

**CONNECTION ONLY**

**AGREEMENT**

**between**

**NORTHERN GAS NETWORKS LIMITED**

**and**

**XXXXXXXX**

**for**

**DETAILED DESIGN WORKS**

**in respect of proposed construction works that are of sufficient complexity**

**relating to:**

**Proposed Gas Entry at XXXXXXXXXXXX**

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 2015

**BETWEEN:**

(1) **Northern Gas Networks Limited** (Registered No. 05167070) whose registered office is situated at 1100 Century Way, Thorpe Park Business Park, Colton, Leeds LS15 8TU ("**NGN**") of the one part; and

(2) **XXXXXXXXXX** (Registered No. **XXXXXXXXXX**) whose registered office is situated at **XXXXXXXXXXXXXXXXXXXXXXXXXXXX** ("**the Company**") of the other part, hereinafter referred to jointly as ("**the Parties**").

The Parties hereby agree that the Design Works - Sufficiently Complex Connections Conditions and the attached Schedule shall be incorporated into and shall apply to this Agreement.

**SIGNED** for and on behalf of  
**Northern Gas Networks Limited**

**SIGNED** for and on behalf of  
**XXXXXXXXXX**

Signature: .....

Signature: .....

Name: .....

Name: .....

Title: .....

Title: .....

**In the presence of:**

Signature: .....

Signature: .....

Name: .....

Name: .....

Title: .....

Title: .....

## SCHEDULE

- A** The Company has requested that NGN undertakes the detail design study of a proposed biomethane entry facility at xxxxxxxxxxxxxxxxxxxxxxxx ("the Entry Point Premises/Connected System Point").
- B** NGN shall carry out the Detailed Design Works and the Company agrees to pay NGN for the Gas Quality Assessment in accordance with, and subject to, the attached terms and conditions "Design Works – Sufficiently Complex Connection Conditions"

### 1.0 Contract Price

- 1.1 **Contract Sum** is £xxxxx (xxx in words xxx) exclusive of VAT.

### 2.0 The Options

- 2.1 To validate the design of a new LTS entry point (minimum NGN Ownership Model) capable of entering up to 700 scm/h.

### 3.0 Information to be Provided to the Company

Within one week of the Completion Date, NGN shall provide the Company with a copy of the Design Works Report, which shall include:

The Design Works Report shall include:

Detail design study for plant & equipment which, following construction, will be adopted by NGN as part of the network. This includes functionality and design standards & specifications which are acceptable to NGN. This will include the following items which form part of the biomethane injection plant;

- Remote Operable Valve.
- The pipeline from the biomethane Plant to the NGN network connection point.
- The connection to the NGN network.

The scope of the study is limited to the following:

- (a) Design Management and Meetings
- (b) Surveys
- (c) Utility Search
- (d) Mechanical Design (Pipeline and ROV)
- (e) Civil Design
- (f) Easement and Ownership Drawing
- (g) Installation methodology
- (h) Safety Assessments

- (i) GQ8 Assessment
- (j) Submission of Design Report to NGN for Approval
- (k) Issue of Design Pack; construction issue
- (l) Validation of Third Party Detail Design of the Gas Entry Unit to be adopted by NGN  
Environmental/Archaeology Reports

## DESIGN WORKS - SUFFICIENTLY COMPLEX CONNECTIONS CONDITIONS

### NOW IT IS HEREBY AGREED as follows:

#### 1. INTERPRETATION

In this Agreement unless inconsistent with the context or otherwise specified the following definitions will apply:

**"Completion Date"** shall mean the date which is the agreed period of time that the Design Works will take from the date of signature of this Agreement, as may be extended under Clause 4.2. The period of time shall be taken to be as specified on the Design Works Quotation letter unless an alternative period has been subsequently agreed in writing.

**"Connected System Point" or "CSP"** shall mean a pipeline or system of pipes that is not in the ownership of NGN, but which are connected to the NGN System that are used to convey gas to premises.

**"Contract Sum"** shall mean as defined in the Schedule.

**"Contract Term"** shall mean as defined in clause 5.1.

**"Default"** shall mean any breach by NGN of its obligations under this Agreement, any default, act, omission, negligence or statement by NGN, its employees, agents or sub-contractors arising out of or in connection with this Agreement and in respect of which NGN may be legally liable to the Company.

**"Design Works"** shall mean the carrying out and production of designs and brief details of the potential options for the installation of a connection.

**"Design Works Report"** shall mean the report provided by NGN following the completion of the Design Works.

**"Dispute"** shall mean any significant difference of view which has not or cannot be resolved by discussion between the Parties relating to the interpretation of the Agreement.

**"Due Date"** shall mean as defined in Clause 4.3.

**"Economic Test"** shall mean the test, operated and calculated by NGN, which is used to determine the amount NGN will contribute towards the provision of additional gas transportation capacity through the development of further infrastructure.

**"NGN Group"** shall mean NGN and every other company which is for the time being a subsidiary or holding company (as defined in the Companies Act 1985, as amended) of NGN or a subsidiary of such holding company.

**"NGN System"** shall mean the gas distribution network owned and operated by NGN.

**"Insolvency Event"** shall mean any step taken under the Insolvency Act 1986 or under any other legislation, or the Party's own constitution, or any agreement that is entered into with any creditor which indicates a likelihood of that Party's insolvency.

**"Party"** shall mean either NGN or the Company.

**"Payment Date"** shall mean as defined in Clause 4.1.

**"Proposed Supply Point Premises"** shall mean as defined in paragraph A of the Schedule.

**"Quotation"** shall mean a quotation for NGN to construct reinforcement apparatus as established by the Design Works.

## **2. OBLIGATIONS OF NGN**

- 2.1 NGN warrants that the Design Works shall be undertaken with reasonable care and skill and in accordance with the proper standards of good engineering practice.
- 2.2 NGN shall use reasonable endeavours to ensure that the Design Works shall be completed by the Completion Date and NGN shall deliver to the Company the Quotation and Design Works Report within the period detailed in the Schedule.
- 2.3 NGN shall have no liability whatsoever for any failure to issue the Design Works Report by the Completion Date or where appropriate the extended date where this is the result of an act or omission of the Company, its employees or agents and NGN shall be entitled to charge the Company for any additional work required to be carried out as a result of such act or omission on a time and materials basis at its standard rates.
- 2.4 NGN shall keep confidential and shall not disclose to any third party any information provided by the Company in connection with the negotiation or performance of this Agreement provided that this restriction shall not apply:-
- (a) to any information which at the time of disclosure is in the public domain or thereafter becomes part of the public domain otherwise than as a consequence of a breach by NGN of its obligations under this Clause 2.4 or such information that NGN is required to reveal as a result of any legal process or regulatory requirement; or
  - (b) to information disclosed to persons professionally engaged by NGN, provided that such persons shall be required to be bound by a similar confidentiality undertaking; or
  - (c) to information which at the time of disclosure is trivial and obvious.
- 2.5 All other terms and conditions whether express or implied concerning the quality or fitness for purpose of the Design Works and all such other terms and conditions are hereby excluded to the fullest extent permitted by law.

2.6 Nothing in this Agreement shall confer on the Company any right or entitlement in respect of the transportation or availability of gas.

### **3. COMPANY OBLIGATIONS**

3.1 The Company shall promptly provide such information as NGN may reasonably require for the proper completion of the Design Works.

3.2 The Company shall ensure that such information as it provides under Clause 3.1 is accurate and may be relied on by NGN in connection with the performance of its obligations under this Agreement.

3.3 The Company shall keep confidential and shall not disclose to any third party any information provided by NGN in connection with the negotiation or performance of this Agreement provided that this restriction shall not apply:-

- (a) to any information which at the time of disclosure is in the public domain or thereafter becomes part of the public domain otherwise than as a consequence of a breach by the Company of its obligations under this Clause 3.3 or such information that the Company is required to reveal as a result of any legal process or regulatory requirement; or
- (b) to information disclosed to persons professionally engaged by the Company, and any developer and end user or consumer of the Proposed Supply Point Premises/Connected System Point, provided that such persons shall be required to be bound by a similar confidentiality undertaking.

### **4. PAYMENT**

4.1 The Company shall pay NGN the Contract Sum in consideration of the Design Works thirty (30) days after the date hereof upon prior receipt of an invoice for the sum payable under this Clause 4.1 (the "Payment Date").

4.2 In addition to the amounts under Clause 4.1 in respect of the Design Works, NGN may, subject to prior notification, invoice the Company for all additional costs incurred by NGN as a result of changes or errors in information provided or alterations or additions made by the Company to the information provided to NGN throughout the duration of this Agreement. In the event that the



Company notifies changes in accordance with this Clause 4.2 the Company shall not unreasonably withhold its agreement to an extension to the Completion Date.

- 4.3 The Company shall pay the sums specified in Clause 4.2 by the "Due Date", that is within fourteen (14) days of receipt of an invoice from NGN.
- 4.4 Should the Company fail to make payment on the due date for payment of any sum due hereunder interest thereon shall accrue at the base lending rate of Barclays Bank plc (or its successor) in London for sterling applicable from time to time plus three (3) percent and compounded annually from the date when such payment is due until the date the same is made.
- 4.5 In the event any amount invoiced under Clauses 4.1 and 4.2 remains unpaid twenty (20) days after the Payment Date as provided in Clause 4.1 or the Due Date as provided in Clause 4.3 NGN may, after **7 working days written prior** notification to the Company and without prejudice to any other of its termination or remedial rights, suspend work on the Design Works or any other Design Works being undertaken for the Company pending receipt of payment due.

Provided that in the event of such suspension the Company shall, notwithstanding any other provision of this Agreement and in addition to all other amounts due, remain liable to NGN for all unavoidable costs and expenses reasonably incurred by reason of said suspension, including but not limited to deposits, standby payments, forfeitures, cancellation and demobilisation and remobilisation fees.

- 4.6 In addition to the sums payable in accordance with Clauses 4.1 and 4.2 the Company shall pay NGN an additional amount equal to any Value Added Tax attributable to such sums on receipt of a proper tax invoice.

## **5. DURATION OF AGREEMENT AND TERMINATION**

- 5.1 This Agreement shall commence on the date of signature of this Agreement and shall (unless terminated in accordance with this Clause 5) terminate automatically without notice upon delivery of the Design Works Report to the Company (the "Contract Term").

- 5.2 Either Party may terminate this Agreement on giving written notice to the other if:-
- (a) the other Party commits a material breach of its obligations under this Agreement which is incapable of remedy or, if capable of remedy, has not been remedied within twenty-eight (28) days of the receipt by the other Party of written notice demanding remedy of the breach; or
  - (b) the other Party is deemed to be unable to pay its debts (within the meaning contained in clause 123 of the Insolvency Act 1986) or any Insolvency Event occurs with respect to that Party.
- 5.3 The Company may only cancel or terminate this Agreement without cause before the expiry of the Contract Term subject to the Company indemnifying NGN in full for any losses or expenses that NGN may incur as a result of that early termination or, where specific cancellation charges have been agreed, subject to the payment by the Company to NGN of such cancellation charges. The Company acknowledges that any agreed cancellation charges are intended as liquidated damages and not as a penalty and are a reasonable and genuine pre-estimate of NGN's losses.
- 5.4 In the event any government or governmental supranational state agency or regulatory body shall:-
- (i) rule or direct that this Agreement (or any part thereof) should not be performed by NGN; or
  - (ii) institute, threaten or thereafter take any action, suit or investigation to restrain, prohibit or otherwise challenge the rights or obligations contemplated by this Agreement; or
  - (iii) thereafter to take any other action as a result of or in anticipation of the implementation of this Agreement which would have adverse effects on the rights of the Parties hereto,

NGN and the Company shall immediately commence negotiations in good faith with a view to agreeing provisions, actions and measures which as far as reasonably practicable retain the economic and commercial effect of the rights or obligations set out in this Agreement which shall include but is not limited to the Assignment of this Agreement within NGN's Group.

5.5 In the event that either:-

- (i) NGN and the Company cannot reach agreement in accordance with Clause 5.4; or
- (ii) no provision, action or measure can be reasonably taken in accordance with Clause 5.4,

then either Party may terminate this Agreement upon such notice as may be reasonably required and agreed by both Parties and which in any event shall be as soon as reasonably practicable.

Upon termination of this Agreement, any sums owing to NGN shall become due and payable immediately by the Company upon demand by NGN.

5.6 The termination of this Agreement shall be without prejudice to the rights and remedies of the Parties that may have accrued up to the date of termination.

5.7 Clauses 2.4, 3.3, 4, 6, 7, 8, 11, 12,13, 14, 15 and 16 shall survive termination of this Agreement.

## **6. LIABILITY**

6.1 NGN shall not be liable for any loss or damage sustained or incurred by the Company resulting from the preparation and completion of the Quotation for Design Works save as set out in this clause 6.

6.2 NGN shall not be liable to the Company for any indirect or consequential loss, loss of profits, loss of contract, revenue loss or loss of anticipated savings, however caused and whether arising in contract, tort (including negligence) or otherwise and whether foreseeable or not.

- 6.3 The maximum aggregate liability of NGN to the Company whether in contract, tort (including negligence) or otherwise for any direct loss or damage however arising suffered by the Company as a result of any Default shall be limited to two (2) times the total amount of the consideration payable in respect of the Design Works under this Agreement.
- 6.4 The Company acknowledges that the level of the Contract Sum has been calculated on the basis that NGN's liability will be limited in accordance with this clause 6. The Company may by written notice request NGN to agree a higher limit of liability provided insurance cover can be obtained therefor and the Company will pay any additional premiums incurred by NGN as a result.
- 6.5 Nothing in this clause shall limit or exclude the liability of NGN in respect of any death or personal injury caused by the negligence of NGN or its employees.

## **7. FORCE MAJEURE**

Neither Party shall be liable to the other for any delay or failure by that Party in performing its obligations under this Agreement where such delay or failure is caused by events beyond the reasonable control of that Party.

## **8. INTELLECTUAL PROPERTY**

- 8.1 All information, data and any intellectual property including but not limited to patents, copyright, design rights, registered designs, trademarks, know-how and inventions which are the property of NGN or which NGN acquires or develops under or in connection with the Design Works other than information, data and intellectual property owned and/or provided by the Company in accordance with Clause 3.1 shall be and remain the exclusive property of NGN at all times.
- 8.2 NGN agrees to grant to the Company a royalty free, non-exclusive licence to use any intellectual property rights contained in the Design Works Report and to copy and disclose the Design Works Report only to the extent necessary to enable the Company to construct the offtake facility project or as otherwise may be agreed in writing by NGN.

**9. VARIATION AND WAIVER**

9.1 This Agreement shall not be varied or amended without the prior written agreement of both Parties.

9.2 Neither Party shall be deemed to have waived any of its rights under this Agreement unless it has specifically agreed in writing to such waiver. No single or partial exercise of any right, power or privilege shall preclude the enforcement of any other right, power or privilege. Nor shall the waiver of any breach of a provision be taken to be held to be a waiver of the provision itself. Except as and to the extent expressly otherwise specified in this Agreement, the rights and remedies outlined in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law or elsewhere in this Agreement.

**10. ASSIGNMENT**

The Company will not transfer its rights and obligations under this Agreement without the prior written consent of NGN (such consent not to be unreasonably withheld).

**11. SUB-CONTRACTING**

NGN may sub-contract any of its obligations hereunder to any third party provided that NGN shall not be relieved from any liability or obligation under this Agreement and NGN shall be responsible for the acts, omissions, defaults or negligence of any sub-contractor as if they were the acts, omissions, defaults or negligence of NGN.

**12. SEVERABILITY**

If any clause of this Agreement is found to be void or otherwise unenforceable for any reason, it will be deemed to be omitted from this Agreement and the validity and/or enforceability of the other provisions of this Agreement shall not in any way be affected.

**13. ENTIRE AGREEMENT**

This Agreement (which shall include these conditions, schedule, Company Acceptance Form and sums of agreement) is the complete and exclusive statement of the Agreement between the Parties relating to the subject matter of the Agreement and supersedes all previous communications, representations and arrangements, written or oral. The Company acknowledges that no reliance is placed on any

representation made but not embodied in this Agreement. The printed terms and conditions of any purchase order or other correspondence and documents of the Company issued in connection with this Agreement will not apply unless expressly accepted in writing by NGN.

**14. NOTICES**

Any notice given pursuant to this Agreement by either Party to the other must be given in writing and may be served by receipted personal delivery or by recorded delivery or registered post to the registered office of the other Party or such other address as may from time to time have been notified in writing to the other Party in accordance with this Clause. Every such notice shall be deemed to have been served upon delivery if delivered by hand at the time of delivery or at the expiration of two (2) working days after despatch to the registered office of the Party if sent by recorded delivery or registered post.

**15. THIRD PARTIES**

The Contract Rights of Third Parties Act 1999 shall not apply to this Agreement and the provisions of the said Act are hereby expressly excluded from this Agreement.

**16. LAW AND DISPUTES**

16.1 In so far as the provisions of Part 1 of the Schedule to the Scheme for Construction Contracts (England & Wales) Regulations 1998 apply to this Agreement then they shall be deemed to be incorporated into this Agreement and shall apply to any Dispute arising hereunder. The decision of the Adjudicator shall be binding upon the Parties unless the Dispute is referred to the jurisdiction of the English Courts within 90 days of the decision of the Adjudicator.

16.2 Any such Dispute not amicably resolved as provided above shall be governed by the laws of England, and the Parties hereby submit to the exclusive jurisdiction of the Courts of England.