

Subject to Contract

Draft 24.10.13 Version 0.1

For discussion purposes only

Planning and Advanced Reservation of Capacity Agreement (PARCA)

Dated []

National Grid Gas plc
(NGG)

[insert name of Reservation Party]
(Reservation Party)

For discussion purposes only

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THIS AGREEMENT is made on the _____ day of _____ 20[]

BETWEEN:

Between

- (1) **National Grid Gas plc (NGG)** registered in England and Wales with number 2006000 whose registered office is at 1 – 3 Strand, London WC2N 5EH; and
- (2) [*insert name of Reservation Party*] (**Reservation Party**) [registered in [England and Wales] with number [*insert company registration number*] whose registered office is at [*insert registered office*] [a corporation organised and existing under the laws of [*insert jurisdiction*]] [whose principal place of business is at [*insert principal place of business*]]

each a **Party** and together the **Parties**.

Recitals

- (A) NGG is the owner and the operator of the NTS.
- (B) The Reservation Party wishes:
 - (a) NGG to reserve the Reserved Capacity from the Reservation Date;
 - (b) NGG to register on the Allocation Date the Reserved Capacity in the name of the Reservation Party (or where the Reservation Party is not a User, in the name of a Nominated User or Nominated Users with effect from the Registration Date.
 - (c) NGG agrees to reserve, allocate and register the Reserved Capacity subject to and in accordance with the terms of this Agreement.

It is agreed:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following terms shall have the following meanings:

Acceptable Security means a letter of credit, bank guarantee, cash deposit or parent company guarantee in a form and/or from a financial institution or corporate entity acceptable to NGG (acting reasonably).¹

Ad-Hoc Demonstration Date means, where the Reservation Party has not provided NGG with the Demonstration Information by the Third Demonstration Date, such later date as NGG may agree for the purposes of Clause 4.4.

Allocation Date means:

- (a) the date identified as such in the Phase 1 PARCA Works Report; or
- (b) Such other date as NGG may determine in accordance with Clause 8.2.

Confidential Information means all information a Party receives as a result of entering or performing this Agreement which relates to:

- (a) the negotiations leading up to, and the provisions or subject matter of, this Agreement or any ancillary matter;
- (b) The other Party's business, financial or other affairs.

Demonstration Information means, in relation to:²

- (a) Phase 2 Schedule A Works, information of the type set out in the Demonstration Information Guidelines;
- (b) Phase 2 Schedule B Works, information of the type set out in the Demonstration Information Guidelines;
- (c) Phase 2 Schedule C Works, information of the type set out in the Demonstration Information Guidelines;
- (d) Phase 2 Schedule D Works, information of the type set out in the Demonstration Information Guidelines;

¹ This may be linked to the credit provisions in TPD Section V3.

² The Schedule will identify generic Demonstration Information and the Demonstration Dates as applicable, NGG will apply relevant Demonstration Information and identify this within the Phase 1 PARCA Works Report.

- (e) Phase 2 Schedule E Works, information of the type set out in the Demonstration Information Guidelines;
- (f) Phase 2 Schedule F Works, information of the type set out in the Demonstration Information Guidelines;
- (g) Phase 2 Schedule G Works, information of the type set out in the Demonstration Information Guidelines;

As specified in the Phase 1 PARCA Works Report.

Demonstration Information Guidelines means the guidelines published by NGG from time to time containing details of the information that the Reservation Party may be required to provide to NGG as the Phase 2 PARCA Works are progressed.

Development Consent Order means an order granting development consent for a nationally significant infrastructure project, as more readily defined in the Planning Act 2008 (as amended or restated from time to time).

Effective Date means the date of this Agreement.

Environmental Impact and Assessment Report means the environmental impact and assessment report which is included in the Phase 1 PARCA Works Report.

First Demonstration Date means, in relation to each Schedule of Phase 2 PARCA Works, the date specified as such in the Phase 1 PARCA Works Report.

Insolvent means with respect to a Party, that such Party:

- (a) becomes insolvent or unable to pay its debts as they become due;
- (b) commences any case, proceeding or other action under any bankruptcy or insolvency law or other statute seeking to enter into any composition or other arrangement for the benefit of its creditors generally or any class of creditors;
- (c) applies for, consents to, or acquiesces in, the appointment of a trustee, receiver or other custodian for such Party or any of its property, or makes a general assignment for the benefit of creditors;
- (d) in the absence of such application, consents or acquiesces in, permits or suffers to exist the appointment of a trustee, receiver or other custodian for such Party or

for a substantial part of its property, and such trustee, receiver or other custodian is not discharged within sixty (60) Business Days;

- (e) permits or suffers to exist the commencement of any bankruptcy, reorganisation, debt arrangement or other case or proceeding under any bankruptcy or insolvency law or other statute or any dissolution, liquidation, winding up or liquidation proceeding, in respect of such Party and, if any such case or proceeding is not commenced by such Party, such case or proceeding is consented to or acquiesced to by such Party or results in the entry of an order for relief or remains un-dismissed or un-stayed for sixty (60) Business Days; or
- (f) Takes any corporate action authorising, or in furtherance of, any of the above.

Nominated User has the meaning given in Clause 6.2.

Notice has the meaning given in Clause 20.1.

NTS System Point means the NTS system point for the time being known as [*insert name*].

PARCA Application means the completed application form which is attached in Part 1 of Exhibit 1 to this Agreement.

PARCA Security Amount means the amount specified as such in the Phase 1 PARCA Works Report.

PARCA Termination Amount means amount calculated in accordance with TPD Section Y;

Phase 1 PARCA Works Report means the report produced by NGG and submitted to the Reservation Party which is attached in Part 2 of Exhibit 1 to this Agreement.

Phase 2 PARCA Works means Phase 2 Schedule A Works, Phase 2 Schedule B Works, Phase 2 Schedule C Works, Phase 2 Schedule D Works, Phase 2 Schedule E Works, Phase 2 Schedule F Works and Phase 2 Schedule G Works.

Phase 2 PARCA Works Report means a report containing the information referred to in Clause 4.5 provided by NGG to the Reservation Party as soon as reasonably practicable following the completion of each of the Phase 2 Schedule A Works, Phase 2 Schedule B Works, Phase 2 Schedule C Works, Phase 2 Schedule D Works, Phase 2 Schedule E Works, Phase 2 Schedule F Works and Phase 2 Schedule G Works.

Phase 2 Schedule A Works means such works to be completed by NGG for completion of a Strategic Options Report and specified as such in the Phase 1 PARCA Works Report.

Phase 2 Schedule B Works means such works to be completed by NGG for completion of a Preferred Pipeline Corridor Report and specified as such in the Phase 1 PARCA Works Report.

Phase 2 Schedule C Works means such works to be completed by NGG for completion of an Environmental Impact and Assessment Report and specified as such in the Phase 1 PARCA Works Report.

Phase 2 Schedule D Works means such works to be completed by NGG for completion of NGG's application for a Development Consent Order as required under the Planning Act 2008 (as amended or restated from time to time) and specified as such in the Phase 1 PARCA Works Report.

Phase 2 Schedule E Works means such works to be completed by NGG for completion of the submission of, and hearings related to, NGG's application for a Development Consent Order as required under the Planning Act 2008 (as amended or restated from time to time) and specified as such in the Phase 1 PARCA Works Report.

Phase 2 Schedule F Works means such works to be completed by NGG for completion of NGG's activities arising as a consequence of the Secretary of State's decision to NGG's for a Development Consent Order and specified as such in the Phase 1 PARCA Works Report.

Phase 2 Schedule G Works means such works to be completed by NGG for completion of NGG's activities in relation to a submission for planning consent under the Town and Country Planning Act 1990 (as amended or restated from time to time) and specified as such in the Phase 1 PARCA Works Report.

Planning Acts means the Planning Act 2008, the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990 and the Planning and Compulsory Purchase Act 2004 (in each case as amended or restated from time to time).

Planning Permission means any and/or all planning permissions, outline planning permissions, planning approvals of reversed matters, any application to amend any

condition attached to any of the above, any extension of time for approval of reserved matters and detailed planning permissions, listed building consents, conservation area consents and/or other consents or approvals required under the Planning Acts for the performance of reinforcement works or other works to be undertaken by either Party for purposes related to this Agreement.

Preferred Pipeline Corridor Route means where NGG has assessed there is a requirement for pipeline investment in the NTS, the pipeline corridor route that will best meet that requirements taking into consideration the Phase 2 PARCA Works and NGG's obligations under the Planning Act 2008 (as amended or restated from time to time).

Registration Date means:

- (a) the date specified as such in the Phase 1 PARCA Works Report; or
- (b) such other date as NGG may determine in accordance with Clause 8.2

being the Gas Flow Day from which the User or Nominated User(s)) is first registered as holding the Reserved Capacity (for the purposes of the UNC).

Relevant Demonstration Information means the Demonstration Information which NGG requires prior to and in the course of undertaking and completion of the Phase 2 PARCA Works and identified in the Phase 1 PARCA Works Report.

Reservation Date means the date on which NGG reserves the Reserved Capacity in the name of the Reservation Party in accordance with Clause 3.1.

Reserved Capacity means, where the Relevant System NTS Point is:

- (a) a NTS Entry Point, Quarterly NTS Entry Capacity in the amount specified for each relevant calendar quarter;
- (b) a NTS Exit Point, Enduring Annual NTS Exit (Flat) Capacity in the amount specified from the 1st of a month within the first gas year, and for subsequent gas years will be for an amount equal to or greater than that amount specified from the 1st of a month within that first gas year

specified in the Phase 1 PARCA Works Report, that may be revised from time to time in accordance with Clause 4.8.

Reserved Capacity Profile means, where the Reserved Capacity comprises

- (a) Quarterly NTS System Entry Capacity, the amount of NTS Entry Capacity specified in the Phase 1 PARCA Works Report for each calendar quarter in respect of the period to which the Reserved Capacity relates.
- (b) Enduring Annual NTS Exit (Flat) Capacity, the amount of NTS Exit Capacity specified in the Phase 1 PARCA Works Report for each tranche (if applicable) in respect of the period(s) to which the Reserved Capacity relates.

Reserved Capacity Tolerance means a tolerance expressed as such (and reasonably required and justified by the Reservation Party in the Demonstration Information) in the Phase 1 PARCA Works Report (if applicable) being a percentage (plus and/or minus) of the Reserved Capacity.

Second Demonstration Date means, in the event the Reservation Party has not provided NGG with the Relevant Demonstration Information by the First Demonstration Date the date falling twenty eight (28) Days after the First Demonstration Date or such other date as the Parties may agree.

Strategic Options Report means a strategic options report which forms part of the Phase 2 PARCA Works Report.

Third Demonstration Date means, in the event the Reservation Party has not provided National Grid NTS with the Demonstration Information by the Second Demonstration Date the date falling twenty eight (28) Days after the Second Demonstration Date or such other date as the Parties may agree.

TPD means the transportation principal document forming part of the UNC.

UNC means the uniform network code prepared by NGG and other gas transporters pursuant to their respective gas transporter licences, as such uniform network code may be modified and supplemented from time to time, including any replacement thereof.

User has the meaning given to it under the UNC.

User Nomination has the meaning given in Clause 6.1 (and in the form set out in Schedule D).

In this Agreement unless the context otherwise requires:

1.1.1 terms defined in the UNC and not defined in this Agreement shall have the same meanings as given in the UNC;

1.1.2 words in the singular may be interpreted including the plural.

1.2 For the avoidance of doubt a breach of this Agreement will not constitute a breach of the UNC.

1.3 The Reservation Party shall be deemed to have obtained and to be fully informed of the terms of the prevailing associated methodology statements, including; the Incremental Entry Capacity Release Methodology Statement, the NTS Entry Capacity Substitution Methodology Statement, the NTS Exit Capacity Substitution Methodology Statement and the Exit Capacity Release Methodology Statement.

2 DURATION

2.1 This Agreement shall take effect on the Effective Date and shall continue in full force and effect until:

2.1.1 the later of:

(a) the date on which no PARCA Security Amount is due and owing by the Reservation Party to NGG pursuant to this Agreement;

(b) the Allocation Date; or

2.1.2 the date on which this Agreement terminates in accordance with Clause 13.

2.2 Notwithstanding the termination of this Agreement the Reservation Party shall remain liable to NGG for any amounts due and owing to NGG which remain outstanding on termination of this Agreement.

3 RESERVATION

3.1 NGG will reserve the Reserved Capacity no later than twenty eight (28) Days following the date on which all of the following are satisfied:

3.1.1 payment, if applicable, of all monies due and owing by the Reservation Party to NGG in relation to those works undertaken by NGG to produce and issue the Phase 1 PARCA Works Report;

- 3.1.2 provision by the Reservation Party to NGG of Acceptable Security in an amount specified in the Phase 1 PARCA Works Report that is not less than the PARCA Security Amount; and
 - 3.1.3 in respect of the Reserved Capacity where comprising Quarterly NTS Entry Capacity only, the NPV test, as provided by NGG and in accordance with the Incremental Entry Capacity Release Methodology Statement has been satisfied; or where NGG identify that no NPV test is required; and
 - 3.1.4 the Reserved Capacity, where comprising Quarterly NTS Entry Capacity only, is for at least sixteen (16) Quarterly periods within a thirty-two (32) Quarter consecutive Quarter period; and
 - 3.1.5 ³.
- 3.2 NGG shall notify the Reservation Party of the Reservation Date.
- 3.3 For the purposes of giving effect to Clause 3.1 the Reserved Capacity shall be treated as Reserved Exit Capacity, where it comprises Enduring NTS Exit (Flat) Capacity and/or Reserved Entry Capacity, where it comprises Quarterly NTS Entry Capacity, for the purposes of TPD Section B.
- 3.4 NGG may cancel a reservation made in accordance with Clause 3.1 where:
- 3.4.1 the Reservation Party fails to provide Acceptable Security for any amount required by NGG and as specified in the Phase 1 PARCA Works Report within Days of NGG requesting such Acceptable Security;
 - 3.4.2 NGG terminates this Agreement in accordance with Clause 13; or
 - 3.4.3 if required, NGG submits an initial proposal to the Authority which details how the reservation of capacity is likely to be satisfied and the Authority veto such proposal.

4 PHASE 2 PARCA WORKS

- 4.1 Subject to the conditions in Clause 3.1 being satisfied and the terms of this Clause 4, NGG shall undertake and subject to Clause 4.2 complete the Phase 2 PARCA Works in

³ Any other conditions?

respect of the Reserved Capacity identified in the Phase 1 PARCA Works Report in accordance with the indicative timetable specified in the Phase 1 PARCA Works Report and in doing so NGG shall act in accordance with the standards of a Reasonable and Prudent Operator.

- 4.2 NGG shall keep the Reservation Party regularly informed of NGG's progress in completing each Schedule of the Phase 2 PARCA Works and of the costs incurred by NGG in undertaking the Phase 2 PARCA Works. Where NGG expects that completion of any Schedule of the Phase 2 PARCA Works will not take place in accordance with the indicative timetable in the Phase 1 PARCA Works Report (or such other timetable agreed with the Reservation Party) NGG shall inform the Reservation Party as soon as reasonably practicable. NGG shall not be liable to the Reservation Party for any delay in completion of any Schedule of the Phase 2 PARCA Works.
- 4.3 In respect of each Schedule of Phase 2 PARCA Works:
- 4.3.1 the Reservation Party agrees to provide NGG with the Relevant Demonstration Information by the First Demonstration Date;
 - 4.3.2 NGG shall undertake the Schedule of the Phase 2 PARCA Works following receipt of the Relevant Demonstration Information;
 - 4.3.3 NGG shall not be required to undertake the Schedule of Phase 2 PARCA Works until it is in receipt of the Relevant Demonstration Information.
- 4.4 In the event NGG has not received the Relevant Demonstration Information in respect of any Schedule of the Phase 2 PARCA Works by the Third Demonstration Date (or where agreed with NGG, an Ad-Hoc Demonstration Date) NGG may terminate this Agreement.
- 4.5 Following completion of each Schedule of Phase 2 PARCA Works, NGG will provide as soon as reasonably practicable to the Reservation Party a Phase 2 PARCA Works Report containing information in respect of the relevant Schedule of Phase 2 PARCA Works including, but not limited to, project update and project progression against the indicative timetable as set out in the Phase 1 PARCA Works Report.
- 4.6 Where following submission of a report(s) in accordance with Clause 4.5, NGG has already received the Relevant Demonstration Information for the next Schedule of the Phase 2 PARCA Works NGG shall proceed to undertake such Schedule of the Phase 2 PARCA Works without delay.

- 4.7 During the period between the Reservation Date and the Allocation Date NGG shall keep the Reservation Party regularly notified of the Reserved Capacity Tolerance.
- 4.8 For the purposes of Clauses 6 and 7 references to Reserved Capacity shall be to such amount of Reserved Capacity as specified in the Phase 1 PARCA Works Report and the Reserved Capacity Tolerance as notified from time to time by NGG to the Reservation Party in accordance with Clause 4.7.

5 PLANNING PERMISSION

- 5.1 In the event the Phase 1 PARCA Works Report identifies a need for NGG to obtain Planning Permission in relation to reinforcement works NGG shall undertake those works necessary and submit an application for Planning Permission as soon as reasonably practicable after the date on which the Reservation Party provides Acceptable Security to NGG in accordance with Clause 3.1.
- 5.2 In the event the Reservation Party needs to obtain Planning Permission for works to be undertaken by it the Reservation Party shall submit an application for Planning Permission; and following the receipt of such Planning Permission the Reservation Party shall promptly provide NGG with evidence of having obtained the Planning Permission.
- 5.3 A Party submitting an application for Planning Permission shall notify the other Party of:
- 5.3.1 the submission of the application for Planning Permission;
 - 5.3.2 the progress of the application for Planning Permission and all material issues arising in relation to the application; and
 - 5.3.3 the granting or refusal of Planning Permission and the terms on which the grant or refusal was made.

6 USER NOMINATION(S)

- 6.1 Where the Reservation Party is not a User the Reservation Party may, on any Day between the Reservation Date and the date falling one (1) month before the Allocation Date, submit a notice(s) (**User Nomination(s)**) to NGG.
- 6.2 A User Nomination shall specify:

- 6.2.1 the identity of a User whom the Reservation Party wishes NGG to register on the Allocation Date as holding the Reserved Capacity with effect from the Registration Date (the **Nominated User**);
- 6.2.2 the NTS System Point; and
- 6.2.3 the amount of Reserved Capacity in respect of which the User Nomination is made, provided such amount shall not be:
 - (a) greater than the Reserved Capacity; or
 - (b) less than 100,000 kWh/Day;
- 6.2.4 where the Reserved Capacity comprises Quarterly NTS Entry Capacity and/or Enduring Annual NTS (Exit) Flat Capacity, the Reserved Capacity Profile;
- 6.2.5 the Registration Date or such later date as NGG may determine in accordance with Clause 8.2 being:
 - (a) where the Reserved Capacity comprises Quarterly NTS Entry Capacity, the first day of a calendar quarter; or
 - (b) where the Reserved Capacity comprises Enduring Annual NTS Exit Capacity, the first day of a calendar month,

and NGG shall, subject to Clause 6.4, disclose the contents of a User Nomination to the Nominated User.

- 6.3 Following receipt of a User Nomination NGG shall as soon as reasonably practicable notify the Nominated User of the receipt of the User Nomination from the Reservation Party.
- 6.4 If a Nominated User does not confirm its acceptance to NGG within five (5) Business Days of NGG's notice under Clause 6.3, NGG shall as soon as reasonably practicable notify the Reservation Party of such non-acceptance and request that the Reservation Party resubmits a notice(or notices) pursuant to Clause 6.1 in relation to that amount of Reserved Capacity that was to be registered in the name of the Nominated User which failed to confirm its acceptance.
- 6.5 NGG may reject a User Nomination:

- 6.5.1 which does not comply with Clause 6.2;
 - 6.5.2 where NGG would be entitled to reject an application for Reserved Capacity from the Nominated User in accordance with TPD Section V3 of the UNC;
 - 6.5.3 where all Demonstration Information required under this Agreement has not been provided by the Reservation Party to NGG.
- 6.6 The Reservation Party may submit more than one (1) User Nomination provided the aggregate Reserved Capacity in respect of which User Nominations are submitted does not exceed the Reserved Capacity.
- 6.7 Where a Reservation Party who is not a User fails to submit a User Nomination(s) in respect of the full amount of Reserved Capacity by the date falling one (1) month before the Allocation Date NGG may terminate this Agreement.

7 ALLOCATION

- 7.1 Not less than [five (5)] Days prior to the Allocation Date NGG shall confirm to the Reservation Party and any Nominated User(s) of the amount of Reserved Capacity which will be allocated to the Reservation Party or Nominated User(s) on the Allocation Date, provided such amount of Reserved Capacity shall always be the amount requested provided that this is an amount falling within the Reserved Capacity Tolerance.
- 7.2 No allocation will be made on the Allocation Date pursuant to this Clause 7 unless:
- 7.2.1 the proposed Capacity Charges in respect of the Reserved Capacity where comprising Quarterly NTS Entry Capacity satisfy the net present value (NPV) test provided by NGG to the Reservation Party and, as the case may be, Nominated User(s);
 - 7.2.2 NGG obtains Planning Permission in relation to reinforcement works on satisfactory terms;
 - 7.2.3 the Reservation Party obtains Planning Permission which the Reservation Party requires for the purposes of its facilities to be located at the NTS System Point (and provides NGG with satisfactory evidence of having obtained such Planning Permission);

- 7.2.4 there are no outstanding sums due for payment by the Reservation Party to NGG under this Agreement;
- 7.2.5 the Nominated User(s) notifies NGG that it does not wish to be allocated the Reserved Capacity;
- 7.2.6 the Authority has not vetoed such allocation;
- 7.2.7 the Reservation Party (being a User) or the Nominated User(s) comply with TPD Section V3;
- 7.2.8 all Demonstration Information required under this Agreement has been provided by the Reservation Party to NGG; or
- 7.2.9 [].⁴

7.3 Where the Reservation Party is a User NGG will on the Allocation Date register the Reservation Party as holding the Reserved Capacity at the NTS System Point with effect from the Registration Date (for the purposes of the UNC).

7.4 Without prejudice to Clause 6.7, where the Reservation Party has submitted a User Nomination(s) in accordance with Clause 6, NGG will on the Allocation Date register the Nominated User(s) as holding the Reserved Capacity at the NTS System Point with effect from the Registration Date (for the purposes of the UNC).

8 CHANGE TO ALLOCATION DATE AND/OR REGISTRATION DATE

8.1 Subject to Clause 8.2, the Allocation Date and Registration Date specified in the Phase 1 PARCA Works Report shall only be changed with the agreement of the Parties.

8.2 If the Reservation Party fails to provide:

8.2.1 NGG with Acceptable Security in the relevant amount within the time specified in this Agreement;

8.2.2 Relevant Demonstration Information by any demonstration date (or where agreed with NGG, an Ad-Hoc Demonstration Date); or

⁴ Others?

8.2.3 [].⁵

and NGG is of the opinion (acting reasonably) that such delay means NGG will no longer be able to make available the Reserved Capacity with effect from the Registration Date NGG may revise the Allocation Date and Registration Date.

9 PAYMENT

9.1 The amounts payable by the Reservation Party to NGG under this Agreement shall be paid:

9.1.1 free and clear of any restriction, reservation or condition; and

9.1.2 except to the extent (if any) required by law, without deduction or withholding in respect of tax or on account of any amount due or to become due to the Reservation Party from NGG, whether by way of set off, counterclaim or otherwise.

9.2 Where following the commencement of Phase 2 PARCA Works this Agreement is terminated in accordance with Clause 13:

9.2.1 NGG shall submit an invoice to the Reservation Party for the PARCA Termination Amount; and

9.2.2 the Reservation Party shall pay the PARCA Termination Amount specified in the invoice submitted by NGG within forty two (42) Days of receipt of the invoice.

9.3 Where the Reservation Party fails to make payment of the PARCA Termination Amount in accordance with Clause 9.2 within [five (5)] Business Days of the due date for payment NGG shall be entitled to take such steps as required to enforce the Acceptable Security for the purposes of recovering all amounts due and owing to NGG under this Agreement.

9.4 In the event the Reservation Party fails to provide NGG with Acceptable Security in accordance with Clause 3 or 4 or such security ceases to be valid, binding on and

⁵ Other circumstances giving rise to a right for NGG to delay the Allocation Date and the Registration Date?

enforceable against the Reservation Party NGG may terminate this Agreement with immediate effect.

10 CREDIT PROVISIONS

10.1 [Credit provisions in relation to Acceptable Security to be determined further by National Grid]

11 CONSENTS, WAY LEAVES AND INTELLECTUAL PROPERTY

All consents, way leaves and other intellectual property rights developed as a result of NGG undertaking the Phase 2 PARCA Works shall remain the exclusive property of NGG.

12 REPRESENTATIONS AND WARRANTIES

12.1 Each of the Party represents and warrants to the other Party that, as of the Effective Date:

12.1.1 it is duly incorporated, validly existing in its jurisdiction of formation and has complied fully with all requirements of the Companies Act 2006 (as amended from time to time) and all other Legal Requirements;

12.1.2 it has full power to carry on its business and to enter into, legally bind itself by, and perform its obligations under, this Agreement;

12.1.3 this Agreement has been duly authorised, executed, and delivered by and constitutes its legal, valid and binding obligation;

12.1.4 the execution, delivery, and performance of this Agreement does not, and will not, constitute a violation of:

(a) any statute, judgment, order, decree or regulation or rule of any Competent Authority; or

(b) its formational or governance documents, or other document, indenture, contract or agreement to which it is a party or by which it or its property may be bound.

12.2 In addition each of the Party represents and warrants to the other Party that, as of the Effective Date:

- 12.2.1 there are no outstanding judgments against it, and, to the best of its knowledge, no action, claim, suit or proceeding is pending or threatened against it before any Competent Authority that could have a material adverse effect on its financial condition or operations or its ability of it to perform its obligations under this Agreement, or that purports to affect the legality, validity or enforceability of this Agreement; and
- 12.2.2 it is not in default under any agreement to which it is a party or by which it or its property may be bound, nor in any material default of any technical or financial obligation, that could have a material adverse effect on its financial condition or operations or its ability of it to perform its obligations under this Agreement, or that purports to affect the legality, validity or enforceability of this Agreement.

13 TERMINATION

13.1 NGG may terminate this Agreement:

13.1.1 in the event that:

- (a) following the Effective Date the Reservation Party notifies NGG that it wishes NGG to cease undertaking Phase 2 PARCA Works;
- (b) NGG fails to obtain any Planning Permission on satisfactory terms where the Phase 1 PARCA Works Report or Phase 2 PARCA Works identify the need for NGG to obtain Planning Permission for the purposes of making the Reserved Capacity available;
- (c) any information provided to NGG by the Reservation Party for the purposes of this Agreement is found to be false or misleading in a material respect;

13.1.2 on notice to the Reservation Party in accordance with Clause 4.4, 6.7 and 9.4;

13.1.3 if:

- (a) any sum payable by the Reservation Party under this Agreement is not paid by the due date;

- (b) NGG has, no earlier than seven (7) Business Days after such due date, given notice to the Reservation Party requiring payment of such sum; and
- (c) such sum has not been paid in full within seven (7) Business Days after NGG's notice under paragraph 13.1.3(b); or

13.1.4 where the Reservation Party is a User and the Reservation Party ceases to be User prior to the Allocation Date.

13.2 The Reservation Party may terminate this Agreement if:

- 13.2.1 any sum payable by NGG hereunder is not paid by the due date; and
- 13.2.2 the Reservation Party has, no earlier than seven (7) Business Days after such due date, given notice to NGG requiring payment of such sum; and
- 13.2.3 such sum has not been paid in full within seven (7) Business Days after the Reservation Party's notice under paragraph 13.2.2.

13.3 Notwithstanding Clause 13.4 and subject to the payment of all amounts due under this Agreement pursuant to Clause 9, the Reservation Party may terminate this Agreement at any time by giving at least [ten (10)] Business Days written notice to NGG.

13.4 In addition to the provisions of Clauses 13.1, 13.2 and 13.3 this Agreement may be terminated by NGG or the Reservation Party:

- 13.4.1 immediately by giving notice of such termination to the other Party if:
 - (a) such other Party is in default of a provision of this Agreement which default is capable of remedy;
 - (b) such default has a material adverse effect on the non-defaulting Party;
 - (c) the non-defaulting Party has given notice to the defaulting Party specifying the nature of the default and requiring that it be remedied; and
 - (d) the defaulting Party has not substantively remedied the default to the fullest practicable extent within a period of thirty (30) Business Days after the non-defaulting Party's notice under paragraph 13.4.1(c);

13.4.2 immediately by giving notice of such termination to the other Party if:

- (a) such other Party is in default of a provision of this Agreement which default is not capable of remedy;
- (b) such default has a material adverse effect on the non-defaulting Party;
- (c) the non-defaulting Party has given notice to the defaulting Party specifying the nature of the default; and
- (d) either:
 - (i) at any time within the period of six (6) months preceding the non-defaulting Party's notice under paragraph 13.4.2(c) the defaulting Party was in default of the same provisions, and such prior default had a material adverse effect on the non-defaulting Party at such time; or
 - (ii) the effect of such default is to take away from the non-defaulting Party all or substantially all of the benefit of this Agreement;

13.4.3 on notice to the other Party if such Party becomes Insolvent; and

13.5 The termination of this Agreement shall be without limitation of or prejudice to any other antecedent right, relief or remedy of any Party under or in connection with this Agreement; provided, however, that in relation to any express right of payment or indemnity under or in connection with this Agreement such right shall be limited to such payments (together with interest thereon) or indemnities actually accruing prior to the date of termination.

14 LIMITATION OF LIABILITY

14.1 Subject to Clause 14.5, neither Party shall be liable to the other Party for loss arising from any breach of this Agreement other than for loss directly resulting from such breach and which at the Effective Date was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:

14.1.1 physical damage to the property of the other Party;

14.1.2 the liability (in law) of the other Party to any other person in respect of physical damage to the property of such person.

14.2 Subject to Clause 14.5, neither Party shall in any circumstances be liable in respect of any breach of this Agreement to the other Party for:

14.2.1 any loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill or increased cost of working;

14.2.2 any indirect or consequential loss;

14.2.3 except as provided under Clause 14.1.1, loss resulting from the liability of the other Party to any other person, howsoever and whensoever arising.

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

14.4 The amount or amounts for which a Party may be liable to the other Party under Clause 14.1 in respect of any one event or circumstance constituting or resulting from such Party's breach of this Agreement shall not exceed £[].

14.5 Nothing in this Clause 14 applies to any payment of sums due and owing by the Reservation Party to NGG under this Agreement.

15 **CONFIDENTIALITY**

15.1 Each Party must:

15.1.1 keep all Confidential Information confidential and not disclose it to any person; and

15.1.2 ensure that all the following do the same:

(a) its representatives;

(b) each person connected with it;

(c) the representatives of each connected person

provided this duty is subject to Clause 15.2.

15.2 A Party may disclose or allow disclosure of Confidential Information:

15.2.1 to its representatives, officers, employees or professional advisers to the extent necessary to enable the party to perform or enforce of any of its duties or rights under this Agreement; or

15.2.2 to the extent required in order to comply with the requirements of the Act or any other Legal Requirement; or

15.2.3 when its legal counsel advises it that disclosure is required by:

- (a) law; or
- (b) the rules or any order of any court, tribunal or agency of competent jurisdiction or any Competent Authority; or
- (c) any securities exchange, recognised investment exchange or regulatory or governmental body, wherever situated, including, without limitation, [the UKLA and the Panel]:
 - (i) which has jurisdiction over it or any of its group companies; or
 - (ii) to which it or any of its group companies normally submits;whether a direction from that body has the force of law or not; or
- (d) any contractual duty of that party existing at the date of this Agreement;
or

15.2.4 to the extent the Confidential Information has become publicly available or generally known to the public at the time of the disclosure other than as a result of a breach of this Clause; or

15.2.5 to a Competent Authority to the extent necessary for the proper management of the taxation affairs of that party or any of its group companies; or

15.2.6 if some other provision of this Agreement expressly allows the disclosure; or

15.2.7 if it has the prior written approval of the other Party to the disclosure (that approval not to be unreasonably withheld or delayed).

15.3 If a Party intends to disclose Confidential Information in a way allowed by Clause 15.2 it must to the extent allowed:

15.3.1 give the other Party advance notice of the fact and a copy of the information which it intends to disclose;

15.3.2 allow the other Party to make representations or objections about the disclosure; and

15.3.3 take into account the reasonable representations and objections the other Party makes.

15.4 The duties in this Clause shall continue to apply after this Agreement ends for a period of [two (2)] years.

16 FORCE MAJEURE

16.1 The provisions of GT Section B3 shall apply for the purposes of this Agreement as if set out in full in this Agreement and for which purposes references to:

16.1.1 a Party shall be construed as being to a Party to this Agreement;

16.1.2 the Code shall be construed as being to this Agreement.

16.2 Without prejudice to Clause 16.1, if a Force Majeure event occurs prior to the Allocation Date, then such date and the Registration Date shall be delayed by a period equivalent to the duration of the Force Majeure event.⁶

16.3 For the avoidance of doubt, any other term of the UNC relating to Force Majeure other than the terms set out in GT Section B3 shall not apply for the purposes of this Agreement.

17 ASSIGNMENT

Neither Party may assign this Agreement, in whole or in part, without the consent of the other Party, such consent not to be unreasonably withheld or delayed.

18 AMENDMENTS

Neither Party may amend or change this Agreement without the written consent of the other Party.

⁶ Force Majeure after Allocation Date will be addressed under UNC.

19 WAIVER

No waiver by a Party of any default by the other Party in the performance of any of the terms of this Agreement shall operate or be construed as a waiver of any other default by the same Party. No waiver by a Party of the performance of any term of this Agreement shall be binding unless such waiver is made in writing.

20 NOTICES

20.1 This Clause 20 applies to all notices and other communications (except formal notices in legal proceedings) between the Parties under this Agreement (**Notices**).

20.2 Each Notice must be in writing in English and signed by the Party giving it (or its authorised representative).

20.3 Notices must be delivered by one of these methods:

20.3.1 by hand;

20.3.2 prepaid first class Recorded Signed For post; or

20.3.3 prepaid International Signed For post for an address outside the United Kingdom),

provided if Recorded Signed For service is not available at the relevant time, the Parties may use any widely-used postal service recording delivery instead.

20.4 Notices must be addressed to the Party to be served at the address set out below as updated or replaced under Clause 20.5:

NGG:

Address: []

Attention: []

[Copy to:] []

Reservation Party:

Address: []

Attention: []

[Copy to:] []

20.5 A Party may change its address in the United Kingdom for Notices by notifying the other Party. Each change takes effect on the effective date calculated under Clause 20.6, or on any later date set out in the Notice itself.

20.6 A Notice delivered:

20.6.1 by hand at 17:00 hours or earlier on a Business Day is effective at delivery;

20.6.2 by hand after 17:00 hours, or on a non-Business day is effective at 09:30 hours on the next Business Day;

20.6.3 post is effective on the second Business Day after posting. Proof the Notice was properly addressed, prepaid and posted is sufficient evidence the Notice has been duly served;

20.7 A Notice is not validly served under this Agreement if sent by email only and a Party may copy a Notice by email without affecting its validity.

20.8 A Party may not withdraw a Notice without the written consent of the receiving Party.

21 INVALIDITY

As long as the commercial purpose of this Agreement is unaffected, the invalidity, illegality or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect the validity, legality or enforceability of:

21.1 any other provision of this Agreement under the law of that jurisdiction; or

21.2 any provision of this Agreement under the law of any other jurisdiction.

22 ENTIRE AGREEMENT

22.1 This Agreement sets out the entire agreement between the Parties. It supersedes all previous agreements between the Parties on the subject matter of this Agreement.

22.2 No other term, express or implied, forms part of this Agreement. No usage, custom or course of dealing forms part of or affects this Agreement.

22.3 The only claim, right or remedy available to a Party for a representation expressly set out in this Agreement shall be damages for breach of contract.

22.4 Each Party waives all claims, rights and remedies for all representations:

22.4.1 made to it by any person before entering this Agreement; and

22.4.2 not set out in this Agreement.

22.5 Each Party acknowledges that, in deciding to enter this Agreement, it has not relied on any such representation.

22.6 This Clause 22 does not exclude or restrict liability for fraudulent misrepresentation or fraudulent concealment.

22.7 If any provision of this Agreement is inconsistent with any provision of the UNC, this Agreement shall prevail.

23 NO THIRD PARTY RIGHTS

A person who is not party to this Agreement may not enforce any term of this Agreement under the Contracts (Rights of Third Parties) Act 1999. The Parties may change any term and may rescind this Agreement without the consent of any person who is not party to this Agreement except where this Agreement expressly states otherwise.

24 COSTS

Each Party must pay its own costs in connection with the negotiation, preparation, execution, and implementation of this Agreement.

25 GOVERNING LAW AND JURISDICTION

25.1 The laws of England and Wales govern:

25.1.1 this Agreement and its interpretation; and

25.1.2 any non-contractual obligations arising from or connected with this Agreement.

25.2 The Parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement. Each party agrees to waive any objection to the courts of England and Wales, whether on the grounds of venue or that the forum is not appropriate.

Signed by the parties [or their duly authorised representatives]

Signed by)

duly authorised for and)

on behalf of)

National Grid Gas plc)

DRAFT

Exhibit 1: PARCA Application and Phase 1 PARCA Works Report

Part 1 – PARCA Application

[insert completed PARCA Application]

Part 2 – Phase 1 PARCA Works Report

[insert Phase 1 PARCA Works Report]