

**OPERATING MARGINS**

**GAS CAPACITY AGREEMENT – 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 owns and operates the Facility, or holds injection, withdrawal and/or storage space 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 the Service for Operating Margins Purposes 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“**Actual Utilisation Quantity**” means on a Day, the quantity of Natural Gas (in kWh) injected into or withdrawn from the Facility and allocated to the Customer at the Gas Delivery Point, unless deemed to be zero (0) in accordance with Clause 5.14;

“**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 17.1;

“**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 value of the Annual Service Fee multiplied by one decimal point five (1.5);

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

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

“**Annual Service Fee**” means the sum specified as such and set out in Schedule 1 and payable by the Customer in accordance with Clause 11.3;

“**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;

**“Applicable Gas Entry Conditions”** means the Gas Entry Conditions applying in respect of the relevant Gas Delivery Point;

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

**“Available Injection Rate”** means the Storage Injection Capacity divided by twenty-four (24);

**“Available Withdrawal Rate”** means the Storage Withdrawal Capacity divided by twenty-four (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 11.1;

**“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 20;

**“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 Applicable Gas Entry Conditions;

**“Daily Service Fee”** has the meaning given in Clause 11.3(b);

**“Day”** has the meaning given in the Network Code;

**“Default”** has the meaning given in Clause 14.1;

**“Dispute”** has the meaning given in Clause 25.1;

**“Due Date”** has the meaning given in Clause 12.1;

**“Early Termination Event”** means:

- (a) the following events, in respect of which either Party may be the Affected Party;
  - (i) a Party (or any third party providing credit security under Clause 16.2 to such Party in respect of its obligations hereunder):
    - (A) 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
    - (B) goes into liquidation, receivership or administration, or makes a composition with its creditors; or

- (C) 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 thirty (30) days of its presentation; or
  - (D) any event occurs, or proceeding is taken, with respect to that Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the foregoing events;
- (ii) a Party fails to make payment and fails to remedy the same within ten (10) Business Days of receiving notice of such breach from the other Party;
  - (iii) a Party commits a material or persistent breach of any of its obligations under this Agreement, which:
    - (A) is not capable of being cured; or
    - (B) is capable of being cured, but is not cured within the reasonable time period specified in the notice given in accordance with Clause 17.1;
  - (iv) a Party breaches the provisions of Clause 28;
  - (v) a Party is affected by Force Majeure and is unable to perform its obligations under this Agreement for a period of thirty (30) consecutive Days; and
- (b) the following events, in respect of which the Service Provider shall be the Affected Party, and the Customer shall be the Notifying Party:
- (i) failure by the Service Provider to provide or continue to provide any credit security required under Clause 16.2 or the failure of the Service Provider or its credit security provider to perform in respect of any such credit security;
  - (ii) if the Service Provider is not the Facility Operator the Service Provider's Gas Storage Agreement is terminated for any reason;
  - (iii) 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
  - (iv) if, during the Winter Period, the Service Provider is unable to provide or will be unable to provide the Service for a period of thirty (30) consecutive Days and the Customer shall have the right to exercise such termination right upon becoming aware of such inability to provide the Service;

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

**"Execution Date"** means the date on which this Agreement is entered into by both Parties;

**"Excess Injection Rate"** means a rate of injection that exceeds the Available Injection Rate as set out in Clause 5.5;

**"Excess Withdrawal Rate"** means a rate of withdrawal that exceeds the Available Withdrawal Rate as set out in Clause 5.5;

**"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 25.2;

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

**“Facility Gas-In-Storage”** means on a Day, the aggregate amount of Natural Gas stored in the Facility up to but not including that Day, for the purposes of determining the Facility Withdrawal Capacity (Nominal), as set out in Schedule 1;

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

**“Facility Withdrawal Capacity”** means the maximum physical delivery capacity of the Facility on the Day, as determined in accordance with Clause 4.8;

**“Facility Withdrawal Capacity (Nominal)”** means the capacity set out in Schedule 1;

**“Force Majeure”** has the meaning given in the Network Code;

**“Gas Delivery Point”** means the point or points 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, (as amended, supplemented, assigned or novated from time to time);

**“Hour”** means any period of sixty (60) minutes beginning on the hour bar;

**“ICE”** means the InterContinental Exchange, owned and operated by InterContinental Exchange, Inc., which facilitates the electronic purchase and sale of energy commodities;

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

**“Injection Amount”** means the amount specified as such in Schedule 1;

**“Injection Charge”** means the charge payable by the Customer for the Service Provider injecting Natural Gas into the Facility on behalf of the Customer pursuant to an Injection Nomination, calculated in accordance with Clause 11.4;

**“Injection Nomination”** has the meaning given in Clause 5.1(a);

**“Injection Overrun Amount”** means the cost of additional injection specified as such in Schedule 1;

**“Injection Overrun Charge”** means the charge payable by the Customer for the Service Provider injecting Natural Gas into the Facility on behalf of the Customer at the Excess Injection Rate, calculated in accordance with Clause 11.6(a);

**“Injection Response Time”** means the period specified as such in Schedule 1;

**“Interrupted Withdrawal Quantity”** has the meaning given in Clause 6.2(i);

**“Interrupted Withdrawal Rate”** has the meaning given in Clause 6.2(g);

**“Interruption Effective Time”** has the meaning given in Clause 6.2(b);

**“Interruption Notice”** has the meaning given in Clause 6.2;

**“Interruption Period”** has the meaning given in Clause 6.2(d);

**“Invoice Period”** has the meaning given in Clause 11.7(a);

**“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 substantially in the form set out in Schedule 5;

**“Liquidated Damages”** means, in respect of Day, an amount equal to:

- (a) the aggregate Shortfall Quantity in respect of all Nominations accepted or deemed accepted on such Day; multiplied by
- (b) fifty per cent (50%) of the SMBP at the end of such Day to which the aggregate Shortfall Quantity relates;

**“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 the period from the first Day of a calendar month until the last Day of the same calendar month, and **“Monthly”** shall be construed accordingly;

**“Monthly Service Fee”** has the meaning given in Clause 11.3(a);

**“National Balancing Point”** or **“NBP”** means the notional delivery 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 5.2(e);

**“Nominated Injection Rate”** has the meaning given in Clause 5.2(d);

**“Nominated Quantity”** means in respect of a Nomination Period, the Nominated Injection Quantity or the Nominated Withdrawal Quantity (as the context so requires);

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

**“Nominated Withdrawal Quantity”** has the meaning given in Clause 5.2(e);

**“Nominated Withdrawal Rate”** has the meaning given in Clause 5.2(d);

**“Nomination”** means an Injection Nomination or a Withdrawal Nomination (as the context so requires);

**“Nomination End Time”** has the meaning given in Clause 5.2(c);

**“Nomination Period”** means, in respect of a Nomination, the period from the Nomination Start Time to the Nomination End Time;

**“Nomination Start Time”** has the meaning given in Clause 5.2(c);

**“Non-Compliant Gas”** means Natural Gas which does not comply with the gas specification requirements in the Applicable Gas Entry Conditions;

**“Notifying Party”** has the meaning given in Clause 17.1;

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

**“Operating Margins Purposes”** has the meaning given in paragraph 1.1.2 of Section K of the Transportation Principal Document of the Network Code;

**“Overrun Charges”** means the Injection Overrun Charge and/or the Withdrawal Overrun Charge (as the context so requires);

**“Parent Company Guarantee”** means a parent company guarantee substantially in the form set out in Schedule 6;

**“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 7.3) 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 10.1(b)(iv);

**“Required Credit Rating”** has the meaning given in Clause 16.1(c);

**“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 16.1(b);

**“Security Provider”** has the meaning given in Clause 16.1(a);

**“Service”** means a service provided by the Service Provider to the Customer in accordance with this Agreement, comprising:

- (a) making available Storage Capacity;
- (b) injecting Natural Gas into the Facility in accordance with an Injection Nomination; and
- (c) withdrawing Natural Gas from the Facility in accordance with a Withdrawal Nomination;

“**Service Availability Factor**” is, in respect of a Day, the factor determined in accordance with Clause 8 which represents the extent to which the withdrawal or injection component of the Service is available to the Customer, the factor being one (1) where the withdrawal or injection component of the Service is fully available to the Customer and zero (0) where the withdrawal or injection component of the Service is fully unavailable to the Customer;

“**Service End Date**” means 05:00 hours on the date specified as such in Schedule 1;

“**Service Provider’s Credit Limit**” has the meaning given in Clause 16.1(d);

“**Service Start Date**” means 05:00 hours on the date specified as such in Schedule 1;

“**Service Test**” has the meaning given in Clause 9.1;

“**Service Year**” means the period commencing on (and including) the Service Start Date and ending on (and including):

- (a) the Service End Date; or
- (b) if earlier, the date of termination of this Agreement;

“**Shortfall Quantity**” means, except as specified in Clause 14.5, where pursuant to a Nomination, the Actual Utilisation Quantity is less than ninety-eight per cent (98%) of the Nominated Quantity in respect of any Hour in the relevant Nomination Period, the difference between ninety-eight per cent (98%) of the Nominated Quantity and the Actual Utilisation Quantity for such Hour;

“**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, 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 Space) to inject Natural Gas into the Facility at that rate of injection, 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 to withdraw Natural Gas from the Facility at that rate of withdrawal, 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 6; 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 commencing on the Service Start Date and ending at 05:00 hours on 1 October in the Service Year;

**"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"** means the period commencing on the Service Start Date and ending on either:

- (a) the final Day of the Run-off Period; or
- (b) if earlier, the date of termination of this Agreement;

**"Therm"** has the meaning given in Clause 1.3;

**"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"** has the meaning given in Clause 11.2;

**"Winter Period"** means the period commencing at 05:00 hours on 1 October in the Service Year and ending on the Service End Date;

**“Withdrawal Amount”** means the amount specified as such in Schedule 1;

**“Withdrawal Charge”** means the charge payable by the Customer for the Service Provider withdrawing Natural Gas from the Facility on behalf of the Customer pursuant to a Withdrawal Nomination, calculated in accordance with Clause 11.5;

**“Withdrawal Nomination”** has the meaning given in Clause 5.1(b);

**“Withdrawal Overrun Amount”** means the amount specified as such in Schedule 1;

**“Withdrawal Overrun Charge”** means the charge payable by the Customer for the Service Provider withdrawing Natural Gas from the Facility on behalf of the Customer at the Excess Withdrawal Rate, calculated in accordance with Clause 11.6(b);

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

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

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 be construed as being by way of 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.

### 1.3 **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.

### 1.4 **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.

### 1.5 **Service Provider and Facility Operator**

If:

- (a) the Service Provider is not the Facility Operator; and
- (b) an obligation in this Agreement to be performed by the Service Provider would require the Service Provider to act as if it were the Facility Operator,

then the Service Provider shall procure that the Facility Operator undertakes, performs, and complies with the relevant obligation.

## 2 **TERM**

### 2.1 **Execution Date**

This Agreement shall come into force on the Execution Date and shall continue in full force and effect for the Term.

## 2.2 **Non-Exclusivity**

This Agreement shall be non-exclusive and the Customer shall be entitled to procure similar or alternative services from third parties in respect of the Term.

## 3 **SCOPE OF AGREEMENT**

3.1 The Service Provider will provide the Service to the Customer during the Term in accordance with the terms and conditions of this Agreement.

3.2 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; or
- (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.

3.3 During the Term, the Customer may use the Facility by:

- (a) injecting Natural Gas into the Facility;
- (b) having Gas-in-Storage in the Facility; and
- (c) withdrawing Natural Gas from the Facility

in accordance with the terms of this Agreement.

3.4 For the purposes of this Agreement, references to “**injection**” and “**withdrawal**” of Natural Gas from the Facility are to be construed as follows:

- (a) injection is injection of Natural Gas into the Facility, and withdrawal is withdrawal of Natural Gas from the Facility in accordance with this Agreement; and
- (b) injection or withdrawal is made by the Customer where it is made pursuant to a Nomination made by the Customer

and quantities of Natural Gas “**injected**” or “**withdrawn**” are to be construed as meaning quantities injected or withdrawn pursuant to the terms of this Agreement, and as appropriate, other Gas Storage Agreements.

3.5 In consideration of the Service Provider providing the Service to the Customer, the Customer will pay to the Service Provider:

- (a) during the Service Year, the Charges; and
- (b) during the Run-off Period, the Injection Charges, Withdrawal Charges, and the Overrun Charges only,

in accordance with this Agreement.

## 4 **SERVICE**

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

4.1 The Customer’s “**Gas-in-Storage**” on any Day in the Term in relation to the Facility and the Service Provider, pursuant to this Agreement, is:

- (a) the sum of:
    - (i) the Customer's Gas-in-Storage at the start of the Term (if any) (pursuant to a prior agreement with the Service Provider);
    - (ii) the quantities of Natural Gas injected by the Customer, pursuant to this Agreement, on Days in the Term up to but not including that Day; and
    - (iii) the quantities of Transferred Gas-in-Storage, pursuant to this Agreement, where the Customer is the Transferee Storage Customer and such Gas-in Storage has been transferred pursuant to this Agreement, 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, pursuant to this Agreement, on Days in the Term up to but not including that Day; and
    - (ii) the quantities of Transferred Gas-in-Storage, pursuant to this Agreement, where the Customer is the Transferor Storage Customer, and such Gas-in Storage has been transferred pursuant to this Agreement, with effect from Days in the Term up to and including that Day.
- 4.2 During the Term, 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 of receiving such request, notify the Customer of the Gas-in-Storage which the Customer holds in the Facility at the time specified in the Customer's request.
- 4.3 If the Customer has Gas-in-Storage in the Facility, the Customer shall be entitled by submitting a Withdrawal Nomination (subject to and in accordance with this Agreement, including Clauses 7 and 13) to have a quantity of Natural Gas not exceeding its Gas-in-Storage delivered to the Gas Delivery Point by way of withdrawal.
- 4.4 Subject to Clauses 7 and 13, 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.
- 4.5 The Customer shall be entitled (subject to and in accordance with this Agreement, including Clauses 7 and 13) to have a quantity of Natural Gas equal to its available Storage Space injected (by submitting an Injection Nomination) or transferred pursuant to Clause 6, into the Facility, to be delivered to the Gas Delivery Point.
- 4.6 The Service Provider shall ensure that all quantities of Natural Gas injected into or withdrawn from the Facility are measured in accordance with the measurement procedure specified in the Storage Connection Agreement.
- 4.7 Title and risk of loss or damage to the Natural Gas shall pass at the Gas Delivery Point and shall be treated as passing:
  - (a) from the Customer to the Service Provider, for Natural Gas injected by the Customer into the Facility; and
  - (b) from the Service Provider to the Customer for Natural Gas withdrawn by the Customer from the Facility.
- 4.8 The Facility Withdrawal Capacity shall be deemed to be equal to the Facility Withdrawal Capacity (Nominal), unless the Facility Operator has, in respect of the relevant Day, made a contrary public notification on the website identified in Schedule 1, in which case the Facility Withdrawal Capacity shall be deemed to be such publicly notified capacity. For the avoidance of doubt, the Service Provider shall ensure that the Facility Withdrawal Capacity may only be zero (0) in the event of a Maintenance Period or an event of Force Majeure.

### **Non-Compliant Gas**

- 4.9 All Natural Gas withdrawn from the Facility or injected into the Facility 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:
- (a) accept or continue to accept delivery of such Non-Compliant Gas (and the relevant Party's rights under Clauses 4.10 or 4.11 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
  - (b) 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:
    - (i) the delivering Party notifies the receiving Party that it is able to deliver Compliant Gas to satisfy the Nomination; and
    - (ii) the receiving Party gives written agreement to receive such Compliant Gas,the delivering Party may resume delivery of Compliant Gas to satisfy such Nomination.
- 4.10 To the extent that Non-Compliant Gas is delivered:
- (a) 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 (as such term is defined in the Network Code) in accordance with Section K1.3.1 of the Transportation Principal Document of the Network Code) in consequence of such delivery, including (without limitation) costs and expenses incurred:
    - (i) in cleaning or clearing any part of the NTS; and/or
    - (ii) 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:
    - (A) such amount shall not exceed the amount of Liquidated Damages that would otherwise have been payable by the Service Provider under Clauses 14.1 and 14.2 had the Customer rejected the Non-Compliant Gas; and
    - (B) the Customer shall have no other claim (including for Liquidated Damages) against the Service Provider in respect of such Non-Compliant Gas; or
  - (b) 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, including (without limitation) costs and expenses incurred:
    - (i) in cleaning or clearing any part of the Facility; and/or

- (ii) 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:

- (A) 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
- (B) the Service Provider shall have no other claim against the Customer in respect of such Non-Compliant Gas.

4.11 To the extent that the Service Provider fails to deliver Compliant Gas pursuant to Clause 4.9 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 Clauses 5 and 14.

4.12 The Customer shall be responsible for procuring:

- (a) NTS Entry Capacity (as defined in the Network Code) for the entry to the NTS of Natural Gas withdrawn from the Facility pursuant to a Withdrawal Nomination; and
- (b) NTS Exit Capacity (as defined in the Network Code) for the offtake from the NTS of Natural Gas injected into the Facility pursuant to an Injection Nomination,

and shall make the appropriate nominations for such Natural Gas as are required under the Network Code.

4.13 In the event of a dispute between the Parties in relation to the delivery of Non-Compliant Gas, either Party may refer such dispute to an Expert in accordance with Clause 25.

## 5 NOMINATIONS

### *Customer submitting a Nomination*

5.1 Where the Customer wishes to have a quantity of Natural Gas:

- (a) injected into the Facility it shall submit a nomination (an “**Injection Nomination**”); or
- (b) withdrawn from the Facility it shall submit a nomination (a “**Withdrawal Nomination**”),

in accordance with this Clause 5 and the provisions of this Agreement.

5.2 Each Nomination shall be submitted (in accordance with Clause 20) substantially in the form set out in Schedule 2 (“**Nomination Form**”) and must specify:

- (a) the Day to which the Nomination relates;
- (b) whether it is an Injection Nomination or a Withdrawal Nomination;
- (c) the Hour from which the Nomination shall take effect (“**Nomination Start Time**”) and the Hour from which the Nomination shall cease to take effect (“**Nomination End Time**”);

- (d) the rate (in kWh per hour) of injection or withdrawal for each Hour of the Nomination Period to which it relates (the “**Nominated Injection Rate**” or “**Nominated Withdrawal Rate**”, as applicable);
  - (e) the quantity of Natural Gas (in kWh) which the Customer wishes to have injected (the “**Nominated Injection Quantity**”) or withdrawn (the “**Nominated Withdrawal Quantity**”) over the Nomination Period, in a Day; and
  - (f) the date and time of the request.
- 5.3 A Nomination may not specify a Nomination Start Time which (by reference to the first hour bar after the time the Nomination was made) is any earlier than the expiry of the Injection Response Time or (as the case may be) the Withdrawal Response Time following such hour bar or such other period of time as may be agreed by the Parties, provided if the Customer requests the Service Provider to give effect to the Nomination at an earlier time the Service Provider shall use its reasonable endeavours to do so.
- 5.4 The Customer shall not be entitled to:
- (a) make a Nomination, either an Injection Nomination and/or Withdrawal Nomination (as the case may be) that is less than zero (0); or
  - (b) 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 (after taking into account any Storage Space Transfer in respect of which such Day falls within the Storage Transfer Period), pursuant to this Agreement; or
  - (c) specify a Nominated Withdrawal Quantity which, if the Withdrawal Nomination were implemented by the Service Provider, would (after taking into account any Storage Gas Transfer in respect of which such Day is the Transfer Date) make the Customer’s Gas-in-Storage fall below zero (0).
- 5.5 The Customer may in its Nomination, in respect of any Hour on any given Day, request that the Service Provider permit, in the Service Year, a Nominated Injection Rate in excess of the Customer’s Available Injection Rate (“**Excess Injection Rate**”) and/or a Nominated Withdrawal Rate in excess of the Customer’s Available Withdrawal Rate (“**Excess Withdrawal Rate**”), and in such case the Customer shall complete column ‘B’ and column ‘C’ of the Nomination Form.

***Service Provider’s response to a Nomination***

- 5.6 If the Customer submits a Nomination, the Service Provider shall, as soon as reasonably practicable and in any case within forty-five (45) minutes, notify the Customer for each Hour in the Nomination Period of:
- (a) the quantity of Natural Gas the Service Provider intends to inject or (as the case may be) withdraw from the Facility during the Nomination Period; and
  - (b) the proposed rate of injection or (as the case may be) rate of withdrawal for each Hour during the Nomination Period (including whether the Service Provider is prepared (in its sole discretion) to make Natural Gas available (in whole or in part) at any Excess Injection Rate or Excess Withdrawal Rate (as the case may be) requested).
- 5.7 For the purposes of Clause 5.6 and in accordance with Clause 20.2, the Service Provider shall notify the Customer by responding to the Customer’s Nomination Form with the final column ‘D’ completed, and by counter-signing and dating such form, and returning such form to the Customer.
- 5.8 If the Service Provider has responded to the Nomination in accordance with Clause 5.7 the Service Provider shall ensure the Actual Utilisation Quantity in the Nomination Period is the

quantity of Natural Gas notified by the Service Provider in accordance with Clause 5.6(a) and the rate at which Natural Gas is injected or withdrawn is the rate notified by the Service Provider in accordance with Clause 5.6(b).

- 5.9 The Service Provider shall be entitled (but not obliged) to adjust downwards a Nominated Quantity under a Nomination, for a Nomination Period to the extent necessary to ensure that the injection rate does not exceed the Customer's Available Injection Rate or that the withdrawal rate does not exceed the Customer's Available Withdrawal Rate.
- 5.10 The Service Provider may (but shall not be required to) reject a Nomination:
- (a) if it does not comply with the requirements in Clause 5.2;
  - (b) which is not in accordance with Clause 5.3 or 5.4;
  - (c) if, during such Nomination Period, the Service Provider would (without taking the Nomination into account) be withdrawing Natural Gas at the Facility Withdrawal Capacity corresponding to the Facility Gas-In Storage in accordance with Schedule 1, Part 4; or
  - (d) if submitted other than in accordance with Clause 20,

and if the Service Provider rejects a Nomination in accordance with this Clause 5.10, subject to the Service Provider giving notice to the Customer of such rejection (together with the reasons for the rejection), such Nomination shall have no effect for the purposes of this Agreement.

- 5.11 At any time and from time to time on a Day, the Customer is entitled to submit a new Nomination relating to (part or all of) the same Nomination Period as any previous Nomination. Any rejection of a Nomination by the Service Provider shall be without prejudice to the Service Provider's obligation to perform in respect of any other prevailing valid Nominations submitted on the Day.
- 5.12 If in respect of a Nomination, the Service Provider does not notify the Customer in accordance with Clauses 5.6 and 5.7, or 5.10, within forty-five (45) minutes from the time the Nomination was made, then the Nomination shall be deemed to have been accepted.

***Information, allocation, and charging***

- 5.13 In respect of each Nomination Period, the Service Provider shall notify the Customer in writing of the Actual Utilisation Quantity (and where applicable any Shortfall Quantity) by no later than the start of the seventh (7th) Business Day following the Day in respect of which the Nomination was made.
- 5.14 The Customer authorises and appoints the Allocation Agent to submit on its behalf an Entry Allocation Statement or (as the case may be) Exit Allocation Statement in respect of a Day on which the Customer made a Nomination in respect of which the quantity specified as delivered to or offtaken from the NTS by the Customer at the Gas Delivery Point is equal to the sum of the Actual Utilisation Quantity for each Hour in respect of which the Customer made a Nomination on such Day.
- 5.15 If the Service Provider:
- (a) injects Natural Gas into the Facility in accordance with an Injection Nomination, the Customer shall pay the Injection Charges in accordance with Clauses 11.1 and 11.4;
  - (b) withdraws Natural Gas from the Facility in accordance with a Withdrawal Nomination, the Customer shall pay the Withdrawal Charges in accordance with Clauses 11.1 and 11.5; and

- (c) provides the Service to the Customer at an Excess Injection Rate or an Excess Withdrawal Rate (as the case may be), the Customer shall pay the Overrun Charges in accordance with Clauses 11.1 and 11.6.

## 6 INTERRUPTION, REALLOCATION AND STORAGE TRANSFERS

### *Interruption*

6.1 Subject always to Clause 6.3(a), 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 Service Year for:

- (a) (if the Service Provider is the Facility Operator) the Service Provider's own withdrawals, or where the aggregate of the rate of withdrawal pursuant to a Withdrawal Nomination and the withdrawal rate of all other users of the Facility exceeds the Facility Withdrawal Capacity; or
- (b) (if the Service Provider is not the Facility Operator) where the Facility Operator has interrupted the Service Provider in accordance with the Service Provider's Gas Storage Agreement.

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**") in accordance with Clause 20.2 and substantially in the form set out in Schedule 3, and signed by the Service Provider, which shall specify:

- (a) the Day to which the Interruption Notice relates;
- (b) 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 forty-five (45) minutes after the submission of the Interruption Notice, *provided that* the Service Provider shall issue an Interruption Notice as soon as reasonably practicable after becoming aware of the circumstance that results in the need to issue such Interruption Notice;
- (c) the interruption number;
- (d) the estimated duration of the interruption (the "**Interruption Period**");
- (e) whether the interruption is in part or in full;
- (f) the nominated Withdrawal Rate (in accordance with column 'A' of the Interruption Notice);
- (g) if the interruption is in part, the rate of withdrawal unavailable to the Customer for each Hour of the Interruption Period (the "**Interrupted Withdrawal Rate**") (in accordance with column 'B' of the Interruption Notice);
- (h) the total end of day quantity to be interrupted by the Service Provider and not provided by the Service Provider to the Customer;
- (i) the total end of day quantity to be provided by the Service Provider to the Customer as a result of the interruption (in accordance with column 'C' of the Interruption Notice) (the "**Interrupted Withdrawal Quantity**"); and
- (j) the date and time of the request in the Interruption Notice.

6.3 In the event that the Service Provider does interrupt the Customer's withdrawal:

- (a) 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 total 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 Withdrawal Capacity; and
- (b) if the Service Provider is able to increase the rate of withdrawal at any time after an Interruption Notice has been served, the Service Provider shall notify the Customer of such higher rate of withdrawal that could be delivered, and the Customer, at its absolute discretion, may submit a revised Nomination; and
- (c) the calculation for determining whether the Service Provider is in Default and whether there is a Shortfall Quantity for the purposes of Clause 14, shall be the difference between ninety-eight percent (98%) of the Nominated Quantity and ((i) the Actual Utilisation Quantity; plus (ii) the additional quantity withdrawn from the Facility pursuant to nomination(s) made by other storage user(s) (if any) (for which the Customer's Withdrawal Nomination was interrupted (provided that the Service Provider can provide evidence to the Customer's satisfaction of such withdrawal))).

### **Reallocation**

6.4 Where the Customer has made a Withdrawal Nomination, but the Service Provider has had or 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, substantially in the form set out in Schedule 4 (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 take all reasonable steps to ensure that the Service Provider or the Nominated Third Party (as the case may be) is 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 reasonable 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.

### ***Storage Transfers***

#### **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 Term:
  - (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 (2) users of the Facility made for the purposes of Clause 6.8(a); and
  - (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; and
  - (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 sixty (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 five (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 five (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 17, 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 five (5) Business Days after giving a Storage Termination Notice to the Transferee Storage Customer; and
  - (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 17 shall not affect any Storage Gas Transfer made before the Storage Discontinuance Date.

## **7 MAINTENANCE**

- 7.1 The Service Provider shall use reasonable endeavours to ensure to the extent possible that:
- (a) the duration of any Maintenance Period in respect of the Facility is minimised;

- (b) Maintenance Periods for the Facility are scheduled 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; and
  - (c) the 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.
- 7.2 The Customer acknowledges that the Facility may be (in whole or in part) 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.
- 7.3 The Service Provider (or, where relevant, the Facility Operator) 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.

## **8 SERVICE AVAILABILITY**

### **8.1 General**

- (a) The Service Provider shall ensure that the Facility is available at all times during the Term for providing the Service, except:
  - (i) during any Maintenance Period; and
  - (ii) during an event of Force Majeure, duly and properly notified pursuant to Clause 13.2.
- (b) If the Facility is (in whole or in part) unavailable to the Customer for withdrawal and/or injection during the Term for reasons other than those set out in Clause 8.1(a), 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 as soon as reasonably practicable of such unavailability, the reasons therefor and the estimated period during which such unavailability will continue.

### **8.2 Service Availability Factor**

- (a) Subject to Clauses 8.2(b) and (c), in respect of any Day during the Term, the Service Availability Factor shall be the factor determined as:
  - (i) for a Day in respect of which the Actual Utilisation Quantity is less than the Nominated Quantity, the factor which represents the extent to which the Nominated Quantity was made available to the Customer;
  - (ii) for a Day falling in a Maintenance Period, the factor which represents the extent to which the Facility's aggregate withdrawal capacity is reduced on such Day;
  - (iii) for a Day in respect of which either:
    - (A) the Service Provider has declared Force Majeure; or
    - (B) the injection or withdrawal component of the Service is not fully available to the Customer other than for the reasons in Clauses 8.2(a)(ii) and 8.2(a)(iii)(A),

the factor which represents the extent to which (if any) the withdrawal or injection component of the Service is available to the Customer on such Day.

- (b) For the purposes of Clause 8.2(a):
- (i) the factor shall be less than one (1) in the circumstances in Clauses 8.2(a)(ii) and (iii) where there is reduction in the availability of the withdrawal component of the Service, notwithstanding there may be no reduction in the availability of the injection component of the Service on the same Day;
  - (ii) the factor shall only be less than one (1) for a Day by reason of the unavailability of the injection component of the Service due to the circumstances in Clauses 8.2(a)(ii) and (iii) provided the Customer submitted a valid Injection Nomination for such Day;
  - (iii) subject to Clause 8.2(b)(ii), where on a Day there is a reduction in both the withdrawal and injection component of the Service for the reasons referred to in 8.2(a), the factor for the Day shall be determined by reference to the extent to whichever of the withdrawal or injection component of the Service is least available to the Customer on the Day;
  - (iv) where on a Day more than one of the circumstances in Clause 8.2(a) apply, the factor for the Day shall reflect the aggregate extent to which the injection or withdrawal component of the Service was unavailable to the Customer.
- (c) In relation to a Day in respect of which:
- (i) none of the circumstances in Clause 8.2(a) apply; or
  - (ii) the Service Provider makes available gas for withdrawal in accordance with the requirements of Part 4 of Schedule 1; or
  - (iii) the injection or withdrawal component of the Service is not fully available to the Customer solely by reason of NGG undertaking maintenance of the NTS on the Day; or
  - (iv) the injection component of the Service is not available, in the event the Customer has not served a valid Injection Nomination and provided none of the circumstances in Clause 8.2(a) apply in relation to the withdrawal component of the Service,

the Service Availability Factor for the Day shall be one (1).

### 8.3 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 to 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 in accordance with Clause 6.

## 9 SERVICE TEST

- 9.1 The Customer may test the Service Provider's ability to comply with a Nomination, including without limitation communications between the Parties ("**Service Test**") at any time during the Service Year, excluding during a Maintenance Period where such Service Test would require the physical injection of Natural Gas into the Facility, or withdrawal of Natural Gas from the Facility.
- 9.2 If a Service Test results in the Service Provider complying with a Nomination, the Customer shall pay the relevant Charges, provided that where the Service Test tests only the communications between the Parties, no charges shall be due or payable.

## 10 RUN-OFF PERIOD

- 10.1 If at the end of the Service Year the Customer has Gas-in-Storage, pursuant to this Agreement with the Service Provider, in the Facility and:
- (a) the Service Provider and the Customer have entered into a new agreement for the provision of storage services for the period immediately following the Service End Date, subject to any re-profiling tender in accordance with Section K of the Transportation Principle Document of the Network Code, the Parties agree that the Customer's Gas-in-Storage, pursuant to this Agreement, at the Service End Date shall be treated as the Customer's opening Gas-in-Storage (up to a maximum amount equal to the Customer's storage space capacity under the new agreement) with the Service Provider, for the purposes of the new agreement; or
  - (b) either:
    - (i) the Service Provider and the Customer have not entered into an agreement for the provision of storage services for the period immediately following the Service End Date; or
    - (ii) the Service Provider and the Customer have entered into a new agreement, as contemplated under Clause 10.1(a), and the Customer's Gas-in-Storage under this Agreement at the Service End Date is greater than the Customer's storage space capacity under the new agreement,then:
    - (iii) during the Run-off Period and without prejudice to the Customer's rights to undertake any trade, transfer or re-profiling tender before the Run-off Period, the Customer may trade or transfer its Gas-in-Storage in accordance with Section K of the Transportation Principle Document of the Network Code; and
    - (iv) if at the end of the Run-off Period the Customer has any Gas-in-Storage under this Agreement, ("**Reconciliation Quantity**"), the Service Provider shall be deemed to purchase the Reconciliation Quantity from the Customer (irrespective of whether the Reconciliation Quantity results from the Service Provider's failure to deliver Gas-in-Storage, an event of Force Majeure, a Maintenance Period or otherwise).
- 10.2 If the Service Provider is deemed to purchase the Reconciliation Quantity, pursuant to Clause 10.1(b)(iv), the Service Provider shall pay the Customer an amount equal to the quantity of the Reconciliation Quantity multiplied by the SMSP for the last Day of the Run-off Period as quoted by ICE. The Customer shall have the right to invoice the Service Provider in respect of the Reconciliation Quantity and the provisions of Clause 11 shall apply.

## 11 CHARGES AND INVOICING

11.1 The Customer shall pay to the Service Provider:

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

(together “**Charges**”) each calculated in accordance with this Agreement.

11.2 Amounts in respect of Charges stated in this Agreement are exclusive of applicable value added tax (“**VAT**”), other Taxes and the Climate Change Levy.

### 11.3 Monthly Service Fee

- (a) The amount of the Annual Service Fee payable in respect of each Month (the “**Monthly Service Fee**”) in the Service Year shall be the sum of all Daily Service Fees in such Month.
- (b) The “**Daily Service Fee**” shall be calculated as

$$\text{Daily Service Fee} = \text{SAF}_D \times P_D$$

where:

SAF = the Service Availability Factor on a Day, as determined in accordance with Clause 8;

P =

(i) in the Summer Period, an amount equal to:

- (A) the Annual Service Fee divided by the number of Days in the Summer Period; multiplied by
- (B) twenty per cent (20%);

(ii) in the Winter Period, an amount equal to:

- (A) the Annual Service Fee divided by the number of Days in the Winter Period; multiplied by
- (B) eighty per cent (80%); and

D = the relevant Day for calculation of the Daily Service Fee.

(c) The Monthly Service Fee shall not be payable in respect of the Run-off Period in accordance with Clause 3.5.

### 11.4 Injection Charges

In respect of each Injection Nomination, the Injection Charge (in pounds sterling) shall be payable by the Customer to the Service Provider, and shall be calculated by multiplying the Injection Amount (in p/kWh) by the aggregate of the Injected Quantity (in kWh) for each Day in the Invoice Period.

### 11.5 **Withdrawal Charges**

In respect of each Withdrawal Nomination, the Withdrawal Charge (in pounds sterling) shall be payable by the Customer to the Service Provider, and shall be calculated by multiplying the Withdrawal Amount (in p/kWh) by the aggregate of the Withdrawn Quantity (in kWh) for each Day in the Invoice Period.

### 11.6 **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) the Injection Overrun Charge (in pounds sterling), calculated by multiplying the Injection Overrun Amount (in p/kWh) by the Excess Injection Rate (in kWh) by the number of hours of excess injection; and
- (b) the Withdrawal Overrun Charge, calculated by multiplying the Withdrawal Overrun Amount (in p/kWh) by the Excess Withdrawal Rate (in kWh) by the number of hours of excess withdrawal,

for each Day in the Invoice Period.

### 11.7 **Monthly Invoicing**

- (a) The Service Provider shall, in respect of each Month of the Service Year (the “**Invoice Period**”), on or before the third (3<sup>rd</sup>) Business Day of the Month following the end of that Invoice Period, provide the Customer with appropriate supporting information in a form satisfactory to the Customer for the Customer’s agreement (acting reasonably) of the Charges due to be paid in respect of the Invoice Period in advance of issuing a VAT invoice.
- (b) Subject to Clause 12.6, following the Customer’s agreement in respect of the Charges due and payable for the relevant Invoice Period, and in any event on or before the tenth (10<sup>th</sup>) Business Day of the Month following the end of the relevant Invoice Period, the Service Provider shall issue to the Customer a VAT invoice (with appropriate supporting information in a form satisfactory to the Customer, acting reasonably) specifying:
  - (i) the Month and purchase order number to which the invoice relates;
  - (ii) the Monthly Service Fee, and the Daily Service Fee and the Service Availability Factor for each Day in the Month;
  - (iii) the quantity of Natural Gas injected during the Month and the sum payable in respect of the Injection Charge;
  - (iv) the quantity of Natural gas withdrawn during the Month and the sum payable in respect of the Withdrawal Charge;
  - (v) the quantity of Natural Gas subject to an Overrun Charge during the Month and the sum payable in respect of the Overrun Charges;
  - (vi) any applicable VAT and Taxes;
  - (vii) any sums payable by the Service Provider to the Customer in accordance with Clause 6.7; and
  - (viii) the total sum payable by the Customer in respect of the Invoice Period, being the aggregate of the sums calculated pursuant to Clause 11.7(b)(ii) to (vi) (each as

agreed with the Customer in accordance with Clause 11.7(a)), less the sums calculated pursuant to Clause 11.7(b)(vii).

- 11.8 Each Party shall promptly provide the other with valid VAT invoices specifying any sums (other than those referred to in Clause 11.1) due or owing under this Agreement.
- 11.9 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.

## 12 PAYMENT

- 12.1 The “**Due Date**” in respect of an invoice is:
- (a) for invoices provided in accordance with and in compliance with Clause 11.7, the twenty-fifth (25<sup>th</sup>) day of the month following the end of the relevant Invoice Period; and
  - (b) subject to Clause 12.6(b), in respect of any other invoice (including invoices with a manifest error regarding the total amount due and the Charges agreed to be paid by the Customer in accordance with Clause 11.7(a)), the twenty-fifth (25<sup>th</sup>) day of the month that follows the month in which the Service Provider provides a revised invoice in respect of the relevant Invoice Period in accordance with and in compliance with Clause 11.7, and

where the Due Date is not a Business Day, the next following Business Day.

- 12.2 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.
- 12.3 Payments by the Customer to the Service Provider shall be made to the bank account set out in Schedule 1, or to such other account as may be notified (on not less than thirty (30) days’ notice) by the Service Provider to the Customer.
- 12.4 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.
- 12.5 Notwithstanding any other provisions of this Clause 12, 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.

### 12.6 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 and may refer such dispute to an Expert in accordance with Clause 25.
- (b) Upon determination or agreement of such dispute, any amount underpaid or overpaid shall be paid within fifteen (15) Business Days of receipt of the Service Provider’s invoice for such amount, 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 (1%)) from the Due Date up to the date of repayment of the underpaid or overpaid amount.

## 12.7 **Payment Default**

If a Party fails on the Due Date to make payment as required pursuant to Clauses 12.1 and 12.2, 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%).

## 12.8 **Final Adjustments**

Any monies due and owing by either Party to the other shall be paid (including any monies incurred in the Run-off Period), any corrections or adjustments to payments previously made shall be determined, and any refunds due shall be made within sixty (60) days after:

- (a) the Service End Date, if Clause 10.1(a) applies; or
- (b) either:
  - (i) the final date of the Run-off Period; or
  - (ii) if earlier, the date of termination of this Agreement.

## 13 **FORCE MAJEURE AND ILLEGALITY**

### 13.1 **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 13, 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 Service Availability Factor for such Day affected by Force Majeure shall be reduced and determined in accordance with Clause 8.

### 13.2 **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).

### 13.3 **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 17.2, 17.4 and 17.5 shall apply for which purposes the Party giving notice pursuant to this Clause 13.3 shall be the “**Affected Party**” and the other Party shall be the “**Notifying Party**”.

## **14 DEFAULT**

- 14.1 To the extent the Actual Utilisation Quantity delivered by the Service Provider is less than ninety-eight per cent (98%) of the Nomination in respect of any Hour in a Nomination Period, or if the circumstances in Clause 14.5 apply, in circumstances where such failure is not excused by Force Majeure or where Clause 7 does not apply, such failure shall be a Default.
- 14.2 To the extent that on any 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.
- 14.3 The Customer shall be entitled to raise an invoice in respect of Liquidated Damages in accordance with Clause 11.8.
- 14.4 For the purposes of calculating the Shortfall Quantity on the basis of the Nominated Quantity, the Nominated Quantity in respect of a Nomination Period shall only be adjusted in accordance with Clause 5.9.
- 14.5 Where the Service Provider agrees to inject or withdraw Natural Gas at an injection rate in excess of the Customer’s Available Injection Rate or a withdrawal rate in excess of the Customer’s Available Withdrawal Rate (as the case may be) and fails to inject or withdraw Natural Gas at such excess rate, the Shortfall Quantity shall be determined on an Hourly basis and shall be calculated for the Nomination Period, as the sum of for each Hour within such Nomination Period, the difference between the aggregate rate agreed to by the Service Provider, and the actual rate at which Natural Gas was injected or withdrawn.

## **15 LIABILITY**

- 15.1 The maximum aggregate liability of a Party to the other Party under or in connection with this Agreement 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;
  - (c) any liability which cannot be excluded or limited by law;
  - (d) any of the Service Provider’s liabilities and obligations to the Customer under the Network Code;
  - (e) (in respect of the Customer only) any amounts claimed pursuant to a claim by the Customer against the Service Provider for the purchase of Customer’s Gas-in-Storage contemplated under Clause 10.1(b)(iv), deemed purchase of the Reconciliation Quantity, in accordance with Clause 10.2 or the loss or destruction of Customer’s Gas-in-Storage; and
  - (f) any obligation under this Agreement to pay Liquidated Damages.
- 15.2 In no circumstances shall a Party be liable to the other Party under this Agreement in respect of any breach of, or as a result of any act or omission in the course of, or in connection with the performance of this Agreement, for or in respect of:
  - (a) any consequential, indirect, exemplary, special or incidental loss or damage; or

- (b) any direct or indirect loss or deferment of revenue or profit, loss of use, contract or goodwill.
- 15.3 Without prejudice to the other provisions of this Clause 15, 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).
- 15.4 The provisions of Clause 15.3 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.
- 15.5 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 15.3, 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 (including any Liquidated Damages) 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.
- 15.6 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.

## 16 CREDIT SECURITY

### 16.1 Definitions

For the purposes of this Agreement, in relation to the Service Provider:

- (a) "**Security Provider**" means a person which, in accordance with the provisions of this Agreement provides or is to provide a Letter of Credit or Parent Company Guarantee in respect of the Service Provider's obligations under this Agreement;
- (b) "**Security Document**" means a Letter of Credit or Parent Company Guarantee;
- (c) "**Required Credit Rating**" means:
  - (i) 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) or Baa3 (as determined by Moody's rating agency), with stable outlook; or
  - (ii) 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) or A3 (as determined by Moody's rating agency), with stable outlook; and
- (d) "**Service Provider's Credit Limit**" means an amount calculated as follows:

$$(\text{Storage Space (in kWh)}) \times (\text{May Price (p/kWh)}) / 100 \times 110\%$$

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 Service 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.

## 16.2 Requirement for Service Provider to provide credit cover

- (a) Subject to Clauses 16.2(b) and 16.2(c):
- (i) if the Service Provider does not have the Required Credit Rating, then, unless the Customer agrees otherwise, the Service Provider shall, within five (5) Business Days of the Service Provider’s failure to have the Required Credit Rating, provide to the Customer a Security Document issued by a Security Provider with a Required Credit Rating in favour of the Customer, in an amount not less than the Service Provider’s Credit Limit.
  - (ii) if the Service Provider has provided a Security Document, and the Service Provider’s Security Provider ceases to have the Required Credit Rating, the Service Provider shall deliver a replacement Security Document in favour of the Customer in an amount not less than the Service Provider’s Credit Limit to the Customer issued by a replacement Security Provider with the Required Credit Rating (as soon as practicable or in accordance with Clause 16.3(c)(i)).
  - (iii) if 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) as soon as practicable, and in any event within five (5) days of the Customer’s demand or application for payment under the Security Document, so that the aggregate amount of the credit cover is restored to not less than the Service Provider’s Credit Limit.
- (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 calculating the Service Provider’s Credit Limit on the Day of the request) is less than seventy-five per cent (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 16.2(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 Service Provider’s Credit Limit calculated on the Day of the request is twenty-five per cent (25%) greater than the amount of credit cover provided at any time.

## 16.3 Forms and terms of credit cover

- (a) For the purposes of Clause 16.2, the Service Provider may provide credit cover in the form of:
  - (i) a Letter of Credit in accordance with Clause 16.3(b); or
  - (ii) a Parent Company Guarantee valid until a date not earlier than the end of the Term.
- (b) A Letter of Credit shall be:
  - (i) an unconditional irrevocable standby letter of credit, in the form substantially set out in Schedule 5, in pounds sterling, issued by a United Kingdom clearing bank or other bank or financial institution which meets the Required Credit Rating, available for payment at a London branch of the issuing bank;
  - (ii) payable to the Customer 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 16.3(c)(ii); and
  - (iii) valid until all outstanding amounts due under this Agreement have been paid and in any event shall be valid for a period of no less than twelve (12) months.
- (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 replacement Letter of Credit for the same amount and complying with the requirements of Clause 16.3(b);
  - (ii) if the Service Provider fails to comply (by the time therein required) with Clauses 16.3(c)(i) or 16.3(b)(ii), the Customer may immediately, without notice to the Service Provider, issue a notice of demand for payment of the entire outstanding amount of the Letter of Credit and the proceeds of such demand shall be paid to the Customer in accordance with Clause 16.4.

#### 16.4 Payment under credit cover

Where any amount is to be paid to the Customer in accordance with the provisions of Clauses 16.3(b)(ii) or 16.3(c)(ii):

- (a) the amount shall be paid by the Security Provider in cash, the amount so paid shall be the absolute property of the Customer and neither the Security Provider nor the Service Provider shall have any beneficial or other interest in such amount;
- (b) in the circumstances set out in Clause 16.2(b) (but not otherwise), the Customer shall pay to the Service Provider an amount (if positive) equal to:
  - (i) the amount paid by the Security Provider under Clause 16.3(b)(ii) or 16.3(c)(ii); less
  - (ii) the aggregate amount then owing by the Service Provider under this Agreement and which is unpaid after its due date for payment;
- (c) until the occurrence of any of the events referred to in Clause 16.2(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 16.3(b)(ii) or 16.3(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; and

- (d) payments owed by the Customer to the Service Provider pursuant to Clause 16.4(c) shall be paid in arrears on the last Business Day of each month.

#### 16.5 **Monthly Service Fee and Early Termination Event**

- (a) If the Service Provider is in breach of its obligations under this Clause 16, then, from the day falling fourteen (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 Monthly Service Fee to the Service Provider in respect of the period thereafter and until such time as the breach is remedied.
- (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 16.2 to 16.3(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; and
  - (iv) any of the Early Termination Events (including, for the avoidance of doubt, an event deemed as such in accordance with Clause 13.3) is done to or suffered by or occurs in relation to its Security Provider.

### 17 **TERMINATION**

17.1 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 thirty (30) days after the discovery by the Notifying Party of the occurrence of an Early Termination Event, elect to terminate this Agreement:

- (a) on expiry of the specified cure period in this Agreement or as notified by the Notifying Party in its notice to the Affected Party, provided that the Early Termination Event is capable of being cured; or
- (b) with immediate effect or on such date as notified by the Notifying Party in its notice to the Affected Party.

17.2 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 17.1. 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.

17.3 Except in the circumstances set out in Clause 17.4, the Service Provider shall retain all Gas-in-Storage at the time of the early termination of this Agreement pursuant to Clause 17.1 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 SMSP on the date of the Early Termination Event;

where:

**“Highest Price Contract”** means the greater of (i) SMBP; and (ii) the Market Product with the highest settlement price in the period between the date of the Early Termination Event and the Service End Date.

- 17.4 If the relevant event is deemed to be an Early Termination Event in accordance with Clause 13.3, the Service Provider shall retain all Gas-in-Storage at the time of the early termination of this Agreement pursuant to Clause 17.1 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.
- 17.5 Termination of this Agreement shall be without prejudice to the rights and liabilities of the Parties accrued prior to such termination provided that neither Party shall have any claim for damages or other compensation or for any other remedy which may be available but for the provision of this Clause 17:
- (a) in respect of such termination; or
  - (b) in relation to the remainder of the Term.
- 17.6 The provisions of Clauses 1 (Definitions and Interpretation), 10.1(b)(iv) and 10.2 (Run-off Period), 11 (Charges and Invoicing) 12 (Payment), 15 (Liability), 16.2(b)(i) (Requirement for Service Provider to provide credit cover), 17 (Termination), 19 (Assignment, Succession, Etc), 20 (Communications), 21 (Confidentiality), 22 (Representation, variation and waiver), 25 (Expert), 26 (Third Party Rights), 27 (Governing Law) and 29 (Counterparts) shall survive termination of this Agreement.

## **18 WARRANTIES AND UNDERTAKINGS**

- 18.1 Each Party warrants to the other that:
- (a) subject to Clause 18.2, 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 for the duration of the Term.
- 18.2 Where the Service Provider does not hold a gas shipper licence, the Service Provider warrants that it shall use the shipping services of the licensed gas shipper whose Shipper Short Code is specified in Schedule 1 for the purpose of fulfilling its obligations under this Agreement. The Service Provider warrants that such licensed gas shipper has and will continue to hold throughout the Term a licence permitting it to ship gas on the NTS, and will ship Natural Gas on the NTS on behalf of the Service Provider for the purposes of the Service Provider's performance of this Agreement.
- 18.3 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, 13 and 14, 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.
- 18.4 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.
- 18.5 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.
- 18.6 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.
- 18.7 The Customer warrants to the Service Provider that it is entering into this Agreement for Operating Margins Purposes and in accordance with the requirements of its gas transporter license.

## **19 ASSIGNMENT, SUCCESSION, ETC**

### **19.1 No Assignment**

Except as expressly provided under Clause 19.2, 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).

### **19.2 Right of Assignment**

No consent shall be required pursuant to Clause 19.1 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.

### **19.3 Successors and Assigns**

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

#### 19.4 **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.

### 20 **COMMUNICATIONS**

#### 20.1 **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 the address specified in Schedule 1; and
- (c) in the case of the Customer (for invoices only) to:  
[invoice+credits@nationalgrid.couphost.com](mailto:invoice+credits@nationalgrid.couphost.com)

Email addresses (to be sent to all): [Box.GasContractServices@nationalgrid.com](mailto:Box.GasContractServices@nationalgrid.com)

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 20.

#### 20.2 **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 (subject to Clause 20.2(b)) and 6.8 to 6.13 shall always be sent by facsimile or by electronic means;
- (b) Nominations or notices served in accordance with Clauses 5.6, 5.7, 5.10 or 6.1 to 6.3 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 10 shall always be sent by electronic means; and
- (d) termination notices under Clauses 13 or 17 must always be given by prepaid post or delivered by hand or sent by facsimile, and confirmed by electronic means.

#### 20.3 **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 20.3(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; and

- (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.

## **21 CONFIDENTIALITY**

### **21.1 No Disclosure**

Subject to Clause 21.2, 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.

### **21.2 Exceptions**

The obligations in Clause 21.1 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 25.

## **22 REPRESENTATION, VARIATION AND WAIVER**

### **22.1 Representation**

- (a) For the purposes of this Clause 22.1, "**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 Execution 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.

## **22.2 Variation**

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

## **22.3 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.

## **22.4 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.

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

- 23.1 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.
- 23.2 In the event that any of the publications or prices referred to in this Agreement cease 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.
- 23.3 If the Parties are unable to agree on any amendments which need to be made to this Agreement pursuant to Clause 23.1 or Clause 23.2, either Party may refer the matter to an Expert for determination in accordance with Clause 25.

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

- 24.1 Each Party shall co-operate with the other in the performance of this Agreement, including in relation to the making and implementing of Nominations.
- 24.2 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.

## **25 EXPERT**

- 25.1 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 25 shall have effect.
- 25.2 To start a determination, one Party must write to the other, identifying the issue and proposing an expert. As soon as reasonably practicable following such notice, the Parties must try to jointly appoint a single expert to determine the Dispute (the “**Expert**”) who shall be an independent person of suitable experience and skill agreed upon by both Parties or in lieu of such agreement:
- (a) in respect of Disputes referred to an Expert in accordance with Clause 12, selected by the President for the time being of the Institute of Chartered Accountants in England (or its successor body); and
  - (b) in respect of all other Disputes, selected by the President for the time being of the Energy Institute (or its successor body).
- 25.3 The Expert must act as an expert and not as an arbitrator. The Arbitration Act 1996 and the law of arbitration shall not apply to the Expert, to the determination procedure, or to the Expert’s decision.
- 25.4 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.
- 25.5 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.
- 25.6 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.
- 25.7 The Expert’s determination must take place in London, in English, and must be delivered within three (3) Months of the Expert’s appointment. The Expert’s final determination shall be final and binding on the Parties except in the case of manifest error by the Expert or fraud.
- 25.8 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.

## **26 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.

## **27 GOVERNING LAW**

- 27.1 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 except where any such Dispute has previously been referred to an Expert and finally determined in accordance with Clause 25.

- 27.2 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.
- 27.3 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 (a) immediately notify the Customer and (b) 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.

## **28 ANTI-CORRUPTION**

- 28.1 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 28.
- 28.2 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.
- 28.3 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.

## **29 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.

## **30 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>Customer contact details for operational notices</b>	Marked for the attention of: [ ] Address: [ ] Telephone number: [ ] Fax number: [ ]
<b>Agent (for the purposes of Clause 27.2)</b>	Name: [ ] Address: [ ] Telephone number: [ ] <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 / meets Required Credit Rating] [delete as required]
<b>Shipper Short Code</b>	[ ]

## PART 2: SERVICE PARAMETERS

<b>Service Start Date</b>	05:00 hours on 1 May [XXXX]
<b>Service End Date</b>	05:00 hours on 1 May [XXXX]
<b>Storage Space</b>	[ ] kWh
<b>Storage Injection Capacity</b>	[ ] kWh/Day
<b>Storage Withdrawal Capacity</b>	[ ] kWh/Day
<b>Injection Response Time</b>	[ ] minutes before the hour bar prior to the Nomination Start Time at which the Injection Nomination or revised Injection Nomination is to take effect
<b>Withdrawal Response Time</b>	[ ] minutes before the hour bar prior to the Nomination Start Time 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 on the Day following the Service End Date
<b>Planned Maintenance Period(s)</b>	[ ] to [ ]
<b>Website for Clauses 4.8 / 7.3</b>	[ ]

## PART 3: SERVICE CHARGES

<b>Annual Service Fee</b>	£ [ ]
<b>Injection Amount</b>	[ ] p/kWh
<b>Withdrawal Amount</b>	[ ] p/kWh
<b>Injection Overrun Amount</b>	[ ] p/kWh
<b>Withdrawal Overrun Amount</b>	[ ] p/kWh
<b>Payment Details</b>	[Bank Name]

	[Bank Address] [Bank Sort Code / SWIFT] [Bank Account Number / IBAN ] [Service Provider]
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**PART 4: CAPABILITY TABLE**

<b>Facility Gas-In-Storage (GWh)</b>	<b>Facility Withdrawal Capacity (Nominal) (kWh/h)</b>
[•]	[•]
[•]	[•]

**SCHEDULE 2**

**OPERATING MARGINS – NATIONAL GRID GAS PLC**

**FORM OF NOMINATION FORM**

<b>OPERATING MARGINS NOMINATION</b>				
<b>Facility:</b> _____ <b>To:</b> _____ <b>Telephone:</b> _____ <b>Send To:</b> _____				
<b>Date and Time of Request:</b> <input type="text" value="dd/mm/yyyy hh:mm"/>	<div style="border: 1px solid black; padding: 5px; font-size: small;"> <i>This is an Operating Margins Withdrawal Nomination under which the Service Provider is obliged to use reasonable endeavours to give effect to a Nomination as soon as possible but in any event within the contracted response time.</i> </div>			
<b>Type of Nomination:</b> <input type="text" value="Injection/Withdrawal"/> (Delete as appropriate)				
<b>Gas Day:</b> <input type="text" value="dd/mm/yyyy"/>				
<b>Nomination Number:</b> <input type="text"/> (for sequential control purposes)				
<b>NATIONAL GRID INSTRUCTION</b>				<b>SERVICE PROVIDER ACCEPTANCE</b>
	<b>A = (B + C)</b>	<b>B</b>	<b>C</b>	<b>D</b>
Hour Commencing	<b>Hourly Nominated Quantity kWh</b>	Available Injection / Withdrawal* Rate kWh per hour	Excess Injection / Withdrawal Rate* kWh per hour	<b>Accepted Nomination kWh</b>
05:00				
06:00				
07:00				
08:00				
09:00				
10:00				
11:00				
12:00				
13:00				
14:00				
15:00				
16:00				
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18:00				
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20:00				
21:00				
22:00				
23:00				
00:00				
01:00				
01:00 GMT if required				
02:00				
03:00				
04:00				
<b>End of Day Volume (kWh)</b>	-	-	-	-
<b>Nomination Quantity kWh</b>	<input type="text"/>			
	<b>Accepted Nomination Quantity kWh</b>	<input type="text"/>		
<b>Note: If the Service Provider requires to make an Interruption, this shall be notified through the Operating Margins Interruption Notice.</b>				
<b>Signed (on behalf of NGG):</b> _____ <b>Date and Time:</b> _____				
<b>SERVICE PROVIDER CONFIRMATION – Please confirm receipt of instruction by return</b>				
<b>Time Nomination acknowledged by Service Provider:</b> <input type="text"/>				
<b>Signed:</b> _____ <b>Date and Time:</b> _____				
From: National Grid Gas Operations GNCC Tel: Fax:				

**SCHEDULE 3**

**OPERATING MARGINS – NATIONAL GRID GAS PLC**

**FORM OF INTERRUPTION NOTICE**

<b><u>OPERATING MARGINS INTERRUPTION NOTICE</u></b>																																																																																																																			
<b>Facility:</b> <b>From:</b> [ Service Provider ] <b>Tel:</b> <b>Fax:</b> <b>E-mail:</b>																																																																																																																			
<b>To:</b> National Grid Gas Operations GNCC <b>Tel:</b> <b>Fax:</b>																																																																																																																			
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<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;"></th> <th style="width: 25%;">A = (B + C)</th> <th style="width: 25%;">B</th> <th style="width: 25%;">C</th> </tr> <tr> <th style="text-align: center;">Hour Commencing</th> <th style="text-align: center;">Prevailing Accepted Nomination kWh</th> <th style="text-align: center;">Interruption Notice kWh</th> <th style="text-align: center;">Revised Accepted Nomination kWh</th> </tr> </thead> <tbody> <tr><td>05:00</td><td></td><td></td><td></td></tr> <tr><td>06:00</td><td></td><td></td><td></td></tr> <tr><td>07:00</td><td></td><td></td><td></td></tr> <tr><td>08:00</td><td></td><td></td><td></td></tr> <tr><td>09:00</td><td></td><td></td><td></td></tr> <tr><td>10:00</td><td></td><td></td><td></td></tr> <tr><td>11:00</td><td></td><td></td><td></td></tr> <tr><td>12:00</td><td></td><td></td><td></td></tr> <tr><td>13:00</td><td></td><td></td><td></td></tr> <tr><td>14:00</td><td></td><td></td><td></td></tr> <tr><td>15:00</td><td></td><td></td><td></td></tr> <tr><td>16:00</td><td></td><td></td><td></td></tr> <tr><td>17:00</td><td></td><td></td><td></td></tr> <tr><td>18:00</td><td></td><td></td><td></td></tr> <tr><td>19:00</td><td></td><td></td><td></td></tr> <tr><td>20:00</td><td></td><td></td><td></td></tr> <tr><td>21:00</td><td></td><td></td><td></td></tr> <tr><td>22:00</td><td></td><td></td><td></td></tr> <tr><td>23:00</td><td></td><td></td><td></td></tr> <tr><td>00:00</td><td></td><td></td><td></td></tr> <tr><td>01:00</td><td></td><td></td><td></td></tr> <tr><td>01:00 GMT if required</td><td></td><td></td><td></td></tr> <tr><td>02:00</td><td></td><td></td><td></td></tr> <tr><td>03:00</td><td></td><td></td><td></td></tr> <tr><td>04:00</td><td></td><td></td><td></td></tr> <tr> <td><b>End of Day Volume (kWh)</b></td> <td align="center">-</td> <td align="center">-</td> <td align="center">-</td> </tr> </tbody> </table>					A = (B + C)	B	C	Hour Commencing	Prevailing Accepted Nomination kWh	Interruption Notice kWh	Revised Accepted Nomination 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				<b>End of Day Volume (kWh)</b>	-	-	-
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<b>Time Interruption acknowledged</b> <input style="width: 100%;" type="text"/> <b>by National Grid Gas Operations GNCC:</b> <b>Signed:</b> _____ <b>Date and Time:</b> _____																																																																																																																			

SCHEDULE 4

OPERATING MARGINS – NATIONAL GRID GAS PLC

FORM OF REALLOCATION NOTICE

<b><u>OPERATING MARGINS REALLOCATION NOTICE</u></b>	
Facility:	
From:	[ Service Provider ]
Tel:	
Fax:	
E-mail:	
To:	National Grid Gas Operations GNCC
Tel:	
Fax:	
Date and Time of Request	<input type="text" value="dd / mm / yyyy hh:mm"/>
Nominated Third Party	<input type="text"/>
Gas Day	<input type="text" value="dd / mm / yyyy"/>
Reallocation Number	<input type="text"/> (for sequential control purposes)
Reallocation Quantity kWh	<input type="text"/>
Signed (on behalf of Service Provider): _____	
Date and Time: _____	
<b><u>National Grid Gas GNCC - Confirmation of receipt of reallocation notice</u></b>	
Time Reallocation acknowledged	
by National Grid Gas Operations GNCC:	
Signed: _____	
Date and Time: _____	

## SCHEDULE 5

### 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>1</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 16 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>1</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")

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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 6**

**FORM OF PARENT COMPANY GUARANTEE**

**DATED** **20**

---

**[GUARANTOR] (1)**

**in favour of**

**NATIONAL GRID GAS PLC (2)**

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**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 clause 16.
- 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;
  - (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. Any such notice will be deemed to be given(a) All notices or other communications under or in connection with this Guarantee shall be given 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), 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 email address 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: [ ]

Email address: [ ]

For the attention of: [ ]

(b) in the case of National Grid Gas:

Address: 1-3 Strand

London

WC2N 5EH

Email address: [ ]

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:
- (a) 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
  - (b) 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]