

**OPERATING MARGINS**

**GAS CAPACITY AGREEMENT – STORAGE**

**BETWEEN**

**NATIONAL GRID GAS PLC**

**AND**

**SERVICE PROVIDER**

**nationalgrid**

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**TABLE OF CONTENTS**

1	DEFINITIONS AND INTERPRETATION .....	1
2	EFFECTIVE DATE AND DURATION.....	9
3	THE SERVICE .....	9
4	SERVICE AVAILABILITY.....	9
5	NOMINATIONS.....	12
6	INTERRUPTION, REALLOCATION AND STORAGE TRANSFERS .....	14
7	SERVICE UNAVAILABILITY .....	19
8	SERVICE TEST .....	21
9	CHARGES AND INVOICING .....	21
10	PAYMENT .....	23
11	CONVERSION AND CALCULATION .....	24
12	FORCE MAJEURE AND ILLEGALITY .....	24
13	DEFAULT .....	25
14	LIABILITY .....	25
15	CREDIT SECURITY.....	26
16	TERMINATION .....	29
17	WARRANTIES AND UNDERTAKINGS.....	30
18	ASSIGNMENT, SUCCESSION, ETC .....	31
19	COMMUNICATIONS .....	31
20	CONFIDENTIALITY .....	32
21	REPRESENTATION, VARIATION AND WAIVER.....	33
22	CHANGES TO NETWORK CODE, PUBLICATIONS, ETC.....	34
23	PARTIES TO CO-OPERATE, ETC .....	34
24	EXPERT .....	34
25	THIRD PARTY RIGHTS .....	35
26	GOVERNING LAW .....	35
27	ANTI-CORRUPTION .....	35
28	COUNTERPARTS .....	36
29	COSTS.....	36
	SCHEDULE 1 .....	37
	SCHEDULE 2 .....	40
	SCHEDULE 3 .....	41
	SCHEDULE 4 .....	44

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

**BETWEEN:**

- (1) The person named as the "**Service Provider**" in Schedule 1 (the "**Service Provider**"); and
- (2) **National Grid Gas plc** a company registered in England with number 2006000 whose registered office is at 1-3 Strand, London WC2N 5EH (the "**Customer**").

**WHEREAS:**

- (A) The Service Provider owns and operates the Facility, or holds certain primary capacity rights at the Facility pursuant to a Gas Storage Agreement with the Facility Operator.
- (B) The Customer wishes to engage the Service Provider to provide operating margins services from the Facility and the Service Provider wishes to provide such services to the Customer in accordance with the terms and conditions set out in this Agreement.

**IT IS HEREBY AGREED** as follows:

**1 DEFINITIONS AND INTERPRETATION**

- 1.1 Except as is otherwise expressly provided herein or unless the context otherwise requires, the terms defined in this Clause shall have the following meanings and derivative expressions shall be construed accordingly:

"**Actual Utilisation Quantity**" has the meaning given in Clause 5.13;

"**Affected Party**" means:

- (a) in relation to Force Majeure, as set out in the Network Code; and
- (b) in all other contexts, as set out in Clause 16.1;

"**Affiliate**" means in relation to a company, a company which is affiliated to it and a company is deemed to be affiliated to another if the first company is controlled by, under common control with or controls the other; a company shall be deemed to have control of another if (directly or indirectly) it owns or controls a majority of the voting shares of, or is entitled (directly or indirectly) to appoint a majority of the directors of, the other company;

"**Aggregate Liability Cap**" means the aggregate of the base Service Fee for each Day of the Term;

"**Agreement**" means this agreement and the Schedule(s) attached hereto;

"**Allocation Agent**" means the person specified as such in Schedule 1;

"**Anti-Bribery Laws**" means any and all statutes, statutory instruments, bye-laws, orders, directives, treaties, decrees and laws (including any common law, judgment, demand, order or decision of any Competent Authority) which relate to anti-bribery and/or anti-corruption, including the Bribery Act 2010;

"**Anti-Slavery Laws**" means any and all statutes, statutory instruments, bye-laws, orders, directives, treaties, decrees and laws (including any common law, judgment, demand, order or decision of any Competent Authority) which relate to anti-slavery or servitude, anti-forced or compulsory labour and/or anti-human trafficking, including the Modern Slavery Act 2015;

"**Associated Person**" has the meaning given to it in section 8 of the Bribery Act 2010;

**“Available Injection Rate”** means the Customer’s Storage Injection Capacity divided by 24;

**“Available Withdrawal Rate”** means the Customer’s Storage Withdrawal Capacity divided by 24;

**"Base Rate"** means on any Day, the sterling base lending rate of National Westminster Bank plc (or any successor bank) in London at 11:00 hours;

**"Business Day"** has the meaning given in paragraph 2.2.1(b) of Section C of the General Terms of the Network Code;

**"Charges"** has the meaning given in Clause 9.1;

**"Climate Change Levy"** means any tax, duty, levy or impost imposed by reference to energy value and/or carbon content;

**"Communications"** has the meaning given in Clause 19;

**“Competent Authority”** means any court of competent jurisdiction and any local, national or supra national agency, authority, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or of the European Union, including, for the avoidance of doubt, the Gas and Electricity Markets Authority;

**“Compliant Gas”** means Natural Gas which complies with the Gas Entry Conditions;

**"Day"** has the meaning given in the Network Code;

**“Default”** has the meaning given in Clause 13.1;

**“Default Day”** has the meaning given in Clause 13.2;

**“Dispute”** has the meaning given in Clause 24.1;

**"Due Date"** has the meaning given in Clause 10.1;

**"Early Termination Event"** means any of the following events:

- (a) a Party (or any third party providing credit security under Clause 15 to such Party in respect of its obligations hereunder) becomes insolvent or unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (other than under sub-Clause 1(a) thereof), or goes into liquidation, receivership or administration, or makes a composition with its creditors, or a petition is presented in relation to making an administration order against or for the winding up or dissolution of that Party and such petition is not withdrawn within 30 days of its presentation;
- (b) failure by a Party to provide or continue to provide any credit security required under Clause 15 or the failure of a Party or its credit security provider to perform in respect of any such credit security;
- (c) a Party fails to make payment and fails to remedy the same within ten Business Days of receiving notice of such breach from the other Party;
- (d) failure by the Service Provider to pass two or more consecutive Service Tests;
- (e) a Party commits a material or persistent breach of any of its obligations under this Agreement, which:
  - (i) is not capable of being cured; or

- (ii) is capable of being cured, but is not cured within the reasonable time period specified in the notice given in accordance with Clause 16.1;
- (f) the Service Provider's Gas Storage Agreement is terminated for any reason;
- (g) if the Service Provider is the Facility Operator, the Facility ceasing to be operated by, controlled by or owned by, the Service Provider or an Affiliate of the Service Provider; and
- (h) a Party breaches the provisions of Clause 27;

"**Effective Date**" means the date on which, in accordance with Clause 2.1, this Agreement comes into force;

"**Effective Injection Rate**" means the prevailing Injection Nomination rate before the revision to the Injection Nomination;

"**Effective Withdrawal Rate**" means the prevailing Withdrawal Nomination rate before the revision to the Withdrawal Nomination;

"**Entry Allocation Statement**" has the meaning given in paragraph 2.1.2 of Section E of the Transportation Principal Document of the Network Code;

"**Exit Allocation Statement**" has the meaning given in paragraph 3.2.2 of Section E of the Transportation Principal Document of the Network Code;

"**Expert**" has the meaning given in Clause 24.2;

"**Excess Injection Rate**" has the meaning given in Clause 5.11

"**Excess Withdrawal Rate**" has the meaning given in Clause 5.11;

"**Expiry Date**" has the meaning given in Clause 9.7;

"**Facility**" means the storage facility owned and operated by the Facility Operator as further described in Schedule 1;

"**Facility Delivery Capacity**" means the maximum physical delivery capacity of the Facility on the Day, as determined in accordance with Clause 4.3(d);

"**Facility Delivery Capacity (Nominal)**" means the capacity set out in Schedule 1;

"**Facility Operator**" means the operator of the Facility, as identified in Schedule 1;

"**Force Majeure**" has the meaning given in the Network Code;

"**Gas Delivery Point**" means the point at which the Facility is connected to the NTS, being identified as the "Storage Connection Point" in the relevant Storage Connection Agreement;

"**Gas Entry Conditions**" has the meaning given in the Network Code;

"**Gas-in-Storage**" has the meaning given in Clause 4.1;

"**Gas Storage Agreement**" means a contract entered into between a person and the Facility Operator, pursuant to which a person is entitled to utilise the Facility for the injection, storage and delivery of Natural Gas;

"**Hour**" means any period of 60 minutes beginning on the hour;

"**ICE**" means the Intercontinental Exchange which facilitates the electronic purchase and sale of energy commodities;

"**Injection Nomination**" has the meaning given in Clause 5.2;

"**Invoice Period**" has the meaning given in Clause 9.6;

"**Injection Charge**" means the charge specified as such in Schedule 1;

"**Injection Overrun Charge**" means the cost of additional injection specified as such in Schedule 1;

"**Injection Response Time**" means the date and time in relation to a Day specified as such in Schedule 1;

"**Injected Quantity**" means, in respect of a Day, the Actual Utilisation Quantity injected pursuant to the last Injection Nomination submitted to the Service Provider in accordance with Clause 5;

"**Interruption Effective Time**" has the meaning given in Clause 6.2(a);

"**Interruption Notice**" has the meaning given in Clause 6.2;

"**kWh**" has the meaning given in paragraph 3.2.1 of Section C of the General Terms of the Network Code;

"**Legal Requirement**" means any Act of Parliament, regulation, rule, order, official directive (in each case having the force of law), licence, present or future directive, request, requirement, instruction, code of practice, direction or rule of any Competent Authority and any modification, extension or replacement thereof;

"**Letter of Credit**" means an unconditional irrevocable standby letter of credit in the form set out in Schedule 3;

"**Liquidated Damages**" means the amount of the Shortfall Quantity multiplied by 50% of the SMBP;

"**Maintenance Period**" means any Planned Maintenance Period or any other period during which the Facility is partially or completely withdrawn from service for unplanned or emergency maintenance;

"**Market Product**" shall mean an NBP futures contract traded on ICE for delivery of Natural Gas during a defined period of time (such as a Day or Month);

"**Month**" means a period from the start of the Day commencing on the first day of a calendar month until the start of the Day commencing on the first day of the immediately following calendar month, and "**Monthly**" shall be construed accordingly;

"**National Balancing Point**" or "**NBP**" means the conceptual point at which Natural Gas may be the subject of Trade Nominations (as defined in the Network Code) in accordance with the terms of the Network Code;

"**National Grid Gas**" means National Grid Gas plc, a company organised and existing under the laws of England with company number 2006000 whose registered office is at 1-3 Strand, London WC2N 5EH;

"**Natural Gas**" has the meaning given to the term "gas" in paragraph 3.1.1 of Section C of the General Terms of the Network Code;

"**Network Code**" means the network code prepared by National Grid Gas pursuant to Standard Special Condition A11(3) of its gas transporter licence, as such code may be amended, varied, supplemented, modified or replaced from time to time;

"**Nominated Injection Quantity**" has the meaning given in Clause 5.3(d);

"**Nominated Quantity**" means a Nominated Injection Quantity or Nominated Withdrawal Quantity;

"**Nominated Third Party**" has the meaning given in Clause 6.4;

"**Nominated Withdrawal Quantity**" has the meaning given in Clause 5.3(c);

"**Nomination**" means an Injection Nomination or a Withdrawal Nomination;

"**Non-Compliant Gas**" means Natural Gas which does not comply with the Gas Entry Conditions;

"**Notifying Party**" has the meaning given in Clause 16.1;

"**NTS**" means the National Transmission System (as defined in the Network Code) operated by National Grid Gas;

"**Overrun Charges**" means the Injection Overrun Charge and/ or the Withdrawal Overrun Charge;

"**Parent Company Guarantee**" means a parent company guarantee in the form set out in Schedule 4;

"**Party**" means either party to this Agreement and its successors and / or permitted assigns and "**Parties**" shall be construed accordingly;

"**Planned Maintenance Period**" means the period specified in Schedule 1, (as may be amended from time to time in accordance with Clause 7.1) during which the Facility is partially or completely withdrawn from service for planned maintenance;

"**Reallocation Notice**" has the meaning given in Clause 6.4;

"**Reallocation Quantity**" has the meaning given in Clause 6.4;

"**Reconciliation Quantity**" has the meaning given in Clause 9.7;

"**Required Credit Rating**" has the meaning given in Clause 15.1(a)(iii);

"**Run-off Period**" means the period specified as such in Schedule 1;

"**Schedule**" means a schedule to this Agreement;

"**Security Document**" has the meaning given in Clause 15.1(a)(ii);

"**Security Provider**" has the meaning given in Clause 15.1(a)(i);

"**Service**" means the provision by the Service Provider of Storage Capacity to the Customer in accordance with this Agreement;

"**Service Availability**" means the number of hours where the Facility can deliver the Service calculated in accordance with Clause 7.1(h);

"**Service Fee**" means the sum set out in Schedule 1 payable in accordance with Clause 9.2;

**“Service Provider’s Gas Storage Agreement”** means the Gas Storage Agreement entered into between the Service Provider and the Facility Operator (as amended, supplemented, assigned or novated from time to time);

**"Service Test"** has the meaning given in Clause 8.1;

**“Shortfall Quantity”** means, where pursuant to a Nomination, the Actual Utilisation Quantity is less than the Nominated Quantity, the difference between the Nominated Quantity and the Actual Utilisation Quantity;

**“Storage Capacity”** means Storage Space, Storage Withdrawal Capacity and/or Storage Injection Capacity;

**"Storage Capacity Transfer"** has the meaning given in Clause 6.8(b)(i));

**“Storage Connection Agreement”** means the agreement of that name between the Facility Operator and National Grid Gas in relation to the connection of the Facility to the NTS, as further described in Schedule 1 and as amended, supplement and/or novated from time to time;

**"Storage Gas Transfer"** has the meaning given in Clause 6.8(b)(ii);

**“Storage Injection Capacity”** means the capacity (in kWh/Day) which entitles the Customer (provided it has sufficient unfilled Storage Capacity) to inject Natural Gas into the Facility, being:

- (a) in respect of the Customer’s initial or registered Storage Injection Capacity, the amount specified in Schedule 1; and
- (b) in respect of any Day, the Storage Injection Capacity which the Customer holds in respect of that Day after taking account of any Storage Capacity Transfer, determined in accordance with Clause 6.9;

**"Storage Injection Capacity Transfer"** has the meaning given in Clause 6.8(b)(i);

**"Storage Space"** means the capacity (in kWh) which entitles the Customer to have Gas-in-Storage in the Facility, being:

- (a) in respect of the Customer’s initial or registered Storage Space, the amount specified in Schedule 1; and
- (b) in respect of any Day, the Storage Space which the Customer holds in respect of that Day after taking account of any Storage Capacity Transfer, determined in accordance with Clause 6.11(b);

**"Storage Space Transfer"** has the meaning given in Clause 6.8(b)(i);

**"Storage Transfer"** has the meaning given in Clause 6.8(b)(iii);

**"Storage Transfer Period"** has the meaning given in Clause 6.8(d)(iii);

**“Storage Withdrawal Capacity”** means the capacity (in kWh/Day) which entitles the Customer (provided it has sufficient Gas-in-Storage) to withdraw Natural Gas from the Facility, being:

- (a) in respect of the Customer’s initial or registered Storage Withdrawal Capacity, the amount specified in Schedule 1, as such amount may be increased in accordance with Clause 5.11; and

(b) in respect of any Day, the Storage Withdrawal Capacity which the Customer holds in respect of that Day after taking account of any Storage Capacity Transfer, determined in accordance with Clause 6.9(b);

**“Summer Period”** means the period from the start of the Day commencing on 1 May in the Year until the start of the Day commencing on 1 October in the same Year;

**“Summer Period Availability”** means the number of hours as set out in Schedule 1;

**“System Average Price”** or **“SAP”** has the meaning given in the Network Code;

**“System Marginal Buy Price”** or **“SMBP”** has the meaning given in the Network Code;

**“System Marginal Sell Price”** or **“SMSP”** has the meaning given in the Network Code;

**“Tax”** means any United Kingdom tax, duty or impost (other than VAT) on Natural Gas or on the storage, processing, sale, transportation or supply of Natural Gas, but excluding any Climate Change Levy;

**“Term”** has the meaning given in Clause 2.1;

**“Therm”** has the meaning given in Clause 11.1;

**“Transfer Date”** has the meaning given in Clause 6.8(d)(iv);

**“Transferee Storage Customer”** has the meaning given in Clause 6.8(a);

**“Transferor Storage Customer”** has the meaning given in Clause 6.8(a);

**“Transferred Gas-in-Storage”** has the meaning given in Clause 6.8(d)(ii);

**“Transferred Storage Capacity”** has the meaning given in Clause 6.8(d)(i);

**“VAT”** means value added tax, or any similar or analogous tax or impost;

**“Winter Period”** means the period from the start of the Day commencing on 1 October in each Year until the start of the Day commencing on 1 May in the immediately following calendar year;

**“Winter Period Availability”** means the number of hours as set out in Schedule 1;

**“Withdrawal Charge”** means the charge specified as such in Schedule 1;

**“Withdrawal Nomination”** has the meaning given in Clause 5.2(b);

**“Withdrawal Overrun Charge”** means the charge specified as such in Schedule 1;

**“Withdrawn Quantity”** means, in respect of a Day, the Actual Utilisation Quantity withdrawn pursuant to the last Withdrawal Nomination submitted to the Service Provider in accordance with Clause 5;

**“Withdrawal Response Time”** means the time period specified as such in Schedule 1; and

**“Year”** means the period specified as such in Schedule 1.

1.2 In this Agreement, unless otherwise specified:

- (a) in the case of conflict between anything in the main body of this Agreement and anything in a Schedule or attachment hereto, the provisions of the main body of this Agreement shall prevail;
- (b) in the computation of periods of time from a specified day (or Day) to a later specified day (or Day), **from** means "**from and including**" and **until** or **to** means "**to and including**";
- (c) all dates and periods of time shall be determined by reference to the Gregorian calendar; and times of day are times of day in England;
- (d) **include, including** and **in particular** shall not be construed as being by way of limitation, illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;
- (e) the index and headings are for ease of reference only and shall not be taken into account in construing this Agreement;
- (f) references to this Agreement or any other documents shall be construed as references to this Agreement or that other document as amended, varied, novated, supplemented, or replaced from time to time;
- (g) the expression **this Clause** shall, unless followed by reference to a specific provision, refer to the whole Clause (not merely the sub-Clause or other provision) in which the expression occurs;
- (h) references to Clauses are to Clauses of this Agreement;
- (i) references to **legislation** include any statute, bye-law, regulation, rule, subordinate or delegated legislation or order; and reference to any **legislation** is to such legislation as amended, modified or consolidated from time to time, and to any legislation replacing it or made under it, save insofar as any such amendment, modification, consolidation or replacement made after the date of this Agreement would impose any increased or new liability on any Party or otherwise adversely affect the rights of any Party;
- (j) references to a **person** (or to a word importing a person) shall be construed so as to include any individual, corporation, partnership, trust, unincorporated organisation or other legal entity, and that person's successors in title and assigns or transferees;
- (k) reference to any gender includes the others; and words in the singular include the plural and vice versa;
- (l) where a word or expression is defined, cognate words and expressions shall be construed accordingly;
- (m) all capitalised terms not otherwise defined in this Agreement shall have the meanings respectively specified in the Network Code; and
- (n) references to "**injection**" of a quantity of Natural Gas are to the transfer of that quantity from the Customer to the Service Provider and references to "**withdrawal**" of a quantity of Natural Gas are to the transfer of that quantity from the Service Provider to the Customer, in each case in accordance with the provisions of this Agreement, and cognate expressions shall be construed accordingly.

## **2 EFFECTIVE DATE AND DURATION**

### **2.1 Effective Date**

This Agreement shall come into force upon execution by both Parties and shall, subject to Clause 16, continue in effect until the later of the end of the Year and the date that both Parties have fully complied with their respective obligations under this Agreement (the "Term").

### **2.2 Surviving Provisions**

Notwithstanding any cancellation, expiry or termination of this Agreement, Clause 2.3, Clause 16 and the provisions contained herein relating to confidentiality, governing law and jurisdiction shall continue to apply without limit in time. Termination shall be without prejudice to any accrued rights and liabilities existing at the date thereof.

### **2.3 Final Adjustments**

Upon expiry of the Term, any monies due and owing by either Party to the other shall be paid, any corrections or adjustments to payments previously made shall be determined, and any refunds due shall be made within 60 days after the date of such expiry.

### **2.4 Non-Exclusivity**

This Agreement shall be non-exclusive and the Customer shall be entitled to procure similar or alternative services from other parties.

## **3 THE SERVICE**

3.1 The Service Provider will provide the Service to the Customer in accordance with the terms and conditions of this Agreement. In providing the Service, the Service Provider shall not knowingly or recklessly pursue any course of conduct (either alone or with some other person) which is likely to prejudice -

- (a) the safe and efficient operation, from day to day, by the Customer of the NTS;
- (b) the safe, economic and efficient balancing by the Customer of the NTS; or
- (c) the due functioning of the arrangements provided for in its Network Code.

3.2 In consideration of the Service Provider providing the Service to the Customer, the Customer will pay the Service Fee and other Charges and payments specified in this Agreement to the Service Provider in accordance with the terms and conditions of this Agreement.

## **4 SERVICE AVAILABILITY**

### **4.1 Gas-in-Storage**

The Customer's "**Gas-in-Storage**" on any Day in the Term in relation to the Facility is:

- (a) the sum of:
  - (i) the Customer's Gas-in-Storage at the start of the Term (if any); and
  - (ii) the quantities of Natural Gas injected by the Customer on Days in the Term up to but not including that Day; and

- (iii) the quantities of Transferred Gas-in-Storage where the Customer is the Transferee Storage Customer with effect from Days in the Term up to and including that Day; less
  - (b) the sum of:
    - (i) the quantities of Natural Gas withdrawn by the Customer on Days in the Term up to but not including that Day; and
    - (ii) the quantities of Transferred Gas-in-Storage where the Customer is the Transferor Storage Customer with effect from Days in the Term up to and including that Day.
- 4.2 During the Year the Service Provider shall, upon receiving a request (including by electronic means) from the Customer, as soon as reasonably practicable and in any case within one (1) Business Day provide the Customer with a written statement specifying the quantity of Gas-in-Storage which the Customer has at the time specified in the statement.

#### 4.3 **Delivery of Natural Gas**

- (a) The Customer shall deliver to the Service Provider Natural Gas by Storage Transfer or for injection to the Facility at the Gas Delivery Point.
- (b) Subject to Clause 7, the Service Provider shall procure that it is at all times able to comply with its obligations to deliver Natural Gas to the Customer pursuant to this Clause 4.3.
- (c) Subject to Clause 7, during the Year the Customer is entitled, by submitting a Nomination in accordance with Clause 5, to require the Service Provider to deliver Natural Gas (not exceeding its Gas-in-Storage) to the Customer at the Gas Delivery Point.
- (d) The Facility Delivery Capacity shall be deemed to be equal to the Facility Delivery Capacity (Nominal), unless the Facility Operator has, on the relevant Day, made a contrary public notification on the website identified in Schedule 1, in which case the Facility Delivery Capacity shall be deemed to be such publicly notified capacity.
- (e) The Service Provider shall:
  - (i) deliver to the Customer Natural Gas withdrawn from the Facility at the Gas Delivery Point; and
  - (ii) on each Day, procure that the Facility Operator measures the volumes of injected and / or withdrawn Natural Gas (pursuant to any Nomination under this Agreement) in accordance with the measurement procedure specified in the Storage Connection Agreement.
- (f) Title and risk of loss or damage to the Natural Gas delivered pursuant to this Agreement shall pass at the Gas Delivery Point to the Service Provider in the case of injection and to the Customer in the case of withdrawal.
- (g) All Natural Gas delivered to or injected by the Customer pursuant to a Nomination shall be Compliant Gas. If either Party delivers (by way of injection in the case of the Customer, or by way of withdrawal in the case of the Service Provider) Non-Compliant Gas to the other Party, each Party shall use reasonable endeavours to notify the other Party as soon as reasonably practical after becoming aware of such Non-Compliant Gas. The Party receiving such Non-Compliant Gas may at its option:
  - (i) accept or continue to accept delivery of such Non-Compliant Gas (and the relevant Party's rights under Clauses 4.3(h) or 4.3(i) shall not be prejudiced by its

election to accept delivery of Non-Compliant Gas (whether or not the Party is aware that such Natural Gas is Non-Compliant Gas)); or

(ii) give written notice to the other Party requiring it to discontinue or procure the discontinuance of the delivery of such Non-Compliant Gas as soon as safely practicable. If, following such discontinuance:

- (A) the delivering Party notifies the receiving Party that it is able to deliver Compliant Gas to satisfy the Nomination; and
- (B) the receiving Party gives written agreement,

the delivering Party may resume delivery of Compliant Gas to satisfy such Nomination.

(h) To the extent that Non-Compliant Gas is delivered:

(i) to the Customer pursuant to a Withdrawal Nomination, the Service Provider shall pay to the Customer all reasonable costs and expenses reasonably incurred by the Customer (in its capacity as a User in accordance with Section K1.3.1 of the Transportation Principal Document of the Network Code) in consequence of such delivery, being the costs and expenses incurred:

- (A) in cleaning or clearing any part of the NTS; and/or
- (B) in taking reasonable measures to secure that the NTS can be operated in accordance with applicable Legal Requirements notwithstanding the delivery or continued delivery of such Non-Compliant Gas,

as such costs and expenses are described in and recoverable by National Grid Gas in accordance with Section I3.4 of the Transportation Principal Document of the Network Code, provided that if the Customer knowingly chooses to accept Non-Compliant Gas such amount shall not exceed the amount that would otherwise have been payable by the Service Provider had the Customer rejected the Non-Compliant Gas and the Customer shall have no other claim against the Service Provider in respect of such Non-Compliant Gas; or

(ii) to the Service Provider pursuant to an Injection Nomination, the Customer shall pay to the Service Provider all reasonable costs and expenses reasonably incurred by the Service Provider in consequence of such delivery, being the costs and expenses incurred:

- (A) in cleaning or clearing any part of the Facility; and/or
- (B) in taking reasonable measures to secure that the Facility can be operated in accordance with applicable Legal Requirements notwithstanding the delivery or continued delivery of such Non-Compliant Gas,

as such costs and expenses are described in and payable by National Grid Gas in accordance with Section J3.4 of the Transportation Principal Document of the Network Code, provided that if the Service Provider knowingly chooses to accept Non-Compliant Gas such amount shall not exceed the amount that would otherwise have been payable by the Customer had the Service Provider rejected the Non-Compliant Gas and the Service Provider shall have no other claim against the Customer in respect of such Non-Compliant Gas.

(i) To the extent that the Service Provider fails to deliver Compliant Gas pursuant to Clause 4.3(g) and the Customer has not chosen to accept delivery of such Non-

Compliant Gas, the Service Provider shall be taken to have failed to deliver Natural Gas to the Customer for the purposes of Clause 5.

- (j) The Customer shall be responsible for arranging the entry of Natural Gas delivered to it pursuant to a Nomination to the NTS, and shall make the appropriate nominations for such Natural Gas as are required under the Network Code.

## 5 NOMINATIONS

5.1 The Customer may inject and/or withdraw Natural Gas into and/or from the Facility on any Day in the Year, in each case, subject to the provisions of this Agreement.

5.2 If the Customer wishes to have a quantity of Natural Gas:

- (a) injected into the Facility on a Day, it shall serve a notice (an "**Injection Nomination**"); or
- (b) withdrawn from the Facility on a Day, it shall serve a notice (a "**Withdrawal Nomination**") on the Service Provider in accordance with Clause 5.3.

5.3 A Nomination shall be substantially in the form set out in Schedule 2 and in particular:

- (a) specify the identity of the Customer;
- (b) specify the Day to which it relates;
- (c) specify the Hour of the Day to which it relates;
- (d) specify the quantity and rate of Natural Gas (in kWh) which the Customer wishes to have injected (the "**Nominated Injection Quantity**") or withdrawn (the "**Nominated Withdrawal Quantity**") on that Day;
- (e) be served on the Service Provider not less than the Injection Response Time or the Withdrawal Response Time before the commencing of the injection or withdrawal, respectively, on the Hour (provided that the Service Provider shall use reasonable endeavours to give effect to a Nomination as soon as possible, but in any event within the Injection Response Time or the Withdrawal Response Time, as appropriate);
- (f) be communicated in accordance with Clause 19;
- (g) comply with the terms set out in this Clause 5 and this Agreement generally.

5.4 Subject to the other provisions of this Clause 5, a Nomination may not:

- (a) result in an Effective Injection Rate in excess of the Customer's Available Injection Rate or less than zero;
- (b) result in an Effective Withdrawal Rate in excess of the Customer's Available Withdrawal Rate or less than zero;
- (c) specify a Nominated Injection Quantity which, if the Injection Nomination were implemented by the Service Provider, would make the Customer's Gas-in-Storage exceed the Customer's Storage Space; or
- (d) specify a Nominated Withdrawal Quantity which, if the Withdrawal Nomination were implemented by the Service Provider, would make the Customer's Gas-in-Storage fall below zero.

- 5.5 Subject to Clause 5.6, the Customer may revise a Nomination made in respect of a Day pursuant to Clause 5.3 at any time by submitting a revised Nomination to the Service Provider.
- 5.6 A revised Nomination may not be submitted later than the Injection Response Time or the Withdrawal Response Time (as appropriate) in relation to the time at which the Customer wishes the revised Nomination to be effective from.
- 5.7 Not used
- 5.8 In the event that the Nominated Quantity under a Nomination would, if implemented, result in the Customer's Gas-in-Storage falling below zero or exceeding the Customer's Storage Space, the Customer shall (at the same time as submitting such Nomination) submit a revised Nomination (resulting in an Effective Injection Rate or Effective Withdrawal Rate, as appropriate, of zero) to become effective at or before the time at which:
- (a) the Customer's Gas in Storage would equal the Customer's Storage Space;
  - (b) the quantity of Natural Gas delivered pursuant to the Withdrawal Nomination equals the Customer's Gas-in-Storage.
- 5.9 Nothing shall prevent the Customer submitting a subsequent revised Nomination with an effective time earlier than the revised Nomination referred to in Clause 5.8 above. In the event that the Customer fails to submit a revised Nomination at the same time as submitting the Nomination referred to above, then the Service Provider shall be entitled (but not obliged) to reject the Nomination in question. Where the Service Provider does reject the Nomination in question, the Service Provider shall advise the Customer as soon as reasonably practicable of the reason(s) for such rejection.
- 5.10 The Customer may request that the Service Provider permit, on any given Day in the Year, an Effective Injection Rate in excess of the Customer's Available Injection Rate and/or an Effective Withdrawal Rate in excess of the Customer's Available Withdrawal Rate.
- 5.11 Where the Customer makes a request pursuant to Clause 5.10, the Service Provider shall respond to such request within sixty (60) minutes of receiving such request advising whether it is prepared (in its sole discretion) to agree to such a request (whether in full or in part). Where the Service Provider does agree to such a request:
- (a) the Service Provider shall specify the additional injection rate (the "**Excess Injection Rate**") that the Customer may use in addition to its Available Injection Rate; and/ or
  - (b) the Service Provider shall specify the additional withdrawal rate (the "**Excess Withdrawal Rate**") that the Customer may use in addition to its Available Withdrawal Rate
- and the Customer shall pay the Overrun Charges in accordance with Clause 9.5.
- 5.12 Where the Service Provider fails to respond to a request within sixty (60) minutes of receiving such request under Clause 5.10, the Service Provider shall be deemed not to have agreed to such request. For the avoidance of doubt the Service Provider shall be entitled (but not obliged) to reduce a Nominated Quantity under a Nomination to ensure that the Effective Injection Rate does not exceed the Customer's Available Injection Rate or that the Effective Withdrawal Rate does not exceed the Customer's Available Withdrawal Rate.
- 5.13 The Service Provider shall notify the Customer in writing of the Actual Utilisation Quantity and any Shortfall Quantity where applicable by no later than the start of the fourth Business Day following the relevant Nomination. Subject to Clause 5.14, the quantity of Natural Gas (in kWh) allocated pursuant to Clause 5.15 as injected and/or withdrawn on a Day from the Facility by the Customer (the "**Actual Utilisation Quantity**") shall be the quantity of Natural Gas allocated to the Customer at the Gas Delivery Point. The quantity of Natural Gas

deemed to be held in storage by the Customer as calculated under Clause 4.1 will be adjusted accordingly.

- 5.14 Without prejudice to Clause 5.13, the physical flows of Natural Gas at the Facility may differ from the quantities in respect of which the Customer made Nominations.
- 5.15 The Customer authorises and appoints the Allocation Agent to submit to National Grid Gas on behalf of the Customer, each Day during the Year in respect of the Gas Delivery Point, an Entry Allocation Statement or Exit Allocation Statement in which the quantity specified as delivered to or offtaken from the NTS by the Customer is equal to the quantity to be allocated to the Customer (as withdrawn or injected by it) in respect of the Facility in accordance with this Agreement. Where no such Entry Allocation Statement or Exit Allocation Statement is submitted in respect of a Day, the Allocation Agent shall be deemed to have submitted an Entry Allocation Statement or an Exit Allocation Statement where the quantity allocated to the Customer (as withdrawn or injected by it) in respect of the Facility on that Day in accordance with this Agreement is equal to the quantity determined as delivered to or offtaken from the NTS on such Day by the Customer at the relevant Gas Delivery Point in accordance with the provisions of the Network Code which apply.

## 6 INTERRUPTION, REALLOCATION AND STORAGE TRANSFERS

- 6.1 Subject always to Clause 6.3(b), the Service Provider has the right, in accordance with Clause 6.2, to interrupt any Withdrawal Nomination of the Customer on any Day and Hour in the Year for its own withdrawals or where the aggregate of the Customer's Effective Withdrawal Rate and the effective withdrawal rate of all other users of the Facility exceeds the Facility Delivery Capacity. For the avoidance of doubt, the Service Provider shall not interrupt the Customer's Withdrawal Nomination in respect of the withdrawals by the Customer for any Day in a Run-off Period.
- 6.2 The Service Provider may at any time submit to the Customer a notice ("**Interruption Notice**") which shall specify:
- (a) the time (the "**Interruption Effective Time**"), on the Hour, with effect from which such Interruption Notice is to take effect, which shall be no earlier than 60 minutes after the submission of the Interruption Notice;
  - (b) whether the interruption is in part or in full;
  - (c) if the interruption is in part, the reduced Effective Withdrawal Rate available to the Customer;
  - (d) the total end of day quantity to be interrupted by the Service Provider; and
  - (e) the estimated duration of the interruption.
- 6.3 In the event that the Service Provider does interrupt the Customer's withdrawal:
- (a) the Customer's Nominated Withdrawal Quantity shall be deemed to be reduced accordingly; and
  - (b) the Service Provider undertakes to the Customer that the physical flow of Natural Gas out of the Facility during the period of interruption shall not be less than the lower of:
    - (i) the physical flow of Natural Gas from the Facility had the Service Provider acted upon the Customer's Withdrawal Nomination prevailing immediately before the Interruption Notice was given or any subsequent revised Withdrawal Nomination submitted after the Interruption Notice was given; and
    - (ii) the Facility Delivery Capacity.

- 6.4 Where the Customer has made a Withdrawal Nomination, but the Service Provider wishes to have all or part of the Natural Gas to be delivered pursuant to such Withdrawal Nomination allocated to it or another person nominated by the Service Provider (a “**Nominated Third Party**”) rather than to the Customer at the Gas Delivery Point, the Service Provider shall give notice (a “**Reallocation Notice**”) to the Customer no later than five (5) Days before the Entry Close-out Date (as defined in the Network Code) of the Day to which the Reallocation Notice relates, and such Reallocation Notice shall specify the identity of the Nominated Third Party (if applicable) and the quantity of Natural Gas (the “**Reallocation Quantity**”), not being greater than the Nominated Withdrawal Quantity, that the Service Provider wishes to have allocated to it or the Nominated Third Party rather than to the Customer. Where the Service Provider submits a Reallocation Notice, then the provisions of this Agreement shall continue to apply to the Withdrawal Nomination, provided that:
- (a) the Reallocation Quantity shall not be included in the calculation of the Charges payable by the Customer (if any) for the Month in which the Withdrawal Nomination is made, or, where the Customer has already paid any Charges in respect of such Reallocation Quantity, the Service Provider shall reimburse the Customer such Charges;
  - (b) the Customer’s Nominated Withdrawal Quantity shall be reduced by the Reallocation Quantity (and the Customer’s Withdrawal Nomination shall be deemed to have been amended accordingly);
  - (c) the Customer and the Service Provider and the Nominated Third Party (as the case may be) shall not do anything inconsistent with the Service Provider or the Nominated Third Party (as the case may be) being allocated with the Reallocation Quantity at the Gas Delivery Point; and
  - (d) where the Reallocation Notice is received later than three (3) hours before the end of the Day in respect of which the Withdrawal Nomination is made, the Service Provider shall reimburse the Customer any costs or expenses incurred by the Customer (as a result of the reallocation of Natural Gas pursuant to this Clause 6.4), which costs or expenses shall be calculated by reference to (and shall be deemed to be limited to):
    - (i) the sum of any charges payable by the Customer; less
    - (ii) any amounts payable to the Customer,in each case in its capacity as a person bringing Natural Gas onto the NTS (and not otherwise) pursuant to the Network Code and to the extent that such charges result from the reallocation of such Reallocation Quantity.
- 6.5 The Service Provider may only submit a Reallocation Notice where the Service Provider or the Nominated Third Party (as the case may be) has or had (as the case may be) Gas-in-Storage of its own on the Day in question in the Facility equal to or greater than the Reallocation Quantity.
- 6.6 Where the Service Provider has given a Reallocation Notice to the Customer not later than three (3) hours before the end of the Day in respect of which the Nomination is made, the Service Provider may also request that the Customer transfer to the Service Provider or the Nominated Third Party (as the case may be) System Entry Capacity (as defined in the Network Code) that the Customer is registered (pursuant to the terms of the Network Code) as holding in relation to the Gas Delivery Point: provided that the Service Provider may only ask the Customer to transfer a quantity of System Entry Capacity that is equal to or less than the Reallocation Quantity. Where the Service Provider makes such a request and the Customer is registered as holding an amount of System Entry Capacity in relation to the Gas Delivery Point that is:
- (a) equal to or greater than the quantity of System Entry Capacity that the Service Provider has requested be transferred, then the Customer shall transfer to the Service

Provider or the Nominated Third Party (as the case may be) (in accordance with the provisions of the Network Code) the quantity of System Entry Capacity in relation to the Gas Delivery Point that the Service Provider has requested be transferred; or

- (b) less than the quantity of System Entry Capacity that the Service Provider has requested be transferred, then the Customer shall transfer to the Service Provider or the Nominated Third Party (as the case may be) (in accordance with the provisions of the Network Code) the quantity of System Entry Capacity in relation to the Gas Delivery Point that the Customer is registered as holding in relation to the Gas Delivery Point.

6.7 Where a quantity of System Entry Capacity in relation to the Gas Delivery Point in relation to the Day in question is transferred by the Customer to the Service Provider or the Nominated Third Party (as the case may be) pursuant to Clause 6.6, then the Service Provider shall pay to the Customer the charges payable by the Customer for such System Entry Capacity in relation to the Day in question.

#### 6.8 **Basis of Storage Transfers**

- (a) The Customer or another user of the Facility (as the case may be) (the "**Transferor Storage Customer**") may at any time during the Year:

- (i) transfer all or part of its Storage Space or its Storage Injection Capacity in the Facility to; or
- (ii) make a Storage Gas Transfer in respect of a quantity of Natural Gas in relation to the Facility in favour of,

such other user of the Facility or the Customer (as the case may be) (the "**Transferee Storage Customer**"), subject to and in accordance with this Clause 6.8.

- (b) For the purposes of this Agreement:

- (i) a "**Storage Space Transfer**" and a "**Storage Injection Capacity Transfer**" are respectively a transfer of Storage Space and a transfer of Storage Injection Capacity in accordance with Clause 6.8(a)(i) and a "**Storage Capacity Transfer**" is a Storage Space Transfer and/or a Storage Injection Capacity Transfer;
- (ii) a "**Storage Gas Transfer**" is an arrangement between two users of the Facility made for the purposes of Clause 6.8(a);
- (iii) a "**Storage Transfer**" is a Storage Capacity Transfer and/ or a Storage Gas Transfer.

- (c) A Storage Injection Capacity Transfer may be for any Day or consecutive Days within the period for which the Transferor Storage Customer holds (by virtue of registration or any Storage Injection Capacity Transfer) such capacity and a Storage Space Transfer shall be for any Day or consecutive Days within the period for which the Transferor Storage Customer holds (by virtue of registration or any Storage Space Transfer) such capacity.

- (d) In respect of a Storage Transfer or proposed Storage Transfer:

- (i) in the case of a Storage Capacity Transfer, the "**Transferred Storage Capacity**" is the Storage Capacity which is (or is to be) transferred;
- (ii) in the case of a Storage Gas Transfer, the "**Transferred Gas-in-Storage**" is the quantity subject to such Storage Gas Transfer;

- (iii) the "**Storage Transfer Period**" is in the case of a Storage Injection Capacity Transfer the hour or hours (being full hours only) or the Day or Days, and in the case of a Storage Space Transfer the period, in accordance with Clause 6.8(c), for which the transferred capacity is (or is to be) transferred;
- (iv) in the case of a Storage Gas Transfer the "**Transfer Date**" is the Day on and with effect from which the Storage Gas Transfer is to take effect.

#### 6.9 **Storage Gas and Capacity Transfers**

- (a) The Customer may not transfer Storage Space or make a Storage Gas Transfer where as a result either the Transferee Storage Customer or the Transferor Storage Customer would have Gas-in-Storage in excess of its Storage Space.
- (b) The Transferred Gas-in-Storage under a Storage Gas Transfer shall not exceed the amount of the Transferor Storage Customer's Gas-in-Storage.
- (c) The Service Provider may but shall not be required to reject a Storage Transfer in respect of which the requirements of Clause 6.9(a) or 6.9(b) are not satisfied; and where the Service Provider does not reject such a Storage Transfer the Storage Transfer will take effect.

#### 6.10 **Storage Transfer Procedure**

- (a) Where a Customer proposes to make a Storage Transfer, each of the Transferor Storage Customer and the Transferee Storage Customer must notify the proposed Storage Transfer to the Service Provider specifying:
  - (i) the identity of the Transferor Storage Customer;
  - (ii) the identity of the Transferee Storage Customer;
  - (iii) whether the Storage Transfer is a Storage Space Transfer, a Storage Injection Capacity Transfer or a Storage Gas Transfer, or a combination in accordance with Clause 6.10(b);
  - (iv) the amount of the Transferred Storage Capacity, or (as the case may be) Transferred Gas-in-Storage; and
  - (v) in the case of a Storage Capacity Transfer, the Storage Transfer Period, or in the case of a Storage Gas Transfer, the Transfer Date.
- (b) A combined notification may (and where required to satisfy the condition in Clause 6.9(a) shall) be made in respect of a Storage Space Transfer and Storage Gas Transfer at the Facility.
- (c) A proposed Storage Space Transfer or a proposed Storage Gas Transfer may not be notified later than two (2) hours prior to the commencement of the Transfer Date or (as the case may be) Day or first Day of the Storage Transfer Period. A proposed Storage Injection Capacity Transfer may not be notified later than one (1) hour prior to the commencement of the Storage Transfer Period.
- (d) The Service Provider may reject a Storage Transfer:
  - (i) in accordance with Clause 6.9(c); or
  - (ii) where either the Transferor Storage Customer or the Transferee Storage Customer does not notify the Storage Transfer in accordance with Clauses 6.10(a) to 6.10(c).

- (e) A Storage Transfer shall be deemed to be rejected if it is not approved by the Service Provider within 60 minutes after it was notified by the Transferor Storage Customer or (if later) the Transferee Storage Customer under Clause 6.10(a).

#### 6.11 Effect of Storage Capacity Transfer

- (a) Except for the purposes of Clause 6.10(c), and subject to Clause 6.13, the Transferee Storage Customer will be treated during the Storage Transfer Period as holding the Transferred Storage Capacity.
- (b) A Customer's Storage Capacity in the Facility on a Day will be determined as its registered Storage Capacity, adjusted in respect of any Storage Capacity Transfer(s) by adding the Transferred Storage Capacity where the Customer was the Transferee Storage Customer, and deducting the Transferred Storage Capacity where the Customer was the Transferor Storage Customer, subject to Clause 6.13.
- (c) A Customer will remain liable for Charges in respect of its registered Storage Capacity irrespective of any Storage Capacity Transfer.

#### 6.12 Effect of Storage Gas Transfer

With effect from (and including) the Transfer Date, the Transferred Gas-in-Storage will be added to the Transferee Storage Customer's Gas-in-Storage and deducted from the Transferor Storage Customer's Gas-in-Storage.

#### 6.13 Effect of Termination

- (a) Where during the Storage Transfer Period in respect of a Storage Capacity Transfer the Transferor Storage Customer ceases to be a user of the Facility:
  - (i) the Service Provider will so notify the Transferee Storage Customer as soon as reasonably practicable and in any event not more than 5 Business Days after giving a notice (the "**Storage Termination Notice**") to the Transferor Storage Customer of the termination by the Service Provider of the contract that gives rise to the right of the Transferor Storage Customer to be a user of the Facility;
  - (ii) with effect from the date (the "**Storage Discontinuance Date**") on which the Transferor Storage Customer ceases to be a user of the Facility, the Storage Capacity Transfer will lapse and the Transferee Storage Customer will cease to be treated as holding the Transferred Storage Capacity;
  - (iii) the Transferee Storage Customer may elect to be registered in accordance with Clause 6.13(b) as holding Storage Capacity (in addition to any such capacity held other than by virtue of the Storage Capacity Transfer) in the Facility:
    - (A) in an amount not exceeding the Transferred Storage Capacity; and
    - (B) for (in the case of a Storage Injection Capacity Transfer) any hour or consecutive hours (being full hours only) or Day or consecutive Days within the Storage Transfer Period, or (in the case of a Storage Space Transfer) a period from any Day (before or after the date of such election, but not before the Storage Discontinuance Date) in the Storage Transfer Period until the end of the Storage Transfer Period.
- (b) Where under Clause 6.13(a) the Transferee Storage Customer elects to be registered as holding Storage Capacity:
  - (i) the Transferee Storage Customer shall notify the Service Provider, as soon as reasonably practicable and in any event not more than 5 Business Days after the Service Provider's notice under Clause 6.13(a), of such election, specifying the

Storage Capacity and period in accordance with Clauses 6.13(c)(i) and 6.13(c)(ii);

- (ii) the Transferee Storage Customer will be registered as holding Storage Capacity in the amount and for the period elected (notwithstanding any other requirement of the Network Code as to the prior notice required for or the period of registration); and
  - (iii) the Transferee Storage Customer will accordingly be liable for Charges in respect of the elected Storage Capacity at the Facility for the elected period.
- (c) Where during the Storage Transfer Period in respect of a Storage Capacity Transfer the Transferee Storage Customer ceases, pursuant to Clause 16, to be a Customer for the purposes of this Agreement:
- (i) the Service Provider will so notify the Transferor Storage Customer as soon as reasonably practicable and in any event not more than 5 Business Days after giving a Storage Termination Notice to the Transferee Storage Customer;
  - (ii) with effect from the Storage Discontinuance Date, the Storage Capacity Transfer will lapse and the Transferee Storage Customer will cease to be treated as holding the Transferred Storage Capacity which will revert to (and be treated as held by) the Transferor Storage Customer.
- (d) For the avoidance of doubt, the fact that a Customer shall cease to be a Customer for the purposes of this Agreement under Clause 16 shall not affect any Storage Gas Transfer made before the Storage Discontinuance Date.

## **7 SERVICE UNAVAILABILITY**

### **7.1 Maintenance**

- (a) The Facility shall be unavailable to the Customer for provision of the Services:
  - (i) during any Maintenance Period; and
  - (ii) during an event of Force Majeure, duly and properly notified pursuant to Clause 12.2.
- (b) The Service Provider shall use reasonable endeavours to procure that the Facility Operator (to the extent possible) minimises the duration of any Maintenance Period in respect of the Facility.
- (c) The Facility shall be completely or partially unavailable for provision of the Services to the Customer on Days when National Grid Gas is carrying out maintenance to the NTS such that (as a result of such maintenance) Natural Gas cannot be delivered from the Facility.
- (d) The Service Provider shall use reasonable endeavours to procure that the Facility Operator (to the extent possible) schedules Maintenance Periods for the Facility at the same time as any maintenance of the NTS planned by National Grid Gas which would result in Natural Gas being unable to be delivered from or to such Facility.
- (e) The Service Provider may amend the Planned Maintenance Period for the Facility by public notification on the website identified in Schedule 1, in which case the Planned Maintenance Period shall be deemed to be such publicly notified period.
- (f) The Service Provider shall use reasonable endeavours to procure that the Facility Operator's chosen mode of operation of the Facility prior to the Nomination by the

Customer shall not compromise the Service Provider's ability to fulfil its obligations under this Agreement.

- (g) If for any other reason the Facility is completely or partially unavailable to the Customer for injection and/or withdrawal during the Year, then (notwithstanding any other obligations or rights of the Service Provider or the Customer, and subject to any restrictions on disclosure pursuant to any Legal Requirements) the Service Provider shall notify the Customer immediately of such unavailability, the reasons therefor and the estimated period during which such unavailability will continue.
- (h) For the purposes of calculating Service Availability and payment of the Service Fee in accordance with Clause 9.2(b), the availability of the Service shall recognise and be calculated:
  - (i) in proportion to any reduction in the Facility's aggregate withdrawal capacity, save where:
    - (A) Natural Gas has not been injected (in whole or part) to the Facility by the Customer subject to the provisions of this Agreement; and
    - (B) the Service Provider has not failed to comply with an Injection Nomination validly served by the Customer on the Service Provider that complies with Clause 5; and
  - (ii) allowing for any loss of availability of the Service where the Customer has served an Injection Nomination in compliance with Clause 5 (and in particular Clause 5.4(a)) but has been unable to inject Natural Gas into the Facility, save where such Facility is unavailable pursuant to Clause 7.1(a).

## **7.2 Other unavailability to the Customer**

- (a) On any Day or Hour during a Gas Supply Emergency (as defined in the Network Code) the Service Provider may take steps to increase flow rates at the Facility in order to comply with National Grid Gas's instructions pursuant of the Network Code notwithstanding the Customer's nomination on such Day.
- (b) Where in respect of any Day or Hour the withdrawal of Natural Gas at the Gas Delivery Point is affected as a result of a pressure in the NTS at the Gas Delivery Point exceeding the maximum delivery pressure specified in the Storage Connection Agreement, or of any other transportation constraints affecting the withdrawals of Natural Gas, the Customer shall be interrupted.

## **7.3 Summer Period Availability and Winter Period Availability**

- (a) The Service Provider shall procure that the Facility is available during the Year to deliver the Summer Period Availability and Winter Period Availability.
- (b) The Service Provider shall monitor the Service Availability in respect of the Facility throughout the Year. No later than one Month after the end of each Summer Period and each Winter Period, the Service Provider shall demonstrate the total Service Availability (in hours) for the Summer Period or Winter Period (as the case may be) in respect of the Facility, providing supporting evidence (in a form satisfactory to the Customer, acting reasonably).
- (c) Where the total Service Availability (in hours) for the Summer Period in the Year is:
  - (i) less than 100% of the Summer Period Availability (save where such unavailability is due to an event of Force Majeure, duly and properly notified under Clause 12.2), the Service Provider shall pay to the Customer 10% of the

base Service Fee (prior to any deductions for unavailability) attributable to that Summer Period; and

- (ii) less than 80% of the Summer Period Availability (save where such unavailability is due to an event of Force Majeure, duly and properly notified under Clause 12.2), the Service Provider shall refund to the Customer 100% of the Service Fee paid or payable in respect of that Summer Period.
- (d) Where the total Service Availability (in hours) for the Winter Period in the Year is:
- (i) less than 100% of the Winter Period Availability (save where such unavailability is due to an event of Force Majeure, duly and properly notified under Clause 12.2), the Service Provider shall pay to the Customer 10% of the base Service Fee (prior to any deductions for unavailability) attributable to that Winter Period; and
  - (ii) less than 80% of the Winter Period Availability (save where such unavailability is due to an event of Force Majeure, duly and properly notified under Clause 12.2), the Service Provider shall refund to the Customer 100% of the Service Fee paid or payable in respect of that Winter Period.
- (e) Any payments calculated in accordance with this Clause 7.3 and payable to the Customer shall be credited against sums due under the next invoice produced by the Service Provider in accordance with Clause 9.6. Where no further invoice is to be produced pursuant to Clause 9.6, the Customer shall be entitled to raise an invoice pursuant to Clause 9.8.

## **8 SERVICE TEST**

- 8.1 The Customer may at any time during the Year test the Service Provider's ability to comply with a Nomination, including without limitation communications between the Parties ("**Service Test**").
- 8.2 For the avoidance of doubt, where a Service Test results in the Service Provider complying with a Nomination, the Customer shall pay for such service in accordance with the terms of this Agreement.

## **9 CHARGES AND INVOICING**

### **9.1 Charges**

The charges payable by the Customer ("**Charges**") shall be exclusive of Taxes, VAT and Climate Change Levy and shall comprise:

- (a) the Service Fee;
- (b) the Injection Charge;
- (c) the Withdrawal Charge; and
- (d) the Overrun Charges,

and, for the avoidance of doubt, such Charges can be applied concurrently and in aggregate.

### **9.2 Service Fee**

- (a) The Service Fee shall be payable Monthly in arrears.

- (b) The Customer shall not be obliged to pay the Service Fee in respect of a Run-off Period or for any Day (or part Day) on which the Service is unavailable for any reason, including during an event of Force Majeure but excluding periods when the Service is unavailable solely pursuant to Clause 7.1(c). Accordingly, the sum payable by way of Service Fee for the Month(s) during which these circumstances apply shall be pro-rated on the basis of the period of unavailability (which shall, for the avoidance of doubt, take account of the proportion by which the Service is unavailable on any Day in the relevant Month).

### 9.3 Injection Charge

In respect of each Injection Nomination, the Injection Charge shall be payable by the Customer to the Service Provider, and shall be calculated by multiplying the Injection Charge by the aggregate of the Injected Quantity for each Day in the Invoice Period.

### 9.4 Withdrawal Charge

In respect of each Withdrawal Nomination, the Withdrawal Charge shall be payable by the Customer to the Service Provider, and shall be calculated by multiplying the Withdrawal Charge by the aggregate of the Withdrawn Quantity for each Day in the Invoice Period.

### 9.5 Overrun Charges

In respect of each Nomination that results in an Excess Injection Rate or Excess Withdrawal Rate, the Overrun Charges shall be payable by the Customer to the Service Provider, and shall be calculated by adding the products of:

- (a) multiplying the Injection Overrun Charge by the Excess Injection Rate by the number of hours of excess injection; and
- (b) multiplying the Withdrawal Overrun Charge by the Excess Withdrawal Rate by the number of hours of excess withdrawal,

for each Day in the Invoice Period.

### 9.6 Monthly Invoicing

- (a) The Service Provider shall, in respect of each Month of the Year (the "**Invoice Period**"), on or before the fifth Business Day of the Month following the end of that Invoice Period, provide the Customer with a draft invoice (with appropriate supporting information in a form satisfactory to the Customer, acting reasonably) for agreement in advance of issuing a VAT invoice.
- (b) The Service Provider shall, following agreement with the Customer pursuant to Clause 9.6(a), and in any event on or before the seventh Business Day of the Month following the end of the relevant Invoice Period, issue to the Customer a VAT invoice (with appropriate supporting information in a form satisfactory to the Customer, acting reasonably) specifying:
  - (i) the sum payable in respect of the Service Fee;
  - (ii) the sum payable in respect of the Injection Charge;
  - (iii) the sum payable in respect of the Withdrawal Charge;
  - (iv) the sum payable in respect of the Overrun Charges;
  - (v) any applicable VAT and Taxes;

- (vi) any sums payable by the Service Provider to the Customer in accordance with Clauses 6.7 and 7.3(e); and
- (vii) the total sum payable by the Customer in respect of the Invoice Period, being the aggregate of the sums calculated pursuant to Clause 9.6(b)(i) to (v) above, less the sums calculated pursuant to Clause 9.6(b)(vi) above.

## 9.7 Reconciliation

- (a) If on the date of expiry of a Run-off Period ("**Expiry Date**") the Gas-in-Storage volume is greater than zero (the "**Reconciliation Quantity**"), the Service Provider shall retain the Reconciliation Quantity and shall pay the Customer for the Reconciliation Quantity in accordance with Clause 9.7(b), except where the Reconciliation Quantity arises as a result of a failure by the Service Provider to withdraw the Nominated Withdrawal Quantity for the final Day of the Year in which case the provisions of Clause 9.7(c) shall apply.
  - (b) Where this Clause applies, the Service Provider shall pay the Customer for the Reconciliation Quantity at rate equal to the SAP quoted by ICE on the relevant Expiry Date less 25%.
  - (c) Where this Clause applies, the Service Provider shall pay the Customer for the Reconciliation Quantity at a rate equal to the SAP quoted by ICE on the relevant Expiry Date. Payment by the Service Provider to the Customer shall be made in accordance with Clause 10.
- 9.8 Each Party shall promptly provide the other with valid VAT invoices specifying any sums (other than those referred to in Clause 9.1) due or owing under this Agreement.
- 9.9 It is the intention of the Parties that the terms of this Agreement shall not constitute a supply of Natural Gas for the purpose of the Climate Change Levy. The VAT treatment of the supplies under this Agreement shall be determined according to the VAT laws of the jurisdiction where a taxable transaction for VAT purposes is deemed to take place. Each Party shall, to the extent permitted by law, provide the other with any additional valid VAT invoices as required for the purposes of this Agreement.

## 10 PAYMENT

- 10.1 The "**Due Date**" in respect of an invoice is the twentieth (20<sup>th</sup>) day of the Month:
- (a) following the end of the relevant Invoice Period for invoices provided under Clause 9.6; and
  - (b) in which the invoice was received for invoices provided under Clause 9.8, or the tenth (10<sup>th</sup>) day after deemed receipt by the receiving Party, whichever is the later, and
- where the Due Date is not a Business Day, payment of the amount due shall be made on the next following Business Day.
- 10.2 All payments shall be made in pounds sterling by direct bank transfer of funds for good value received on the Due Date to the account of the receiving Party specified by such Party.
- 10.3 Payments by the Customer to the Service Provider shall be made to the bank account number set out in Schedule 1, or such other details as may be notified (on not less than thirty (30) days' notice) by the Service Provider to the Customer.
- 10.4 Payments by the Service Provider to the Customer shall be made to the bank account number notified by the Customer to the Service Provider from time to time on not less than thirty (30) days' notice.

10.5 Notwithstanding any other provisions of this Clause 10, either Party shall be entitled to set off any amounts due by the other pursuant to this Agreement (irrespective of whether any such amounts have been invoiced or not) against any amounts due by it to the other pursuant to this Agreement.

#### 10.6 **Payment Disputes**

- (a) If a Party disagrees in good faith with any sum shown by any invoice or statement received as being payable by that Party, it shall pay the undisputed amount by the Due Date and shall promptly give notice of the amount in dispute and the reasons therefor to the other Party. The Parties shall seek to settle the disputed amount as soon as practicable.
- (b) Upon determination or agreement of such dispute, any amount underpaid or overpaid shall be paid within five Business Days thereof, together with interest accruing from day to day, after as well as before any judgement (at a rate equal to the Base Rate plus one per cent) from the Due Date up to the date of repayment of the underpaid or overpaid amount.

#### 10.7 **Payment Default**

If a Party fails on the Due Date to make payment as required pursuant to Clause 10.1, interest shall accrue from day to day, after as well as before any judgement, on the unpaid amount, from the Due Date until the date of payment, at a rate equal to the Base Rate plus one per cent (1%).

### 11 **CONVERSION AND CALCULATION**

#### 11.1 **kWh and Therms**

Where:

- (a) a Nomination is by reference to a quantity of Natural Gas in Therms, and the Network Code requires such nomination to be stated in kWh; or
- (b) any quantity or sum determined by National Grid Gas as a number of kWh or in relation to kWh is to be employed under this Agreement for the calculation of a quantity of Natural Gas in Therms or sum of money in pence per Therm; or
- (c) this Agreement otherwise requires a conversion of kWh to Therms or vice versa,

then such conversion shall be made on the basis of 1 Therm to 29.3071 kWh.

#### 11.2 **Rounding**

- (a) All intermediate calculations made for the purpose of ascertaining any sum payable by either Party under this Agreement shall be made to four decimal places without rounding. The final such sum shall be rounded to the second decimal place; and, in both cases, a figure of five, or greater than five in the final place of decimals shall cause a rounding up of the penultimate decimal.
- (b) Any quantity expressed for the purposes of this Agreement or any Nomination to be made hereunder in kWh shall be rounded to the nearest kWh and an exact half shall be rounded upwards.

### 12 **FORCE MAJEURE AND ILLEGALITY**

#### 12.1 **Extent of Relief**

- (a) If either Party is rendered unable to perform any of its obligations under this Agreement as a result of Force Majeure, such Party shall, subject to the provisions of Clause 7 and the following provisions of this Clause 12, be excused from liability (including any requirement under this Agreement to make payment of any sum except for any sum due and owing as at the time of Force Majeure) for such non-performance to the extent that, and for as long as, such Force Majeure persists.
- (b) To the extent to which Force Majeure affecting the Service Provider results in a full or partial reduction in the level of the Service which the Service Provider can make available to the Customer, then the amounts payable by way of Service Fee by the Customer shall be reduced by the same proportion as the Service has been reduced as a result of Force Majeure.

## 12.2 Notification of Force Majeure

A Party shall not be entitled to Force Majeure relief, unless:

- (a) it shall have notified the other as soon as practicable after becoming aware of such Force Majeure; and
- (b) it shall have continued to seek to perform its obligations under this Agreement (in which event it shall be entitled to such relief with effect from the commencement of such Force Majeure).

## 12.3 Illegality

If either Party becomes unable to perform its obligations under this Agreement as a result of any applicable Legal Requirement rendering such performance illegal (otherwise than as a result of that Party's own acts or omissions) then such Party shall be entitled, upon written notice to the other Party to deem such inability to be an "**Early Termination Event**", in which case:

- (a) this Agreement shall terminate with immediate effect; and
- (b) the provisions of Clause 16.2 and 16.3 shall apply for which purposes the Party giving notice pursuant to this Clause 12.3 shall be the "**Affected Party**" and the other Party shall be the "**Notifying Party**".

## 13 DEFAULT

- 13.1 To the extent the Service Provider fails to comply with a Nomination in circumstances where such failure is not excused by Force Majeure or where Clause 7 does not apply, such failure shall be a Default.
- 13.2 To the extent that on any Day (the "**Default Day**"), the Service Provider is in Default, Liquidated Damages shall apply and such Liquidated Damages shall be the Customer's sole remedy under this Agreement in respect of such Default.
- 13.3 The Customer shall be entitled to raise an invoice in respect of Liquidated Damages in accordance with Clause 9.8.

## 14 LIABILITY

- 14.1 The maximum aggregate liability of a Party to the other Party under or in connection with this Agreement (including, for the avoidance of doubt, in respect of any Default) shall not exceed the Aggregate Liability Cap, subject to the following exclusions:
  - (a) any obligation under this Agreement to pay the Charges;

- (b) any provision of this Agreement which expressly provides for an indemnity; and
  - (c) any liability which cannot be excluded or limited by law.
- 14.2 Without prejudice to the other provisions of this Clause 14, the rights and remedies of the Parties set out in this Agreement in respect of the non-performance or breach by a Party of this Agreement or for any other claim of whatsoever nature arising out of or in relation to this Agreement shall be the exclusive remedies of the Parties and shall exclude and are in place of any other rights or remedies of either Party howsoever arising (whether at law, in equity or in consequence of any statutory duty, strict or tortious liability or otherwise). The provisions of this Clause 14.2 shall be without prejudice to the rights of a Party to seek injunctive or declaratory relief in respect of that Party's rights and interests and/or the covenants and obligations of the other Party in accordance with this Agreement.
- 14.3 Where any provision of this Agreement provides for any amount to be payable by a Party upon or in respect of that Party's non-performance or breach of any provision of this Agreement both Parties agree and acknowledge that:
- (a) without prejudice to Clause 14.2, the remedy conferred by such provision is exclusive of and is in substitution for any remedy in damages in respect of such breach or the event or circumstances giving rise thereto; and
  - (b) the amount provided to be payable represents a genuine and reasonable pre-estimate of the damages likely to be suffered by the Party to which such amount is payable and such agreement has been made by the Parties with the knowledge that the actual losses suffered by the Party to which such amount is payable may be more or less than the amounts specified in the relevant provision.
- 14.4 Except as otherwise provided in this Agreement, the Customer will not be liable to the Service Provider for any costs, charges, fees or expenses that the Service Provider may be liable to pay to the Facility Operator, any other user of the Facility or any other person as a result of providing the Service.
- 14.5 In no circumstances shall a Party be liable to the other Party for any consequential, incidental or indirect loss or loss of profit or loss of business opportunity arising out of or in connection with the non-performance or breach by the other Party of this Agreement.

## 15 CREDIT SECURITY

### 15.1 Definitions

- (a) For the purposes of this Agreement, in relation to the Service Provider:
  - (i) **"Security Provider"** means a person which, in accordance with the provisions of this Agreement, provides or is to provide any guarantee or other surety or security in respect of the Service Provider's obligations under this Agreement;
  - (ii) **"Security Document"** means any document pursuant to which any Security Provider provides any such guarantee, surety or security; and
  - (iii) **"Required Credit Rating"** means:
    - (A) in the case of the Service Provider or any Security Provider which is not a bank or other financial institution, a long-term unsecured debt rating no worse than BBB- (as determined by Standard and Poor's rating agency) and Baa3 (as determined by Moody's rating agency), with stable outlook; and

- (B) in relation to a Security Provider which is a bank or other financial institution, a long-term unsecured debt rating no worse than A- (as determined by Standard and Poor's rating agency) and A3 (as determined by Moody's rating agency), with stable outlook.

## 15.2 Requirement for Service Provider to provide credit cover

- (a) Subject to Clauses 15.2(b) and 15.2(c), if the long-term unsecured debt rating of the Service Provider and, where it already has a Security Provider in place, its Security Provider is or falls below the Required Credit Rating, then, unless the Customer has agreed to accept and the Service Provider has provided a Security Document executed by another Security Provider having a long-term unsecured debt rating no worse than the Required Credit Rating, the Service Provider shall:
  - (i) on request from the Customer, within five (5) Business Days after such request, provide to the Customer credit cover, in an amount not less than:  
  
$$\text{Storage Space (in kWh)} \times \text{May Price (p/kWh)} / 100 \times 110\%$$
  
  
Where "**May Price**" means the settlement price, converted to p/kWh, for the NBP Future monthly contract for delivery in the Month of May immediately following the end of the Year as quoted by ICE on the relevant Day, or, if prices are not published on such relevant Day, on the most recent Day on which prices are published, or, if unavailable, such other Market Product as the Customer specifies;
  - (ii) for so long thereafter as it or its Security Provider continues to fail to satisfy the Required Credit Rating as soon as practicable and in any event within five (5) Business Days after the Customer demands or applies any credit cover in or towards payment of any amount due and unpaid by the Service Provider under this Agreement, ensure that the credit cover is renewed or restored (or provide to the other Party additional credit cover) so that the aggregate amount of the credit cover is restored to not less than the required amount in accordance with paragraph 15.2(a)(i) above.
- (b) The Service Provider shall be entitled, by giving not less than five (5) Business Days' notice to the Customer, to a reduction in or return of the amount of credit cover (but subject to any demand on or application of such credit cover before the expiry of such five (5) Business Day period):
  - (i) on or at any time after the end of the Term; or
  - (ii) if the long-term unsecured debt rating of the Service Provider or (as the case may be) its Security Provider ceases to be below the Required Credit Rating; or
  - (iii) to the extent only of the excess, if the amount of credit cover required (as demonstrated by application of the formula in Clause 15.2(a)(i) on the Day of the request) is less than 75% of the amount of credit cover provided at any time.
- (c) If the Service Provider is required to provide credit cover in accordance with Clause 15.2(a), the Customer shall be entitled, by giving not less than five (5) Business Days' notice to the Service Provider, to an increase in the amount of credit cover if the amount of credit cover required (as demonstrated by application of the formula in Clause 15.2(a)(i) on the Day of the request) is 25% greater than the amount of credit cover provided at any time.

## 15.3 Forms and terms of credit cover

- (a) For the purposes of Clause 15.2, the Service Provider may provide credit cover either by:

- (i) providing a Letter of Credit in accordance with Clause 15.3(b); or
  - (ii) by providing a Parent Company Guarantee valid until not earlier than the end of the Term.
- (b) A Letter of Credit provided by the Service Provider shall be:
- (i) an unconditional irrevocable standby letter of credit, in such form as the Customer may reasonably require, in sterling, issued by a United Kingdom clearing bank or other bank or financial institution with a long-term unsecured debt rating of not less than the Required Credit Rating, available for payment at a London branch of the issuing bank;
  - (ii) payable on demand by the Customer, without notice to the Service Provider, upon the Customer certifying that the Service Provider has failed to pay any amount payable under this Agreement when due, or in accordance with Clause 15.3(c)(ii); and
  - (iii) valid until all outstanding amounts due under this Agreement have been paid and in any event shall be valid until not earlier than the end of the Term.
- (c) Where the Service Provider has provided and is required to maintain a Letter of Credit:
- (i) if at any time the issuing bank ceases to have the Required Credit Rating, the Service Provider shall immediately and in any event within three (3) Business Days after notice from the Customer provide a new Letter of Credit for the same amount and complying with the requirements of Clause 15.3(b);
  - (ii) if the Service Provider fails to comply (by the time therein required) with Clauses 15.3(c)(i) or 15.3(b)(ii), the Customer may immediately, without notice to the Service Provider, demand payment of the entire amount of the Letter of Credit and the proceeds of such demand shall be paid to the Customer in accordance with Clause 15.4.

#### 15.4 Payment under credit cover

- (a) Where any amount is to be paid to the Customer in accordance with the provisions of Clause 15.3(a) or 15.3(c)(ii):
- (i) the amount shall be paid by the Service Provider in cash, the amount so paid shall be the absolute property of the Customer and the Service Provider shall have no beneficial or other interest in such amount;
  - (ii) in the circumstances set out in Clause 15.2(b) (but not otherwise), the Customer shall pay to the Service Provider an amount (if positive) equal to:
    - (A) the amount paid by the Service Provider under Clause 15.4(a)(i); less
    - (B) the aggregate amount then owing by the Service Provider under this Agreement and which is unpaid after its due date for payment;
  - (iii) until the occurrence of any of the events referred to in Clause 15.2(b), the Customer shall pay to the Service Provider an amount equivalent to the interest which would have accrued on the amount paid to the Customer under Clause 15.3(a) or 15.3(c)(ii), as the case may be, at a rate determined by the Customer, acting reasonably, as being the rate on which interest would be payable to the Service Provider on deposits with Barclays Bank PLC of comparable amounts for a comparable period;

- (iv) payments owed by the Customer to the Service Provider pursuant to paragraph (c) above shall be paid in arrears on the last Business Day of each month.

#### 15.5 Service Fee and Early Termination Event

- (a) If the Service Provider is in breach of its obligations under this Clause 15, then, from the day falling 14 Days after the Day on which the breach arose and provided that the breach has not been remedied, the Customer shall have no obligation to pay the Service Fee to the Service Provider in respect of such Day.
- (b) For the purposes of this Agreement it shall be an Early Termination Event in relation to the Service Provider if:
  - (i) it fails to comply with any requirement in this Agreement as to the provision or maintenance in force of any Security Document;
  - (ii) it fails to comply, fully and within the time required, with any of its obligations under Clauses 15.2 to 15.3(c);
  - (iii) there occurs any event of default on the part of the Service Provider's Security Provider under the terms of its Security Document;
  - (iv) any of the Early Termination Events (including, for the avoidance of doubt, an event deemed as such in accordance with Clause 12.3) is done or suffered by or occurs in relation to a its Security Provider.

### 16 TERMINATION

- 16.1 If an Early Termination Event occurs in relation to either Party (the "**Affected Party**") the other Party (the "**Notifying Party**") may upon written notice to the Affected Party, to be given no later than 30 days after the discovery by the Notifying Party of the occurrence of an Early Termination Event, specify a cure period (if appropriate) or elect to terminate this Agreement with immediate effect.
- 16.2 The Affected Party will pay the Notifying Party's reasonable costs, expenses and legal fees directly arising from an early termination of this Agreement pursuant to Clause 16.1. For the avoidance of doubt, where the Customer is the Notifying Party, such reasonable costs, expenses and legal fees shall include those relating to running a new tender to replace the Service.
- 16.3 Termination of this Agreement shall be without prejudice to the rights and liabilities of the Customer and the Service Provider accrued prior to or as a result of such termination.
- 16.4 Except in the circumstances set out in Clause 16.5, the Service Provider shall retain all Gas-in-Storage at the time of the early termination of this Agreement pursuant to Clause 16.1 and shall pay the Customer for such Gas-in-Storage:
  - (a) if the Affected Party is the Service Provider, at a rate equal to the price quoted by ICE on the date of the Early Termination Event for the Highest Price Contract; or
  - (b) if the Affected Party is the Customer, at a rate equal to the SAP quoted by ICE on the date of the Early Termination Event;

where "**Highest Price Contract**" means the greater of (i) SAP; and (ii) the Market Product with the highest settlement price in the period between the date of the Early Termination Event and the date that would have been the end of the Term had this Agreement not been so terminated.

16.5 If the relevant event is deemed to be an Early Termination Event in accordance with Clause 12.3, the Service Provider shall retain all Gas-in-Storage at the time of the early termination of this Agreement pursuant to Clause 16.1 and shall pay the Customer for such Gas-in-Storage at a rate equal to the SAP quoted by ICE on the date of the Early Termination Event.

## **17 WARRANTIES AND UNDERTAKINGS**

17.1 Each Party warrants to the other that:

- (a) it has obtained and will maintain at all times during the Term all licences, authorisations, permits, consents and other approvals necessary to enter into this Agreement and to enable it to fulfil its obligations under this Agreement;
- (b) it has negotiated, entered into and executed this Agreement as principal (and not as agent or in any other capacity, fiduciary or otherwise); and
- (c) it is and will remain a party to the Network Code.

17.2 The Service Provider acknowledges that the Customer requires the services provided under this Agreement (and in particular the withdrawal service) to comply with the Gas Safety (Management) Regulations 1996, and that the Customer requires a physical flow of Natural Gas from the Facility at least equal to its Nominated Withdrawal Quantity. Accordingly, the Service Provider warrants to the Customer, subject to Clauses 7, 12 and 13, that it shall ensure that:

- (a) the physical flow of Natural Gas from the Facility to the NTS on any Day in respect of which the Customer has submitted a Withdrawal Nomination is not less than the Nominated Withdrawal Quantity plus the Reallocation Quantity (if any) plus the quantity of Natural Gas nominated for withdrawal by other users of the Facility less the quantity of Natural Gas nominated for injection by the Customer and other users of the Facility; and
- (b) the Service Provider shall not knowingly or deliberately do anything that would put the Customer in breach of the Gas Safety (Management) Regulations 1996 and shall fully co-operate with the Customer insofar as such co-operation is required to ensure that the Customer complies with its obligations under the Gas Safety (Management) Regulations 1996. The Service Provider acknowledges and agrees that the provision of the Service is in accordance with its obligation pursuant to Regulation 6(6) of the Gas Safety (Management) Regulations 1996.

17.3 The Service Provider warrants to the Customer that, at the Gas Delivery Point, Natural Gas to be withdrawn shall be free from lien, charge, encumbrance or adverse claim (as to title or otherwise) including any claim for any Tax, royalty or other charge arising on or before withdrawal. The Service Provider shall indemnify the Customer and hold it harmless against any loss, liability, damage, claim, action, proceeding, cost and expense suffered or incurred by or made or brought against the Customer in consequence of a breach of this warranty.

17.4 The Customer warrants to the Service Provider that, at the Gas Delivery Point, Natural Gas to be injected shall be free from lien, charge, encumbrance or adverse claim (as to title or otherwise) including any claim for any Tax, royalty or other charge arising on or before injection. The Customer shall indemnify the Service Provider and hold it harmless against any loss, liability, damage, claim, action, proceeding, cost and expense suffered or incurred by or made or brought against the Service Provider in consequence of a breach of this warranty.

17.5 The Service Provider acknowledges and agrees that nothing in this Agreement shall prevent the Customer from complying with any Legal Requirement and in such regard the Customer shall be able to take any action that it considers to be necessary to comply with any Legal Requirement.

## **18 ASSIGNMENT, SUCCESSION, ETC**

### **18.1 No Assignment**

Except as expressly provided under Clause 18.2, neither Party shall be entitled, at any time, to assign any or all of its rights under this Agreement and/or transfer any or all of its obligations under this Agreement to a third party without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

### **18.2 Right of Assignment**

No consent shall be required pursuant to Clause 18.1 in the case of an assignment by a Party to an Affiliate provided that:

- (a) the Affiliate is technically capable of performing the Party's obligations under this Agreement; and
- (b) the assigning Party shall not be relieved of any obligations that such Affiliate fails to perform.

### **18.3 Successors and Assigns**

This Agreement shall be binding upon and enure for the benefit of the Parties' respective successors and permitted assigns.

### **18.4 No Agency**

Except as expressly provided in this Agreement, this Agreement does not constitute either Party as the associate, agent, partner or legal representative of the other for any purposes whatsoever, and neither Party shall have any express or implied right or authority to assume or to create any obligation or liability on behalf of or in the name of the other Party.

## **19 COMMUNICATIONS**

### **19.1 Addresses for Communications**

All Nominations, notices, consents, communications and invoices to be made or given under this Agreement ("**Communications**") shall be in writing and delivered:

- (a) in the case of the Service Provider, to the address specified in Schedule 1;
- (b) in the case of the Customer (other than invoices) to:

National Grid House, Warwick Technology Park, Gallows Hill, Warwick CV34 6DA

For the attention of: Network Operations Manager

Telephone number: 0870 1910636

Facsimile number: 0870 1910647

- (c) in the case of the Customer (for invoices only) to:

Email addresses (to be sent to all):

[ngrid.invoices@edmgroupp.com](mailto:ngrid.invoices@edmgroupp.com)

SAP processing team

[Box.GasContractServices@nationalgrid.com](mailto:Box.GasContractServices@nationalgrid.com)

Settlements Team

or to such other address, email address or facsimile number notified by a Party to the other from time to time in accordance with this Clause 19.

## 19.2 **Method of Communications**

Communications shall only be given by prepaid post or delivered by hand or sent by facsimile or by electronic means provided that:

- (a) Communications under Clauses 5.13 and 6.8 to 6.13 shall always be sent by facsimile or by electronic means;
- (b) Nominations shall initially be communicated by telephone and confirmed by facsimile or by electronic means;
- (c) invoices (including, for the avoidance of doubt, credit notes) under Clause 9 shall always be sent by electronic means; and
- (d) termination notices under Clauses 12 or 16 must always be given by prepaid post or delivered by hand or sent by facsimile.

## 19.3 **Time for Receipt**

Communications shall be deemed to have been received:

- (a) in the case of facsimile or deliveries by hand:
  - (i) except as stated in Clause 19.3(a)(ii) below, on the day of delivery if such day is a Business Day, or otherwise on the next succeeding Business Day;
  - (ii) if the Communication is a Nomination or other notice pursuant to any of the provisions in Clauses 4 to 7, at the time of receipt;
- (b) in the case of prepaid post, on the day after they were posted, if such day is a Business Day, or otherwise the next succeeding Business Day;
- (c) in the case of transmission by electronic means, receipt shall be deemed to occur at the time that the electronic communication was sent, as evidenced by the time stamp on the communication indicating the time of sending.

## 20 **CONFIDENTIALITY**

### 20.1 **No Disclosure**

Subject to Clause 20.2, neither Party shall disclose the terms of this Agreement or any information relating thereto to any third party save with the prior written consent of the other, and shall keep the same strictly confidential.

### 20.2 **Exceptions**

The obligations in Clause 20.1 shall not apply:

- (a) to the extent such disclosure is required by any Legal Requirement or in connection with any judicial, arbitration or administrative proceeding or the rules of any recognised stock or securities exchange or any provision of the Network Code;
- (b) to disclosures made to Affiliates, employees, agents, contractors or advisers of a Party who have been required by the relevant Party to keep such terms and/or information confidential;

- (c) to the extent such terms and/or information is already in the public domain (or otherwise already known to the person receiving such information), otherwise than through a breach of this Agreement;
- (d) to any governmental agency, or regulatory, or administrative agency having jurisdiction over the disclosing Party;
- (e) to a bona fide intended assignee or transferee of a Party's rights and obligations hereunder provided that such assignee or transferee has undertaken to keep such terms and/or information confidential;
- (f) to a bank or financial institution for the purpose of financing such Party's business provided that such bank or financial institution has undertaken to keep such terms and/or information confidential;
- (g) to the Facility Operator to the extent that such disclosure is reasonably necessary to give effect to any provisions of this Agreement; and
- (h) to any Expert appointed in accordance with Clause 24.

## **21 REPRESENTATION, VARIATION AND WAIVER**

### **21.1 Representation**

- (a) For the purposes of this Clause 21.1, "**Representation**" means a draft, agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to this Agreement, made or given by either Party or any other person at any time prior to the Effective Date.
- (b) Except to the extent repeated in this Agreement, the terms of this Agreement supersede and extinguish any Representation.
- (c) Each Party acknowledges that in entering into this Agreement it is not relying and will not rely upon any Representation which is not set out in this Agreement.
- (d) Neither Party shall have any right of action against the other Party arising out of or in connection with any Representation (except in the case of fraud) except to the extent repeated in this Agreement.
- (e) This Agreement contains the entire Agreement between the Parties with respect to the subject matter hereof, and supersedes all previous agreements or understandings between the Parties with respect thereto and any warranty, condition or other term implied by law or custom is (to the fullest extent permitted by law) expressly excluded.

### **21.2 Variation**

No variation to this Agreement shall be valid, unless it is in writing and signed by an authorised representative of each Party.

### **21.3 Waiver**

No waiver or consent by either Party (express or implied) of any one or more defaults by the other shall operate or be construed as a waiver of, or consent to, any other defaults, whether of a like or different nature, and failure by a Party to complain of any act of the other or to declare such other in default in respect of this Agreement, regardless of how long that failure continues, shall not constitute a waiver by such Party of its rights with respect to such default.

### **21.4 Severability**

If any of the provisions of this Agreement is found by a court or authority of competent jurisdiction to be void or unenforceable, such provision shall be deemed to be deleted from this Agreement, and the remaining provisions shall continue in full force and effect. The Parties shall in such event meet to negotiate in good faith and seek to agree upon a valid and enforceable provision to replace the provision so found to be void or unenforceable.

## **22 CHANGES TO NETWORK CODE, PUBLICATIONS, ETC**

- 22.1 If any changes shall be made to the Network Code which would affect the implementation of the provisions of this Agreement, the Parties shall agree such amendments to this Agreement as may be necessary or appropriate to take account of such changes, so that this Agreement may continue in force, achieving substantially the same commercial effect.
- 22.2 In the event that any of the publications or prices referred to in this Agreement ceases to be published, or the information contained in any such publication is provided in a different form, the Parties shall agree any amendments to this Agreement which may be necessary or appropriate, including the use of alternative publications, prices or information, so that this Agreement may continue in force, achieving substantially the same commercial effect.
- 22.3 If the Parties are unable to agree on any amendments which need to be made to this Agreement pursuant to Clause 22.1 or Clause 22.2, the matter shall be referred to an Expert for determination in accordance with Clause 24.

## **23 PARTIES TO CO-OPERATE, ETC**

- 23.1 Each Party shall co-operate with the other in the performance of this Agreement, including in relation to the making and implementing of Nominations.
- 23.2 The Parties shall agree such further rules and procedures for the implementation of the provisions of this Agreement as may be necessary or appropriate for the efficient performance of this Agreement, including in relation to the making and implementation of Nominations.

## **24 EXPERT**

- 24.1 Where pursuant to this Agreement any matter is to be referred to an Expert, or the Parties agree that any matter shall be referred to an Expert (any such matter a "**Dispute**") the provisions of this Clause 24 shall have effect.
- 24.2 The expert chosen to determine the Dispute (the "**Expert**") shall be an independent person of suitable experience and skill agreed upon by both Parties or in lieu of such agreement, selected by the President for the time being of the Energy Institute (or its successor body).
- 24.3 The Parties will meet with the Expert to agree the timetable and to determine the form of submissions to be made, the form of the hearing of the Dispute and the remuneration of the Expert.
- 24.4 Each Party shall bear its own costs including without limitation the costs of providing documentation, information, data, submissions and expenses of all witnesses and other persons retained by such Party.
- 24.5 The Expert's fees and expenses shall be payable by the Parties in equal amounts, unless the Parties agree that the Expert may make a direction that such fees and expenses should be borne on some other basis.
- 24.6 The Expert's final determination shall be final and binding on the Parties except in the case of manifest error.

24.7 The Parties and the Expert shall keep confidential the fact that the expert determination is taking place, all documents and information relating thereto and its outcome.

## **25 THIRD PARTY RIGHTS**

The Parties do not intend that any terms of this Agreement, nor any rights or benefits expressly or impliedly conferred by it, be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement; and the Parties may rescind or vary this Agreement, in whole or in part, without the consent of any such person.

## **26 GOVERNING LAW**

26.1 This Agreement and any dispute, controversy, proceedings or claims of whatever nature arising out of or in any way relating to this Agreement or its formation (including any non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England, and each Party submits to the exclusive jurisdiction of the English courts.

26.2 Without prejudice to any other mode of service allowed under any relevant law, where the Service Provider is a company registered outside of the United Kingdom, the Service Provider:

- (a) irrevocably appoints the Agent identified in Schedule 1, as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
- (b) agrees that failure by its Agent to notify the Service Provider of the process will not invalidate the proceedings concerned.

26.3 If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Service Provider shall (i) immediately notify the Customer and (ii) immediately (and in any event within thirty (30) Business Days of such event taking place) appoint another person in England to accept service of process on its behalf in England.

## **27 ANTI-CORRUPTION**

27.1 Each Party warrants and undertakes that it (and any Associated Person) has in the negotiations of this Agreement and shall in connection with its performance continue to:

- (a) comply with all applicable Anti-Bribery Laws and Anti-Slavery Laws;
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 or under the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in the UK; and
- (c) notify the other Party as soon as reasonably practicable upon becoming aware of any breach of this Clause 27.

27.2 Each Party will, in connection with this Agreement, maintain in place throughout the Term appropriate policies and procedures to ensure compliance with all applicable Anti-Bribery Laws and Anti-Slavery Laws.

27.3 To the extent permitted by law, the Service Provider will provide the Customer (at the Customer's cost) with such reasonable assistance as it may require from time to time:

- (a) to enable it to conduct any audit or investigation into its performance of this Agreement and its compliance with any applicable Anti-Slavery Laws and Anti-Bribery Laws (such reasonable assistance to include access to any data, documents or individuals

involved in the performance of this Agreement and any relevant property, site or location during business hours and on reasonable notice); and

- (b) to assist any Competent Authority in conducting any investigation into compliance with any applicable Anti-Slavery Laws and Anti-Bribery Laws.

**28 COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart shall constitute an original of this Agreement, but together the counterparts shall constitute one document.

**29 COSTS**

Except as expressly provided in this Agreement, each Party shall pay its own costs incurred in connection with the negotiation, preparation, and execution of this Agreement and any documents referred to in it.

**IN WITNESS** whereof the duly authorised representatives of the Parties have executed this Agreement the day and first year before written.

**SIGNED** for and on behalf of  
**National Grid Gas plc**

**SIGNED** for and on behalf of  
**[Service Provider]**

Signed: .....

Signed: .....

Name: .....

Name: .....

Position: .....

Position: .....

## SCHEDULE 1

### PART 1: SERVICE PROVIDER DETAILS

<b>Service Provider</b>	[ ], a company incorporated under the laws of [England and Wales] with company number [ ] whose registered office is at [ ]
<b>Service Provider Contact Details for Operational notices</b>	Marked for the attention of: [ ] Address: [ ] Telephone number: [ ] Fax number: [ ] Email: [ ]
<b>Service Provider Contact Details for other communications</b>	Marked for the attention of: [ ] Address: [ ] Telephone number: [ ] Fax number: [ ] Email: [ ]
<b>Agent (for the purposes of Clause 26.2)</b>	Name: [ ] Address: [ ] <b>[Drafting Note: Insert N/A where no agent is required.]</b>
<b>Facility Operator</b>	[ ], registered under company number [ ] and whose registered office is at [ ]
<b>Facility</b>	[ ]
<b>Service Provider's Gas Storage Agreement</b>	Gas Storage Agreement dated [#] between the Service Provider and the Facility Operator in relation to the Facility. <b>[Drafting Note: delete this row if counterparty is the Facility Operator.]</b>
<b>Type of Credit Security Provided</b>	[Parent Company Guarantee / Letter of Credit] [Delete as required]
<b>Shipper Short Code</b>	[ ]

## PART 2: SERVICE PARAMETERS

<b>Year (from)</b>	[1 May XXXX]
<b>Year (to)</b>	[30 April XXXX]
<b>Storage Space</b>	[ ] kWh
<b>Storage Injection Capacity</b>	[ ] kWh/Day
<b>Storage Withdrawal Capacity</b>	[ ] kWh/Day
<b>Facility Delivery Capacity (Nominal)</b>	[ ] kWh/h
<b>Injection Response Time</b>	[ ] hours on [ ]
<b>Withdrawal Response Time</b>	[ ] minutes before the exact hour at which the Withdrawal Nomination or revised Withdrawal Nomination is to take effect
<b>Allocation Agent</b>	
<b>Run-off Period</b>	A period of seven (7) Days commencing at the end of the Year.
<b>Summer Period Availability</b>	[1,836] hours
<b>Winter Period Availability</b>	[4,579] hours
<b>Planned Maintenance Period(s)</b>	[ ] to [ ]
<b>Website for clauses 4.3(d) / 7.1(e)</b>	[ ]

## PART 3: SERVICE CHARGES

<b>Service Fee<sup>1</sup></b>	
<b>For each Day in the Summer Period</b>	£[ ] / Day
<b>Service Fee</b>	
<b>For each Day in the Winter Period:</b>	£[ ] / Day
<b>Injection Charge</b>	[ ] p/kWh
<b>Withdrawal Charge</b>	[ ] p/kWh

<sup>1</sup> For the purposes of the agreement, the Annual Capacity Charge will be converted to a daily Service Fee, such that 80% of the annual charge shall be payable over the 7 month winter period and 20% payable over the 5 month summer period.

<b>Injection Overrun Charge</b>	[ ] p/kWh
<b>Withdrawal Overrun Charge</b>	[ ] p/kWh
<b>Payment Details</b>	[Bank Name] [Bank Address] [Bank Sort Code / SWIFT] [Bank Account Number / IBAN ] [Service Provider]

**SCHEDULE 2**  
**FORM OF NOMINATION**

<b>OPERATING MARGINS NOMINATION</b>						
<b>Facility:</b> _____ <b>To:</b> _____ <b>Telephone:</b> _____ <b>Send To:</b> _____						
<p><b>Date and Time of Request</b> <input style="width: 100px;" type="text" value="dd / mm / yyyy hh:ss"/></p> <p><b>Type of Nomination</b> <input style="width: 100px;" type="text" value="Injection / Withdrawal"/> (Delete as appropriate)</p> <p><b>Gas Day</b> <input style="width: 100px;" type="text" value="dd / mm / yyyy"/></p> <p><b>Nomination Number</b> <input style="width: 100px;" type="text"/> (for sequential control purposes)</p>						
* As applicable						
<b>NATIONAL GRID INSTRUCTION</b>				<b>SERVICE PROVIDER NOMINATION ACCEPTANCE</b>		
<b>A = (B + C)</b>		<b>B</b>	<b>C</b>	<b>D = (E + F)</b>		<b>F</b>
Hour Commencing	Requested Nomination kWh	Contracted Available Injection / Withdrawal* Rate kWh	Request Excess Injection / Withdrawal Rate* kWh	Accepted Nomination kWh	Contracted Available Injection / Withdrawal* Rate kWh	Agreed Excess Injection / Withdrawal* Rate kWh
05:00						
06:00						
07:00						
08:00						
09:00						
10:00						
11:00						
12:00						
13:00						
14:00						
15:00						
16:00						
17:00						
18:00						
19:00						
20:00						
21:00						
22:00						
23:00						
00:00						
01:00						
01:00 GITT if required						
02:00						
03:00						
04:00						
<b>End of Day Volume (kWh)</b>	-	-	-	-	-	-
<b>Signed (on behalf of NGG):</b> _____ <b>Date and Time:</b> _____						
<b>OPERATOR CONFIRMATION - Please confirm receipt of instruction by return</b>						
<b>Time Nomination acknowledged</b> <input style="width: 100%; height: 20px;" type="text"/> <b>by Service Provider</b> <b>Signed:</b> _____ <b>Date and Time:</b> _____						
From: National Grid Gas Operations GNCC Tel: Fax:						

### SCHEDULE 3

#### FORM OF LETTER OF CREDIT

National Grid Gas plc  
National Grid House  
Warwick Technology Park  
Gallows Hill  
Warwick  
CV34 6DA

Dear Sirs,

Unconditional, irrevocable standby letter of credit No. [#]

**Beneficiary: National Grid Gas plc (number 2006000)**

1. We [Bank], of [address] understand that [#] (the “**Service Provider**”) has entered into a Gas Capacity Agreement (Storage) (# facility) (“**OM Agreement**”) with you dated [# date].
2. We understand that you and the Service Provider have agreed that the Service Provider will provide security to you in respect of all payments which may become due under the OM Agreement. Accordingly, we issue this unconditional irrevocable standby letter of credit in your favour for a maximum aggregate amount of [£#].
3. Following presentation to us on or before the end of [# date]<sup>2</sup> (“**Expiry Date**”) at our offices, the address of which is specified above, of a Notice of Drawing (in the form set out in Annex 1), we shall on demand by you, without further notice to the Service Provider, upon you certifying that the Service Provider has failed to pay any amount payable under the OM Agreement when due or in accordance with clause 15.7(b) of the OM Agreement, pay to you the lesser of the amount specified in the Notice of Drawing and then our maximum aggregate liability under paragraph two hereof.
4. Partial drawings are permitted.
5. The presentation of a Notice of Drawing shall be conclusive evidence that the Service Provider is in default of its obligations under the OM Agreement and that the amount claimed is due to you.
6. This standby letter of credit shall become effective on the date hereof. Any Notice of Drawing must be received in writing at this office in conformity with the terms of the standby letter of credit before close of business on the Expiry Date, and after Expiry Date the standby letter of credit shall become null and void whether returned to us for cancellation or not. Any Notice of Drawing received after the close of business of the Expiry Date shall be ineffective provided that we shall not be released from our obligations on the Expiry Date if the Notice of Drawing has been presented on or before that date.
7. This unconditional irrevocable standby letter of credit shall be governed by and construed in accordance with the laws of England and is subject to the Uniform Customs and Practice of Documentary Credits (2007 Revision, International Chamber of Commerce, Paris, France, Publication Number 600) (“**UCP**”), insofar as the same are applicable and not inconsistent with the terms of this unconditional irrevocable standby letter of credit.

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<sup>2</sup> The end date is intended to be 31 May, as extended for any run-off period.

8. The courts of England shall have jurisdiction to settle any dispute which may arise in relation to this unconditional irrevocable standby letter of credit.

Yours faithfully  
For and on behalf of [# Bank]

Authorised Signature(s)

**Annex 1  
Notice of Drawing**

To: [Bank]

[# date]

Dear Sirs,

Re: Gas Capacity Agreement (Storage) (# Facility)

Dated [#]

Letter of Credit No. [#] ("THE SECURITY")

---

We refer to the above Security in our favour. We hereby demand immediate payment thereunder in the amount of [#].

We require payment to be made by telegraphic transfer to:

Institution Name:

Address:

Sort Code:

Account Name: National Grid Gas plc

Account No.:

Yours faithfully,

For and behalf of  
National Grid Gas plc

Duly authorised officer

**SCHEDULE 4**

**FORM OF PARENT COMPANY GUARANTEE**

**DATED** **20**

---

**[GUARANTOR] (1)**

**in favour of**

**NATIONAL GRID GAS PLC (2)**

---

**GUARANTEE**

---

**THIS GUARANTEE** is made the day.....of 20

by [.....] a company [registered in [ ] (No. ....)] and having its registered office at [.....] (herein called the "Guarantor") in favour of National Grid Gas plc a company registered in England (No. 2006000) having its registered office at 1-3 Strand, London, WC2N 5EH herein called "National Grid Gas".

## WHEREAS

- (A) This Guarantee is supplemental to a Gas Capacity Agreement – Storage dated [ ] (the "Agreement") between (1) National Grid Gas (2) and [.....], a company registered in [ ] (No. ....) and having its registered office at [.....] ("the Service Provider"), whereby the Service Provider agrees and undertakes to provide certain operating margins services to National Grid Gas in order for National Grid Gas to comply with its regulatory requirements, namely Special Licence Condition 8C and TPD Section K of the Network Code (as such term is defined in the Agreement).
- (B) National Grid Gas has entered or agreed to enter into the Agreement subject to the Guarantor guaranteeing performance by the Service Provider of its payment obligations pursuant to the Agreement.

NOW THIS DEED WITNESSETH and the Guarantor hereby agrees as follows:

- 1 This Guarantee is effective from (Enter date) (or such later date as may be notified in writing by National Grid Gas to the Guarantor prior to (Enter date) (the "Effective Date").
- 2 In this Guarantee "Guaranteed Liabilities" means all monies which are now, or in the future become due or owing by the Service Provider to National Grid Gas howsoever arising under or in connection with the Agreement.
- 3 The Guarantor irrevocably and unconditionally guarantees to National Grid Gas the punctual payment by the Service Provider of the Guaranteed Liabilities and that whenever the Service Provider does not pay any Guaranteed Liabilities the Guarantor shall immediately pay such Guaranteed Liabilities on written demand as if it were the principal debtor and in the currency in which the same falls due for payment.
- 4 The Guarantor agrees to pay interest on each amount demanded under this Guarantee and on any interest compounded under this clause 4 from the date of demand until payment (as well after as before judgment) at a rate of 2 per cent per annum above Barclays Bank PLC base rate accruing on a daily basis. Such interest shall be calculated and compounded monthly if not paid on demand but without prejudice to National Grid Gas's right to require payment of such interest.
- 5 The Guarantor agrees to pay legal and other costs and expenses (on a full and unqualified indemnity basis) incurred by National Grid Gas whether before or after the date of demand on the Guarantor: (i) in enforcing or reasonably endeavouring to enforce the payment of any money due under this Guarantee or otherwise in relation to this Guarantee; and (ii) in resisting or reasonably endeavouring to resist any claims or defences made against National Grid Gas in connection with the liabilities or alleged liabilities of the Service Provider guaranteed hereunder or any money or benefits received by or any preference or alleged preference given to National Grid Gas from or by the Service Provider.
- 6 The obligations of the Guarantor under this Guarantee are undertaken by it as a primary obligor and not merely as a surety.
- 7 As a separate and independent primary obligation, without prejudice to clause 3, the Guarantor unconditionally and irrevocably agrees that it shall remain liable in respect of the Guaranteed Liabilities even if any of the Guaranteed Liabilities is not or ceases to be valid or enforceable against the Service Provider for whatever reason, whether or not known to

National Grid Gas, as if the same were fully valid and enforceable. The Guarantor unconditionally and irrevocably agrees to keep National Grid Gas fully indemnified on demand against all damages, losses, costs and expenses arising from any failure of the Service Provider to perform or discharge payment of any of the Guaranteed Liabilities.

8 The liability of the Guarantor to make payment to National Grid Gas shall not be impaired or discharged by reason of any of the following (whether or not the Guarantor has notice thereof):

- (a) any amendment, variation or waiver (however fundamental) of any provision of the Agreement;
- (b) any indulgence or forbearance shown by National Grid Gas towards the Service Provider or the Guarantor whether as to payment or time for payment or any arrangement entered into or composition accepted by National Grid Gas modifying (by operation of law or otherwise) the rights and remedies of National Grid Gas pursuant to the Agreement with regard to payment or time for payment;
- (c) any action lawfully taken by any party to the Agreement to determine the Agreement as respects the Service Provider or any other party thereto, or as a result of which the Service Provider ceases to be a party to the Agreement;
- (d) any change in the relationship between the Guarantor and the Service Provider;
- (e) any disability, legal limitation, incapacity or change in the status or constitution of the Service Provider, the Guarantor or National Grid Gas;
- (f) the bankruptcy, liquidation, dissolution or insolvency of the Service Provider or any receivership, administration, moratorium, composition of creditors or other analogous event affecting the Service Provider or any of its property;
- (g) any failure or delay by National Grid Gas to assert any of its rights under this Guarantee;
- (h) any composition discharge release or other variation of liability entered into with or granted to the Service Provider;
- (i) the invalidity or unenforceability of the obligations of the Service Provider pursuant to the Agreement; or
- (j) any other act or omission of National Grid Gas or any other circumstance which but for this provision might discharge the Guarantor.

9 This Guarantee shall:

- (a) be in addition to any present or future Collateral Instrument, right or remedy held by or available to National Grid Gas; and
- (b) not be in any way prejudiced or affected by:
  - (i) the existence of any Collateral Instrument, rights or remedies; or
  - (ii) any Collateral Instrument becoming wholly or in part void, voidable or unenforceable on any ground; or
  - (iii) National Grid Gas dealing with, exchanging, varying or failing to perfect or enforce any Collateral Instrument; or

- (iv) National Grid Gas giving time for payment or indulgence or compounding with any person liable for the Guaranteed Liabilities.

- 10 National Grid Gas shall not be obliged to make any claim or demand on the Service Provider or to resort to any Collateral Instrument or other means of payment now or in future held by or available to it before enforcing this Guarantee.
- 11 No action taken or omitted by National Grid Gas in connection with any Collateral Instrument or other payment or any variation, amendment, supplement, novation or replacement of any Collateral Instrument shall discharge, reduce, prejudice or affect the Guaranteed Liabilities or liability of the Guarantor under this Guarantee.
- 12 National Grid Gas shall not be obliged to apply any money or other property received or recovered in consequence of any enforcement or realisation of any Collateral Instrument or other payment in reduction of the Guaranteed Liabilities.
- 13 For the purposes of this clause "Collateral Instruments" means notes, bills of exchange, certificates of deposit and other negotiable and non-negotiable instruments, guarantees, indemnities and other assurances against financial loss, and any other documents or instruments which contain or evidence an obligation (with or without security) to pay, discharge or be responsible directly or indirectly for, any indebtedness or liabilities of the Service Provider, and includes any document or instrument creating or evidencing an encumbrance, however defined and includes, without limitation, letters of credit, deposit agreements and escrow agreements.
- 14 This Guarantee shall continue in full force and effect until all sums whatsoever payable by the Service Provider pursuant to the Agreement have been finally paid in full and all obligations of the Service Provider pursuant to the Agreement have been performed in full.
- 15 The Guarantor shall exercise only in accordance with any of National Grid Gas's instructions:
  - (a) its rights of subrogation, contribution and indemnity in connection with any payment by the Guarantor pursuant to this Guarantee;
  - (b) its right to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Service Provider obligations held by National Grid Gas; and
  - (c) its right to prove or claim in the bankruptcy, liquidation, dissolution or insolvency of the Service Provider or any receivership, administration, moratorium, composition of creditors or other analogous event affecting the Service Provider or any of its property.

Any amount recovered as a result of the exercise of such rights shall be paid to National Grid Gas on demand.

- 16 The Guarantor hereby represents and warrants to National Grid Gas that:
  - (a) the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
  - (b) the Guarantor has full power and authority to execute, deliver and perform its obligations under this Guarantee and no limitation on the powers will be exceeded as a result of the Guarantor entering into this Guarantee;
  - (c) the execution, delivery and performance by the Guarantor of this Guarantee and the performance of its obligations under this Guarantee have been duly authorised by all necessary corporate action and do not contravene or conflict with:

- (i) the Guarantor's memorandum and articles of association or other equivalent constitutional documents; or
  - (ii) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is a party or which is binding upon it or any of its assets; or
  - (iii) the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets; and
- (d) this Guarantee is the legal, valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.
- 17 The Guarantor acknowledges that National Grid Gas has accepted this Guarantee in full reliance on the representations and warranties set out in clauses 16-17.
- 18 All payments by the Guarantor under this Guarantee shall be made in full, without set-off or counterclaim and, subject to clause 19, free and clear of any deductions or withholdings in immediately available, freely transferable, cleared funds for value on the date specified in National Grid Gas's demand to the account notified to the Guarantor by National Grid Gas.
- 19 If at any time the Guarantor is required by law to make any deduction or withholding in respect of any taxes, duties or other charges or withholdings from any payment due under this Guarantee, the sum due from the Guarantor in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, National Grid Gas receives on the due date and retains (free of any liability in respect of such deduction or withholding) a net sum equal to the sum which it would have received had no such deduction or withholding been required to be made.
- 20 The Guarantor may not assign or transfer any of its rights or obligations under this Guarantee. National Grid Gas may only assign its rights under this Guarantee to a person in favour of whom an assignment has been made pursuant to the Agreement.
- 21 National Grid Gas may disclose to a prospective assignee or transferee or to any other person proposing to enter into any agreement with National Grid Gas in relation to the Agreement such information about the Guarantor as National Grid Gas thinks fit.
- 22 National Grid Gas's rights under this Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as National Grid Gas deems expedient.
- 23 If any provisions of this Guarantee become invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
- 24 No failure or delay by National Grid Gas in exercising any right or remedy shall operate as a waiver, nor shall any single or partial exercise or waiver of any right or remedy preclude its further exercise or the exercise of any other right or remedy.
- 25 A person who is not a party to this Guarantee (including any employee, officer, agent, representative or sub-contractor of any party) shall not have the right to enforce any term of this Guarantee which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Guarantor and National Grid Gas, which agreement must refer to this clause 25.
- 26 This Guarantee shall secure the ultimate balance of the Guaranteed Liabilities from time to time and shall be a continuing security and shall not be affected by any performance, payment, settlement or other matter pursuant to or in respect of the Agreement or this Guarantee and shall (subject to clause 27) remain in effect until the date on which National

Grid Gas is satisfied that the Guaranteed Liabilities have been discharged in full (such date, the "Termination Date").

- 27 Notwithstanding clause 26 above and any release, discharge, termination or settlement between National Grid Gas and the Guarantor the liability of the Guarantor under this Guarantee shall continue in full force and effect following the Termination Date and/or such release discharge, termination or settlement in relation to:
- (a) the Guaranteed Liabilities which shall have become due at the Termination Date; and
  - (b) the Guaranteed Liabilities (including for the avoidance of doubt and without limitation contingent and unascertained liabilities) which may become due, owing or incurred by the Service Provider to National Grid Gas pursuant to any transaction, dealing, commitment or other engagement entered into or effected either (i) prior to the Termination Date or (ii) on or after the Termination Date pursuant to any commitment, expressed or implied, assumed or undertaken by the Service Provider to National Grid Gas prior to the Termination Date; and
  - (c) the Guaranteed Liabilities if any monies paid to National Grid Gas in reduction of the indebtedness of the Service Provider pursuant to the Agreement has to be repaid by National Grid Gas by virtue of any provision or enactment relating to bankruptcy, liquidation, administration, dissolution, insolvency or other analogous event for the time being in force or on any other ground. If that happens the liability of the Guarantor under this Guarantee shall be computed as if such monies had never been paid to National Grid Gas at all; and
  - (d) the Guaranteed Liabilities if any security, disposition or payment to National Grid Gas from the Guarantor is liable to be void, set aside or ordered to be refunded pursuant to any enactment or law relating to bankruptcy, liquidation, administration, dissolution, insolvency or other analogous event or for any other reason whatsoever. If that happens, National Grid Gas shall be entitled to recover from the Guarantor to the full extent of this Guarantee as if the release, discharge or settlement had not occurred and such payment had not been made.
- 28 National Grid Gas shall be entitled to retain this Guarantee after as well as before the payment or discharge of all the Guaranteed Liabilities for such period as it may determine.
- 29 Any statement of account of the Service Provider, signed as correct by an officer of National Grid Gas, showing the amount of the Guaranteed Liabilities shall, in the absence of manifest error, be binding and conclusive on and against the Guarantor.
- 30 All notices or other communications under or in connection with this Guarantee shall be given in writing or facsimile. Any such notice will be deemed to be given as follows:
- (a) if in writing, when delivered or, if later, 2 days after posting if sent by first class post (or 7 days if sent by second class post or 5 days if sent from outside the United Kingdom);
  - (b) if by facsimile, when received or as evidenced by the notifying party's facsimile transmission report.

Provided that a notice given in accordance with the above but not received on a "business day" or received after "business hours" shall be deemed to have been received at 9.am on the following "business day". For the purposes of this clause 30 a "business day" is a day which is not a Saturday, Sunday or public holiday in London and "business hours" means 9am to 5pm on a business day.

- 31 [Subject to clause 39,] the address and facsimile number for all notices under or in connection with this Guarantee are as follows, unless the other party has been notified otherwise at least five days before the notice is received:
- (a) in the case of the Guarantor:
- Address: [ ]
- Facsimile Number: [ ]
- For the attention of: [ ]
- (b) in the case of National Grid Gas:
- Address: 1-3 Strand
- London
- WC2N 5EH
- Facsimile Number: [ ]
- For the attention of: [ ]
- 32 Service of legal proceedings in the manner described in clause 30 shall be deemed to constitute good service.
- 33 Unless the contrary intention appears, a reference in this Guarantee to National Grid Gas or Guarantor or the Service Provider or a person includes its successors in title, permitted assigns and permitted transferees.
- 34 This Guarantee is governed by and shall be construed in accordance with English law.
- 35 Subject to clauses 37 and 38, the courts of England have exclusive jurisdiction to settle any disputes arising out of or connected with this Guarantee (including a dispute regarding the existence validity or termination of this Guarantee or the consequences of its nullity) (a "Dispute").
- 36 Subject to clauses 37 and 38, the parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes between them and accordingly that they will not argue to the contrary.
- 37 This clause 37 is for the benefit of National Grid Gas only. As a result and notwithstanding clauses 35 and 36 it does not prevent National Grid Gas from:
- 37.1 taking proceedings relating to a Dispute in any other courts (and the Guarantor waives any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum); or
- 37.2 referring a Dispute to be finally settled by arbitration under the Rules of Arbitration and Conciliation of the International Chamber of Commerce by two or more arbitrators appointed pursuant to such Rules.
- 38 To the extent allowed by law, National Grid Gas may take concurrent proceedings in any number of jurisdictions.
- 39 [The Guarantor authorises and appoints [name] of [legal representatives or related company in England and Wales] (or such other person being a firm of solicitors in England as they may from time to time substitute by notice to National Grid Gas) to accept service of all legal

process arising out of or connected with this Guarantee. Service on such person (or substitute) shall be deemed to be service on the Guarantor. Except upon a substitution, the Guarantor shall not revoke any such authority or appointment and shall at all times maintain an agent for service of process in England. If any agent ceases for any reason to be an agent, the Guarantor shall forthwith appoint another agent and advise National Grid Gas accordingly.]

40 [The Guarantor waives any right of state immunity which it may have in respect of any proceedings or action (which shall include any attachment or arrest prior to judgement and any enforcement proceedings including execution) commenced by the Beneficiary against the Guarantor under or in connection with this Deed.]

IN WITNESS whereof the Guarantor has caused this Guarantee to be executed as its deed but not delivered until the day and year first before written.

[The Common Seal of [.....] was

hereunto affixed in the presence of:

[.....] Director

[.....] Director/Company Secretary]

or

[Executed as a Deed by

[ ] acting

by:

[.....] Director

[.....] Director/Company Secretary]