

# DEEMED CONTRACT SCHEME

For Major Business Customers from 18 June 2008

Made by EDF Energy Customers plc, pursuant to Schedule 2B of the Gas Act, for the purpose of determining the terms and conditions which are to be incorporated into contracts which, by virtue of that schedule, are to be deemed to have been made

## In force with effect from 18 June 2008

### RECITALS

- A** Paragraph 8 of Schedule 2B to the Gas Act 1986 (the "Schedule") provides for contracts to be deemed to have been made between gas suppliers and owners or occupiers of premises in circumstances described at paragraphs 8(1) and (2) of the Schedule;
- B** Paragraph 8(7) of the Schedule requires the express terms and conditions of such a contract (a "Deemed Contract") to be provided for in a scheme made under paragraph 8 (a "Deemed Contract Scheme"); and
- C** Paragraph 8(10) of the Schedule provides for a Deemed Contract Scheme to make different provision for different cases or classes of cases, or for different areas, determined by or in accordance with the provisions of the Deemed Contract Scheme.
- D** London Energy plc (registered company number 2228297) made a Deemed Contract Scheme which commenced on 1 November 2003 ("the Previous Scheme").
- E** In June 2006, London Energy plc changed its name to EDF Energy Customers plc ("EDF Energy").
- F** EDF Energy, pursuant to and in accordance with paragraph 8(8) of the Schedule, hereby makes the following Deemed Contract Scheme, for determining the terms and conditions which are to be incorporated into

contracts that are deemed to have been made by virtue of the Schedule and which replaces the Previous Scheme.

### PART 1: GENERAL PROVISIONS OF THE DEEMED CONTRACT SCHEME

#### 1. COMMENCEMENT

- 1.1 This Deemed Contract Scheme comes into force on 18 June 2008.

#### 2. SCOPE AND APPLICATION

- 2.1 This Deemed Contract Scheme applies where:
  - 2.1.1 gas is supplied to premises in any part of Great Britain otherwise than in pursuance of a contract, and
  - 2.1.2 EDF Energy is the appropriate supplier at those premises (the "Relevant Premises").

#### 3. EFFECT OF THE DEEMED CONTRACT SCHEME

- 3.1 Where this Deemed Contract Scheme applies, it determines the terms and conditions of the Deemed Contract made between EDF Energy and the customer for the supply of gas at the Relevant Premises (the "Deemed Terms and Conditions").

### PART 2: DEEMED TERMS AND CONDITIONS

#### 4. DETERMINATION

- 4.1 For the purposes of paragraph 3.1, the Deemed Terms and Conditions are to be determined as equivalent (with any necessary adaptations) to those of the standard contract for the supply of gas by EDF Energy that would have applied to the supply of gas at the Relevant Premises at the time that the Deemed Contract was made.

#### 5. UNDERTAKING

- 5.1 EDF Energy undertakes to comply with all obligations placed on it by virtue of paragraph 4.1 and, in particular, will not terminate any Deemed Contract under this Deemed Contract Scheme except in

accordance with the termination provisions of the equivalent relevant standard contract for the supply of gas at the Relevant Premises.

### PART 3: DEFINITIONS AND INTERPRETATION

#### 6. DEFINITIONS

- 6.1 In this Deemed Contract Scheme:
  - "Appropriate Supplier" means the supplier determined in accordance with the provisions of paragraph 8(3) of the Schedule;
  - "Customer" means the owner or occupier (as the case may be) of the relevant premises; and
  - "Standard Contract" means any contract of a type or category that was made available to customers by EDF Energy in the normal course of its gas supply business at the time that the Deemed Contract was made.

#### 7. INTERPRETATION

- 7.1 The reference in paragraph 4.1 to a standard contract for the supply of gas is to be taken to include a reference to each successive revision of that contract (in accordance with the provisions thereof) since the time that the Deemed Contract was made, and the terms and conditions of the standard contract (particularly, but without limitation, as to price) are to be applied to the Deemed Contract accordingly.

#### 8. REVOCATION

- 8.1 With effect from 18 June 2008 the Previous Scheme is hereby revoked provided however that any Customer supplied pursuant to the Previous Scheme shall continue to be supplied pursuant to this new Deemed Contract Scheme.

Executed by:  
Robert Ian Higson  
Company Secretary  
EDF Energy Customers plc

EDF Energy Customers Plc  
Legal Department  
40 Grosvenor Place  
Victoria London  
SW1X 7EN

## 1 DEFINITIONS

1.1 In these Standard Conditions, unless the context otherwise requires, the following expressions have the following meanings: **"Affected Party"** has the meaning given to it in Standard Condition 16.1. **"Agreement"** means this Agreement for the supply of Gas comprising these Standard Terms and Conditions, the Special Conditions and the Site Schedule. **"Annual Quantity"** has the meaning given in the Uniform Network Code. **"CCL"** means the tax referred to in Schedule 6 to the Finance Act 2000. **"Confirmed Supply Start Date"** has the meaning given in the Special Conditions. **"Contract Overrun Price"** means the price which the Supplier shall charge for each kWh of Gas supplied to any Site after the end of the Contract Supply Period until such time as the Site(s) registered with a new supplier or a new Agreement has been made between the Parties. **"Contract Price"** has the meaning set out in the Special Conditions. **"Contract Period"** has the meaning set out in the Special Conditions. **"Contract Year"** means any 12 month period starting on the Requested Start Date and each anniversary thereafter (as applicable). **"Contracted Gas Consumption"** has the meaning set out in the Special Conditions. **"Customer"** means the person being supplied with Gas under this Agreement. **"Day"** means a period of 24 hours commencing at 0600 hours on one day and ending at 0600 hours on the following day. **"Deemed Contract Scheme"** means the deemed contract scheme made by EDF Energy Customers plc pursuant to Schedule 2B of the Gas Act. **"Distribution Networks"** means distribution networks operated by National Grid Gas plc, Northern Gas Networks plc, Wales and West Utilities plc, Scotia Gas Networks plc. **"Emergency"** has the meaning set out in the Uniform Network Code. **"EUC"** End User Category means the Industry standard consumption profiles, or customer usage shapes, derived by ALP and DAF algorithms and allocated to all NDM sites by National Grid. **"Excess Gas"** means any Gas off taken at a Site within a Contract Year which is in excess of the relevant Maximum Annual Quantity level for that Site. **"Excess Gas Price"** means the Price which the Supplier shall charge for each kWh of Excess Gas supplied. **"Firm Supply of Gas"** means a supply of gas to Sites which neither the Relevant Transporter nor the Supplier is entitled to interrupt, except in an Emergency. **"Force Majeure"** means the occurrence of any event or circumstance beyond the control of the Parties which results in the inability of the Affected Party to fulfil all or any of its obligations under this Agreement which, in the case of Force Majeure affecting the Supplier, may include any event or circumstance which qualifies as force majeure under the Shipper's agreement with the Transporter in respect of the transportation and metering of Gas delivered to the Site(s) and which, notwithstanding the exercise by the Affected Party of reasonable diligence and foresight, it would not have been possible to prevent or overcome. **"Gas"** means all natural gas supplied under this Agreement, as defined in Section 48 of the Gas Act. **"Gas Act"** means the Gas Act 1986 and the regulations made thereunder, both as amended by the Gas Act 1995 and the Utilities Act 2000. **"Gas Purchase Contract"** means any contract between the Shipper and/or the Supplier and a third party for the purchase of gas, which gas the Shipper and/or the Supplier intend to use to enable them to meet their commitments to supply gas pursuant to, inter alia, this Agreement. **"Hour"** means a period of 60 minutes commencing at zero minutes. **"kWh"** means kilowatt hours. **"Maximum Annual Quantity"** means the maximum annual quantity of Gas contracted to be consumed per Contract Year in respect of each of the Sites, more particularly as set out in the Site Schedule, and may be derived from the Maximum Contract Quantity. **"Maximum Contract Quantity"** means in respect of a Site the figure in kWh set out in the Site Schedule. **"Meter"** means the metering equipment at the Site(s) up to and including outlet for the (primary) metering installation and which is used by the Supplier for the purposes of measuring the supply of Gas to the Site(s). **"Meter Operator"** means the contractor or subcontractor who has been appointed or approved by the Meter Owner to read, install and maintain the Meter. **"Meter Owner"** means the entity which owns the Meter at the relevant Site. **"Minimum Annual Quantity"** means the minimum annual quantity of Gas contracted to be consumed per Contract Year in respect of each of the Sites, more particularly as set out in the Site Schedule and may be derived from the Minimum Contract Quantity. **"Minimum Contract Quantity"** means in respect of a Site the figure in kWh set out in the Site Schedule. **"Month"** means a period commencing at 0600 hours on the first day of any calendar month and ending at 0600 hours on the first day of the following calendar month. **"Monthly Charge"** means a charge levied by the Supplier in respect of any ancillary costs incurred by the Supplier in relation to the supply of Gas to any of the Sites. **"National Grid Gas"** means either National Grid Gas plc or any successor company to National Grid Gas operating an independent distribution network. **"Uniform Network Code"** means the document of that name prepared by the Relevant Transporter pursuant to gas transporter's licence as the same may be varied, modified or replaced from time to time. **"OFGEM"** means the Office of Gas and Electricity Markets, or its successor as appropriate. **"Party"** means either the Customer or the Supplier and **"Parties"** means both of them. **"Registered User"** has the meaning given to it in the Uniform Network Code. **"Registration Date"** means the date upon which the Supplier becomes the Registered User in respect of a Site. **"Relevant Transporter"** means any person who holds a gas transporter's licence granted (or treated as having been granted) under Section 7(2) of

the Gas Act, with whom the Shipper has an agreement for the transporting of Gas delivered to the Site(s) pursuant to this Agreement. **"Requested Start Date"** means the date on which the Customer has requested that supply to the Site(s) begin, as set out in the Special Conditions. **"Shipper"** means any person with whom the Supplier has an arrangement for the purchase of Gas and who has an agreement with the Relevant Transporter for the transporting of gas to the Site(s). For the avoidance of doubt, the Shipper may be the Supplier. **"Site(s)"** means the Site(s) specified in the Site Schedule Conditions. **"Site Schedule"** means the schedule setting out certain details in respect of the Sites and being part of this Agreement. **"Site Start Date"** means in respect of a Site the date on which the Supplier is registered with the Relevant Transporter for the Supply Meter Point(s) relating to that Site. **"SOQ"** Supply Offtake Quantity means the maximum daily consumption for a supply point. **"Special Conditions"** means the Special Conditions entered into between the Supplier and the Customer and forming part of this Agreement, and any reference herein to a Special Condition shall mean the relevant condition contained in the Special Conditions. **"Supplier"** means EDF Energy Customers plc trading as EDF Energy. **"Termination Date"** means the date of expiry of the Contract Period or the date the Supplier is no longer registered with the Relevant Transporter for the Site(s), whichever is the later. **"Third Party"** means any person other than the Parties. **"VAT"** means value added tax or any similar tax which is introduced to replace value added tax.

- 1.2 Any other references to defined terms in this Agreement shall, to the extent that they are not defined in these Standard Terms and Conditions or in the Special Conditions, have the meaning attributed to them, if any, in the Uniform Network Code. In the case of any conflict between the definitions contained in this Agreement and the definitions contained in the Uniform Network Code, the definitions contained herein shall take precedence.
- 1.3 Any reference herein to a Standard Condition shall mean a condition contained in these Standard Terms and Conditions.
- 1.4 In the case of any conflict between the provisions of the Special Conditions and the provisions of these Standard Conditions, the provisions of the Special Conditions shall take precedence.
- 1.5 References to any legislation or instrument shall be to that legislation or instrument as amended, modified, consolidated or re-enacted from time to time.

## 2 DETERMINATION OF KILOWATT HOURS

- 2.1 Consumption of Gas at the Sites will be determined by Meters which comply with Section 17 of the Gas Act and relevant regulations.
- 2.2 The Customer will be charged according to the number of kWh consumed at each of the Sites as calculated in accordance with the methodology specified in the Gas (Calculation of Thermal Energy) Regulations 1996.
- 2.3 Where automatic correctors are not fitted to compensate for temperature and pressure conditions that vary from those specified in the Gas Act, standard conversion factors will be applied. The Supplier will provide relevant details with each invoice.

## 3 METERING

- 3.1 The Customer agrees to provide or procure the provision of the right of safe access to each and any Site for the Supplier and/or the Relevant Transporter and/or Meter Operator and/or Meter Owner and/or their respective employees and contractors for the purposes of inspecting, installing, operating, maintaining and replacing such main and subsidiary Meters and other apparatus, mains and pipes up to the final outlet of the primary metering installations of the Meter Owner as may be reasonable for measurement of the supply of Gas, the ascertainment of kilowatt hours supplied hereunder, the control of gas and the protection of the supply system, all of which shall remain in the ownership of the Meter Owner. The Supplier and/or the Relevant Transporter and/or Meter Owner and/or Meter Operator shall have the right to inspect any gas fitting either side of the primary metering installations and cut off or discontinue the supply of Gas to any Site if it or they are of the opinion that it is necessary to do so for the purpose of averting danger to life or property.
- 3.2 The Customer shall pay such contribution as may be agreed between the Customer and the Supplier towards the installation, maintenance and renewal of all or part of the equipment referred to in Standard Condition 3.1 above, which contribution shall not give the Customer any rights of ownership in any Meter.
- 3.3 The Customer shall on or before disposal of any Site, in which any part of any Meter is laid or installed and at any time on request by the Supplier grant to the Supplier and/or the Relevant Transporter and/or any Third Party nominated by either of them, an easement to lay, install, maintain and operate such equipment or any part thereof and preventing the Customer, its successors and assigns from doing anything which might unreasonably prevent or impede access thereto by the Supplier and/or the Relevant Transporter and/or the nominated Third Party all in such forms the Supplier may reasonable require.
- 3.4 The Customer shall provide the Meter Owner, free of charge, such sites for and supplies or power, water and drainage for any Meter and other

apparatus of the Meter Owner as the Supplier may require and shall provide and maintain such protection for the same as the Supplier may require to support the site installation.

- 3.5 The Customer shall give the Supplier not less than twenty-one (21) days' prior written notice of any proposed changes to its gas using equipment and the Supplier may require the Customer to install, maintain, keep in operation and pay for extra equipment to protect the gas supply system if such proposed changes, particularly those involving the use of engines, compressors or compressed air, pose a threat to the system or would cause pressure fluctuations in the supply mains. The Supplier shall on reasonable notice (except in the case of an emergency, when no notice is required) have the power to arrange for the disconnection, removal, testing and replacement of any such appliances and any expense thereby incurred shall, if the appliance is found to be in proper order and repair, be borne by Supplier but otherwise shall be paid by the Customer.
- 3.6 Save to the extent, if any, that the Meter Owner or Meter Operator may notify the Customer that either accepts responsibility therefore, the Customer shall be responsible for all pipes and apparatus installed for the purposes of the supply of Gas beyond the Meter.
- 3.7 The Customer shall ensure that no seal incorporated into the Meters shall be broken unless this is essential to enable the flow of gas to be maintained. In the event that any such seal is broken the Customer shall promptly inform the Supplier of the time and date on which the seal was broken.
- 3.8 If in accordance with Section 17 of the Gas Act, the Customer or the Supplier requires a meter examiner to examine any Meter or part thereof and the Meter is found when so examined to have registered inaccurately to a degree exceeding that permitted by the regulations under such Section then:
  - 3.8.1 unless proved otherwise or historical data suggests to the contrary, the Meter shall be deemed to have registered inaccurately to the degree so found since the penultimate date on which the Meter was (otherwise than in connection with the examination) read; or
  - 3.8.2 where historical data suggests that the Meter has been registering inaccurately since a date before the penultimate date on which the Meter was (otherwise than in connection with the examination) read, the parties shall endeavour to agree a date from which the Meter shall be deemed for the purposes of this Agreement to have been registering inaccurately to the degree so found, but in the absence of such agreement, the relevant date shall be a date from which it would be reasonable in all the circumstances to deem that the Meter has been registering inaccurately to the degree so found; and
  - 3.8.3 the amount of allowance to be made to or the surcharge to be placed on the Customer in consequence of the inaccurate registration shall be paid promptly to or by the Customer as the case may be and in any event shall be paid within seven (7) days of the date upon which the amount of the allowance or surcharge becomes known to the Parties, and the last day of such seven (7) day period shall constitute the due date for the purposes of Standard Condition 4.8 and Standard Condition 12.2.
- 3.9 Where a Meter or any part thereof is removed for the purposes of being examined in accordance with Standard Condition 3.8 above, the expenses incurred in removing, examining and reinstalling the Meter and fixing a substitute Meter shall, if the Meter is found to register accurately to a degree not exceeding that permitted by regulations under Section 17 of the Gas Act, be paid by the Customer if the Customer required the Meter examination, but otherwise by the Supplier.
- 3.10 The Supplier or the Customer may at their own expense install and operate measuring devices to check any Meter provided that such devices do not interfere with the operation of any such Meter, and permission has been granted by the Supplier and Relevant Transporter.

#### **4 PRICE AND PAYMENT**

- 4.1 The Customer shall pay to the Supplier:
  - 4.1.1 the Contract Price in respect of any Gas supplied under this Agreement, and
  - 4.1.2 the Monthly Charge, if applicable.
- 4.2 The Supplier shall render invoices for Gas supplied to the Site(s) under this Agreement in respect of each month during the Contract Period. Each invoice shall include a statement of the volume of Gas delivered to each Site, the number of kilowatt hours, the applicable Price(s) and where applicable any Monthly Charge.
- 4.3 The price of Gas specified in this Agreement is exclusive of VAT and, in addition to the price specified and any Monthly Charge payable hereunder, the Customer shall pay to the Supplier the amount of any applicable VAT and any other United Kingdom tax, duty or impost levied or imposed on or on account of gas or on account of the processing, sale or supply of gas which is payable by the Supplier in respect of Gas supplied, including any amounts payable by any previous supplier and reimbursable by the Supplier. In order for the Supplier to apply to the Customer's bill any exemptions to the CCL for which the Customer may qualify, the Customer must provide any CCL exemption certificates to the Supplier within a reasonable time prior to the first billing date or as soon as practicable thereafter.
- 4.4 If the information required for charging purposes under this Agreement is not available at any time, the Supplier may make such estimates for charging purposes as may be reasonable having regard to the Customer's gas usage before or after the period of estimation and any consumption estimates previously given to the Supplier by the Customer and the Customer shall pay in accordance with such estimates. When the information required for charging purposes becomes available, appropriate

adjustments will be made in any subsequent invoice rendered in accordance with this Standard Condition 4.

- 4.5 If the total amount of Gas consumed at any Site during any Contract Year is less than the Minimum Annual Quantity for that Site for the same period, the Customer shall on or before the expiry of a two (2) month period, immediately following the relevant Contract Year, pay to the Supplier, in addition to amounts invoiced for Gas consumed, the Contract Price for such Site in respect of the difference between (a) the total amount of Gas consumed during that Contract Year at that Site PLUS any amounts not taken by the Customer at the Site as a result of Force Majeure applying under this Agreement, and (b) the Minimum Annual Quantity for that Site, and the last day of such two (2) month period shall constitute the due date for the purposes of Standard Condition 4.8 and Standard Condition 12.2.
- 4.6 Subject to Standard Condition 4.9, the Customer shall promptly pay each invoice in full and in accordance with the payment method and by the due date specified in the Special Conditions.
- 4.7 If the initial payment method specified in this Agreement is direct debit/BACS/CHAPS and the Customer subsequently fails to make any payment due by means of direct debit/BACS/CHAPS and the Supplier's prior written consent to the same has not been obtained, the Supplier shall be entitled to increase the Invoice amount by two (2) per cent in respect of every kWh of Gas supplied to the Customer for which the Customer pays by other means and the Customer shall pay for any such Gas at the increased Contract Price.
- 4.8 If any payment due hereunder has not been received by the appropriate due date then, without prejudice to any other rights and remedies which the Supplier may have hereunder, the Supplier shall be entitled to:
  - 4.8.1 levy a late payment fee for each invoice as notified to the Customer in writing;
  - 4.8.2 charge interest from the due date on any unpaid amount in accordance with the Late Payment of Debts (Interest) Act 1998.
  - 4.8.3 charge the Customer an administration fee in respect of each communication made by the Supplier to the Customer in respect of any amount which is due but unpaid; or
  - 4.8.4 remove any Meters supplied under this Agreement if the debt is outstanding for more than 28 days, provided that the Supplier has notified the Customer of such amount remaining outstanding and such debt is not under dispute, and all costs shall be borne by the Customer for such action.
- 4.9 If the amounts payable by the Supplier in respect of the transportation of Gas are for any reason varied by the Relevant Transporter and/or the Shipper, the Supplier may, by written notice to the Customer, forthwith vary the Contract Price such that the Supplier is compensated for any additional costs, charges, liabilities and/or losses it incurs or suffers as a consequence of such variation.
- 4.10 The Supplier may on prior written notice vary the Contract Price at any time to reflect any alteration in the amounts payable by the Supplier pursuant to all or any of the Gas Purchase Contracts by reason of the suspension or termination of any such Gas Purchase Contract in whole or in part as a result of the occurrence of any event or circumstance which qualifies as force majeure under any such Gas Purchase Contract so as to recover from the Customer an amount which the Supplier considers an equitable proportion of any additional costs which the Supplier incurs as a consequence of such suspension or termination.
- 4.11 Where the Contract Period has expired and the parties hereto have not entered into another agreement for the supply of gas to the Site(s) which renews or replaces this Agreement:
  - 4.11.1 the Supplier shall, without prejudice to any other rights or remedies available to it, be entitled to charge the Customer for any gas it offtakes from the Supplier at any Site after the Contract Supply Period at the Contract Overrun Price or pursuant to the Deemed Contract Scheme, as may be applied at its absolute discretion; and
  - 4.11.2 The terms of this agreement shall, in so far as appropriate, apply to such offtake. The provisions of this Standard Condition 4.11 and any other provisions necessary for its operation will survive termination of this agreement.

#### **5 CONSUMPTION**

- 5.1 The Customer warrants that the Contracted Gas Consumption levels specified in respect of each site and any amendments thereto agreed by the Parties represent its genuine and good faith best estimate of its offtake requirements for Gas at each Site.
- 5.2 The Customer undertakes to notify the Supplier as soon as practicable of any significant variation (whether actual or anticipated) in either the Contracted Gas Consumption or annual contracted consumption including any actual or anticipated abnormal cessation in its offtake of Gas at any Site.
- 5.3 If the Customer notifies the Supplier of any variation between any annual contracted consumption or Contracted Gas Consumption and its actual consumption in accordance with Standard Condition 5.2 or if in the reasonable opinion of the Supplier the Customer's actual consumption of Gas at any Site varies from any of the specified consumption levels in respect of such Site or if the Customer fails to give any of the information required in accordance with this Standard Condition 5, the Customer shall indemnify the Supplier in respect of any costs, charges, losses and/or liabilities the Supplier incurs or suffers as a consequence, whether direct or indirect, of such variation or failure and the Supplier shall be entitled to vary the Contract Price forthwith such that the Supplier is compensated for any such additional costs, charges, losses and/or liabilities, by serving written notice on the Customer to that effect.

## **6 MAXIMUM ANNUAL QUANTITY AND EXCESS GAS**

- 6.1 The Customer shall not in any Contract Year take Excess Gas in respect of any Site without obtaining the prior written consent of the Supplier to the same in accordance with the terms of this Agreement.
- 6.2 If the Customer would like to take Excess Gas, it shall request the Supplier's prior written consent to the taking of Excess Gas by giving the Supplier at least thirty six (36) days prior written notice of the same, which notice shall set out details of the quantities of Excess Gas which the Customer would like to take and when.
- 6.3 The Supplier shall be entitled to grant or withhold its consent to the taking of Excess Gas at its absolute discretion.
- 6.4 If the Customer takes Excess Gas with the prior written consent of the Supplier, the Customer shall pay for any Excess Gas taken at the Excess Gas Price.
- 6.5 In the case of the Customer taking Excess Gas without the Supplier's prior written consent, the Customer shall:
  - 6.5.1 pay for any such Excess Gas at the Excess Gas Price; and
  - 6.5.2 indemnify the Supplier in respect of any additional costs, expenses, losses and/or liabilities the Supplier incurs or suffers as a consequence (whether direct or indirect) of the Customer's offtaking such Excess Gas, including any additional costs, expenses, losses and/or liabilities the Supplier incurs or suffers or will incur or suffer pursuant to the terms of any arrangement for the transportation of Gas to the Site(s).

## **7 SUPPLY COMMITMENT AND WARRANTIES**

- 7.1 The Customer confirms and acknowledges that the Supplier is and, for the duration of the Agreement, will remain the sole supplier of gas to the Site(s) and that the Customer will not use any gas at any Site or location which is supplied pursuant to the terms of any other gas supply arrangement with the Supplier or any third party, and the Supplier agrees to supply Gas to each Site from the applicable Site Start Date in accordance with this Agreement. Terms & Conditions page 2 of 4
- 7.2 Without prejudice to the Supplier's rights or remedies under this Agreement, in the event that the Customer either to sell, dispose of, or terminate the use of a Site, (which Site, for the avoidance of doubt, must not be the only Site covered by this Agreement) or where the Customer wishes to introduce an additional site or sites to the provisions of this Agreement:
  - 7.2.1 the Customer shall give a minimum of thirty (30) days prior written notice to the Supplier of the intended sale, disposal, termination of use or addition of any Site;
  - 7.2.2 a Site shall only be removed from this Agreement and this Agreement thereby terminate in respect of such Site with the Supplier's prior written consent and on the Supplier being satisfied, inter alia, that the supply of gas to such Site is being governed by a valid agreement with a supplier other than the Supplier or that the new owner or occupier of the site has entered into an agreement for the supply of gas to that Site with the Supplier;
  - 7.2.3 where the Customer wishes to terminate the use of a Site other than by pursuant to 7.2.1, or where the Customer has ceased to occupy the site the Supplier shall be under no obligation whatsoever to remove such Site from this Agreement and, unless the Supplier elects otherwise, this Agreement shall remain in full force and effect with respect to such Site and any Gas delivered to it;
  - 7.2.4 where the Customer wishes to introduce an additional site or sites to this Agreement, the Supplier shall be under no obligation to agree to any such addition, but may agree to any such addition on such terms and conditions, including as to the applicable Contract Price, as the Supplier may at its discretion require;
  - 7.2.5 the Supplier shall be entitled to vary the Contract Price by written notice to the Customer at any time during the Contract Period, such that it is indemnified in respect of any additional costs, charges, losses and/or liabilities it may incur or suffer as a consequence, whether direct or indirect, of any sale, termination of use or addition of a Site; and
  - 7.2.6 the provisions of the Site Schedule shall, to the extent agreed to by the Supplier (as applicable), be amended or be deemed to be amended as appropriate to take account of such sale, disposal, termination of use or addition of a Site.
- 7.3 The Customer warrants that it is the owner or occupier of the Site(s) and that, inter alia, it has power and authority to permit, grant and provide the matters referred to in Standard Condition 3 hereof.
- 7.4 The Supplier shall be under no obligation:
  - 7.4.1 to supply Gas to any Site before the Site Start Date in respect of that additional site; nor
  - 7.4.2 to attempt to obtain a Registration Date in respect of any such site.

## **8 LIABILITY**

- 8.1 The Supplier will indemnify the Customer against damage or injury to property or persons arising out of or in connection with this Agreement to the extent that such physical damage or personal injury is directly caused by the default or by the negligent or wilful acts or omissions of the Supplier, its agents or contractors provided that any compensation payable under this clause for physical damage shall not exceed £1 million in each Contract Year.
- 8.2 The Customer will indemnify the Supplier against damage or injury to property or persons arising out of or in connection with this Agreement to the extent that such physical damage or personal injury is directly caused by the default or by the negligent or wilful acts or omissions of the Customer, its servants, agents or contractors provided that any compensation payable under this clause for physical damage shall not exceed £1 million in each Contract Year.

- 8.3 Save as expressly provided otherwise in this Agreement, neither the Supplier nor the Customer shall be liable for the other Party's loss of use, loss of assets, loss of profits, loss of contracts, loss of production or loss of revenue or increased cost of working or business interruption howsoever caused arising out of or in connection with this Agreement irrespective of whether such loss, increased cost of working or business interruption is caused by the sole or concurrent negligence of the Supplier or the Customer and whether or not foreseeable at the date of signature of this Agreement or by any other act or omission of the Supplier or the customer.
- 8.4 Subject to Standard Condition 8.5, the Supplier shall not be liable to the Customer in contract, tort (including negligence and breach of statutory duty), statute or otherwise howsoever for any indirect, consequential, economic or financial loss, or loss of business opportunity or goodwill, or any loss resulting from the Customer's liability to any third party (except as provided in Standard Condition 8.1).
- 8.5 Notwithstanding any other provisions of this Agreement, nothing in this Agreement shall exclude a party's liability to the other for death or personal injury resulting from its negligence.
- 8.6 The provisions of this Agreement shall exclude all other remedies of the party affected to the fullest extent permitted by law.

## **9 OBJECTIONS**

- 9.1 Without prejudice to the Supplier's other rights or remedies, if it receives notification that another supplier ("new supplier") has applied to supply any of the Site(s) the Supplier is supplying under this Agreement, and either:
  - (a) the Customer has an outstanding debt with the Supplier, or one of its group companies, relating to the supply of energy (or the provision of other services in connection with, or ancillary to, such supply) to such Site(s);
  - (b) the new supplier has contacted the Supplier and the Supplier has agreed that the new supplier's application has been made in error;
  - (c) the new supplier's application relates to a metering point which is a related metering point and the new supplier's application has not applied to register all the related metering points on the same working day for the same start date;
  - (d) the new supplier's application is for the purpose of commencing a supply to any of the Site(s) prior to the end of the Contract Period or termination of the Agreement pursuant to clause 12;
  - (e) the Customer has otherwise instructed the Supplier to object to the new supplier's application (either specifically or generally); and/or
  - (f) the Customer is otherwise in breach of any of its obligations under this Agreement;then the Customer hereby:
  - (i) irrevocably authorises the Supplier to raise an objection with Relevant Transporter to prevent the new supplier taking over the supply to the Customer's Site(s); and
  - (ii) undertakes not to dispute, challenge or take any steps to prevent any objection properly raised in accordance with this Standard Condition 9; and
  - (iii) if the Supplier requests the Customer to do so, provide the new supplier, within three (3) working days of our request, with written confirmation that the Customer either does not wish the new supplier to proceed with its application to supply the supplied Sites and requires the new supplier to withdraw all existing or pending registration applications for the Site(s) and/or requires the new supplier to confirm to the Supplier in writing that it will not make any further applications in respect of the Site(s) until it has obtained confirmation from the Supplier that the Customer has given the Supplier proper notice to terminate its Agreement with the Customer (as applicable) and;
  - (iv) agrees to take any other necessary action to ensure that the Supplier continues to remain registered with Relevant Transporter as the supplier responsible for supplying the supplied Site(s).
- 9.2 The Supplier shall enforce the Contract Overrun Price, applied at its absolute discretion, as necessary if this Agreement expires whilst either of the Parties is acting pursuant to this Standard Condition 9 and shall continue to charge such rate until such time as the Sites are registered with the new supplier or the Customer agrees a new Agreement with the Supplier.

## **10 WAIVER**

No waiver of any right of a Party under this Agreement will prejudice that Party's entitlement to that (or any other) right in future, nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

## **11 ASSIGNMENT**

- 11.1 The Customer shall not assign the whole or any part of its rights or obligations under this Agreement, without prior written consent of the Supplier (such consent not to be unreasonably withheld provided that the Customer can demonstrate to the reasonable satisfaction of the Supplier that any proposed assignee has the ability to observe and perform the obligations to be assigned during the remainder of the Contract Period) and shall remain responsible for the performance of all the Customer's obligations and the discharge of any of the Customer's liabilities hereunder.
- 11.2 Notwithstanding Standard Condition 11.1, no assignment shall be made unless the Customer and any proposed assignee execute a document whereby:
  - 11.2.1 the proposed assignee covenants with the Supplier to be bound by the terms of this Agreement with effect from the date of any assignment of this Agreement; and

- 11.2.2 the Customer confirms that it will remain liable to the Supplier (notwithstanding the assignment for any breaches of this Agreement occurring prior to the date of the assignment).

## **12 TERMINATION AND SUSPENSION**

- 12.1 If the Customer defaults in complying with the provisions of Standard Condition 3.5 or uses or improperly deals with Gas in an unsafe manner or so as to interfere with the efficient supply of gas to any other person, the supply of Gas to all Sites may be suspended forthwith until the default has been remedied to the satisfaction of the Supplier.
- 12.2 Without prejudice to any other rights or remedies that the Supplier may have under this Agreement, if the Customer breaches any of its obligations hereunder the Supplier may give the Customer notice of such breach and if within seven (7) days following receipt of the said notice the Customer has not taken steps to remedy the breach (if such breach is capable of remedy) the Supplier shall be entitled to suspend the supply of Gas forthwith until the breach is remedied to the satisfaction of the Supplier. If such breach is not capable of remedy, the Supplier may suspend the supply of Gas forthwith upon notice to the Customer.
- 12.3 Without prejudice to any other rights the Supplier may have under this Agreement, the Supplier may cease to supply Gas and thereupon terminate this Agreement:
- 12.3.1 forthwith on written notice if the Customer goes into liquidation, whether voluntary or compulsory, (save for the purposes of a reconstruction or amalgamation) or if any administrator or administrative receiver is appointed in respect of the whole or any part of its assets or if the Customer makes or offers to make any arrangement or composition for the benefit of creditors generally; or
- 12.3.2 on twenty-one (21) days' written notice if the Customer is in breach of any of the terms of this Agreement, including any term or condition relating to the making of any payment by a due date, during which time the Customer may remedy such breach at no cost to the Supplier but failing such remedy at no cost to the Supplier, this Agreement shall terminate at the end of the period of notice unless the Supplier elects otherwise; or
- 12.3.3 notwithstanding Standard Condition 12.3.2 above, forthwith on written notice if the Customer commits any substantial breach of this Agreement or is in breach of this Agreement by its willful and/or persistent misconduct under or in connection with this Agreement or otherwise in circumstances where the Supplier or the Relevant Transporter would be entitled to disconnect the supply of Gas under the Gas Act; or
- 12.3.4 in the event that any authorisation or consent to the Supplier or the Relevant Transporter granted pursuant to the provisions of the Gas Act or any agreement between the Supplier and the Relevant Transporter terminates or is withdrawn or is amended in a manner which adversely affects the ability of the Supplier to perform its obligations hereunder, in which case this Agreement shall terminate on the date which such termination, withdrawal or amendment takes effect and the Supplier shall endeavour to give the Customer as much notice as is practicable of such date; or
- 12.3.5 on seven (7) days written notice in the event that the Uniform Network Code is amended in a manner which adversely affects the Supplier's position hereunder or adversely affects the ability of the Supplier to perform its obligations hereunder and the parties hereto are unable to agree appropriate variations to the terms of this Agreement to facilitate such amendment.
- 12.4 The Parties agree that this Agreement will terminate immediately in respect of any Site if a last resort supply direction comes into effect in relation to that Site, being a last resort supply direction given to a supplier other than the Supplier in pursuance of standard condition 29 of the gas supply licence.
- 12.5 If this Agreement is terminated following the Customer's breach or if either the Supplier or the Relevant Transporter isolates the supply of Gas to any Site following a breach by the Customer or if supply of Gas to any Site is isolated in accordance with Standard Condition 7 or if the Customer exercises any right it may have to terminate this Agreement, the Customer shall indemnify the Supplier in respect of all costs, charges, losses and/or liabilities the Supplier incurs in connection with the isolation of any Site, including any administrative costs the Supplier incurs in connection with the disconnection of any Meter. The termination of this Agreement shall not affect any rights or obligations which may have accrued to either party prior to such termination or which arise from such termination.
- 12.6 In the event that the Supplier agrees to a termination of the Agreement prior to the end of the Contract Period then the Supplier shall be entitled to charge an early termination fee to recover any reasonable losses, energy costs, administrative costs or other expenses that the Supplier may incur as a result of such early termination. Energy costs shall be calculated by the Supplier using the following formula, which the Customer agrees represents a reasonable pre-estimate of the energy costs the Supplier will incur as a result of such early termination: (Contracted Gas Consumption less actual gas consumption) x Contract Price.

## **13 NOTICES**

- 13.1 Notices under this Agreement shall be in writing and be delivered by hand or sent first class prepaid mail or facsimile to the addresses for the Customer and the Supplier set out in the Special Conditions or, where either party has previously requested in writing that notices may be served by email and the other party has consented in writing to such service, by email to the email addresses for the Customer and the Supplier set out in the Special Conditions.

- 13.2 Any written notice served in accordance with the terms of this Agreement shall be deemed to have been received:
- 13.2.1 if delivered by hand, at the time of delivery;
- 13.2.2 if delivered by facsimile transmission, on acknowledgement by the receiving party's facsimile equipment;
- 13.2.3 if delivered by prepaid first class mail, on the second working day following the day of posting;
- 13.2.4 if delivered by email, when in the ordinary course of the means of transmission it would first be received by the addressee during the hours of 9.00am to 5.30pm on any day which is not a Saturday or Sunday or recognised public or bank holiday in England and Wales.

## **14 DURATION**

Subject to the provision for earlier termination contained herein, this Agreement shall continue in full force and effect until the Termination Date.

## **15 GAS ACT**

- 15.1 This Agreement is entered into subject to the provisions of the Gas Act.
- 15.2 The Customer acknowledges that the Supplier is under no obligations to supply Gas of a quality or at a pressure or a thermal value other than that existing in the Relevant Transporter's system from time to time.

## **16 FORCE MAJEURE**

- 16.1 If a Party is by reason of Force Majeure rendered unable to carry out any or all of its obligations under this Agreement, the party affected by the Force Majeure (the "Affected Party") shall be released from its obligations under this Agreement to the extent to which its obligations are affected by the Force Majeure and for the period during which the event or circumstance subsists provided that:
- 16.1.1 the Affected Party advises the other party as soon as practicable of the relevant Force Majeure together with its estimate of the likely effect of the Force Majeure on its ability to perform its obligations hereunder and of the likely period of such Force Majeure having regard to the matters referred to in Standard Condition 16.1.2; and
- 16.1.2 the Affected Party uses all reasonable endeavours to terminate the circumstance or event of Force Majeure to the extent reasonably practicable and with reasonable speed and at reasonable cost having regard, inter alia, to the unexpired term of the Contract Period (but nothing in this Standard Condition 16.1.2 shall limit the absolute discretion of the Affected Party with regard to the settlement of any labour dispute constituting an event or circumstance of Force Majeure).
- 16.2 For the avoidance of doubt, an inability to pay any sums due under this Agreement will not constitute an event or circumstance of Force Majeure and nothing in this Standard Condition 16 shall relieve or be deemed to relieve either Party of its obligations to indemnify or to make any payments due hereunder.

## **17 EMERGENCIES**

- 17.1 The Customer shall contact the Relevant Transporter and the Supplier immediately in the event of any event or circumstance affecting its ability to take supplies of Gas or which affects the safety of its operations and will allow access to the Relevant Transporter's personnel to secure safe operations and, if necessary for the purpose of averting danger to life or property, to cut off or discontinue the supply of Gas to any Site. The Customer shall inform the Supplier of any emergency and the steps taken by the Relevant Transporter and the Customer to make the affected Site(s) safe following such an emergency at the earliest convenient opportunity.
- 17.2 The Customer shall provide, for each site that has an annual consumption in excess of 732,000kWh or 25,000 therms, the Supplier with up-to-date emergency and facsimile numbers at which a representative(s) of the Customer can be contacted twenty four (24) hours a day for the purpose of reporting or facilitating a response to any emergency.
- 17.3 The Customer representative shall use his best endeavours to refrain from using gas immediately upon being told by the Supplier or Relevant Transporter that he should do so. The representative should be trained and authorised to turn off all gas using appliances if they are requested to do, or be able to immediately contact the authorised person to do so, at each site.
- 17.4 Should the Customer's representative not adhere to the request in a real emergency the Supplier is entitled, for the duration of the stated emergency, at the request of the Relevant Transporter or Shipper to discontinue the supply of gas to the premises.
- 17.5 The Customer shall reimburse the Supplier in respect of any costs and charges incurred by the Supplier in connection with any works carried out by the Relevant Transporter at any Site in connection with any emergency.
- 17.6 The Supplier and/or Relevant Transporter may, from time to time, exercise their right to test their emergency procedures and processes. In such cases, the Customer agrees to be bound by this Standard Condition 17 as if the exercise were a real emergency.

## **18 LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the law of England and Wales and the parties hereto shall submit to and be subject to the exclusive jurisdiction of the English Courts.

## **19 CONFIDENTIALITY**

Each of the Parties undertakes to keep the terms and conditions of this Agreement and any information received in relation to it, (the "Confidential Information") confidential and shall not disclose the same to any third party during the Contract Supply Period, without the prior written consent of the other party to such disclosure, save that a party may disclose Confidential Information without consent:

- 19.1 to its representatives officers, employees or legal or other professional advisers, to the extent necessary to enable it or them to perform or cause to be performed or to enforce any of its rights or obligations under this Agreement; or
- 19.2 to any of its permitted assignees; or
- 19.3 when required to do so:
  - 19.3.1 by law; or
  - 19.3.2 by or pursuant to the rules or any order of any court, tribunal, agency or regulatory authority of competent jurisdiction (including but not limited to Ofgem); or
  - 19.3.3 by any securities exchange whether or not any direction from any such body has the force of law;
  - 19.3.4 to the Relevant Transporter, the Shipper, the Meter Owner or Meter Operator to the extent required under this Agreement.

## **20 TITLE AND RISK**

Title and risk in the Gas shall pass to the Customer at the final outlet of the primary metering installation.

## **21 ENTIRE AGREEMENT**

This Agreement:

- 21.1 constitutes the entire agreement between the Parties and supersedes and extinguishes all prior representations, negotiations and undertakings previously made or given to or by the Parties with respect to the subject matter of this Agreement (provided that this shall not exclude liability for any fraudulent misrepresentation); and
- 21.2 may be varied or amended by the Supplier from time to time in order to reflect any changes in legislation, orders of any regulatory authority including but not limited to Ofgem and/or any changes in the Uniform Network Code of any Relevant Transporter.

## **22 ILLEGALITY**

- 22.1 If at any time any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.
- 22.2 If any provision of this Agreement is so found to be invalid, illegal or unenforceable but would be valid, legal or enforceable if some part of the provision were deleted, the provision in question shall apply with such modifications as may be necessary to make it valid, legal or enforceable.

## **23 THIRD PARTY RIGHTS**

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

## **24 LEGAL COSTS**

The Customer agrees that if the Supplier incurs legal costs in connection with the enforcement of its rights arising out of or in connection with this Agreement the Customer will indemnify the Supplier against those legal costs.





## GAS DEEMED CHARGES

PRICES VALID FROM 1ST OCTOBER 2009

Volume	Band	Standing Charge £/day	Unit Rate p/kWh
0 - 73,200 kWh	Band A	1.30	2.228
73,201 – 732,000 kWh	Band B	7.00	2.228
732,001 kWh	Band C	45.00	2.228

*All prices exclude VAT and Climate Change Levy (CCL).*

PRICE CARD