

**DRAFT**

**Gas Supply Agreement**

**(1) HydroWingas Ltd**

**and**

**(2) [Customer]**

Contract Reference :

***General Terms and Conditions***

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## GENERAL TERMS AND CONDITIONS

### 1 Definitions and interpretation

1.1 In the Agreement (except as otherwise stated):

**Affiliate** means in respect of a Party any company which is a holding company of that Party and any other subsidiary of such holding company. The expressions "**holding company**" and "**subsidiary**" shall, except as expressly modified in the Agreement, have the meanings specified by Section 736 of the Companies Act 1985;

**Agreement** means the Agreement for the supply of Gas which comprises these General Terms and Conditions, the Special Terms and Conditions, the Supply Schedule and the Pricing Schedule;

**Annual Contract Quantity** means for each Contract Year and each Site the quantity of Gas specified in the Supply Schedule as being the requirement of the Customer for delivery by HydroWingas for such Contract Year at such Site;

**Base Rate** means the base lending rate in London of Barclays Bank PLC for pounds Sterling which is in force from time to time;

**Business Day** means any calendar day other than a Saturday, a Sunday or a bank holiday in England and Wales;

**Contract Year** means a period during the Supply Period, commencing at 0600 hours on the Supply Start Date in any calendar year and ending at 0600 hours on the Supply End Date in the next calendar year;

**Day** means a period commencing at 0600 hours on one day and ending at 0600 hours on the following day and **Daily** shall be construed accordingly;

**Day Ahead Offer Price** means in respect of a delivery Day.

- (a) where the delivery Day is a Price Assessment Day, the Day-ahead offer/bid price under the heading "NBP" quoted in ESGM on the immediately preceding Price Assessment Day;
- (b) where the delivery Day is not a Price Assessment Day and is a Saturday or a Sunday or is contiguous with a Saturday or a Sunday, or is contiguous with a bank holiday which is contiguous with a Saturday or a Sunday, the "Weekend Offer" price under the heading "NBP" quoted in ESGM on the immediately preceding Price Assessment day; and

Price Assessment Day shall mean a Day on which Price Assessments are quoted in ESGM;

**Defaulting Party** has the meaning given to it in Clause 21.2;

**Due Date** means the due date for payment of any sum under the Agreement and unless expressly stated otherwise shall be seven (7) days after the date of receipt of the relevant invoice;

**Equipment** has the meaning given to it in Clause 11.1;

**ESGM** means European Spot Gas Markets as published by Heren Energy Ltd.

**Excess Gas** means in relation to a Site any Gas which is:

- (a) in excess of the Maximum Consumption for such Site; and
- (b) taken by the Customer without the prior written consent of HydroWingas;

**Firm** has the meaning ascribed to it in the Network Code;

**Force Majeure** has the meaning given to it in Clause 24.2;

**Gas** means any hydrocarbons or mixture of hydrocarbons and other gases consisting primarily of methane which, at a temperature of 15 degrees Celsius and at an absolute pressure of 1.01325 bar, are or is predominantly in the gaseous state;

**Gas Acts** means the Gas Act 1986 (the **Gas Act**) (as amended by the Gas Act 1995 and the Utilities Act 2000) and all statutory instruments and other regulations made pursuant or in relation thereto;

**General Terms and Conditions** means these general terms and conditions;

**Interruptible** and **Interruption** have the meaning ascribed to them in the Network Code, and **Interrupt** shall be construed accordingly;

**Interruption Start Time** has the meaning given to it in Clause 15.5;

**Interruption Allowance** has the meaning given to it in Clause 16.1;

**Joules** means a unit of measurement as defined in ISO 1000 - 1981 (E);

**Maximum Consumption** means the rates of consumption specified for the time being in relation to a Site in the Supply Schedule in respect of an Hour, a Day and a Year (as applicable);

**Megajoule** means a unit of measurement equivalent to 1,000,000 Joules;

**Minimum Payment** means the minimum payment levels specified in the Special Terms and Conditions for the time being;

**Month** means a period commencing at 0600 hours on the first day of any calendar month and ending at 0600 hours on the first day of the following calendar month and **Monthly** shall be construed accordingly;

**Network Code** means the document of that name prepared by the Transporter in accordance with its gas transporter's licence;

**Non-Defaulting Party** has the meaning given to it in Clause 21.2;

**Party** means a party to the Agreement, and **Parties** means both of them;

**Price** means the price payable for the purchase of Gas specified in relation to a Site in the Pricing Schedule for the time being;

**Pricing Schedule** means the schedule of that name signed by the Parties attached to the Special Terms and Conditions and forming part of the Agreement;

**Quantities Delivered** means in relation to a Site the amount of Gas as expressed in kWh delivered to the Customer at that Site, as calculated pursuant to Clause 8;

**Site(s)** means the site(s), or any of them, for delivery of Gas specified in the Supply Schedule;

**Special Terms and Conditions** means the special terms and conditions between the Parties and signed by them forming part of the Agreement;

**Supply End Date** means the final date for the supply of Gas under the Agreement and shall be the earlier of the date specified as such in Clause 2 of the Special Conditions and the Termination Date;

**Supply Meter Point(s)** has the meaning ascribed to it in the Network Code;

**Supply Period** means the period from 0600 hours on the Supply Start Date until 0600 hours on the Supply End Date;

**Supply Schedule** means the schedule of that name signed by the Parties attached to the Special Terms and Conditions and forming part of the Agreement;

**Supply Start Date** means the date for commencement of the supply of Gas under the Agreement specified in Clause 2 of the Special Terms and Conditions;

**Termination Date** has the meaning given to it in Clause 21.2;

**Termination Notice** has the meaning given to it in Clause 21.2; and

**Transporter** means National Grid Transco plc (acting in its capacity as a gas transporter) and/or its subsidiary Transco Metering Services (acting in its capacity as a gas metering service company) or such other transporter of gas or metering service provider with whom HydroWingas has an agreement for transporting gas to the Customer via a pipeline transmission network or providing metering service (as applicable).

- 1.2 All references to Clauses and sub-Clauses shall, unless otherwise stated, be references to Clauses and sub-Clauses of these General Terms and Conditions.
- 1.3 References to any document or enactment shall be to that document or enactment as modified, amended, replaced or re-enacted from time to time.
- 1.4 References to a person shall include reference to that person's successors or assigns.
- 1.5 Terms defined in any part of the Agreement shall have the meanings given to them wherever they are used in the Agreement. The construction and interpretation

provisions of this Clause 1 shall apply to the Agreement as a whole except to the extent expressly stated otherwise.

- 1.6 In the case of any conflict between one part of this Agreement and another part the Special Terms and Conditions (including the Schedules attached to them) shall prevail over these General Terms and Conditions.

## **2 Sale and Purchase**

HydroWingas hereby agrees to sell and supply Gas to the Customer and the Customer agrees to purchase and take (or pay for if not taken) Gas in accordance with the Agreement.

## **3 Supply Commitment**

- 3.1 Subject to the provisions of the Agreement, HydroWingas agrees to supply Gas to the Site(s) during the Supply Period at the times and in the quantities required under the Agreement.
- 3.2 The obligation of HydroWingas to commence delivery of Gas at the Site(s) shall be conditional on HydroWingas acceding to the applicable Network Code and receiving confirmation from the Transporter that the system is capable of delivering Gas to the Site(s) in quantities up to the Maximum Consumption levels.
- 3.3 HydroWingas shall have no obligation to supply Gas to any Site if an objection is lodged with the Transporter by any person in respect of that Site, unless such objection is withdrawn within a time determined by the Transporter as being effective to prevent the automatic lapsing of HydroWingas's confirmation of the Transporter's transportation offer.
- 3.4 The Parties acknowledge that HydroWingas may be required to disconnect or approve the disconnection of the Site(s) or cease supply at the Site(s) or take such other action as required for any reason of system security or to comply with any requirement of applicable law or regulation and the Parties agree that HydroWingas shall not have any liability in respect of any loss or damage arising as a result.

## **4 Title, Risk and Site(s)**

- 4.1 The Customer warrants that it is the owner or occupier of the Site(s) and, inter alia, has power and authority to permit, grant and provide the matters referred to in Clause 11.
- 4.2 Title and risk in the Gas shall pass to the Customer in respect of a Site at:
- (a) the outlet of the Customer's control valve on the service pipe in relation to that Site; or
  - (b) where a network exit agreement is in force with the Transporter in relation to a Site which identifies the point(s) of offtake for that Site, the point or points so identified.

## **5 Annual Contract Quantity and Consumption Nominations**

- 5.1 The Customer represents and warrants that the Annual Contract Quantity for each Site is a genuine and accurate estimate of its Gas requirements in respect of that Site.
- 5.2 The Customer represents and warrants that, during the twelve (12) Month period immediately preceding the Supply Start Date, the actual Gas offtake at:
- (a) each of the Site(s) which are Interruptible was equivalent to more than 5,861,420 kWh (200,000 therms); and
  - (b) each of the Site(s) which are not Interruptible was equivalent to more than 73,200 kWh ( around 2,500 therms).
- 5.3 The Customer shall inform HydroWingas at the earliest opportunity of any scheduled interruption to its Gas consumption and/or of any change in the rate or characteristics of its Gas consumption.
- 5.4 If the Customer is to nominate daily under the Special Terms and Conditions, then not later than 1200 hours on Thursday of each week the Customer shall notify HydroWingas of the quantity of Gas (in kWh) it expects to consume at each of the Site(s) during each Day of the following week (that is, Monday to Sunday inclusive). If in respect of a Day the Customer wishes to revise its estimate of the quantity of Gas to be consumed at any Site then notification of any such revision shall be given to HydroWingas no later than 0900 hours on the Day prior to such Day.
- 5.5 If the Customer is to nominate monthly under the Special Terms and Conditions, then not later than 1700 hours on the Day which is five (5) Business Days prior to the beginning of a Month the Customer shall notify HydroWingas of the quantity of Gas (in kWh) it expects to consume at each of the Site(s) on each Day of such Month. <sup>1</sup>
- 5.6 If the Customer does not notify HydroWingas in accordance with this Clause 5 then HydroWingas shall estimate consumption.
- 5.7 If on any Day the quantity of Gas nominated by the Customer to HydroWingas for consumption at any Site pursuant to this Clause 5 differs from the Quantities Delivered in respect of that Site then the Customer shall indemnify HydroWingas against any and all costs and/or charges associated with such difference and incurred by HydroWingas including those incurred under the terms of its transportation arrangements. Any such costs and/or charges shall be invoiced to the Customer by means of an invoice submitted for those purposes.

## **6 Maximum Consumption**

The Customer shall not in any Hour, Day, Month or Contract Year take Gas in excess of the Maximum Consumption without the prior written consent of HydroWingas.

## **7 Excess Gas**

- 7.1 If any Excess Gas is taken by the Customer at any Site, HydroWingas shall be entitled:

- (a) to receive payment for the excess quantity of Gas taken at the greater of the Price and the System Marginal Buy Price for the Day(s) in question;
  - (b) to recover from the Customer any and all charges payable by HydroWingas to the Transporter under the terms of its transportation arrangements which are related to the Customer taking Excess Gas at such Site; and
  - (c) to adjust the levels of the Maximum Consumption relating to such Site accordingly.
- 7.2 Where an amendment is made by HydroWingas to the Maximum Consumption pursuant to Clause 7.1(c), then HydroWingas shall be entitled to make an amendment to the Price, taking into consideration any increased or reduced charges which may become payable to the Transporter.
- 7.3 No payment for Excess Gas and no additional payment or reimbursement made pursuant to this Clause 7 shall be taken into account or credited towards the Customer's obligation to make the Minimum Payment.
- 7.4 Any charges to be recovered by HydroWingas under Clause 7.1(b) shall be invoiced to the Customer by means of an invoice submitted for those purposes.

## **8 Calculation of Quantities Delivered**

- 8.1 The Quantities Delivered shall be calculated in accordance with the provisions of this Clause 8.
- 8.2 For the purposes of the calculation of the Quantities Delivered in respect of each Site, these shall be calculated using the Meter readings taken by the Transporter in respect of each Site in accordance with its normal meter reading cycles.
- 8.3 The Quantities Delivered shall be calculated for each Site as follows:

$$QD_M = \frac{ACM_M \times CV_M}{3.6}$$

Where:

$QD_M$  is the Quantities Delivered for Month M in kWh;

$ACM_M$  is the aggregate number of cubic metres (or cubic feet converted into cubic metre by multiplying with 0.0283, as the case may be) of Gas registered by the relevant meters at each Site in Month M and corrected in accordance with Clause 8.5; and

$CV_M$  is the calorific value of the Gas in Month M, determined in accordance with Clause 8.4.

3.6 is used to convert Megajoules to kWh 1kWh =3.6 Megajoules

- 8.4 In order to determine the calorific value of all or part of the Quantities Delivered, HydroWingas may at any time use either:

- (a) the relevant calorific value in Megajoules per cubic metre declared by the Transporter; or
  - (b) the average of actual calorific values in Megajoules per cubic metre ascertained in accordance with the official testing standards of the Department of Trade and Industry at any point or points through which any Quantities Delivered passes.
- 8.5 The number of cubic metres of Gas registered as aforesaid shall be corrected as if it had been measured at a temperature of 15 degrees Celsius and either at a pressure of 1.01325 bar absolute or such lower temperature or greater pressure as HydroWingas may determine.
- 8.6 Corrections for the purpose of Clause 8.5 shall be effected by:
- (a) automatic correctors; or
  - (b) reference to the Transporter's standard factors for temperature and pressure correction, as applicable from time to time.
- 8.7 Subject to Clause 8.8, the register of the metering equipment at each Site shall be primary evidence of the Quantities Delivered at such Site under the Agreement.
- 8.8 If, in accordance with Section 17 of the Gas Act, the Customer requires a meter examiner to examine any meter supplied by the Transporter for the purposes of ascertaining the quantity of Gas supplied under the Agreement and such meter is found to register inaccurately to a degree exceeding that permitted by Section 17 of the Gas Act then:
- (a) the meter shall be assumed to have registered inaccurately to the same degree since the penultimate date on which the meter was read (otherwise than in connection with the examination), except where it is proved to have begun to register inaccurately as described on some later date; and
  - (b) the amount of any rebate or surcharge (as appropriate) to be made to the Customer in consequence of the inaccurate registration shall be paid to or by the Customer as the case may be.
- 8.9 Where a meter is removed for the purpose of being examined in accordance with Clause 8.8, the expenses incurred in removing, examining and re-installing the meter and fixing a substituted meter shall, if the meter is found and agreed by both Parties to register accurately or to register inaccurately to a degree not exceeding that permitted by Section 17 of the Gas Act, be paid by the Customer.

## **9 Price**

- 9.1 The Customer shall pay HydroWingas the Price in respect of Quantities Delivered, provided that in any Contract Year the Customer shall pay to HydroWingas no less than the Minimum Payment.
- 9.2 HydroWingas shall be entitled to adjust the Price to reflect any changes in charges payable to the Transporter and/or meter operator/provider by virtue of changes in published charges including those for meters and associated equipment.

- 9.3 For the purpose of calculating the Price, HydroWingas has included a figure in the Pricing Schedule to cover the transportation cost to each Site. At the end of the Supply Period or as soon as reasonably practicable thereafter, HydroWingas shall determine the aggregate amount of transportation costs in respect of such Site (being the total quantity of Gas consumed by the Customer multiplied by the transportation cost in the Pricing Schedule), less the actual transportation charges incurred by HydroWingas in respect of the transportation of Gas to the Site. If the result is positive then HydroWingas shall refund the difference to the Customer but if negative then the Customer shall pay the difference to HydroWingas. Any charges to be recovered by HydroWingas under this Clause 9.3 shall be invoiced to the Customer by means of an invoice submitted for those purposes.
- 9.4 In addition to the Price, the Customer shall be liable for the amount of any United Kingdom tax, duty or impost (including valued added tax) levied on or on account of Gas or on account of the processing, sale or supply of Gas which is either payable by HydroWingas in respect of the Quantities Delivered or payable by any previous supplier in respect of a Site and reimbursable by HydroWingas or by reference to any other amount payable to HydroWingas under the Agreement.

## **10 Billing and Payment**

- 10.1 HydroWingas will send to the Customer an invoice in respect of each Month during the Contract Year for Quantities Delivered under the Agreement and the Customer shall pay each such invoice promptly, but not later than the Due Date. The invoice shall include a statement of the Quantities Delivered in kWh (together with a figure in terms which is provided solely for information purposes) and the Price in respect of the Month in question.
- 10.2 If the total amount invoiced in accordance with Clause 10.1 in respect of Quantities Delivered during any Contract Year is less than the Minimum Payment for the same Contract Year, HydroWingas will in the Month following the end of that Contract Year send to the Customer an invoice for the Quantities Delivered plus the difference between the amount invoiced for that Contract Year and the Minimum Payment for that Contract Year.
- 10.3 If the Customer disputes in good faith any sum shown on an invoice, or notified as being payable in accordance with the Agreement, the Customer shall give notice to HydroWingas of any amount in dispute and the reasons for the dispute. Without prejudice to the following provisions of this Clause 10, the Customer shall make payment, subject to manifest errors, of the full amount shown in the invoice, as being payable by the Customer, whether disputed or undisputed, on or before the Due Date.
- 10.4 If payment has not been received by HydroWingas on or before the Due Date, HydroWingas shall be entitled to charge interest at the rate of 3 per cent per annum above Base Rate from the due date for payment until payment is made. Failure to make payment on or before the Due Date for payment shall entitle HydroWingas immediately to terminate the Agreement on notice and/or disconnect or discontinue to supply Gas to the Site(s).
- 10.5 If the information required for charging purposes under the Agreement is not available at any time, HydroWingas may make such estimates for charging purposes as may be necessary, taking into consideration the Customer's Gas usage before and after the

period of estimation, and the Customer shall be obliged to and agrees to pay against invoices drawn up in accordance with such estimates. When the required information becomes available appropriate adjustments will be made in the invoice submitted by HydroWingas after such information becomes available.

- 10.6 All payments to be made under the Agreement shall be made on or before the Due Date in pounds sterling, by direct debit or such other equivalent instantaneous method of transfer of funds as HydroWingas shall approve to such bank account or bank branch as HydroWingas (or such other person as HydroWingas may designate to the Customer) shall have previously specified to the Customer and quoting the invoice number against which payment is made. Payment shall only be deemed to be received once all sums due have been transferred to HydroWingas (or any person so designated to the Customer by HydroWingas) in cleared funds for value.

## 11 Supply and Metering Equipment

- 11.1 The Customer will at HydroWingas's direction, permit HydroWingas and/or the Transporter and/or their respective employees and contractors access to the Site(s) for the purpose of installing, operating, maintaining and replacing such main and subsidiary meters and other apparatus, mains and pipes up to the final outlet of the primary metering installation of HydroWingas and/or the Transporter (the **Equipment**), all of which shall remain in the ownership of either HydroWingas or the Transporter, as the case may be. The Customer will take good care of the Equipment and will not damage it. The Customer will inform HydroWingas and the Transporter immediately in case of any damage or malfunctioning of the Equipment.
- 11.2 The Customer shall pay such contribution as may be agreed between the Customer and HydroWingas towards the installation, maintenance and renewal of all or part of the Equipment without such contribution giving the Customer any rights of ownership.
- 11.3 On or before the disposal of any part of the Site(s) in which any part of the Equipment is laid or installed, and at any time on request by HydroWingas, the Customer shall grant or procure the grant to HydroWingas and/or the Transporter an easement to lay, install, maintain and operate the Equipment or any part of the Equipment and which will prevent the Customer, its successors and assigns from doing anything which might unreasonably prevent or impede access to the Equipment by HydroWingas and/or the Transporter, in such form as HydroWingas may reasonably require.
- 11.4 The Customer shall provide to HydroWingas and/or the Transporter free of charge such sites and supplies of power, water and drainage for the Equipment as HydroWingas may require, and shall provide and maintain such protection for the same as HydroWingas may require to support on-site inspection, installation and maintenance.
- 11.5 The Customer shall be responsible for all pipes and apparatus installed for the purposes of the supply of Gas beyond the final outlet of the primary metering installation of HydroWingas and/or the Transporter unless HydroWingas notifies the Customer that either HydroWingas or the Transporter accepts such responsibility.

## **12 Emergencies**

- 12.1 At least fifteen (15) Business Days prior to the Supply Start Date the Customer shall provide to HydroWingas the following essential information:
- (a) if the Site(s) are manned continuously over a twenty-four (24) hour period, the telephone and facsimile number(s) of one (1) person to be contacted in the event of an emergency in relation to each Site; and
  - (b) if the Site(s) are not manned continuously over a twenty-four (24) hour period, the telephone, facsimile number(s) and names of three (3) different personnel to be contacted in the event of an emergency in relation to each Site.
- 12.2 The Customer shall ensure that, throughout the Supply Period, the information required pursuant to Clause 12.1 shall be maintained up to date in respect of each of the Site(s) and shall also ensure that procedures are in place and maintained such that at any time of the Day one of the designated contact(s) is available and capable of being contacted both by telephone and by facsimile, whether by HydroWingas or the Transporter, and that any and all notifications made pursuant to the Agreement will be promptly and properly acted upon.
- 12.3 HydroWingas shall provide the Customer with a copy of its emergency procedures.
- 12.4 The Customer shall contact the Transporter and HydroWingas immediately in the event of any emergency affecting its ability to take supplies of Gas or the safety of its operations and will allow immediate and unconditional access to the Transporter's personnel to ensure safe operations and, if necessary for the purpose of averting danger to life or property, cut off or discontinue the supply of Gas to the Site(s). The Customer shall reimburse HydroWingas in respect of any costs and charges incurred by HydroWingas in connection with any such emergency call-outs and/or works carried out by the Transporter in response.

## **13 Information**

The Customer shall provide HydroWingas with accurate and timely information with respect to the Customer's offtake and Gas consumption at the Site(s), as may be reasonably requested by HydroWingas.

## **14 Amendments to the Supply Schedule**

- 14.1 Where the Customer takes on additional Sites, then such Sites may be added to the Supply Schedule by agreement between the Customer and HydroWingas provided the Site(s) are available for supply by HydroWingas and the Customer gives HydroWingas at least sixty (60) Business Days prior written notice.
- 14.2 The Customer agrees that any addition to the Supply Schedule shall entitle HydroWingas to revise the Price to reflect such addition, and any such amendment shall be notified to the Customer by HydroWingas as soon as reasonably practicable.
- 14.3 The Customer shall give HydroWingas at least sixty (60) Business Days prior written notice if it proposes (for example, upon closure of a Site) to stop taking Gas at any of

the Supply Meter Point(s) detailed in the Supply Schedule and shall pay the costs incurred by HydroWingas for isolating the supply together with any related unavoidable transportation charges. Any such costs shall be invoiced to the Customer by means of an invoice submitted for these purposes. If such notice applies to all Supply Meter Points on a Site such Site shall be removed from the Supply Schedule with effect from the end of such notice period.

- 14.4 If the Customer intends to sell or vacate any of the Site(s) detailed in the Supply Schedule it shall give HydroWingas at least sixty (60) Business Days (including the name and contact details of the new occupants) prior to the date of sale or vacation and such Site(s) shall be removed from the Supply Schedule with effect from the end or such notice period.
- 14.5 The Customer agrees that if any Site is removed from the Supply Schedule for the reasons specified in Clauses 14.3 and 14.4 then HydroWingas shall be entitled to revise the Price to reflect the effect of such removal.
- 14.6 Removal of a Site from the Supply Schedule shall not affect the obligations of the Customer in respect of the Minimum Payment applicable to such Site.

## 15 Interruption

- 15.1 The Supply Schedule states which, if any, of the Site(s) are subject to Interruption and Clauses 15 to 17 shall accordingly apply to those Site(s) only.
- 15.2 Upon entering into the Agreement the Customer shall provide to HydroWingas at least one (1) telephone number and at least one (1) facsimile number (but not more than four (4) numbers in total) on which HydroWingas and/or the Transporter may contact, twenty-four (24) hours a day, a representative of the Customer in respect of an Interruption and the name(s) or job title(s) of not more than two (2) representatives who may be contacted at such numbers. The Customer shall ensure that these details are maintained up to date and shall notify HydroWingas of any change in such details before such change takes effect.
- 15.3 The Customer shall ensure that at all times on each day one (1) representative is available and capable of being contacted both by telephone with access to facsimile and by facsimile.
- 15.4 A notification of a requirement for Interruption given by telephone is a valid notification irrespective of whether it is subsequently confirmed by facsimile.
- 15.5 Where Interruption is required, HydroWingas shall give (or shall procure that the Transporter gives) the Customer not less than four (4) hours notice before the time from which Interruption is required (the **Interruption Start Time**), specifying:
- (a) the Sites to be Interrupted;
  - (b) the Day of Interruption;
  - (c) Interruption Start Time; and
  - (d) an estimate of the time at which the requirement for Interruption will cease to apply.

- 15.6 Where Interruption has been required, as soon as reasonably practical after notification by the Transporter that the requirement for Interruption no longer applies or will at a certain time cease to apply, HydroWingas will notify the Customer specifying the time (where later than the time of such notification) at which the requirement for Interruption will no longer apply.

## 16 Interruptible Rights

- 16.1 The number of Days (including parts of a Day) in respect of which HydroWingas requires the Customer to cease taking Gas at a Site in any Contract Year shall not exceed the following (the **Interruption Allowance**):

- (a) forty-five (45) Days in any Contract Year called at the sole discretion of the Transporter; or
- (b) in the case of a Site which is a TNI Supply Point (as such term is defined in the Network Code), forty-five (45) Days and such number of Days, additional to the usual maximum set by the Transporter for Interruptible Sites, for the time being specified by the Transporter for the Site;

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

- 16.2 Where the Supply Start Date is part way through a Contract Year, the Days on which the Transporter requires Interruption at a Site in the Contract Year before the Start Date (as notified to HydroWingas by the Transporter) will be taken into account in determining the number of Days upon which Interruption may be required of Customer until the end of the Contract Year under the Agreement.

- 16.3 The exercise by HydroWingas or the Transporter of a right to require or secure the discontinuance or reduction of offtake at any Site provided for in the Agreement shall not count towards the Interruption Allowance.

## 17 Failure to Interrupt

- 17.1 If the Customer fails to comply with a direction to Interrupt at a Site (irrespective of whether the failure results from Force Majeure):

- (a) if the Transporter determines that such failure results in a significant risk to system security, the Transporter or HydroWingas may take any steps available to isolate or disconnect any or all Supply Meter Point(s) at the Site, and the Customer shall be liable to reimburse HydroWingas for the costs and expenses incurred by the Transporter and HydroWingas in taking such steps and in any subsequent reconnection or restoration of the supply; and
- (b) the Customer shall be liable to HydroWingas for any charges imposed on HydroWingas by the Transporter as a result of such failure and shall pay for all Gas taken during a period of Interruption at the System Marginal Buy Price as defined in the Network Code.

- 17.2 If the Customer fails to comply with a direction to Interrupt at a Site as a result of Force Majeure (as defined in the Network Code) and unless the Transporter otherwise determines, with the effect from the date of such failure the Site shall be redesignated as Firm for the purposes of the Network Code, and accordingly the Special Terms and Conditions, and the Price shall be adjusted to take account of the capacity within the system that HydroWingas will be required to book with the Transporter based upon the Maximum Consumption quantities specified by the Transporter in respect of the Site.
- 17.3 No Day in which there is a failure to Interrupt at a Site shall count towards the Interruption Allowance in respect of that Site.
- 17.4 The following circumstances shall not amount to Force Majeure for the Customer:
- (a) the unavailability of the representatives referred to in Clause 15.2 other than for wholly unforeseeable and unavoidable reasons; and
  - (b) the fact that there is no facility for the Customer's plant to operate with a supply of fuel or energy alternative to or in substitution for Gas or such a facility exists but is temporarily unusable or unavailable for reasons within the Customer's control.

## **18 Liability**

- 18.1 Subject to the further provisions of this Clause 18, each Party agrees and acknowledges that:
- (a) neither Party shall be liable to the other Party for loss arising from any breach of the Agreement, other than for loss directly resulting from such breach and which, at the date the Agreement was entered into, was reasonably foreseeable as not unlikely to occur in the ordinary course of events as a result of such breach in respect of physical damage to the property of either Party; and
  - (b) neither Party shall, in any circumstances, be liable in respect of any breach of the Agreement to the other for any loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill, or increased cost of working or any indirect or consequential loss or, except as expressly provided herein, loss resulting from the liability of any other Party to any other person howsoever and whensoever arising.
- 18.2 The amount or amounts for which one Party may be liable to the other pursuant to Clause 18.1(a) in respect of any event or circumstance or series of events constituting or resulting in a breach of a provision of the Agreement shall not exceed £1,000,000.
- 18.3 Clauses 18.1 and 18.2 are without prejudice to any provision of the Agreement which provides for an indemnity or which provides for any Party to make payment to the other.
- 18.4 Nothing in the Agreement shall exclude or limit the liability of any Party for death or personal injury resulting from the negligence of such Party.
- 18.5 The rights and remedies of the Parties pursuant to the Agreement exclude and are in place of any rights or remedies of any Party in tort (including negligence and nuisance)

or misrepresentation in respect of the subject matter of the Agreement, and accordingly, but without prejudice to Clause 18.4, each Party (to the fullest extent permitted by law):

- (a) waives any rights or remedies; and
- (b) releases the other from any duties or liabilities;

arising in tort or misrepresentation in respect of the subject matter of the Agreement.

- 18.6 Without prejudice to Clause 18.5, where any provision of the Agreement provides for any amount to be payable by a Party upon or in respect of that Party's breach of the Agreement, each Party agrees and acknowledges that the remedy conferred by such provision is exclusive of and is in substitution for any remedy in damages in respect of such breach or the event or circumstance giving rise thereto.
- 18.7 It is agreed and declared that nothing in this Clause 18 shall prevent or restrict any Party from enforcing any obligation (including suing for a debt) owed to it under or pursuant to the Agreement.
- 18.8 If loss or damage is sustained by three (3) or more of HydroWingas customers in respect of the same event or circumstances or series of events and circumstances the total liability of HydroWingas to all of such customers in respect of such loss or damage shall not exceed £2,000,000 and the liability of HydroWingas to each of such customers (including the Customer) shall be the proportion of £2,000,000 which the amount agreed or adjudicated in respect of the claim made by such customer bears to the aggregate of all of the amounts agreed or adjudicated in respect of all of such claims made by all of such customers.

## **19 Waiver**

- 19.1 No default by either Party in the performance of or compliance with any provision of the Agreement shall be waived or discharged except with the express written consent of the other Party. A waiver by a Party of a default by the other Party will not prevent the first Party from subsequently requiring compliance with the waived obligation.
- 19.2 No waiver by a Party of any default of the other Party shall operate, or be construed, as a waiver in respect of any other further default, whether of a like character or not.

## **20 Assignment**

This Contract is personal to the Customer and the Customer shall not assign or transfer the whole or any part of the Agreement or any of its rights or obligations in relation to any Site under the Agreement without the prior written consent of HydroWingas. HydroWingas may not assign, transfer, charge or otherwise encumber all or part of its rights under the Agreement or subcontract any of its obligations without the Customer's consent (such consent not to be unreasonably withheld or delayed) except that HydroWingas may assign, transfer, charge or otherwise encumber or subcontract in respect of an Affiliate of HydroWingas without the consent of the Customer. For the purposes of this Clause the expression "Affiliate of HydroWingas" shall be construed as if the definition of Affiliate had been amended by applying the

provisions of Section 736 (1) (a) and (c) of the Companies Act 1985 as if the words “a majority” had been replaced by the words “not less than twenty-six percent (26%)”.

## 21 Term and Termination

21.1 The Agreement shall take effect on the date of the signature of the Special Terms and Conditions.

21.2 A Party (**Non-Defaulting Party**) may by giving notice (**Termination Notice**) to the other Party (**Defaulting Party**) terminate the obligations of the Parties to supply and take and pay for Gas under the Agreement as from the date (**Termination Date**) specified in the Termination Notice if:

- (a) the Defaulting Party fails to perform or comply with any material obligation under the Agreement and, if it is capable of remedy, it is not remedied to the reasonable satisfaction of the Non-Defaulting Party within twenty-one (21) days of the Defaulting Party receiving written notice from the Non-Defaulting Party of its failure and requiring it to be remedied; or
- (b) a material adverse change occurs in the financial standing of the Defaulting Party when compared to the Defaulting Party’s financial standing as at the Supply Start Date; or
- (c) the Defaulting Party becomes insolvent or goes into liquidation, receivership, administration or makes a composition with creditors.

21.3 Any termination in accordance with the Agreement shall be without prejudice to

- (a) any antecedent rights or remedies of either Party including remedies arising from such termination; and
- (b) the obligations of the Parties to perform covenants and undertakings which are expressed or by their nature are intended to survive the termination of the obligations to supply and take and pay for Gas .

## 22 Notices

Notices given under the Agreement shall, except to the extent expressly provided otherwise in the Agreement, be given or sent by hand, first class mail or facsimile to the address or facsimile number of the relevant Party given in the Special Terms and Conditions or to such other address as may have previously been notified in writing to the Party giving such notice.

## 23 Gas Acts

23.1 The Agreement is made pursuant to the Gas Acts and provides for a supply to the Site(s) in excess of such numbers of kWh in each Contract Year within the Supply Period as HydroWingas is from time to time permitted to supply to the Customer under the Gas Acts.

- 23.2 The Customer acknowledges that HydroWingas is under the no obligation to supply Gas to the Site(s) at a pressure and/or a quality and/or calorific value greater than those provided under the relevant provisions of the Gas Acts.

## **24 Force Majeure**

- 24.1 If either Party is by reason of Force Majeure rendered unable wholly or in part to carry out any of its obligations under the Agreement, then the Party affected shall be released from its obligations hereunder to the extent to which they are affected by Force Majeure and for the period during which those circumstances exist, provided that:

- (a) the Party seeking relief under this Clause 24 shall advise the other Party as soon as practicable by notice in writing of the Force Majeure together with its estimate of the likely effect of the Force Majeure on its ability to perform its obligations and of the likely period of such Force Majeure having regard to the matters referred to in Clause 24.1(b);
- (b) the Party affected shall use all reasonable endeavours to terminate the circumstance of Force Majeure if and to the extent reasonably practicable and with all reasonable speed and at reasonable cost having regard, inter alia, to the unexpired term of the Supply Period; but nothing in this proviso shall limit the absolute discretion of the Party affected in relation to the settlement of any labour dispute constituting circumstances of Force Majeure; and
- (c) the Parties acknowledge that Force Majeure shall not release any Party from any obligation to pay amounts due under the Agreement.

- 24.2 In this Clause **Force Majeure** means any event or circumstance beyond the control of the Party concerned and which, notwithstanding the exercise by it of reasonable diligence and foresight, that Party was or would have been unable to prevent or overcome. Without limitation to the generality of this Clause 24.2, it is acknowledged that any event or circumstance which qualifies as Force Majeure under HydroWingas's transportation contract with the Transporter shall be deemed to be Force Majeure hereunder.

## **25 Network Code**

- 25.1 HydroWingas may modify any provision of the Agreement to the extent required as a consequence of the modification of any Network Code.

## **26 Disputes, Applicable Law and Jurisdiction**

- 26.1 Any dispute which shall at any time arise between HydroWingas and the Customer in respect of the construction or effect of the Agreement or in relation to the rights, duties and liabilities of the Parties shall in the first instance be referred for discussion and resolution, if possible, at a meeting between the respective nominees of HydroWingas and the Customer. Any such meeting shall be held within fourteen (14) days of the service of notice by either Party requesting such a meeting.

- 26.2 If the respective nominees of HydroWingas and the Customer fail to resolve any dispute referred to them under Clause 26.1, unless otherwise agreed, the dispute shall be referred to a court of competent jurisdiction for determination.
- 26.3 The Agreement shall be governed by and construed in accordance with English law and the Parties agree that the English courts shall have exclusive jurisdiction to settle any dispute arising out of or in connection with the Agreement.

## **27 Third Party Rights**

The Parties do not intend that any term of the Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to the Agreement.

## **28 Confidentiality**

For a period of one (1) year after the Termination Date, the Agreement and all information disclosed hereunder between the Parties shall be treated as confidential and shall not be disclosed to any other person except in order to give effect to the Agreement or to the extent required by applicable law, the rules of any recognised stock exchange or requested by any competent regulatory authority, save that, except as mentioned below, a Party may disclose such confidential material to the employees, consultants or legal and other advisors of such Party and its Affiliates provided that the disclosing Party shall procure that the disclosee shall maintain confidential the material disclosed to it. Neither Party shall disclose to any person the Price without the express consent of the other Party save for the purposes of the auditing of its accounts or in order to comply with legal or regulatory requirements provided that in the latter case it shall first notify the other Party of such requirements and shall pay due consideration to any representations made by such other Party with respect to the nature and extent of the disclosure.

## **29 Entire Agreement**

The Agreement sets out the entire agreement between the Parties. It supersedes and replaces any previous agreement between them in relation to the subject matter of this Agreement. Except as expressly stated in the Agreement, no amendment, other than price adjustments as foreseen in the Agreement, may be made to any part of the Agreement except by an instrument in writing signed by both of the Parties.