

**STANDARD CONDITIONS OF CONTRACT FOR THE DESIGN AND  
PERFORMANCE OF WORKS**

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**1. DEFINITIONS**

1.1. For the purposes of the Agreement, except as is otherwise expressly provided herein or unless the context otherwise requires, the terms defined in this Clause shall have the following meanings:-

**“Acceleration”** shall mean acceleration of (a) the Conceptual Design Study Works to achieve completion of the Conceptual Design Study Works prior to the Conceptual Design Study Completion Date or (b) the Design and Build Works to achieve Substantial Completion prior to the Date for Substantial Completion, as the case may be;

**“Acceptance”** shall have the meaning given in Clause 2.1;

**“Adjudicator”** shall mean the person agreed between the Parties as such or, in the absence of such agreement, the person appointed as such by the President for the time being of the Institution of Civil Engineers;

**“Affiliate”** shall mean any holding company or subsidiary of a Party or any company which is a subsidiary of any holding company of a Party and the expression “holding company” and “subsidiary” shall have the meanings respectively ascribed thereto by Sections 736 and 736A of the Companies Act 1985 (as amended);

**“Agreement”** shall mean the Quotation as accepted by the Company (including the Annexes thereto) and these Standard Conditions of Contract, all of which shall be read as one document;

**“Arbitrator”** shall mean the person agreed between the Parties as such or, in the absence of such agreement, the person appointed as such by the President for the time being of the Institution of Civil Engineers;

**“Commissioning”** shall have the meaning given in the Quotation;

**“Company”** shall mean the person or entity to whom or to which the Quotation is addressed, and its permitted successors and assigns;

**“Company Facilities”**: shall have the meaning given in the Quotation;

**“Company Provided Facilities”** shall mean those facilities (if any), whether of a temporary or permanent nature, which the Company is to provide to NGN pursuant to the Agreement, as may be more particularly described in the Quotation and/or the Conceptual Design Study Report;

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**“Company’s Specific Obligations”** shall have the meaning given in the Quotation;

**“Compensation Event”** shall have the meaning given in Clause 11;

**“Competent Authority”** shall mean the Gas and Electricity Markets Authority (as such body is amended or replaced from time to time) or any local, national or supra-national agency, authority, department, inspectorate, minister, official, court, tribunal or public or statutory person (whether autonomous or not) of the United Kingdom (or the government thereof) or the European Union which has jurisdiction over NGN or the Company or the Agreement;

**“Conceptual Design Study Completion Date”** shall have the meaning given in the Quotation;

**“Conceptual Design Study Report”** shall mean the report provided by NGN to the Company pursuant to the Agreement, as more particularly described in the Quotation;

**“Conceptual Design Study Works”** shall have the meaning given in the Quotation;

**“Conceptual Design Study Works Actual Cost”** shall mean the total of:-

- (a) the gross amount (ignoring any amounts of retention) certified or re-certified (as the case may be) under the relevant Subcontracts as being payable by NGN to Subcontractors in respect of the Conceptual Design Study Works (including (for the avoidance of doubt) but not limited to any amounts payable in respect of any Conceptual Design Study Works Compensation Event);
- (b) the amounts payable to any third parties (including but not limited to any amounts payable in respect of easements or other land rights) in respect of the Conceptual Design Study Works; and
- (c) any amounts chargeable by NGN for NGN Internal Conceptual Design Study Works in line with NGN’s then current policy;

**“Conceptual Design Study Works Compensation Event”** shall mean a Compensation Event which relates to the Conceptual Design Study Works;

**“Conceptual Design Study Works Estimate”** shall have the meaning given in the Quotation, as such estimate may be amended pursuant to Clause 11;

**“Conceptual Design Study Works Overhead Charge”** shall have the meaning given in the Quotation;

**“Conceptual Design Study Works Price”** shall mean the Conceptual Design Study Works Actual Cost plus the Conceptual Design Study Works Overhead Charge;

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**“Conceptual Design Study Works Price Paid To Date”** shall mean the amount paid by the Company pursuant to Clause 7.2 prior to the date in question;

**“Consequential Loss”** shall mean:

- (a) all losses, damages, costs and expenses (including but not limited to legal expenses) incurred in respect of failure to take, receive or deliver gas; and
- (b) indirect or special loss (including but not limited to loss of use, revenue, profit, contract and production), increased cost of working and business interruption howsoever caused arising out of or in connection with the Agreement and whether or not foreseeable at the date of Acceptance,

howsoever caused and irrespective of whether caused by the negligence or breach of duty (whether statutory or otherwise) of NGN or the Company or by any other tortious act or omission or breach of the Agreement by NGN or the Company;

**“Date for Substantial Completion”** shall mean the date for the Substantial Completion of the Design and Build Works, being the date identified as such in the Conceptual Design Study Report or such later date as may be established pursuant to Clause 6;

**“Design and Build Commencement Date”** shall mean the earlier of:-

- (a) the date thirty (30) calendar days after the delivery of the Conceptual Design Study Report by NGN to the Company, or
- (b) such date as the Company may notify to NGN after the delivery of the Conceptual Design Study Report by NGN to the Company PROVIDED ALWAYS that the Company shall give NGN no less than seven (7) calendar days’ (such period to include not less than five (5) Working Days) prior written notice of such date;

**“Design and Build Works”** shall have the meaning given in the Quotation;

**“Design and Build Works Actual Cost”** shall mean the total of:-

- (a) the gross amount (ignoring any amounts of retention) certified or re-certified (as the case may be) under the relevant Subcontracts as being payable by NGN to Subcontractors in respect of the Design and Build Works (including (for the avoidance of doubt) but not limited to any amounts payable in respect of any Design and Build Works Compensation Event);

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- (b) the amounts payable to any third parties (including but not limited to any amounts payable in respect of easements or other land rights) in respect of the Design and Build Works; and
- (c) any amounts chargeable by NGN for NGN Internal Design and Build Works in line with NGN's then current policy;

**"Design and Build Works Compensation Event"** shall mean a Compensation Event which relates to the Design and Build Works;

**"Design and Build Works Estimate"** shall mean NGN's estimate (as set out in the Conceptual Design Study Report) of the total sum for undertaking the Design and Build Works, such sum being made up of:-

- (a) an estimated sum in respect of NGN Internal Design and Build Works, and
- (b) an estimated sum in respect of the remainder of the Design and Build Works;

as such sum may be amended pursuant to Clause 11;

**"Design and Build Works Overhead Charge"** shall have the meaning given in the Quotation;

**"Design and Build Works Price"** shall mean the Design and Build Works Actual Cost plus the Design and Build Works Overhead Charge;

**"Design and Build Works Price Paid To Date"** shall mean the amount paid by the Company pursuant to Clause 7.5 prior to the date in question;

**"Dispute"** shall mean any significant difference of view which has not been resolved by discussion between the Parties as to the interpretation or performance of the Agreement or any of its terms and conditions;

**"Due Date"** shall have the meaning given in Clause 7.7;

**"Engineer"** shall mean the engineer appointed from time to time by NGN and notified to the Company, to act as Engineer for the purposes of the Agreement;

**"Force Majeure"** shall have the meaning given in Clause 9;

**"Information Cut-off Date"** shall have the meaning given in the Quotation;

**"Intellectual Property"** means any patent, registered design, copyright, design right, database right, topography right, trade mark, service mark, application to register any of the

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aforementioned rights, trade secret, right in unpatented know-how, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world;

“**LTS**” shall mean NGN’s local transmission system;

“**National Grid**” shall mean National Grid Gas plc (Company No. 2006000) whose registered office is situated at 1-3 Strand, London, WC2N 5EH and its permitted successors and assigns;

“**Network Code**” shall mean the network code prepared by NGN, as from time to time modified, pursuant to the NGN Licence;

“**NGN Facilities**” shall have the meaning given in the Quotation;

“**NGN Internal Conceptual Design Study Works**” shall mean that part or parts of the Conceptual Design Study Works provided and/or to be carried out directly by NGN or NGNOL and not by a Subcontractor, other than:-

- project management;
- project and quality control;
- project health, safety & environmental control;
- project accounts; and
- administrative support;

“**NGN Internal Design and Build Works**” shall mean that part or parts of the Design and Build Works provided and/or to be carried out directly by NGN or NGNOL and not by a Subcontractor, other than:-

- project management;
- project and quality control;
- project health, safety & environmental control;
- project accounts;
- construction management (head office); and
- administrative support;

“**NGN Licence**” shall mean the licence granted, or treated as granted, to NGN from time to time under Section 7(2) of the Gas Act 1986 as amended;

“**NGN/NGN/National Grid System**” shall mean the NTS and the LTS, and shall (for the avoidance of doubt) include the NGN Facilities;

“**NGN Telemetry Testing**” shall mean the completion by NGN of all necessary functionality testing of (a) communication between NGN’s telecoms and data interface and data interface

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housing(s) and the relevant NGN control centre and (b) the satisfactory remote operation of the ROV;

**"NGN Specific Obligations"** shall have the meaning given in the Quotation;

**"NTS"** shall mean National Grid's national transmission system;

**"Party"** shall mean NGN of the one part and the Company of the other part and **"Parties"** shall be construed accordingly;

**"Protected Information"** shall mean any information relating to the affairs of NGN or the Company gained pursuant to or in the course of the negotiation, implementation or performance of the Agreement and shall, for the avoidance of doubt, include but not be limited to the Conceptual Design Study Report;

**"Quotation"** shall mean the letter referring to these Standard Conditions of Contract addressed to the Company containing *inter alia* details of the Works, the Conceptual Design Study Works Estimate and such other matters as may be specified in these Standard Conditions of Contract, together with any other documents attached to or expressly incorporated therein;

**"Reasonable and Prudent Operator"** and **"RPO"** shall mean a person seeking in good faith to perform its contractual obligations, and in so doing and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator complying with applicable law engaged in the same type of undertaking in the same or similar circumstances and conditions, and any reference to the standard of a Reasonable and Prudent Operator shall be construed accordingly;

**"Subcontract"** shall mean a contract between NGN and a Subcontractor;

**"Subcontractor"** shall mean any person or corporate body who has a contract with NGN to carry out and/or provide all or any part of the Works, but who shall not be an agent of NGN for the purposes of the Agreement nor have any rights or obligations under the Agreement;

**"Substantial Completion"** shall mean that the Design and Build Works shall be completed as demonstrated by successful Commissioning and (where required) NGN Telemetry Testing;

**"Weather Data"** shall mean historical weather data provided by the Met Office in respect of the Weather Measurement Location;

**"Weather Measurement"** shall mean a measurement, for each calendar month, for the following:-



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- (a) the cumulative rainfall in millimetres (mm);
- (b) the number of days with rainfall of more than five millimetres (5mm);
- (c) the number of days with a minimum air temperature less than zero degrees Celsius (0oC); and
- (d) the number of days with snow lying at 09:00 hours GMT;

**“Weather Measurement Location”** shall have the meaning given in the Quotation;

**“Working Day”** shall mean a day (not being a Saturday or Sunday) on which the clearing banks in the city of London are normally open for business; and

**“Works”** shall mean the Conceptual Design Study Works and the Design and Build Works.

- 1.2. References in the Agreement to Clauses are to Clauses of these Standard Conditions of Contract, except where otherwise stated.
- 1.3. Any reference to statutes, statutory instruments, codes of practice, standards or NGN documents in these clauses or the Quotation are intended to refer to current statutes, statutory instruments, codes of practice, standards or NGN documents as may be amended, extended, re-enacted or replaced from time to time.
- 1.4. Words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and neuter and vice versa.
- 1.5. In the event of an inconsistency between the various provisions of the Agreement (including any documents incorporated herein by reference) the inconsistency shall be resolved by giving such provisions and documents the following order of precedence:
  - (a) the Quotation;
  - (b) the Annexes to the Quotation;
  - (c) the Clauses of these Standard Conditions of Contract;
  - (d) the Conceptual Design Study Report; and
  - (e) any other document forming part of the Agreement.

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**2. QUOTATION AND ACCEPTANCE**

- 2.1. The formation of the Agreement (“**Acceptance**”) shall take effect on the receipt by NGN of the acceptance by the Company of the Quotation, including a confirmation by the Company that no further terms or conditions are required other than those set out in these Standard Conditions of Contract and any additional conditions incorporated in the Quotation.
- 2.2. NGN shall notify the Company of the date of Acceptance in writing within seven (7) calendar days of Acceptance pursuant to Clause 2.1.

**3. THE COMPANY’S OBLIGATIONS**

- 3.1. The Company, in respect of the Works, and in accordance with the terms and conditions of the Agreement:-
- (a) shall make or procure the making of all payments due under the Agreement in accordance with the provisions set out in the Agreement;
  - (b) shall provide by the Information Cut-off Date and without undue delay, such information as:-
    - (i) NGN may reasonably request (having regard to the extent of the information requested and the timing of the request) for the proper completion of the Works; and
    - (ii) the Company has in its control that the Company believes may be relevant to the Works or any part thereof.

Any information so provided shall be deemed at all times to be subject to the provisions of Clause 13;

- (c) agrees that such information as it provides under paragraph (b) is accurate and may be relied on by NGN and the Subcontractors in connection with the performance of NGN’s obligations under the Agreement;
- (d) acknowledges that the Conceptual Design Study Completion Date (as set out in the Quotation), the Conceptual Design Study Works Estimate (as set out in the Quotation) and the scope of work set out in the Quotation have been specified on the basis of the information provided by the Company to NGN as at the Information Cut-off Date. The Company further acknowledges and agrees that any information provided to NGN after the Information Cut-off Date has not, irrespective of the date of the provision of such information, been considered by NGN in arriving at the Conceptual Design Study

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Completion Date (as set out in the Quotation), the Conceptual Design Study Works Estimate (as set out in the Quotation) and the scope of work set out in the Quotation. The Company further acknowledges and agrees that the Conceptual Design Study Report, the Design and Build Works Estimate (as set out in the Conceptual Design Study Report) and the Date for Substantial Completion (as set out in the Conceptual Design Study Report) have been specified on the basis of the information provided by the Company to NGN as at the date of issue of the Conceptual Design Study Report. The Company further acknowledges and agrees that any information provided to NGN after such date has, irrespective of the date of the provision of such information, not been considered by NGN in preparing the Conceptual Design Study Report and in arriving at the Design and Build Works Estimate (as set out in the Conceptual Design Study Report) and the Date for Substantial Completion (as set out in the Conceptual Design Study Report). Any information provided to NGN by the Company after the Information Cut-off Date shall be a Compensation Event in accordance with Clause 11; and

- (e) shall not unreasonably interfere with or restrict the carrying out of all or any part of the Works.

3.2. Without prejudice to the generality of the foregoing, the Company, in respect of the Design and Build Works, and in accordance with the terms and conditions of the Agreement:-

- (a) shall comply with the Company's Specific Obligations by the dates (if any) specified in the Agreement for doing so or, where no date is specified, without undue delay;
- (b) shall, as and from the Design and Build Commencement Date until completion of the Works, provide free, safe and unrestricted access and egress for NGN and its contractors at all times (subject to reasonable site rules and regulations) to and from the Company Provided Facilities and any other area(s) within the control of the Company, its agents, contractors and sub-contractors in which the Works or any part thereof are to be carried out;
- (c) shall comply with all relevant legislation in the performance of the Company's obligations under the Agreement;
- (d) shall not commence any works in the vicinity of the NGN System before, during or after the Works without formal written consent from NGN in accordance with NGN specification NGN/SP/SSW/22 for "Safe Working In The Vicinity Of NGN High Pressure Gas Pipelines and Associated Installations – Requirements for Third Parties" (as amended from time to time) (a copy of which the Company acknowledges it has received) and without having first provided NGN with risk assessments in respect of the proposed works; and

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- (e) acknowledges the importance of maintaining the integrity, safety and security of the NGN/National Grid System, and the Company confirms that it (and its employees, agents and sub-contractors) shall not do any act or omission which may cause harm to the NGN/National Grid System or jeopardise or threaten to jeopardise any proprietary rights and interests which NGN has from time to time in the routes and land through which the NGN/National Grid System passes.

**4. NGN'S OBLIGATIONS**

4.1. NGN shall, acting as an RPO and in accordance with the terms and conditions of the Agreement:-

- (a) carry out the Works;
- (b) comply with the NGN Specific Obligations; and
- (c) comply with all relevant legislation in performance of all NGN's obligations under the Agreement.

4.2. Nothing in the Agreement shall obligate NGN to confer any right or entitlement on the Company or any other person to offtake gas from or input gas to or have otherwise gas transported through the NGN/National Grid System and any such right or entitlement shall be the subject of a separate agreement or separate agreements.

4.3. Nothing in the Agreement shall obligate NGN to commence the Design and Build Works until:-

- (a) the Design and Build Commencement Date, and
- (b) the Company has complied with all of its obligations under the Agreement arising prior to the Design and Build Commencement Date.

4.4. The Parties agree that NGN shall be the "principal contractor" and the "planning supervisor" for the purposes of the Works in accordance with the Construction (Design and Management) Regulations 1994.

**5. COMPLETION DATES**

5.1. Subject to Clause 6, NGN shall achieve completion of the Conceptual Design Study Works by the Conceptual Design Study Completion Date.

5.2. The date on which completion of the Conceptual Design Study Works is achieved shall be the date on which the Company receives or is deemed to have received (pursuant to Clause 12) (whichever is the earlier) the Conceptual Design Study Report from NGN.

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- 5.3. If NGN fails to achieve completion of the Conceptual Design Study Works by the Conceptual Design Study Completion Date, NGN's liability shall be three decimal three three three three percent (3.3333%) of the Conceptual Design Study Works Overhead Charge per day of actual delay provided that NGN's liability hereunder shall not under any circumstances exceed in aggregate an amount equal to the Conceptual Design Study Works Overhead Charge. A day for the purposes of this Clause 5.3 shall mean a period of twenty four (24) hours commencing at midnight.
- 5.4. Subject to Clause 6, NGN shall achieve Substantial Completion of the Design and Build Works by the Date for Substantial Completion.
- 5.5. The date on which Substantial Completion of the Design and Build Works is achieved shall be certified by the Engineer.
- 5.6. If NGN fails to achieve Substantial Completion of the Design and Build Works by the Date for Substantial Completion, NGN's liability shall be three decimal three three three three percent (3.3333%) of the Design and Build Works Overhead Charge per day of actual delay provided that NGN's liability hereunder shall not under any circumstances exceed in aggregate an amount equal to the Design and Build Works Overhead Charge and provided further that NGN (and its contractors, agents and employees) is permitted access to the Company Provided Facilities at all times to perform the Works. A day for the purposes of this Clause 5.6 shall mean a period of twenty four (24) hours commencing at midnight.

**6. EXTENSIONS OF TIME**

- 6.1. The Conceptual Design Study Completion Date and/or the Date for Substantial Completion may be extended by a Compensation Event in accordance with Clause 11.
- 6.2. In all cases, where NGN has given notice (in accordance with Clause 11) of a Compensation Event arising which may lead to a delay, it shall thereafter comply with all reasonable instructions which the Company shall give in order to overcome or minimise any actual or anticipated delay. Such compliance shall of itself constitute a Compensation Event pursuant to Clause 11.

**7. PAYMENT**

- 7.1. In consideration of the Conceptual Design Study Works, the Company shall pay NGN the Conceptual Design Study Works Price.
- 7.2. NGN shall invoice the Company in respect of the Conceptual Design Study Works Price as follows:-

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- (a) the percentage(s) of the Conceptual Design Study Works Estimate plus the percentage(s) of the Conceptual Design Study Works Overhead Charge on or after the date(s) specified in the Quotation; and
- (b) in respect of a Conceptual Design Study Works Compensation Event, at any time following implementation of the Compensation Event;

provided that NGN may (in its absolute discretion) elect not to issue an invoice in respect of a Conceptual Design Study Works Compensation Event but instead to recover the sums due via the statement and reconciliation referred to in Clause 7.3.

7.3. Within thirty (30) calendar days of (a) NGN receiving a final invoice from all Subcontractors in respect of the Conceptual Design Study Works, or (b) the final determination of any dispute between NGN and one or more of its Subcontractors in respect of the Conceptual Design Study Works, or (c) as soon as reasonably practicable following a termination of the Agreement to which Clause 10.3 applies, NGN shall provide a statement to the Company showing the Conceptual Design Study Works Price. Such a statement shall be supported by:-

- (a) the certificate(s) issued by NGN to the Subcontractor under the Subcontract for the main part of the Conceptual Design Study Works, together with confirmation of the fixed price quoted to NGN by the Subcontractor at the award of the Subcontract for the main part of the Conceptual Design Study Works;
- (b) a schedule of all Compensation Events that have occurred during the Conceptual Design Study Works, including NGN's assessments of those Compensation Events and (for information purposes only) the amount quoted by the relevant Subcontractor for such Compensation Events;
- (c) any third party invoices for those parts of the Conceptual Design Study Works not included in the Subcontract for the main part of the Conceptual Design Study Works; and
- (d) a list (by job title) of the hours incurred by NGN personnel (and the applicable hourly charge out rate) in respect of the NGN Internal Conceptual Design Study Works.

Where the Conceptual Design Study Works Price is greater than the Conceptual Design Study Works Price Paid To Date, the statement shall be accompanied by an invoice from NGN in respect of the amount by which the Conceptual Design Study Works Price exceeds the Conceptual Design Study Works Price Paid To Date.

Where the Conceptual Design Study Works Price is less than the Conceptual Design Study Works Price Paid To Date, NGN shall either:-

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- (a) where the Agreement has not been terminated, credit the amount by which the Conceptual Design Study Works Price Paid To Date exceeds the Conceptual Design Study Works Price against the amount next falling due under Clause 7.5 or
- (b) where the Agreement has been terminated, refund (within thirty (30) Working Days of the date of the statement or the date of receiving the Company's relevant bank account details, whichever is the later) the amount by which the Conceptual Design Study Works Price Paid To Date exceeds the Conceptual Design Study Works Price, and the provisions of Clause 7.9 shall apply *mutatis mutandis* to such a refund.

7.4. In consideration of the Design and Build Works, the Company shall pay NGN the Design and Build Works Price.

7.5. NGN shall invoice the Company in respect of the Design and Build Works Price as follows:-

- (a) the percentage(s) of the Design and Build Works Estimate plus the percentage(s) of the Design and Build Works Overhead Charge on or after the date(s) specified in the Quotation; and
- (b) in respect of a Design and Build Works Compensation Event, at any time following implementation of the Compensation Event;

provided that NGN may (in its absolute discretion) elect not to issue an invoice in respect of a Design and Build Works Compensation Event but instead to recover the sums due via the statement and reconciliation referred to in Clause 7.6.

7.6. Within thirty (30) calendar days of (a) NGN receiving a final invoice from all Subcontractors in respect of the Design and Build Works, or (b) the final determination of any dispute between NGN and one or more of its Subcontractors in respect of the Design and Build Works, or (c) as soon as reasonably practicable following a termination of the Agreement to which Clause 10.3 applies, NGN shall provide a statement to the Company showing the Design and Build Works Price. Such a statement shall be supported by:-

- (a) the certificate(s) issued by NGN to the Subcontractor under the Subcontract for the main part of the Design and Build Works, together with confirmation of the fixed price quoted to NGN by the Subcontractor at the award of the Subcontract for the main part of the Design and Build Works;
- (b) a schedule of all Compensation Events that have occurred during the Design and Build Works, including NGN's assessments of those Compensation Events and (for information purposes only) the amount quoted by the relevant Subcontractor for such Compensation Events;

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- (c) any third party invoices for those parts of the Design and Build Works not included in the Subcontract for the main part of the Design and Build Works; and
- (d) a list (by job title) of the hours incurred by NGN personnel (and the applicable hourly charge out rate) in respect of the NGN Internal Design and Build Works.

Where the Design and Build Works Price is greater than the Design and Build Works Price Paid To Date, the statement shall be accompanied by an invoice from NGN in respect of the amount by which the Design and Build Works Price exceeds the Design and Build Works Price Paid To Date.

Where the Design and Build Works Price is less than the Design and Build Works Price Paid To Date, NGN shall refund (within thirty (30) Working Days of the date of the statement or the date of receiving the Company's relevant bank account details, whichever is the later) the amount by which the Design and Build Works Price Paid To Date exceeds the Design and Build Works Price, and the provisions of Clause 7.9 shall apply *mutatis mutandis* to such a refund.

7.7. Payment shall be made by the Company in pounds sterling free from any right of set-off, counterclaim or deduction by direct bank transfer or equivalent instantaneous transfer of funds within:-

- (a) thirty (30) Working Days of receipt of each invoice issued pursuant to Clause 7.2(a) or Clause 7.5(a);
- (b) ten (10) Working Days of receipt of any other invoice issued pursuant to this Agreement;

(in each case, the "Due Date") and (to the extent permitted by law) free from any right of set-off, counterclaim, deduction, retention, reservation or withholding in respect of tax PROVIDED ALWAYS that in the event that any payment is subject to deduction, retention or withholding the Company shall forthwith pay to NGN such further amount as is necessary to ensure that NGN receives as cleared funds an amount equivalent to the amount which would have been received if no deduction, retention or withholding had been made.

7.8. The Company shall pay, upon presentation of proper VAT invoices, all VAT charges properly payable in connection with the Works.

7.9. Any amounts reasonably and properly incurred becoming due under the Agreement shall bear interest (payable by the Company) from the Due Date at an annual rate of three percent (3%) per annum above the Barclays Bank plc base rate in force from time to time, compounded annually, until the date of payment. The Parties agree that the provisions of this Clause 7.9 constitute a substantial remedy for late payment of any sum due under the Agreement. The



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Parties further agree that the provisions of the Late Payment of Commercial Debts (Interest) Act 1998, and any orders or regulations made pursuant thereto, as to rates of interest or credit periods shall (insofar as is possible) not apply to the Agreement.

7.10. In the event any amount properly invoiced remains unpaid after the Due Date, NGN may thereafter, upon giving not less than seven (7) calendar days' (such period to include not less than five (5) Working Days) prior written notice and without prejudice to any other of its termination or remedial rights, suspend work on the Works pending receipt of payment due. Any such suspension shall constitute a Compensation Event pursuant to Clause 11.

7.11. Invoices, and the statements referred to in Clauses 7.3 and 7.6 above, shall be sent to the address specified in the Quotation, or such other address as the Company may from time to time notify to NGN.

**8. LIABILITY AND INSURANCE**

8.1. This Clause 8.1 shall apply solely in respect of the Conceptual Design Study Works:-

- (a) Without prejudice to the remainder of this Clause 8.1, NGN shall not be liable for any loss or damage sustained or incurred by the Company resulting from the Conceptual Design Study Works unless it is caused by the negligence of NGN or its employees.
- (b) Without prejudice to Clause 5.3, NGN shall not be liable to the Company for any Consequential Loss, however caused and whether arising in contract, tort (including negligence) or otherwise and whether foreseeable or not.
- (c) Without prejudice to Clause 8.1(b), the maximum aggregate liability of NGN to the Company under the Agreement whether in contract, tort (including negligence) or otherwise for any loss or damage suffered by the Company arising out of or relating to the Agreement howsoever arising and notwithstanding any breach of contract or negligence of NGN, its directors, officers or employees or its contractors shall be limited to two (2) times the Conceptual Design Study Works Price. The Company shall save, hold harmless and indemnify NGN from and against any loss or damage suffered by the Company arising out of or relating to the Agreement howsoever arising and notwithstanding any breach of contract, negligence or breach of duty (whether statutory or otherwise) of NGN, its directors, officers or employees or its contractors to the extent that such loss or damage exceeds two (2) times the Conceptual Design Study Works Price.
- (d) Nothing in this Clause 8.1 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.

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- (e) The Conceptual Design Study Report prepared by NGN pursuant to the Agreement is prepared solely for the benefit of the Company to allow the Company to assess whether it wishes the Design and Build Works to proceed. Where the Company requests that the Design and Build Works do not comprise all elements of works detailed in the Conceptual Design Study Report, NGN shall not be liable for any loss or damage sustained or incurred by the Company or any third party to whom the Company discloses all or part of the Conceptual Design Study Report (whether such disclosure is permitted or not pursuant to the terms of the Agreement) as a result of the Company or such third party relying on that part of the Conceptual Design Study Report that is not comprised in the Design and Build Works. The Company shall hold harmless and indemnify NGN in respect of any claim made against NGN by any such third party to whom the Company discloses all or part of the Conceptual Design Study Report (whether such disclosure is permitted or not pursuant to the terms of the Agreement) arising out of or relating to the Conceptual Design Study Report.

8.2. This Clause 8.2 shall apply solely in respect of the Design and Build Works:-

- (a) Without prejudice to Clause 5.6, NGN shall not be liable to the Company for any Consequential Loss, howsoever caused and whether arising in contract, tort (including in negligence) or otherwise and whether foreseeable or not.
- (b) Without prejudice to Clause 8.2(a), the maximum aggregate liability of NGN under the Agreement to the Company whether in contract, or tort (including in negligence) or otherwise for any loss or damage suffered by the Company to the extent caused by NGN or as a result of any breach of contract or negligence of NGN (or of its agents or employees) shall be limited to three times the Design and Build Works Price. The Company shall save, hold harmless and indemnify NGN from and against any loss or damage suffered by the Company arising out of or relating to the Agreement howsoever arising and notwithstanding any breach of contract, negligence or breach of duty (whether statutory or otherwise) of NGN, its directors, officers or employees or its contractors to the extent that such loss or damage exceeds three times the Design and Build Works Price.
- (c) To the extent that the owner ("**Asset Owner**") of all or any part of the Company Facilities is a person other than the Company, then (without prejudice to Clause 8.2(a)) any liability of NGN to the Asset Owner whether in contract, or tort (including in negligence) or otherwise for any loss or damage suffered by the Asset Owner to the extent caused by NGN or as a result of any breach of contract or negligence of NGN (or of its agents or employees) shall be included in the cap on liability referred to in Clause 8.2(b). The Company shall save, hold harmless and indemnify NGN from and against any loss or

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damage suffered by the Asset Owner arising out of or relating to the Agreement howsoever arising and notwithstanding any breach of contract, negligence or breach of duty (whether statutory or otherwise) of NGN, its directors, officers or employees or its contractors to the extent that such loss or damage, when aggregated with any loss or damage of the Company referred to in Clause 8.2(b), exceeds three times the Design and Build Works Price.

- (d) Nothing in this Clause 8.2 shall limit or exclude the liability of either Party in respect of any death or personal injury caused by the negligence of that Party, its agents or employees.
- (e) Any detailed design carried out by NGN pursuant to the Agreement is carried out solely for the purpose of allowing NGN to perform its obligations under the Agreement. Where the Company requests that the Design and Build Works be amended so as not to comprise all elements of works which have been the subject of detailed design, NGN shall not be liable for any loss or damage sustained or incurred by the Company or any third party to whom the Company discloses all or part of such detailed design (whether such disclosure is permitted or not pursuant to the terms of the Agreement) as a result of the Company or such third party relying on that detailed design that is not comprised in the Design and Build Works. The Company shall hold harmless and indemnify NGN in respect of any claim made against NGN by any such third party to whom the Company discloses all or part of such detailed design (whether such disclosure is permitted or not pursuant to the terms of the Agreement) arising out of or relating to such detailed design.
- (f) Each Party shall also effect and maintain employer's liability insurance for a minimum limit of five million pounds sterling (£5,000,000) per occurrence or series of occurrences arising from any one event or for a higher minimum limit as required to comply with current legislation.

8.3. The Company shall save, hold harmless and indemnify NGN against any losses, charges, liabilities, claims, damages, fines, penalties, costs or expenses (including but not limited to legal expenses) incurred by NGN in connection with or resulting from any breach of the Company's obligations as to insurance under this Agreement.

**9. FORCE MAJEURE**

9.1. For the purposes of the Agreement, "**Force Majeure**" means:

- (a) any event or combination of events or circumstance (other than the lack, non-receipt or unavailability of financial resources or funds) which is beyond the control of a party acting and having acted as a Reasonable and Prudent Operator, and which prevents that party

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from or causes hindrance, delay or impediment to that party in fulfilling all or any of its obligations under the Agreement. For the avoidance of doubt unforeseen adverse weather conditions will not constitute a Force Majeure event.

- (b) any failure by the Party to perform its obligations hereunder to the extent that such failure was caused by any change in the law or cancellation of any consent, approval or licence rendering it unlawful for a party to comply with its obligations hereunder after the date of Acceptance unless such change or cancellation would not have occurred except for any act or omission of the Party concerned in relation to such law, consent, approval or licence unless itself caused by Force Majeure.

9.2. If either Party is rendered unable wholly or in part by Force Majeure to carry out its obligations (other than payment of money) under the Agreement it shall as soon as reasonably practicable after becoming aware of the occurrence of the event or circumstances of Force Majeure give written notice to the other Party giving full particulars of the event or circumstances constituting Force Majeure and of the obligations which cannot as a result be performed. The Party giving notice shall thereafter be excused from liability for non-performance of such obligations, subject to the provisions of Clause 9.3 below, to the extent and for so long as the inability to perform the obligations as a result of the event or circumstances of Force Majeure may continue. For the avoidance of doubt, the relief from liability for non-performance of any obligation under this Clause 9 shall not affect the existence of that obligation for the purposes of any other provision of the Agreement.

9.3. A Party relieved from liability for the non-performance of any obligations under the Agreement as a result of Force Majeure shall use all reasonable endeavours to overcome or circumvent such Force Majeure and shall on request in writing from the other Party give full details of the measures it is taking in that regard.

**10. TERMINATION**

10.1. Without prejudice to any of its antecedent rights or remedies, NGN may terminate the Agreement:

- (a) forthwith on written notice if:-
  - (i) the Company goes into liquidation (either voluntary or compulsory); or
  - (ii) any administrator or administrative receiver shall be appointed in respect of the whole or any part of the Company's assets; or
  - (iii) the Company makes or offers to make any arrangement or composition for the benefit of creditors generally; or

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- (iv) the Company becomes subject to a change in control (as "control" is defined by Section 840 of the Income and Corporations Taxes Act 1988); or
- (b) by giving fourteen (14) calendar days' prior notice in writing if either Party is prevented by reason of Force Majeure from performing any of its obligations under the Agreement for a period exceeding nine (9) months;
- (c) by giving twenty-eight (28) calendar days' notice in writing of a breach of the Agreement by the Company, provided the Company fails to take reasonable steps to remedy the breach within such twenty-eight (28) day period; or
- (d) by giving two (2) Working Days' notice in writing to the Company, provided that the effective date of termination pursuant to such notice may only be following delivery of the Conceptual Design Study Report to the Company by NGN and prior to the Design and Build Commencement Date.

10.2. The Company may terminate the Agreement:-

- (a) by giving twenty eight (28) calendar days' notice in writing to NGN; or
- (b) by giving two (2) Working Days' notice in writing to NGN, provided that the effective date of termination pursuant to such notice may only be following delivery of the Conceptual Design Study Report to the Company by NGN and prior to the Design and Build Commencement Date.

10.3. Where the Agreement is terminated under any provision of this Clause 10 (other than Clause 10.1(d) or Clause 10.2(b)), NGN shall be entitled to receive:

- (a) payment of all amounts due at the time of termination under Clause 7.2 and Clause 7.5;
- (b) any additional sum for which the Company is liable under Clause 7.3 and Clause 7.6;
- (c) any cost or expense reasonably incurred, or for which NGN is liable and is unable lawfully or contractually to avoid or recover from third parties in connection with any contracts placed in connection with the Agreement (insofar as these have not already been paid by the Company) including without limitation, forfeited deposits, cancellation fees and legal expenses; and
- (d) any and all reasonable costs incurred or expended in the restoration and/or reinstatement of land or buildings and removal of plant, apparatus and equipment which in the opinion of NGN is necessary as a result of the termination of the Agreement taking into account inter alia environmental considerations and contractual commitments.

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- 10.4. Where the Agreement is terminated pursuant to Clause 10.1(d) or Clause 10.2(b), NGN shall be entitled to receive:
- (a) payment of all amounts due at the time of termination under Clause 7.2; and
  - (b) any additional sum for which the Company is liable under Clause 7.3.
- 10.5. For the avoidance of doubt, all ownership in and rights over all partly completed Works, plant and all materials will continue to vest solely in NGN after termination of the Agreement under this Clause.
- 10.6. Any termination of the Agreement pursuant to any provision of this Clause 10 shall be without prejudice to any rights or obligations of the Parties that accrued prior to the effective date of such termination.
- 10.7. In the event any government or governmental supranational state agency or regulatory body shall:-
- (a) rule or direct that the Agreement (or any part thereof) should not be performed by NGN; or
  - (b) institute, threaten or thereafter take any action, suit or investigation to restrain, prohibit or otherwise challenge the rights or obligations contemplated by the Agreement; or
  - (c) thereafter to take any other action as a result of or in anticipation of the implementation of the 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 the Agreement which shall include but is not limited to the assignment of the Agreement to an Affiliate of NGN.

**11. COMPENSATION EVENTS**

- 11.1. The following are "**Compensation Events**", which may or may not have a cost and/or time impact:-
- (a) the Company requests a change to all or any part of the Works;
  - (b) NGN proposes a change (for health, safety or environmental reasons or for operational purposes or to comply with NGN's then current design philosophies) to all or any part of the Works;

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- (c) the Company provides new or additional information to NGN after the Information Cut-off Date, or amends, corrects or replaces any information or specifications previously provided by it to NGN in accordance with the Agreement;
- (d) the Company does not comply with any of the Company's Specific Obligations by the dates (if any) specified for doing so or, where no date is specified, without undue delay;
- (e) the Company does not otherwise comply with its obligations under the Agreement;
- (f) any act or omission of the Company or its contractors and subcontractors (which shall, for the avoidance of doubt, not include NGN and the Subcontractors) which adversely affects the Works;
- (g) NGN encounters physical conditions which:-
  - (i) affect the land on, over, under or through which the Works are being carried out; and
  - (ii) are not weather conditions or physical conditions resulting from the effects of weather; and
  - (iii) are conditions which a Reasonable and Prudent Operator would have judged at the date of Acceptance to have such a small chance of occurring that it would have been unreasonable to allow for them;
- (h) a Weather Measurement is recorded at the Weather Measurement Location:-
  - (i) within a calendar month; and
  - (ii) after the Design and Build Commencement Date and before the date of Substantial Completion

the value of which, by comparison with the Weather Data, is shown to occur on average less frequently than once in ten years;
- (i) the requirements of any legislation which were not known or could not have been anticipated by NGN acting as an RPO at the date of Acceptance, including but not limited to any changes or amendments to the Gas Act 1986, the Gas Act 1995, the Utilities Act 2000 and/or the NGN Licence;
- (j) the occurrence of a Force Majeure event;

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- (k) caused by any labour dispute or work stoppage or slow-down involving the Company, the Company's contractors (which shall, for the avoidance of doubt, not include NGN), subcontractors (which shall, for the avoidance of doubt, not include the Subcontractors) or the unions of the workers of the Company or the Company's contractors (which shall, for the avoidance of doubt, not include NGN) or subcontractors (which shall, for the avoidance of doubt, not include the Subcontractors);
- (l) any action or restraint taken or issued by a Competent Authority or by any person with an interest in land pursuant to occurrences of any agricultural disease which prevents NGN (acting as an RPO) from, or causes hindrance, delay or impediment to NGN in, fulfilling all or any of its obligations under the Agreement;
- (m) any undue delays by third parties, including but not limited to Nature Conservancy Council, Department of Environment, Food and Rural Affairs (DEFRA), statutory undertakers (including but not limited to the relevant river, water and highway authorities), Network Rail (or any successor of any of the foregoing) in providing any necessary consents for the Works or any part thereof;
- (n) any delays in the acquisition of any land, or interests in or rights over land, required in connection with the Works or any part thereof, including but not limited to delays in connection with the compulsory purchase of any land or interests in or rights over land;
- (o) any action taken by NGN to comply with a request from the Company for Acceleration;
- (p) any action taken by NGN to comply with any instruction from the Company pursuant to Clause 6.2;
- (q) any suspension of the works by NGN pursuant to Clause 7.10;
- (r) any request by the Company to change the Design and Build Commencement Date;
- (s) any of the assumptions set out in the Conceptual Design Study Report prove to be incorrect; and
- (t) a breach of contract by the Company which is not one of the events listed above.

11.2. In the event of a Compensation Event arising other than pursuant to Clause 11.1(a), (c) to (f), (k), (o), (p), (q), (r), and/or (t), NGN shall:-

- (a) within fourteen (14) calendar days of NGN becoming aware of the occurrence of the Compensation Event or as soon thereafter as is reasonable in the circumstances, notify the Company of the occurrence of the Compensation Event and request that the



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appropriate Subcontractor advise NGN as to the impact that the Compensation Event will have on the Works; and

- (b) within fourteen (14) calendar days of receiving a response from the appropriate Subcontractor as to the impact that the Compensation Event will have on the Works, notify the Company of:-
  - (i) the impact that the Compensation Event will have on the Conceptual Design Study Completion Date and/or the Date for Substantial Completion (as the case may be); and
  - (ii) NGN's estimate of the impact that the Compensation Event will have on the Conceptual Design Study Works Actual Cost and/or the Design and Build Works Actual Cost (as the case may be).

11.3. In the event of a Compensation Event to which Clause 11.2 applies, the Conceptual Design Study Completion Date and/or the Date for Substantial Completion (as the case may be) shall be amended as set out in the NGN notification given under Clause 11.2(b) and the Compensation Event shall be implemented immediately. For the avoidance of doubt, any Compensation Event to which Clause 11.2 applies shall have no impact on the Conceptual Design Study Works Estimate and/or the Design and Build Works Estimate (as the case may be) and, therefore, the Conceptual Design Study Works Overhead Charge and/or the Design and Build Works Overhead Charge (as the case may be) shall not be adjusted as a result of such a Compensation Event.

11.4. In the event of a Compensation Event arising pursuant to Clause 11.1(c) to (f), (k), (q) and/or (t), NGN shall

- (a) within fourteen (14) calendar days of NGN becoming aware of the occurrence of the Compensation Event or as soon thereafter as is reasonable in the circumstances, notify the Company of the occurrence of the Compensation Event and request that the appropriate Subcontractor advise NGN as to the impact that the Compensation Event will have on the Works; and
- (b) within fourteen (14) calendar days of receiving a response from the appropriate Subcontractor as to the impact that the Compensation Event will have on the Works, notify the Company of:-
  - (i) the impact that the Compensation Event will have on the Conceptual Design Study Works Completion Date and/or the Date for Substantial Completion (as the case may be); and

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- (ii) the impact that the Compensation Event will have on the Conceptual Design Study Works Estimate and/or the Design and Build Works Estimate (as the case may be).
- 11.5. In the event of a Compensation Event to which Clause 11.4 applies, the Conceptual Design Study Works Completion Date and/or the Date for Substantial Completion (as the case may be) and the Conceptual Design Study Works Estimate and/or the Design and Build Works Estimate (as the case may be) shall be amended as set out in the NGN notification and the Compensation Event shall be implemented immediately.
- 11.6. In the event of a Compensation Event arising pursuant to Clause 11.1(a), (o), (p), and/or (r), NGN shall within fourteen (14) calendar days of NGN becoming aware of the occurrence of the Compensation Event or as soon thereafter as is reasonable in the circumstances request that the appropriate Subcontractor advise NGN as to whether it is willing or able to implement the change or the Company's request or instruction and, if it is so willing or able, the impact that the Compensation Event will have on:-
- (a) the Conceptual Design Study Completion Date and/or the Date for Substantial Completion (as the case may be); and
  - (b) the Conceptual Design Study Works Estimate and/or the Design and Build Works Estimate (as the case may be).
- 11.7. NGN shall, within fourteen (14) calendar days of receiving a response from the appropriate Subcontractor to its request issued pursuant to Clause 11.6, notify the Company as to whether it is willing or able to implement the change or the Company's request or instruction, and if it is so willing or able, as to the impact that the Compensation Event will have on:-
- (a) the Conceptual Design Study Completion Date and/or the Date for Substantial Completion (as the case may be); and
  - (b) the Conceptual Design Study Works Estimate and/or the Design and Build Works Estimate (as the case may be).
- 11.8. In the event of a Compensation Event to which Clause 11.6 applies, the Company shall, provided NGN has confirmed that it is willing or able to implement the Company's request, within seven (7) calendar days of receiving notification from NGN as set out in Clause 11.7, notify NGN whether or not it wishes the Compensation Event to be implemented. If the Company fails to so notify NGN, the Compensation Event shall not be implemented by NGN. In the event that the Company requests NGN to implement the Compensation Event, the Conceptual Design Study Completion Date and/or the Date for Substantial Completion (as the case may be) and the Conceptual Design Study Works Estimate and/or the Design and Build

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Works Estimate (as the case may be) shall be amended as set out in the NGN notification and the Compensation Event shall be implemented immediately.

**12. NOTICES**

- 12.1. Any notice or other document to be given under the Agreement shall be in writing and shall be deemed to have been duly given if left or delivered by hand or sent by registered post or given by facsimile to a Party at the address set out below for such Party, or such other address as the receiving Party may from time to time designate by written notice to the other.
- 12.2. Any such notice or other document shall be deemed to have been received by the addressee two (2) Working Days following the date of dispatch if the notice or other document is sent by registered post or upon delivery if left or delivered by hand or upon confirmation by the recipient's facsimile machine of transaction in the case of notice sent by facsimile. Any notice given by facsimile shall be subsequently confirmed by letter sent by post or hand but without prejudice to the validity of the original notice if transmitted.
- 12.3. The Company's address for service is the address specified as such in the Quotation, or such other address as the Company may from time to time notify to NGN.
- 12.4. NGN's address for service is the address specified as such in the Quotation, or such other address as NGN may from time to time notify to the Company.

**13. CONFIDENTIALITY**

- 13.1. Each Party shall keep confidential and shall not disclose to any third party Protected Information provided that:
- (a) this restriction shall not apply to any information which at the time of disclosure is in the public domain or thereafter becomes party of the public domain otherwise than as a consequence of a breach by a Party of its obligations under this Clause 13;
  - (b) nothing in the Agreement shall prevent the disclosure of information to any government department or any governmental or regulatory agency having jurisdiction over any Party (including but not limited to the Gas and Electricity Markets Authority), or as required by law or any lawful subpoena or recognised stock exchange or other process in connection with any judicial arbitration or administration proceeding, or where reasonably necessary to effect the purpose of the Agreement;
  - (c) in the event disclosure to any third party is necessary in order to give effect to the purposes of the Agreement or permissible under this Clause 13, the disclosing Party shall use all reasonable endeavours to ensure that such third party shall respect the

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confidentiality of such information and be bound by the terms of this Clause 13 as if a party thereto.

13.2. Nothing in Clause 13.1 shall apply to the disclosure of Protected Information to any:

- (a) lending or other financial institution in connection with the financing or the disclosing Party's business or operations;
- (b) bona fide intending assignee of the whole or any part of the rights and interests of the disclosing Party under the Agreement; or
- (c) person that is considering acquiring shares in either Party or (in the case of the Company) any equity investment in the Company Facilities.

13.3. The disclosing Party, pursuant to Clause 13.2 shall:

- (a) keep the disclosure of the Protected Information to the minimum necessary for the purpose for which it is disclosed; or
- (b) obtain an undertaking from the person to whom the Protected Information is disclosed, satisfactory to the non-disclosing Party acting reasonably to maintain the confidentiality of the Agreement.

**14. INTELLECTUAL PROPERTY**

14.1. All Intellectual Property and, to the extent that Intellectual Property is embodied therein, documents (including but not limited to drawings, transparencies, prints, photographs, negatives, tapes, discs, working notes and reports) (including but not limited to the Conceptual Design Study Report), software or other items created or supplied by NGN in connection with the Works shall be owned by NGN and the originals and all copies of them, if any, supplied to the Company shall be delivered to NGN on completion of the Works and the Company shall be required to certify that none are retained in its possession, (save for one copy of the Conceptual Design Study Report which may be retained by the Company)

14.2. All Intellectual Property and, to the extent that Intellectual Property is embodied therein, documents (including but not limited to drawings, transparencies, prints, photographs, negatives, tapes, discs, working notes and reports), software or other items supplied by the Company in connection with the Works shall be owned by the Company and save for documents required by NGN for the purposes of operating and maintaining the NGN System all the originals and all copies of them, if any, supplied to NGN shall be delivered to the Company on completion of the Works and NGN shall be required to certify that apart from the documents referred to above none are retained in its possession.

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14.3. NGN shall have by virtue of the Agreement a royalty-free, non-exclusive licence (with power to sub-licence) for the purposes only of designing, constructing, commissioning, testing, operating and maintaining pipelines, metering and pressure reduction equipment, in respect of any such Intellectual Property of the Company as forms part of any invention or development made by NGN under or in connection with the Agreement.

**15. DISPUTES PROCEDURE**

15.1. This Clause 15 shall apply solely in respect of the Design and Build Works.

15.2. Any Dispute shall be submitted to and settled by the Adjudicator in accordance with the provisions of this Clause 15.

15.3. This Clause 15 shall not impose any pre-conditions on any Party or otherwise prevent or delay any Party from commencing proceedings in any court of competent jurisdiction in relation to any Dispute where that Party requires either:-

(a) an order (whether interlocutory or final) restraining the other Party from doing any act or compelling the other Party to do any act; or

(b) a judgement for a liquidated sum to which there is no arguable defence.

15.4. A Dispute may be submitted to the Adjudicator by either Party at any time between two (2) and four (4) weeks after notification of the Dispute to the other Party. The Adjudicator shall be the person agreed by both parties or, in the event that the Parties are unable to so agree within four (4) weeks of the of the Dispute being notified by one Party to the other then the Adjudicator shall be selected by the President for the time being of the Institution of Civil Engineers of England and Wales.

15.5. In the event that the Adjudicator is unwilling or unable to act or does not confirm his appointment within seven (7) days of receiving the submission of the Dispute, then another Adjudicator shall be appointed in accordance with the provisions of Clause 15.4, and this shall continue until such time as an Adjudicator is found that is willing and able to act.

15.6. The Adjudicator shall settle the Dispute by notifying the Parties of his decision, together with the reasons for his decision, within the time set out in Clause 15.10. Unless and until there has been such a settlement, the Parties shall proceed as if the Dispute had not been raised. Every decision of the Adjudicator concerning any Dispute shall be implemented by the Parties without delay. The decision of the Adjudicator concerning any Dispute shall be final and binding unless and until it is revised by the Arbitrator.

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- 15.7. The Party submitting the Dispute to the Adjudicator shall include a written statement detailing the matter and nature of the Dispute and shall provide such information as it wishes the Adjudicator to consider. A copy of the written statement and such other information shall be provided to the other Party at the same time as it is submitted to the Adjudicator.
- 15.8. Within four (4) weeks of the date of the submission of the Dispute to the Adjudicator, each Party shall provide the Adjudicator with any further information that that Party wishes the Adjudicator to consider and a copy of such information shall be provided to the other Party at the same time as it is submitted to the Adjudicator.
- 15.9. The Adjudicator shall be entitled to request such additional information from either Party as the Adjudicator may require in order to be able to arrive at his decision. A Party shall provide any such information within one (1) week of the Adjudicator's request and shall provide a copy of such information to the other Party at the same time as providing the information to the Adjudicator.
- 15.10. The Adjudicator shall notify the Parties of his decision within eight (8) weeks of the date of the submission of the Dispute to the Adjudicator. This eight (8) week period may be extended at the request of the Adjudicator in view of the nature of the Dispute and if agreed by both Parties.
- 15.11. If a matter disputed under or in connection with a Subcontract is also a matter disputed under or in connection with this Agreement, NGN may submit the dispute under the Subcontract to the Adjudicator to determine together with the Dispute. The Adjudicator shall then settle both disputes together, and references to the Parties in this Clause 15 shall be deemed to be references to the Parties and the relevant Subcontractor.
- 15.12. The Adjudicator shall settle the Dispute as an independent adjudicator and not as an arbitrator. The Adjudicator's decision shall be enforceable as a matter of contractual obligation between the Parties and not as an arbitral award.
- 15.13. The Adjudicator shall be entitled to incur reasonable costs and expenses in coming to his decision. Any such costs and expenses shall be borne equally between the Parties, unless the Adjudicator determines otherwise.
- 15.14. If the Adjudicator resigns, then another Adjudicator shall be appointed in accordance with the provisions of this Clause 15.
- 15.15. If:-
- (a) after the Adjudicator notifies his decision to the Parties, a Party is dissatisfied with the decision; or

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- (b) the Adjudicator fails to notify his decision to the Parties within the time provided for in this Clause 15,

then either Party may refer the Dispute to the Arbitrator and shall notify the other Party of such reference. The Dispute can not be referred to the Arbitrator unless the reference occurs within four (4) weeks of the notification of the Adjudicator's decision or of the time provided for in this Clause 15 for the Adjudicator to notify his decision if he has failed to do so, whichever is the earlier.

- 15.16. The Arbitrator shall determine the Dispute in accordance with, and the Parties shall comply with, the Institution of Civil Engineers Arbitration Procedure (England and Wales) 1997.

**16. ENTIRETY OF AGREEMENT AND AMENDMENTS**

- 16.1. The documents forming the Agreement shall be read as one and shall constitute the entire express agreement between the parties with respect to the Works and shall prevail and supersede all prior agreements, understandings, statements, representations, commitments, warranties and communications between the Parties hereto with respect to the Works and neither Party shall rely on or be bound by any of the foregoing not appearing in or incorporated by specific reference into the Agreement. Nothing in this Clause shall operate to exclude either Party's liability to the other for fraudulent misrepresentation.

**17. ASSIGNMENT**

- 17.1. NGN or the Company may assign all or any of its rights and obligations under the Quotation (prior to Acceptance) or the Agreement to any:

- (a) Affiliate; or
- (b) in the case of the Company, person that is considering acquiring any equity investment in the Company Facilities;

with the consent of the other Party, and such consent should not be unreasonably withheld.

**18. SUB-CONTRACTING**

- 18.1. NGN shall be entitled to sub-contract the whole or any part of the Works. Any such sub-contracting shall not relieve NGN from any liability or obligation that it has, or may have, in connection with the Agreement.

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**19. WARRANTY**

- 19.1. NGN warrants that the Works shall be undertaken with reasonable skill and care and in accordance with the proper standards of good engineering practice.
- 19.2. All other terms and conditions whether express or implied concerning the quality or fitness for purpose of the Works and all such other terms and conditions are hereby excluded to the fullest extent permitted by law.

**20. OWNERSHIP, OPERATION AND MAINTENANCE**

- 20.1. The Parties agree that at all times:
- (a) NGN shall own outright, and be the operator of, the NGN Facilities;
  - (b) the Company shall be the operator of the Company Facilities, and the Company or the Asset Owner (as the case may be) shall own outright the Company Facilities;
  - (c) NGN shall have no right or obligation to operate and/or maintain, and shall have no responsibility for the operation and/or maintenance of, the Company Facilities; and
  - (d) the Company shall have no right or obligation to operate and/or maintain, and shall have no responsibility for the operation and/or maintenance of, the NGN Facilities.
- 20.2. In the event that, contrary to Clause 20.1, NGN becomes the operator of the Company Facilities, or any part of the Company Facilities, within the meaning of the Pipelines Safety Regulations 1996, or any similar successor legislation, the Company shall provide a full indemnity to NGN in respect of its compliance or attempted compliance with the relevant statutory requirements, including but not limited to: any and all claims, losses, liabilities, fines, penalties, costs (including legal costs) and expenses, whether direct or indirect BUT excluding any of these caused by negligence of NGN, its employees or agents.

**21. WAIVER AND AMENDMENTS**

- 21.1. None of the provisions of the Agreement shall be considered waived by a Party unless such waiver is given in writing and signed by a duly authorised representative of the Party making the waiver. No such waiver shall be a waiver of any past or future default or breach or modification of any other term, provision, condition or covenant of the Agreement unless expressly set forth in such waiver.
- 21.2. Without prejudice to Clause 11, no amendments to the Agreement shall be valid unless made in writing and agreed and signed by the duly authorised representatives of the Parties.



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**22. PUBLICITY**

22.1. Each Party shall obtain written approval from the other, which will not be unreasonably withheld, prior to taking publicity photographs or issuing publicity releases or announcements regarding the Agreement or the Works.

**23. SURVIVAL**

23.1. The provisions of the Agreement which by their nature or from their context are intended to, or would naturally, continue to have effect after termination of the Agreement shall survive after termination.

**24. THIRD PARTY RIGHTS**

24.1. Subject to any rights which may accrue to any successor or permitted assign of the Parties, no provision of the Agreement shall or may be construed as creating any rights enforceable by a third party and all third party rights as may be implied by law are hereby excluded to the fullest extent permitted by law from the Agreement.

**25. SEVERABILITY**

25.1. If any term or provision in the Agreement shall be held to be illegal or unenforceable in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of the Agreement but the validity and enforceability of the remainder of the Agreement shall not be affected.

**26. GOVERNING LAW**

26.1. The Agreement shall be governed by and construed in accordance with English Law and the parties hereby submit (subject to Clause 15) to the exclusive jurisdiction of the Courts of England and Wales in respect thereto.