

## GENERAL CONDITIONS

## 1. Definitions

- (a) "Act" means the Gas Act 1986 as amended by the Gas Act 1995 and as otherwise amended.
- (b) "Agreement Date" means the date of the Agreement shown on the first page.
- (c) "Billing Period" means the period covered by an invoice.
- (d) "Confidential Information" means any information relating to the affairs of either party obtained by the other party pursuant to or in the course of negotiation or performance of the Agreement, which shall include for the purpose of the Customer's duty of confidentiality, any meter point reference number assigned by TOTAL to the Meter and information relating to the affairs of the Transporter that TOTAL may from time to time disclose to the Customer on terms that such information is to be kept confidential.
- (e) "Consumption Reconciliation" means a reconciliation and adjustment in relation to gas consumed by the Customer in respect of differences between:
- the quantities of gas assumed to be consumed by the Customer during the relevant period,
  - the quantities subsequently determined to have been consumed pursuant to a Meter Reading.
- (f) "Contract Price" means the price of gas shown on the first page of this Agreement, subject to any amending paragraphs.
- (g) "Contract Year" means any period beginning at 0600 hours on the Supply Date or any anniversary of the Supply Date and ending at 0600 hours on the next anniversary of the Supply Date.
- (h) "Customer" means the person or company named as such on the first page of the Agreement.
- (i) "Day" means a period of twenty four hours beginning at 0600 hours on any day and ending at 0600 hours on the next day.
- (j) "Estimated Annual Quantity" means that Quantity of gas specified as such in the Schedule of Quantities in respect of each Site.
- (k) "Gas Code" means the code set out at Schedule 2B to the Act.
- (l) "Good Industry Practice" means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking.
- (m) "Large Site" means any Site the consumption of gas at which during the 12 months prior to the first delivery in accordance with the Agreement, is greater than 732,000 kWh (25,000 Therms), or where there is installed at the Site equipment which enables the Transporter to take Meter Readings remotely at set intervals.
- (n) "Maximum Annual Quantity" means that quantity of gas specified as such in the Schedule of Quantities in respect of each Site which shall not be exceeded in any Contract Year.
- (o) "Maximum Daily Quantity" means that quantity of gas specified as such in the Schedule of Quantities which shall not be exceeded on any Day.
- (p) "Maximum Period Quantity" means that quantity of gas specified as such in the Schedule of Quantities in respect of each Site which shall not be exceeded in the Supply Period.
- (q) "Meter" means the equipment for measuring the quantity of gas consumed, installed at or near each Supply Meter Point.
- (r) "Meter Installation" means the Meter and associated equipment and installations installed or to be installed at the Customer's premises including any associated pipework, regulator, filters, valves, seals, housings and mountings.
- (s) "Meter Reading" means a reading of the index of the Meter.
- (t) "Minimum Annual Quantity" means a quantity of gas specified as such in relation to each Site or group of Sites in the Schedule of Quantities.
- (u) "Minimum Period Quantity" means the quantity of gas specified as such in respect of each Site or group of Sites in the schedule of quantities.
- (v) "Month" means a period beginning at 0600 hours on the first day of any calendar month and ending at 0600 hours on the first day of the next calendar month.
- (w) "Monthly Reference Consumption" means a quantity of gas calculated by applying monthly factors (available on request, if any) to the Estimated Annual Consumption (if any).
- (x) "Network Code" means
- the agreement (as modified or augmented by additional or ancillary agreements from time to time) between shippers of gas (including TOTAL) and Transco which governs (amongst other matters) the delivery by the shippers of natural gas to the System, the transportation of natural gas through the System by Transco and the offtake of gas from the System by shippers; and
  - where appropriate, any other similar transportation agreement relating to a part of the System to which the Supply Point is connected which is owned and operated by a Transporter other than Transco.
- (y) "Non Annual" means, in the case of the Supply Period, the Supply Period being neither a period of one year nor a multiple of one year.
- (z) "Offtake Point" means, in respect of each Supply Meter Point comprised in a Supply Point, the outlet of the customer control valve on the service pipe.
- (aa) "Reconciliation Quantity" means the amount by which the quantity determined pursuant to a Meter Reading to have been consumed by the Customer in the relevant period differs from the quantity previously assumed or determined to have been consumed since the preceding Meter Reading.
- (ab) "Site" means a location at which the Customer carries on its business and which is identified in the Schedule of Quantities. The Site(s) identified in the Schedule of Quantities may be amended from time to time by agreement in writing between the parties.
- (ac) "Small Site" means any Site which is not likely to consume more than 732,000 kWh (25,000 Therms) per annum.
- (ad) "Supply" means the provision of gas pursuant to the Agreement.
- (ae) "Supply Date" means the first day of the Supply Period.
- (af) "Supply Meter Point" means a point on the System at which gas may be offtaken for the purposes of supply directly to a Site.
- (ag) "Supply Period" means the period shown on the first page of the Agreement as such period may be extended pursuant to Clause 2.
- (ah) "Supply Point" means in respect of each Site the Supply Meter Point or Supply Meter Points at the Site.
- (ai) "Supply Point Offtake Rate" means the maximum instantaneous rate in kWh/hour at which the Transporter permits offtake of gas at the Supply Point.
- (aj) "System" means either collectively or individually as appropriate:
- the main national pipeline system operated by Transco through which gas is conveyed;
  - the pipeline systems operated by any other Transporters through which gas is conveyed.
- (ak) "TOTAL" means Total Gas & Power Ltd.
- (al) "Transportation Charges" means such charges in relation to Capacity Charge, Commodity Charge, Site Charge, Meter Reading Charge and Metering Services Charge (for meter provision, installation and maintenance) as are levied by the Transporter or Meter Reading Provider or Metering Services Provider) in connection with the Supply, and the terms "Capacity Charge", "Commodity Charge", "Site Charge", "Meter Reading Charge" and "Metering Services Charge" shall be as defined in TOTAL's agreements with the Transporter or pipeline system owner or provider of Meter Reading services or Metering Services (as applicable) and shall include any amendment thereto, so that the charges herein referred to are charges for the same service whatever name may be applied to them.

(am) "Transporter" means either collectively or individually as appropriate:

- (i) National Grid Gas plc ("Transco") as licensee under the Public Gas Transporter's Licence treated as granted to Transco under the Act;
- (ii) any other pipeline operator who transports gas supplied to the Customer by TOTAL in connection with the Agreement.

## 2. Duration

The Agreement shall, subject to Clause 14, initially remain in force for the Supply Period commencing on the Supply Date. Thereafter it shall continue for successive periods of one year (and the Supply Period shall be extended accordingly) unless either party gives to the other not less than three months' written notice of termination before the beginning of any such period. Termination pursuant to any such notice of termination under this Clause shall be subject to the provisions of Clauses 14(b), (c) and (d).

## 3. Provision of the Supply

(a) Subject to Clauses 3(b) and 3(c), TOTAL shall supply natural gas to the Supply Point at each Site set out in the Schedule of Quantities commencing on the Supply Date on and subject to the terms of the Agreement, such Supply being in accordance with regulations from time to time made pursuant to Section 16(1) of the Act with regard to pressure and purity.

(b) Commencement of the Supply and the terms of Supply are subject to the following conditions:

- (i) agreement by the Transporter that it accepts the obligation to deliver at the rates and quantities required by this Agreement;
- (ii) in the case of contracts which permit interruption of the supply of gas, confirmation by the Transporter that it has or will in time for the Supply to begin designate the Supply Point as being one at which the Transporter may instruct the offtake of gas to be discontinued; and
- (iii) where works are required to connect, or modify existing connections to the Site or the System, completion of such works and registration of the new Supply Point by the Transporter;
- (iv) the satisfactory provision to TOTAL of any information requested pursuant to Clause 4(b) and 8(f) or any other requirement in the Agreement
- (v) the provision by the Customer of any financial assurances of due performance requested by TOTAL, including the maintenance of any prepayment (at any level required by TOTAL) and such financial assurances as are requested under Clause 6A(a)

and the provisions of Clause 3(c) shall apply in relation to these conditions.

(c) At any time the conditions in 3(b) are not met:

i) TOTAL shall have no liability to the Customer under the Agreement; and

ii) the Customer shall indemnify TOTAL in respect of any liabilities to the Transporter (including, but not limited to, charges imposed by the Transporter in respect of the gas consumed) arising from the Customer's offtaking gas from the System.

(d) Subject to clause 12 (c), the Customer shall purchase its entire requirements for gas at the Supply Point from TOTAL whilst the Agreement is in force.

## 4. Quantity

The Customer shall ensure that its consumption of gas at any Site shall not without prior written consent of TOTAL, which consent shall not unreasonably be withheld, in any Contract Year exceed the Maximum Annual Quantity applicable to that Site.

Where the Supply Period is Non Annual, the Customer shall ensure that its consumption of gas at any Site shall not without prior written consent of TOTAL, which consent shall not unreasonably be withheld, in the Supply Period exceed the Maximum Period Quantity applicable to that Site. Where the Supply Period continues for a period or successive periods of one year pursuant to Clause 2, the foregoing paragraph shall apply and the Maximum Annual Quantity shall be 120% of the Estimated Annual Quantity.

Subject to the above the following provisions shall apply in relation to each Large Site:

- (a) The Customer shall ensure that its consumption of gas at any Site shall not without the prior written consent of TOTAL in any Day exceed the Maximum Daily Quantity or that its rate of consumption shall not without the prior written consent of TOTAL exceed the Supply Point Offtake Rate (where such rate is notified to the Customer). In the event that the Customer fails to comply with this provision TOTAL shall not be liable to the Customer for the consequences of the Transporter taking any steps available to it to secure reduction or discontinuance of the offtake of gas from the System at the Supply Point.
- (b) The Customer shall at the request of TOTAL (made prior to or during the Supply Period) promptly provide TOTAL with such good faith estimates of the quantity of gas it expects to consume in specified periods and with such other information relating to the Customer's consumption of gas as TOTAL considers necessary or reasonable.

And in relation to all Sites:

- (c) The Customer shall notify TOTAL promptly if there is likely to be a change of more than 10% to any estimated gas requirements previously notified to TOTAL.
- (d) (i) TOTAL shall use all reasonable endeavours to make arrangements which permit the consumption of gas by the Customer in excess of any maximum quantities specified in the Agreement if so requested in writing by the Customer, but TOTAL shall be under no obligation to do so. Any consent to such increased levels of consumption shall be in writing and

shall stipulate any terms upon which such consent is granted. If the Customer's consumption of gas does exceed any of the above maximum quantities without the prior written consent of TOTAL then TOTAL shall be entitled to stop or limit the Customer's supply of gas, and may charge the Customer for such excess at a rate determined by TOTAL by issuing an invoice or by varying the Contract Price.

(ii) In the event that the Customer intends to install additional Supply Meter Point(s) at the Site it shall, not less than 40 (forty) Days prior to such proposed installation, give TOTAL proper written notice of the proposed addition and the quantity of gas proposed to be purchased in respect thereof. In the event that TOTAL agrees to the proposal, after giving written notice to that effect, such Supply Meter Point(s) shall be added to the Schedule of Quantities. In the event that TOTAL does not agree, the Customer shall be entitled to contract with another supplier in respect of the supply of gas to such additional Supply Meter Point(s).

(e) (i) In the event that the Customer's consumption of gas at the Site (or, in relation to Sites in a group for which a single Minimum Annual Quantity is specified in the Schedule of Quantities, the aggregate consumption of gas at those Sites) is less than the Minimum Annual Quantity in any Contract Year the Customer shall be charged for the Minimum Annual Quantity in respect of the Site (or Sites) in accordance with Clause 6.

(ii) Where the Supply Period is Non Annual, in the event that the Customer's consumption of gas at the Site (or, in relation to Sites in a group for which a single Minimum Period Quantity is specified in the Schedule of Quantities, the aggregate consumption of gas at those Sites) is less than the Minimum Period Quantity in the Supply Period the Customer shall be charged for the Minimum Period Quantity in respect of the Site (or Sites) in accordance with Clause 6. Where the Supply Period continues for a period or successive periods of one year pursuant to Clause 2, the provisions of Clause 4(e)(i) shall apply for the extension of the Supply Period and the Minimum Annual Quantity shall be 80% of the Estimated Annual Quantity.

(f) In the event that:

- (i) TOTAL is liable under the Agreement for failure of the Supply arising from a breach by the Transporter of its obligations under the Network Code; or
- (ii) gas is below minimum quality requirements and the Customer either continues or refuses to take such gas;

TOTAL shall pay to the Customer such sums as are received from the Transporter by way of compensation less an

administration charge of 10% on the basis that such payment shall be the limit of TOTAL's liability to the Customer in such circumstances.

## 5. Price of Gas

- (a) The price for gas supplied under the Agreement shall be the Contract Price shown on the first page of the Agreement (subject to variation in accordance with the provisions of the Agreement) or, where the Agreement continues after the expiry of the Supply Period pursuant to Clause 14(c), any rate specified pursuant to that Clause.
- (b) In addition the Customer shall pay to TOTAL on production of the appropriate tax invoice or other certificate the amount of any United Kingdom tax, levy (including Climate Change Levy), duty or impost on gas or on the processing, sale or supply of gas which is either payable or to be collected by TOTAL in respect of the gas or which is payable by any previous supplier thereof and reimbursable by TOTAL.
- (c) Where the Customer breaches any of the provisions of Clause 4 TOTAL reserves the right to recover from the Customer any additional charges imposed on TOTAL by the Transporter resulting from such breach by issuing an invoice or by varying the Contract Price, whichever TOTAL deems appropriate.
- (d) If Transportation Charges change in respect of all or part of the Supply Period, TOTAL reserves the right to recover from the Customer any additional charges imposed on TOTAL by the Transporter resulting from any such change by issuing an invoice or by varying the Contract Price, whichever TOTAL deems appropriate.
- (e) Where the ESGM Price Assessment for day ahead in respect of any Day in the Supply Period, as published by Heren Energy in European Spot Gas Markets (or, in the absence of a day ahead price, the last published price for that Day) ("NBP offer price") is greater than 3.48 pence per kWh, then TOTAL reserves the right to recover an additional amount from the Customer equal to the Estimated Annual Quantity/365 x (NBP offer price less (Contract Price less Transportation Charges)) for each such Day, by issuing an invoice or by varying the Contract Price, whichever TOTAL deems appropriate.
- (f) Where Clause 12(b)(ix) applies the Contract Price shall be the SMP Buy Price (as defined in Transco's Uniform Network Code) for each Day in which gas is consumed plus 0.025 pence per kWh plus Transportation Charges levied for that Day.
- (g) If the Customer ceases consumption of gas (or the consumption is de minimis) at any Meter, or if the Customer does not require a supply of gas at any Meter, then the Customer shall pay, in respect of such Meter and in addition to any other charges under this agreement, the greater of either:
- (i) a standing charge of £100 plus VAT per month; or
  - (ii) an amount equal to the Transporter's current published Transportation

Charges under the Network Code until the Meter is removed.

- (h) Upon removal of any Meter (whether at the Customer's request or otherwise), the Customer shall pay, in respect of such Meter and in addition to any other charges under this Agreement, TOTAL's charges for the removal of the Meter and for making the Site safe which shall include:
- (i) all charges imposed by the Transporter; and
  - (ii) an administration charge of 10% limited to £100 plus VAT; and
  - (iii) all other expenses in connection with the Meter removal, including any termination fee imposed by the meter asset manager.

## 6. Payment

For each Site the following provisions shall apply:

- (a) TOTAL shall for each Billing Period issue an invoice to the Customer in respect of:
- i) the following quantity of gas charged for at the Contract Price:
    - (aa) for Large Sites, the quantity of gas actually consumed by the Customer in that Billing Period (as determined by the Transporter); and
    - (bb) for Small Sites:
      - (A) for any Meter which is read monthly the total of the quantities of gas actually consumed by the Customer in each Month in the Billing Period; and
      - (B) for any Meter which is not read monthly the quantity of gas equal to the Monthly Reference Consumption for each Month (or part thereof) in the Billing Period;
- provided that, in respect of a Meter that is read monthly, if no Meter reading has been obtained at the end of any Month TOTAL may substitute for the quantity actually consumed its best estimate of such quantity;
- (ii) if any Consumption Reconciliation has been carried out in the Billing Period the Reconciliation Quantity charged at the Contract Price.

- (b) If on the first day of the Supply Period no Meter Reading is obtained, TOTAL shall be entitled, upon the next Consumption Reconciliation, to invoice the Customer for the entire Reconciliation Quantity, notwithstanding that a part thereof relates to a period before the Supply Period.

- (c) (i) If the quantity of gas consumed by the Customer in any Contract Year is less than the Minimum Annual Quantity then the following shall apply:
- (aa) if any part of the shortfall arose due to the fault of TOTAL or the Transporter, no charge shall be made for such shortfall or part shortfall;

(bb) otherwise the shortfall shall be charged for at the Contract Price that applies at the end of the last Month of the Contract Year.

- (ii) Where the Supply Period is Non Annual, if the quantity of gas consumed by the Customer in the Supply Period is less than the Minimum Period Quantity then the following shall apply:

(aa) if any part of the shortfall arose due to the fault of TOTAL or the Transporter, no charge shall be made for such shortfall or part shortfall;

(bb) otherwise the shortfall shall be charged for at the Contract Price that applies at the end of the last Month of the Supply Period. Where the Supply Period continues for a period or successive periods of one year pursuant to Clause 2, the provisions of clause 6(c)(i) shall apply for the extension of the Supply Period and the Minimum Annual Quantity shall be 80% of the Estimated Annual Quantity.

- (d) The Customer shall be charged for any sum payable pursuant to Clauses 5 and 6.
- (e) The Customer shall pay the amount due in respect of each invoice within 10 days of date of invoice.
- (f) All payments due to be made by the Customer to TOTAL under the Agreement shall be made by direct bank transfer or an equivalent instantaneous transfer of funds if agreed by TOTAL in writing to such place as TOTAL may from time to time direct and, at the request of TOTAL, shall be initiated by Direct Debit.
- (g) If payment is not received by TOTAL by the due date then without prejudice to any other rights or remedies that TOTAL may have TOTAL shall be entitled (i) to levy a late payment charge of £33 per Site in respect of which payment is overdue, and (ii) to charge interest on overdue amounts (but not on the late payment charge) from the due date until payment at the rate of four per cent per annum above HSBC Bank PLC base rate from time to time in force.
- (h) Sums claimed in invoices are preliminary sums and are subject to reconciliation and correction.
- (i) Failure to pay more than one invoice by the due date shall amount to a material breach of the Agreement for the purposes of Clause 14(a)(i).

## 6A. Change In Financial Circumstances

- (a) If, before the Supply Date or at any time during the term of this Agreement, TOTAL has reasonable grounds for believing
- (i) that the Customer may be unable to meet its obligations under this Agreement, or
  - (ii) that the financial circumstances of the Customer have deteriorated to a level unacceptable to TOTAL, or

- (iii) that any credit insurance policy applied for or obtained by TOTAL in respect of payments due from the Customer under this Agreement is denied, expires, is cancelled or withdrawn and TOTAL is unable to renew or replace the same on terms which in the sole opinion of TOTAL are economically viable in the context of the Agreement then

TOTAL may give notice to the Customer stating its reasonable grounds (in the case of (i) or (ii) above or the existence of the circumstances in the case of (iii) above) and requesting adequate financial assurances of due performance.

- (b) In the event the Customer is unable or unwilling to provide the adequate financial assurance requested by TOTAL within seven (7) days of receipt of TOTAL's notice pursuant to Clause 6A(a), TOTAL shall have the immediate right to serve notice of termination on the Customer. The right to serve notice of termination under this Clause 6A shall be without prejudice to and will not affect any right of action or remedy which has accrued or may accrue in favour of either party.
- (c) In the event that TOTAL gives notice pursuant to Clause 6A(a), TOTAL shall have the right (in addition to the right provided for under Clause 6A(b)) to render invoices to the Customer as frequently as TOTAL requires from time to time and the due date for payment of such invoices shall be five days from receipt of invoice. Clause 6 shall apply to such invoices mutatis mutandis, for the purposes of this Clause 6A(c).

## 7. Measurement

For each Site the following provisions shall apply:

- (a) (i) The number of kWh or Therms supplied shall be ascertained in accordance with the provisions of the Gas (Calculation of Thermal Energy) Amendment Regulations 1997 (the "CV Regulations")
- (iii) TOTAL may at any time for the purposes of Clause 7(a)(i)
- (aa) use such calorific values as are ascertained in accordance with the CV Regulations or such other units of measure (at the discretion of TOTAL) as are or become either those used by the Transporter of standard units of measure; and
- (bb) subject to any method prescribed by the Gas and Electricity Markets Authority use the volume of gas registered by the Meter, as may be corrected as TOTAL deems appropriate, using such methods prescribed either by law or as may be used by the Transporter.
- (b) Save where the Meter is removed by TOTAL after commencement of this Agreement by reason only of the Customer ceasing to consume gas at that Meter, the Customer shall ensure that there is installed, operated and maintained in proper working order a Meter Installation containing such equipment as may be required which installation shall

comply in every respect with the requirements of the Network Code and any statute as amended from time to time.

- (c) The Customer shall inform TOTAL if and as soon as the Meter is replaced or modified.
- (d) TOTAL or the Customer may, each at their own option and expense, install and operate measuring devices to check the Meter provided that such devices do not interfere with the operation of the Meter.
- (e) The Customer may at any time by giving reasonable notice in writing request TOTAL to arrange that the Meter be verified for accuracy. If a verification shows that the Meter is within plus or minus two per cent of accuracy the costs of such verification shall be borne by the Customer. If the Meter is outside these limits TOTAL will bear the cost of verification.
- (f) If the Meter fails to register the gas within the limits set out in Clause 7(e), the quantity of gas supplied since the previous Meter Reading shall be calculated in the following order of precedence:-
- (i) by using the readings of any measuring device installed pursuant to Clause 7(d);
- (ii) by making adjustments on the assumption that the Meter has had the same degree of error since the previous Meter Reading; or
- (iii) by reference to the quantity of gas supplied based on consumption during a preceding period under similar conditions when the Meter was registering accurately.

## 8. Site Equipment and Safe Use of Gas

- (a) The Customer shall:
- (i) at all times use the gas in a safe manner and so as not to interfere with the efficient conveyance of gas by the Transporter;
- (ii) comply with any request reasonably made by TOTAL or the Transporter in the interests of the security of the System to discontinue or reduce offtake of gas from the System;
- (iii) provide at the Site free of charge such sites, supplies of power, water and drainage, installation sites and such protection for the Meter as may be required and any other requisite equipment, pipes or apparatus;
- (iv) be responsible for all pipes and apparatus on the Customer's side of the Supply Point;
- (v) without charge allow any or all of TOTAL, a Transporter and any person selected by TOTAL, on the production of some duly authenticated document showing his authority, safe, full, free and uninterrupted access to each Site for the purposes of exercising any rights or powers (including without limitation those in respect of emergencies) conferred on them or carrying out any obligations they may have under the Network Code, the Gas Code and any statute or Industry

accepted Code of Practice as amended from time to time.

- (b) The Customer shall indemnify TOTAL against any loss of or damage to the property of a third party comprised in the Meter Installation except to the negligence of TOTAL or that third party.
- (c) TOTAL shall wherever possible provide the Customer with reasonable prior notice of any necessary maintenance, repair, replacement or extension of any facilities and shall use reasonable endeavours to carry out or procure the carrying out of such works at minimal inconvenience to the Customer.
- (d) If the Customer makes an arrangement directly with the Transporter or other third party for the carrying out of works to the pipes or apparatus (whether before or after the Supply Point) or to the Meter Installation TOTAL shall have no liability to the Customer for any loss or damage howsoever caused by the Transporter or other third party as a result of the carrying out of such works.
- (e) TOTAL warrants that it has arranged for the Transporter to provide an emergency call-out service, and the Customer shall report any escapes of gas to the Transporter using the continuously attended telephone service provided by the Transporter for this purpose. The Customer shall reimburse TOTAL the amounts that the Transporter charges TOTAL for the call-out, less the Transporter's call-out charges attributable to the first half hour spent on the call-out.
- (f) In relation to Large Sites the Customer shall upon entering into the Agreement provide to TOTAL the following details:
- (i) the names and/or job titles of representatives of the Customer ("emergency contacts") each of which has the power and authority to comply with any direction not to consume gas given by the Transporter pursuant to Regulation (6)4 of the Gas Safety (Management) Regulations 1996, as may be amended from time to time;
- (ii) at least one (but not more than four) telephone numbers for each emergency contact by means of which TOTAL or the Transporter may contact, 24 hours a day, at least one emergency contact and at least one facsimile number which is able to receive transmission 24 hours a day and the Customer shall notify to TOTAL in writing any change in such details as soon as reasonably practical and where possible in advance of such change. Provided that any such notice shall be given by facsimile in accordance with Clause 19 at such facsimile number as shall be notified to the Customer by TOTAL upon entering into this Agreement.
- (g) In relation to Large Sites, where the Supply Point (whether or not interruptible) is isolated by the Transporter by reason of the Customer's failure to comply with a request by the Transporter in dealing with an emergency that the Customer reduce or

discontinue its offtake of gas, TOTAL shall have no liability in respect of the Supply.

- (h) No step taken or other thing done or not done (which may include a reduction in the Supply), by the Transporter, TOTAL or any other party

- (i) in dealing with emergencies; or  
(ii) maintaining the security and operational safety of the System

shall be a breach of the Agreement by TOTAL; in particular TOTAL will not be in breach of its obligations in respect of the Supply.

- (i) To the extent that at any time it is not feasible for the Transporter or the Transporter has refused to make gas available for offtake at the Supply Point or its ability to do so is restricted by reason of:

- (i) the carrying out of works in connection with the System (whether maintenance, repair, replacement, extension or other works); or  
(ii) the exercise of a right or discharge of a duty by the Transporter under the Act (including the Gas Code) or relevant Public Gas Transporter's Licence; or

- (iii) difficulties encountered in balancing the quantities of gas entering and leaving the System; TOTAL shall be relieved of its obligations in respect of the Supply.

- (j) (i) TOTAL shall not be liable for the failure of the Supply resulting from any failure or defect or requirement for maintenance of any Meter Installation at the Site which it does not own.

- (ii) The Customer shall give written notice to TOTAL (in any event within 7 days) of a failure in the Supply resulting from the failure of any Meter Installation at the Site.

- (k) Where the Customer intends to use the gas for supply to a compressor or with compressed air or extraneous gas the Customer shall give TOTAL not less than 28 days' written notice thereof and shall, if so required by TOTAL, install and keep in use at the Customer's cost an appliance approved by the Transporter to prevent pressure fluctuations in the Transporter's mains and any other inconvenience or danger to other consumers of gas.

- (l) If the Supply Point is isolated by the Transporter or TOTAL, whether at the request of the Customer or the insistence of the Transporter, the Customer shall indemnify TOTAL in respect of any charges imposed on TOTAL by the Transporter together with any other charges incurred by TOTAL in effecting such isolation and shall be liable for the costs of any subsequent reconnection carried out at the Customer's request.

## 9. Ownership

The following provisions shall apply:-

- (a) Title to and risk in the gas shall pass to the Customer at the Offtake Point.

- (b) The Meter and any other equipment, pipes or apparatus of TOTAL, the Transporter or meter asset manager are not and shall not become the property of the Customer.

## 10. Care of Meter and Metering

The Customer shall ensure that:

- (a) no part of the Meter Installation is damaged or otherwise mistreated;  
(b) no person improperly breaks any seal affixed to any part of the Meter Installation;  
(c) no notice relating to ownership affixed to the Meter by the Transporter or TOTAL is removed or defaced;  
(d) no gas is offtaken from the System on the Customer' premises at a point before the Offtake Point; and  
(e) in the case of a Meter for which a by-pass has been installed at the Supply Point, the flow of gas is not diverted from passing through the Meter otherwise than in accordance with the applicable Meter By-Pass Policy published by the Transporter from time to time;

and shall indemnify TOTAL against any liabilities, charges or costs arising from the Customer's failure to comply with this Clause. If it appears that any interference of the kind envisaged in this Clause has occurred, TOTAL may invoice the Customer for the monetary value (assessed at the Contract Price) of any gas which it reasonably calculates to have been consumed since the interference together with the costs of rectifying the damage and any associated legal and administrative costs.

## 11. Liability

- (a) TOTAL shall indemnify the Customer against personal injury to or the death of any person or loss of or damage to any property real or personal to the extent that such injury, death, loss or damage arises in the course of or by reason of the Supply and provided always and only to the extent that the same is due to negligence on the part of TOTAL, subject to Clauses 11(b) and 11(d).

- (b) The obligation of TOTAL to indemnify the Customer under Clause 11(a) shall be subject to an aggregate limit of £10,000,000 in any Contract Year save in the case of death or personal injury where this limit shall not apply.

- (c) Notwithstanding anything expressed or implied in the Agreement, neither TOTAL or any of its associates, affiliates, servants, agents, or contractors (of any tier) or its or their directors, officers or employees shall be liable (whether through Contract, negligence or otherwise) to the Customer or the Customer's associates, affiliates, servants, agents, or contractors (other than TOTAL) or its or their directors, officers or employees for any damages (other than to the extent arising pursuant to Clause 11(a)), expenses (including legal expenses), loss of use, profits, contracts, goodwill, production, data, revenue, or for increased cost of working or business interruption, or any indirect or consequential loss whatsoever and howsoever caused whether foreseeable or not.

- (d) Provided always that none of the foregoing provisions of this Clause shall operate to exclude or restrict TOTAL's liability for death or personal injury resulting from negligence.

## 12. Force Majeure

- (a) If in or as a consequence of Force Majeure (as defined in Clause 12(b)) it is not reasonably practicable for the party affected by Force Majeure to perform any of its obligations in accordance with the Agreement, such obligations (other than any obligations to make any payments under the Agreement) shall be suspended to the extent that and for so long as it is so impracticable. Whenever possible each party shall give to the other prior written notice of such suspension.

- (b) "Force Majeure" means any event or circumstance which is beyond the reasonable control of, and could not have been avoided by steps which might reasonably be expected to have been taken by, either party, including (but without limitation):

- (i) act of public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage or act of vandalism;

- (ii) act of God;

- (iii) strikes, lockouts or other industrial disturbance;

- (iv) explosion, fault or failure of plant or machinery, other than the Customer's plant or machinery, which could not have been prevented by Good Industry Practice;

- (v) governmental restraint, Act of Parliament, other legislation, bye law or Directive or the coming into force of any legal requirement;

- (vi) any system maintenance carried out under the provisions of the Network Code;

- (vii) extreme weather conditions by reason of which the Transporter is unable to make available at the Supply Point, or is unable to make available economically, sufficient quantity of gas to meet the Customer's demand;

- (viii) breaking or severing of, accidental or criminal damage to, or interference with the Meter Installation, Meter, any other equipment, pipes or apparatus of TOTAL or the Transporter, or data processing and communications equipment or machinery;

- (ix) any conditions by reason of which the Supplier is unable to make available economically at the Supply Point sufficient quantities of gas to meet the Customer's demand.

Inability to pay (however caused) shall not amount to Force Majeure.

- (c) If and for so long as TOTAL is unable to supply gas under this Agreement for any reason including Force Majeure the Customer will be entitled to purchase gas from an alternative supplier without

prejudice to any claim, right or remedy which the Customer may have against TOTAL.

- (d) If either party is unable to perform any obligation under the Agreement for reasons of Force Majeure for a continuous period of three months the other party shall have the right
- (i) to terminate the Agreement forthwith upon notice to the other party (provided that Clauses 14 (b), (c) and (d) shall apply); or
  - (ii) to withdraw any affected Site from the Agreement and in such case the Minimum Annual Quantity (or, where the Supply Period is Non Annual, the Minimum Period Quantity) shall be reduced pro rata by the quantity of the estimated gas requirement for that year (or for that Supply Period) for such Site which has not been delivered to the Site owing to Force Majeure.

### 13. Suspension

- (a) If the Customer shall fail to comply with any of its obligations in respect of any Site and such failure shall remain unremedied for seven days after TOTAL shall have given written notice to the Customer requiring the same to be remedied TOTAL shall be entitled to suspend or reduce the Supply to such Site forthwith until such time as the failure is remedied, without prejudice to any other rights or remedies that TOTAL may have and provided always that any such suspension shall not be treated as being outside the control of the Customer and shall not relieve the Customer of its obligation to make payment in respect of the Minimum Annual Quantity or Minimum Period Quantity pursuant to Clauses 4 and 6.
- (b) In the case of a pipe-line system emergency, that is to say, where the circumstances are such that, in the opinion of the Transporter –
- (i) the safety of the System is significantly at risk;
  - (ii) the safe conveyance of gas by the System is significantly at risk; or
  - (iii) gas conveyed by the 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, then –
- (iv) TOTAL shall be entitled at the request of the Transporter or a relevant shipper to discontinue the supply of gas to the Premises; and
  - (v) The Customer shall use its best endeavours to refrain from using gas immediately upon being requested by TOTAL or the Transporter to do so; and TOTAL shall have no liability to the customer in respect of the discontinuance or restriction of the Supply.
- (c) If TOTAL is given a direction under section 2(1)(b) of the Energy Act 1976 prohibiting or restricting the supply of gas to specified

persons, then, for so long as the direction is in force and so far as is necessary or expedient for the purposes of, or in connection with, the direction –

- (i) TOTAL shall be entitled to discontinue or restrict the supply of gas to the Customer; and
  - (ii) the Customer shall refrain from using, or restrict its use, of gas on being required by TOTAL to do so;
- and TOTAL shall have no liability to the Customer in respect of the discontinuance or restriction of the Supply.

### 14. Termination

- (a) Subject to Clauses 14(b), (c) and (d), either party may terminate the Agreement forthwith by written notice to the other at any time if:
- (i) the other is in material breach of its obligations hereunder and fails to remedy the same within fourteen days after receiving written notice of the failure from the terminating party requiring it to be remedied and notifying its intention to exercise the right of termination under this Clause 14(a)(i); or
  - (ii) the other ceases to trade or enters into liquidation whether voluntarily or compulsorily (other than for the purposes of amalgamation or reconstruction) or compounds with its creditors or has a receiver, administrative receiver, administrator, nominee, supervisor or similar officer appointed over all or any of its assets or its undertaking or any part thereof (or in Scotland, becomes notour bankrupt) or if any action, petition, application or proceeding is initiated or resolution passed relating to any of the aforementioned matters.
- (b) Any termination of the Agreement shall be without prejudice to any rights or remedies of either party which arise prior to or as a result of termination.
- (c) The Agreement shall remain in full force and effect, and the Customer shall remain liable to pay TOTAL for gas consumed at the rate determined by TOTAL from time to time (which shall include an amount to take account of the transportation and other charges imposed by the Transporter), after the expiry of the Supply Period for such further period of time as TOTAL continues to be treated by the Transporter as the supplier in respect of the Supply Point.
- (d) Notwithstanding the provisions of Clauses 14(a), (b) and (c), this Contract shall terminate upon a last resort direction given to a gas supplier other than TOTAL, in pursuance of standard condition 29 (Supplier of Last Resort) of that supplier's licence coming into effect in relation to the Premises.

### 14A. Supplier Transfer Objections

TOTAL may prevent any proposed transfer of the gas supply, in respect of any Site, to another gas supplier for so long as –

- (a) the Customer fails to pay charges for the supply of gas to those premises or any premises of the Customer which are due to TOTAL and have been demanded in writing; or
- (b) this Agreement will not expire nor, to the knowledge of TOTAL, be terminated in accordance with its terms on or before the date of the proposed transfer; or
- (c) TOTAL and that other gas supplier agree that the transfer was made or initiated in error; or
- (d) the Customer has informed TOTAL that the Customer has not entered into a contract for gas supply with that other gas supplier, or the Customer otherwise requests TOTAL to prevent the transfer

provided always that TOTAL shall have no liability to the Customer for any loss or damage resulting from any prevention of (or failure to prevent) any transfer.

### 15. Assignment

The Customer may not assign the Agreement or part of the Agreement without the prior written consent of TOTAL.

### 16. Confidentiality and copyright

- (a) Neither party shall without the prior written consent of the other:
  - (i) disclose to any person other than its officers or employees, professional advisers, consultants, affiliates, shareholders, or
  - (ii) make use of any Confidential Information other wise than in the performance of the Agreement provided that this restriction shall not apply to information which has come properly into the public domain through no fault of either party.
- (b) Where Confidential Information is disclosed as permitted under Clause 16(a) the party disclosing such Confidential Information shall take all reasonable steps to ensure that the person to whom the information is disclosed is aware of the obligations under Clause 16(a) and does not use or disclose the information otherwise than as permitted.
- (c) Notwithstanding Clause 16(a), TOTAL shall own the copy right in the Agreement and own any data TOTAL records relating to the Customer's consumption of and price paid for gas under the Agreement and may use such data in the compilation of statistics or for any use which TOTAL thinks fit.
- (d) The obligations contained in this Clause shall continue notwithstanding any termination of the Agreement.

### 17. Warranty

The Customer warrants that in entering into the Agreement it is not in breach of any contract it has with a third party for the supply of gas.

### 18. Waiver

No indulgence shown by either party to the other shall prevent that party subsequently insisting upon its rights and remedies under the Agreement.

**19. Notices**

Any notice given pursuant to the Agreement shall be in writing and may be served by personal delivery, prepaid recorded delivery or registered post to the addressee at its registered office for the time being, or by facsimile to the recipient's facsimile number or such other address or facsimile number as may be notified in accordance with this Clause, and shall be deemed to have been received:

- (a) in the case of personal delivery, at the time of delivery;
- (b) in the case of recorded delivery or registered post, forty eight hours from the time of posting;
- (c) in the case of facsimile, on transmission.

**20. Variations**

- (a) TOTAL may without affecting its binding nature and without further formality (save for notice to the Customer) vary the Agreement (provided that this Clause 20(a) shall not apply to variations in the Contract Price pursuant to Clause 20(b)), and without limiting the circumstances in which they may be made, variations may be made to reflect any obligations and liabilities (other than those made in respect of charges to be made for the supply) imposed on TOTAL under the Network Code or any other agreement between and including TOTAL and the Transporter or any Meter Reading or Meter Services Provider.
- (b) Any variation in respect of the Contract Price (provided that this Clause 20(b) shall not apply to variations in the Contract Price pursuant to Clauses 4(d)(i), 5(c), 5(d), 5(e) and 14(c)) shall only be effective if contained in a written document which is dated and refers to the Agreement and its date, identifies the Clause or Clauses which are to be varied and has been signed by an authorised TOTAL representative and countersigned by an authorised representative of the Customer.

**21. Network Code**

Where

- (a) the Network Code provides for the Transporter and/or TOTAL to do anything at or affecting any Site or the supply of gas; and
- (b) in doing that thing the Transporter and/or TOTAL comply with the requirements of the Network Code and any other relevant agreement in relation thereto, do not act unlawfully and are not negligent; and
- (c) by reason of the Transporter and/or TOTAL doing that thing the Customer suffers loss or damage neither TOTAL nor the Transporter shall have any liability in respect of such loss or damage and the Customer warrants that it will bring no action or proceeding against the Transporter or any Meter Reading or Meter Services Provider.

**22. Information to be provided by the Customer**

- (a) The Customer shall notify TOTAL
  - (i) upon entering into the Agreement, whether or not the Supply Point has

been designated by the Transporter as one in respect of which priority of supply shall be given and the criteria that justify it being so designated; and

- (ii) as soon as the Customer ceases to satisfy any of the criteria justifying priority of supply, that the Customer has ceased to satisfy such criteria.
- (b) Where a Site includes a Supply Point which comprises more than one Supply Meter Point, the Customer shall advise TOTAL in advance of either of the following events (such events being likely to affect the entitlement of the relevant Supply Meter Points to be comprised in a single Supply Point):
  - (i) any division of ownership of the Site;
  - (ii) any splitting of the functions at the Site such that the premises at the Site might no longer be considered to serve each other in a necessary or reasonably useful way.

**23. Severability of provisions**

If any provision of the Agreement should be held to be illegal, invalid or unenforceable in whole or in part, the Agreement shall continue to be valid as to its remaining provisions and the remainder of the affected provision.

**24. Interpretation**

- (a) The Agreement constitutes the entire agreement between the parties with respect to the subject matter of the Agreement and supersedes and extinguishes any representations and understandings previously given or made other than those contained herein.
- (b) The headings in the Agreement are inserted for convenience only and shall not affect the interpretation of any of its provisions.
- (c) The Agreement shall be construed and governed in all respects in accordance with the laws of England and any disputes or differences shall be subject to the exclusive jurisdiction of the English Courts.

**25. Voluntary Interruption and Gas Deficit Emergencies**

- (a) In the event of
  - (i) a Potential Network Gas Supply Emergency pursuant to which a reduction or discontinuance of offtake of gas has not yet been required at any Site, or
  - (ii) a Gas Balancing Alert, or
  - (iii) a Network Gas Supply Emergency Gas Deficit Emergency pursuant to which a reduction or discontinuance of offtake of gas has not yet been required at any Site

or where the Customer reasonably considers that market prices are sufficiently high that it wishes to discontinue consuming gas at any Site, then TOTAL shall upon request by the Customer offer to pay the Customer for any offtake of gas which is discontinued after such offer is made, at such rate and for such period and on such other terms as may be agreed, and upon

acceptance of such offer the Customer shall discontinue its offtake of gas accordingly for that period.

- (b) The Customer may give TOTAL 5 Working Days' prior written notice of a price ("the Trigger Price") to which this Clause 25(b) shall apply. In the event of
  - (i) a Potential Network Gas Supply Emergency, or
  - (ii) a Gas Balancing Alert, or
  - (iii) a Network Gas Supply Emergency Gas Deficiency Emergency.
 and where market prices exceed the Trigger Price, then
  - (iv) the Customer shall, upon being required to do so by TOTAL, discontinue its offtake of gas from the time requested, and
  - (v) TOTAL shall pay the Customer for such volume that would otherwise have been taken at a rate equal to the Trigger Price less the Contract Price applicable during the period of such discontinuance.

- (c) Where the Customer wishes to discontinue consuming gas at any Site by reason of
  - (i) a Potential Network Gas Supply Emergency pursuant to which a reduction or discontinuance of offtake of gas has not yet been required at any Site, or
  - (ii) a Gas Balancing Alert, or
  - (iii) a Network Gas Supply Emergency Gas Deficit Emergency pursuant to which a reduction or discontinuance of offtake of gas has not yet been required at any Site,
 and where
  - (iv) no agreement has been made under Clause 25(a), and
  - (v) Clause 25(b) does not apply

the Customer shall as soon as reasonably practicable, and in any event before the commencement of the Customer's intended discontinuance, give notice to TOTAL by email to [buy.gas@totalgp.com](mailto:buy.gas@totalgp.com) of the time with effect from which the Customer intends to discontinue, and resume, its consumption.

- (d) In the event the Customer fails to discontinue its offtake of gas having either
  - (i) accepted an offer by TOTAL for payment for such discontinuance under Clause 25a, or
  - (ii) received notification requiring the Customer to discontinue under Clause 25(b), or
  - (iii) notified TOTAL of the Customer's intention to discontinue under Clause 25(c), the Customer shall pay an amount equal to the System Marginal Buy Price plus any other charges imposed by the Transporter in respect of any gas consumed in breach of such agreement, requirement or notification.

- (e) In the event of a Potential Network Gas Supply Emergency or Network Gas Supply Emergency Gas Deficit Emergency, the Customer shall comply with any requirement by the Transporter to reduce or discontinue the offtake of gas at any Site and, upon request by TOTAL, shall pay for the Emergency Curtailment Quantity applicable to that Site at the Contract Price. If such payment is so requested, TOTAL shall refund to the Customer such sums as it receives from the Transporter in respect of such Emergency Curtailment Quantity plus the Transportation Charges applicable to the Emergency Curtailment Quantity.
- (f) In the event of a Potential Network Gas Supply Emergency or Network Gas Supply Emergency Gas Deficit Emergency where the Customer fails to comply with any requirement by the Transporter to reduce or discontinue the offtake of gas at any Site, the Customer shall pay an amount equal to the System Marginal Buy Price plus any other charges imposed by the Transporter in respect of any gas consumed in breach of that requirement.

"Network Gas Supply Emergency Gas Deficit Emergency", "Emergency Curtailment Quantity", "Potential Network Gas Supply Emergency" and "the System Marginal Buy Price" shall have the meanings given in Transco's Uniform Network Code and "Gas Balancing Alert" shall mean a Gas Balancing Alert given on the website [www.nationalgrid.com](http://www.nationalgrid.com). "Working Day" means Mondays to Fridays inclusive but excludes Bank and other public holidays.