

Dated _____

[SHIPPER] (1)

-and-

NATIONAL GRID GAS PLC (2)

OPERATING MARGINS GAS DELIVERY SERVICE AGREEMENT

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THIS AGREEMENT is made the _____ day of _____

BETWEEN:

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

WHEREAS:

- (A) The Customer wishes to engage the Shipper to provide certain services from the Facility, and the Shipper 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 The following terms shall have the following meanings:

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

"**Actual Utilisation Quantity**" means the actual measured quantity of Natural Gas provided by the Shipper in aggregate for the Facility pursuant to an Instruction as notified to the Shipper by the Customer pursuant to clause 4.9;

"**Affected Party**" has the meaning given in clause 9.1 or 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 a majority of the voting shares of, or is entitled (directly or indirectly) to appoint a majority of the directors of, the other company;

"**Annual Utilisation Limit**" shall be as set out in Schedule 1;

"**Authority**" means the Gas and Electricity Markets Authority;

"**Bar**" means the unit defined as such in ISO 1000: 1992(E);

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

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

"**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;

"**Communications Test**" shall have the meaning set out in clause 3.5;

"**Competent Authority**" means the Authority or any local, national or supra-national agency, authority, department, inspectorate, minister, official, court, tribunal or public or statutory person (whether autonomous or not) of the United Kingdom (or the government thereof) or

the member states of the European Union which have jurisdiction over the Customer or the Shipper or the subject matter of this Contract

"Contract Price" means the sum calculated in accordance with clause 6.1 (b);

"Daily Flow Notice" or "DFN" means the notice given by the Shipper to the Customer in accordance with the relevant Network Entry Agreement;

"Day" means a period commencing at 06:00 hours on any day and ending at the same time on the immediately following day;

"Delivery Duration" means the length of time that the Customer requires each Instruction to be provided for which shall not be less than the Minimum Delivery Duration or greater than the Maximum Delivery Duration;

"Directive" means any present or future directive, request, requirement, instruction, code of practice, direction or rule of any Competent Authority and any modification, extension or replacement thereof;

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

"Due Date" has the meaning given in clause 13;

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

- (a) a Party (or any third party providing credit support to such Party in respect of its obligations hereunder) becomes insolvent or unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (other than under sub-clause 1(a) thereof), or goes into liquidation, receivership or administration, or makes a composition with its creditors, or a petition is presented in relation to making an administration order against or for the winding up or dissolution of that Party and such petition is not withdrawn within 30 days of its presentation;
- (b) failure by a Party to provide or continue to provide any credit support agreed between the Parties in respect of this Agreement or the failure of a Party or its credit support provider to perform in respect of any such credit support;
- (c) a Party fails to make payment of any amount payable under this Agreement and fails to remedy the same within five Business Days of receiving notice of such breach from the other Party;
- (d) illegality in accordance with clause 9.4; and
- (e) the facility ceasing to be operated by, controlled by or owned by, the Shipper or an Affiliate of the Shipper.

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

"Expert" has the meaning given in clause 24.2;

"Facility" means the facility specified in Schedule 1 which is used to provide the Service;

"Force Majeure" has the meaning given in clause 9.1;

"Gas Flow Day" has the meaning given in the Network Code;

"Heren" means the publication "European Spot Gas Markets" published by Heren Energy Analysis Ltd;

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

"Indexed Delivery Charge" means the charge listed in Schedule 1;

"Instruction" shall have the meaning given in clause 4;

"Instructed Delivery Rate" means the aggregate rate, (which shall be not greater than the Maximum Delivery Rate) specified by the Customer for the delivery of gas to the NTS (which may be provided by an increase in supply or reduction in offtake from the NTS), for the Delivery Duration from the Facility;

"Instructed Gas Quantity" means the quantity of Natural Gas specified by the Customer pursuant to an Instruction (being the Instructed Delivery Rate multiplied by the Delivery Duration);

"Invoice Period" has the meaning given in clause 12.1;

"ISO" means the International Organisation for Standardisation;

"kWh" means kilowatt hour(s);

"Legal Requirement" means any Act of Parliament, regulation, licence or Directive of a Competent Authority;

"letter of credit" means an unconditional irrevocable standby letter of credit in a form acceptable to the Customer;

"Maintenance Period" means the period specified in Schedule 1 (as may be amended from time to time in accordance with clause 7) during which the Facility is completely withdrawn from service for planned maintenance;

"Maximum Delivery Rate" means the maximum aggregate rate that the Facility can provide Natural Gas pursuant to this Agreement as set out in Schedule 1;

"Maximum Delivery Duration" means the maximum length of time (as set out in Schedule 1) that an Instruction can specify that the Service can be provided for;

"Minimum Delivery Rate" means the minimum aggregate rate to be provided for the Service from Facilities as specified in Schedule 1;

"Minimum Delivery Duration" means the minimum length of time (set out in Schedule 1) that an Instruction can specify that the Service shall be provided for;

"Month" means a period commencing at 06:00 hours on the first day of a calendar month and ending at the same time on the first day of the immediately following calendar month;

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

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

"Natural Gas" means any hydrocarbons or mixture of hydrocarbons and other gases consisting predominantly of methane, which at a temperature of 15 Degrees Celsius and at an absolute pressure of 1.01325 Bar, is or are predominantly in the gaseous state;

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

"Network Entry Agreement" shall have the meaning given in 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 Shipper 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 National Grid NTS of that quantity of Natural Gas in determining for that Day the Daily Imbalance of the Shipper making the Disposing Trade Nomination;

"Notifying Party" has the meaning given in clause 9.4 and 15.1;

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

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

"Operating Margins Purposes" shall have the meaning given in the Network Code;

"Party" means either party to this Agreement and its successors and permitted assigns;

"Reasonable and Prudent Operator" means a person acting in good faith, with the intention of performing its contractual obligations and who in so doing, and in the general conduct of its undertaking, exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced person complying with applicable law engaged in the same type of undertaking in similar conditions and circumstances;

"Recovery Period" means the period specified as such in Schedule 1;

"Regulation" means any regulation, rule, order, official directive (in each case having the force of law) of any governmental body, agency or department, regulatory or self-regulatory authority;

"Renomination" shall have the meaning given in Network Code;

"Required Credit Rating" has the meaning given in clause 11.1;

"Security Document" has the meaning given in clause 11.1;

"Security Provider" has the meaning given in clause 11.1;

"Response Time" means the time specified in Schedule 1 being the period between the time of the first Instruction and the time that the Instructed Delivery Rate is achieved, which shall be no greater than two (2) hours from the first hour bar after the time of Instruction;

"Service" means the services to be provided by the Shipper pursuant to this Agreement as further set out in clause 3;

"Service Availability" means the number of hours where the Facilities in aggregate can meet no less than the Minimum Delivery Rate;

“**Service Fee**” means the sum set out in Schedule 1 payable in accordance with clause 12.1;

“**Shipper Representative**” shall be such representative as set out in Schedule 1;

“**Shortfall Quantity**” means where pursuant to an Instruction the Actual Utilisation Quantity is less than the Instructed Gas Quantity, the difference between the Instructed Gas Quantity and the Actual Utilisation Quantity;

“**Start Time**” means the time (on the hour) from when the Customer requires an Instruction to commence;

“**Summer Period**” means the period from 06:00 on [01/05/2011] until 05:59 on [01/10/2011];

“**Summer Period Availability**” shall be as set out in Schedule 1;

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

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

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

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

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

“**Therm**” means 29.3071 kWh;

“**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 5.1 and generally under the terms and conditions set out in this Agreement;

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

“**Winter Period**” shall mean the period from 06:00 on [01/10/2011] until 05:59 on [01/05/2012];

“**Winter Period Availability**” shall be as set out in Schedule 1.

- 1.2 All references to clauses and schedules are (unless otherwise specified) references to clauses of and schedules to this Agreement and such Schedules are hereby incorporated as part of this Agreement.
- 1.3 All terms derived from terms defined in this clause 1 shall be construed in accordance with such defined terms; and references to the singular shall include the plural and vice versa.
- 1.4 All capitalised terms not otherwise defined in this Agreement shall have the meanings respectively specified in the Network Code.
- 1.5 The headings of the clauses in this Agreement are inserted for convenience only and shall not affect the construction of this Agreement.
- 1.6 In this Agreement, unless the context otherwise requires:

(a) the word "including" is to be construed without limitation;

(b) references to persons shall include individuals, bodies corporate, unincorporated associations and partnerships.

1.7 References to statutes are to the same as may be amended modified or re-enacted from time to time.

2 EFFECTIVE DATE AND DURATION

2.1 Effective Date

This Agreement shall come into force at 0600 hours on 1 May [2011] and shall, subject to clause 15, continue in effect for the period of 12 Months (the “**Term**”).

2.2 Surviving Provisions

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

3 THE SERVICE

3.1 The Shipper agrees to procure the increase in supply and/or reduction in offtake of Natural Gas to/from the NTS during the Term (the “**Services**”) in accordance with the terms and conditions set out in this Agreement in exchange for the payment of the Service Fee by the Customer.

3.2 The number of occasions during a calendar year upon which the Customer utilises the Service by issuing an Instruction in accordance with this Agreement shall not exceed the Annual Utilisation Limit.

3.3 The Shipper undertakes to comply with all Instructions given by the Customer pursuant to clause 3.2.

3.4 The Customer agrees to pay the Shipper the Indexed Delivery Charge and the Contract Price upon successful completion of each Instruction in accordance with clause 13.

3.5 The Customer may at any time during the Term test the Shipper’s ability to comply with an Instruction, including without limitation communications between the Parties (“**Communication Test**”). Where a Communications Test has failed to meet the testing criteria agreed between the Parties, the Customer may require (acting reasonably) further Communications Tests to be performed. The Customer shall upon request from the Shipper provide the reasons and criteria for failure of such test.

3.6 Where subsequent Communications Tests fail National Grid reserves the right to terminate this Agreement in accordance with clause 15.2.

3.7 Subject to clauses 3.9 and 7.1 below, the Shipper shall procure that the Facility is available during the Term to deliver the Summer Period Availability and Winter Period Availability. The Customer shall monitor the Service Availability throughout the Term. No later than 1 Month after the end of each of the Summer Period and the Winter Period, the Customer shall demonstrate the total Service Availability (in hours) for the Summer Period or Winter Period (as the case may be). If the total Service Availability (in hours) (inclusive of any Maintenance Period pursuant to Clause 7) is less than 100% of the appropriate Summer Period Availability or Winter Period Availability (as specified in Schedule 1), the Shipper shall pay to the Customer, in respect of the relevant period a repayment amount in accordance with the following calculations. Such payment shall be due on or before the tenth day following receipt by the Shipper of an invoice provided by the Customer in relation thereto (the “**Due Date**”):

- (a) if the Service Availability is less than 100% but greater than or equal to 90% of the Summer Period Availability or Winter Period Availability (as appropriate), then the Shipper shall pay to the Customer 10% of the Service Fee; or
 - (b) if the Service Availability is less than 90% but greater than or equal to 85% of the Summer Period Availability or Winter Period Availability (as appropriate), then the Shipper shall pay to the Customer 25% of the Service Fee; or
 - (c) if the Service Availability is less than 85% but greater than or equal to 80% of the Summer Period Availability or Winter Period Availability (as appropriate), then the Shipper shall pay to the Customer 50% of the Service Fee;
 - (d) if the Service Availability is less than 80% of the Summer Period Availability or Winter Period Availability (as appropriate), then the Shipper shall pay to the Customer 100% of the Service Fee.
- 3.8 The Customer may not issue a second Instruction until after the minimum number of hours have elapsed since the completion of a previous Instruction (the “**Recovery Period**”) as set out in Schedule 1.
- 3.9 The Customer shall not issue an Instruction:
- (a) for an Instructed Delivery Rate greater than the Maximum Delivery Rate;
 - (b) for an Instructed Delivery Rate less than the Minimum Delivery Rate or less than the rate of offtake as set out in the latest OPN prior to the Instruction;
 - (c) for a Start Time prior to the expiry of the Response Time;
 - (d) for a Delivery Duration of less than the Minimum Delivery Duration; and
 - (e) for a Delivery Duration of greater than the Maximum Delivery Duration.

4 INSTRUCTION

- 4.1 For the purposes of this Agreement, it shall be assumed that any change in the rate of delivery of Natural Gas to or from the NTS by a Shipper will occur on the hour.
- 4.2 The Customer may issue one or more Instructions to the Shipper by telephone and by facsimile to the Shipper Representative as such telephone number and facsimile number are set out in Schedule 1 in accordance with this clause 4.
- 4.3 Each Instruction shall:
- (a) specify the identity of the Shipper;
 - (b) specify the Gas Flow Day to which it relates;
 - (c) be substantially in the form set out in Schedule 2;
 - (d) specify the Instructed Delivery Rate;
 - (e) specify the Delivery Duration;
 - (f) specify the Instructed Gas Quantity;
 - (g) specify the Start Time;

(h) comply with the terms set out in this clause 4 and this Agreement generally.

4.4 Within sixty (60) minutes of receipt of an Instruction, the Shipper shall:

- (a) notify the Customer in writing by facsimile (substantially in the form set out in Schedule 3) the quantity to be utilised for the Facility;
- (b) procure that revised Offtake Profile Notices or Daily Flow Notices as the case may be are delivered in respect of any Facility that is being used to provide the Service;
- (c) submit Renomination(s) in accordance with the Network Code in respect of the revised quantities of gas to be offtaken or delivered to the NTS.

4.5 The Instructed Delivery Rate must be achieved by the Start Time.

4.6 The Customer may submit a revised Instruction to amend the Instructed Delivery Rate at any time after submission of the initial Instruction and before the end of the specified Delivery Duration.

4.7 Within sixty (60) minutes of receipt of a revised Instruction, the Shipper shall resubmit those items set out in 4.4 above.

4.8 The Instructed Gas Quantity so notified by the Customer pursuant to clause 4.3 shall be deemed to be the agreed quantity by both Parties for the purposes of the NBP Trade made pursuant to clause 5 below.

4.9 The Customer shall notify the Shipper in writing (by facsimile substantially in the form set out in Schedule 4) of the Actual Utilisation Quantity and any Shortfall Quantity where applicable no later than 0600 hours on the fourth Business Day following the relevant Instruction.

5 TRADE NOMINATIONS

5.1 No later than 04:00 hours on each Day within the Term for which the Instructed Gas Quantity is greater than zero the Customer shall make an Acquiring Trade Nomination for the Instructed Gas Quantity for such Day and the Shipper 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 Instruction, the Customer shall make a further Trade Nomination and the Shipper shall make a corresponding Trade Nomination as appropriate to match the quantity.

5.2 For the purposes of making Trade Nominations, the Customer hereby nominates that it shall use shipper code OMM and the Shipper nominates that it shall use shipper code [].

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

5.4 NBP Trade Nominations shall be made in kilowatt hours, for which purpose the conversion from Therms shall be calculated in accordance with the following formula:

$$\mathbf{K} = 29.3071 \times \mathbf{T}$$

rounded to the nearest kilowatt hour, an exact half being rounded upwards; where "**K**" is the quantity expressed in kilowatt hours and "**T**" is the quantity expressed in Therms.

5.5 Where National Grid NTS has accepted a Trade Nomination, neither Party shall, unless otherwise agreed by the Parties, amend or withdraw such Trade Nomination.

6 CALCULATION OF CONTRACT PRICE AND INDEXED DELIVERY CHARGE

6.1 In respect of each Instruction:

- (a) the Contract Price and the Indexed Delivery Charge shall be payable by the Customer to the Shipper; and
- (b) the Contract Price shall be payable upon completion of a matched Trade Nomination pursuant to clause 5.1 and calculated by multiplying the System Average Price (SAP) on the relevant Day by the Instructed Gas Quantity and where applicable deducting the amount set out in clause 6.2 below; and
- (c) the Indexed Delivery Charge shall be calculated as set out in Schedule 1; and
- (d) each Party shall ensure that VAT, royalties, taxes, duties and other sums legally payable arising as a result of each Transaction are paid.

All the above prices invoiced in accordance with this Agreement are net amounts and subject to any applicable VAT, royalties, taxes, duties and other sums legally payable and each Party shall pay such sums where applicable.

6.2 Following an Instruction where any Shortfall Quantity is greater than five percent of the Instructed Gas Quantity for each complete hour for the period of the Instruction, the Shipper shall multiply such Shortfall Quantity by the System Marginal Buy Price on the relevant Day and deduct from the Contract Price applicable for the relevant Instruction for the relevant Day.

7 MAINTENANCE

7.1 Subject to clause 3.7:

- (a) The Facility shall be unavailable to the Customer for provision of the Services during the Maintenance Period.
- (b) The Shipper shall use all reasonable endeavours to minimise the duration of the Maintenance Period.
- (c) In addition, the Facility shall be completely or partially unavailable for provision of the Services to the Customer on Days when National Grid Gas is carrying out maintenance to the NTS such that (as a result of such maintenance) Natural Gas cannot be delivered from the Facility.
- (d) The Shipper shall use all reasonable endeavours to schedule the Maintenance Period at the same time as any maintenance of the NTS planned by National Grid Gas which would result in Natural Gas being unable to be delivered from the Facility.
- (e) The Shipper may amend the Maintenance Period for the Facility by giving the Customer reasonable prior written notice which shall in any event be given not later than the date being one Month prior to the commencement of the proposed Maintenance Period, provided that the Shipper shall not (without the prior written agreement of the Customer) be entitled to amend the Maintenance Period such that its duration is greater than forty-five (45) calendar days.

8 REPRESENTATIONS AND WARRANTIES

8.1 Each Party represents and warrants to the other that it has obtained and will maintain at all times during the Term all licences, authorisations, permits, consents and other approvals

necessary to enable it to fulfil its obligations under this Agreement and that it is and will remain a party to the Network Code.

- 8.2 The Shipper shall not knowingly or deliberately do anything that would put the Customer in breach of its safety case prepared pursuant to 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 Shipper 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.
- 8.3 The Shipper 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.

9 FORCE MAJEURE AND ILLEGALITY

9.1 For the purpose of this Agreement, "Force Majeure" means any event or circumstance, or any combination of events and/or circumstances, the occurrence of which is beyond the reasonable control of, and could not have been avoided by steps which might reasonably be expected to have been taken by, a Party (the "Affected Party") and which causes or results in the failure of the Affected Party to perform or its delay in performing any of its obligations owed to the other Party (the "Other Party") under this Agreement, including:

- (a) war declared or undeclared, threat of war, act of public enemy, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism;
- (b) act of God;
- (c) strike, lockout or other industrial disturbance;
- (d) explosion, fault or failure of plant, equipment or other installation which the Affected Party could not prevent or overcome by the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same kind of undertaking under the same or similar circumstances.

9.2 Extent of Relief

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 following provisions of this clause 9, 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.

9.3 Notification of Force Majeure

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

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

9.4 Illegality

If either Party becomes unable to perform its obligations under this Agreement as a result of any law or Regulation rendering such performance illegal (otherwise than as a result of that Party's own acts or omissions) then such Party shall be entitled, upon written notice to the other Party to deem such inability to be an "Early Termination Event" and the provisions of clause 15.1 will apply, for which purpose the Party giving notice pursuant to this clause 9.4 shall be the "Affected Party" and the other Party shall be the "Notifying Party".

10 CONVERSION AND CALCULATION

10.1 kWh and Therms

Where:

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

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

10.2 Rounding

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

11 CREDIT SECURITY

11.1 For the purposes of this Agreement, in relation to each Party providing credit:

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

and Poor's rating agency) and A3 (as determined by Moody's rating agency), with stable outlook.

- 11.2 Subject to Clauses 11.5 and 11.6, if the long-term unsecured debt rating of a Party or its Security Provider is or falls below the Required Credit Rating, then, unless the other party has agreed to accept and the Party has provided a Security Document executed by another Security Provider having a long-term unsecured debt rating no worse than the Required Credit Rating, the Party shall:
- (a) on request from the other party, within five (5) Business Days after such request, provide to the other party credit cover) in an amount not less than the Service Fee; and
 - (b) for so long thereafter as it or its Security Provider continues to fail to satisfy the Required Credit Rating as soon as practicable and in any event within five (5) Business Days after the other party demands or applies any credit cover in or towards payment of any amount due and unpaid by the Party under this Agreement, ensure that the credit cover is renewed or restored (or provide to the other party additional credit cover) so that the aggregate amount of the credit cover is restored to not less than the required amount in accordance with paragraph (a) above.
- 11.3 For the purposes of Clause 11.2, the Party may provide credit cover either by providing a letter of credit in accordance with Clauses 11.5 and 11.6 or by paying cash in accordance with Clause 12.7 or, in the case of the Shipper by providing a parent company guarantee from [] PLC in a form acceptable to the Customer (acting reasonably) [valid until not earlier than 1 August 2012].
- 11.4 A Party shall be entitled, by giving not less than five (5) Business Days notice to the other party, to a reduction in or return of the amount of cash cover (but subject to any demand on or application of such credit cover before the expiry of such five (5) Business Day period):
- (a) on or at any time after [1 August 2012]; or
 - (b) if the long-term unsecured debt rating of the Party or (as the case may be) its Security Provider ceases to be below the Required Credit Rating; or
 - (c) to the extent only of the excess, if the amount of credit cover provided exceeds the required amount at any time.
- 11.5 A letter of credit provided by the Party shall be:
- (a) an unconditional irrevocable standby letter of credit, in such form as the other party may reasonably require, in sterling, issued by a United Kingdom clearing bank or other bank or financial institution with a long-term unsecured debt rating of not less than the Required Credit Rating, available for payment at a London branch of the issuing bank;
 - (b) payable on demand by the other party, without notice to the Party, upon the other party certifying that the Party has failed to pay any amount payable under this Agreement when due, or in accordance with Clause 11.6(b); and
 - (c) valid until all outstanding amounts due under this Agreement have been paid and in any event shall be valid until not earlier than [1 August 2012].
- 11.6 Where a Party has provided to the other party and is required to maintain a letter of credit:
- (a) if at any time the issuing bank ceases to have the Required Credit Rating, the Party shall immediately and in any event within three (3) Business Days after notice from the other party provide a new letter of credit for the same amount and complying with the requirements of Clause 11.5;

- (b) if the Party fails to comply (by the time therein required) with Clauses 11.6(a) or 11.6(b), the other party may immediately, without notice to the Party, demand payment of the entire amount of the letter of credit and the proceeds of such demand shall be paid to the other party in accordance with Clause 11.7.
- 11.7 Where any amount is to be paid to the other party in accordance with the provisions of Clause 11.3 or 11.6(b):
- (a) the amount shall be paid by the Party to the other party in cash, the amount so paid shall be the absolute property of the other party and the Party shall have no beneficial or other interest in such amount;
 - (b) in the circumstances set out in Clause 11.4 (but not otherwise), the other party shall pay to the Party an amount (if positive) equal to:
 - (i) the amount paid to the other party by the Party under Clause 11.7(a); less
 - (ii) the aggregate amount then owing by the Party under this Agreement and which is unpaid after its due date for payment;
 - (c) until the occurrence of any of the events referred to in Clause 11.4, the other party shall pay to the Party an amount equivalent to the interest which would have accrued on the amount paid to the other party under Clause 11.3 or 11.6(b), as the case may be, at a rate determined by the other party, acting reasonably, as being the rate on which interest would be payable to the other party on deposits with Barclays Bank PLC of comparable amounts for a comparable period;
 - (d) payments owed by the other party to the Party pursuant to paragraph (c) above shall be paid in arrears on the last Business Day of each month.
- 11.8 If the Shipper is in breach of its obligations under this Clause 11, then, from the day falling 16 Days after the Day on which the breach arose and provided that the breach has not been remedied, the Customer shall have no obligation to pay the Service Fee to the Shipper in respect of such Day.
- 11.9 For the purposes of this Agreement it shall be a Credit Default in relation to a Party if:
- (a) the Party fails to comply with any requirement in this Agreement as to the provision or maintenance in force of any Security Document;
 - (b) the Party fails to comply, fully and within the time required, with any of its obligations under Clauses 11.2 to 11.6;
 - (c) here occurs any event of default on the part of a Party's Security Provider under the terms of a Party's Security Document;
 - (d) any of the Early Termination Events is done or suffered by or occurs in relation to a Party's Security Provider;

12 CHARGES AND INVOICING

- 12.1 The Shipper shall, in respect of each Month (the "Invoice Period"), on or before the fifth Business Day of the Month following the end of that Invoice Period, provide the Customer with a VAT invoice (with appropriate supporting information) specifying:
- (a) subject to clause 12.2, the sum payable in respect of the Service Fee for the previous Month in the Invoice Period (equal to one twelfth of the Service Fee payable in respect of the Term);

- (b) the sum payable in respect of Indexed Delivery Charge;
- (c) the sum payable in respect of the Contract Price;
- (d) any applicable VAT and Taxes;
- (e) the total sum payable by the Customer in respect of the Invoice Period, being the aggregate of the sums calculated pursuant to (a), (b), (c) and (d) above.

12.2 The Customer shall not be obliged to pay the Service Fee for any Day on which the Facility is withdrawn from Service during the relevant Maintenance Period or the Service is otherwise unavailable pursuant to clause 7.1(c). Accordingly, the sum payable by way of Service Fee for the Month(s) during which the relevant Maintenance Period occurs and/or the circumstances in clause 7.1(c) apply shall be pro-rated on the basis of the period of unavailability.

12.3 **Other Invoices**

The Shipper shall promptly provide the Customer with valid VAT invoices specifying any sums pursuant to Transactions (other than those referred to in clause 12.3) due or owing under this Agreement.

12.4 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.

13 **PAYMENT**

13.1 **Payment**

- (a) The "Due Date" in respect of an invoice is the twentieth (20th) day of the Month after the Month in which the invoice was deemed to be received by the Customer.
- (b) 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.
- (c) Where the Due Date is not a Business Day, payment of the amount due shall be made on the next following Business Day, provided that where such Due Date is a Monday, payment of the amount due shall be made on the next following Business Day.

13.2 **Disputes**

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

13.3 Payment Default

If a Party fails on the Due Date to make payment as required pursuant to clause 13.1, interest shall accrue from day to day, after as well as before any judgement, on the unpaid amount, from the Due Date until the date of payment, at a rate equal to the Base Rate plus one per cent.

14 LIABILITY

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

14.2 The Shipper's aggregate liability arising out of this Agreement (including any deductions from the Contract Price of any Shortfall Quantities) shall be limited to the Service Fee.

14.3 The Customer's aggregate liability arising out of this Agreement shall be limited to the aggregate of the Service Fee, the Indexed Delivery Charge and the Contract Price.

14.4 In no event shall either Party be liable to the other for any one or more of the following:

- (a) any indirect or consequential loss or damage;
- (b) any loss of profit, loss of revenue, loss of goodwill, loss or reputation, loss of contract or loss of customer; and
- (c) loss to the extent resulting from the breach of a negligent act or omission of the other Party.

14.5 The rights and remedies of the Parties pursuant to this Agreement exclude and are in place of any rights or remedies of any Party in tort (including negligence and nuisance) or misrepresentation (but not fraudulent misrepresentation) in respect of the subject matter of this Agreement, and accordingly, without prejudice to clause 14.1, each Party (to the fullest extent permitted by law):

- (a) waives any such rights or remedies (other than those provided for pursuant to this Agreement); and
- (b) releases the other Party from any claims or liabilities arising in tort or misrepresentation (but not fraudulent misrepresentation) in respect of the subject matter of this Agreement.

15 EARLY 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 30 days after the discovery by the Notifying Party of the occurrence of an Early Termination Event, elect to terminate this Agreement with immediate effect.

15.2 Where the Shipper fails to pass a Communications Test initiated by the Customer pursuant to clause 3.5 on two (2) or more occasions the Customer may upon written notice to the Shipper, to be given no later than 30 days after the second occasion on which such failure occurs, elect to terminate this Agreement with immediate effect.

16 WARRANTIES**16.1 The Shipper Warranty**

The Shipper 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 Shipper 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.

16.2 No Third Party Rights

The Parties do not intend that any terms of this Agreement should be enforceable by any third party.

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.

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.

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

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

For the attention of: Network Operations Manager

Telephone number: []

Facsimile number: []

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

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

For the attention of: Gas Settlements

Facsimile number: []

or to such other address or facsimile number notified by a Party to the other from time to time in accordance with this clause 18.

18.2 Time for Receipt

Communications shall be deemed to have been received:

- (a) in the case of facsimile or deliveries by hand:
 - (i) except as stated in (ii) below, on the day of delivery if such day is a Business Day, or otherwise on the next succeeding Business Day;
 - (ii) if the Communication is a Trade Nomination or other notice pursuant to any of the provisions in clauses 4, 5 or 9, at the time of receipt;
- (b) in the case of prepaid post, on the day after they were posted, if such day is a Business Day, or otherwise the next succeeding Business Day;
- (c) in the case of transmission by electronic means, at such time as the Parties shall specify in the written agreement which permits the use of such electronic means.

19 GOVERNING LAW

This Agreement 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.

20 CONFIDENTIALITY

20.1 No Disclosure

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

20.2 Exceptions

The obligations in clause 20.1 shall not apply:

- (a) to the extent such disclosure is required by any applicable law, Directive, order, or regulation or in connection with any judicial, arbitration or administrative proceeding or the rules of any recognised stock or securities exchange or any provision of the Network Code;
- (b) to disclosures made to Affiliates, employees, agents, contractors or advisers of a Party who have been required by the relevant Party to keep such terms and/or information confidential;
- (c) to the extent such terms and/or information is already in the public domain (or otherwise already known to the person receiving such information), otherwise than through a breach of this Agreement;
- (d) to any governmental agency, or regulatory, or administrative agency having jurisdiction over the disclosing Party;

- (e) to a bona fide intended assignee or transferee of a Party's rights and obligations hereunder provided that such assignee or transferee has undertaken to keep such terms and/or information confidential;
- (f) to a bank or financial institution for the purpose of financing such Party's business provided that such bank or financial institution has undertaken to keep such terms and/or information confidential;
- (g) to National Grid Gas for the performance of NBP Trades;
- (h) in the case of National Grid Gas, to the extent required by the Network Code; and
- (i) to any Expert appointed in accordance with clause 24.

21 REPRESENTATION, VARIATION AND WAIVER

21.1 Representation

For the purposes of this clause 21.1, "Representation" means a draft, agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to this Agreement, made or given by either Party or any other person at any time prior to the Effective Date:

- (a) except to the extent repeated in this Agreement, the terms of this Agreement supersede and extinguish any Representation;
- (b) 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; and
- (c) 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.

This Agreement contains the entire Agreement between the Parties with respect to the subject matter hereof, and supersedes all previous agreements or understandings between the Parties with respect thereto and any warranty, condition or other term implied by law or custom is (to the fullest extent permitted by law) expressly excluded.

21.2 Variation

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

21.3 Waiver

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

21.4 Severability

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

22 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 Instructions.
- 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 Instructions.

23 CHANGES TO NETWORK CODE, PUBLICATIONS, ETC

- 23.1 If any changes shall be made to the Network Code which would affect the implementation of the provisions of this Agreement, the Parties shall agree such amendments to this Agreement as may be necessary or appropriate to take account of such changes, so that this Agreement may continue in force, achieving substantially the same commercial effect.
- 23.2 In the event that any of the publications referred to in this Agreement ceases to be published, or the information contained in any of them 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 or information, so that this Agreement may continue in force, achieving substantially the same commercial effect.
- 23.3 If the Parties are unable to agree on any amendments which need to be made to this Agreement pursuant to clause 22.1 or clause 22.2, the matter shall be referred to an Expert for determination in accordance with clause 24.

24 EXPERT

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

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above.

SIGNED by the duly authorised
representative for and on behalf of
National Grid Gas plc

By: _____

SIGNED by the duly authorised
representative for and on behalf of
the Shipper

By: _____

SCHEDULE 1

Shipper Representative

Shipper:

Address of the Shipper for notices:

Marked for the attention of: []

Telephone number: []

Fax number: []

Minimum Delivery Rate

[] kWh/h

Maximum Delivery Rate

[] kWh/h

Annual Utilisation Limit

[]

Indexed Delivery Charge

[]

Indexed Delivery Charge Liability Cap

£[] pounds sterling

Response Time

[] hours

Service Fee

£[]

Maximum Delivery Duration

[12 or 24] hours

Minimum Delivery Duration

[] hour

Recovery Period

[]

Maintenance Period

[] to []

Summer Period Availability

May – Sept,

Winter Period Availability

Oct – Apr,

SCHEDULE 2



All Quantities in kWh

OPERATING MARGINS CALL OFF -

Facility:

To:

Tel:

Back Up Tel 1:

Back Up Tel 2:

Fax:

Date and Time of Request

Test Type
(Communications only or Physical)

Type of Nomination
(2 Hours notification required before the commencing of the call off)

Gas Day

Hour	Current OM Volume Required Across Portfolio (kWh)	New OM Volume Required Across Portfolio (kWh)
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		
02:00		
03:00		
04:00		
05:00		
End of Day Volume (kWh)	-	-

Signed (on behalf of NGG) _____

Date and Time _____

CONFIRMATION

Time Nomination acknowledged by Service Provider

Signed _____

Date and Time _____

From: National Grid Gas Operations

Tel: GNCC

Fax:

Generic

REF []

SCHEDULE 4



All Quantities in kWh

OPERATING MARGINS VOLUME CONFIRMATION -

Portfolio Facilities:

To:

Tel:

Back Up Tel 1:

Back Up Tel 2:

Fax:

For Gas Day Commencing 06:00 on:

Hour Commencing	Site Position				
	Demand Reduction		OM Requirement (kWh)	OM Delivered (kWh)	Shortfall Quantity (kWh)
	Total of Site nominations before initial call off (kWh)	Flow (kWh)			
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					
02:00					
03:00					
04:00					
05:00					
Total					

Actual Utilisation Quantity:

Shortfall Quantity (if any)

Name

Signed

Date and Time

From: National Grid Gas Operations Manager

Tel: GNCC

Fax:

Generic

REF []

SCHEDULE 5**COMMUNICATIONS TEST PROCEDURE**

Communications Tests may be conducted to simulate an instruction. This is to test the communication and instruction process robustness without needing to alter flow or make trade nominations. Failure to pass 2 or more of these tests may result in the Customer terminating this Agreement in accordance with clause 15.2.

Below is the draft process (To be agreed in writing between the Parties)

1. Customer to contact Shipper by telephone to inform Shipper of instruction
 - Shipper to respond to telephone & be informed & trained in provision of OM service
2. Customer to contact Shipper by Fax detailing
 - Instruction Type, i.e. Communications Test
 - Gas Day
 - Instructed Gas Quantity for each hour
 - End of Day Total Instructed Gas Quantity (kWh)
 - Facsimile number not rejected
3. Shipper to respond with a completed Confirmation of Expected Delivery facsimile (Schedule 3a or 3b as appropriate) within 60 minutes of faxed instruction by Customer.
 - Correct form used
 - Confirmation fax reflects the Instructed Gas Quantity
 - Confirmation fax received within timescale
4. Shipper to respond with revised OPNs and DFNs (as appropriate) within 60 minutes of faxed instruction by Customer.
 - Normal OPN and DFN process followed for all of the facilities that would be used to fulfil instruction
 - OPN and DFN change to reflect the Instructed Gas Quantity and align with Confirmation of Expected Delivery facsimile from Shipper in 3.
 - Confirmation fax received within timescale
5. Shipper to confirm that trade possible with the Operating Margins Manager (BA Code: OMM)