having in place for the full duration of the Supply Period, a credit insurance policy on terms which are acceptable to us, in relation to your account with us; or
- 3.4.2 where we are unable to obtain and/or retain an acceptable credit insurance policy, as detailed in Clause 3.4.1 above, you providing a Security Deposit within ten (10) Working Days of receiving our request for the same pursuant to this clause.
- 3.5 Where you fail to consume gas from any or all Meter Points from the Start Date then we shall be entitled to recover from you and shall be indemnified by you for all costs and losses incurred by us as a result of such failure for the period up to the date on which the consumption commences, or the Termination Date, whichever is the sooner, and in either case such costs to include any Mark to Market Loss.
- 3.6 You shall indemnify us for all costs, losses and expenses we reasonably incur where the Supply Contract includes Supply Points which you provided to us in error including administration costs and any Mark to Market Loss.

#### Charges after Termination or Expiry

- 3.7 After the Termination Date and until such time as another Registered Supplier has been registered as the supplier to your Meter Point(s), you recognise and agree that any consumption shall be automatically charged at our Default Contract Rate without any further notification to you from us, but to all other extents the terms of this Supply Contract, including the recovery by us of all Transportation Costs, Meter Reading Costs and Metering Costs, shall continue in full force and effect. In addition, (and without prejudice to our rights under Clause 10.9) we shall be entitled, at our discretion, to do any one, or a combination of the following:
- 3.7.1 vary the Invoicing Period, the Invoicing Date and the Payment Date from those specified in the Quotation Document without further notification to you from us. Such variation may include invoicing you in advance of delivery based on your estimated consumption;
- 3.7.2 revoke or vary the terms of any applicable Product Appendix;

- 3.7.3 request a Security Deposit be provided within ten (10) Working Days of such a request; and/or
  - 3.7.4 arrange for the Meter Points (or any one or combination of the Meter Points) to be Isolated, Disconnected and/or removed immediately (and we shall be entitled to exercise Access Rights in doing so) together with being entitled to recover from you the costs incurred in such actions.
  - 3.7.5 To the extent that gas has already been forward purchased for delivery beyond the Termination Date we shall be entitled to sell the additional gas on the wholesale market.
- 3.8 Where the Supply Contract contains a Product Appendix with a sellback provision, any sellback required under clause 3.7.5 shall, if possible, be dealt with and invoiced in accordance with the terms of the Product Appendix.

#### Transfer of Supply

- 3.9 Where you wish to transfer any Supply Point we may enter an objection under the customer transfer process in accordance with the Industry Agreements to prevent an alternative supplier from registering the Supply Point if:
- 3.9.1 you arrange to transfer to an alternative Registered Supplier before the Termination Date; and/or
  - 3.9.2 there are any overdue Invoices not paid by their Payment Date (including Reconciliation Invoices and Invoices for interest) such Invoices not being subject to a bona fide dispute; and/or
  - 3.9.3 there is a co-operative agreement with the new Registered Supplier that they have registered the Meter Point in error; and/or
  - 3.9.4 an alternative supplier attempts to register a single Meter Point where we are the Registered Supplier for one or more related Meter Points.
- 3.10 Where we do not enter an objection, or where we do enter an objection when that objection is removed, we shall co-operate with any new supplier to enable the transfer to be completed within twenty one (21) days of the Relevant Transfer Date unless:
- 3.10.1 you request that the transfer takes place over a longer time period; or
  - 3.10.2 you withdraw your request for a transfer by notifying the new supplier that you do not wish to switch to that supplier; or
  - 3.10.3 one or more of the conditions in Clause 3.11 applies.
- 3.11 The conditions applicable to Clause 3.10.3 are that, on or after the Relevant Transfer Date:
- (a) we do not have all of the information required in order to complete the transfer and:
    - (i) we have taken all reasonable steps to obtain the missing information from you and you have not provided that information, or the information you provided is incorrect; and
    - (ii) that information is not readily available to us from another source; or
  - (b) we are prevented from completing the transfer in accordance with Clause 3.10 due to any other circumstance caused by you.
- 3.12 We will not charge you for the transfer of the Supply Point to a new Registered Supplier. However, and for the avoidance of doubt, all other Charges, including if relevant any termination payment due under the terms of the Supply Contract will be, and will remain, due and payable on the transfer of the Supply Point.

## 4 Your Consumption Information and other obligations

- 4.1 You agree that:
- 4.1.1 you will provide us with a true and accurate opening and closing meter reading (which is acceptable for Settlement purposes) for each Meter Point in the Supply Contract as at the Start Date and any added or removed during the Supply Period;
  - 4.1.2 if you do not provide us with such opening and/or closing meter reads we shall be entitled to rely on estimated reads and to treat them as actual reads for the purposes of calculating your first and last Consumption Invoices and any associated Reconciliation Invoices;
  - 4.1.3 title and risk in the gas shall pass to you at the Offtake Point;
  - 4.1.4 the quantity of gas in kWh supplied under this Supply Contract shall be calculated in accordance with section 12 of the Act;
  - 4.1.5 the volume of gas supplied shall be measured and corrected for pressure and temperature in accordance with the Gas (Calculation of Thermal Energy) Regulations 1996;
  - 4.1.6 at least thirty (30) Working Days before the Start Date and thereafter on an on-going basis you will provide us with an up to date emergency telephone number clearly identifying personnel who can be contacted at any time for the purposes of reporting or facilitating a response to any emergency at any Supply Point;
  - 4.1.7 you shall indemnify us against all costs and losses we incur should your Service Providers, in our reasonable opinion, fail to provide their services adequately. In such circumstances we may de-appoint that Service Provider and appoint another ourselves and you shall indemnify us for all costs and losses we incur in doing so;
  - 4.1.8 you shall use gas supplied under this Supply Contract so that it does not interfere with the efficient and safe supply of gas to other consumers;
  - 4.1.9 the Supply shall be for your consumption during the Supply Period and that you shall not on-supply any third party without our prior written consent; and
  - 4.1.10 you have informed us and shall continue to inform us immediately if you have or use or intend to have or use any on-site generation facilities or are party to any ancillary service or commercial demand-side agreements, at any time during the

Supply Period.

### Supply Point Capacity and Annual Quantity

- 4.2 In relation to each Supply Point:
- 4.2.1 we are entitled to rely upon the Supply Point Capacity and Annual Quantity to calculate the Charges and the Initial Consumption Forecast;
  - 4.2.2 you will notify us as soon as possible where you know or believe any Supply Point Capacity and/or Annual Quantity is incorrect;
  - 4.2.3 you will notify us where you wish any Supply Point Capacity and/or Annual Quantity to be varied and we will use our reasonable endeavours to arrange the variation, which will always be subject to confirmation by the relevant Transporter and/or other relevant third party organisation that such variation to Supply Point Capacity and/or Annual Quantity is agreed; and
  - 4.2.4 you shall provide us with sufficient data as specified in the Industry Agreements to allow us to agree a Supply Point Capacity and/or Annual Quantity revision with the Transporter or other relevant third party organisation.
  - 4.2.5 For the avoidance of doubt we shall be entitled but not obliged to set, monitor, notify you, or vary the Supply Point Capacity and/or Annual Quantity.

### Consumption Forecasts

- 4.3 You agree that the Initial Consumption Forecast and, in relation to the period after their provision, any Revised Consumption Forecasts provided pursuant to Clauses 4 and 5, shall be contractually binding in relation to the consumption tolerance mechanism in Clause 6.20.
- 4.4 You will provide a Revised Consumption Forecast as soon as possible on each occasion that you become aware of any likely change of more than 10% to your consumption in any month compared to your Initial Consumption Forecast, or any previous Revised Consumption Forecast (including periods of zero consumption for any Meter Point under this Supply Contract).
- 4.5 Where we reasonably consider the Initial Consumption Forecast or any Revised Consumption Forecast to be materially inaccurate, then we shall be entitled to substitute the Initial Consumption Forecast (or, if any, the most recent Revised Consumption Forecast) with a reasonable Revised Consumption Forecast on your behalf. At your request we shall provide you with reasonable evidence to demonstrate why the Initial Consumption Forecast or any Revised Consumption Forecast is materially inaccurate and to support our Revised Consumption Forecast.
- 4.6 Where you or we provide a Revised Consumption Forecast pursuant Clauses 4.4 and 4.5 above then:
- 4.6.1 the Initial Consumption Forecast (or, if any, the most recent Revised Consumption Forecast) shall be substituted with the new Revised Consumption Forecast with effect from the date of the provision of the Revised Consumption Forecast and that Revised Consumption Forecast shall be effective only for the period following the date it is provided;
  - 4.6.2 where there is a reduction in the Initial Consumption Forecast (or, if any, the most recent Revised Consumption Forecast), to the extent that gas has already been forward purchased in excess of any Revised Consumption Forecast, we shall be entitled to sell the additional gas on the wholesale market;
  - 4.6.3 where the Supply Contract does not contain a Product Appendix and the sell back pursuant to Clause 4.6.2 results in a Mark to Market Loss, we shall provide you with a separate Invoice for that amount, such Invoice to be payable fourteen (14) days after the date of Invoice; and
  - 4.6.4 Where there is an increase in the Initial Consumption Forecast (or, if any, the most recent Revised Consumption Forecast) and additional gas is purchased, then we shall be entitled to vary the Charges by a reasonable amount to reflect any resulting changes in the cost of the Supply.

### National Transmission System Exit Capacity Charges

- 4.7 Where any of your Supply Points are connected to the National Transportation System, we will, upon becoming the Registered Supplier, also become liable for the enduring capacity for that Supply Point. This status will require us to confirm the exit capacity for that Supply Point to National Grid on an annual or other basis as legislation and regulation requires.
- 4.8 In order to enable us to confirm the exit capacity required you will use your best endeavours to provide us with such information as we reasonably require from you. The information will be provided in good faith and you will notify us as soon as you become aware of changes, errors or omissions in the information given.
- 4.9 The Capacity Charges relating to the Supply Points connected to the National Transmission System, will be passed through to you as set out in the Quotation Document during the Supply Period. Where we remain liable for the Capacity Charges arising after or applying in respect of any period beyond the End Date of this Supply Contract and, we will invoice you for these costs on a pass through basis.
- 4.10 You acknowledge and agree that you shall be liable for and will pay the Capacity Charges payable by you in accordance with the terms of the Supply Contract both before and after termination until such time as the enduring capacity obligation has transferred to your new Registered Supplier.
- 4.11 Following termination of the Supply Contract both Parties will use their reasonable endeavours and will work together in good faith, to arrange for the transfer of the enduring capacity obligation to your new Registered Supplier.

## 5 Supply Points



## New Supply Points

- 5.1 We may, in our absolute discretion, agree in writing to your written request that Supply Points in addition to those in the Quotation Document are added to the Supply Contract.
- 5.2 The Charges for any new Supply Points that we agree to add to the Supply Contract will be as set out in an additional Quotation Document. In all other respects the terms of the Supply Contract shall apply.
- 5.3 Any Supply Points added during the Supply Period which were not included in the first Quotation Document shall be subject to a separate calculation under Clause 6.20.

## Removal of Supply Points

- 5.4 If you wish to remove a Supply Point, from this Supply Contract you shall:
  - 5.4.1 provide us with at least thirty (30) days' notice in writing; and
  - 5.4.2 provide us with written details of the meter reading at the date of removal (having regard to the timescales in Clause 5.4.1), valid contact details for the new or remaining lessee, lessor, owner or occupier of the Supply Point.
- 5.5 Notwithstanding the notice requirements in Clause 5.4 above, this Supply Contract shall remain in full force and effect with respect to all Supply Points and you shall remain liable for payment of all invoices applicable to all Supply Points, unless and until we have provided our written consent to such removal, such consent not to be unreasonably withheld or delayed.
- 5.6 Where we agree to the removal of a Supply Point from the Supply Contract:
  - 5.6.1 the Initial Consumption Forecast (or, if any, the most recent Revised Consumption Forecast) shall be substituted with a new Revised Consumption Forecast with effect from the date of the Supply Point removal and that Revised Consumption Forecast shall be effective only for the period following the date it is provided;
  - 5.6.2 to the extent that gas has already been forward purchased in excess of any Revised Consumption Forecast, we shall be entitled to sell the additional gas on the wholesale market;
  - 5.6.3 where the Supply Contract contains a Product Appendix with a sellback provision, any sellback required under clause 5.6.2 shall be dealt with and invoiced in accordance with the terms of the Product Appendix; and
  - 5.6.4 where the Supply Contract does not contain a Product Appendix and the sell back pursuant to Clause 5.6.2 results in a Mark to Market Loss, we shall provide you with a separate invoice for that amount, which invoice will be payable within fourteen (14) days of the Invoicing Date.

## Discontinuance of Supply

- 5.7 If you wish to discontinue consumption of gas at any Supply Point during the term of this Supply Contract whilst you continue to lease, occupy or own such Supply Point then, until such time as the relevant Meter Point(s) is/are Disconnected and the Equipment is removed you shall indemnify us in respect of:
  - 5.7.1 all on-going Transportation Costs, Metering Costs, Meter Reading Costs and other ancillary costs associated with such Supply Point, including, those accruing to the Supply Point after Disconnection or Isolation;
  - 5.7.2 all Isolation and Disconnection costs; and
  - 5.7.3 all meter removal costs.
- 5.8 Where you discontinue the consumption of gas at any Supply Point, we shall be entitled to sell any gas forward purchased by us for delivery to that Supply Point on the wholesale market.
- 5.9 Where the Supply Contract contains a Product Appendix with a sellback provision, any sellback required under Clause 5.8 shall, where your Product Appendix permits, be dealt with and invoiced in accordance with the terms of the Product Appendix.
- 5.10 Where the Supply Contract does not contain a Product Appendix and the sell back pursuant to Clause 5.8 results in a Mark to Market Loss, we shall provide you with a separate invoice for that amount, which invoice will be payable fourteen (14) days after the date of invoice.
- 5.11 You shall not be entitled to remove a Supply Point from this Supply Contract where such Supply Point is the only remaining Supply Point under this Supply Contract.
- 5.12 If gas is not used at any Supply Point for a consecutive period in excess of six (6) calendar months we may, at our sole discretion, arrange for the Disconnection or Isolation and/or removal of the Equipment at that Supply Point and you shall indemnify us for a reasonable administration fee and all costs incurred by such Disconnection or Isolation and/or removal.

## Domestic Sites

- 5.13 You acknowledge and accept that we do not have a licence to supply Domestic Sites and that, as such;
  - 5.13.1 we will not accept the addition of a Domestic Site to the Supply Contract under Clause 5.1; and
  - 5.13.2 we will not accept the removal of a Supply Point from the Supply Contract under Clause 5.4 if the site would thereafter be for domestic use and/or if the new owner, occupier or lessee would fall within the definition of a Domestic Site; and
  - 5.13.3 we will not accept any change to the use and/or ownership of any Supply Point included in the Supply Contract to a Domestic

Site; and

- 5.13.4 in the case of Clauses 5.13.2 and 5.13.3, you will remain liable for the Charges and all and any other costs associated with that Supply Point as if it were and remained in your commercial and/or industrial use and ownership.

#### Micro-Business Consumer

- 5.14 We have taken reasonable steps to identify whether your business is a Micro-Business Consumer on the Signature Date, based on the information you have provided to us.
- 5.15 If during the Supply Period, your business changes such that you become a Micro-Business Consumer or you hold any information which we may deem relevant for the purposes of determining whether you are a Micro-Business Consumer, you shall notify us immediately.

## 6 Charges and Payment

- 6.1 In consideration of the Supply in accordance with this Supply Contract you shall pay us all Charges detailed in the Invoices without set off, deduction or counterclaim using the Payment Method and by the Payment Date.
- 6.2 We may at any time without notice to you, set off any of your liabilities to any of our Associated Companies against any liability of us to you, whether either liability is present or future, liquidated or unliquidated and whether or not either liability exists under this Supply Contract. Any exercise by us of our rights under this Clause 6.2 shall not limit or affect any other rights or remedies available to us under this Supply Contract or otherwise.
- 6.3 We shall be entitled to charge you an administration fee in respect of each Invoice if payment is not made by the Payment Method, including for the avoidance of doubt, where you make payment by credit card.
- 6.4 We shall use our reasonable endeavours to send you a Consumption Invoice by the Invoicing Date. In the event that a Consumption Invoice is not posted to you or sent to you by other customary means by the Invoicing Date, the Payment Date will be extended by the number of days such Invoice is posted or sent late.
- 6.5 We may (both before and after judgment) charge you interest at 4% above the Bank of England's base lending rate from time to time, compounded daily, on any overdue amount.
- 6.6 Where you have paid three (3) or more Invoices late during the Supply Period then we shall be entitled to Invoice you in advance for the last month of consumption of the Supply Period based on our estimate of consumption.
- 6.7 We reserve the right to charge you an administration fee for each copy invoice you request.
- 6.8 Should you wish a purchase order number to be added to an Invoice, you must notify us by email to the email address detailed in Clause 11.10 no later than thirty (30) days ahead of the Invoice Date, failing which no purchase order number will be added to that Invoice. We shall be entitled to charge you an administration fee for the addition of a purchase order number to an Invoice.
- 6.9 If any overdue amount is the subject of a bona fide dispute, then you shall still pay any undisputed portion of an Invoice by the Payment Date.
- 6.10 We will use reasonable endeavours to invoice you for your consumption using validated Consumption Data. However, where we receive non-validated, incomplete or, in our reasonable opinion, inaccurate Consumption Data we will be entitled to charge you on the basis of our estimate of consumption. We will be entitled but not obliged to issue Reconciliation Invoices at any time after receipt of validated Consumption Data, whether during or after the end of the Supply Period. For the avoidance of doubt, this Clause 6.10 survives termination of the Supply Contract.
- 6.11 If at any time during or after the Supply Period, one or more elements of the Charges are found to have been incorrectly calculated or wrongly omitted or included in any invoice, then we shall be entitled but not obliged to issue a Reconciliation Invoice in respect of the same. For the avoidance of doubt, this Clause 6.11 survives termination of the Supply Contract.
- 6.12 In addition to the provisions of Clause 6.11, we are entitled but not obliged to issue Reconciliation Invoices during or after the Supply Period in respect of any or all elements of the Charges which are set out as "Pass-Through" in the Quotation Document. For Supply Periods greater than twelve (12) months, we will usually issue Reconciliation Invoices annually but may do so more or less frequently.
- 6.13 You are entitled to request a Reconciliation Invoice of the Charges, or any element of them, provided that:
- 6.13.1 there have been no previous Reconciliation Invoices issued in respect of that element of the Charges for the period in question within the last (12) months; and
- 6.13.2 such request is received within twelve (12) months of (a) the Termination Date; or (b) the date of the last Invoice; or (c) our receipt of fully validated Consumption Data, whichever is the later.
- For the avoidance of doubt, this Clause 6.13 survives termination of the Supply Contract.
- 6.14 We shall be entitled to vary any component of the Charges by a reasonable and proportionate amount at any time during the Supply Period, so as to minimise the amount of any Reconciliation Invoices. At your request we shall provide reasonable evidence to demonstrate why the Charges have been varied and to support our substitute Charges.
- 6.15 If over the whole of the Supply Period, the total invoiced consumption is outside the Consumption Threshold, we may recover additional Transportation Costs and/or Metering Costs incurred even if Transportation Costs and/or Metering Costs are "included in the Unit Rate" or "Fixed" in the Quotation Document.

- 6.16 In addition to the Metering Costs you shall be liable to pay any costs incurred by us where any Equipment not in situ at the Signature Date is fitted at a Supply Point, including but not limited to installation and rental charges.
- 6.17 Transportation Costs are still payable by you for any Meter Points which remain connected even if they are not consuming gas and regardless of whether the relevant costs are referred to as "included in the Unit Rate", "Fixed" or "Pass-Through" in the Quotation Document. Metering Costs and Meter Reading Costs are still payable by you for any meters which remain on site, even if they are not connected and regardless of whether the relevant costs are referred to as "included in the Unit Rate", "Fixed" or "Pass-Through" in the Quotation Document.
- 6.18 We shall be entitled to recover from you and you shall indemnify us in respect of a proportionate amount of any additional costs, charges, expenses or liabilities ("**Costs**") which are incurred by us in supplying the gas or are levied against us including, but not limited to, where such Costs arise in the following circumstances:
- 6.18.1 from the imposition, or variation in the rate, of any energy-related tax, levy or duty;
  - 6.18.2 as a result of; (a) any imposition, revision, variation, amendment or change in interpretation, of any statute, statutory instrument, regulation, law, directive ("**Legislation**") or the Industry Agreements; (b) any new Legislation or new Industry Agreements; or (c) any decision, direction, order or interpretation of Legislation or the Industry Agreements by the Authority or any other relevant regulatory body;
  - 6.18.3 as a result of us fulfilling our or your obligations or, your failure to comply with your obligations, under any of the Industry Agreements in relation to safety issues or investigations in connection with any of the Supply Points;
  - 6.18.4 any Supply Point being (or becoming known to be) reclassified or re-designated as daily metered;
  - 6.18.5 where any supply point ratchet charges arise from the Supply Point Capacity being exceeded or exit capacity overrun charges arise, which shall be payable monthly in arrears by you upon us notifying you of those charges arising;
  - 6.18.6 where the demand pattern of an NDM Supply Point is inconsistent with the End User Category assigned by the Transporter such that the Transporter assigns a different End User Category;
  - 6.18.7 where our costs increase due to changes to the method for apportioning the NDM error across different categories of consumer;
  - 6.18.8 costs incurred in programming inaccurate Equipment, or default by the Service Provider;
  - 6.18.9 where you fail to provide such data referred to in Clause 4.2.4 or the Transporter rejects the data you have provided, we reserve the right to alter the Charges to reflect any resulting increased costs;
  - 6.18.10 as a result of the cost of unidentified gas being passed on to gas suppliers through the Reconciliation by Difference or other mechanism; and
  - 6.18.11 all costs whatsoever incurred by us pursuant to the terms of our Licence.

### Consumption Tolerance

- 6.19 For the purposes of Clauses 6.19, 6.20 and 6.21 the following expressions shall have the following meanings:-
- 6.19.1 Consolidated Consumption Forecast means the Initial Consumption Forecast as replaced by any and all Revised Consumption Forecasts pursuant to Clauses 4 and 5;
  - 6.19.2 Consumption Threshold means the minimum and maximum percentage levels applicable to the Consumption Tolerance Forecast set out in the Quotation Document;
  - 6.19.3 Consumption Tolerance Forecast means the Consolidated Consumption Forecast apportioned monthly excluding, for the avoidance of doubt, the impact of any Supply Points added or removed during the Supply Period;
  - 6.19.4 Invoiced Consumption means the volume of gas invoiced in each Invoicing Period;
  - 6.19.5 Market Price means the unweighted arithmetic average of daily System Average Prices (as defined in the Industry Agreements) during the Invoicing Period;
  - 6.19.6 Minimum Consumption Threshold and Maximum Consumption Threshold shall mean respectively the minimum and maximum volumes of gas calculated as percentages of the Consolidated Consumption Forecast in accordance with the Consumption Threshold; and
  - 6.19.7 Reference Price means the monthly wholesale market price that was used by us for the calculation of the Charges.
- 6.20 At the end of the Supply Period or, for contracts greater than twelve (12) months, on an annual basis, we will be entitled to compare monthly Invoiced Consumption against the Consumption Tolerance Forecast apportioned monthly (defined below). If over each annual period the total Invoiced Consumption is outside the Consumption Threshold (calculated to three (3) decimal places), we shall be entitled to recover the additional costs of Supply calculated by reference to differences in volume and price as follows for each month:
- 6.20.1 where the Invoiced Consumption is less than the Minimum Consumption Threshold, the additional Costs of Supply shall be calculated as follows:-  

$$(\text{Invoiced Consumption} - \text{Minimum Consumption Threshold}) \times (\text{Market Price} - \text{Reference Price}) = \text{the additional costs of Supply payable by you};$$
  - 6.20.2 where the Invoice Consumption exceeds the Maximum Consumption Threshold, the additional Costs of Supply shall be

calculated as follows:-

$(\text{Invoiced Consumption} - \text{Maximum Consumption Threshold}) \times (\text{Market Price} - \text{Reference Price}) = \text{the additional costs of Supply payable by you.}$

- 6.21 You agree that the additional costs of Supply calculated with reference to the Consumption Tolerance calculation set out above is a genuine pre-estimate of the loss we are likely to suffer in circumstances where your consumption is outside of the Consumption Threshold.
- 6.22 We will be entitled, where applicable, to include a Charge on each Invoice to reflect the Unidentified Gas Cost. We shall be entitled to issue you with a Reconciliation Invoice from time to time, whether during or after the Supply Period, where the actual costs we have incurred on your behalf differ from those we have included on your Invoice over the applicable Reconciliation Period.

## 7 Meters and Equipment

### Ownership of Equipment

- 7.1 Unless otherwise agreed with you in writing, or provided for in the Supply Contract, we do not own and are not responsible for the installation, operation, maintenance, renewal, Isolation, Disconnection or removal of any Equipment at your Supply Points.
- 7.2 Equipment may be installed up to the Offtake Point, which shall remain the property of the Transporter or the Service Provider.

### Maintenance of Equipment

- 7.3 You shall pay agreed contributions towards installation, maintenance, inspection, operation and renewal of all or part of the Equipment belonging to the Transporter or Service Provider without being able to claim any rights of ownership over that Equipment.
- 7.4 We shall, at your cost, make any necessary arrangements with the Transporter or any relevant Service Provider for the installation, operation, maintenance, renewal, Isolation, Disconnection or removal of the Equipment.
- 7.5 You shall ensure that all Equipment installed at the Supply Points is kept in proper order for registering the quantity of gas supplied to each Supply Point.
- 7.6 You warrant that meters installed at the Supply Points are stamped in accordance with Section 17 of the Act. You shall inform us immediately if you know, or have reason to believe, that any meters are no longer stamped.
- 7.7 We shall use our reasonable endeavours to make arrangements for the reading of your meters in accordance with the reading cycles.
- 7.8 Subject only to Clauses 4.1.1 and 4.1.2, the register of a Meter Point shall be conclusive evidence of the quantity of gas supplied through that meter.
- 7.9 You shall ensure that there is a contract between you and appropriate Service Providers for each Supply Point and where no such contract is in place then we shall be entitled to appoint an alternative Service Provider and recover from you all costs and expenses incurred by us as a result of doing so.

### Examination and Removal of Equipment

- 7.10 We are entitled to require that equipment be removed, repaired or replaced where we consider it to be damaged, incorrectly recording data, past its certification date or incorrect for the product structure and you shall notify us immediately where you become aware of or suspect any such circumstances.
- 7.11 If, in accordance with the relevant provisions of the Act, either Party requires a meter examiner to examine any Meter Point provided for the purposes of ascertaining the quantity of gas supplied under this Supply Contract, then where the meter is found to register inaccurately to a degree exceeding that permitted by the Act:
- 7.11.1 the Meter Point shall be assumed to have registered inaccurately to the degrees so found since the penultimate date on which (otherwise than in connection with the examination) the Meter Point was read or some other date as determined for this purpose under the Act except in a case where it is proved to have begun to register inaccurately as described on some later date; and
- 7.11.2 the amount of allowance to be made to, or the surcharge to be made on you as a result of the inaccurate registration shall be paid to or by you within fifteen (15) days of notification of the adjustment.
- 7.12 If a Meter Point is installed, removed for examination, maintained, inspected or renewed, any expenses we incur in removing, examining and re-installing the meter or substituting meter, shall be paid by you upon receipt of Invoice.
- 7.13 We shall give to you reasonable notice (except in the case of emergencies when notice will not be required) and you shall allow us to exercise the Access Rights without charge for the purposes of installation, maintenance, operation, inspection or renewal of the Equipment or for the purposes of Isolating or Disconnecting the supply of gas to the Supply Point where, in our or the Transporter's reasonable opinion, it is necessary to do so for the purpose of averting danger of damage to life and/or property.

### Service Providers

- 7.14 You shall comply with and act in accordance with best industry practice in relation to the appointment of Service Providers and shall also comply with the RGMA (Review of Gas Meter Arrangements), including but not limited to the requirement to provide file flows and information relating to any changes of Equipment.
- 7.15 Where you wish to use a Service Provider other than those which we recommend then you shall notify us of any such preferred Service Provider(s) which you wish to use and you shall indemnify us in respect of all costs which arise from your choice of Service Provider.

- 7.16 You are responsible for maintaining the Equipment and shall ensure insofar as it is required by law that the Equipment is;
  - 7.16.1 appropriate;
  - 7.16.2 meets all the appropriate standards; and
  - 7.16.3 is kept safe and secure, including from weather damage and third party interference.
- 7.17 We shall not be responsible for checking the suitability of Equipment. You will pay for any work deemed necessary and undertaken by us to ensure that the Equipment is appropriate and meets the appropriate standards.
- 7.18 You shall provide protection for the Transporter's Equipment against damage by weather, physical damage and third party interference.
- 7.19 You shall provide to the Transporter, free of charge, supplies of power, water and drainage as are required for the Transporter's Equipment.
- 7.20 Where the meter status or classification changes during the Supply Period then we shall be entitled to recover any costs which arise as a result of such changes.
- 7.21 You shall report any escape or suspected escape of gas to the Transporter's emergency service.

#### Automated Meter Reading

- 7.22 In accordance with the standard conditions of our gas supply licence, all Supply Points consuming above 25,000 therms annually must have an AMR enabled Meter Point by April 2014.
- 7.23 You accept and agree that if your meters are not compliant with this legislation we will be entitled to exercise the Access Rights to your site in order to install an AMR device to your Meter Point at your cost.
- 7.24 We confirm that the AMR device installed will be compliant with the legislation and will be installed by a fully qualified engineer.
- 7.25 If a meter exchange is required, we will inform you and obtain your approval to carry out the work at your cost in advance.
- 7.26 Any costs associated with the installation of the AMR device and/or meter exchange will be subject to your prior agreement, such agreement not to be unreasonably withheld or delayed.
- 7.27 Where available, we may, at our discretion, use Consumption Data collected via any AMR system installed at any of your Meter Points for the purposes of calculating the Charges.

## 8 Liability

- 8.1 Subject to the terms of Clause 8.3, the liability of either Party to the other in connection with this Supply Contract shall not exceed £1,000,000 (one million pounds) per incident or series of related incidents.
- 8.2 Subject to the terms of Clause 8.3, and unless otherwise expressly provided for elsewhere in the Supply Contract, neither Party will be liable to the other for:
  - 8.2.1 Economic Loss;
  - 8.2.2 any indirect or consequential loss;
  - 8.2.3 loss resulting from the liability of either Party to any other person; or
  - 8.2.4 any action, inaction or default by the Transporter or a Service Provider.
- 8.3 Nothing in this Supply Contract shall exclude or limit the liability of either Party to the other for:
  - 8.3.1 death or personal injury resulting from negligence;
  - 8.3.2 any obligation owed by either Party under the Act to the extent only that the Act expressly prevents any limitation of liability for failure to perform that obligation;
  - 8.3.3 any obligation to pay monies due under this Supply Contract or under any liability arising from any indemnity contained in this Supply Contract including for the avoidance of doubt and without limitation, any Mark to Market Loss or Mark to Market Gain; or
  - 8.3.4 its fraud, or fraudulent misrepresentation, misstatement, act or omission.
- 8.4 You acknowledge and agree that, where applicable to any elements of the Charges, the prevailing time limits in the relevant Industry Agreements shall apply to any claim you make from us and any consequential liability on our part to you in respect of any reconciliations for industry or other charges previously levied by us on you and whether as a charge (pass through or otherwise), a reconciliation or a refund in respect of any charges from the Transporter or other body. Subject to Clause 8.3, nothing in this Clause 8 shall operate to restrict this position.
- 8.5 We shall pay to you any monies we receive from the Transporter which are specifically paid to us by the Transporter for the purpose of refunding you pursuant to the terms of the Industry Agreements.
- 8.6 Where any of the Industry Agreements require the Transporter and/or us to do anything, which may affect the Supply to the Supply

Points, neither we nor the Transporter shall have any liability for any loss or damage suffered by you for complying with that requirement.

## 9 Force Majeure

- 9.1 Neither Party shall be liable to the other for delays or failures to fulfil all or a material part of its obligations under this Supply Contract if they are directly due to Force Majeure and provided that a Party seeking to claim that a Force Majeure has occurred shall notify the other Party within twenty four (24) hours of the Force Majeure occurring such notification to include its nature, expected duration, the measures they are taking to remedy and/or mitigate the effects and when its effect ceases or is likely to cease.
- 9.2 Force Majeure shall not relieve any Party from its obligations to indemnify or make payment under this Supply Contract.
- 9.3 During the continuance of a Force Majeure:
- 9.3.1 you may obtain temporary supplies of gas from an alternative source or supplier; and
- 9.3.2 we shall not charge you for the Commodity Charges in respect of that period; and
- 9.3.3 we shall be entitled to recover from you recover all costs from you which are levied on us by a third party in relation to your Supply, including for the avoidance of doubt Transportation Costs, Meter Reading Costs and Metering Costs arising in respect of that period.
- 9.4 Where an event of Force Majeure subsists for a period exceeding thirty (30) days then either Party shall have the right to terminate the Supply Contract immediately on the provision of written notice to the other.
- 9.5 Upon termination in accordance with Clause 9.4 we shall be entitled to sell back any undelivered gas and invoice or credit you respectively for any Mark to Market Loss or Mark to Market Gain arising.
- 9.6 The Mark to Market Loss or Mark to Market Gain shall be included in the final Invoice and paid by the paying Party to the other within fourteen (14) days of the trading position being settled in the market for the relevant period.
- 9.7 The Party claiming to be affected by Force Majeure shall take all reasonable measures to mitigate and/or remedy the effects of the Force Majeure as soon as possible

## 10 Suspension, Termination and Breach

### Suspension

- 10.1 Notwithstanding any provision of this Supply Contract, for the duration of a Pipeline System Emergency we shall be entitled, at the request of the Transporter or any person authorised under Section 7A(2) of the Act to make arrangements for the conveyance of gas to the Supply Points, to discontinue the supply of gas to any Supply Point.
- 10.2 Notwithstanding any other provision of this Supply Contract, if we are given a direction under Section 2(b)(i) of the Energy Act 1976 prohibiting or restricting the supply of gas, then, for the purposes of or in connection with the direction, we may discontinue or restrict the supply of gas to the Supply Points and you shall comply with such directions until further notice from us.
- 10.3 You shall comply with any directions made by us or the Transporter for the purposes of:
- 10.3.1 averting or reducing danger to life or property; or
- 10.3.2 securing against or reducing any risk to the safety of the Transportation System.
- 10.4 You shall notify us of the content of any directions received from the Transporter requiring you to reduce or cease gas consumption.
- 10.5 Where you fail to comply with Clauses 10.3 and 10.4 you shall indemnify us in respect of all costs, losses or expenses incurred by us as a result of such breach.
- 10.6 We shall not be liable to you for any loss or damage arising from:
- 10.6.1 any Isolation, Disconnection, discontinuance or restriction of supply by (a) us acting in accordance with Clauses 10.1 to 10.4 inclusive, unless this action is unlawful; or (b) by the Transporter; or
- 10.6.2 any action taken by you in consequence of any direction given or request made by us or the Transporter, in any of the circumstances contemplated in Clauses 10.1 to 10.4 inclusive.

### Your right to terminate for our breach

- 10.7 You may terminate this Supply Contract upon written notice to us where:
- 10.7.1 we are in material breach of any of our obligations under this Supply Contract, such breach has a material adverse impact on your business and within fourteen (14) days following receipt of written notice from you of such breach we have not remedied the breach; or
- 10.7.2 we become Insolvent (as such term is defined in Section 123 of the Insolvency Act 1986) or a receiver, administrator, administrative receiver or liquidator is, or applies to be, appointed over any of our assets or we enter into any arrangement with our creditors.

### Our right to terminate for your breach

- 10.8 You shall be in breach of this Supply Contract and we shall be entitled to all or any combination of the remedies set out in Clause 10.9, at our absolute discretion, in the following circumstances:
- 10.8.1 Notwithstanding the specific circumstances set out below, if you are in repeated or material breach of any of your obligations under this Supply Contract (which shall include non-payment of a material sum of money) and within fourteen (14) days of

- being given notice in writing from us of such breach you have not remedied the breach;
- 10.8.2 you default in paying amounts due to us by the Payment Date three (3) times in any twelve (12) month period;
- 10.8.3 if the credit insurance policy, Security Deposit, or other form of credit support obtained on or before the Start Date, or put in place during the Supply Period is withdrawn, reduced, amended, shortened, the terms are breached, or conditions which are unacceptable to us are applied, or if the credit standing, rating or scoring given to you by our credit insurer or such other credit reference agency we use from time to time to assess your creditworthiness is withdrawn, reduced, shortened or falls below a level which is acceptable to us;
- 10.8.4 if we have been unable to register any Supply Point within forty (40) Working Days of the Start Date caused by you providing incorrect data;
- 10.8.5 you become unable to pay your debts (as such term is defined in Section 123 of the Insolvency Act 1986) or a receiver, administrator, administrative receiver or liquidator is, or applies to be, appointed over any of your assets or you enter into any arrangement with your creditors, or where any such appointment or arrangement terminates or ceases;
- 10.8.6 you unlawfully interfere with any Equipment or Meter Point; or
- 10.8.7 the Transporter is entitled to and/or has already acted pursuant to powers under the Act to discontinue the transportation of gas to you at any of the Supply Points.

### Consequences of Breach

- 10.9 Where you are in breach of the Supply Contract in accordance with any of the provisions of Clause 10.8 then we shall be entitled to all or any combination of the following remedies:
- 10.9.1 terminate this Supply Contract for all or the affected Supply Points under the Supply Contract immediately on written notice to you;
- 10.9.2 arrange for the Supply Points (or any one or combination of the Supply Points) to be Isolated, Disconnected and removed (and we shall be entitled to exercise Access Rights in doing so) and while any breach persists we shall be entitled to Isolated and/or Disconnect Supply Points on more than one occasion, together with being entitled to recover from you the costs incurred in such Disconnections;
- 10.9.3 sell any gas forward purchased for delivery to any or all of the Supply Points after the date of the breach on the wholesale market;
- 10.9.4 recover from you and be indemnified by you for all costs and losses incurred as a result of such breach including any Mark to Market Loss;
- 10.9.5 invoke the take or compensate mechanism set out in Clause 6.18 but on a monthly basis, so that such calculation is not over the whole of the Supply Period or each annual period but is instead on the basis of monthly Invoiced Consumption outside the Consumption Threshold for both the period of the Supply Contract prior to the breach and thereafter on an on-going monthly basis;
- 10.9.6 vary the Product Appendix so as to mitigate our risk, including but not limited to by, restricting your right to purchase forward until such time as any breach is remedied;
- 10.9.7 increase our Charges by a reasonable and proportionate amount (which may include placing you on our Default Contract Rates) to reflect any increased risk and/or unavoidable costs to us;
- 10.9.8 invoice you on a weekly basis and the Invoicing Date shall automatically become the weekly anniversary of the date on which we issue a first invoice to you and the Payment Date shall be automatically amended to the [date seven (7) days after the Invoicing Date];
- 10.9.9 invoice you in advance of your consumption, such invoice to be based on our estimate of your gas consumption over a full month in advance of the start of the applicable consumption period to which that invoice relates. For the avoidance of doubt, we will then have the right to reconcile that invoice to your actual consumption of gas following that consumption period; and
- 10.9.10 request a Security Deposit to be provided within ten (10) Working Days of such a request.
- 10.10 Where you fail to comply with Clause 4.1.7 you shall indemnify us in respect of all costs, losses or expenses incurred by us as a result of such breach.
- 10.11 The termination of this Supply Contract and/or the termination of the Supply to any Supply Point shall not affect any rights or obligations which may have accrued to either Party or the Transporter prior to the Termination Date.

### Removal of Authority to Supply

- 10.12 In the following circumstances;
- 10.12.1 any authorisation or consent granted pursuant to the provisions of the Act or the Industry Agreements terminates or is withdrawn or is amended in a manner that materially affects our ability to perform our obligations; or
- 10.12.2 any relevant Licence, permission or consent, which permits us to supply you with gas, terminates or is revoked;
- 10.13 we shall be entitled at our discretion to:
- 10.13.1 amend this Supply Contract to the extent possible and/or necessary to accommodate the change; or
- 10.13.2 terminate the Supply Contract.
- 10.14 Following termination in the circumstances set out in Clauses 10.12 and 10.13;
- 10.14.1 you shall use all reasonable endeavours to transfer your supply to an alternative Registered Supplier as soon as practicable; and
- 10.14.2 we will be entitled to sell all forward purchased gas on the wholesale market and invoice or credit you respectively for any Mark to Market Loss or Mark to Market Gain arising as a result of such sell back.

- 10.14.3 The Mark to Market Loss or Gain detailed in Clause 10.14.2 shall be included in the final Invoice and paid by the paying Party to the other within fourteen (14) days of the trading position being settled in the market.

## Resumption of Supply

- 10.15 Where a Supply Point has been Isolated or Disconnected, we will resume any Supply provided you pay us in advance for (i) all reconnection charges; or (ii) and any other costs which we notify you will be reasonably incurred by us and all other conditions are met and (iii) outstanding sums are paid in full.

## 11 General Terms

- 11.1 We may keep a record of e-mails and any messages you or we send and record telephone conversations.
- 11.2 The Parties shall not, at any time during or after the Supply Period, divulge to any person other than any of its or their respective advisers, officers or employees who require the same to enable them to properly carry out their duties, any of the contents of this Supply Contract or any other confidential information, trade secrets or information whose disclosure is likely to adversely affect a Party's commercial or economic interests, without the written consent of the other Party other than to the extent:
- 11.2.1 required by law except where disclosure is in response to a request for information made to you under either the Freedom of Information Act 2000 ("FOI") or the Environmental Information Regulations 2004 ("EIR") (an "information request"); or
- 11.2.2 it is already in the public domain other than by reason of a breach of contract.
- 11.3 If you receive an information request and your response might include disclosing any of the details of this Supply Contract or any of our information without prejudice to Clause 11.2, you shall prior to disclosure notify us immediately and apply all relevant exemptions permissible under the FOI or the EIR (as applicable) to resist disclosure.
- 11.4 If the Euro is introduced as mandatory legal tender in the United Kingdom, then all invoicing and payment shall be amended to Euros in line with government timetables and Sterling values will be converted using the prescribed rates.
- 11.5 Neither Party will assign or hold on trust for any person (other than a 100% owned subsidiary) the whole or any part of this Supply Contract without the prior written consent of the other and; such consent not to be unreasonably withheld or delayed.
- 11.6 Subject to the provisions of Clause 12, this Supply Contract does not create any right enforceable by any person who is not a Party.
- 11.7 No waiver by a Party of any default by the other shall operate or be binding unless made in writing.
- 11.8 If any provision of this Supply Contract shall be declared invalid, unenforceable or illegal it shall not prejudice or affect the remaining provisions of this Supply Contract, which shall continue in full force and effect.
- 11.9 Unless otherwise set out in the Product Appendix, notice or communication required under this Supply Contract from you to us shall be by any one or more of the following methods and shall be deemed effective as set out below. Failure to comply with this clause shall make any attempted written contact invalid:
- 11.9.1 first class mail to our registered office at GDF SUEZ Sales Limited, No 1 Leeds, 26 Whitehall Road, Leeds LS12 1BE and for commercial notices marked for the attention of "Contract Management" and for Legal notices marked for "Head of Legal Services" and in each case notice is deemed effective two (2) Working Days after despatch;
- 11.9.2 recorded delivery to our registered office address detailed at Clause 11.9.1 above and for commercial notices, marked for the attention of "Contract Management" and for Legal notices marked for the attention of "Head of Legal Services". In both cases, notice is deemed effective two (2) Working Days after despatch; or
- 11.9.3 email to the following email address - <mailto:contract.management@gdfsuezuk.com> - notice is deemed effective two (2) Working Days after despatch.
- 11.10 The Supply Contract constitutes the entire agreement between both Parties. We and you hereby acknowledge and agree that this Supply Contract has not been entered into in reliance on any representation, warranty or other undertaking and neither Party has any right or remedy in relation to any such representation, warranty, or other undertaking.
- 11.11 The rights and remedies provided for by this Supply Contract are exhaustive, and exclude and replace all substantive (but not procedural) contractual rights or remedies expressed or implied by law.
- 11.12 This Supply Contract shall be construed and governed by the laws of England and subject to the exclusive jurisdiction of the English Courts.
- 11.13 If any Party wishes to pursue a dispute with the other then where mediation is agreed the procedures of the Centre for Dispute Resolution ("CEDR") shall apply or where arbitration is agreed, the Rules of the London Court of Arbitration shall apply.
- 11.14 We may issue a revised Supply Contract to you to the extent reasonably required to take into account any changes to the Acts, Industry Agreements or other statutory, regulatory, or common law provisions which are applicable to the gas supply industry as a whole.
- 11.15 Any Supply Point that falls within an Independent Transportation Network and any terms and definitions contained within this Supply Contract relating to such Supply Point shall be dealt with in accordance with the relevant Industry Agreements.



- 11.16 Both Parties accept the terms of and agree that they are bound by, and will comply with, the terms of all relevant legislation including the Bribery Act 2010.

## Section B – Terms of Interruptible Supply

Where any of your Supply Points are designated as “Interruptible” on or after 1 October 2011, as indicated in the Quotation Document then the following supplementary terms and conditions shall apply in addition to Clauses 1 to 11 inclusive.

### 12.1 Interruptible Supply Definitions

- 12.1 The following definitions shall apply to the provisions of Clause 12:

“**Interruptible Period**” means the period of time during which a supply of gas to a Supply Point is designated as an Interruptible Supply of gas by the Transporter.

“**Interruptible Supply of Gas**” means a supply of gas to a Supply Point that in respect of an Interruptible Period is designated an Interruptible Supply by the Transporter.

“**Interruptible Supply Point**” means the outlet of your control valves for Supply Points deemed by the Transporter to be interruptible.

“**Interruption**” means the interruption of the offtake of gas from an Interruptible Supply Point as required by the Transporter for operational purposes in accordance with the management of the gas network in accordance with Clause 13 and reference to “**Interrupt**” or “**Interruptible**” shall be construed accordingly.

“**Interruption Notice**” means a notice from the Transporter either directly or via us, to you instructing you to stop taking gas or in certain circumstances reducing your taking of gas at the Supply Point. We will provide notice as soon as practicable following receipt of the notification from the Transporter.

### 12.2 Interruptible Supply

- 12.2.1 The Interruptible Supply at the Supply Point shall be subject to Interruption in accordance with the tender submitted by you and accepted by the Transporter.
- 12.2.2 For the avoidance of doubt, where Supply Point Capacity increases at a Supply Point following the acceptance of a tender outlined at Clause 12.2.1 above, such additional capacity shall be classified as firm until a tender is accepted by the Transporter.
- 12.2.3 Where Interruptible Supply Point Capacity decreases or that Interruptible Supply Point is subsequently re-classified as firm, we shall be entitled to vary Transportation Costs to reflect the resulting increase to our costs.
- 12.2.4 You may request that an Interruptible Supply Point is reclassified as firm at any time after the Transporter has accepted a tender for Interruptible Supply and where such reclassification is granted, the terms of Clause 12.2.3 shall apply.
- 12.2.5 You shall provide us with details of a manned 24 hour telephone contact and an email address and fax number for receipt of Interruption Notices in respect of the Supply Point and you shall immediately notify us of any changes to these details.
- 12.2.6 In the event that the AQ at the Supply Point is reduced the Transporter may give notice that the Interruptible Supply of gas is to be re-designated as firm.
- 12.2.7 You may be required to provide the Transporter with your best estimate of your gas consumption during the Interruption Period and, where you fail to do so, the Transporter may suspend payment of any option fees due to you and/or re-designate any Interruptible Supply Point as firm.
- 12.2.8 Where a Supply Point is Interruptible, then:
- 12.2.8.1 the Transporter will issue an Interruption Notice in the event of a requirement to Interrupt the Supply;
  - 12.2.8.2 upon receipt of an Interruption Notice you shall comply with the Interruption Notice and discontinue offtake in accordance with the terms of the Interruption Notice. Any period of Interruption on any Day (as specified in the Interruption Notice) shall cause that Day to be designated as a Day of Interruption;
  - 12.2.8.3 if your Interruptible Supply Point is covered by a Firm Allowance (as defined in the Industry Agreements) you shall ensure that no gas exceeding the Firm Allowance shall be taken within an Interruption Period;
  - 12.2.8.4 you may only resume taking a supply or a supply in excess of the Firm Allowance (and in accordance with this Supply Contract) from the time and Day specified in a notice to them from us;
  - 12.2.8.5 you shall not use any other supply of gas to substitute the Interrupted supply under this Clause 12.2.1; and
  - 12.2.8.6 you will reimburse us for all costs and charges imposed on us by the Transporter as a result of a failure by you to comply with

an Interruption Notice.

12.2.9 If you fail to comply with an Interruption Notice then we shall be entitled to the remedies set out in Clause 10.9.

### **Interruptible Supply – Emergency**

12.3 In the event of a gas supply emergency or potential emergency, including without limitation an event giving rise to a significant risk of reduction in the gas network, Supply Points with Interruptible Supply will be instructed to stop taking gas immediately. You shall turn off all Equipment at each Supply Point immediately should you receive an emergency Interruption Notice in relation to the Supply Point.