

	<b>Agreement</b>	
	for the supply of energy and additional services	
	(1) TotalEnergies Gas & Power Limited (2) Home Office - The Secretary of State for the Home Department	
	Dated: 1 <sup>st</sup> April 2024	
	Draft v1: 2024	

## **Contents**

<b>Clause</b>	<b>Page No</b>
<b>PART 1 – COMMERCIAL TERMS AND CONDITIONS FOR THE SUPPLY OF NATURAL GAS</b>	<b>4</b>
<b>1 COMMERCIAL TERMS</b>	<b>4</b>
<b>PART 2 – GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF NATURAL GAS</b>	<b>7</b>
<b>1 CONDITIONS PRECEDENT</b>	<b>7</b>
<b>2 REGISTRATION</b>	<b>7</b>
<b>3 SUPPLY OF GAS PRODUCTS</b>	<b>8</b>
<b>4 SUPPLIER OBLIGATIONS</b>	<b>12</b>
<b>5 CUSTOMER OBLIGATIONS</b>	<b>16</b>
<b>6 METERING EQUIPMENT</b>	<b>16</b>
<b>7 METER READING</b>	<b>17</b>
<b>8 INVOICE AMOUNT AND CHARGES</b>	<b>18</b>
<b>9 INVOICING AND PAYMENT</b>	<b>19</b>
<b>10 DATA PROVISION</b>	<b>22</b>
<b>11 INTERRUPTION</b>	<b>23</b>
<b>12 REPRESENTATIONS AND WARRANTIES</b>	<b>23</b>
<b>13 FORCE MAJEURE EVENTS</b>	<b>24</b>
<b>14 EARLY TERMINATION</b>	<b>25</b>
<b>15 LIABILITY, INDEMNITIES AND INSURANCE</b>	<b>28</b>
<b>16 TERM AND RENEWAL</b>	<b>29</b>
<b>17 OBJECTIONS</b>	<b>29</b>
<b>19 CONFIDENTIALITY</b>	<b>32</b>
<b>20 FREEDOM OF INFORMATION</b>	<b>33</b>
<b>21 GOVERNING LAW AND DISPUTE RESOLUTION</b>	<b>34</b>
<b>22 SUBCONTRACTING AND ASSIGNMENT</b>	<b>37</b>

<b>23 MISCELLANEOUS PROVISIONS</b>	<b>37</b>
<b>24 RECOVERY OF SUMS DUE</b>	<b>38</b>
<b>25 NOTICES</b>	<b>38</b>
<b>26 CORRUPT GIFTS AND PAYMENTS OF COMMISSION</b>	<b>39</b>
<b>27 OFFICIAL SECRETS</b>	<b>40</b>
<b>28 DISCRIMINATION</b>	<b>41</b>
<b>29 DISABILITY EQUALITY</b>	<b>41</b>
<b>30 RACE EQUALITY</b>	<b>41</b>
<b>31 PREVENTION OF FRAUD AND CONFLICTS OF INTEREST</b>	<b>41</b>
<b>32 SUSTAINABLE PROCUREMENT</b>	<b>42</b>
<b>33 CONTRACTOR STATUS</b>	<b>42</b>
<b>34 ACTS BY THE PARTIES</b>	<b>43</b>

## **Appendices**

<b>A</b>	<b>Official Secrets T&amp;Cs</b>	<b>57</b>
<b>B</b>	<b>Processing Personal Data</b>	<b>60</b>
<b>C</b>	<b>Tax</b>	<b>62</b>
<b>D</b>	<b>Excerpt from HMRC's "Test for Tax Non-Compliance"</b>	<b>68</b>
<b>E</b>	<b>Confidentiality Declaration</b>	<b>70</b>

**This Agreement** is made on 1<sup>st</sup> April 2024

**Between:**

- (1) TotalEnergies Gas & Power Limited a company registered in England and Wales under company number 02172239, Bridge Gate, 55 - 57 High Street, Redhill, Surrey, RH1 1RX (the **Supplier**); and
- (2) **Home Office - The Secretary of State for the Home Department** of 2 Marsham Street, London, SW1P 4DF (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 through the use of the Framework Agreement with the Supplier which regulates, inter alia, the aggregation of the 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 Services. Such supply shall be for the commercial purposes of managing 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 as defined in the Framework Agreement.

**Whereby it is agreed as follows:**

**Part 1 – Commercial terms and conditions for the supply of natural gas**

**1 Commercial Terms**

- 1.1 The Supplier shall supply the Customer with natural gas, and the Customer shall take delivery of such natural gas, on the following terms:

Contract Period	01/04/2024 - 31/03/2030
Customer's Bank Accounts	REDACTED UNDER FOIA 43 COMMERCIAL INTERESTS
Customer's Notice Address	Home Office - The Secretary of State for the Home Department, 2 Marsham Street, London, SW1P 4DF

<b>Details of the Meter Asset Manager</b>	various
<b>Details of the Meter Reading Agency</b>	various
<b>Earliest Supply Start Date</b>	1 <sup>st</sup> April 2024
<b>Invoice format</b>	<p>The Customer may, subject to applicable Laws, elect any one or more of the following formats for receiving invoices:</p> <ul style="list-style-type: none"> <li>(a) hard copy;</li> <li>(b) e-billing;</li> <li>(c) EDI; or</li> <li>(d) other format agreed between the Parties</li> </ul>
<b>Payment terms</b>	<p>The Customer may elect to pay invoices issued under this Agreement:</p> <ul style="list-style-type: none"> <li>(a) 7 days following receipt of invoice;</li> <li>(b) 10 days following receipt of invoice;</li> <li>(c) 14 days following receipt of invoice;</li> <li>(d) 21 days following receipt of invoice;</li> <li>(e) 28 days following receipt of invoice; or</li> <li>(f) 30 days following receipt of invoice.</li> </ul>
<b>Payment method</b>	<p>The Customer may elect any one of the following payment methods:</p> <ul style="list-style-type: none"> <li>a) Direct debit;</li> <li>b) BACS</li> <li>c) GPC Card</li> </ul>
<b>Supplier's Bank Accounts</b>	<b>REDACTED UNDER FOIA 43 COMMERCIAL INTERESTS</b>
<b>Supplier's Notice Address</b>	Bridge Gate, 55 - 57 High Street, Redhill, Surrey, RH1 1RX

<b>Supplies of Renewable Gas</b>	N/A
<b>Supply Points</b>	as per existing portfolio, or through TotalEnergies Gas & Power Limited supplier portal and web address

## Part 2 – General terms and conditions for the Supply of natural gas

### 1 Conditions precedent

- 1.1 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:
  - 1.1.1 the Supply Point being connected to a Transporter's network such that natural gas can flow directly or indirectly from it;
  - 1.1.2 Agents being appointed for each Metering Point;
  - 1.1.3 the Supplier holding a Licence to supply natural gas in accordance with the Act; and
  - 1.1.4 the Supplier being Registered for each Supply Point.
- 1.2 The Customer shall use its reasonable endeavours to ensure that the condition in Clause 1.1.1 is satisfied by the Earliest Supply Start Date for each Supply Point and that it remains satisfied until this Agreement ends.
- 1.3 The Supplier shall use its reasonable endeavours to ensure that the conditions in Clauses 1.1.3 and 1.1.4 are satisfied by the Earliest Supply Start Date for each Supply Point and that they remain satisfied until this Agreement ends.
- 1.4 The Responsible Party shall use reasonable endeavours to ensure that the condition in Clause 1.1.2 is satisfied by the Earliest Supply Start Date for each Supply Point.
- 1.5 The condition in Clause 1.1.1 is for the benefit of, and may only be waived or deferred by, the Supplier. The conditions in Clauses 1.1.3 and 1.1.4 are for the benefit of, and may only be waived or deferred by, the Customer. The condition in Clause 1.1.2 is for the benefit of, and may only be waived or deferred by, the Party which is not the Responsible Party.
- 1.6 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 Clause 1.5).

### 2 Registration

- 2.1 For the purposes of the Registration the Supplier shall use the Managed Registration Information which the Authority provides to it in accordance with Schedule 5 of the Framework Agreement.
- 2.2 If the Supplier fails to Register itself in respect of a Supply Point in accordance with the requirements of the Framework Agreement:
  - 2.2.1 the Supplier shall notify the Customer within two (2) Working Days of the failure;
  - 2.2.2 the Supplier shall use all reasonable endeavours to Register itself in respect of the relevant Supply Point as soon as reasonably practicable;
  - 2.2.3 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; and

- 2.2.4 subject to Clause 2.3, and to the extent that any such failure is attributable to any act or omission of the Supplier, the Supplier shall compensate the Customer in accordance with the provisions of the Framework Agreement.
- 2.3 The Supplier shall not be liable pursuant to Clause 2.2.4 to the extent that such failed Registration is caused by a Transfer Objection submitted by the Incumbent Supplier.
- 2.4 Without prejudice to the generality of Clause 2.2.2 the Supplier shall use all reasonable endeavours to resolve any Transfer Objection as soon as reasonably practicable and the Parties shall cooperate and do such things as are necessary to resolve such Transfer Objection and minimise any delays to the Actual Supply Start Date for the relevant Supply Point.
- 2.5 If a Transfer Objection is made by the Customer's Incumbent Supplier and is not resolved within five (5) Working Days then either Party may terminate this Agreement in respect of the affected Supply Point.
- 2.6 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.

### 3 Supply of Gas Products

#### Nominated Consumption for DM Supply Meter Points

- 3.1 As soon as reasonably practicable and, in any event, prior to the start of each Supply Year, the Customer shall in respect of each of its 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 Supply Year and its likely consumption profile for each Month during that Supply Year (**Nominated Consumption**). The Customer shall ensure that the Nominated Consumption is, as far as is reasonably practicable, based on the Historic Demand of natural gas supplied to the DM Supply Meter Point and takes into account any planned shutdowns of the DM Supply Meter Point in the relevant Supply Year. The Customer agrees that the Nominated Consumption may only deviate from Historic Demand on reasonable grounds and that the Customer shall provide the Supplier with details of any such reasonable grounds for such deviation with its notification of Nominated Consumption pursuant to this Clause 3.1.
- 3.2 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 in respect of a Supply Year, including any planned shutdowns of a DM Supply Meter Point, from time to time (**Revised Nominated Consumption**). For the purposes of this Clause 3.2, a **material change** to the Nominated Consumption in respect of a Supply 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 Clause 3.1. In the case of the Day-Ahead Product only, the Customer shall provide where relevant any Revised Nominated Consumption data in respect of each Day of the Supply Month by 15.30 hours on the immediately preceding Day.
- 3.3 Subject to Clause 3.4, the Parties acknowledge and agree that the Customer shall have complied with its obligation under Clause 3.1 in respect of a Supply Year if the Nominated Consumption for that Supply Year is agreed between the Authority and the Supplier in accordance with Schedule 3 of the Framework Agreement and the Authority has consulted the Customer as part of that process.
- 3.4 If, after the Nominated Consumption for a Supply Year has been agreed between the Authority and the Supplier in accordance with Clause 3.3, the Customer provides to the Supplier a Revised Nominated Consumption then the Customer's nomination shall prevail over the Nominated Consumption agreed between the Authority and the Supplier as described in Clause 3.3 except in the event of manifest error.



- 3.5 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.
- 3.6 For the purposes of Clause 3.5, 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.

### **Delivery to Supply Points**

- 3.7 The Supplier shall:
- 3.7.1 have the exclusive right to supply, and shall supply or procure supply to, the relevant Supply Points for NDM and DM Supply Meter Points the Nominated Consumption or the Revised Nominated Consumption (as the case may be) **(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
  - 3.7.2 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.
- 3.8 The Customer shall only accept delivery of natural gas up to the Maximum Consumption of each Supply Point from the Supplier. In addition, for DM Supply Meter Points the Nominated Consumption or Revised Nominated Consumption (as the case may be) may not exceed the Maximum Consumption in respect of the relevant Supply Points for each Supply Year.
- 3.9 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 or Industry Documents (provided the Supplier is not in breach of the Framework Agreement) or system security, load management or demand control, provided further that:
- 3.9.1 if the suspension or Isolation of Supply is arranged by the Supplier, the Supplier shall give notice to the Customer and the Authority, 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;
  - 3.9.2 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 it is not also 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
  - 3.9.3 insofar as it is not the sole responsibility of the Transporter under the Act, the Licence and any other Law or Industry Documents, the Supplier shall use reasonable endeavours to procure the remedy of any interruption, reduction or impairment, including by Re-establishing an Isolated Supply Point, as soon as reasonably practicable.

### **Supply Point Withdrawals and additions**

- 3.10 If a Customer:
- 3.10.1 vacates a Site;
  - 3.10.2 sells, assigns, transfers or otherwise disposes of its interest in a Site; or
  - 3.10.3 removes a Supply Point from a Site, or otherwise disconnects a Supply Point from the Transporter's network and/or the Distribution System to which the Supply Point is connected,
- as a result of which the Customer no longer wishes the Supplier to provide the Supply to a Supply Point (**Supply Point Withdrawal**), the Customer shall give the Supplier no less than thirty (30) 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 (subject to the remaining provisions of this Clause 3) such Supply shall cease (**Withdrawal Date**). The Customer shall continue to be liable for Fixed Daily Charges in respect of such a Supply Point until the later of:
- 3.10.4 sixty (60) days after notice is given by the Customer under this Clause 3.10; and
  - 3.10.5 the date the Supply Point Withdrawal becomes effective in accordance with Clause 3.13,
- and accordingly, should the Supply Point Withdrawal not become effective in accordance with Clause 3.13, the Customer will remain liable for the relevant Charges.
- 3.11 Without prejudice to the Supplier's right to lodge a Transfer Objection under Clause 17, where Clause 3.10.2 applies, the Supplier shall cooperate with the new Gas Supplier and do such things as are necessary to enable the Registration of the new Gas Supplier as soon as reasonably practicable.
- 3.12 The Customer shall, within two (2) Working Days of the date a Supply Point Withdrawal becomes effective in accordance with Clause 3.13, provide the Supplier with written notice which shall include:
- 3.12.1 the date when such Supply Point Withdrawal was made;
  - 3.12.2 where Clause 3.10.2 applies, details of the new occupier of the Supply Point (including contact information);
  - 3.12.3 where Clause 3.10.2 applies, the date the new occupier took occupancy of the Supply Point; and
  - 3.12.4 meter readings on the date on which the Supply Point Withdrawal took effect.
- 3.13 For the purposes of Clauses 3.10 and 3.12, a Supply Point Withdrawal shall become effective in relation to a Supply Point on the earlier of the date on which:
- 3.13.1 a third party has entered into an agreement with the Supplier for the supply of natural gas at the relevant Supply Point;
  - 3.13.2 another Gas Supplier has Registered and started supplying natural gas to the relevant Supply Point; or
  - 3.13.3 the Supplier Isolates the relevant Supply Point because no supply of natural gas is required at the relevant Supply Point.
- 3.14 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 3.13:
- 3.14.1 the Supplier shall continue to provide the Supply, and

- 3.14.2 the Customer shall continue to pay the Charges in accordance with this Agreement save that the Charges shall be calculated by reference to the Deemed Contract Rate.
- 3.15 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 2 shall apply to such additional Supply Points.
- 3.16 In the case of DM Supply Meter Points, if a Supply Point is added by the Customer in accordance with Clause 3.15 the Customer shall, as soon as possible after the Supplier's Registration of each additional DM Supply Meter Point, provide the Supplier with the Nominated Consumption for each additional DM Supply Meter Point in respect of the relevant Supply Year in which the Site is added in accordance with Clause 3.1 or, if the relevant DM Supply Meter Point is added after the Price Setting Round Commitment Point in respect of the relevant Supply 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 Clause 3.1 shall apply to the Nominated Consumption provided by the Customer to the Supplier under this Clause 3.16.
- 3.17 If the Customer adds a Supply Point after the Price Setting Round Commitment Point in respect of the relevant Supply Year, then the Customer shall pay the Supplier the Interim Price in respect of Interim Supply to such Supply Points during the Interim Supply Period, including any discount equivalent to those offered by the Supplier to the Customer under Clause 8.3.
- 3.18 The terms of this Agreement in relation to the Supply and Isolation of any of the Supply Points shall arise, subsist and cease individually and separately, so that:
- 3.18.1 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
- 3.18.2 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.

#### **Changes to the Managed Registration Information**

- 3.19 In the case of DM Supply Meter Points, 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, 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.
- 3.20 Subject to Clause 3.22, 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 with regard to a DM Supply Meter Points the Customer's Nominated Consumption or Revised Nominated Consumption or Maximum Consumption, where such alteration is not temporary or transitory.

#### **Additional provisions in relation to Supply**

- 3.21 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.

- 3.22 The characteristics of the Supply shall be subject to such variations as are permitted by the Act.
- 3.23 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 email address 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.
- 3.24 Title and risk in the natural gas shall pass to the Customer at the Metering Points.
- 3.25 The Parties acknowledge that, during a Supply Year, the status of a Supply Point may change from daily metered to non-daily metered or vice versa. Should this occur the Customer will provide to the Supplier any assistance reasonably required by the Supplier in relation to the Supplier's obligations under Schedule 3 to the Framework Agreement.

## **4 Supplier obligations**

### **Account Manager**

- 4.1 The Supplier shall ensure that, in accordance with its obligations under the Framework Agreement, it provides an Account Manager to each Customer who shall:
- 4.1.1 provide a copy of the Customer Welcome Pack (as described in Schedule 6) to the Customer prior to the First Supply Start Date;
  - 4.1.2 hold regular account review meetings with the Customer;
  - 4.1.3 support the Customer by using analysis of the Customer's account to proactively identify potential savings opportunities and improvement initiatives;
  - 4.1.4 support the Customer in their understanding of regulatory, legislative and policy challenges within the energy industry;
  - 4.1.5 where required by the Customer, work with them to agree a communications protocol, which should detail appropriate lines of communication and how such communications will be managed and monitored in order to avoid instances of miscommunication and information loss;
  - 4.1.6 undertake other such activities as to be reasonably expected in order to successfully manage the Customers account.
- 4.2 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.

### **Customer Service Team**

- 4.3 The Supplier shall ensure that, in accordance with its obligations under the Framework Agreement, it has a Customer Service Team which shall:
- 4.3.1 ensure accurate set-up and management of the Customer's account with the Supplier;
  - 4.3.2 ensure invoices are billed and, subject to Clause 9.4, issued in the format requested by the Customer;
  - 4.3.3 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;
  - 4.3.4 attend meetings with the Customer as and when required;

- 4.3.5 prepare all reports, documents and other information required under the Framework Agreement or this Agreement to be provided to the Customer; and
- 4.3.6 deal with Customer Queries and Complaints in accordance with Clauses 4.4 to 4.15.

#### **Customer Queries and Complaints**

- 4.4 If the Supplier receives a query from the Customer it shall:
  - 4.4.1 identify whether the query is:
    - (a) an Invoicing Query;
    - (b) a General Query; or
    - (c) a Complaint.
  - 4.4.2 if the query is:
    - (a) an Invoicing Query or a General Query, resolve the Query in accordance with Clauses 4.5 to 4.7; or
    - (b) a Complaint, resolve the Complaint in accordance with Clauses 4.8 to 4.11.
- 4.5 If the Supplier receives a Query from a Customer, the Supplier shall:
  - 4.5.1 immediately log the Query in its Query Management System;
  - 4.5.2 within two (2) Working Days of receipt of the Query, send the Customer (by email or letter) an acknowledgement of receipt of the Query which specifies what steps the Supplier shall take to resolve the Query;
  - 4.5.3 use all reasonable endeavours to resolve the Query to the Customer's satisfaction within two (2) Working Days of receipt of the Query;
  - 4.5.4 if the Query is an Invoicing Query and if reasonably 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 Clause 4.7;
  - 4.5.5 if the Customer disagrees that the Query is resolved, within two (2) Working Days, provide the Customer with a written response giving the reason why it was not resolved, and a date when full resolution is expected; and
  - 4.5.6 if the Customer disagrees that the Query is resolved within five (5) Working Days of receipt of the Query from the Customer, identify and describe the Query in the relevant reporting document in Schedule 15 -issues register.
- 4.6 If a Query is not resolved to the Customer's satisfaction within the timeframes required by Clause 4.5.6 the Customer may request that the Query be dealt with as a Complaint.
- 4.7 If the Supplier cancels an issued invoice (**Original Invoice**) and re-issues the invoice in accordance with Clause 4.5.4, the Customer shall:
  - 4.7.1 if the re-issued invoice is received by the Customer no fewer 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
  - 4.7.2 if the re-issued invoice is received by the Customer fewer 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.

- 4.8 If the Supplier receives a Complaint from a Customer, the Supplier shall:
- 4.8.1 log the Complaint in its Query Management System;
  - 4.8.2 prioritise resolution of the Complaint;
  - 4.8.3 provide the Customer with a written acknowledgement of the Complaint within one (1) Working Day of receipt of the Complaint;
  - 4.8.4 use all reasonable endeavours to resolve the Complaint to the Customer's satisfaction within ten (10) Working Days of receipt of the Complaint; and
  - 4.8.5 if the Complaint is not resolved to the Customer's satisfaction at the end of the ten (10) Working Day period described in Clause 4.8.4, notify the Customer and inform the Customer of the steps the Supplier shall take to resolve the matter.
- 4.9 If the Complaint is not resolved to the Customer's satisfaction within the timeframe specified in Clause 4.8, 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 Clauses 4.12 to 4.14.
- 4.10 The Supplier shall provide the Customer with regular updates on its resolution of the Complaint throughout the 10 Working Day period referred to in Clause 4.8.4.
- 4.11 The Parties acknowledge and agree that the Supplier shall, in accordance with Schedule 5 of 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 Clauses 4.12 to 4.14.

#### **Escalation procedure**

- 4.12 If:
- 4.12.1 the Customer is not satisfied that a Complaint has been resolved in accordance with Clauses 4.8 to 4.9; or
  - 4.12.2 the Authority is not satisfied that a Complaint has been resolved in accordance with Clauses 4.8 to 4.11 and has required the Supplier to escalate the Complaint,
- then the Customer may, or the Supplier must (as the case may be) 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.
- 4.13 If, following the review of the Complaint by the Head of Sales and Marketing in accordance with Clause 4.12, the Complaint has not been resolved to the Customer's or the Authority's satisfaction (as the case may be), 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 21.
- 4.14 The Parties agree that a determination of the Energy Ombudsman shall be final and binding in respect of the Parties save in the case of fraud or manifest error.
- 4.15 The Parties agree that neither Party shall be entitled to refer a Complaint or a Query to the Dispute resolution process in Clause 21 until the processes set out in Clauses 4.4 to 4.14 have been exhausted in respect of that Query or Complaint.

#### **Customer Survey**

- 4.16 The Supplier shall, at least once each Supply 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:

- 4.16.1 the quality, type and scope of the Supply and associated services provided by the Supplier to the Customer under this Agreement;
  - 4.16.2 any ways in which the Supplier's provision of the Supply and performance of its obligations under this Agreement can be improved; and
  - 4.16.3 any other matters which the Authority notifies the Supplier should be included.
- 4.17 The Customer Survey must 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.
- 4.18 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 set out in this Clause 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.
- 4.19 The Supplier shall provide the results of the Customer Survey to the Authority.

#### **Access**

- 4.20 The Supplier shall comply, and shall ensure that the Supplier Staff (including 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.

#### **Payment of Subcontractors**

- 4.21 The Supplier shall:
- 4.21.1 in relation to any sub-contract entered into in relation to this Agreement or the Supplier's obligations under it, **(Supplier Sub-contract)**, pay all undisputed sums due under the Supplier Sub-contract within 30 (thirty) days of the relevant due date; and
  - 4.21.2 include in each Supplier Sub-contract provisions similar to those referred to in Clause 4.21.1 such that all subcontractors, of any tier in relation to Supplier Sub-contracts, must pay undisputed sums within 30 (thirty) days of the due date.

#### **Sourcing Playbook**

- 4.22 It is the intention of the Government to publish the top KPIs in the majority of public contracts, to help facilitate this, the Customer may publish at least three KPIs and one Social Value KPI for this Agreement chosen at their absolute discretion [●every three/six/twelve months].
- 4.22.1 The Supplier agrees that any KPI which is published in accordance with Clause 4.22 above;
    - (a) is not Confidential Information;
    - (b) is not Commercially Sensitive Information;
    - (c) is not exempt from publication;
    - (d) shall not give rise to any Dispute;
    - (e) shall not give rise to any form of liability on behalf of the Customer or the Authority

- 4.23 To enable the Customer to comply with Clause 4.22 above, the Supplier shall:
- (a) supply any information and or data requested by the Customer within 10 Working Days of any request; and/or
  - (b) supply any reasonable assistance requested by the Customer or the Authority in relation to Clause 4.22 above.
- 4.24 The Customer shall have the discretion to categorise this Agreement as Gold, Silver or Bronze using the Cabinet Office Tiering Tool as a guide.
- 4.25 Where the Customer has specified that this Agreement is a Critical Services Contract (either in the Order Form or via another form of communication to the Supplier) then the Supplier shall comply with Part B of Schedule 17 of the Framework Agreement.
- 4.26 The Supplier shall comply with any request of the Customer to include an Insolvency Continuity Plan into the Supplier's BCDR plan in accordance with Schedule 17 of the Framework Agreement (such request to be made at the Customer's discretion).

## 5 Customer obligations

### Provision of information and access

- 5.1 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. The Customer shall provide and shall notify the Supplier of any changes to such information.
- 5.2 Without prejudice to any statutory power, or other legal right, of entry to the Sites, the Supplier and the Supplier Staff (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 inspecting, reading, testing, (and, where the Supplier is responsible for the Meter, maintaining, repairing and replacing) a Meter.

### Emergencies

- 5.2.1 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.
- 5.2.2 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.
- 5.2.3 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.

## 6 Metering Equipment

- 6.1 Subject to Clause 6.2, the Supplier shall be responsible for the Metering Equipment and shall:
- 6.1.1 provide to the Customer the Metering Services; and



- 6.1.2 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.
- 6.2 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.
- 6.3 The person responsible for the Metering Equipment in accordance with Clauses 6.1 and 6.2 (the **Responsible Party**) 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 6.3 it shall inform the Responsible Party.
- 6.4 The Customer shall:
- 6.4.1 protect the Metering Equipment against weather damage, physical damage and any unauthorised third party interference or adjustment;
- 6.4.2 provide power as required for the Metering Equipment; and
- 6.4.3 provide safe and reasonable access to all Metering Points.
- 6.5 The Responsible Party 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 Clause 6.1, the Customer shall pay the Supplier the Meter Asset Charge and Meter Reading Charge for the Metering Services provided.
- 6.6 The Party which is not the Responsible Party (the **Indemnifying Party**) shall indemnify the Responsible Party for any costs, claims, liabilities, charges, costs, expenses (including legal expenses) or damage suffered or incurred by the Responsible Party as a result of: (i) damage caused to the Metering Equipment by the Indemnifying Party; or (ii) removal of the Metering Equipment by the Indemnifying Party, its agents or contractors.
- 6.7 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.
- 6.8 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.
- 6.9 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.

## 7 Meter reading

- 7.1 The Customer, or Agent, may provide Meter readings to the Supplier, and the Supplier shall accept such Meter readings, for the purposes of calculation of invoices in accordance with Clause 9, by any one of the following methods:
- 7.1.1 the Supplier's Website;

- 7.1.2 telephone;
- 7.1.3 email to the address specified by the Supplier from time to time; or
- 7.1.4 prepaid postcard.
- 7.2 The Responsible Party shall ensure that each Meter is read in accordance with the Uniform Network Code.
- 7.3 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.

## 8 Invoice Amount and Charges

- 8.1 Subject to Clauses 8.2 and 3.17, the Customer shall (subject to any Disputed Payment) pay the Supplier the Charges for the Supply, which shall include the Variable Charges and the Fixed Daily Charges (the **Invoice Amount**).
- 8.2 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 Clauses 8.3 and 8.4.
- 8.3 The applicable adjustments (if any) set out in this Clause 8.3 shall apply depending upon the Payment Terms agreed:

- 8.3.1 Payment method/time frame adjustment for Supply Meter Points:

	7 days Payment Timeframe (ppkWh)	10 days Payment Timeframe (ppkWh)	14 days Payment Timeframe (ppkWh)	21 days Payment Timeframe (ppkWh)	28 days Payment Timeframe (ppkWh)	30 days Payment Timeframe (ppkWh)
BACS Payment Method	REDACTED UNDER FOIA 43 COMMERCIAL INTERESTS					
Direct Debit Payment Method						
GPC Card Payment Method						

- 8.3.2 Invoicing adjustment for Meter Points:

	Billing to Site (Primary) ppkWh	Billing to Site (Secondary) ppkWh	Consolidated Billing ppkWh	Quarterley ppkWh	Exostar ppkWh
	REDACTED UNDER FOIA 43 COMMERCIAL INTERESTS				
Paper					
Paper & E- Billing					
Paper & EDI					
Paper & E- Billing & EDI					
EDI					

E-Billing & EDI	<b>REDACTED UNDER FOIA 43 COMMERCIAL INTERESTS</b>
Exostar	

- 8.4 If the Customer wishes to receive the discounts referred to in Clause 8.3 then the Customer shall:
- 8.4.1 if Clauses 8.2 and 3.17 apply, notify the Authority (at the same time as it provides the Managed Registration Information under the Customer Access Agreement) of the relevant Payment Terms and the Supplier shall apply the discounts referred to in Clause 8.3 to Invoice Amounts contained in those invoices issued to the Customer in respect of the Interim Supply; or
  - 8.4.2 in all other cases notify the Supplier of the relevant Payment Terms no less than ten (10) Working Days prior to the beginning of a Supply Year and the Supplier shall apply the discounts referred to in Clause 8.3 to Invoice Amounts contained in those invoices issued to the Customer for the remainder of the Term unless the Customer otherwise notifies the Supplier.
- 8.5 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.
- 8.6 If the Supply is through the Monthly Product, then the Parties acknowledge and agree that (subject to Clause 9.11) the Invoice Amount shall be based on the actual volume of Gas Products offtaken by the Customer each Month in accordance with this Agreement. There is no annual reconciliation for Monthly Product.

## 9 Invoicing and payment

- 9.1 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.
- 9.2 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.
- 9.3 If the invoice is to be provided to the Customer:
- 9.3.1 in hard copy, the Supplier shall use all reasonable endeavours to provide the Customer with the invoice by the tenth (10<sup>th</sup>) Working Day of the Month immediately following the Supply Month; or
  - 9.3.2 electronically, the Supplier shall use all reasonable endeavours to provide the Customer with the invoice by the ninth (9<sup>th</sup>) Working Day of the Month immediately following the Supply Month,
- and any delay in receipt of an invoice by the Customer shall extend the Payment Terms by a number of days equivalent to the delay in receipt of such invoice.
- 9.4 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:
- 9.4.1 hard copy;
  - 9.4.2 e-billing;
  - 9.4.3 EDI; or
  - 9.4.4 such other format as the Parties may agree.

- 9.5 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.
- 9.6 The Customer may, prior to the beginning of each Supply Year, change the method by which it pays an invoice by providing written notice to the Supplier which shall apply throughout that Supply Year, provided that the new payment method must be one of the following formats:
- 9.6.1 direct debit;
  - 9.6.2 BACS; or
  - 9.6.3 GPC Card.
- 9.7 If the Customer makes no election, the payment method shall be by BACS transfer.
- 9.8 Any change of payment method notified by the Customer to the Supplier in accordance with Clause 9.6 shall take effect from the commencement of the relevant Supply Year and continue for the Term unless otherwise notified by the Customer in accordance with Clause 9.6.
- 9.9 If:
- 9.9.1 the Customer is the Responsible Party the Supplier shall (subject to Clauses 9.10 and 9.11) use Meter readings provided by the Customer, or Agent, to calculate the amount of an invoice. If the Customer's Meter reading is received by the Supplier by the second Working Day following the end of the Supply Month, then the Supplier shall use the Customer's Meter reading to calculate the invoice for that Supply Month. 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 following the Supply Month in which such reading is received. If the Supplier receives Meter readings from both the Customer and an Agent, the Supplier shall use the Agent's Meter reading when calculating the amount of an invoice in accordance with this Clause 9.9; or
  - 9.9.2 the Supplier is the Responsible Party the Supplier shall use Meter readings obtained by or on behalf of it to calculate the amount of an invoice.
- 9.10 If the Customer is the Responsible Party and the Customer, or 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 7.
- 9.11 If the Customer is the Responsible Party and 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.
- 9.12 If the Customer is the Responsible Party, and an invoice has been prepared under Clause 9.11, 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.
- 9.13 Each Month the Supplier shall send the Customer the invoice showing and/or providing the Charges due from the Customer for the Supply taken at the Site during the relevant Supply Month comprising:
- 9.13.1 the Invoice Amount;
  - 9.13.2 any VAT or other taxes, including CCL, customarily to be paid or reimbursed by the Customer;

- 9.13.3 any adjustments required under this Agreement or the Framework Agreement;
- 9.13.4 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;
- 9.13.5 any discount offered by the Supplier and available to the Customer under this Agreement, including for prompt payment of sums due; and
- 9.13.6 any other information or data as may be specified in Part 1 as required from the Supplier.
- 9.14 The Supplier shall seek to validate each invoice before sending it to a Customer and, as a result of such validation process, shall determine whether such invoice is legitimate and accurate (**Pass**) or is not legitimate and accurate (**Fail**). The Supplier shall send invoices to Customers only where they are Passes. The process of validation referred to in this Paragraph shall include a comparison to the previous invoice totals. Should any invoice exceed the percentage of the Monthly billed average agreed between the Supplier and the Authority from time to time (the average of invoice values over last twelve (12) Months on a like for like basis), the Supplier shall review that invoice to ensure legitimacy and accuracy taking into account factors such as:
- 9.14.1 seasonal variance;
- 9.14.2 price changes;
- 9.14.3 any differences between a Meter read and a previously assumed level of consumption; and
- 9.14.4 number of days consumption.
- 9.15 If an invoice is a Pass the Supplier may issue it to the Contracted Customer in accordance with the relevant Agreement and this Framework Agreement.
- 9.16 For the avoidance of doubt, where group billing applies, the Supplier shall validate invoices both at group and site level and any site level failure shall result in the group level invoice being considered as a Fail.
- 9.17 The Supplier shall contact the Contracted Customer within three (3) Working Days of the standard billing date to discuss any invoice which is a Fail, and the timing of any re-issued invoice.
- 9.18 Any Contracted Customers which have not been invoiced because an invoice is a Fail shall be billed manually during the Month following the Month of consumption, if a Contracted Customer requires it.
- 9.19 The Supplier shall adopt procedures to support manual billing should it be required by a Contracted Customer.
- 9.20 If an invoice is a Fail, the Supplier shall recalculate the invoice and issue the recalculated invoice to the Contracted Customer as soon as reasonably possible during the Month following the Month of consumption.
- 9.21 Subject to Clause 9.23, each invoice shall be paid by the Customer in accordance with the Payment Terms. 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

**REDACTED UNDER FOIA 43 COMMERCIAL INTERESTS**

- 9.22 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.
- 9.23 If the Customer does not agree with the amount of an invoice provided pursuant to this Clause 9, 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. The Customer shall only withhold payment of the amount of the invoice that is disputed (the **Disputed Payment**).
- 9.24 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 Clauses 4.8 to 4.15. 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:
- 9.24.1 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
- 9.24.2 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,
- and the re-issued invoice may only require the Customer to pay the outstanding amount.
- 9.25 Any non-regular payment under this Agreement shall be by GPC Card, BACS (or equivalent instantaneous transfer of funds) or CHAPS 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.
- 9.26 The Supplier shall only be entitled to vary the Charges in accordance with Schedule 3 of the Framework Agreement.
- 9.27 The Supplier shall comply with Appendix C of the Agreement

## **10 Data provision**

- 10.1 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.
- 10.2 The Supplier shall, if requested by the Customer, provide a report to the Customer which identifies each of the items listed in Schedule 5 to the Framework Agreement in any of the following formats:
- 10.2.1 EDI format;
- 10.2.2 on an electronic disc in spreadsheet format;
- 10.2.3 in hard copy in spreadsheet format; and/or
- 10.2.4 via e-mail 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.

- 10.3 The Supplier shall 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 Clause 10.2, including, without limitation, by negotiating with third party software providers who provide computer software services to the Customer.

## **11 Interruption**

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

## **12 Representations and warranties**

- 12.1 Each Party warrants, represents and undertakes to the other Party that:

- 12.1.1 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;
- 12.1.2 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) amount to a violation or breach of any applicable Laws or regulations in any relevant jurisdiction;
  - (c) 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) 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;
- 12.1.3 where applicable, it is duly incorporated and validly existing under the laws of the place of its incorporation;
- 12.1.4 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;
- 12.1.5 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
- 12.1.6 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.

- 12.2 The Customer represents and warrants to the Supplier that:

- 12.2.1 the Authority has been fully authorised to act on behalf of the Customer in all aspects of the Framework Agreement, including the Transactions;

- 12.2.2 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 gas procurement services to be provided by the Supplier to the Authority under the Framework Agreement will not constitute a recommendation or advice to enter into one or more Transactions; and
- 12.2.3 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.
- 12.3 The Supplier represent, warrants and undertakes to the Customer that:
- 12.3.1 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;
- 12.3.2 the Customer and the Supply Points are eligible for Supply by the Supplier under the terms of the Supplier's Licence;
- 12.3.3 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;
- 12.3.4 it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary for the performance of this Agreement;
- 12.3.5 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;
- 12.3.6 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;
- 12.3.7 it has acceded to all applicable Industry Documents and the Supplier undertakes that it shall remain in compliance with all applicable Industry Documents;
- 12.3.8 the Customer shall obtain good title to the natural gas received from the Supplier under this Agreement and that, at the relevant Metering Point, the natural gas so received shall be free from all liens, charges and adverse claims of every description; and
- 12.3.9 it has not committed any act or omission which would, if it occurred after the date of this Agreement, constitute a breach of Clause 26.1.
- 12.4 The Supplier acknowledges and undertakes that any breach by it of the warranties, representations or undertakings in Clause 12.1 or Clause 12.3 shall be remedied by the Supplier as a matter of urgency. Without prejudice to the generality of Clause 14.1.2 or Clause 14.1.3, any failure to remedy (if capable of remedy) such breach within thirty (30) Working Days of notification by the Customer of the breach of warranty, or breach of any warranty which is not capable of remedy, shall constitute a breach of this Agreement entitling the Customer to terminate in accordance with Clause 14.
- 12.5 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.

## 13 Force Majeure Events

- 13.1 If either Party is prevented or delayed in the performance of its obligations to the other by a Force Majeure Event (**Affected Party**) 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 Affected Party shall, subject to Clause 13.4, be excused from the performance of its obligations to the extent that such non-performance is due to a Force Majeure Event from the date of such notice for the period for which such prevention or delay continues.

- 13.2 Notwithstanding Clause 13.1, 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.
- 13.3 If a Force Majeure Event occurs then, as soon as practicable following notice being given under Clause 13.1, 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 the Force Majeure Event and to facilitate the continued performance of this Agreement.
- 13.4 An Affected Party cannot claim relief pursuant to this Clause 13:
  - 13.4.1 if the relevant Force Majeure Event results from any wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event;
  - 13.4.2 if the relevant Force Majeure Event results from a failure or delay by any other person in the performance of that other person's obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of an event which is equivalent to a Force Majeure Event); or
  - 13.4.3 to the extent that the Affected Party does not use all reasonable endeavours (including, without limitation, carrying out all of those actions agreed pursuant to Clause 13.3) in accordance with Good Industry Practice, to mitigate the effect of the Force Majeure Event and to continue to perform the relevant obligation notwithstanding the existence of the Force Majeure Event.

## **14 Early termination**

- 14.1 Either Party may terminate this Agreement immediately by notice in writing if:
  - 14.1.1 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 within three (3) months after notice of such failure is given to the Party;
  - 14.1.2 the other Party fails to observe or perform any of the terms of this Agreement which apply to it, if such failure is: (i) material, and not remedied on or before the thirtieth (30<sup>th</sup>) Working Day after notice of such failure is given to the Party; (ii) material and not capable of remedy; or (iii) persistent such that, taken together with other, similar or repeated breaches, it has a substantial impact on the other Party;
  - 14.1.3 any representation or warranty made by the other Party in this Agreement is or becomes untrue, inaccurate or misleading in any material respect;
  - 14.1.4 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;
  - 14.1.5 any of the following events occurs in respect of the other Party:
    - (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;

- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
  - (c) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given or an order is made for its winding-up or an application is made for the appointment of a provisional liquidator;
  - (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
  - (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
  - (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
  - (g) a moratorium comes into force pursuant to Part A1 of the Insolvency Act 1986; or
  - (h) any event analogous to those listed in sub-Clauses (a) to (g) above, or relevant legal equivalent, occurs under the law of any other jurisdiction;
- 14.1.6 a Transfer Objection is made by the Incumbent Supplier and is not resolved in accordance with Clause 2.5, in which case such termination shall only apply in respect of the affected Supply Point; or
- 14.1.7 a Supplier of Last Resort is appointed in relation to any Supply Point.
- 14.2 Termination of this Agreement can also occur in the following circumstances:
- 14.2.1 if a Force Majeure Event continues for a consecutive period of three (3) Months, the Party whose performance under this Agreement is not affected directly by the Force Majeure Event can terminate this Agreement, save that the Agreement shall only be terminated in relation to each Supply Point which is affected by the Force Majeure Event;
  - 14.2.2 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;
  - 14.2.3 if any of the conditions precedent in Clause 1.1 have not been either: (i) satisfied; or (ii) waived in writing by the relevant Party (meaning the relevant Party for whose benefit the relevant condition is by reference to Clause 1.5) 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 to add such Supply Point is received by the Supplier, the relevant Party may terminate this Agreement provided that:
    - (a) the relevant Party shall not be entitled to terminate this Agreement on these grounds where the failure to satisfy the condition(s) precedent in question is attributable to any breach of this Agreement or other act or omission on the part of that Party; and
    - (b) where the relevant Party is the Supplier, it shall only be entitled to terminate this Agreement in relation to the Supply Points in respect of which the conditions precedent are not satisfied;

- 14.2.4 if the Customer Access Agreement is terminated in whole, or all of the Customer's Energy Product Orders relating to the Supply have been terminated, this Agreement may be terminated by the Customer; or
  - 14.2.5 if the Supplier is in breach of Clauses 26, 27, 28, 29 or 30, the Customer may terminate this Agreement;
  - 14.2.6 if the Supplier has committed any breach of the kind described in clauses 3.3, 4.7 or 7 of Appendix C, the Customer may terminate this Agreement.
- 14.3 This Agreement shall expire, or is terminated following the final requested associated delivery period.
- 14.4 This Agreement shall terminate forthwith should the Authority terminate or cease provision of the Gas Products pursuant to this Agreement in accordance with the Framework Agreement.
- 14.5 In the case of termination under:
  - 14.5.1 Clauses 14.2.1, 14.2.4 or 14.2.5 the relevant Party may terminate this Agreement by giving fourteen (14) Working Days' notice in writing; or
  - 14.5.2 Clause 14.2.2 the relevant Party may terminate this Agreement with immediate effect; or
  - 14.5.3 Clause 14.2.3, the relevant Party may terminate this Agreement with immediate effect.
- 14.6 On termination of this Agreement for any reason:
  - 14.6.1 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, Clause 9.11 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;
  - 14.6.2 the Customer shall, within a reasonable time of termination, allow the Supplier's representatives or agents to enter the relevant Site to remove any of the Supplier's Metering Equipment; and
  - 14.6.3 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).
- 14.7 Continued application of this Agreement in respect of Supply Points:

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:

  - 14.7.1 a new Gas Supplier is Registered in respect of all of the Supply Points; or
  - 14.7.2 the Customer and the Supplier enter into a new agreement for the sale and purchase of natural gas; or
  - 14.7.3 any Supply Points not falling within Clauses 14.7.1 or 14.7.2 have been Isolated.
- 14.8 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 14 on the same day as such notice is issued to the other Party.
- 14.9 The Supplier shall on demand indemnify and keep the Customer indemnified in full from and against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages suffered or incurred by the Customer by reason of termination in accordance with Clauses 14.1 (provided that the

relevant termination arises from the default of the Supplier), 14.2.3 or 14.2.5. These costs shall include, without limitation, any increased costs, additional expenditure or loss of savings which results from the Customer obtaining replacements for the Gas Products through another agreement or call-off.

- 14.10 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. Without limitation to the generality of this Clause 14.10, provisions of this Agreement which relate to the compensation or indemnification of a Party, or confidentiality, shall continue in force in accordance with their terms notwithstanding expiry or termination of this Agreement.

## 15 Liability, indemnities and insurance

- 15.1 The Supplier shall on demand indemnify and keep the Customer indemnified in full from and against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from:

- 15.1.1 damage to property;
- 15.1.2 death or personal injury to persons; or
- 15.1.3 breach of statutory duty,

to the extent that such damage to property, or death or personal injury to persons, or breach of statutory duty is caused by the breach, default, negligence, or wilful act or omission of such Party, its agents or contractors. This is provided that, subject to Clause 15.2, any compensation payable under this Clause 15 or otherwise under or in connection with this Agreement for property damage shall not exceed the higher of:

- 15.1.4 **REDACTED UNDER FOIA 43 COMMERCIAL INTERESTS**
- 15.1.5 the price payable by the Customer, for all supplies of Gas Products under this Agreement, in the period between the date of this Agreement and the occurrence of the relevant damage to property.

- 15.2 The limitation on liability set out at Clause 15.1 shall not apply to limit or exclude any liability of the Supplier in relation to claims, proceedings, losses, liabilities, costs (including legal costs and expenses), damages and expenses:

- 15.2.1 which relate to or arise from a third party claim which could have been brought directly against the Supplier by the relevant third party; or
- 15.2.2 which relate to or arise from a risk which is insured by the Supplier, or which would have been insured against by the Supplier had it complied with its obligations under this Agreement.

- 15.3 Without prejudice to Clause 15.4 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.

- 15.4 Nothing in this Agreement shall exclude, restrict or otherwise prejudice:

- 15.4.1 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
- 15.4.2 any liability of a Party in respect of death or personal injury resulting from that Party's negligence.

15.5 Each Party:

- 15.5.1 shall on demand indemnify the Authority and keep it indemnified in full from and against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages suffered or incurred by the Authority as a result of any act or omission of that Party (including its agents and contractors) 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 any claim for restitution; and
- 15.5.2 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 any claim for restitution.

15.6 The Supplier:

- 15.6.1 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;
- 15.6.2 shall hold employer's liability insurance in respect of its employees in accordance with any legal requirement for the time being in force; and
- 15.6.3 agrees that 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.

## 16 Term and renewal

This Agreement shall come into force on the date hereof and shall, subject to early termination, continue for the Contract Period as specified in Part 1 to this Agreement (the **Term**).

## 17 Objections

17.1 The Supplier may only enter a Transfer Objection and prevent an alternative Gas Supplier from Registering any of the Supply Points if:

- 17.1.1 the Customer arranges to transfer some or all of the Supply Points to an alternative Gas Supplier before termination or expiry of this Agreement in accordance with Clauses 14 or 16;
- 17.1.2 there are any overdue invoices not paid by the Customer by their due date, such invoices not being subject to a bonafide dispute; or
- 17.1.3 the new Gas Supplier has been Registered as the supplier of the relevant Supply Points in error.

## 18 Data Protection

18.1 Where a Party is a Processor, the only Processing that it is authorised to do is listed in Appendix B (**Processing Personal Data**) by the Controller.

18.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

- 18.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
- 18.3.1 a systematic description of the envisaged Processing and the purpose of the Processing;
  - 18.3.2 an assessment of the necessity and proportionality of the Processing in relation to the Deliverables;
  - 18.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 18.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 18.4 The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Agreement:
- 18.4.1 Process that Personal Data only in accordance with Appendix B (**Processing Personal Data**), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall notify the Controller before Processing the Personal Data unless prohibited by Law;
  - 18.4.2 ensure that it has in place Protective Measures, having taken account of the:
    - (a) nature of the data to be protected;
    - (b) harm that might result from a Personal Data Breach;
    - (c) state of technological development; and
    - (d) cost of implementing any measures;
  - 18.4.3 ensure that:
    - (a) the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Appendix B (**Processing Personal Data**));
    - (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
      - (i) are aware of and comply with the Processor's duties under this Clause 18;
      - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
      - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and
      - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
  - 18.4.4 not transfer Personal Data outside of the UK or EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
    - (a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or LED Article 37) as determined by the Controller;

- (b) the Data Subject has enforceable rights and effective legal remedies;
  - (c) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (d) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
- 18.4.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
- 18.5 Subject to Clause 18.6, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:
- 18.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 18.5.2 receives a request to rectify, block or erase any Personal Data;
  - 18.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 18.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
  - 18.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 18.5.6 becomes aware of a Personal Data Breach.
- 18.6 The Processor's obligation to notify under Clause 18.5 shall include the provision of further information to the Controller, as details become available.
- 18.7 Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 18.5 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
- 18.7.1 the Controller with full details and copies of the complaint, communication or request;
  - 18.7.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 18.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 18.7.4 assistance as requested by the Controller following any Personal Data Breach; and/or
  - 18.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

- 18.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 18. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 18.8.1 the Controller determines that the Processing is not occasional;
  - 18.8.2 the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
  - 18.8.3 the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 18.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 18.10 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 18.11 Before allowing any Sub-processor to Process any Personal Data related to the Contract, the Processor must:
- 18.11.1 notify the Controller in writing of the intended Sub-processor and Processing;
  - 18.11.2 obtain the written consent of the Controller;
  - 18.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 18 such that they apply to the Subprocessor; and
  - 18.11.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 18.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 18.13 The Authority may, at any time on not less than thirty (30) Working Days' notice, revise this Clause 18 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Agreement).
- 18.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Working Days' notice to the Supplier amend the Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## 19 Confidentiality

- 19.1 Except to the extent set out in this Clause 19 or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:
- 19.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
  - 19.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 19.2 Clause 19.1 shall not apply to the extent that:
- 19.2.1 disclosure is made to professional advisers, insurers and insurance brokers and strictly on the basis that the information disclosed to such persons is confidential and is not to be disclosed to any third party;



- 19.2.2 disclosure is a requirement of an applicable Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 20;
  - 19.2.3 information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 19.2.4 information was obtained from a third party without obligation of confidentiality;
  - 19.2.5 information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
  - 19.2.6 information is independently developed without access to the other Party's Confidential Information.
- 19.3 The Supplier may only disclose the Customer's Confidential Information to the Supplier Staff who are directly involved in the provision of the Supply and who need to know the information, and shall ensure that such Supplier Staff are aware of and shall comply with the obligations set out in this Clause 19 in respect of such information.
- 19.4 The Supplier shall not, and shall procure that the Supplier Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Agreement.
- 19.5 Nothing in this Agreement shall prevent the Customer from disclosing the Supplier's Confidential Information:
- 19.5.1 in the case of Customer 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;
  - 19.5.2 to any consultant, contractor or other person engaged by the Customer, or to any person conducting a government gateway or other review on the basis that the information is confidential;
  - 19.5.3 for the purpose of the examination and certification of the Customer's accounts; or
  - 19.5.4 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.
- 19.6 The Customer shall ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 19.5 is notified in writing of the Customer's obligations of confidentiality set out in this Agreement.
- 19.7 Nothing in this Clause 19 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.

## **20 Freedom of Information**

- 20.1 The Supplier acknowledges that the Customer is subject to the requirements of 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.

- 20.2 The Supplier shall (and shall procure that its subcontractors shall) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to a 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.
- 20.3 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 FOIA or the Environmental Information Regulations.
- 20.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Customer.
- 20.5 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.
- 20.6 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.
- 20.7 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 Clause 20.5.

## 21 Governing law and dispute resolution

- 21.1 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.
- 21.2 Each Party shall use reasonable endeavours to resolve any dispute, difference or disagreement arising out of or in connection with this Agreement (**Dispute**) 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 Clause 21.4, 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.
- 21.3 The Parties agree that neither Party shall be entitled to refer a Complaint or a Query to the Dispute resolution process in this Clause 21 until the process set out in Clauses 4.4 to 4.8 has been exhausted in respect of that Query or Complaint.
- 21.4 Subject to the provisions of Clause 21.5, any Dispute between the Parties relating to this Agreement shall be dealt with in accordance with this Clause 21, 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 21 have been exhausted.
- 21.5 Clause 21.4 shall be without prejudice to the rights of termination set out in Clause 14 and shall not prevent the Customer or the Supplier from applying for injunctive relief in the case of:
- 21.5.1 breach or threatened breach of confidentiality by the other Party;

- 21.5.2 infringement or threatened infringement of its Pre-Existing Intellectual Property Rights; or
- 21.5.3 infringement or threatened infringement of the Intellectual Property Rights of a third party.
- 21.6 All Disputes between the Parties relating to this Agreement shall in the first instance be referred to an operational employee or officer of each Party nominated by each Party in relation to the relevant dispute. If the respective officer(s) and employee(s) fail to resolve the Dispute within ten (10) Working Days of it being referred to them:
- 21.6.1 it shall be referred to the Supplier's Director and the Customer's Manager respectively for their consideration with a view to making a decision in relation to the Dispute; and
- 21.6.2 if the Supplier's Director and the Customer's Manager fail to resolve the Dispute within ten (10) Working Days of it being referred to them; 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.
- 21.7 If any particular manager referred to in this Clause 21 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.
- 21.8 In the event that a Dispute cannot be resolved by the Parties in accordance with Clause 21.6.2 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 21.9.

### **Mediation**

- 21.9 The procedure for mediation shall be as follows:
- 21.9.1 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;
- 21.9.2 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;
- 21.9.3 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;
- 21.9.4 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's Manager and the Supplier's Director;
- 21.9.5 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;

- 21.9.6 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;
- 21.9.7 work and activity to be carried out under this Agreement shall not cease or be delayed during the mediation process; and
- 21.9.8 in the event that the Customer and the Supplier fail to reach agreement in the structured negotiations referred to in Clause 21.9.2 within forty (40) Working Days of the Mediator being appointed, or such longer period as may be agreed, then any Dispute between them may, subject to the agreement of both Parties, be referred to arbitration in accordance with the provisions of Clause 21.10.

### **Arbitration**

- 21.10 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 Clause 21.9, the Parties may (at any time before court proceedings are commenced) refer the matter to arbitration in accordance with this Clause 21.10. The procedure for arbitration shall be as follows:

- 21.10.1 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;
- 21.10.2 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 Clause 21.10;
- 21.10.3 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 Clause 21.10 shall be resolved by arbitration under the procedural rules of the London Court of International Arbitration;
- 21.10.4 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;
- 21.10.5 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 anybody 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;
- 21.10.6 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; and
- 21.10.7 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.

### **Recourse to the Courts**

- 21.11 In the event that the Parties 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.
- 21.12 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 judgement 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.

## **22 Subcontracting and assignment**

- 22.1 Save as provided by the Framework Agreement and this Clause 22, 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.
- 22.2 Without prejudice to Clause 22.1 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.
- 22.3 Without prejudice to Clause 22.1 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.
- 22.4 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,
- 22.5 The Supplier will enter into a deed of novation, where required to do so by the Authority, pursuant to Schedule 5 of the Framework Agreement and undertake any other actions required in order to put the provisions of that Paragraph into effect.

## **23 Miscellaneous provisions**

- 23.1 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.
- 23.2 The Parties shall provide each other from time to time with 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.
- 23.3 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.

- 23.4 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.
- 23.5 No amendments to this Agreement shall be effective unless made in writing and signed by or on behalf of both Parties, save that Clauses 1.1 and 1.2 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 necessary to permit the Supply. The Parties shall immediately notify the Authority of any amendment to this Agreement.
- 23.6 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.
- 23.7 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.

## 24 Recovery of sums due

- 24.1 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:
- 24.1.1 this Agreement;
  - 24.1.2 the Framework Agreement; or
  - 24.1.3 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).
- 24.2 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.
- 24.3 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.

## 25 Notices

- 25.1 All notices, orders, or other forms of communication (including invoices) (**Notices**) under or in connection with this Agreement shall be sent to the relevant Party's notices address as set out in this Agreement, or such other address as either Party may specify by giving notice and shall:
- 25.1.1 be given in writing;
  - 25.1.2 be authenticated by signature or by such other method as agreed between the Parties;

- 25.1.3 be marked for the attention of the appropriate department or officer; and
- 25.1.4 be marked in a prominent position with the relevant contract number for this Agreement.
- 25.2 Notices should be delivered by:
  - 25.2.1 hand;
  - 25.2.2 first-class prepaid post (or airmail, in the case of Notices to or from overseas);
  - 25.2.3 recorded delivery post; or
  - 25.2.4 electronic mail, where such a means of communication has been agreed for the purposes of this Agreement.
- 25.3 Notices shall be deemed to have been received:
  - 25.3.1 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; or
  - 25.3.2 if sent by first-class prepaid post (or airmail, if appropriate), on the third (3<sup>rd</sup>) Working Day (or on the tenth (10<sup>th</sup>) Working Day, in the case of airmail) after the day of posting;
  - 25.3.3 if sent by electronic means:
    - (a) if transmitted between 9.00am and 5.00pm on a Working Day (recipient's time) on 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 receipt by the sender of verification of the transmission from the receiving instrument; or
  - 25.3.4 if sent by email, on the day of receipt in legible form if received before 17:00 hours on a Working Day or otherwise on the 1st Working Day after receipt.
- 25.4 Where either Party requests written confirmation of any communication which does not constitute a Notice such request shall not unreasonably be refused.

## **26 Corrupt gifts and payments of commission**

- 26.1 The Supplier shall not:
  - 26.1.1 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; or
  - 26.1.2 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 26.

- 26.2 Nothing contained in this Clause 26 shall prevent the Supplier paying such commission or bonuses to his own staff in accordance with their agreed contracts of employment.
- 26.3 Any breach of this Clause 26 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 Bribery Act 2010, 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.
- 26.4 Any Dispute or question arising in respect of:
- 26.4.1 the interpretation of this Clause 26 (except so far as the same may relate to the amount recoverable from the Customer under Clause 26.3 in respect of any loss resulting from such termination of this Agreement); or
  - 26.4.2 the right of the Customer to terminate this Agreement; or
  - 26.4.3 the amount or value of any gift, consideration or commission,
- may be referred by either Party to the Authority, whose decision shall be final and conclusive.

## 27 Official Secrets

- 27.1 In this Clause:
- 27.1.1 **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 "Official", and shall include any information concerning the content of such matter and anything which contains or may reveal that matter; and
  - 27.1.2 **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.
- 27.2 The Supplier shall:
- 27.2.1 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
  - 27.2.2 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).
- 27.3 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:
- 27.3.1 who is not a British citizen;
  - 27.3.2 who does not hold the appropriate authority for access to the Secret Matter; or
  - 27.3.3 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.



- 27.4 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 unauthorised 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.
- 27.5 If the Supplier proposes to make a sub-contract which will involve the disclosure of Secret Matter to the sub-contractor, the Supplier shall:
- 27.5.1 submit for approval of the Customer the name of the proposed subcontractor, a statement of the work to be carried out and any other details known to the Supplier which the Customer shall reasonably require;
  - 27.5.2 incorporate into the sub-contract the terms of the Appendix A to this Part 2 and such secrecy and security obligations as the Customer shall direct;
  - 27.5.3 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.
- 27.6 The Customer shall be entitled to terminate this Agreement immediately if:
- 27.6.1 the Supplier is in breach of any obligation under this Clause 27; or
  - 27.6.2 the Supplier is in breach of any secrecy or security obligation imposed by any other contract with the Crown.

## **28 Discrimination**

- 28.1 The Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2010, the Human Rights Act 1998 or any other applicable Law relating to discrimination in employment.
- 28.2 The Supplier shall take all reasonable steps to secure the observance of the provisions of Clause 28.1 by the subcontractors employed in the execution of this Agreement.

## **29 Disability Equality**

The Customer is subject to the Equality Act 2010. The Supplier shall, and shall procure that its subcontractors, agents and personnel shall, comply with the Equality Act 2010. Upon the Supplier breaching, or causing the Customer to breach, the Equality Act 2010, 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.

## **30 Race Equality**

The Customer is subject to the Equality Act 2010. The Supplier shall, and shall procure that its subcontractors, agents and personnel shall, comply with the Equality Act 2006. Upon the Supplier breaching, or causing the Customer to breach, the Equality Act 2010 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 Prevention of Fraud and conflicts of interest**

- 31.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by the Supplier Staff or the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.

- 31.2 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.
- 31.3 If the Supplier commits any Fraud in relation to this or any other agreement with a Contracting Authority or the Customer, the Customer may:
- 31.3.1 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
  - 31.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this Clause 31.
- 31.4 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Supplier Staff 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 Staff and the duties owed to the Customer under the provisions of this Agreement.
- 31.5 The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 31.4 arises or is reasonably foreseeable.
- 31.6 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 31 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 31.7 This Clause 31 shall apply during the Term and for a period of two (2) years after expiry of the Term.

## **32 Sustainable procurement**

- 32.1 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.
- 32.2 The Supplier shall meet all reasonable requests by the Customer for information evidencing compliance with the provisions of this Clause 32 by the Supplier.
- 32.3 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.

## **33 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.

## **34 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.

.

## Part 1 – Definitions, interpretation and precedence

### 1 Definitions

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

<b>Account Manager</b>	the person notified by the Supplier to the Customer from time to time as being the Account Manager
<b>Act</b>	the Gas Act 1986 and the regulations made thereunder
<b>Actual Supply Start Date</b>	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
<b>Additional Services</b>	has the meaning given to it in the Framework Agreement
<b>Administration Fee</b>	has the meaning given to it in the Framework Agreement
<b>Affiliate</b>	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
<b>Agent</b>	a Meter Reading Agency or Meter Asset Manager
<b>Agreement</b>	this Agreement and all of its parts, appendices and schedules
<b>AMR</b>	means automated Meter reading
<b>AQ</b>	has the meaning given to it under the Uniform Network Code
<b>Authority</b>	the Minister for the Cabinet Office as represented by Crown Commercial Service being a trading fund of the Cabinet Office without separate legal personality
<b>CCL</b>	the Climate Change Levy being a charge levied at the rate from time to time imposed pursuant to the Finance Act 2000 and any regulations made thereunder or in connection with such charge
<b>Change Control Request</b>	a request by the Authority or the Supplier to change the Framework Agreement under the change control process in Schedule 14 of the Framework Agreement
<b>Charges</b>	the charges payable by the Customer to the Supplier in accordance with this Agreement

<b>Competent Authority</b>	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 government of the United Kingdom
<b>Complaint</b>	any formal written complaint raised by a Customer in relation to the performance of this Agreement
<b>Confidential Information</b>	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
<b>Contracting Authority</b>	any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 other than the Authority
<b>Crown</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf, and <b>Crown Bodies</b> shall be interpreted accordingly
<b>Customer Access Agreement</b>	has the meaning given to it in the Framework Agreement
<b>Agreement</b>	an agreement between the Supplier and a customer pursuant to the Framework Agreement
<b>Customer Portfolio</b>	has the meaning given to it in the Framework Agreement
<b>Customer Service Team</b>	has the meaning given to it in Schedule 5
<b>Customer Service Team</b>	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
<b>Customer Survey</b>	has the meaning given to it in the Framework Agreement
<b>Customer's Chief Executive Officer</b>	the person notified by the Customer to the Supplier from time to time as being its Chief Executive Officer

	and having the skills and experience to deal with strategic issues under this Contract
<b>Customer's Manager</b>	the person notified by the Customer to the Supplier from time to time as having the appropriate experience to deal with commercial issues arising under this Agreement
<b>Customer's Manager</b>	the person notified by the Customer to the Supplier from time to time as having the appropriate experience to deal with commercial issues arising under this Agreement
<b>Day</b>	the twenty-four (24) hour period starting at 0600 hours on a day and ending at 0600 hours on the following day
<b>Day Ahead Product</b>	has the meaning given to it in the Framework Agreement
<b>Deemed Contract Rate</b>	the deemed rate charged by the Supplier for any Supply provided after the Withdrawal Date in relation to any Supply Point
<b>Dispute</b>	has the meaning given to it in the Framework Agreement
<b>Disputed Payment</b>	has the meaning given to it in Framework Agreement
<b>Distribution System</b>	the system for the distribution of natural gas to which each of the Supply Points is connected
<b>DM Supply Meter Points</b>	has the meaning given to it in the Framework Agreement
<b>Earliest Supply Start Date</b>	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 22.5, the date on which such novation is to be effective)
<b>E-billing</b>	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
<b>EDI</b>	means electronic data inference
<b>Effective Date</b>	the date of this Agreement (or, where this Agreement is novated to a new Gas Supplier in accordance with Clause 22.5, the date of the deed of novation by which such novation is effected)

<b>Emergency</b>	circumstances in which, 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
<b>Energy Ombudsman</b>	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
<b>Energy Product Order</b>	has the meaning given to it in the Customer Access Agreement
<b>Environmental Information Regulations</b>	the Environmental Information Regulations 2004 and any codes of practice issued by the Information Commissioner in relation to such regulations
<b>Fail</b>	refers, for the purposes of the invoice validation process envisaged by Clause 9.14, to circumstances in which the Supplier has determined that a particular invoice is not legitimate and/or not accurate
<b>Fixed Daily Charges</b>	has the meaning given to it in the Framework Agreement
<b>FOIA</b>	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
<b>Force Majeure Event</b>	<p>any event, occurrence, circumstance or matter outside of the reasonable control of the Affected Party which prevents or materially delays the Affected Party from performing its obligations under this Framework Agreement, including:</p> <ul style="list-style-type: none"> <li>(a) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</li> <li>(b) acts of Government or Competent Authorities;</li> <li>(c) any failure or outage or unavailability of a gas distribution or transmission system;</li> <li>(d) fire, flood, disaster or any act of nature; or</li> <li>(e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available, but excluding any industrial dispute relating only to the Supplier Staff (or a subset of them),</li> </ul>

	but always excluding: (1) any event, occurrence, circumstance or matter to the extent it (or its consequences) would have been avoided had the Affected Party acted in accordance with Good Industry Practice; (2) any event, occurrence, circumstance or matter to the extent it (or its consequences) is within the scope or contemplation of the disaster recovery or business continuity plans required of the Affected Party in accordance with this Framework Agreement or Good Industry Practice; (3) any failure or delay caused by a third party in the performance of such third party's obligations to the Affected Party, unless such third party is itself prevented or delayed from complying with its obligations as result of a Force Majeure Event; and (4) lack of funds
<b>Framework Agreement</b>	a framework agreement entered into on [●date] for the procurement of natural gas (daily and non-daily metered) between the Authority and the Supplier, as such agreement may be amended or supplemented from time to time
<b>Fraud</b>	any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the Crown
<b>Gas Products</b>	has the meaning given to it in the Framework Agreement
<b>Gas Supplier</b>	a person who is authorised to supply natural gas to customers pursuant to a licence granted to it by GEMA pursuant to Section 7A of the Act
<b>GEMA</b>	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)
<b>General Query</b>	a Query which is not an Invoicing Query or a Complaint
<b>Good Industry Practice</b>	standards, practices, methods and procedures conforming to the Law and the exercise of that degree of skill and care, diligence, prudence and foresight which would be expected from a leading company within the relevant industry or business sector
<b>Historic Demand</b>	has the meaning given to it in the Framework Agreement
<b>Incumbent Supplier</b>	has the meaning given to it in the Framework Agreement



<b>Industry Documents</b>	all agreements, licences, authorisations and codes (including the Uniform Network Code) or procedures applicable to the Supplier and relating to or necessary for the supply of natural gas to the Sites from time to time
<b>Information</b>	has the meaning given to it under Section 84 of the Freedom of Information Act 2000
<b>Information Commissioner</b>	the person appointed as Information Commissioner pursuant to schedule 12 of the Data Protection Act 2018
<b>Intellectual Property Rights or IPRs</b>	all of: (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trademarks, 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 (c) all other rights having equivalent or similar effect in any country or jurisdiction
<b>Interim Price</b>	has the meaning given to it in the Framework Agreement
<b>Interim Supply</b>	has the meaning given to it in the Framework Agreement
<b>Interim Supply Period</b>	has the meaning given to it in the Framework Agreement
<b>Interruption</b>	the interruption of the offtake of natural gas from Metering Point(s) in accordance with Clause 3 and <b>Interrupt</b> shall be construed accordingly
<b>Interruption Allowance</b>	has the meaning given to it in the Framework Agreement
<b>Interruption Start Time</b>	has the meaning given to it in this schedule
<b>Inter-Shipper Agreement</b>	a voluntary code for resolving issues arising from the late transfer of sites between signatories to the Inter-Shipper Agreement

<b>Inter-Shipper Dispute Mechanism</b>	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
<b>Invoice Amount</b>	has the meaning given to it in the Framework Agreement
<b>Invoicing Query</b>	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. A Disputed Payment is not an Invoicing Query
<b>Isolation</b>	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 <b>Isolate</b> and <b>Isolated</b> shall be construed accordingly
<b>Law</b>	any law, statute, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgement of a relevant court of law, or directives or requirements of any Regulatory Body
<b>Licence</b>	a licence granted, or treated as granted, under the Act for the shipping, supply or transportation of natural gas (as applicable)
<b>Managed Registration Information</b>	has the meaning given to it in the Framework Agreement
<b>Maximum Consumption</b>	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
<b>Mediator</b>	has the meaning given to it in the Framework Agreement
<b>Meter</b>	the meter comprised in the Metering Equipment, including a Meter enabled with AMR (if applicable)
<b>Meter Asset Charge</b>	has the meaning given to it in the Framework Agreement

<b>Meter Asset Manager</b>	has the meaning given to it in the Uniform Network Code and, for the purposes of this Agreement, is the person identified in Part 1
<b>Meter Asset Services</b>	all services in connection with the provision, installation, maintenance, removal and replacement of Meters and other Metering Equipment
<b>Meter Reading Agency</b>	the person appointed by the Supplier or the Customer to conduct Meter reads in accordance with the Uniform Network Code
<b>Meter Reading Charge</b>	has the meaning given to it in the Framework Agreement
<b>Meter Reading Services</b>	the services in connection with reading Meters installed at Supply Points including data collection and aggregation
<b>Metering Equipment</b>	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
<b>Metering Point</b>	the outlet of the control valve for each Meter at each Supply Point
<b>Metering Services</b>	Meter Asset Services and Meter Reading Services
<b>Month</b>	a period beginning at 0600 hours on the first Day of a calendar month and ending at 0600 hours on the first Day of the following calendar month and <b>Monthly</b> shall be construed accordingly
<b>Monthly Product</b>	has the meaning given to it in the Framework Agreement
<b>NDM Supply Meter Points</b>	each non-daily metered Meter included in a Supply Point
<b>NEXA</b>	the Network Exit Agreement provided by the NTS
<b>Nominated Consumption</b>	has the meaning given to it in the Framework Agreement
<b>Notices</b>	the meaning given to it in the Framework Agreement
<b>Notices Address</b>	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

<b>NTS</b>	means the National Transmission System
<b>Original Invoice</b>	has the meaning given to it in Clause 4.7
<b>Party</b>	any party to this Agreement, and <b>Parties</b> shall be construed accordingly
<b>Pass</b>	refers, for the purposes of the invoice validation process envisaged by Clause 9.14, to circumstances in which the Supplier has determined that a particular invoice is legitimate and accurate
<b>Payment Terms</b>	the payment method, date and invoice format set out in Part 1, or as otherwise agreed between the Parties from time to time
<b>Pre-existing Intellectual Property Rights</b>	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
<b>Price Setting Round</b>	has the meaning given to it in the Framework Agreement
<b>Price Setting Round Commitment Point</b>	has the meaning given to it in the Framework Agreement
<b>Process</b>	has the meaning given to it under the Data Protection Requirements but, for the purposes of this Agreement, it shall include both manual and automatic processing and references to <b>Processing</b> shall be construed accordingly
<b>Query</b>	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
<b>Query Management System</b>	the online database maintained by the Supplier for registering Queries and Complaints from customers
<b>Reasonable and Prudent Operator</b>	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
<b>Re-establishing</b>	the meaning given to <b>Re-establish</b> in the Uniform Network Code
<b>Registered</b>	has the meaning given to it in the Uniform Network Code and <b>Registration</b> and <b>Register</b> shall be construed accordingly
<b>Regulatory Bodies</b>	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
<b>Reporting Documents</b>	has the meaning given to it in the Framework Agreement
<b>Request for Information</b>	a request for information or an apparent request under the FOIA or the Environmental Information Regulations
<b>Responsible Party</b>	has the meaning given to it in the Framework Agreement
<b>Revised Nominated Consumption</b>	has the meaning given to it in the Framework Agreement
<b>Services</b>	has the meaning given to it in recitals to this Agreement
<b>Shipper</b>	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 Shipper
<b>Site</b>	each site at which is located one or more Supply Points which are subject to be supplied pursuant to this Agreement
<b>Sterling, £ and pence</b>	pounds or pence sterling, the legal currency of the United Kingdom
<b>Supplier of Last Resort</b>	a licensed supplier of natural gas appointed by GEMA under a last resort direction
<b>Supplier Staff</b>	all persons employed or engaged by the Supplier together with the Supplier's agents, suppliers, consultants and subcontractors (and all persons employed by any subcontractor together with the subcontractor's servants, consultants, agents, suppliers

	and subcontractors) used in the performance of its obligations under this Agreement or any Agreement
<b>Supplier's Director</b>	the person notified by the Supplier to the Customer from time to time as being a director and having the appropriate experience to deal with commercial issues arising under this Agreement
<b>Supplier's Managing Director</b>	the person notified by the Supplier to the Customer from time to time as being its Managing Director and having the skills and experience to deal with strategic issues under this Contract
<b>Supplier's Website</b>	the section of the Supplier's website which is dedicated to customers of the Authority in accordance with the Framework Agreement
<b>Supply</b>	has the meaning given to it in the Framework Agreement
<b>Supply Month</b>	a Month during which gas is supplied by the Supplier to the Customer pursuant to this Agreement
<b>Supply Point</b>	has the meaning given to it in the Uniform Network Code
<b>Supply Point Withdrawal</b>	has the meaning given to it in the Framework Agreement
<b>Supply Year</b>	has the meaning given to it in the Framework Agreement
<b>Term</b>	has the meaning as given to it in the Framework Agreement
<b>Transaction</b>	has the meaning given to it in the Framework Agreement
<b>Transfer Objection</b>	in relation to a Site, an objection submitted pursuant to the Uniform Network Code to the Registration of a Gas Supplier in respect of a Supply Point to the relevant Site
<b>Transporter</b>	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
<b>Uniform Network Code</b>	the uniform network code as amended from time to time prepared by the Transporters pursuant to the gas transporters licence granted to them under Section 7 of the Act. Defined words in this Framework Agreement which have the meaning given to it in the

	Uniform Network Code are deemed to be amended in accordance with amendments to the Uniform Network Code
<b>Variable Charges</b>	has the meaning set out in the Framework Agreement
<b>VAT</b>	the value added tax chargeable under the Value Added Taxes Act 1994 (as amended) or any replacement or analogous tax
<b>Withdrawal Date</b>	has the meaning given to it in the Framework Agreement
<b>Working Day</b>	any day other than a Saturday or a Sunday and which is not Christmas Day, Good Friday or a statutory Bank Holiday
<b>Working Hours</b>	the hours of 9.00am to 5.00pm on any Working Day

## 2 Interpretation

### 2.1 In this Agreement:

- 2.1.1 where the context permits, capitalised terms used in this Agreement but not defined herein shall have the same meaning as such capitalised terms as they are used in the Framework Agreement or Customer Access Agreement, as appropriate;
- 2.1.2 headings are for convenience only and do not affect interpretation;
- 2.1.3 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;
- 2.1.4 a reference to any document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- 2.1.5 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, bylaws, regulations, rules and statutory instruments (however described) issued under it;
- 2.1.6 words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- 2.1.7 references to Parties, clauses, Clauses, schedules, exhibits or annexures are, unless otherwise specified, references to Parties, clauses, 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;
- 2.1.8 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
- 2.1.9 any phrase introduced by the words **including, includes, in particular, for example** or similar, shall be construed as illustrative and without limitation to the generality of the related general words. Accordingly, the rule of interpretation known as ejusdem generis shall not apply in such cases.

### 3      **Precedence**

If there is any conflict between the provisions of Part 1, Part 2, Part 3 and Part 4, Part 1 shall prevail.



## Part 2 – Interruption

### 1 Interruption

- 1.1 Upon entering into the Agreement the Customer shall provide to the Supplier at least one (1) telephone number (but not more than four (4) numbers in total) and at least one (1) email address (but not more than four (4) email addresses 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 Clause 1.1 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.
- 1.2 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.
- 1.3 A notification of a requirement for Interruption given by telephone is a valid notification.
- 1.4 Where Interruption is required, the Supplier shall give (or shall procure that the Transporter gives) the Customer not less than four hours' notice before the time from which Interruption is required (the **Interruption Start Time**), specifying:
- 1.4.1 the Supply Point to be Interrupted;
  - 1.4.2 the day of Interruption;
  - 1.4.3 the Interruption Start Time; and
  - 1.4.4 an estimate of the time at which the requirement for Interruption will cease to apply.
- 1.5 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.

### 2 Interruptible rights

- 2.1 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 Supply Year shall not exceed the following (the **Interruption Allowance**):
- 2.1.1 45 (forty five) Working Days in any Supply Year called at the sole discretion of the Transporter; or
  - 2.1.2 in the case of a Supply Point which is a TNI Supply Point (as such term is defined in the Uniform Network Code), 45 (forty five) 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.
- 2.2 Where the Actual Supply Start Date is part way through a Supply Year, the Days on which the Transporter requires Interruption at the relevant Supply Point in the Supply 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 Supply Year under this Agreement.

- 2.3 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.

### **3 Failure to Interrupt**

- 3.1 If the Customer fails to comply with a direction to Interrupt at a Supply Point (irrespective of whether the failure results from a Force Majeure Event):
- 3.1.1 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;
  - 3.1.2 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
  - 3.1.3 the Supplier shall immediately put the Customer on firm instead of interruptible supply.
- 3.2 If the Customer fails to comply with a direction to Interrupt at the relevant Supply Point as a result of a Force Majeure Event 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.
- 3.3 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.
- 3.4 The following circumstances shall not amount to a Force Majeure Event for the Customer:
- 3.4.1 the unavailability of the representatives referred to in Clause 1.1 other than for wholly unforeseeable and unavoidable reasons; and
  - 3.4.2 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.

**Home Office - The Secretary of State for the Home Department**

Signed by and duly authorised for and on behalf of the Customer

By: **REDACTED UNDER FOIA 40 PERSONAL INFORMATION**  
**REDACTED UNDER FOIA 40 PERSONAL INFORMATION**  
Signature: **REDACTED UNDER FOIA 40 PERSONAL INFORMATION**

Date: **17/03/2025**.....

Signed by and duly authorised for and on behalf of the Supplier

By: **REDACTED UNDER FOIA 40 PERSONAL INFORMATION**  
**REDACTED UNDER FOIA 40 PERSONAL INFORMATION**  
Signature: **REDACTED UNDER FOIA 40 PERSONAL INFORMATION**

Date: **17/03/2025**.....

## Appendix A

### Official secrets terms and conditions to be included in any supplier sub-contract

#### 1 Definitions

##### 1.1 In this Clause:

<b>Secret Matter</b>	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 "Official", and shall include any information concerning the content of such matter and anything which contains or may reveal that matter
<b>Employee</b>	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
<b>Customer</b>	means [●]

#### 2 The Official Secrets Acts

##### 2.1 The Second Party shall:

- 2.1.1 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 apply to them and will continue so to apply after the completion or termination of this Agreement; and
- 2.1.2 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).

#### 3 Security measures

##### 3.1 Unless it has the written authorisation 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 a Secret Matter being disclosed to or acquired by a person in any of the following categories:

- 3.1.1 who is not a British citizen;
- 3.1.2 who does not hold the appropriate authority for access to the protected matter;
- 3.1.3 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;
- 3.1.4 who is not an Employee of the Second Party; and
- 3.1.5 who is an Employee of the Second Party and has no need to know the information for the proper performance of this Agreement.

4 [●]

4.1 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:

4.1.1 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

4.1.2 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 [●]

5.1 The Second Party shall:

5.1.1 provide to the Customer:

(a) 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 Clause 4.1;

(b) 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

(c) 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

5.1.2 ensure that, for the purpose of checking the Second Party's compliance with the obligation in Clause 4.1.2, 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.

7 **Sub-contracts**

7.1 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:

7.1.1 submit for approval of the Customer the name of the proposed subcontractor, a statement of the work to be carried out and any other details known to the Second Party which the Customer shall reasonably require;

7.1.2 incorporate into the sub-contract the terms of this Clause and such secrecy and security obligations as the Customer shall direct; and

- 7.1.3 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 this Agreement.

## 8 **Termination**

8.1 The First Party shall be entitled to terminate this Agreement immediately if:

- 8.1.1 Data the Second Party is in breach of any obligation under this Clause; or
- 8.1.2 the Second Party is in breach of any secrecy or security obligation imposed by any other contract with the Crown; or
- 8.1.3 where the Customer considers the circumstances of the breach authorized the secrecy or security of the Secret Matter and notifies its contractor accordingly.

## Appendix B

### Processing Personal Data

- 1 This Appendix B shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Appendix B shall be with the Relevant Authority at its absolute discretion.
- 1.1 The contact details of the Supplier's Data Protection Officer are: N/A
- 1.2 The contact details of the Customer's Data Protection Officer are: N/A
- 1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
- 1.4 Any such further instructions shall be incorporated into this Appendix B.

Description	Details
Identity of Controller for each Category of Personal Data	<p><b>[•Please delete as appropriate]</b></p> <p><b>[•The Supplier is Controller and the Customer is Processor]</b></p> <p>The Parties acknowledge that in accordance the Data Protection Legislation, the Supplier is the Controller and the Customer is the Processor of the following Personal Data:</p> <p><b>The Customer is Controller and the Supplier is Processor</b></p> <p>The Parties acknowledge that in accordance the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor of the following Personal Data:]</p>
Duration of the Processing	<p><b>[•Clearly set out the duration of the Processing including dates]</b></p>
Nature and purposes of the Processing	<p><b>[•Please be as specific as possible, but make sure that you cover all intended purposes.</b></p> <p><b>The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</b></p>

	<b>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</b>
Type of Personal Data	<b>[•Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</b>
Categories of Data Subject	<b>[•Examples include: Staff (including volunteers, agents, and temporary workers), customers/clients, suppliers, patients, students/pupils, members of the public, users of a particular website etc]</b>
Plan for return and destruction of the data once the Processing is complete  <b>Unless</b> requirement under Union or Member State law to preserve that type of data	<b>[•Describe how long the data will be retained for, how it be returned or destroyed]</b>



## Appendix C

### Tax

In case of any ambiguity or conflict, the terms below will supersede any other terms in the Agreement in relation to this annex.

#### 1 Definitions

These definitions are in addition to those found in the Agreement and the Framework Agreement. Defined terms used in this Appendix C which do not appear in the list below shall be defined in the Agreement or the Framework Agreement.

<b>Affiliate</b>	the Gas Act 1986 and the regulations made thereunder
<b>Connected Company</b>	means, in relation to a company, entity or other person, the Affiliates of that company, entity or other person or any other person associated with such company, entity or other person
<b>Control</b>	the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and <b>Controls</b> and <b>Controlled</b> shall be interpreted accordingly
<b>Customer Data</b>	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Supplier by or on behalf of the Customer; and/or</p> <p>(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or</p> <p>(b) any Personal Data for which the Customer is the Controller, or any data derived from such Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified</p>
<b>Key Subcontractor</b>	<p>any Subcontractor:</p> <p>(a) which, in the opinion of the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or</p>

	(b) with a Subcontract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Call-Off Contract
<b>Purchase Order Number</b>	the Customer's unique number relating to the supply of the Services
<b>Subcontract</b>	any contract or Agreement (or proposed contract or Agreement) between the Supplier (or a Subcontractor) and any third party whereby that third party agrees to provide to the Supplier (or the Subcontractor) all or any part of the Services, or facilities or services which are material for the provision of the Services, or any part thereof or necessary for the management, direction or control of the Services or any part thereof
<b>Subcontractor</b>	any third party with whom:  (a) the Supplier enters into a Subcontract; or  (b) a third party under (a) above enters into a Subcontract,  or the servants or agents of that third party
<b>Supplier Personnel</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor of the Supplier engaged in the performance of the Supplier's obligations under the Agreement
<b>Supporting Documentation</b>	sufficient information in writing to enable the Customer to reasonably verify the accuracy of any invoice
<b>Tax</b>	(a) all forms of tax whether direct or indirect;  (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;  (c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and  (d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,  in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction
<b>Tax Non-Compliance</b>	where an entity or person under consideration meets all 3 conditions contained in the relevant excerpt from

	<p>HMRC's "Test for Tax Non-Compliance", as set out in Appendix E, where:</p> <p>(a) the <b>Economic Operator</b> means the Supplier or any agent, supplier or Subcontractor of the Supplier requested to be replaced pursuant to Clause 4.3; and</p> <p>(b) any <b>Essential Subcontractor</b> means any Key Subcontractor</p>
--	---

## 2 **Payment and recovery of sums due**

- 2.1 The Supplier shall invoice the Customer as specified in the Agreement. Without prejudice to the generality of the invoicing procedure specified in the Agreement, the Supplier shall procure a Purchase Order Number from the Customer prior to the commencement of any Services and the Supplier acknowledges and agrees that should it commence Services without a Purchase Order Number:
- 2.1.1 the Supplier does so at its own risk; and
- 2.1.2 the Customer shall not be obliged to pay any invoice without a valid Purchase Order Number having been provided to the Supplier.
- 2.2 Each invoice and any Supporting Documentation required to be submitted in accordance with the invoicing procedure specified in the Agreement shall be submitted by the Supplier, as directed by the Customer from time to time via the Customer's electronic transaction system.
- 2.3 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other Agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

## 3 **Warranties**

- 3.1 The Supplier represents and warrants that:
- 3.1.1 in the three years prior to the Effective Date, it has been in full compliance with all applicable securities and Laws related to Tax in the United Kingdom and in the jurisdiction in which it is established;
- 3.1.2 it has notified the Customer in writing of any Tax Non-Compliance it is involved in; and
- 3.1.3 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue and the Supplier has notified the Customer of any profit warnings issued in respect of the Supplier in the three years prior to the Effective Date.
- 3.2 If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 3.1.1, 3.1.2 and/or 3.1.3 has been breached, is untrue, or is misleading, it shall immediately notify the Customer of the relevant occurrence in sufficient detail to enable the Customer to make an accurate assessment of the situation.
- 3.3 In the event that the warranty given by the Supplier pursuant to Clause 3.1.2 is materially untrue, the Customer shall be entitled to terminate the Agreement with immediate effect pursuant to the clause 14.2.6 in the main part of the Agreement.

#### **4 Promoting tax compliance**

- 4.1 All amounts stated are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a valid VAT invoice.
- 4.2 To the extent applicable to the Supplier, the Supplier shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established.
- 4.3 The Supplier shall provide to the Customer the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Subcontractor of the Supplier prior to the provision of any material Services under the Agreement by that agent, supplier or Subcontractor. Upon a request by the Customer, the Supplier shall not contract, or will cease to contract, with any agent, supplier or Subcontractor supplying Services under the Agreement.
- 4.4 If, at any point during the Term, there is Tax Non-Compliance, the Supplier shall:
  - 4.4.1 notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and
  - 4.4.2 promptly provide to the Customer:
    - (a) details of the steps which the Supplier is taking to resolve the Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
    - (b) such other information in relation to the Tax Non-Compliance as the Customer may reasonably require.
- 4.5 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 4.5 shall be paid in cleared funds by the Supplier to the Customer not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Customer.
- 4.6 Upon the Customer's request, the Supplier shall provide (promptly or within such other period notified by the Customer) information which demonstrates how the Supplier complies with its Tax obligations.
- 4.7 If the Supplier:
  - 4.7.1 fails to comply (or if the Customer receives information which demonstrates to it that the Supplier has failed to comply) with Clauses 4.2, 4.4.1 and/or 4.6 this may be a material breach of the Agreement;
  - 4.7.2 fails to comply (or if the Customer receives information which demonstrates to it that the Supplier has failed to comply) with a reasonable request by the Customer that it must not contract, or must cease to contract, with any agent, supplier or Subcontractor of the Supplier as required by Clause 4.3 on the grounds that the agent, supplier or Subcontractor of the Supplier is involved in Tax Non-Compliance this shall be a material breach of the Agreement; and/or
  - 4.7.3 fails to provide details of steps being taken and mitigating factors pursuant to Clause 4.4.2 which in the reasonable opinion of the Customer are acceptable this shall be a material breach of the Agreement;

and any such material breach shall allow the Customer to terminate the Agreement pursuant to clause 14.2.6 in the main part of the Agreement.

- 4.8 The Customer may internally share any information which it receives under Clauses 4.3 to 4.4 (inclusive) and 4.6, for the purpose of the collection and management of revenue for which the Customer is responsible.

## 5 Use of off-shore tax structures

- 5.1 Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall ensure that its Connected Companies, Key Subcontractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Customer) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Customer under or pursuant to this Agreement or (in the case of any Key Subcontractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Subcontract (**Prohibited Transactions**). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Subcontractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties' business.
- 5.2 The Supplier shall notify the Customer in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Subcontractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Customer within a reasonable time to allow the Customer to consider the proposed Prohibited Transaction before it is due to be put in place.
- 5.3 In the event of a Prohibited Transaction being entered into in breach of Clause 5.1 above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Key Subcontractor (as applicable) shall discuss the situation with the Customer and, in order to ensure future compliance with the requirements of Clauses 5.1 and 5.2, the Parties (and the Supplier shall procure that the Key Subcontractor, where applicable) shall agree (at no cost to the Customer) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the escalation process in the Agreement.
- 5.4 Failure by the Supplier (or a Key Subcontractor) to comply with the obligations set out in Clauses 5.2 and 5.3 shall allow the Customer to terminate the Agreement pursuant to the Clause that provides the Customer the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

## 6 Data Protection and off-shoring

- 6.1 The parties agree that the Supplier shall, whether it is the Controller or Processor, in relation to any Personal Data processed in connection with its obligations under the Agreement:
- 6.1.1 not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- (a) the Supplier or any applicable Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or, where relevant, section 75 of the Data Protection Act 2018) as determined by either the Customer or the Supplier when it is the Controller;
  - (b) the Data Subject has enforceable rights and effective legal remedies;
  - (c) the Supplier or any applicable Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best

endeavours to assist either the Customer or the Supplier when it is the Controller in meeting its obligations); and

- (d) the Supplier or any applicable Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

- 6.2 Failure by the Supplier or any applicable Processor to comply with the obligations set out in Clause 6.1 shall allow the Customer to terminate the Agreement pursuant to the Clause that provides the Customer the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

## **7 Commissioners for Revenue and Customs Act 2005 and related Legislation**

- 7.1 The Supplier shall comply with and shall ensure that all Supplier Personnel who will have access to, or are provided with, Customer Data comply with the obligations set out in Section 18 of the Commissioners for Revenue and Customs Act 2005 (**CRCA**) to maintain the confidentiality of Customer Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Customer) a breach of the aforesaid obligations may lead to a prosecution under Section 19 of CRCA.
- 7.2 The Supplier shall comply with and shall ensure that all Supplier Personnel who will have access to, or are provided with, Customer Data comply with the obligations set out in Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Customer) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.
- 7.3 The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel who will have access to, or are provided with, Customer Data in writing of the obligations upon Supplier Personnel set out in Clause 7.1 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.
- 7.4 The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Customer Data sign (or have previously signed) a Confidentiality Declaration, in the form provided at Appendix F to this Appendix D. The Supplier shall provide a copy of each such signed declaration to the Customer upon demand.
- 7.5 In the event that the Supplier or the Supplier Personnel fail to comply with this Clause 7, the Customer reserves the right to terminate the Agreement with immediate effect pursuant to clause 14.2.6 in the main part of the Agreement.

## Appendix D

### Excerpt from HMRC's "Test for Tax Non-Compliance"

#### Condition one (an in-scope entity or person)

- 1 There is a person or entity which is either: **(X)**.
  - 1.1 The Economic Operator or Essential Subcontractor (**EOS**);
  - 1.2 Part of the same Group of companies of EOS. An entity will be treated as within the same Group of EOS where that entities' financial statements would be required to be consolidated with those of EOS if prepared in accordance with **IFRS 10 Consolidated Financial Accounts**<sup>1</sup>;
  - 1.3 Any director, shareholder or other person (**P**) which exercises control over EOS. **Control** means **P** can secure, through holding of shares or powers under articles of association or other document that EOS's affairs are conducted in accordance with P's wishes.

#### Condition two (arrangements involving evasion, abuse or tax avoidance)

- 2 X has been engaged in one or more of the following:
  - 2.1 fraudulent evasion<sup>2</sup>;
  - 2.2 conduct caught by the General Anti-Abuse Rule<sup>3</sup>;
  - 2.3 conduct caught by the Halifax Abuse principle<sup>4</sup>;
  - 2.4 entered into arrangements caught by a DOTAS or VADR scheme<sup>5</sup>;
  - 2.5 conduct caught by a recognised anti-avoidance rule<sup>6</sup> being a statutory provision which targets arrangements where either a main purpose, or an expected benefit, is to obtain a tax advantage or where the arrangement is not effected for commercial purposes. Targeted Anti-Avoidance Rules (**TAARs**). It may be useful to confirm that the Diverted Profits Tax is a TAAR for these purposes;
  - 2.6 entered into an avoidance scheme identified by HMRC's published Spotlights list<sup>7</sup>;
  - 2.7 engaged in conduct which falls under rules in other jurisdictions which are equivalent or similar to (a) to (f) above.

---

<sup>1</sup> <https://www.iasplus.com/en/standards/ifrs/ifrs10>

<sup>2</sup> Fraudulent evasion means any UK tax evasion offence or UK tax evasion facilitation offence as defined by section 52 of the Criminal Finances Act 2017 or a failure to prevent facilitation of tax evasion under section 45 of the same Act.

<sup>3</sup> General Anti-Abuse Rule means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions

<sup>4</sup> Halifax Abuse Principle means the principle explained in the *CJEU Case C-255/02 Halifax and others*

<sup>5</sup> A Disclosure of Tax Avoidance Scheme (DOTAS) or VAT Disclosure Regime (VADR) scheme caught by rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Section 19 and Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Section 19 and Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

<sup>6</sup> The full definition of Anti-avoidance rule can be found at Paragraph 25(1) of Schedule 18 to the Finance Act 2016 and Condition 2 (a) above shall be construed accordingly.

<sup>7</sup> Targeted list of tax avoidance schemes that HMRC believes are being used to avoid paying tax due and which are listed on the Spotlight website: <https://www.gov.uk/government/collections/tax-avoidance-schemes-currently-in-the-spotlight>

**Condition three (arrangements are admitted, or subject to litigation/prosecution or identified in a published list (Spotlights))**

- 3 X's activity in Condition 2 is, where applicable, subject to dispute and/or litigation as follows:
- 3.1 In respect of (a), either X:
- 3.1.1 has accepted the terms of an offer made under a Contractual Disclosure Facility (CDF) pursuant to the Code of Practice 9 (COP9) procedure<sup>8</sup>; or
- 3.1.2 has been charged with an offence of fraudulent evasion.
- 3.2 Once X has commenced the statutory appeal process by filing a Notice of Appeal and the appeal process is ongoing including where the appeal is stayed or listed behind a lead case (either formally or informally). NB Judicial reviews are not part of the statutory appeal process and no supplier would be excluded merely because they are applying for judicial review of an HMRC or HMT decision relating to tax or national insurance.
- 3.3 In respect of (b) to (e), during an HMRC enquiry, if it has been agreed between HMRC and X that there is a pause with the enquiry in order to await the outcome of related litigation.
- 3.4 In respect of (f) this condition is satisfied without any further steps being taken.
- 3.5 In respect of (g) the foreign equivalent to each of the corresponding steps set out above in (i) to (iii).

For the avoidance of doubt, any reference in this Appendix D to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time including any implementing or successor legislation.

---

<sup>8</sup> The Code of Practice 9 (COP9) is an investigation of fraud procedure, where X agrees to make a complete and accurate disclosure of all their deliberate and non-deliberate conduct that has led to irregularities in their tax affairs following which HMRC will not pursue a criminal investigation into the conduct disclosed.



## Appendix E

### Confidentiality declaration

**Contract reference:** [●for Supplier to insert Contract reference number and contract date] (the Agreement).

**Declaration:**

I solemnly declare that:

- 1 I am aware that the duty of confidentiality imposed by section 18 of the Commissioners for Revenue and Customs Act 2005 applies to Customer Data (as defined in the Agreement) that has been or will be provided to me in accordance with the Agreement.
- 2 I understand and acknowledge that under Section 19 of the Commissioners for Revenue and Customs Act 2005 it may be a criminal offence to disclose any Customer Data provided to me.

Signed:	[●]
Full name:	[●]
Position:	[●]
Company:	[●]
Date of signature:	[●]