

**OPERATING MARGINS
GAS DELIVERY AGREEMENT – LNG STORAGE**

BETWEEN

NATIONAL GRID GAS PLC

AND

SERVICE PROVIDER

nationalgrid

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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 (or an Affiliate) has entered into an LNG Terminal Agreement with the Facility Operator to allow it to utilise the Facility.
- (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:

“**Acquired Quantity**” has the meaning given in Clause 13.5(a);

“**Actual Utilisation Quantity**” has the meaning given in Clause 5.15;

“**Additional Quantity**” has the meaning given in Clause 13.5;

“**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;

“**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 LNG-in-storage**” means the amount of LNG-in-storage owned by the Service Provider (or an Affiliate) minus its Minimum Inventory;

“**Available Quantity**” means the amount of LNG expressed in kWh which shall be available to the Customer for delivery at any time during the Term of this Agreement;

“**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;

“**Berthing Slot**” means an entitlement, under an LNG Terminal Agreement, on a specific occasion to berth and unload an LNG Tanker at the Facility;

“**Boil-Off**” means the estimated average minimum delivery of the Service Provider for each Day, whether as a result of boil-off (allowing for any additional quantities of LNG needed for blending) or otherwise, as specified in Schedule 1;

“**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;

“**Delivery Charge**” means a charge calculated in accordance with Clause 9.3;

“**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 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) 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;
- c) failure by the Service Provider to pass two or more consecutive Service Tests;
- d) 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;
- e) the Service Provider's LNG Terminal Agreement is terminated for any reason; and
- f) 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 Delivery Rate" means the prevailing Nomination rate prevailing before the revision to the Nomination;

"Expert" has the meaning given in Clause 24.2;

"Facility" means the LNG receiving terminal 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 4.2(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 System Entry Point(s) (as defined in the Network Code) at which the Facility is connected to the NTS;

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

"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;

"Invoice Period" has the meaning given in Clause 9.5;

"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;

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

“LNG” means Natural Gas in a liquid state at or below its boiling point and at or near atmospheric pressure;

“LNG-in-storage” means LNG in the Facility’s storage tanks;

“LNG Tanker” means an ocean-going LNG vessel;

“LNG Terminal Agreement” means a contract entered into between a person and the Facility Operator, pursuant to which such person is entitled to utilise the Facility for the unloading and storage of LNG and the delivery of Natural Gas;

“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;

“Maximum Delivery Duration” means the maximum length of time that an Nomination can specify that the Service shall be provided for from the Facility as specified in Schedule 1;

“Maximum Delivery Rate” means the maximum rate of Natural Gas to be provided for the Service from the Facility as specified in Schedule 1;

“Minimum Delivery Duration” means the minimum length of time that an Nomination can specify that the Service shall be provided for from the Facility as specified in Schedule 1;

“Minimum Delivery Rate” means the minimum rate of Natural Gas to be provided for the Service from the Facility as specified in Schedule 1;

“Minimum Inventory” means the minimum quantity of LNG which the Service Provider (or an Affiliate) is required to maintain in the Facility’s storage tanks at all times under the Service Provider’s LNG Terminal Agreement, as specified in Schedule 1;

“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 Quantity” has the meaning given in Clause 5.3(d);

“Nominated Third Party” has the meaning given in Clause 6.4;

“Nomination” has the meaning given in Clause 5.2;

“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 Delivery Charge” means a charge calculated in accordance with Clause 9.4;

“Overrun Delivery Rate” has the meaning given in Clause 5.11;

“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 6.1;

“Reallocation Quantity” has the meaning given in Clause 6.1;

“Response Time” means the date and time in relation to a Day specified as such in Schedule 1;

“Schedule” means a schedule to this Agreement;

“Service” means the holding of LNG-in-storage and the delivery of Natural Gas to the Customer at the Gas Delivery Point, in accordance with this Agreement;

“Service Availability” means the number of hours where the Facility can deliver the Service at no less than the Maximum Delivery Rate;

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

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

“Service Quantity” means the maximum amount of LNG that the Available Quantity may be, as set out in Schedule 1, and the Service Quantity shall remain the same for each Day from the start of the Year until the end of the Year;

“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 capacity, in kWh, held pursuant to an LNG Terminal Agreement which entitles a person to unload LNG from an LNG Tanker into, and to hold LNG-in-storage in, the Facility;

“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;

“**Terminal User**” means any person (other than the Customer) with whom the Facility Operator has entered into an LNG Terminal Agreement which remains for the time being in force, and shall (for the avoidance of doubt) include the Service Provider (or an Affiliate);

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

“**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 the 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; 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; and
- (m) all capitalised terms not otherwise defined in this Agreement shall have the meanings respectively specified in the Network Code.

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. For the avoidance of doubt, the Service requires the delivery of Natural Gas to the Customer at the Gas Delivery Point, at which the Facility is connected to the NTS, operated by National Grid Gas; therefore delivery of Natural Gas at any other point, including (if applicable) where the Facility is connected to the Local Distribution Zone (as defined in the Network Code), shall result in a failure by the Service Provider to provide the Service. 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 LNG-in-storage

(a) The Service Provider undertakes and warrants that at all times during the Year, the Available LNG-in-storage shall not be less than the Available Quantity.

(b) Without prejudice to any rights of the Customer or liabilities of the Service Provider, if the Service Provider's aggregate Available LNG-in-storage is less than the Available Quantity during the Year, then the Service Provider shall take such steps as it may deem necessary to ensure compliance with Clause 4.1(a).

(c) If at any time the Customer becomes aware that the total aggregate LNG-in-storage of all Terminal Users at the Facility will on any Day be less than or equal to the Available Quantity after taking into account the day-ahead Input Nominations (as such term is defined in the Network Code) that have been submitted by Terminal Users, the Customer may request (by telephone or in writing) written confirmation of the Available LNG-in-storage. Where the Customer's request is received by no later than 15:00 hours on a Business Day the Service Provider shall provide such confirmation as soon as reasonably practical and in any event by no later than 17:00 hours on the same Business Day on which the Customer's request is received. In the case of requests received after 15:00 hours on a Business Day or a day other than a Business Day the Service Provider shall provide written confirmation by no later than 17:00 hours on the next following Business Day.

(d) During the Year the Service Provider shall provide (or shall procure that the Facility Operator provides) the Customer with a report detailing the Service Provider's Available LNG-in-storage as set out under Clause 9.5(a)(ii).

(e) The Available Quantity shall be:

(i) set to the same value as the Service Quantity at the beginning of the Term; and

(ii) reduced by the amount of Natural Gas delivered to the Customer following a Nomination pursuant to Clause 5.2.

(f) The Customer may request in writing that the Service Provider increases the Available Quantity up to the Service Quantity at any time. The Service Provider will use its reasonable endeavours to supply LNG from itself and/or seek offers from other Terminal Users and provide the Customer with a price to increase the Available Quantity up to the Service Quantity and the Customer will confirm as soon as reasonably practicable whether it wishes to increase the Available Quantity at the price provided by the Service Provider. For the avoidance of doubt the Service Provider does not warrant that LNG will be available.

(g) The Customer may request (at any time) in writing that the Service Provider provides a copy of the Service Provider's most up to date unloading schedule for the following Month, and the Service Provider shall subject to applicable Legal Requirements provide the same to the Customer within 5 Business Days of such written request. The Customer may verbally request (by telephone or otherwise) details of the next scheduled unloading of an LNG Tanker and the Service

Provider shall subject to applicable Legal Requirements provide such details as soon as reasonably practicable.

4.2 Delivery of Natural Gas

- (a) 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 4.2.
- (b) 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 a quantity of Natural Gas (not exceeding the Available Quantity) to the Customer at the Gas Delivery Point.
- (c) Title and risk of loss or damage to the Natural Gas delivered by the Service Provider to the Customer pursuant to this Agreement shall pass 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 Service Provider 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) All Natural Gas delivered to the Customer pursuant to a Nomination shall be Compliant Gas. If the Service Provider delivers Non-Compliant Gas to the Customer, each Party shall use reasonable endeavours to notify the other Party as soon as reasonably practical after becoming aware of such Non-Compliant Gas and the Customer may at its option:
 - (i) accept or continue to accept delivery of such Non-Compliant Gas (and the Customer's rights under Clause 4.2(f) shall not be prejudiced by its election to accept delivery of Non-Compliant Gas (whether or not the Customer is aware that such Natural Gas is Non-Compliant Gas)); or
 - (ii) give written notice to the Service Provider requiring the Service Provider 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 Service Provider notifies the Customer that it is able to deliver Compliant Gas to satisfy the Nomination; and
 - (B) the Customer gives written agreement,the Service Provider may resume delivery of Compliant Gas to satisfy such Nomination.
- (f) To the extent that the Service Provider:
 - (i) delivers Non-Compliant Gas to the Customer, the Service Provider shall pay to the Customer all reasonable costs and expenses reasonably incurred by the Customer in consequence of such delivery, including (without limitation) 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 13.4 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, in accordance with Clauses 13.1 and 13.2, 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) fails to deliver Compliant Gas pursuant to Clause 4.2(e) 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.
- (g) 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 request the delivery of Natural Gas on any Day in the Year subject to the provisions of this Agreement.
- 5.2 If the Customer wishes to have a quantity of Natural Gas delivered to it on a Day, it shall serve a notice (a "**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 delivered (the "**Nominated Quantity**") on that Day;
 - (e) be served on the Service Provider not less than the Response Time before the commencing of the delivery of the Natural Gas 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 Response Time);
 - (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 Delivery Rate in excess of the Maximum Delivery Rate or less than the Minimum Delivery Rate or zero;
 - (b) specify a Nominated Quantity which, if the Nomination were implemented by the Service Provider, would make the Available Quantity fall below zero;
 - (c) result in a delivery duration of less than the Minimum Delivery Duration; or
 - (d) result in a delivery duration of greater than the Maximum Delivery Duration.

- 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 Response Time 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:
- (a) exceed the Customer's Available Quantity, the Customer shall (at the same time as submitting such Nomination) submit a revised Nomination (resulting in an Effective Delivery Rate of zero) to become effective at or before the time at which the quantity of Natural Gas delivered pursuant to the Nomination equals the Customer's Available Quantity;
 - (b) exceed the Maximum Delivery Duration, the Customer shall (at the same time as submitting such Nomination) submit a revised Nomination to become effective at or before the time at which the Maximum Delivery Duration pursuant to the Nomination expires.
- 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, a Nomination which would result in:
- (a) an Effective Delivery Rate exceeding the Maximum Delivery Rate; or
 - (b) the Customer exceeding the Available Quantity.
- 5.11 Where the Customer makes a request pursuant to Clause 5.10(a), the Service Provider shall use reasonable endeavours to agree to such request, and shall respond within sixty (60) minutes of receipt advising whether it is able to agree to such a request (whether in full or in part). Where the Service Provider does agree to such a request, the Service Provider shall specify the additional delivery rate, either on a firm or interruptible basis (the "**Overrun Delivery Rate**"), that the Customer may use in addition to its Maximum Delivery Rate and the Customer shall pay the Overrun Delivery Charge in respect of such Overrun Delivery Rate, calculated in accordance with Clause 9.4.
- 5.12 Where the Customer makes a request pursuant to Clause 5.10(b), the Service Provider shall respond 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, the Service Provider shall specify the additional quantity in excess of the Customer's Available Quantity, and the Customer shall pay the Delivery Charge in respect of such Natural Gas, calculated in accordance with Clause 9.3 and, without prejudice to Clause 4.1(f), the Available Quantity shall be set to zero.
- 5.13 Where the Service Provider fails to respond to a request under Clause 5.10 within sixty (60) minutes of receiving such request, the Service Provider shall be deemed not to have agreed to such request. Should the Service Provider permit delivery in excess of the Customer's Maximum Delivery Rate or Available Quantity, then the Service Provider has fulfilled its obligation to the Customer as soon as the Nominated Quantity has been delivered at the

Gas Delivery Point. 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 Delivery Rate does not exceed the Maximum Delivery Rate or result in exceeding the Customer's Available Quantity.

- 5.14 The Service Provider shall not (without the prior consent of the Customer) do anything inconsistent with the Customer being allocated with the Nominated Quantity at the Gas Delivery Point.
- 5.15 For the purposes of this Agreement, the quantity of Natural Gas delivered on a Day by the Service Provider to the Customer pursuant to a Nomination (the "**Actual Utilisation Quantity**") shall be that quantity of Natural Gas (in kWh) allocated to the Customer at the Gas Delivery Point. The Service Provider will be considered to have complied with its obligation under this Agreement to deliver Natural Gas to the Customer notwithstanding that the Customer may be unable to take delivery of such Natural Gas as a result of any constraint or limitation on the flow of Natural Gas in the NTS away from the Gas Delivery Point.

6 INTERRUPTION AND REALLOCATION

- 6.1 Subject always to Clause 6.3(b), the Service Provider has the right, in accordance with Clause 6.2, to interrupt any 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 Delivery Rate and the effective delivery rate of all other Terminal Users exceeds the Facility Delivery Capacity.
- 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 Delivery 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 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 Nomination prevailing immediately before the Interruption Notice was given or any subsequent revised Nomination submitted after the Interruption Notice was given; and
 - (ii) the Facility Delivery Capacity.
- 6.4 Where the Customer has made a Nomination, but the Service Provider wishes to have all or part of the Natural Gas to be delivered pursuant to such 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 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 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 Nomination is made, or, where the Customer has already paid any Charges in respect of the Reallocation Quantity, the Service Provider shall reimburse the Customer such Charges;
- (b) the Customer’s Nominated Quantity shall be reduced by the Reallocation Quantity (and the Customer’s 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;
- (d) the Available Quantity shall not be decreased by the Reallocation Quantity; and
- (e) where the Reallocation Notice is received later than three (3) hours before the end of the Day in respect of which the 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 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.

6.6 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 6.5, 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.

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 minimise 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 schedule 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 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 in proportion to any reduction in the aggregate withdrawal capacity of the Facility.

7.2 **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 7.2 and payable to the Customer shall be credited against sums due under the next invoice produced by the Service Provider in accordance with Clause 9.5. Where no further invoice is to be produced pursuant to Clause 9.5, the Customer shall be entitled to raise an invoice pursuant to Clause 9.6.

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 Delivery Charge; and
- (c) the Overrun Delivery Charge,

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

9.2 The Service Fee

- (a) The Service Fee shall be payable Monthly in arrears.
- (b) The Customer shall not be obliged to pay the Service Fee 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 Delivery Charge

For each Day, the Delivery Charge shall be payable in respect of the Actual Utilisation Quantity delivered to the Customer pursuant to a Nomination and shall be calculated as follows:

$$\text{Delivery Charge} = \sum_{d=1}^D \text{DQ}_d * \text{DGP}_d$$

Where:

- D is the number of Days in the month;
- DQ is the Actual Utilisation Quantity for Day d in the month in question; and
- DGP is the Delivery Gas Price determined pursuant to Schedule 1 for Day d:

9.4 Overrun Delivery Charge

For each Day, the Overrun Delivery Charge shall be payable by the Customer to the Service Provider in respect of the Overrun Delivery Rate delivered to the Customer pursuant to Clause 5.11 and shall be calculated as the sum across all hours in the Day as follows:

$$\text{Overrun Delivery Charge} = \sum_{h=1}^{h=24} \max((EDR_h - MDR_h), 0) \times ODP$$

Where:

EDR_h is the Effective Delivery Rate expressed in kWh/Day

MDR_h is the Maximum Delivery Rate expressed in kWh/Day

ODP is the Overrun Delivery Price as specified Schedule 1 expressed in p/kWh

9.5 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:
- (i) 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; and
 - (ii) a report (in such format as the Customer shall reasonably require) detailing the Service Provider’s (or its Affiliate) Available LNG-in-storage at the end of each Day of the Invoice Period as well as confirmation that the Service Provider’s (or its Affiliate) Available LNG in-storage will be sufficient to cover the Available Quantity plus the maximum anticipated monthly Boil-Off volume during the next Month of the Year.
- (b) The Service Provider shall, following agreement with the Customer pursuant to Clause 9.5(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 Delivery Charge;
 - (iii) the sum payable in respect of the Overrun Delivery Charge
 - (iv) any applicable VAT and Taxes;
 - (v) any sums payable by the Service Provider to the Customer in accordance with Clauses 6.6 and 7.2(e); and
 - (vi) the total sum payable by the Customer in respect of the Invoice Period, being the aggregate of the sums calculated pursuant to Clause 9.5(b)(i) to (iv) above, less the sums calculated pursuant to Clause 9.5(b)(v) above.

9.6 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.

9.7 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 (20th) day of the Month:

- (a) following the end of the relevant Invoice Period for invoices provided under Clause 9.5; and
- (b) in which the invoice was received for invoices provided under Clause 9.6, or the tenth (10th) 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 9.6.

13.4 For each Day during the Year that the Service Provider fails to maintain or procure the maintenance of Available LNG-in-storage sufficient to deliver the Available Quantity in accordance with Clause 4.1(a) in circumstances where such failure is not excused by Force Majeure, then:

- (a) where such failure arises as a result of a breach on the part of the Facility Operator under the Service Provider's LNG Terminal Agreement, and the Service Provider has provided evidence of such breach satisfactory to the Customer (acting reasonably), the Service Provider shall have no liability to the Customer;
- (b) in all other circumstances (including, for the avoidance of doubt, where Clause 7 applies), the Service Provider shall pay to the Customer an amount calculated as:

$$A = 1.5 * SF * SFA / TAQ$$

Where:

- A is the amount that the Service Provider is to pay;
- SFA is the amount on such Day by which the Available Quantity exceeds the aggregate Available LNG-in-storage;
- TAQ is the Available Quantity on such Day; and
- SF is the base Service Fee payable by the Customer for such Day.

13.5 Where the Service Provider fails to comply with Clause 4.1, then the Customer shall (in accordance with the following provisions of this Clause 13.5) be entitled to acquire (or procure that the Service Provider acquires on its behalf) a sufficient quantity of LNG ("**Additional Quantity**") that when added to the stock of the Service Provider shall increase the aggregate LNG-in-storage to the Available Quantity plus a volume equivalent to 30 days Boil-Off. Such Additional Quantity shall be acquired as follows:

- (a) the Customer shall (by written notice to the Service Provider) instruct the Service Provider to acquire the Additional Quantity and the Service Provider shall use best endeavours to acquire the Additional Quantity within twenty-four (24) hours of receipt of the Customer's instruction. The Service Provider shall immediately confirm to the Customer in writing the quantity of LNG that it has acquired ("**Acquired Quantity**"). All and any losses, liabilities, claims, costs (including legal costs) and expenses incurred by the Service Provider arising out of or in connection with the acquisition of such LNG shall be borne by the Service Provider;

- (b) if within the timescale referred to in Clause 13.5(a) the Service Provider either fails to notify the Customer that it has obtained the Additional Quantity or notifies the Customer of an Acquired Quantity that is less than the Additional Quantity the Customer shall be entitled to seek to acquire the Additional Quantity or such quantity of LNG that is required to increase the Acquired Quantity to the Additional Quantity (as the case may be) from an alternative source and for the resulting LNG-in-storage to be allocated to the Service Provider. The Service Provider shall save, hold harmless and indemnify the Customer against any and all losses, liabilities, claims, costs (including legal costs) and expenses reasonably incurred by the Customer arising out of or in connection with the acquisition of such LNG by the Customer pursuant to this Clause 13.5(b) which shall include (but not be limited to) the total amount paid by the Customer for the LNG;
- (c) notwithstanding Clause 13.5(b), the Customer shall be entitled (upon giving not less than forty eight (48) hours prior written notice to the Service Provider) to acquire the Additional Quantity or such quantity of LNG that is required to increase the Acquired Quantity to the Additional Quantity (as the case may be) by unloading an LNG Tanker at the Facility (if necessary utilising the Berthing Slots and Storage Capacity of the Service Provider) and for the resulting LNG-in-storage to be allocated to the Service Provider. For the purposes of this Agreement, such unloading shall be deemed to be an unloading of an LNG Tanker by the Service Provider and utilise the rights of the Service Provider to unload a LNG Tanker at the Facility. The Service Provider shall save, hold harmless and indemnify the Customer against any and all losses, liabilities, claims, costs (including legal costs) and expenses reasonably incurred by the Customer, the Service Provider or any third party (including the Facility Operator) arising out of or in connection with the Customer arranging for such unloading. In addition to the foregoing, the Service Provider shall be liable to the Facility Operator for any costs that may arise pursuant to the Service Provider's LNG Terminal Agreement as a result of the Customer utilising the Berthing Slots and Storage Capacity of the Service Provider. The Service Provider shall also pay to the Customer the total amount paid by the Customer for such LNG.

13.6 Title to any quantity of LNG that is acquired by the Customer pursuant to Clause 13.5(b) or Clause 13.5(c) shall pass to the Service Provider upon payment to the Customer and pending which, the Service Provider shall hold the LNG on trust for the Customer.

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 NOT USED

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.

17 WARRANTIES AND UNDERTAKINGS

- 17.1 Each Party warrants to the other that it (either directly or acting through an Affiliate):
- (a) 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) has negotiated, entered into and executed this Agreement as principal (and not as agent or in any other capacity, fiduciary or otherwise); and
 - (c) is and will remain a party to the Network Code.
- 17.2 The Service Provider acknowledges that the Customer requires the Service provided under this Agreement (and in particular the delivery service) to comply with the Gas Safety (Management) Regulations 1996. Accordingly, 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, Natural Gas 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 delivery. 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 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
- Email address: []
- (c) in the case of the Customer (for invoices only) to:
- Email addresses (to be sent to all):
- ngrid.invoices@edmgroup.com SAP processing team
- 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) Nominations shall initially be communicated by telephone and confirmed by facsimile or by electronic means;
- (b) invoices (including, for the avoidance of doubt, credit notes) under Clause 9 shall always be sent by electronic means; and
- (c) 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

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

PART 2: SERVICE PARAMETERS

Year (from)	[1 May XXXX]
Year (to)	[30 April XXXX]
Service Quantity	[] kWh

Minimum Inventory	[] kWh
Boil-Off	[] kWh/Day
Minimum Delivery Rate	[] kWh/h
Maximum Delivery Rate	[] kWh/h
Facility Delivery Capacity (Nominal)	[] kWh/h
Minimum Delivery Duration	[] hours
Maximum Delivery Duration	[12 or 24] hours
Response Time	[] hours / minutes] before the exact hour at which the Instruction is to take effect
Summer Period Availability	[1,836] hours
Winter Period Availability	[4,579] hours
Planned Maintenance Period(s)	[] to []
Website for clauses 4.2(d) / 7.1(e)	[]

PART 3: Service Charges

Service Fee¹	
For each Day in the Summer Period	£[] / Day
Service Fee	£[] / Day
For each Day in the Winter Period:	
DGP (Delivery Gas Price)	[] p/kWh
ODP (Overrun Delivery Price)	[] p/kWh
Payment Details	[Bank Name] [Bank Address] [Bank Sort Code / SWIFT]

¹ 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.

	[Bank Account Number / IBAN] [Service Provider]
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Schedule 2



All Quantities in kWh

OPERATING MARGIN INSTRUCTION (PRO-FORMA)

OPERATING MARGINS NOMINATION						
Facility:						
To:						
Telephone:						
Send To:						
Date and Time of Request <input type="text" value="dd / mm / yyyy hh:ss"/>						
Type of Nomination <input type="text" value="Injection / Withdrawal"/> (Delete as appropriate)						
Gas Day <input type="text" value="dd / mm / yyyy"/>						
Nomination Number <input type="text"/> (for sequential control purposes)						
<small>* As applicable</small>						
NATIONAL GRID INSTRUCTION				SERVICE PROVIDER NOMINATION ACCEPTANCE		
A = (B + C)				D = (E + F)		
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 GMT if required						
02:00						
03:00						
04:00						
End of Day Volume (kWh)	-	-	-	-	-	-
Signed (on behalf of NGG): _____						
Date and Time: _____						
<u>OPERATOR CONFIRMATION - Please confirm receipt of instruction by return</u>						
Time Nomination acknowledged _____						
by Service Provider _____						
Signed: _____						
Date and Time: _____						
From: National Grid Gas Operations GNCC						
Tel:						
Fax:						