OPERATING MARGINS

GAS DELIVERY AGREEMENT – DEMAND REDUCTION

BETWEEN

NATIONAL GAS TRANSMISSION PLC

AND

SERVICE PROVIDER

National Gas Transmission plc
Warwick Technology Park
Gallows Hill
Warwick CV34 6DA

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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 Gas Transmission plc** a company registered in England with number 02006000 whose registered office is at National Grid House, Warwick Technology Park, Gallows Hill, Warwick CV34 6DA (the "**Customer**").

WHEREAS:

(A) The Service Provider controls and/or operates the Facility.

(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:

"**Acquiring Trade Nomination**" shall have the meaning given in the Network Code;

"**Actual Utilisation Quantity**" means, in respect of a Nomination, the actual measured quantity of Natural Gas (expressed in kWh/Day, measured by the relevant NTS Measurement Equipment for the Facility) not used by the Service Provider pursuant to the Nomination instructing demand reduction, as notified to the Service Provider by the Customer pursuant to Clause 5.13;

"**Affected Party**" means:

(a) in relation to Force Majeure, as set out in the Network Code; and

(b) in all other contexts, as set out in Clause 15.1;

"**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;

"**Annual Service Fee**" means the sum specified as such and set out in Schedule 1 and payable by the Customer in accordance with Clauses 10.1 and 10.3;

"**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;

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

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

"**Base Rate**" means on any Day, the sterling base lending rate of the Bank of England 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 10.1;

"**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 18;

"**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:

(a) the United Kingdom (including, for the avoidance of doubt, the Gas and Electricity Markets Authority); or

(b) (as and when, and to the extent that, the acts or decisions of any such person or body are binding in any part of the United Kingdom as a matter of the law of that part of the United Kingdom) the European Union.

"**Daily Service Fee**" has the meaning given in Clause 10.3(b);

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

"**Default**" has the meaning given in Clause 13.1;

"**Delivery Charge**" means a charge calculated in accordance with Clause 10.4;

"**Delivery Rate**" has the meaning given in Clause 5.2(d);

"**Disposing Trade Nomination**" shall have the meaning set out in the Network Code;

"**Dispute**" has the meaning given in Clause 23.1;

"**Due Date**" has the meaning given in Clause 11.1;

"**Early Termination Event**" means any of:

(a) the following events, in respect of which either Party may be the Affected Party;

(i) in relation to a Party:

(A) it becomes insolvent or unable to pay its debts within the meaning of section 123 of the Insolvency Act or admits that it is unable to pay its debts, or stops carrying on business; or

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(B) it proposes or enters any scheme, restructuring plan, company voluntary arrangement, reconstruction and arrangement, composition or other arrangement for the benefit of its creditors or a class of creditors; or

(C) a trustee, supervisor, receiver, liquidator, administrator, monitor or similar officer or other encumbrancer of that Party is appointed over all or substantially all of its assets (including but not limited to the passing of a resolution in relation to such appointment or the filing of a notice of intention to appoint an administrator); or

(D) anyone takes any formal step towards the winding-up or dissolution of that Party, except on a winding-up petition which is withdrawn (i) within fourteen (14) days of its presentation and (ii) before it is advertised; or

(E) a Party (or its directors) takes any step towards that Party obtaining a moratorium or other protection from its creditors; or

(F) the holder of a floating charge over the assets of that Party has become entitled to crystallise such floating charge (including for the avoidance of doubt where such floating charge has automatically crystallised) over all or substantially all of that Party's assets; or

(G) a creditor or encumbrancer of that Party takes possession of, seize, or levy a distress or execution against all or substantially all of that Party's assets; or

(H) any person takes any of the steps identified in paragraphs 43(2), (3) or (4) of Schedule B1 to the Insolvency Act 1986; or

(I) 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 Notifying Party's notice given in accordance with Clause 15.1;

(iv) a Party breaches the provisions of Clause 26;

(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;

(vi) a 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); 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) the Facility ceasing to be operated by, controlled by or owned by, the Service Provider or an Affiliate of the Service Provider; and

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(ii) 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;

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

"**Expert**" has the meaning given in Clause 23.2;

"**Facility**" means the facility owned and operated by the Service Provider, which is used to provide the Service, and as further described in Schedule 1;

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

"**Grid Code**" means the code for connection and development of the national electricity transmission system in Great Britain as such code may be amended, varied, supplemented, modified, or replaced from time to time;

"**Hour**" means any period of sixty (60) minutes beginning on the hour bar, and "**Hourly**" shall be construed accordingly;

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

"**Indexed Delivery Charge**" means the charge (in pence/kWh) calculated in accordance with the formula in Schedule 1 Part 3;

"**Invoice Period**" has the meaning given in Clause 10.5;

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

"**Legal Requirement**" means:

(a) any legislation; and/or

(b) any licence, present or future directive, request, requirement, instruction, code of practice, direction or rule of any Competent Authority, and, in each case, as amended, modified, supplemented, extended or replaced from time to time; and/or

(c) the Network Code;

"**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;

"**Maximum Delivery Duration**" means the maximum length of time in Hours that a Nomination can specify that the Service shall be provided for as specified in Schedule 1;

"**Maximum Delivery Rate**" means the maximum rate of Natural Gas in kWh/h to be provided for the Service as specified in Schedule 1;

"**Minimum Delivery Duration**" means the minimum length of time in Hours that a Nomination can specify that the Service shall be provided for as specified in Schedule 1;

"**Minimum Delivery Rate**" means the minimum aggregate rate of Natural Gas in kWh/h to be provided for the Service as specified in Schedule 1;

"**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 10.3;

"**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;

"**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;

"**NBP Trade**" means, in respect of a quantity of Natural Gas, where:

(a) in respect of any Day the Customer and the Service Provider make corresponding Trade Nominations in respect of that quantity of Natural Gas subject to and in accordance with Section C5 of the Network Code; and

(b) neither Trade Nomination is amended or withdrawn thereafter, the deduction by the Customer of that quantity of Natural Gas in determining for that Day the Daily Imbalance of the Service Provider making the Disposing Trade Nomination;

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

"**Nominated Quantity**" has the meaning given in Clause 5.2(c);

"**Nomination**" shall have the meaning given in Clause 5.1;

"**Nomination End Time**" shall have the meaning given in Clause 5.2(b);

"**Nomination Form**" shall have the meaning given in Clause 5.2;

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

"**Nomination Start Time**" shall have the meaning given in Clause 5.2(b);

"**Notifying Party**" has the meaning given in Clause 15.1;

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

"**NTS Measurement Equipment**" means, in respect of the Facility, the measurement equipment measuring the offtake of Natural Gas from the Facility to the NTS, pursuant to the Network Code, and, if applicable, the relevant Measurement Provisions and Network Exit Provisions (as defined in the Network Code) for the Facility.

"**Offtake Profile Notice**" or "**OPN**" shall have the meaning given in the Network Code;

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

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"**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;

"**Response Time**" means the time period specified as such in Schedule 1;

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

"**Service**" means the reduction in offtake of Natural Gas from the NTS during the Service Year, in accordance with this Agreement;

"**Service Availability Factor**" is, in respect of a Day, the factor determined in accordance with Clause 8 which represents the extent to which the Service is available to the Customer, the factor being one (1) where the Service is fully available to the Customer and zero (0) where 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 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 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 amount of Natural Gas in kWh equal to the difference between ninety-eight per cent (98%) of the Nominated Quantity and the Actual Utilisation Quantity for such Hour;

"**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 Exit Point**" 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 Service Year; or

(b) if earlier, the date of termination of this Agreement;

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

"**Trade Nomination**" shall have the meaning given in the Network Code;

"**Transaction**" means the agreement to undertake an Acquiring Trade Nomination and corresponding Disposing Trade Nomination as set out in Clause 6.1 and generally under the terms and conditions set out in this Agreement;

"**Transaction Shortfall Quantity**" means, where pursuant to a Nomination, the quantity (in kWh) delivered through the Transaction is less than the Nominated Quantity, the difference between the Nominated Quantity and the quantity delivered through the Transaction;

"**VAT**" has the meaning given in Clause 10.1; and

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

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, order, or official directive (in each case having the force of law). Reference to any "**legislation**" is to such legislation as amended, modified, supplemented, extended, or replaced from time to time, to any legislation replacing it or made under it, and as it has effect from time to time in the United Kingdom, including as assimilated law within the meaning of the European Union (Withdrawal) Act 2018;

(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 the Customer 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 one (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 (4) decimal places without rounding. The final such sum shall be rounded to the second (2^{nd}) decimal place; and, in both cases, a figure of five (5), or greater than five (5) 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.

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 shall provide the Service to the Customer during the Service Year in accordance with the terms and conditions of this Agreement.

3.2 Where, pursuant to a Nomination the Service Provider is required to reduce the Service Provider's offtake of Natural Gas, the Service Provider shall do so at the System Exit Point at which the Facility is connected to the NTS.

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3.3 In providing the Service, the Service Provider shall not knowingly or recklessly pursue any course of conduct (either alone or with some other person) which is likely to prejudice:

(a) the safe and efficient operation, from day to day, by the Customer of the NTS;

(b) the safe, economic and efficient balancing by the Customer of the NTS; or

(c) the due functioning of the arrangements provided for in its Network Code.

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

4 SERVICE

4.1 Subject to and in accordance with this Agreement, including Clauses 7 and 12, the Service Provider shall ensure that it is at any time and at all times during the Service Year able to comply with its obligations to the Customer to reduce offtake of Natural Gas at the Facility pursuant to this Agreement.

4.2 During the Service Year, the Customer shall be entitled, by submitting a Nomination (subject to and in accordance with this Agreement, including Clauses 7 and 12), to require the Service Provider to reduce offtake of Natural Gas at the Facility so as to deliver a quantity of Natural Gas to the Customer at the System Exit Point at which the Facility is connected to the NTS pursuant to a Nomination in accordance with Clause 5.

5 NOMINATIONS

Customer submitting a Nomination

5.1 Where the Customer wishes the Service Provider to reduce offtake of Natural Gas from the NTS so as to have a quantity of Natural Gas delivered to it on a Day, it shall submit a nomination (a "**Nomination**") to the Service Provider in accordance with this Clause 5 and the provisions of this Agreement.

5.2 Each Nomination shall be submitted (in accordance with Clause 18) substantially in the form set out in Schedule 2 ("**Nomination Form**") and must specify:

(a) the Day to which the Nomination relates;

(b) 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**");

(c) the quantity of Natural Gas (in kWh) which the Customer wishes to have delivered (the "**Nominated Quantity**") over the Nomination Period, on that Day;

(d) the rate (in kWh per hour) of delivery for each Hour of the Nomination Period to which it relates (the "**Delivery Rate**");

(e) the prevailing OPN (in kWh per hour) for the Facility and the new OPN (in kWh per hour) for each Hour over the Nomination Period; 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 Response Time or such other period of time as may be agreed by the Parties, provided that if the Customer

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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 make a Nomination, that:

(a) specifies a Delivery Rate that is:

(i) greater than the Maximum Delivery Rate;

(ii) greater than the aggregate rate of offtake for the Facility as set out in the latest OPN prior to the Nomination;

(iii) less than the Minimum Delivery Rate;

(iv) less than zero (0);

(v) if applicable, reduces the Facility's net output to a level that is greater than zero (0) but less than the Facility's Stable Export Limit (as defined in the Grid Code);

(vi) if applicable, increases the Facility's net output to a level that is greater than the Facility's Maximum Export Limit (as defined in the Grid Code); or

(vii) not in compliance with any Additional Nomination Restrictions set out in Schedule 1;

(b) specifies a Nomination Period of less than the Minimum Delivery Duration or greater than the Maximum Delivery Duration.

Service Provider's response to a Nomination

5.5 If the Customer submits a Nomination, the Service Provider shall, as soon as reasonably practicable, and in any case within forty-five (45) minutes:

(a) notify the Customer, for each Hour in the Nomination Period, of the quantity of Natural Gas the Service Provider intends to deliver to the Customer by reducing the offtake of Natural Gas from the NTS at the Facility;

(b) procure that revised Offtake Profile Notices are submitted in respect of the reduced offtake of Natural Gas from the NTS at the Facility during the Nomination Period;

(c) submit Renomination(s) in accordance with the Network Code in respect of the reduced quantities of Natural Gas to be offtaken from the NTS at the Facility;

(d) notify the Customer, for each Hour following the end of the Nomination Period and prior to the end of the Day, of the quantity of Natural Gas the Service Provider proposes to offtake from the NTS at the Facility; and

(e) notify the Customer of any actual (or anticipated) change to the quantities notified under paragraph (d).

5.6 For the purposes of Clause 5.5(a) and in accordance with Clause 18.2, the Service Provider shall notify the Customer by completing the form set out in Schedule 2, and by counter-signing and dating such form, and returning such form to the Customer.

5.7 If the Service Provider has responded to the Nomination in accordance with Clause 5.6 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 5.5(a).

5.8 The Service Provider may only reject a Nomination if:

(a) it does not comply with the requirements in Clause 5.2;

(b) it is not in accordance with Clause 5.3 or 5.4; or

(c) it is submitted other than in accordance with Clause 18,

and if the Service Provider rejects a Nomination in accordance with this Clause 5.8, 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.

5.9 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.

5.10 If in respect of a Nomination, the Service Provider does not notify the Customer in accordance with Clauses 5.5 and 5.6, or 5.8, within forty-five (45) minutes from the time the Nomination was made, then the Nomination shall be deemed to have been accepted.

5.11 If, on a Day, the Customer submits a Nomination, in accordance with this Clause, then (whether or not such Nomination has been rejected or will be performed), the Service Provider shall ensure that the Customer is notified prior to any revised OPN being delivered for the Facility (other than those delivered pursuant to Clause 5.5(b)) for that Day.

5.12 Where the Service Provider accepts a Nomination the Service Provider shall not submit a Renomination in accordance with the Network Code to increase the quantity of Natural Gas to be offtaken from the NTS at the Facility in respect of any Hour in the Nomination Period.

Notification

5.13 The Customer shall notify the Service Provider in accordance with Clause 18 (substantially in the form set out in Schedule 3) of the Actual Utilisation Quantity and any Shortfall Quantity where applicable by no later than the start of the seventh (7th) Business Day following the relevant Nomination.

5.14 For the purposes of the NBP Trade made pursuant to Clause 6, the Nominated Quantity notified by the Customer pursuant to Clause 5.2 shall be deemed to be the agreed quantity by both Parties.

6 TRADE NOMINATIONS

6.1 No later than two (2) hours before the end of each Day within the Service Year for which the Nominated Quantity is greater than zero (0) the Customer shall make an Acquiring Trade Nomination for the Nominated Quantity for such Day and the Service Provider shall make a corresponding Disposing Trade Nomination equal to the quantity in the Acquiring Trade Nomination in accordance with Section C5.2 of the Network Code (a "**Transaction**"). For the avoidance of doubt, in the event of a revised Nomination, the Customer shall make a further Trade Nomination and the Service Provider shall make a corresponding Trade Nomination as appropriate to match the quantity.

6.2 For the purposes of making Trade Nominations, the Customer hereby nominates that it shall use shipper short code OMM and the Service Provider nominates that it shall use the shipper short code specified in Schedule 1.

6.3 If, on any such Day, UK Link is affected by a Code Contingency and which affects a Party, such Party shall submit its Trade Nomination by the means and in the manner provided for in the Contingency Procedures.

6.4 Where the Customer has accepted a Trade Nomination, neither Party shall, unless otherwise agreed by the Parties, amend or withdraw such Trade Nomination.

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 the Customer which would result in Natural Gas being unable to be delivered from or to the 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 the Customer is carrying out maintenance to the NTS such that (as a result of such maintenance) the demand for Natural Gas at the Facility cannot be reduced in accordance with this Agreement.

7.3 A Planned Maintenance Period for the Facility may be amended by public notification by the Service Provider 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;

(ii) during an event of Force Majeure, duly and properly notified pursuant to Clause 12.2; and

(iii) for reasons other than those set out in 8.1(a)(i) and 8.1(a)(ii), duly and properly notified pursuant to Clause 8.1(b).

(b) If the Facility is (in whole or in part) unavailable to the Customer during the Service Year for any reason, 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.

(c) For the avoidance of doubt, the Facility shall not be considered unavailable for the purposes of Clause 8.1(a) (and the Service Provider shall not be in breach of Clause 7.1(c)) during any periods in respect of which the Facility is not running or running at the Facility's Stable Export Limit (as defined in the Grid Code) as part of its ordinary course of commercial operations, including where the Service Provider considers it economical to do so and where such chosen mode of operation is not due to any of the reasons set out in Clause 8.1(a).

(d) The Service Provider shall notify the Customer as soon as reasonably practicable after becoming aware of any actual or suspected cyber security incident which affects, or

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may affect, the provision of the Service, the Customer's systems, data or information, or Communications between the Parties.

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 Service is available to the Customer on such Day;

(iii) for a Day in respect of which either:

(A) the Service Provider has declared Force Majeure; or

(B) 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 the Service is available to the Customer on such Day.

(b) For the purposes of Clause 8.2(a), 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 Service was unavailable to the Customer.

(c) In relation to a Day in respect of which:

(i) none of the circumstances in Clause 8.1(a) apply; or

(ii) the Service is not fully available to the Customer solely by reason of the Customer undertaking maintenance of the NTS on the Day;

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

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 delivery of Natural Gas into or out of 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 CHARGES AND INVOICING

10.1 **Charges**

The Customer shall pay to the Service Provider:

(a) the Monthly Service Fee; and

(b) the Delivery Charge,

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(together the "**Charges**") each calculated in accordance with this Agreement.

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

10.3 **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

$$Daily\ Service\ Fee = SAF_D \times P_D$$

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.

10.4 **Delivery Charge**

(a) In respect of each Nomination that results in Gas being delivered to the Customer the amount payable by the Customer to the Service Provider shall be calculated by multiplying the Actual Utilisation Quantity (in kWh) by the Indexed Delivery Charge (in pence/kWh).

(b) Where there is a Transaction Shortfall Quantity (including if either Party fails to make a Trade Nomination), the Delivery Charge payable in accordance with Clause 10.4(a) shall be reduced by the amount of the Transaction Shortfall Quantity multiplied by:

(i) SMBP, where such failure is caused by the Service Provider; or

(ii) SMSP, where such failure is caused by the Customer.

10.5 **Monthly Invoicing**

(a) The Service Provider shall, in respect of each Month of the Service Year (the "**Invoice Period**"), on or before the third (3rd) Business Day of the Month following the end of that Invoice Period, provide the Customer with:

(i) 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; and

(ii) a report (in such format as the Customer shall reasonably require) detailing, for the Invoice Period, any unavailability of the Facility in the Invoice Period, due to any reason and the reasons therefor.

(b) Subject to Clause 11.6, 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 (10th) 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 for the Invoice Period:

(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) in respect of each Day in the Month on which the Customer submitted a Nomination,

(A) the Actual Utilisation Quantity; and

(B) the Delivery Charge;

(iv) any applicable VAT and Taxes; and

(v) the total sum payable by the Customer in respect of the Invoice Period, being the aggregate of the sums calculated pursuant to Clauses 10.5(b)(ii) to (iv) (each as agreed with the Customer in accordance with Clause 10.5(a)(i)).

10.6 Each Party shall promptly provide the other with valid VAT invoices specifying any sums (other than those referred to in Clause 10.1) due or owing under this Agreement.

10.7 It is the intention of the Parties that the terms of this Agreement shall not constitute a supply of Natural Gas for the purpose of the Climate Change Levy. The VAT treatment of the supplies under this Agreement shall be determined according to the VAT laws of the jurisdiction where a taxable transaction for VAT purposes is deemed to take place. Each Party shall, to the extent permitted by law, provide the other with any additional valid VAT invoices as required for the purposes of this Agreement.

11 PAYMENT

11.1 The "**Due Date**" in respect of an invoice is:

(a) for invoices provided in accordance with and in compliance with Clause 10.5, the twenty-fifth (25th) day of the month following the end of the relevant Invoice Period; and

(b) subject to Clause 11.6(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 10.5(a)), the twenty-fifth (25th) 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 10.5, and

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

11.2 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.

11.3 Payments by the Customer to the Service Provider shall be made to the bank account set out in Schedule 1, or such other account as may be notified (on not less than thirty (30) days' notice) by the Service Provider to the Customer.

11.4 Payments by the Service Provider to the Customer shall be made to the bank account notified by the Customer to the Service Provider from time to time on not less than thirty (30) days' notice.

11.5 Notwithstanding any other provisions of this Clause 11, 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.

11.6 **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 23.

(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.

11.7 **Payment Default**

If a Party fails on the Due Date to make payment as required pursuant to Clauses 11.1 and11.2, 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%).

11.8 **Final Adjustments**

Any monies due and owing by either Party to the other shall be paid, any corrections or adjustments to payments previously made shall be determined, and any refunds due shall be made within sixty (60) days after the Service End Date, or if earlier, the date of termination of this Agreement.

12 FORCE MAJEURE

12.1 **Extent of Relief**

(a) If either Party is rendered unable to perform any of its obligations under this Agreement as a result of Force Majeure, such Party shall, subject to the provisions of Clause 7 and the following provisions of this Clause 12, be excused from liability (including any requirement under this Agreement to make payment of any sum except for any sum due and owing as at the time of Force Majeure) for such non-performance to the extent that, and for as long as, such Force Majeure persists.

(b) To the extent to which Force Majeure affecting the Service Provider results in a full or partial reduction in the level of the Service which the Service Provider can make available to the Customer, then the Service Availability Factor for such Day affected by Force Majeure shall be reduced and determined in accordance with Clause 8.

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12.2 **Notification of Force Majeure**

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

(a) it shall have notified the other as soon as practicable after becoming aware of such Force Majeure; and

(b) it shall have continued to seek to perform its obligations under this Agreement which are not affected by the Force Majeure event (in which event it shall be entitled to such relief with effect from the commencement of such Force Majeure).

13 DEFAULT

13.1 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, in circumstances where such failure is not excused by Force Majeure or where Clause 7 does not apply, such failure shall be a Default.

13.2 To the extent that on any Day, the Service Provider is in Default, Liquidated Damages shall apply and such Liquidated Damages shall be the Customer's sole remedy under this Agreement in respect of such Default.

13.3 The Customer shall be entitled to raise an invoice in respect of Liquidated Damages in accordance with Clause 10.6.

14 LIABILITY

14.1 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 of the Service Provider's liabilities and obligations to the Customer under the Network Code;

(d) any liability which cannot be excluded or limited by law; and

(e) any obligation under this Agreement to pay Liquidated Damages.

14.2 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; and/or

(b) any direct or indirect loss or deferment of revenue or profit, loss of use, contract, or goodwill.

14.3 Without prejudice to the other provisions of this Clause 14, the rights and remedies of the Parties set out in this Agreement in respect of the non-performance or breach by a Party of this Agreement or for any other claim of whatsoever nature arising out of or in relation to this Agreement shall be the exclusive remedies of the Parties and shall exclude and are in place of any other rights or remedies of either Party howsoever arising (whether at law, in equity or in consequence of any statutory duty, strict or tortious liability or otherwise). The provisions of this Clause 14.3 shall be without prejudice to the rights of a Party to seek injunctive or declaratory

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relief in respect of that Party's rights and interests and/or the covenants and obligations of the other Party in accordance with this Agreement.

14.4 Where any provision of this Agreement provides for any amount to be payable by a Party upon or in respect of that Party's non-performance or breach of any provision of this Agreement both Parties agree and acknowledge that:

(a) without prejudice to Clause 14.3, 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 amounts provided to be payable (including any Liquidated Damages) by the non-performing Party or Party in breach are reasonable and proportionate to protect the legitimate operational and financial interests of other Party.

14.5 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.

15 TERMINATION

15.1 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 reasonable cure period 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.

15.2 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 15.1. 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.

15.3 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 15:

(a) in respect of such termination; or

(b) in relation to the remainder of the Term.

15.4 The provisions of Clauses 1 (Definitions and Interpretation), 10 (Charges and Invoicing), 11 (Payment), 14 (Liability), 15 (Termination), 17 (Assignment, Succession, Etc.), 18 (Communications), 19 (Confidentiality), 20 (Representation, variation and waiver), 23 (Expert), 24 (Third Party Rights), 25 (Governing Law) and 27 (Counterparts) shall survive termination of this Agreement.

16 WARRANTIES AND UNDERTAKINGS

16.1 Each Party warrants to the other that it (either directly or acting through an Affiliate):

(a) subject to Clause 16.2, has obtained and will maintain at all times during the Term all licences, authorisations, permits, consents and other approvals necessary to enter into this Agreement and to enable it to fulfil its obligations under this Agreement;

(b) has negotiated, entered into and executed this Agreement as principal (and not as agent or in any other capacity, fiduciary or otherwise); and

(c) is and will remain a party to the Network Code for the duration of the Service Year.

16.2 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.

16.3 The Service Provider acknowledges that the Customer requires the Service provided under this Agreement (and in particular the delivery service) to comply with the Gas Safety (Management) Regulations 1996. Accordingly, the Service Provider shall not knowingly or deliberately do anything that would put the Customer in breach of the Gas Safety (Management) Regulations 1996 and shall fully co-operate with the Customer insofar as such co-operation is required to ensure that the Customer complies with its obligations under the Gas Safety (Management) Regulations 1996. The Service Provider acknowledges and agrees that the provision of the Service is in accordance with its obligation pursuant to Regulation 6(6) of the Gas Safety (Management) Regulations 1996.

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

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

16.6 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.

17 ASSIGNMENT, SUCCESSION, ETC.

17.1 **No Assignment**

Except as expressly provided under Clause 17.2, 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).

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17.2 **Right of Assignment**

No consent shall be required pursuant to Clause 17.1 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.

17.3 **Successors and Assigns**

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

17.4 **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.

18 COMMUNICATIONS

18.1 **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):
box.GSOsettlements@nationalgas.com

Email addresses (to be sent to all): operatingmargins@nationalgas.com

or to such other address, email address notified by a Party to the other from time to time in accordance with this Clause 18.

18.2 **Method of Communications**

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

(a) Nominations or notices served in accordance with Clauses 5.5, 5.6 and 5.8 shall initially be communicated by telephone and confirmed by electronic means;

(b) invoices (including, for the avoidance of doubt, credit notes) under Clause 10 shall always be sent by electronic means; and

(c) termination notices under Clause 15 must always be given by electronic means and confirmed by prepaid post or delivered by hand.

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18.3 **Time for Receipt**

Communications shall be deemed to have been received:

(a) in the case of deliveries by hand:

(i) except as stated in paragraph (ii) below, on the day of delivery if such day is a Business Day, or otherwise on the next succeeding Business Day; and

(ii) if the Communication is a Nomination or other notice pursuant to any of the provisions in Clauses 5 or 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.

19 CONFIDENTIALITY

19.1 **No Disclosure**

Subject to Clause 19.2, 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.

19.2 **Exceptions**

The obligations in Clause 19.1 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 disclosures made to National Energy System Operator Limited (NESO) (registered company number 11014226) to use only for the purpose of carrying out regulated activities pursuant to its licence granted under the Electricity Act 1989;

(d) 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;

(e) to any governmental agency, or regulatory, or administrative agency having jurisdiction over the disclosing Party;

(f) 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;

(g) 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;

(h) to the Customer for the performance of NBP Trades; and

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(i) to any Expert appointed in accordance with Clause 23.

20 REPRESENTATION, VARIATION AND WAIVER

20.1 Representation

(a) For the purposes of this Clause 20.1, "**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.

20.2 Variation

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

20.3 Waiver

(a) If a Party breaches a term of this Agreement, the rights of the other Party arising from that breach cannot be waived except:

(i) with the express written consent of the other Party; and

(ii) to the extent set out in that consent.

(b) 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.

(c) 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.

20.4 Severability

If any of the provisions of this Agreement is found by a court or authority of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be deemed to be modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the 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 deleted.

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21 CHANGES TO LEGAL REQUIREMENTS, PUBLICATIONS, ETC.

21.1 If any changes shall be made to the applicable Legal Requirements 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.

21.2 In the event that any of the publications or prices referred to in this Agreement ceases to be published, or the information contained in any such publication is provided in a different form, the Parties shall agree any amendments to this Agreement which may be necessary or appropriate, including the use of alternative publications, prices or information, so that this Agreement may continue in force, achieving substantially the same commercial effect.

21.3 If the Parties are unable to agree on any amendments which need to be made to this Agreement pursuant to Clause 21.1 or Clause 21.2, either Party may refer the matter to an Expert for determination in accordance with Clause 23.

22 PARTIES TO CO-OPERATE, ETC.

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

22.2 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.

23 EXPERT

23.1 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 23 shall have effect.

23.2 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 11, 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).

23.3 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.

23.4 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.

23.5 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.

23.6 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.

23.7 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.

23.8 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.

24 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.

25 GOVERNING LAW

25.1 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 23.

25.2 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.

25.3 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.

26 COMPLIANCE

26.1 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;

(c) comply with all applicable laws relating to economic or trade sanctions, fraud and the prevention of the facilitation of tax evasion; and

(d) notify the other Party as soon as reasonably practicable upon becoming aware of any actual or suspected breach of this Clause 26.

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26.2 Each Party will, in connection with this Agreement, maintain in place throughout the Term appropriate policies and procedures to ensure compliance with any applicable laws referred to in Clause 26.1.

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

(a) in respect of any actual or suspected breach notified in accordance with Clause 26.1(d);

(b) to enable the Customer to conduct any audit or investigation into the Service Provider's performance of this Agreement and the Service Provider's compliance with any applicable laws referred to in Clause 26.1 (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

(c) to assist any Competent Authority in conducting any investigation into compliance with any applicable laws referred to in Clause 26.1.

27 DATA PROTECTION

27.1 Each Party shall comply with its obligations under all applicable data protection legislation in connection with any personal data it processes for the purposes of or in connection with this Agreement.

27.2 In respect of any such personal data, each party acknowledges and agrees that it acts as an independent controller in its own right and is independently responsible for determining the purposes and means of its processing and for ensuring that such processing complies with applicable data protection legislation.

27.3 If the nature or extent of the personal data processed or shared between the Parties changes materially, the Parties shall consider and discuss in good faith whether any additional data protection arrangements are reasonably required.

27.4 For the purposes of this Clause 27, "personal data", "controller" and "processing" have the meanings given to them in applicable data protection legislation.

28 COUNTERPARTS

28.1 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.

28.2 A counterpart may be executed by electronic signature and may be delivered by electronic means, and any counterpart so executed or delivered shall be as effective as an original.

29 COSTS

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

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

SIGNED for and on behalf of **National Gas Transmission plc**	**SIGNED** for and on behalf of **[Service Provider]**
Signed:	Signed: .....
Name:	Name: .....
Position:	Position: .....

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SCHEDULE 1

PART 1: SERVICE PROVIDER DETAILS

Service Provider	[ ], a company incorporated under the laws of [England and Wales] with company number [ ] whose registered office is at [ ]
Service Provider contact details for operational notices	Marked for the attention of: [ ] Address: [ ] Telephone number: [ ] Email: [ ]
Service Provider contact details for other Communications	Marked for the attention of: [ ] Address: [ ] Telephone number: [ ] Email: [ ]
Customer contact details for operational notices	Marked for the attention of: [ ] Address: [ ] Telephone number: [ ]
Agent (for the purposes of Clause 25.2)	Name: [ ] Address: [ ] Telephone number: [ ] **[Drafting note: Insert N/A where no agent is required.]**
Facility	[ ]
BM Unit IDs	[ ]
Shipper Short Code	[ ]

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PART 2: SERVICE PARAMETERS

Service Start Date	05:00 hours on 1 May [XXXX]
Service End Date	05:00 hours on 1 May [XXXX]
Minimum Delivery Rate	[ ] kWh/h
Maximum Delivery Rate	[ ] kWh/h
Minimum Delivery Duration	[ ] hours
Maximum Delivery Duration	[12 or 24] hours
Facility Stable Export Limit	[ ]
Facility Maximum Export Limit	[ ]
Response Time	[hours / minutes] before the hour bar prior to the Nomination Start Time
Planned Maintenance Period(s)	[ ] to [ ]
Website for Clause 7.3	[ ]
Additional Nomination Restrictions	**[Drafting note: insert N/A where no additional nomination restriction is required.]**

PART 3: SERVICE CHARGES

Annual Service Fee	£[ ]
Indexed Delivery Charge	The Indexed Delivery Charge for Power Station payable in pounds sterling shall be: $\sum_i$ [Max (SBP_i , AO, 0) x [X]%] x AUQ_i Where; $\sum_I$ = the sum of all Hours i on the Day in which the Service has been delivered; SBP_i = the average System Buy Price for electricity determined by the two relevant settlement periods within the Hour i as published in the final settlement report in £/kWh; AO = the accepted offer price in £/kWh; X = the efficiency loss factor for the Facility;

	AUQ_i = the Actual Utilisation Quantity delivered in the Hour i in kWh;
Payment Details	[Bank Name] [Bank Address] [Bank Sort Code / SWIFT] [Bank Account Number / IBAN] [Service Provider]

SCHEDULE 2

OPERATING MARGINS – NATIONAL GAS TRANSMISSION PLC

FORM OF NOMINATION FORM

OPERATING MARGINS NOMINATION

This is an Operating Margins Delivery 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.

Facility:
To:
Telephone:
Send To:

Date and Time of Request dd / mm / yyyy hh:mm

Gas Day dd / mm / yyyy

Type of Nomination Demand Reduction

Nomination Number (for sequential control purposes)

	NATIONAL GAS INSTRUCTION			SERVICE PROVIDER ACCEPTANCE
	A	B	C = (B - A)	D
Hour Commencing	**Nominated OM Quantity (kWh/h)**	Prevailing OPN (kWh/h)	New OPN (kWh/h)	**Nominated Quantity (kWh/h)**
05:00				
06:00				
07:00				
08:00				
09:00				
10:00				
11:00				
12:00				
13:00				
14:00				
15:00				
16:00				
17:00				
18:00				
19:00				
20:00				
21:00				
22:00				
23:00				
00:00				
01:00				
01:00 GMT if required				
02:00				
03:00				
04:00				
End of Day Volume (kWh)	-	-	-	-

Nominated Quantity kWh

Accepted Nominated Quantity kWh

SERVICE PROVIDER: PLEASE CONFIRM HOURLY EXPECTED FLOWS FOLLOWING THE END OF THE OM NOMINATION PERIOD	Hour Commencing:	kWh	Hour Commencing:	kWh

Please continue on separate page if necessary

Signed (on behalf of NGT):
Date and Time:

SERVICE PROVIDER CONFIRMATION - Please confirm receipt of instruction by return

Time Nomination acknowledged by Service Provider
Signed:
Date and Time:

From: National Gas Operations NCC | Tel: 0870 191 0636

SCHEDULE 3

OPERATING MARGINS – NATIONAL GAS TRANSMISSION PLC

FORM OF VOLUME CONFIRMATION

OPERATING MARGINS VOLUME CONFIRMATION

Facility:
From: National Gas Operations GNCC
Tel:
E-mail:

To: [Service Provider]
Tel:
E-mail:

Gas Day: dd/mm/yyyy

Hour Commencing	Prevailing OPN before OM Nomination, kWh	Flow, kWh	**Actual Utilisation Quantity, kWh**	**OM Nomination, kWh**	**Shortfall Quantity, 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					
Total (kWh)					

Name: _____
Signed (on behalf of NGT): _____
Date and Time: _____

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