

**DIRECT CONNECT  
ADVANCED RESERVATION OF CAPACITY AGREEMENT (“DC ARCA”)**

**between**

**NATIONAL GRID GAS PLC**

**and**

[ ]

**relating to**

[ ]

**THIS AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 200[ ]

**BETWEEN:**

- 1) **National Grid Gas plc** (Registered No. 2006000) whose registered office is at 1-3 Strand, London, WC2N 5EH ("**National Grid NTS**"); and
- 2) [ \_\_\_\_\_ ], (Registered No. [ \_\_\_\_\_ ]) whose registered office is at [ \_\_\_\_\_ ] [(the "**Company**")]

(the "**Parties**" such expression to include any permitted assignees).

**WHEREAS:**

- (A) The Company wishes to have capacity as specified in Schedule 1 at the ARCA NTS Exit Point at which gas will be offtaken from the NTS for the purposes of supply to [ \_\_\_\_\_ ] which is or will be operated by the Company and will procure that arrangements are made with National Grid NTS for permitting the flow of gas.
- (B) [National Grid NTS and the Company [are in the course of negotiations to finalise] [have entered into] a Facilities Agreement].
- (C) National Grid NTS is the owner and operator of the NTS and is willing to provide NTS Exit Capacity at the ARCA NTS Exit Point subject to the terms of this Agreement.
- (D) The Company wishes to have NTS Exit Capacity reserved in advance to enable the Shipper(s) to be registered as holding such capacity in accordance with the Uniform Network Code up to the maximum amount stated in Schedule 1 and to secure that gas will be available to be offtaken at the ARCA NTS Exit Point at the NTS Exit Point Rate on a firm basis in accordance with the Uniform Network Code as from the Reduction Period Start Date and National Grid NTS will accept such reservation and undertake to make gas so available for offtake subject to and in consideration of the following conditions.

**NOW IT IS HEREBY AGREED as follows:**

**1. INTERPRETATION**

1.1 For the avoidance of doubt, breach of this Agreement by either Party will not be a breach of the Uniform Network Code, as provided in the Uniform Network Code Section, TPD, V paragraph 1.1.5.

1.2 Except as otherwise provided herein, terms defined in the Uniform Network Code and used in this Agreement have the same meanings as in the Uniform Network Code.

1.3 In this Agreement the following terms shall have the following meanings:

**“ARCA Commitment”**: means an amount equal to the sum over n years of C multiplied by the prevailing Exit Charge for each Day in the relevant Contract Year, where C is equal to Incremental NTS Exit Capacity less the Registered Capacity for the relevant Contract Year;

**“ARCA NTS Exit Point”**: means the NTS Exit Point located at the NTS Exit Point location identified in Schedule 1;

**“Authority”** means the Gas and Electricity Markets Authority;

**“Available Capacity”** shall have the meaning given in the definition of Registered Capacity;

**“Contract Year”**: means a period of 12 months commencing on the Reduction Period Start Date or any anniversary thereof;

**“CSEP Offtake Rate”**: means the maximum rate or maximum aggregate rate (as the case may be) permitted in accordance with the CSEP Network Exit Agreement;

**“Exit Charge”**: means the NTS Exit Capacity Charge ([to be] set out in the Transportation Statement) for the Exit Zone applicable to the ARCA NTS Exit Point (and payable by Shippers pursuant to Uniform Network Code);

**“Existing NTS Exit Capacity”**: means the amount of capacity specified in Schedule 1.

["**Facilities Agreement**": means the agreement between National Grid NTS and the Company for the construction of certain works in connection with the establishment (or enlargement) of the ARCA NTS Exit Point [including where appropriate works for the construction of the pipeline connecting the ARCA NTS Exit Point to the NTS]];

"**Incremental NTS Exit Capacity**": means the incremental NTS Exit Capacity identified in Schedule 1;

"**Initial Reduction Period Start Date**": means the date upon which it is anticipated that the System Reinforcement Works will be completed being [ ];

"**n**": means the number (rounded up or down to the nearest whole number being not less than one) determined by dividing A by B, where A is the System Reinforcement Works Costs and B is the Incremental NTS Exit Capacity at the ARCA NTS Exit Point multiplied by the Exit Charge which applies at the date of this Agreement;

"**NTS Exit Point Rate**": means the Supply Point Offtake Rate or CSEP Offtake Rate (as the case may be);

"**Pipeline Construction Season**": means the period during each calendar year from 1 April to 31 October inclusive when National Grid NTS carries out reinforcement works to its System. National Grid NTS may in its reasonable discretion change such period on notice owing to adverse weather conditions;

"**Reduction Period**": means the period commencing on the Reduction Period Start Date and ending on 06:00 hours on the day following the nth anniversary thereof or at 06:00 hours on such later date as determined under Clauses 3.4 or 10;

"**Reduction Period Start Date**": means the date upon which the System Reinforcement Works have been completed being not earlier than 06:00 hours on [ ], or at 06:00 hours on such later date as determined under Clauses 3.4 or 10 or as notified by National Grid NTS under Clause 2.5;

"**Registered Capacity**" means, for any particular Contract Year, an amount equal to the sum of the:

- (a) NTS Exit Capacity (excluding the Existing NTS Exit Capacity) which the Shipper is registered as holding at the ARCA NTS Exit Point during such Contract Year; and
- (b) NTS Exit Capacity, NTS Offtake (Flexibility) Capacity and NTS Offtake (Flat) Capacity which:
  - (i) Users other than the Shipper are registered as holding at the ARCA NTS Exit Point, and
  - (ii) any Users (including the Shipper) are registered as holding at any NTS Exit Points other than the ARCA NTS Exit Point, during such Contract Year due to such capacity being made available as a direct result of the System Reinforcement Works (the “**Available Capacity**”) (such availability shall be determined by National Grid NTS in its absolute discretion (acting reasonably)).

“**Security**”: shall have the meaning as set out in Clause 5.2;

“**Security Amount**”: means (i) prior to the Reduction Period Start Date, the amount as specified in Schedule 2, determined and adjusted on the basis of the amounts that are forecast to be expended in providing the System Reinforcement Works, (ii) on the Reduction Period Start Date, the System Reinforcement Works Costs and (iii) following the Reduction Period Start Date, the amount determined in accordance with Clause 6.1;

“**Shipper**”: means a User (or, in the case of a Shared Supply Meter Point or CSEP, Users) appointed by the Company and notified to National Grid NTS for the purposes of this Agreement each of whom intends to become a Registered User at the NTS Exit Point;

“**System Reinforcement Works**” shall have the meaning given in Clause 4.1(a);

“**System Reinforcement Works Costs**”: means £ [ ] being the forecast costs associated with providing the System Reinforcement Works;

“**TPD**”: means the Transportation Principal Document of the Uniform Network Code;

**“Uniform Network Code”**: means the document so entitled dated 1st May 2005, and as from time to time modified in accordance with the Modification Rules.

## 2. DURATION

2.1 This Agreement shall commence on the date of signature and unless earlier terminated in accordance with its terms shall continue in force until the end of the Reduction Period at which time this Agreement shall terminate.

2.2 If by the end of the 14<sup>th</sup> day following the date of this Agreement National Grid NTS has not received evidence to its reasonable satisfaction that the Company has provided Security to National Grid NTS for an amount equal to the Security Amount specified in Schedule 2, paragraph 1, then National Grid NTS may within 28 days following signature of this Agreement terminate this Agreement.

2.3 National Grid NTS shall be entitled to extend the Reduction Period Start Date in the event of any delay in procuring the grant of relevant permissions or acquisition of any land (including but not limited to the compulsory acquisition of land) or any other interest in or rights over land, which are necessary in the reasonable opinion of National Grid NTS for the purposes of the System Reinforcement Works, provided that National Grid NTS has used, and continues to use, all reasonable endeavours to avoid and minimise such delays.

2.4 National Grid NTS shall also be entitled to make an additional extension to the Reduction Period Start Date in respect of any other matters that arise, either directly or indirectly from the occurrence of any of those circumstances set out in Clause 2.3 and that have an impact on the Reduction Period Start Date, such matters shall include, but not be limited to:

(a) any rescheduling of the System Reinforcement Works (such rescheduling shall include, but not be limited to, National Grid NTS having to undertake the System Reinforcement Works in a later Pipeline Construction Season); and

(b) any alterations to the route taken by the System Reinforcement Works;

provided always that National Grid NTS has used and continues to use all reasonable endeavours to avoid and minimise any delay.

2.5 In the event of any delay arising due to those circumstances set out in Clauses 2.3 and/or 2.4 above, National Grid NTS shall notify the Company in writing of the delay as soon as reasonably practicable (and in any event no later than 28 days) after becoming aware of the delay and as soon thereafter as is reasonably practicable (and in any event no later than 28 days) notify the Company of the new Reduction Period Start Date once it has been determined by National Grid NTS and the Reduction Period Start Date shall be extended accordingly.

### **3. UNIFORM NETWORK CODE**

3.1 This Agreement shall remain in force notwithstanding any modification from time to time to the Uniform Network Code.

3.2 Nothing in this Agreement shall modify the terms on which, pursuant to the Uniform Network Code, the Shipper may deliver gas to, have gas conveyed by means of and offtake gas from the NTS.

3.3 In the event that the Uniform Network Code is modified or changes are made to the Gas Act 1986 (as amended), the National Grid NTS Gas Transporters Licence, the Shippers Licence, or the gas regulatory regime which would result in either Party being unable lawfully to perform this Agreement, the Parties agree to meet in good faith to discuss how this Agreement may be amended to take account of such modification or change. The Parties agree to make amendments to the terms of this Agreement from time to time to such extent (if any) as is necessary to make the terms of this Agreement consistent with the principles behind the relevant modifications or changes.

3.4 In the event that a Party is unable lawfully to perform its obligations as a result of any of the circumstances described in Clause 3.3 and the Shipper has applied to the Authority for a determination under Section 19 of the Gas Act 1986 (as amended), the Reduction Period Start Date shall be postponed or the Reduction Period extended (as the case may be) by a period equal to the period from the date the said Section 19 application was made to the date the Authority's determination was issued.

### **4. NATIONAL GRID NTS'S OBLIGATIONS**

4.1 National Grid NTS undertakes that it will:

- (a) subject always to Clause 2.2, undertake such System reinforcement works as are necessary (not being the works that are the subject of any Facilities Agreement) (the “**System Reinforcement Works**”), so as to enable National Grid NTS to comply with paragraph (b) and (c);
  
- (b) subject, where applicable, to the completion of:
  - (i) the works that are the subject of any Facilities Agreement;
  
  - (ii) any other works necessary to facilitate the conveyance of gas to the consuming plant downstream of the ARCA NTS Exit Point at the rates stated in Schedule 1;

ensure that by the Reduction Period Start Date there will be sufficient NTS Exit Capacity available to ensure that the quantities specified in Schedule 1 are available for offtake at the ARCA NTS Exit Point at the NTS Exit Point Rate in accordance with Uniform Network Code provisions;

- (c) accept the Shipper application(s) (in accordance with the Uniform Network Code, TPD, Section B, paragraph 3) for NTS Exit Capacity:
  - (i) on and with effect from the Initial Reduction Period Start Date, at the NTS Exit Point Rate at the ARCA NTS Exit Point up to the respective amounts then available on such date; and
  
  - (ii) on and with effect from the Reduction Period Start Date, at the NTS Exit Point Rate at the ARCA NTS Exit Point up to the respective amounts specified in Schedule 1;
  
- (d) maintain its Gas Transporter’s Licence granted under the Gas Act 1986 (as amended) and if a third party acquires or is granted a Gas Transporter’s Licence in relation to the NTS, procure that such third party shall assume and accept the obligations of National Grid NTS under this Agreement;

provided always that National Grid NTS shall not be in breach of any of its obligations pursuant to this Agreement if the works referred to in Clause 4.1(b)



(if any) have not been completed to the reasonable satisfaction of National Grid NTS.

- 4.2 Nothing in this Agreement shall oblige National Grid NTS to accept any application by the Shipper for NTS Exit Capacity at the ARCA NTS Exit Point in an amount in excess of that specified in Schedule 1.
- 4.3 Nothing in this Agreement shall prejudice the Shipper's right under the Uniform Network Code to apply for further NTS Exit Capacity at the ARCA NTS Exit Point in respect of the Reduction Period.
- 4.4 Where National Grid NTS is liable to make gas available for offtake at the ARCA NTS Exit Point in accordance with the applicable provisions of Uniform Network Code before the Reduction Period Start Date, the Company hereby undertakes to reimburse any amounts paid by National Grid NTS to Shippers in respect of such liability, save and except for the element of such amounts comprising payments made for failure to make gas available in respect of Existing NTS Exit Capacity, or NTS Exit Capacity registered as a result of an application in accordance with Clause 4.1(c)(i).
- 4.5 Where the System Reinforcement Works have not been completed by the Reduction Period Start Date and this results in failure of National Grid NTS to comply with Clause 4.1 (b), then for the purposes of the ARCA Commitment, Clause 6.1 and Clause 7.4(b), the amount of Registered Capacity held on and with effect from the Reduction Period Start Date shall be deemed to be an amount equal to the Incremental NTS Exit Capacity (irrespective of the amount of Registered Capacity actually held on such date).
- 4.6 Clause 4.5 shall cease to apply at the end of the 21<sup>st</sup> day following the date upon which National Grid NTS has notified the Company that the System Reinforcement Works have been completed and from such cessation the Registered Capacity shall be the actual amount held.

## 5. **COMPANY OBLIGATIONS**

- 5.1 The Company will procure that the Shipper:
  - (a) will not apply for NTS Exit Capacity at the ARCA NTS Exit Point with a date of registration earlier than the Reduction Period Start Date, or where National Grid NTS makes NTS Exit Capacity available in

accordance with Clause 4.1(c)(i), the Initial Reduction Period Start Date;

- (b) shall have applied for and shall hold NTS Exit Capacity in the amounts referred to in Schedule 1 and that the Shipper shall hold NTS Exit Capacity at the levels accepted by National Grid NTS in accordance with the Uniform Network Code.

5.2 In respect of its obligations under this Agreement, the Company undertakes to provide security in the form of either:

- (a) a parent company guarantee (in the form specified in Schedule 3 attached hereto) from a guarantee provider that possesses at all times for the duration of the Agreement an investment grade credit rating as determined by National Grid NTS for long term debt appropriate to the System Reinforcement Works Costs or;
- (b) such other form of security that is acceptable to National Grid NTS acting reasonably;

(the "**Security**") in respect of an amount equal to the Security Amount. Such Security shall remain in full force and effect for the duration of this Agreement

5.3. In the event that the Security falls below the standard required as set out in Clause 5.2 above at any time during the term of this Agreement, National Grid NTS shall be entitled, without notice, to demand the immediate payment of either the amount set out in Clause 5.5(a) or 5.5(b) below as appropriate.

5.4 The Security shall be adjusted so as to be equal to the Security Amount:

- (a) prior to the Reduction Period Start Date, on each date specified in Schedule 2, paragraph 2;
- (b) on the Reduction Period Start Date; and
- (c) following the Reduction Period Start Date, at the end of each Contract Year;

5.5 In the event that the Security (to be adjusted in accordance with Clause 5.4) is not provided 30 days prior to the expiry of the Security then in force, National

Grid NTS shall be entitled, without notice, to demand the immediate payment of either:

- (a) the costs reasonably incurred or committed in the provision of the System Reinforcement Works as at the date of the demand notice, if such demand is made prior to the Reduction Period Start Date; or
- (b) the Security Amount in force at the date of such demand notice, if such demand is made after the Reduction Period Start Date;

and such sums shall become immediately due and payable.

- 5.6 The Company shall procure that the Shipper shall provide National Grid NTS with the information required in accordance with Uniform Network Code, Section O, paragraph 3.2, in respect of the NTS Exit Point.

## **6. SECURITY AMOUNT REDUCTION AND ARCA COMMITMENT**

- 6.1 The Security Amount will be reduced at the end of each Contract Year in the Reduction Period by an amount equal to the Registered Capacity in that Contract Year multiplied by the prevailing Exit Charge for each Day of such Contract Year.
- 6.2 Where at the end of the Reduction Period, the resultant value calculated in accordance with Clause 6.1 is a positive amount then subject always to Clause 6.3, the Company shall pay to National Grid NTS in accordance with Clause 6.4 the ARCA Commitment.
- 6.3 Where the Registered Capacity is equal to (or greater than) the amount of Incremental NTS Exit Capacity for each and every Contract Year in the Reduction Period then payment of the ARCA Commitment shall be deemed to have been discharged and the ARCA Commitment shall not be due and payable.
- 6.4 The ARCA Commitment shall be invoiced to the Company by National Grid NTS and shall be due and payable by the Company within 21 days of the date of the invoice.
- 6.5 Interest shall accrue on any amounts due and payable in accordance with this Agreement at the base lending rate from time to time of Barclays Bank plc plus two (2) percentage points per annum.

- 6.6 For the avoidance of doubt, no Commodity Charge, Overrun Charge, Supply Point Ratchet Charge, nor any Balancing Charge or Balancing Neutrality Charge payable by the Shipper in accordance with the Network Code shall be included in the calculation of the ARCA Commitment.
- 6.7 The provisions of this Clause 6 shall apply notwithstanding that the Shipper does not become, or ceases to be, a Registered User at the NTS Exit Point.

## 7. TERMINATION

- 7.1 If this Agreement is terminated by the Company after the Reduction Period Start Date for any reason the Company shall be liable to pay National Grid NTS any Security Amount owing to National Grid NTS as at the date of termination and such amount shall be due and payable within twenty-one (21) days of the receipt by the Company of an invoice for the same.
- 7.2 The Company may terminate this Agreement if National Grid NTS is in material breach of any of its obligations hereunder and where such breach is capable of remedy, fails to remedy such breach within 28 days from the date on which it was notified to do so by the Company. If after expiry of that notice National Grid NTS has failed to remedy such breach, the Company may issue a notice of its intention to terminate this Agreement, such termination to take effect after the expiry of 7 days from issue of the notice, provided that prior to the expiry of that period of 7 days, such breach has not been remedied by National Grid NTS.
- 7.3 If this Agreement is terminated by the Company before the Reduction Period Start Date for any reason the Company shall pay to National Grid NTS an amount equal to the costs reasonably incurred or committed in the provision of the System Reinforcement Works as at the date of the termination notice. Such payment shall be due and payable within twenty-one (21) days of receipt by the Company of an invoice for the same.
- 7.4 National Grid NTS may by serving notice on the Company terminate this Agreement where:
- (a) the Company suffers any of the events or circumstances of the type described in the Uniform Network Code, TPD, Section V, paragraph 4.3.1(e);

- (b) the sum of the amounts of Registered Capacity over a period of any four consecutive Contract Years is less than 50% of the sum of the amounts of Incremental NTS Exit Capacity over such four year period;

and in such event the Security Amount shall be due and payable within twenty-one (21) days of the receipt by the Company of an invoice for the same.

## 8. **ASSIGNMENT**

Neither National Grid NTS nor the Company may assign this Agreement in whole or part to a third party without the consent of the other Party such consent not to be unreasonably withheld or delayed.

## 9. **LIABILITY**

9.1 No Party shall in any circumstance be liable to the other in respect of any breach of this Agreement or in tort (including in negligence or nuisance) or as a result of any misrepresentation (excluding fraudulent misrepresentation) to any other Party for:

- (a) any direct loss directly resulting from such breach except physical damage to the property of any other Party; or
- (b) any loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill, or increased cost of working; or
- (c) any indirect or consequential loss; or
- (d) loss resulting from the liability of any other Party to any person howsoever and whensoever arising.

9.2 Nothing in this Agreement shall exclude or limit the liability of any Party for death or personal injury resulting from the negligence of such Party.

9.3 Clause 9.1 above is without prejudice to any provision in this Agreement which provides for an indemnity, or which provides for any Party to make payment to another.

## 10. **FORCE MAJEURE**

The Force Majeure provisions of Uniform Network Code, General Terms, Section B paragraph 3 shall apply to this Agreement as if both the Company and National Grid NTS were parties to the National Grid Framework Agreement save that references in such paragraph 3 to a Party shall be construed as references to National Grid NTS or the Company and references in such paragraph 3 to Code shall be construed as a reference to this Agreement. If a Force Majeure event occurs prior to the Reduction Period Start Date, the Reduction Period Start Date will be postponed by the duration of the Force Majeure event. If the Force Majeure event occurs during the Reduction Period, then the Reduction Period will be extended accordingly.

11. **CONFIDENTIALITY**

The Confidentiality provisions of the Uniform Network Code, TPD, Section V paragraph 5 shall apply to this Agreement, save that references to a User shall be construed as references to the Company and references to the Transporter shall be construed as references to National Grid NTS.

12. **WAIVER**

No waiver by either Party of any default or defaults by the other in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character. Furthermore no waiver by either Party of any provision of this Agreement shall be binding unless made in writing.

13. **SEVERANCE**

If any Clause of this Agreement is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, that Clause shall be deemed omitted from this Agreement and the validity and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission and the Parties shall meet to negotiate in good faith and seek to agree a mutually satisfactory valid and enforceable provision to replace the omitted provision.

14. **GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with English Law and the Parties hereby submit to the exclusive jurisdiction of the English Courts.

15. **NOTICES**







**SCHEDULE 1**

**1. NTS EXIT CAPACITY**

The Company has notified National Grid NTS that its Shipper will apply for and hold incremental NTS Exit Capacity at the following amounts at, the NTS Exit Point in respect of the first Contract Year:

NTS Exit Point location	[	]	
Existing NTS Exit Capacity	[	]	kWh per Day
Incremental NTS Exit Capacity	[	]	kWh per Day
Total NTS Exit Capacity	[	]	kWh per Day
[ Supply Point Offtake Rate	[	]	kWh per Day ]
[ CSEP Offtake Rate	[	]	kWh per Day]

**SCHEDULE 2**

**SECURITY AMOUNT PRIOR TO THE REDUCTION PERIOD START DATE**

1. The Security Amount shall be £ [ ]
2. Such Security Amount shall increase to:
  - (a) £ [ ] on [ ] and shall increase to:
  - (b) £ [ ] on [ ] .....

**SCHEDULE 3**

**[Parent Company Guarantee]**

**[DATED**

**20**

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**[GUARANTOR](1)**

**in favour of**

**NATIONAL GRID GAS PLC(2)**

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**PARENT COMPANY GUARANTEE**

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THIS GUARANTEE is made the                    day.....of                    20  
by [.....] a company [registered in [                    ]<sup>1</sup> (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) National Grid Gas and [.....], a company registered in [                    ] (No. ....) and having its registered office at [.....] herein called the “**Counterparty**” are and will be parties to the Advanced Reservation of Capacity Agreement dated [                    ] which is herein called the “**ARCA**” (which term shall include the ARCA as from time to time amended, varied, supplemented, novated or reduced).
- (B) The Guarantor is or will make itself aware of the subject matter and the terms of the ARCA and of the Counterparty's obligations thereunder.
- (C) National Grid Gas entered into the ARCA with the Counterparty subject to the Guarantor guaranteeing performance by the Counterparty of all of its obligations and liabilities under or arising out of the ARCA.

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

- 1 In this Guarantee “**Default**” means any failure by the Counterparty for any reason whatsoever to perform any obligation or to make any payment, either in part or in full, which is due to National Grid Gas pursuant to the ARCA whether or not entered into prior to or subsequent to the date of this Guarantee.
- 2 This Guarantee is effective from [*insert required date*] (the “**Effective Date**”).
- [3 This Guarantee is in substitution for the deed of guarantee dated [                    ] granted by the Guarantor in favour of National Grid Gas in respect of the same subject matter (the “**Existing Deed**”). The Existing Deed shall terminate upon the Effective Date save that the Guarantor shall remain liable for all liabilities (including contingent and unascertained liabilities) which may become due, owing or incurred to National Grid Gas pursuant to any transaction, dealing, commitment or other engagement entered into or effected under or pursuant to the ARCA either (a) prior to the Effective Date or

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<sup>1</sup> Complete if foreign company.

(b) on or after the Effective Date pursuant to any commitment express or implied, assumed or undertaken by the Counterparty to National Grid Gas prior to the Effective Date.]<sup>2</sup>

4. If there is a Default the Guarantor irrevocably and unconditionally guarantees to pay to National Grid Gas on written demand and in the currency in which the same falls due for payment immediately all monies which are now or in future become due or owing by the Counterparty to National Grid Gas as a result of a Default (the “**Guaranteed Liabilities**”) PROVIDED that the Guarantor shall not be liable to pay National Grid Gas any greater sum than that for which the Counterparty is liable to National Grid Gas under or arising out of the ARCA [provided further that aggregate liability of the Guarantor hereunder shall not exceed £[.....] ([..... pounds sterling))].
5. The Guarantor agrees to pay interest on each amount demanded under this Guarantee 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 day to day 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.
- 6.1 The obligations of the Guarantor under this Guarantee are undertaken by it as a primary obligor and not merely as a surety.
- 6.2 As a separate and independent stipulation, the Guarantor agrees that it shall remain liable in respect of an obligation or liability of the Counterparty even if that obligation or liability is not or ceases to be valid or enforceable against the Counterparty for whatever reason, whether or not known to National Grid Gas, as if the same were fully valid and enforceable. The Guarantor agrees to keep National Grid Gas fully and unconditionally indemnified on demand against all damages, losses, costs and expenses arising from any failure of the Counterparty to perform or discharge any such purported obligation or liability pursuant to the ARCA in addition to the Guaranteed Liabilities.
7. 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 ARCA;

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<sup>2</sup> Delete if this Guarantee is not in substitution of another Guarantee

- (b) any modification of National Grid Gas's Network Code irrespective of whether the Counterparty was a party to or in agreement with any such modification;
- (c) any indulgence or forbearance shown by National Grid Gas towards the Counterparty 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 under the ARCA with regard to payment or time for payment;
- (d) any action lawfully taken by any party to the ARCA to determine the ARCA as respects the Counterparty or any other party thereto, or as a result of which the Counterparty ceases to be a party to the ARCA;
- (e) any change in the relationship between the Guarantor and the Counterparty;
- (f) any disability, legal limitation, incapacity or change in the status or constitution of the Counterparty, the Guarantor or National Grid Gas;
- (g) the liquidation, dissolution or insolvency of the Counterparty or any receivership, judicially supervised administration, moratorium, composition of creditors or other analogous event affecting the Counterparty or any of its property;
- (h) any third party becoming or ceasing to be a party to the ARCA;
- (i) any failure or delay by National Grid Gas to assert any of its rights under this Guarantee;
- (j) any composition discharge release or other variation of liability entered into with or granted to the Counterparty;
- (k) the invalidity or unenforceability of the obligations of the Counterparty under the ARCA;
- (l) any other act or omission of National Grid Gas or any other circumstance which but for this provision might discharge the Guarantor.

8.1 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.

8.2 National Grid Gas shall not be obliged to make any claim or demand on the Counterparty 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.

8.3 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.

8.4 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.

8.5 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 Counterparty, and includes any document or instrument creating or evidencing an encumbrance, however defined and includes, without limitation, letters of credit, deposit agreements, escrow agreements.

9.1 This Guarantee shall continue in full force and effect until all sums whatsoever payable by the Counterparty under the ARCA have been finally paid in full and all obligations of the Counterparty under the Agreement have been performed in full.



9.2 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 Counterparty obligations held by National Grid Gas; and
- (c) its right to prove or claim in the bankruptcy, liquidation, administration or other insolvency proceedings of the Counterparty.

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

10.1 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.
- 10.2 The Guarantor acknowledges that National Grid Gas has accepted this Guarantee in full reliance on the representations and warranties set out in this clause 10.
- 11. All payments by the Guarantor under this Guarantee shall be made in full, without set-off or counterclaim and, subject to clause 12, 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.
- 12. 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.
- 13.1 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 under the ARCA.
- 13.2 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 ARCA such information about the Guarantor as National Grid Gas thinks fit.
- 14. 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.
- 15.1 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.

- 15.2 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.
16. 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 16.
- 17.1 This Guarantee shall secure the ultimate balance from time to time owing to National Grid Gas by the Counterparty and shall be a continuing security and shall not be affected by any performance, payment, settlement or other matter under or in respect of the Agreement or this Guarantee.
- 17.2 Notwithstanding any release, discharge 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 date of any such release, discharge or settlement (the “**Termination Date**”) in relation to:
- (a) the Guaranteed Liabilities which shall have become due at or on the Termination Date; and
  - (b) the Guaranteed Liabilities which may become due, owing or incurred by the Counterparty 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 Counterparty to National Grid Gas prior to the Termination Date; and
  - (c) the Guaranteed Liabilities if any moneys paid to National Grid Gas in reduction of the indebtedness of the Counterparty under the Agreement has to be repaid by National Grid Gas by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation 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 moneys 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 or insolvency 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.

17.3 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.

18. Any statement of account of the Counterparty, 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.

19.1 All notices or other communications under or in connection with this Guarantee shall be given in writing or facsimile. Any such notice will be deemed to be given as follows:

- (a) if in writing, when delivered or, if later, 2 days after posting if sent by first class post (or 7 days if sent by second class post or 5 days if sent from outside the United Kingdom);
- (b) if by facsimile, when received or as evidenced by the notifying party's facsimile transmission report.

Provided that a notice given in accordance with the above but not received on a "business day" or received after "business hours" shall be deemed to have been received at 9.am on the following "business day". For the purposes of clause 19.1 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.

19.2 Subject to Clause 21.5 the address and facsimile number for all notices under or in connection with this Guarantee are as follows, unless the other party has been notified otherwise at least five days before the notice is received:

- (a) in the case of the Guarantor:
  - Address: [ ]
  - Facsimile Number: [ ]
  - For the attention of: [ ]
- (b) in the case of National Grid Gas:
  - Address: 1-3 Strand

London  
WC2N 5EH

Facsimile Number: [                    ]  
For the attention of: [                    ]

- 19.3 Service of legal proceedings in the manner described in clause 19.1 shall be deemed to constitute good service.
20. Unless the contrary intention appears, a reference in this Guarantee to National Grid Gas or Guarantor or the Counterparty or a person includes its successors in title, permitted assigns and permitted transferees.
- 21.1 This Guarantee is governed by and shall be construed in accordance with English law.
- 21.2 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**”).
- 21.3 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.
- 21.4 This clause 21 is for the benefit of National Grid Gas only. As a result and notwithstanding clause 21.4 it does not prevent National Grid Gas from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, National Grid Gas may take concurrent proceedings in any number of jurisdictions.
- 21.5 [The Guarantor authorises and appoints [*name*] of [*legal representatives or related company in England and Wales*]<sup>3</sup> (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.]

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<sup>3</sup> This Clause 21.5 is only necessary if the Guarantor is a foreign company. The process agent should be an independent law firm.

21.6<sup>4</sup> [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.]

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<sup>4</sup> This Clause 21.6 is only necessary if the Guarantor is a governmental authority (whether foreign or in England and Wales).

**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]