

General Terms & Conditions

Section A – General Supply Terms

1 Definitions

The following definitions shall apply:

“**Access Rights**” means our right or our subcontractors' or agents' right to all reasonable access to all Supply Points at any time;

“**Act**” means the Gas Act 1986 as amended by the Gas Act 1995 and any regulations made hereunder both as amended or re-enacted from time to time;

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

“**Charges**” means the Commodity Charges and other charges specified in the Quotation Document and clause 6 of these Terms and Conditions, which shall be charged during the Supply Period;

“**Commodity Charges**” means the element of the Charges charged in respect of the volume of gas consumed during the Supply Period;

“**Consumption Data**” means actual meter readings from each Supply Point received by us from you, National Grid plc or a meter reading agent during the Supply Period showing the actual consumption of gas in respect of each Supply Point;

“**Day**” means a period of twenty-four (24) hours beginning at 06:00 hours on each day;

“**Default Contract Rate**” means the rates and charges published on our website at www.gazdefrance-ess.co.uk, which shall be payable by you where you continue to consume gas after the End Date and which shall include and comprise (a) charges for the gas consumed, (b) an administration charge per Supply Point, (c) the pass through of specific costs incurred by us for transportation and metering in respect of the relevant Supply Point(s) and (d) any other reasonable charges and costs incurred by us in respect of the Supply Points after the End Date;

“**Economic Loss**” means loss of profits, revenues, interest, business, goodwill or commercial, market or economic opportunity, whether direct or indirect and whether or not foreseeable;

“**End Date**” means the anticipated end of the Supply Period as set out in the Quotation Document;

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

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

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

“**Framework Agreement**” means any, Joint, multi-party, or consortium framework agreement attached to and forming part of this Supply Contract, or subsequently agreed in writing between the parties to be part of this Supply Contract setting out certain matters which amend or are supplementary to the Terms and Conditions;

“**Industry Agreements**” means:

- The Uniform Network Code;
- The Short Form Code; and
- Any agreements into which it has been necessary for us to enter in order to supply gas;

“**Industry Laws**” means any legally binding obligations imposed on us and other authorised gas suppliers under the Licence, the Industry Agreements or any other code agreement or arrangement which we and other authorised gas suppliers are obliged by the Act, Industry Agreements or any Licence to be a party to or to comply with;

“**Initial Consumption Forecast**” means the first set of best estimates for the consumption of gas as set out in the Quotation Document (and in respect of flexible products, also in Table A of the Product Appendix), excluding the impact of Supply Points added or removed after the original Start Date, which shall comprise forecast information provided by you to us or, in the absence of you providing such information, either our historical consumption data or where such data is not available, the registered AQ of the Supply Point(s);

“**Licence**” means any Transporter's Licence, our Shipper's Licence or our Supplier's Licence;

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

“**Metering Costs**” means a component of the Charges, comprising any charges relating to the installation, provision, maintenance of your Equipment in situ at the Signature Date at the Supply Point and specified as “Fixed” or “Pass Through” in the Quotation Document;

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

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

“**Payment Date**” means (a) in relation to monthly consumption invoices, the date as defined in the Quotation Document and (b) the date as specified on the invoice in respect of all other invoices;

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

- (a) the safety of the pipeline system is significantly at risk;
- (b) the safe conveyance of gas by that system is significantly at risk; or
- (c) gas conveyed by that system is at such a pressure, or of such a quality, as to constitute, when supplied to premises, a danger to life or property,

and that opinion is not manifestly unreasonable.

“**Product Appendix**” means the appendix detailing the product type and mechanism, attached to the Quotation Document;

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“Quotation Document” means your offer to enter into the Supply Contract, accepted by us in accordance with these Terms and

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

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

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

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

“Revised Consumption Forecast” means your (or, pursuant to clause 4.5, our) ongoing written best estimate of your projected future gas consumption for each remaining period (i.e. day/month) after the date of such forecast, estimating gas consumption for each such future period of the Supply Period on an ongoing basis and which we agree to use to purchase and/or sellback any gas;

“Security Deposit” means at our option either (i) a cash amount equivalent to the charges which we reasonably consider would constitute the likely charges for four calendar months calculated on a reasonable estimate of consumption together with you and us entering into a deposit agreement in a form acceptable to us or (ii) a letter of credit or bank guarantee from such financial institution and in such form of wording as is acceptable to us. Where we initially choose (ii) above but are not satisfied with the form of wording or institution proposed by you, then we may alternatively invoke (i) above;

“Service Providers” means any meter reading agent, meter asset manager, meter asset provider or automated meter reader provider;

“Short Form Code” means the document which details individual distribution network operators’ transportation arrangements to the extent that these differ from those set out in the Uniform Network Code;

Conditions which shall include the Product Appendix, Supply Point details and the Charges;

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

“Signature Date” means the date on which we accept your offer on the terms of the Quotation Document, by our signature and dating of the Quotation Document;

“Start Date” means the date on which you intend to start to receive Supply as set out in the Quotation Document;

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

“Supply Contract” means the terms and conditions set out in the Quotation Document and (where applicable) Product Appendix together with these Terms and Conditions and any Side Letter(s);

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

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

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

“Supply Meter Point” has the meaning given to such expression in the Industry Agreements (including both Daily Metered (DM) and Non-Daily Metered (NDM) Supply Meter Points) and referred to as the “Meter Point Reference Numbers” in the Quotation Document;

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

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

“Transporter” means National Grid plc, any Service Provider or any other person or body licensed under the Act to transport gas and which transports Gas in connection with this Supply Contract;

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

“Uniform Network Code” means the agreement as modified from time to time between the Transporter and gas shippers which sets out the commercial terms for gas transportation services applying in respect of the national transportation system, to which we are a Party;

“We” or “us” means GDF SUEZ ENERGY UK, the trading name of GDF SUEZ Sales Limited (Registered No. 3814495) whose registered offices are at 1 City Walk, Leeds, West Yorkshire LS11 9DX;

“Working Day” means Monday to Friday inclusive but excluding bank holidays;

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“you” or “your” means the person or organisation who offered to enter into this Supply Contract as identified as the “Customer” in the Quotation Document.

2 Interpretation

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

3 Contract Period

Commencement and Duration of Supply

- 3.1 You make an irrevocable offer to be bound by this Supply Contract in relation to all Supply Points from the date of your signature on the Quotation Document.
- 3.2 This Supply Contract becomes binding in relation to all Supply Points on both Parties on the Signature Date.
- 3.3 We shall provide a Supply in relation to all Supply Points in accordance with this Supply Contract for the Supply Period.

- 3.4 Our Supply to you pursuant to clause 3.3 is conditional upon; us having in place for the full duration of the Supply Period, a credit insurance policy on terms which are acceptable to us, in relation to your account with us or, where we are unable to obtain and/or retain an acceptable credit insurance policy you providing a Security Deposit within 10 Working Days of receiving our request for the same pursuant to this clause.

- 3.5 Where you fail to consume any of the Supply from the Start Date then we shall be entitled to recover from you and shall be indemnified by you for all costs and losses incurred by us as a result of such failure for the period up to when consumption commences, including but not limited to costs incurred by us in selling gas at a price lower than that price for which it was originally purchased.

Consumption after Termination or Expiry

- 3.6 In the event that you continue to consume gas at any Supply Point after the Termination Date then, until such time as another gas supplier authorised under the Act has been registered as the supplier to that Supply Point, any consumption after the Termination Date shall be charged at our Default Contract Rate (and not the Charges) but shall to all other extents continue to be subject to the Terms of this Supply Contract. In addition, we shall be entitled, at our discretion, to do any one, or a combination of the following:
- 3.6.1 invoice you on a weekly basis, thereby varying the Invoicing Period to a weekly basis;
- 3.6.2 request a Security Deposit be provided within 10 Working Days of such a request.
- 3.6.3 arrange for the Supply Points (or any one or combination of the Supply Points) to be disconnected immediately (and we shall be entitled to exercise Access Rights in doing so) together with being entitled to recover from you the costs incurred in such disconnections;

Transfer of Supply

- 3.7 Where you wish to transfer any Supply Point we may enter an objection under the customer transfer process in accordance with the Industry Agreements to prevent an alternative supplier from registering the Supply Point if:
- 3.7.1 you arrange to transfer to an alternative supplier before the Termination Date;
- 3.7.2 there are any overdue invoices not paid by their Payment Date, such invoices not being subject to a bona fide dispute; and/or
- 3.7.3 there is a co-operative agreement with the new supplier that they have registered the Supply Meter Point in error.

4 Your Consumption Information and other obligations

- 4.1 You agree that:
- 4.1.1 title and risk in the gas shall pass to you at the Offtake Point;

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- 4.1.2 the quantity of gas in kWh supplied under this Supply Contract shall be calculated in accordance with section 12 of the Act;
- 4.1.3 the volume of gas supplied shall be measured and corrected for pressure and temperature in accordance with the gas (Calculation of Thermal Energy) Regulations 1996;
- 4.1.4 you shall use gas supplied under this Supply Contract so that it does not interfere with the efficient and safe supply of gas to other consumers;
- 4.1.5 you have informed us and shall continue to inform us immediately if you have or use or intend to have or use any on-site generation facilities at any time during the Supply Period;
- 4.1.6 unless otherwise set out in the Product Appendix you shall always contact us in writing at the contact details set out in clause 11.9 below and any failure to do so shall make any attempted written contact invalid; and
- 4.1.7 at least 30 working days before the Start Date and thereafter on an ongoing basis you will provide us with up to date emergency telephone and facsimile numbers clearly identifying personnel who can be contacted at any time for the purposes of reporting or facilitating a response to any emergency at any Supply Point.

Supply Point Capacity

- 4.2 In relation to each Supply Point:
 - 4.2.1 we are entitled to rely upon the Supply Point Capacity to calculate the Charges;
 - 4.2.2 you will notify us as soon as possible where you know or believe any Supply Point Capacity is incorrect;
 - 4.2.3 you will notify us where you wish any Supply Point Capacity to be varied and we will then arrange the variation as soon as reasonably practicable provided that it is confirmed by the Transporter that such variation to Supply Point Capacity is agreed; and
 - 4.2.4 you shall provide us with sufficient data as specified in section G 1.6 of the Uniform Network Code/ Short Form Code to allow us to agree a Supply Point Capacity revision with the Transporter.

Consumption Forecasts

- 4.3 You agree that the Initial Consumption Forecast and, in relation to the period after their provision, any Revised Consumption Forecasts provided pursuant to clauses 4 and 5, shall be contractually binding in relation to the consumption tolerance mechanism in clause 6.19.
- 4.4 You will provide a new forecast as soon as possible on each occasion that you become aware of any likely change of more than the lower of (a) 10% to your consumption in any month or (b) 150,000 kWh per day compared to your Initial Consumption Forecast or any previous Revised Consumption Forecast, (including periods of zero consumption for any Supply Meter Point under this Supply Contract) and we may agree that this is a Revised Consumption Forecast.

- 4.5 Where we reasonably consider the Initial Consumption Forecast or any Revised Consumption Forecast to be materially inaccurate, then we shall be entitled to substitute the Initial Consumption Forecast (or, if any, the most recent Revised Consumption Forecast) with a reasonable Revised Consumption Forecast on your behalf.
- 4.6 Where you or we provide a Revised Consumption Forecast pursuant clauses 4.4 and 4.5 above then:
 - 4.6.1 the Initial Consumption Forecast (or, if any, the most recent Revised Consumption Forecast) shall be substituted with the new Revised Consumption Forecast with effect from the date of the provision of the Revised Consumption Forecast and that Revised Consumption Forecast shall be effective only for the period following the date it is provided;
 - 4.6.2 where there is a reduction in the Initial Consumption Forecast (or, if any, the most recent Revised Consumption Forecast), to the extent that gas has been forward purchased in excess of any Revised Consumption Forecast, we shall be entitled to recover from you and shall be indemnified by you for all costs and losses incurred by us as a result of such revision including but not limited to costs incurred by us in selling gas at a price lower than that price for which it was originally purchased; and
 - 4.6.3 where there is an increase in the Initial Consumption Forecast (or, if any, the most recent Revised Consumption Forecast) and additional gas is purchased, then we shall be entitled to vary the Charges to reflect any resulting changes in the cost of supply.

5 Supply Points

New Supply Points

- 5.1 We may, in our absolute discretion, agree in writing to your written request that Supply Points in addition to those in the Quotation Document are added to the Supply Contract.
- 5.2 The Charges for any new Supply Points that we agree to add to the Supply Contract will be as set out in an additional Quotation Document. In all other respects the Product Appendix (if applicable) and these Terms and Conditions shall apply.
- 5.3 Any Supply Points added during the Supply Contract which were not included in the first Quotation Document shall be subject to a separate calculation under clause 6.19.

Removal of Supply Points

- 5.4 If you wish to dispose of or sell any Supply Point to a third party or cease to lease, own or occupy a Supply Point during the term of this Supply Contract then such Supply Point shall only be removed from this Supply Contract where:
 - 5.4.1 you have provided us with at least 45 days notice in writing;
 - 5.4.2 we have provided written consent to such removal;
 - 5.4.3 you have provided us with written details of the new or remaining lessee, lessor, owner or occupier of the Supply Point; and
 - 5.4.4 we are satisfied that the new or remaining lessee, lessor, owner or occupier of the Supply Point;

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- (a) is of equal or better financial standing as you or has provided alternative security acceptable to us; and
- (b) has entered into a supply contract with us for the supply of gas to that Supply Point on terms satisfactory to us.

5.5 Until all of the provisions of 5.4 are satisfied;

5.5.1 this Supply Contract shall remain in full force and effect with respect to such Supply Point and any Supply delivered to it and we shall be under no obligation whatsoever to remove such Supply Point from this Supply Contract unless we agree otherwise in writing, and

5.5.2 Clause 3.5 shall apply to such Supply Points where the Termination Date has passed, and

5.5.3 we shall be entitled to recover from you and shall be indemnified by you for all costs and losses incurred as a result of the removal of a Supply Point including but not limited to costs incurred by us in selling gas at a price lower than that price for which it was originally purchased.

5.6 Following the removal of a Supply Point, the Initial Consumption Forecast (or any previous Revised Consumption Forecast) may be substituted with a further Revised Consumption Forecast. The further Revised Consumption Forecast shall take account of the volume of any gas we choose to sell back pursuant to clause 5.5.3 and such Revised Consumption Forecast shall be effective only for the period following the date of the removal of the Supply Point.

Discontinuance of Supply

5.7 If you wish to discontinue consumption of gas at any Supply Point during the term of this Supply Contract whilst you continue to occupy or own such Supply Point then, until such time as the Supply Point is disconnected you shall indemnify us in respect of:

5.7.1 all ongoing transportation, metering and other ancillary costs associated with such Supply Point;

5.7.2 all disconnection costs where you instruct us to disconnect the Supply Point; and

5.7.3 all costs and losses, including but not limited to costs incurred by us in selling gas at a price lower than that price for which it was originally purchased, as a result of the Supply Contract not being performed in respect of such Supply Contract as originally intended.

5.8 Where any Supply Point is added or removed pursuant to this clause 5 the provisions of the Quotation Document shall, to the extent agreed to by us, be amended or be deemed to be amended as appropriate to take account of such sale, disposal of, termination of use or addition of a Supply Point.

5.9 You shall not be entitled to remove a Supply Point from this Supply Contract where such Supply Point is the only remaining Supply Point under this Supply Contract.

5.10 If gas is not used at any Supply Meter Point for a consecutive period in excess of six (6) calendar months we may, at our discretion, arrange for the isolation of that meter and you shall

indemnify us for a reasonable administration fee and all costs incurred by such isolation.

5.11 You shall indemnify us for all costs, losses and expenses we reasonably incur (including administration costs) where the Supply Contract includes Supply Points which you provided to us in error.

6 Charges and Payment

6.1 You shall be invoiced on a monthly basis unless otherwise agreed in writing with us.

6.2 In consideration of the Supply in accordance with this Supply Contract you shall pay us all Charges without set off, deduction or counterclaim by the Payment Date.

6.3 If payment is not made by the Payment Method then we shall be entitled to charge you an administration fee in respect of each invoice.

6.4 We shall use our reasonable endeavours to send you an invoice for the Charges by the Invoicing Date. In the event that an invoice is not posted to you or sent to you by other customary means by the Invoicing Date, the Payment Date will be extended by the number of days such invoice is posted or sent late.

6.5 We may (both before and after judgement) charge you interest at 4% above Bank of England's base lending rate from time to time, compounded daily, on any overdue amount.

6.6 Where you have paid three or more invoices late during the Supply Period then we shall be entitled to invoice you in advance for the last month of consumption of the Contract Period based on our estimate of consumption.

6.7 We reserve the right to charge you an administration fee for each copy invoice you request.

6.8 If any overdue amount is the subject of a bona fide dispute, then you shall still pay any undisputed portion of an invoice by the Payment Date.

6.9 We will use reasonable endeavours to invoice you for your consumption using validated Consumption Data. However, where we receive non-validated, incomplete or, in our reasonable opinion, inaccurate Consumption Data we will be entitled to charge you on the basis of our estimate of consumption. Upon receipt of validated Consumption Data we will then be entitled but not obliged to issue Reconciliation Invoices.

6.10 Where one or more elements of the Charges are incorrectly calculated or wrongly omitted or included in any invoice, then we shall be entitled but not obliged to issue Reconciliation Invoices.

6.11 For Supply Points identified as "Transportation Pass Through" in the Quotation Document we are entitled but not obliged to issue Reconciliation Invoices during or after the Supply Period in respect of the Transportation Costs due. For Supply Periods greater than 12 months, we shall be entitled but not obliged to issue Reconciliation Invoices annually.

6.12 For Supply Points identified as "Metering Pass Through" in the Quotation Document we are entitled but not obliged to

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issue Reconciliation Invoices during or after the Supply Period in respect of the Metering Costs due. For Supply Periods of greater than 12 months, we shall be entitled but not obliged to issue Reconciliation Invoices annually.

- 6.13 You are entitled to request a Reconciliation Invoice of the Transportation Costs and/or Metering Costs provided that:
- 6.13.1 there has been no previous Reconciliation Invoice issued in respect of that element of the Charges for the period in question; and
- 6.13.2 such request is received within 12 months of (a) the Termination Date or (b) the date of the last invoice or (c) our receipt of fully validated Consumption Data, whichever is the later.
- 6.14 Following the issue of any Reconciliation Invoice we shall be entitled to vary the Charges so as to minimise the need for future Reconciliation Invoices.
- 6.15 If over the whole of the Supply Period, the total invoiced consumption is outside the Consumption Threshold, we may recover additional Transportation Costs incurred even if Transportation Costs are "Fixed" in the Quotation Document, together with an administration fee of £100 per Supply Point.
- 6.16 In addition to the Metering Costs you shall be liable to pay any costs incurred by us where any Equipment not in situ at the Signature Date is fitted at a Supply Point, including but not limited to installation and rental charges.
- 6.17 Transportation Costs and Metering Costs are still payable by you for any Supply Points that remain connected but are not using gas even if Transportation Costs are Fixed in the Quotation Document.
- 6.18 We shall be entitled to recover from you and you shall indemnify us in respect of a proportionate amount of any additional costs, charges, expenses or liabilities ("Costs") which are incurred by us in supplying the gas including, but not limited to, where such Costs arise in the following circumstances:
- 6.18.1 from the imposition, or variation in the rate, of any energy-related tax, levy or duty;
- 6.18.2 where there is an increase to our cost of supply (including but not limited to Transportation Costs or distribution costs) as a result of (a) any imposition, revision, variation, amendment or change in interpretation of any statute, statutory instrument, regulation, law, directive ("Legislation") or the Industry Agreements, (b) any new Legislation or new Industry Agreements, or (c) any decision, direction order or interpretation of Legislation or the Industry Agreements by the Authority or any other relevant regulatory body;
- 6.18.3 as a result of us fulfilling our or your obligations or your failure to comply with your obligations under any of the Industry Agreements in relation to:
- (a) safety issues or investigations in connection with any of the Supply Points; and/or
- (b) any Supply Point being (or becoming known to be) reclassified or re-designated as daily metered;
- 6.18.4 where any supply point ratchet charges arise from the Supply Point Capacity being exceeded or exit capacity overrun

charges arise, which shall be payable monthly in arrears by you upon us notifying you of those charges arising;

- 6.18.5 where the demand pattern of an NDM Supply Point is inconsistent with the End User Category assigned by the Transporter such that the Transporter assigns a different End User Category;
- 6.18.6 where our costs increase due to changes to the method for apportioning the NDM error across different categories of consumer; or
- 6.18.7 where you fail to provide such data referred to in 4.2.4 or the Transporter rejects the data you have provided pursuant to clause 4.2.4, we reserve the right to alter the Charges to reflect any resulting increased costs.

Consumption Tolerance

- 6.19 At the end of the Supply Period or, for contracts greater than 12 months, on an annual basis, we will compare Invoiced Consumption against the Consumption Tolerance Forecast (defined below). If over each annual period the total Invoiced Consumption is outside the Consumption Threshold, we shall be entitled to recover the additional costs of Supply calculated by reference to differences in volume and price as follows for each month:
- 6.19.1 (Invoiced Consumption – Consolidated Consumption Forecast) * (Market Price – Reference Price) where;
- 6.19.2 **Consumption Threshold** means the percentage levels of the Consumption Tolerance Forecast as prescribed in the Quotation Document, adjusted for Reduced Consumption Periods;
- 6.19.3 **Consumption Tolerance Forecast** means the Initial Consumption Forecast excluding, for the avoidance of doubt, the impact of any Supply Points added or removed during the Supply Period;
- 6.19.4 **Invoiced Consumption** means the consumed volume of gas invoiced in each Invoicing Period;
- 6.19.5 **Consolidated Consumption Forecast** means the Initial Consumption Forecast as replaced by any and all Revised Consumption Forecasts pursuant to clauses 4 and 5;
- 6.19.6 **Market Price** means the unweighted average of daily System Average Prices (as defined in the Industry Agreements) during the Invoicing Period;
- 6.19.7 **Reference Price** means the monthly wholesale market price that was used by us for the calculation of the Charges.

7 Meters and Equipment

- 7.1 You shall ensure that every meter installed at the Supply Points is kept in proper order for registering the quantity of gas supplied to each Supply Point
- 7.2 You warrant that meters installed at the Supply Points are stamped in accordance with Section 17 of the Act. You shall inform us immediately if you know, or have reason to believe, that any meters are no longer stamped.

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- 7.3 We shall take all reasonable endeavours to make arrangements for the reading of the meters in accordance with normal reading cycles notified to you.
- 7.4 Subject only to clause 4.1, the register of a meter shall be conclusive evidence of the quantity of gas supplied through that meter.
- 7.5 If, in accordance with the relevant provisions of the Act, either Party requires a meter examiner to examine any meter provided for the purposes of ascertaining the quantity of Gas supplied under this Supply Contract, then where the meter when so examined is found to register inaccurately to a degree exceeding that permitted by regulations under the said provision:
- 7.5.1 the meter shall be assumed to have registered inaccurately to the degrees so found since the penultimate date on which (otherwise than in connection with the examination) the meter was read or some other date as determined for this purpose under the relevant regulations except in a case where it is proved to have begun to register inaccurately as described on some later date; and
- 7.5.2 the amount of allowance to be made to, or the surcharge to be made on you as a result of the inaccurate registration shall be paid to or by you within fifteen (15) days of notification of the adjustment.
- 7.6 If a meter is removed for examination, the expenses incurred in removing, examining and re-installing the meter or substituting meter, shall be paid by you.
- 7.7 You shall allow the Access Rights without charge. We shall give to you reasonable notice (except in the case of emergencies when notice will not be required) for the purposes of installation, maintenance, operation, inspection or renewal of the Equipment or for the purposes of cutting off or discontinuing the supply of gas to the Supply Point where, in our or the Transporter's reasonable opinion, it is necessary to do so for the purpose of averting danger of damage to life and/or property.
- 7.8 You shall comply with and act in accordance with best industry practice in relation to the appointment of Service Providers and shall also comply with the RGMA (Review of Gas Meter Arrangements), including but not limited to the requirement to provide file flows and information relating to any changes of Equipment.
- 7.9 Where you wish to use a Service Provider other than those which we recommend then you shall notify us of any such preferred Service Provider(s) which you wish to use and you shall indemnify us in respect of a reasonable administration fee and all additional costs which arise from your choice of Service Provider.
- 7.10 We shall make any necessary arrangements with the Transporter or any relevant meter service provider for the installation, operation, maintenance and renewal of the Equipment.
- 7.11 You shall ensure insofar as it is required by law that the Equipment installed to supply all apparatus with gas connected to it is appropriate and meets all the appropriate standards. We shall not be responsible for checking the suitability of Equipment. You will pay for any work deemed necessary and undertaken by us to ensure that the

equipment is appropriate and meets the appropriate standards.

- 7.12 Equipment may be installed up to and/or beyond the Offtake Point, which shall remain the property of the Transporter. You shall pay agreed contributions towards installation, maintenance, inspection, operation and renewal of all or part of the Equipment belonging to the Transporter without being able to claim any rights of ownership.
- 7.13 You shall properly maintain and be responsible for all pipes and apparatus and their safety.
- 7.14 You shall provide protection for the Transporter's Equipment against damage by weather, physical damage and third party interference.
- 7.15 You shall provide to the Transporter, free of charge, supplies of power, water and drainage as are required for the Transporter's equipment.
- 7.16 Where the meter status or classification changes during the Supply Period then we shall be entitled to recover any costs which arise as a result of such changes.
- 7.17 You shall report any escape or suspected escape of gas to the Transporter's emergency service.

8 Liability

- 8.1 Subject to the terms of clause 8.3, the liability of either Party to the other in connection with this Supply Contract shall not exceed £1,000,000 (one million pounds) per incident or series of related incidents.
- 8.2 Subject to the terms of clause 8.3, neither Party will be liable to the other for:
- 8.2.1 Economic Loss;
- 8.2.2 any indirect or consequential loss;
- 8.2.3 loss resulting from the liability of either Party to any other person; or
- 8.2.4 any action, inaction or default by the Transporter or a Service Provider.
- 8.3 Nothing in this Supply Contract shall exclude or limit the liability of either Party to the other for:
- 8.3.1 death or personal injury resulting from negligence;
- 8.3.2 any obligation owed by either Party under the Act to the extent only that the Act expressly prevents any limitation of liability for failure to perform that obligation; or
- 8.3.3 any obligation to pay monies due under this Supply Contract or under any liability arising from any indemnity contained in this Supply Contract.
- 8.4 We shall pay to you any monies we receive from the Transporter which are specifically paid to us by the Transporter for the purpose of refunding you pursuant to the terms of the Industry Agreements.
- 8.5 Where the Uniform Network Code/ Short Form code requires the Transporter and/or us to do anything, which may affect

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

- 8.6 The rights and remedies provided for by this Supply Contract are exhaustive, and exclude and replace all substantive (but not procedural) rights or remedies expressed or implied by law.

9 Force Majeure

- 9.1 Neither Party shall be liable to the other for delays or failures to fulfil all or a material part of its obligations under this Supply Contract if it is directly due to Force Majeure and provided that a Party seeking to claim that a Force Majeure has occurred shall notify the other Party within 24 hours of it occurring of its nature, its expected duration, the measures they are taking to remedy and/or mitigate the effects and when its effect ceases or is likely to cease.

- 9.2 Force Majeure shall not relieve any Party from obligations to indemnify or make payment under this Supply Contract save that, subject to clauses 9.3 and 9.4, in the event of gas not being supplied for reasons of Force Majeure you:

- 9.2.1 shall be under no obligation to pay the Charges for a supply of gas that is not supplied by us; and

- 9.2.2 may obtain temporary supplies of gas to the extent of the time that the Force Majeure takes effect.

- 9.3 Where an event of Force Majeure results in us not being able to supply you with gas then during that period:

- 9.3.1 we shall not charge you for the Commodity Charges in respect of that period;

- 9.3.2 we shall be entitled to recover from you the Transportation Costs and Metering Costs in respect of that period.

- 9.4 Where an event of Force Majeure subsists for a period exceeding 40 Days then either Party shall have the right to terminate the Supply Contract and upon such termination we shall have the right to sell any unconsumed gas and you shall be responsible for and indemnify us for any losses incurred as a result of our selling volumes at a price lower than that price for which they were originally purchased.

- 9.5 The Party claiming to be affected by Force Majeure shall take all reasonable measures to mitigate and/or remedy the effects of the Force Majeure as soon as possible.

10 Suspension, Termination and Breach

Suspension

- 10.1 Notwithstanding any provision of this Supply Contract, for the duration of a Pipeline System Emergency we shall be entitled, at the request of the Transporter or any person authorised under Section 7A(2) of the Act to make arrangements for the conveyance of gas to the Supply Points, to discontinue the supply of gas to any Supply Point.

- 10.2 Notwithstanding any other provision of this Supply Contract, if we are given a direction under Section 2(i)(b) of the Energy Act 1976 prohibiting or restricting the supply of gas, then, for

the purposes of or in connection with the direction, we may discontinue or restrict the supply of gas to the Supply Points and you shall comply with such directions until further notice from us.

- 10.3 You shall comply with any directions made by us or the Transporter for the purposes of:

- 10.3.1 averting or reducing danger to life or property; or

- 10.3.2 securing against or reducing any risk to the safety of a pipeline system used for the conveyance of gas.

- 10.4 You shall notify us of the content of any directions received from the Transporter requiring you to reduce or cease gas consumption.

- 10.5 Where you fail to comply with clauses 10.3 and 10.4 you shall indemnify us in respect of all costs, losses or expenses incurred by us as a result of such breach.

- 10.6 We shall not be liable to you for any loss or damage arising from:

- 10.6.1 any disconnection or restriction of supply by (a) us in accordance with clauses 10.1 to 10.4 inclusive, unless this disconnection or restriction is unlawful, or (b) by the Transporter; or

- 10.6.2 any action taken by you in consequence of any direction given or request made by us or the Transporter, in any of the circumstances contemplated in clauses 10.1 to 10.4 inclusive.

Your right to Terminate

- 10.7 You may terminate this Supply Contract upon written notice to us where:

- 10.7.1 we are in material breach of any of our obligations under this Supply Contract, such breach has a material adverse impact on your business and within 28 days following receipt of written notice from you of such breach we have not remedied the breach; or

- 10.7.2 we become unable to pay our debts (as such term is defined in Section 123 of the Insolvency Act 1986) or a receiver, administrator, administrative receiver or liquidator is, or applies to be, appointed over any of our assets or we enter into any arrangement with our creditors.

Our right to terminate

- 10.8 You shall be in breach of this Supply Contract and we shall be entitled to all or any combination of the remedies set out in clause 10.9, at our absolute discretion, in the following circumstances:

- 10.8.1 notwithstanding the specific circumstances set out below, if you are in repeated or material breach of any of your obligations under this Supply Contract (which shall include non-payment of a material sum of money) and within 7 days of being given notice in writing from us of such breach you have not remedied the breach;

- 10.8.2 you persistently default in paying amounts due to us by the Payment Date;

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- 10.8.3 if the credit insurance policy obtained at the start, or put in place at any time before or during, the Supply Period is withdrawn, reduced, amended, shortened or conditions which are unacceptable to us are applied, or if the credit standing, rating or scoring given to you by our credit insurer or such other credit reference agency we use from time to time to assess your creditworthiness is withdrawn, reduced, shortened or falls below a level which is acceptable to us, and any Security Deposit requested is not provided within 10 Working days of the request being made;
- 10.8.4 if we have been unable to register any Supply Point within 40 Working Days of the Start Date caused by you providing incorrect data;
- 10.8.5 in the event that any authorisation or consent granted pursuant to the provisions of the Act terminates or is withdrawn or is amended in a manner that materially affects our ability to perform our obligations;
- 10.8.6 you become unable to pay your debts (as such term is defined in Section 123 of the Insolvency Act 1986) or a receiver, administrator, administrative receiver or liquidator is, or applies to be, appointed over any of your assets or you enter into any arrangement with your creditors, or where any such appointment or arrangement terminates or ceases;
- 10.8.7 you unlawfully interfere with a meter or Supply Point;
- 10.8.8 the Transporter is entitled to and/or has already acted pursuant to powers under the Act to discontinue the transportation of gas to you at any of the Supply Points;
- 10.8.9 any relevant Licence, permission or consent, which permits the Supply, terminates or is revoked.

Consequences of Breach

- 10.9 Where you are in breach of the Supply Contract in accordance with any of the provisions of clause 10.8 then we shall be entitled to all or any combination of the following remedies, namely to:
 - 10.9.1 arrange for the Supply Points (or any one or combination of the Supply Points) to be disconnected immediately (and we shall be entitled to exercise Access Rights in doing so) and while any breach persists we shall be entitled to disconnect Supply Points on more than one occasion, together with being entitled to recover from you the costs incurred in such disconnections;
 - 10.9.2 terminate this Supply Contract for any or all of the Supply Points under the Supply Contract immediately on written notice to you;
 - 10.9.3 recover from you and shall be indemnified by you for all costs and losses incurred as a result of such breach including but not limited to costs incurred by us in selling gas at a price lower than that price for which it was originally purchased, when terminating the Supply Contract or removing or disconnecting all or any of the Supply Points pursuant to clauses 10.9.1 and 10.9.2;
 - 10.9.4 invoke the take or compensate mechanism set out in clause 6.19 for the period of the Supply Contract prior to the breach and thereafter on an ongoing basis prior to the end of the Supply Contract;

- 10.9.5 vary the product so as to mitigate our risk including, but not limited to, restricting your right to purchase forward until such time as any breach is remedied;
- 10.9.6 increase our Charges so as to reflect any increased risk and/or unavoidable costs to us;
- 10.9.7 invoice you on a weekly basis, thereby varying the Invoicing Period; and
- 10.9.8 request a Security Deposit to be provided within 21 days of such a request.
- 10.10 Where you fail to comply with clause 4.1.5 you shall indemnify us in respect of all costs, losses or expenses incurred by us as a result of such breach.
- 10.11 The termination of this Supply Contract and/or the termination of the Supply to any Supply Point shall not affect any rights or obligations, which may have accrued to either Party prior to the date of termination.

Resumption of Supply

- 10.12 Where a Supply Point has been disconnected, we will resume any Supply provided you pay in advance all reconnection charges and any other costs which we notify you will be reasonably incurred by us and all other conditions are met and outstanding sums are paid in full.

11 General Terms

- 11.1 We may keep a record of e-mails and any messages you or we send and record telephone conversations.
- 11.2 The Parties shall not, at any time during or after the Supply Contract, divulge to any person other than any of its or their respective officers or employees who require the same to enable them to properly carry out their duties, any of the contents of this Supply Contract or any other confidential information, trade secrets or information whose disclosure is likely to adversely affect a party's commercial or economic interests, without the written consent of the other Party other than to the extent:
 - 11.2.1 required by law except where disclosure is in response to a request for information made to you under either the Freedom of Information Act 2000 (FOI) or the Environmental Information Regulations 2004 (EIR) (an "information request"); or
 - 11.2.2 it is already in the public domain other than by reason of a breach.
- 11.3 If you receive an information request responding to which might include disclosing any of the details of this Supply Contract or our information without prejudice to clause 11.2, prior to disclosure, you shall notify us immediately and apply all relevant exemptions permissible under the FOI or the EIR (as applicable) to resist disclosure.
- 11.4 If the Euro is introduced as mandatory legal tender in the United Kingdom, then all invoicing and payment shall be amended to Euros in line with government timetables and Sterling values will be converted using the prescribed rates.
- 11.5 Neither Party will assign or hold on trust for any person (other than a 100% owned subsidiary) the whole or any part of this

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- Supply Contract without the prior written consent of the other; such consent will not be unreasonably withheld or delayed.
- 11.6 This Supply Contract does not create any right enforceable by any person who is not a Party.
- 11.7 No waiver by a Party of any default by the other shall operate or be binding unless made in writing.
- 11.8 If any provision of this Supply Contract shall be declared invalid, unenforceable or illegal it shall not prejudice or affect the remaining provisions of this Supply Contract, which shall continue in full force and effect.
- 11.9 Notice or communication required under this Supply Contract from you to us shall be by any one or more of the following methods and shall be deemed effective as set out below:
- 11.9.1 facsimile transmission to 0113 245 7921, marked for the attention of "Contract Management" – notice is deemed effective on completion of transmission, provided that a copy of the notice is also sent by first class mail recorded delivery on the same working day;
- 11.9.2 first class mail to "Contract Management, GDF SUEZ ENERGY UK, P.O Box 215, Leeds, LS11 1BX" - notice is deemed effective two normal working days after despatch;
- 11.9.3 recorded delivery to our registered office marked for the attention of "Contract Management" - notice is deemed effective two normal working days after despatch; or
- 11.9.4 email to the following email address - contractmanagement@gdfsuezuk.com - notice is deemed effective two normal working days after despatch.
- 11.10 This Supply Contract constitutes the entire agreement between both Parties.
- 11.11 We may amend this Supply Contract without liability in the event that any authorisation or consent granted pursuant to the provisions of the Act terminates or is withdrawn or is amended in a manner that materially affects our ability to perform our obligations. We shall provide to you as much notice as is practicable of such amendment.
- 11.12 We and you hereby acknowledge and confirm that this Supply Contract has not been entered into in reliance on any representation, warranty or other undertaking. Nothing excludes the liability of either Party for any fraudulent misrepresentation.
- 11.13 Any rights or remedies arising from this Supply Contract do not preclude any rights or remedies provided by law.
- 11.14 This Supply Contract shall be construed and governed by the laws of England and subject to the exclusive jurisdiction of the English Courts.
- 11.15 If any Party wishes to pursue a dispute with the other then where mediation is agreed the procedures of the Centre for Dispute Resolution ("CEDR") shall apply or where arbitration is agreed, the Rules of the London Court of Arbitration shall apply.
- 11.16 Any Supply Point that falls within an Independent Network and any terms and definitions contained within this Supply Contract relating to such Supply Point shall be dealt with in accordance with the Industry Agreements.

Section B – Terms of Interruptible Supply

Where any of your Supply Points are designated as "Interruptible" in the Quotation Document then the following terms and conditions shall apply in addition to clauses 1 to 11 inclusive.

12 Interruptible Supply Definitions

The following definitions shall apply:

"Interruptible Supply of gas" means a Supply to a Supply Meter Point where Transporter or we on its behalf are entitled to determine periods during which we have no obligation or only a limited obligation to supply gas to the Supply Meter Point.

"Interruptible Supply Meter Point" means the outlet of your control valves for Supply Points deemed by the Transporter to be interruptible.

"Interruption" means the interruption of the offtake of gas from an Interruptible Supply Meter Point in accordance with clause 13 and reference to "Interrupt" shall be construed accordingly.

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

13 Interruptible Supply

13.1 Where a Supply Point is "Interruptible", then:

13.1.1 Either the Transporter or we on its behalf will issue an Interruption Notice in the event of a requirement to interrupt the Supply;

13.1.2 upon receipt of an Interruption Notice you shall discontinue offtake in accordance with the terms of the Interruption Notice. Any period of Interruption on any Day (as specified in the Interruption Notice) shall cause that Day to be designated as a Day of Interruption;

13.1.3 if your Interruptible Supply Meter Point is covered by a firm allowance (as defined in the Industry Agreements) you shall ensure that no gas exceeding the firm allowance shall be taken within an Interruption Period;

13.1.4 you may only resume taking a Supply or a Supply in excess of the firm allowance (and in accordance with this Supply Contract) from the time and Day specified in a notice to them from us;

13.1.5 you shall not use any other supply of gas to substitute the interrupted supply under this clause 13.1; and

13.1.6 you will reimburse us for all reasonable costs and all reasonable charges imposed on us by the Transporter as a result of a failure by you to comply with an Interruption Notice.

13.2 Where an Interruptible Supply Meter Point is reclassified as a "firm" Supply Point then we shall be entitled to vary the

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Transportation Costs so as to reflect any resulting increase to our costs.

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