

Dated \_\_\_\_\_

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**OPERATING MARGINS GAS STORAGE AGREEMENT**

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**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_

BETWEEN:

- (1) The person named as the "Storage Operator" in Schedule 1 (the "**Storage Operator**"); 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 Storage Operator to provide Natural Gas storage services from the Relevant Storage Facility, owned and operated by the Storage Operator, and the Storage Operator wishes to provide such services to the Customer in accordance with the terms and conditions set out in this Agreement.
- (B) Under the storage services provided by this Agreement the Storage Operator's obligation, as consideration for the transfer by way of injection of Natural Gas from the Customer to the Storage Operator and payment of the Storage Charges, is to transfer by way of withdrawal of an equal quantity of Natural Gas to the Customer at a later time.

**IT IS HEREBY AGREED** as follows:

## **1 DEFINITIONS AND INTERPRETATION**

1.1 The following terms shall have the following meanings:

"**Affected Party**" as specified in clause 15.1;

"**Affiliate**" 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;

"**Aggregate Liability Cap**" is the amount specified as such in Schedule 1;

"**Available**" has the meaning given in clause 7.1(b);

"**Available Withdrawal Rate**" is the Customer's Available Storage Deliverability divided by 24;

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

"**Base Rate**" 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**" as specified in paragraph 2.2.1(b) of Section C of the General Terms of the Network Code;

"**Capacity Charge**" is the charge specified as such in Schedule 1;

"**Climate Change Levy**" any tax, duty, levy or impost imposed by reference to energy value and/or carbon content;

"**Communications**" as specified in clause 20;

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

**"Default"** as specified in clause 14.1;

**"Default Day"** as specified in clause 14.2;

**"Default Price"** is:

- (a) in the case of under-injection, the Heren NBP Day-ahead Price for the Day preceding the Default Day minus the SMSP Price for the Default Day, provided that where the resulting Default Price is negative it shall be deemed to be zero; and
- (b) in the case of under-withdrawals, the SMBP Buy Price for the Default Day minus the Heren NBP Day-Ahead Price for the Day before the Default Day, provided that where the resulting Default Price is negative it shall be deemed to be zero;

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

**"Delivery Point"** shall be the Storage Connection Point;

**"Due Date"** as specified in clauses 13.1;

**"Early Termination Event"** 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 10.4.

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

**"Effective Injection Rate"** as specified in clause 4.6;

**"Effective Withdrawal Rate"** as specified in clause 5.7;

**"Entry Allocation Statement"** has the meaning given to such term in the Network Code;

**"Exit Allocation Statement"** has the meaning given to such term in the Network Code;

**"Expert"** as specified in clause 26.2;

**"Expiry Date"** as specified in clause 17.1;

**"Force Majeure"** as specified in clause 10.1;

**"Gas Flow Day"** in relation to the application of any provision of this Agreement in relation to injections or withdrawals of Natural Gas or other operations, a Day in respect of which such provision is to apply;

**"Gas-in-Storage"** as specified in clause 3.1;

**"Gas Supply Emergency"** has the meaning given to such term in the Network Code;

**"Gross Calorific Value"** that quantity of heat in Megajoules produced by the complete combustion of one standard cubic metre of Natural Gas at fifteen Degrees Celsius and at an absolute pressure of 1.01325 Bar with excess air at the same temperature and pressure as the Natural Gas when the production of combustion are cooled to fifteen Degrees Celsius and when the water formed by combustion is condensed to the liquid state and the products of combustion contain the same total mass of water vapour as the Natural Gas and air before combustion;

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

**"Highest Price Day"** the Day in the period between the date of the Early Termination Event and the date that would have been the end of the Term had this Agreement not been terminated for which Heren quotes on the date of the Early Termination Event the highest price;

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

**"Injection Nomination"** as specified in clause 4.2;

**"Invoice Period"** as specified in clause 12.5;

**"Injection Charge"** is the charge specified as such in Schedule 1;

**"Injection Period"** is the period specified as such in Schedule 1;

**"Injection Response Time"** is the date and time in relation to a Gas Flow Day specified as such in Schedule 1

**"Injected Quantity"** in respect of a Day, the quantity of Natural Gas specified in the last Injection Nomination submitted to the Storage Operator in accordance with clause 4;

**"Interruption Effective Time"** as specified in clause 9.3 (b);

**"Interruption Notice"** as specified in clause 9.3 (b);

**"ISO"** the International Organisation for Standardisation;

**"kWh"** kilowatt hour(s);

**"Late Reallocation Notice"** as specified in clause 5.13;

**"Late Reallocation Quantity"** as specified in clause 5.13;

**"Liquidated Damages"** means the sums payable by the Storage Operator to the Customer in the event of Default pursuant to clause 14;

**"Maintenance Period"** is the period specified in Schedule 1 during which the Relevant Storage Facility is completely withdrawn from service for maintenance;

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

**"Mid Point Bid/Offer Price"** the mid point between the NBP bid price and NBP offer price for a Day;

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

**"Nominated Injection Quantity"** as specified in clause 4.3(c);

**"Nominated Quantity"** a Nominated Injection Quantity or Nominated Withdrawal Quantity;

**"Nominated Third Party"** as specified in clause 5.12;

**"Nominated Withdrawal Quantity"** as specified in clause 5.3(c);

**"Nomination"** an Injection Nomination or a Withdrawal Nomination;

**"Notifying Party"** as specified in clause 15.1;

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

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

**"Preceding Day"** in relation to a Day, the immediately preceding Day;

**"Quality Specification"** shall mean the Natural Gas quality specification contained in the Storage Connection Agreement;

**"Reallocation Notice"** as specified in clause 5.12;

**"Reallocation Quantity"** as specified in clause 5.12;

**"Reasonable and Prudent Operator"** 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;

**"Reconciliation Quantity"** as specified in clause 17.1;

**"Referred Matter"** as specified in clause 26.1;

**"Regulation"** 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;

**"Relevant Storage Facility"** means the storage facility specified as such in Schedule 1;

**"Run-off Period"** is the period specified as such in Schedule 1;

**"Start Date"** is the date specified as such in Schedule 1;

**"Storage"** means the provision by the Storage Operator of storage services in accordance and with the terms of this Agreement;

**"Storage Capacity"** means Storage Space, Storage Deliverability and/or Storage Injectability;

**"Storage Capacity Transfer"** has the meaning given in clause 7.1(c)(i);

**"Storage Charges"** the Capacity Charge and the Injection Charge and the Withdrawal Charge;

**"Storage Connection Point"** the point at which the Relevant Storage Facility is connected to the NTS as the same is identified in the relevant Storage Connection Agreement;

**"Storage Connection Agreement"** means the agreement of that name between the Storage Operator and National Grid Gas in relation to the connection of the Relevant Storage Facility to the NTS, as such agreement may be amended, supplement and/or novated from time;

**"Storage Deliverability"** is capacity (in kWh/Day) which entitles the Customer (provided it has sufficient Gas-in-Storage) to withdraw Natural Gas from the Relevant Storage Facility, and the Customer's initial or registered Storage Deliverability is the amount specified in Schedule 1, as such amount may be increased in accordance with clause 5.8;

**"Storage Deliverability Transfer"** has the meaning given in clause 7.1(c)(i);

**"Storage Gas Transfer"** has the meaning given in clause 7.1(c)(ii);

**"Storage Injectability"** is capacity (in kWh/Day) which entitles the Customer (provided it has sufficient unfilled Available Storage Capacity) to inject Natural Gas into the Relevant Storage Facility, and the Customer's initial or registered Storage Injectability is the amount specified in Schedule 1;

**"Storage Injectability Transfer"** has the meaning given in clause 7.1(c)(i);

**"Storage Space"** is capacity (in kWh) which entitles the Customer to have Gas-in-Storage in the Relevant Storage Facility, and the Customer's initial or registered Storage Injectability is the amount specified in Schedule 1;

**"Storage Space Transfer"** has the meaning given in clause 7.1(c)(i);

**"Storage Transfer"** has the meaning given in clause 7.1(c)(iii);

**"Storage Transfer Period"** has the meaning given in clause 7.1(e)(iii);

**"System Average Price"** or **"SAP"** as specified in the Network Code;

**"System Marginal Buy Price"** or **"SMBP"** as specified in the Network Code;

**"System Marginal Sell Price"** or **"SMSP"** as specified in the Network Code;

**"Tax"** 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"** the period specified as such in Schedule 1, throughout which the Storage Operator is to provide storage services in accordance with this Agreement;

**"Therm"** 29.3071 kWh;

**"Transfer Date"** has the meaning given in clause 7.1(e)(iv);

**"Transferee Storage Customer"** has the meaning given in clause 7.1(a);

**"Transferor Storage Customer"** has the meaning given in clause 7.1(a);

**"Transferred Gas-in-Storage"** has the meaning given in clause 7.1(e)(ii);

**"Transferred Storage Capacity"** has the meaning given in clause 7.1(e)(i);

**"VAT"** value added tax, or any similar or analogous tax or impost;

**"Week"** a period commencing at 06:00 hours on each Sunday and ending at the same time on the Sunday immediately following;

**"Withdrawal Charge"** is the charge specified as such in Schedule 1;

**"Withdrawal Nomination"** as specified in clause 5.2;

**"Withdrawn Quantity"** in respect of a Day, the quantity of Natural Gas specified in the last Withdrawal Nomination submitted to the Storage Operator in accordance with clause 5; and

**"Withdrawal Response Time"** is the time period specified as such 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.
- 1.8 References in this Agreement to "injection" of a quantity of Natural Gas are to the transfer of that quantity from the Customer to the Storage Operator in accordance with the provisions of this Agreement, and cognate expressions shall be construed accordingly.



- 1.9 References in this Agreement to "withdrawal" of a quantity of Natural Gas are to the transfer of that quantity from the Storage Operator to the Customer in accordance with the provisions of this Agreement, and cognate expressions shall be construed accordingly.
- 1.10 References in this Agreement to "credit support" include any guarantee, letter of credit or other security.

## **2 EFFECTIVE DATE AND DURATION**

### **2.1 Effective Date**

This Agreement shall come into force upon execution by both Parties and shall, subject to clause 15, continue in effect until both Parties have fully complied with their respective obligations under this Agreement.

### **2.2 Surviving Provisions**

Notwithstanding any termination of this Agreement, clause 2.3, clause 15 and 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.

### **2.3 Final Adjustments**

Upon the Expiry Date and subject to clause 17, any monies due and owing by either Party to the other shall be paid, any corrections or adjustments to payments previously made shall be determined, and any refunds due shall be made within 60 days after the date of such expiry.

## **3 GAS-IN-STORAGE**

3.1 The Customer's "Gas-in-Storage" on any Day in the Term in relation to the Relevant Storage Facility is:

(a) the sum of:

- (i) the Customer's Gas-in-Storage at the start of the Term (if any); and
- (ii) the quantities of Natural Gas injected by the Customer on Days in the Term up to but not including that Day; and
- (iii) the quantities of Transferred Gas-in-Storage where the Customer is the Transferee Storage Customer with effect from Days in the Term up to and including that Day; less

(b) the sum of:

- (i) the quantities of Natural Gas withdrawn by the Customer on Days in the Term up to but not including that Day; and
- (ii) the quantities of Transferred Gas-in-Storage where the Customer is the Transferor Storage Customer with effect from Days in the Term up to and including that Day.

3.2 The Storage Operator shall, on a weekly basis, provide the Customer with a written statement specifying the quantity of Gas-in-Storage which the Customer has at the time specified in the statement.

## 4 INJECTION NOMINATIONS

- 4.1 The Customer may inject Natural Gas into the Relevant Storage Facility on any Day in the Injection Period (subject to the provisions of this Agreement) provided that the Customer may not submit an Injection Nomination for a Nominated Injection Quantity which (if implemented by the Storage Operator) would make the Customer's Gas-in-Storage exceed the Customer's Available Storage Space.
- 4.2 If the Customer wishes to have a quantity of Natural Gas injected into the Relevant Storage Facility on a Gas Flow Day, it shall serve on the Storage Operator a notice (an "Injection Nomination") in accordance with clause 4.3.
- 4.3 An Injection Nomination shall:
- (a) specify the identity of the Customer;
  - (b) specify the Gas Flow Day to which it relates;
  - (c) specify the quantity of Natural Gas which the Customer wishes to have injected on that Gas Flow Day (the "Nominated Injection Quantity");
  - (d) be served on the Storage Operator not less than the Injection Response Time before the commencing of the injection on the Hour (provided that the Storage Operator shall use reasonable endeavours to give effect to an Injection Nomination as soon as possible, but in any event within the Injection Response Time);
  - (e) be substantially in the form set out in Schedule 2;
  - (f) be in accordance with clause 4.4.
- 4.4 An Injection Nomination may not:
- (a) specify a Nominated Injection Quantity in excess of the Customer's Available Storage Injectability for the Gas Flow Day in question;
  - (b) specify a Nominated Injection Quantity which, if the Injection Nomination were implemented by the Storage Operator, would make the Customer's Gas-in-Storage exceed the Customer's Available Storage Space or
  - (c) specify a Nominated Injection Quantity less than zero.
- 4.5 Subject to clause 4.6, the Customer may revise an Injection Nomination made in respect of a Gas Flow Day pursuant to clause 4.3 at any time by submitting a revised Injection Nomination to the Storage Operator.
- 4.6 A revised Injection Nomination may be submitted by no later than the Injection Response Time in relation to the time at which the Customer wishes the revised Injection Nomination to be effective from. A revised Injection Nomination shall not be submitted if it would result in an Effective Injection Rate of less than zero.
- 4.7 In respect of an Injection Nomination, the "Effective Injection Rate" is:
- (a) in the case of an Injection Nomination that was effective as from 06:00 hours on the Gas Flow Day in question:

- (b) in the case of an Injection Nomination that was effective later than 06:00 hours on the Gas Flow Day in question and where no earlier Injection Nomination had been made in respect of the Gas Flow Day in question:

$$QN / H$$

- (c) in the case of any other Injection Nomination:

$$IIR_P + ((QN - QN_P) / H)$$

Where:

QN is the Nominated Injection Quantity under the Injection Nomination;

H is the number of hours remaining in the Day from the effective time of the Injection Nomination or revised Injection Nomination;

IIR<sub>P</sub> is the Effective Injection Rate under the Injection Nomination prevailing before the revision to the Injection Nomination; and

QN<sub>P</sub> is the Nominated Injection Quantity under the Injection Nomination prevailing before the revision to the Injection Nomination.

## 5 WITHDRAWAL NOMINATIONS

- 5.1 The Customer may withdraw Natural Gas from the Relevant Storage Facility on any Day over the Term (subject to the provisions of this Agreement).
- 5.2 If the Customer wishes to withdraw Natural Gas from the Relevant Storage Facility on any Gas Flow Day, it shall serve on the Storage Operator a notice (a "Withdrawal Nomination") in accordance with clause 5.3.
- 5.3 A Withdrawal Nomination shall:
- (a) specify the identity of the Customer;
  - (b) specify the Gas Flow Day to which it relates;
  - (c) specify the quantity of Natural Gas which the Customer wishes to withdraw on that Gas Flow Day (the "Nominated Withdrawal Quantity") up to but not exceeding the Customer's Available Storage Deliverability;
  - (d) be served on the Storage Operator not less than the Withdrawal Response Time before the commencing of the withdrawal on the Hour (provided that the Storage Operator shall use reasonable endeavours to give effect to a Withdrawal Nomination as soon as possible, but in any event within the Withdrawal Response Time);
  - (e) be substantially in the form set out in Schedule 2;
  - (f) be in accordance with clause 5.4.
- 5.4 Subject to clauses 5.8 and 5.9, a Withdrawal Nomination may not:
- (a) specify a Nominated Withdrawal Quantity that would give a deliverability in excess of the Customer's Available Storage Deliverability;
  - (b) specify a Effective Withdrawal Rate in excess of the Customer's Available Withdrawal Rate;

- (c) specify a Nominated Withdrawal Quantity which, if the Withdrawal Nomination were implemented by the Storage Operator, would make the Customer's Gas-in-Storage fall below zero; or
- (d) specify a Nominated Withdrawal Quantity less than zero

5.5 Subject to clause 5.6, the Customer may revise a Withdrawal Nomination made in respect of a Gas Flow Day pursuant to clause 5.3 at any time by submitting a revised Withdrawal Nomination to the Storage Operator.

5.6 A revised Withdrawal Nomination may be submitted by no later than the Withdrawal Response Time in relation to the time at which the Customer wishes the revised Withdrawal Nomination to be effective from. A revised Withdrawal Nomination shall not be submitted if it would result in an Effective Delivery Rate of less than zero.

5.7 In respect of a Withdrawal Nomination, the "Effective Withdrawal Rate" is:

- (a) in the case of a Withdrawal Nomination that was effective as from 06:00 hours on the Gas Flow Day in question:

$$QN / 24$$

- (b) in the case of a Withdrawal Nomination that was effective later than 06:00 hours on the Gas Flow Day in question and where no earlier Withdrawal Nomination had been made in respect of the Gas Flow Day in question:

$$QN / H$$

- (c) in the case of any other Withdrawal Nomination:

$$IWR_p + ((QN - QN_p) / H)$$

Where:

QN is the Nominated Withdrawal Quantity under the Withdrawal Nomination;

H is the number of hours from the effective time of the Withdrawal Nomination or revised Withdrawal Nomination;

IWR<sub>p</sub> is the Effective Withdrawal Rate under the Withdrawal Nomination prevailing before the revision to the Withdrawal Nomination; and

QN<sub>p</sub> is the Nominated Withdrawal Quantity under the Withdrawal Nomination prevailing before the revision to the Withdrawal Nomination.

5.8 The Customer may request that the Storage Operator permit an Effective Withdrawal Rate in excess of the Customer's Available Withdrawal Rate on any given Day. Where the Customer makes such a request, the Storage Operator shall respond to such request within sixty (60) minutes of receiving such request advising whether it is prepared (in its sole discretion) to agree to such a request (whether in full or in part). Where the Storage Operator does so agree to such a request, the Customer's Available Withdrawal Rate shall be increased to the amount agreed by the Storage Operator. Where the Storage Operator fails to respond to a request within sixty (60) minutes of receiving such request, the Storage Operator shall be deemed not to have agreed to such request. Should the Storage Operator permit the Customer to withdraw at a rate which would result in an Effective Withdrawal Rate in excess of the Customer's Available Withdrawal Rate, then the Storage Operator has fulfilled its obligation to the Customer as soon as the Nominated Withdrawal Quantity has been withdrawn from the Relevant Storage Facility.

- 5.9 In the event that the Nominated Withdrawal Quantity under a Withdrawal Nomination exceeds the Customer's Gas-in-Storage, the Customer shall (at the same time as submitting the Withdrawal Nomination referred to above) submit a revised Withdrawal Nomination (for a zero Effective Withdrawal Rate) to become effective at or before the time at which the quantity of Natural Gas delivered pursuant to the Withdrawal Nomination equals the Customer's Gas-in-Storage. Nothing shall prevent the Customer submitting a subsequent revised Withdrawal Nomination with an effective time earlier than the revised Withdrawal Nomination referred to above. In the event that the Customer fails to submit a revised Withdrawal Nomination at the same time as submitting the Withdrawal Nomination referred to above, then the Storage Operator shall be entitled (but not obliged) to reject the Withdrawal Nomination in question. Where the Storage Operator does reject the Withdrawal Nomination in question, the Storage Operator shall advise the Customer as soon as reasonably practicable of the reason(s) for such rejection.
- 5.10 The Storage Operator acknowledges that the Customer requires the services provided under this Agreement (and in particular the withdrawal service) to comply with its safety case prepared pursuant to the Gas Safety (Management) Regulations 1996, and that the Customer requires a physical flow of Natural Gas from the Relevant Storage Facility at least equal to its Nominated Withdrawal Quantity. Accordingly, the Storage Operator warrants to the Customer, subject to clauses 9, 10 and 14, that it shall ensure that:
- (a) the physical flow of Natural Gas from the Relevant Storage Facility to the NTS on any Day in respect of which the Customer has submitted a Withdrawal Nomination is not less than the Nominated Withdrawal Quantity plus the Reallocation Quantity (if any) plus the quantity of Natural Gas nominated for withdrawal by other users of the Relevant Storage Facility less the quantity of Natural Gas nominated for injection by other users of the Relevant Storage Facility; and
  - (b) the Storage Operator 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.
- 5.11 Where Natural Gas withdrawn from the Relevant Storage Facility does not comply with the gas entry conditions set out in the Storage Connection Agreement, the Storage Operator shall pay the Customer an amount equal to that amount (calculated in accordance with the provisions of section I of the Network Code) which the Customer would be liable to pay National Grid Gas in consequence of the delivery of such Natural Gas to the NTS.
- 5.12 Where the Customer has made a Withdrawal Nomination, but the Storage Operator wishes to have all of the Natural Gas to be delivered pursuant to such Withdrawal Nomination allocated to it or another person nominated by the Storage Operator (a "Nominated Third Party") rather than to the Customer at the Storage Connection Point, the Storage Operator shall (subject to clause 5.14) give notice (a "Reallocation Notice") to the Customer no later than 04:00 hours on the Gas Flow Day to which the Withdrawal Nomination relates, and such notice shall specify the identity of the Nominated Third Party (if applicable) and the quantity of Natural Gas (the "Reallocation Quantity"), not being greater than the Nominated Withdrawal Quantity, that the Storage Operator wishes to have allocated to it or the Nominated Third Party rather than to the Customer. Where the Storage Operator submits a Reallocation Notice, then the provisions of this Agreement shall continue to apply to the Withdrawal Nomination: provided that:
- (a) the Reallocation Quantity shall not be included in the calculation of the Withdrawal Charge payable by the Customer (if any) for the month in which the Withdrawal Nomination is made;
  - (b) the Customer's Nominated Withdrawal Quantity shall be reduced by the Reallocation Quantity (and the Customer's Withdrawal Nomination shall be deemed to have been amended accordingly);

- (c) any withdrawal charges due by the Customer pursuant to this Agreement shall be calculated using the reduced Nominated Withdrawal Quantity calculated in accordance with paragraph (b); and
  - (d) the Customer and the Storage Operator and the Nominated Third Party (as the case may be) shall not do anything inconsistent with the Storage Operator or the Nominated Third Party (as the case may be) being allocated with the Reallocation Quantity at the Storage Connection Point.
- 5.13 Where, after a Day on which Natural Gas was delivered to the Customer pursuant to a Withdrawal Nomination, the Storage Operator wishes to have all of such Natural Gas allocated to it or a Nominated Third Party rather than to the Customer at the Storage Connection Point, the Storage Operator shall (subject to clause 5.14) give notice (a "Late Reallocation Notice") to the Customer not later than five (5) Days before the Entry Close-out Date (as defined in the Network Code) in respect of the Day on which the delivery of Natural Gas occurred, and such notice shall specify the identity of the Nominated Third Party (if applicable) and the quantity of Natural Gas (the "Late Reallocation Quantity") that the Storage Operator wishes to have allocated to it or the Nominated Third Party (as the case may be) rather than to the Customer. Where the Storage Operator submits a Late Reallocation Notice, then the provisions of this Agreement shall continue to apply to the Withdrawal Nomination: provided that:
- (a) the Late Reallocation Quantity shall not be included in the calculation of the Withdrawal Charge payable by the Customer (if any) for the month in which the Withdrawal Nomination is made, or, where the Customer has already paid a Withdrawal Charge in respect of the Late Reallocation Quantity, the Storage Operator shall reimburse the Customer such Withdrawal Charge in respect of the Late Reallocation Quantity;
  - (b) the Customer's Nominated Withdrawal Quantity shall be reduced by the Late Reallocation Quantity (and the Customer's Withdrawal Nomination shall be deemed to have been amended accordingly); and
  - (c) the Customer and the Storage Operator and the Nominated Third Party (as the case may be) shall not do anything inconsistent with the Storage Operator or the Nominated Third Party (as the case may be) being allocated with the Late Reallocation Quantity at the Storage Connection Point.
- 5.14 The Storage Operator may only submit a Reallocation Notice or a Late Reallocation Notice where the Storage Operator or the Nominated Third Party (as the case may be) has or had (as the case may be) Gas-in-Storage of its own on the Day in question in the Relevant Storage Facility equal to or greater than the Reallocation Quantity or Later Reallocation Quantity (as the case may be).
- 5.15 Where the Storage Operator has given notice to the Customer pursuant to Clause 5.12, the Storage Operator may also request that the Customer transfer to the Storage Operator or the Nominated Third Party (as the case may be) NTS Entry Capacity (as defined in the Network Code) in relation to the Day in question that the Customer is registered (pursuant to the terms of the Network Code) as holding in relation to the Storage Connection Point: provided that the Storage Operator may only ask the Customer to transfer a quantity of NTS Entry Capacity in relation to the Day in question that is equal to or less than the Reallocation Quantity. Where the Storage Operator makes such a request and the Customer agrees to such request, the Customer shall transfer to the Storage Operator or the Nominated Third Party (as the case may be) (in accordance with the provisions of the Network Code) the quantity of NTS Entry Capacity in relation to the Storage Connection Point in relation to the Day in question that the Storage Operator has requested be transferred.

Where a quantity of NTS Entry Capacity in relation to the Storage Connection Point in relation to the Day in question is transferred by the Customer to the Storage Operator or the Nominated Third Party (as the case may be) pursuant to this Clause 5.15, then the Storage

Operator shall pay to the Customer the charges payable by the Customer for such NTS Entry Capacity in relation to the Day in question.

## 6 ALLOCATION

- 6.1 Subject to clauses 5.12, 5.13, 9, 10 and 14, the quantity of Natural Gas accounted for as injected or withdrawn on a Day from the Relevant Storage Facility by the Customer will be the Nominated Quantity under its Nomination prevailing at the end of the Day. In the case of under-injection, the quantity of Natural Gas accounted for as injected by the Customer on a Day will be the Nominated Quantity less the under-injections. In the case of under-withdrawal, the quantity of Natural Gas accounted for as withdrawn by the Customer on a Day will be the Nominated Quantity less the under-withdrawal. The quantity of Natural Gas deemed to be held in storage by the Customer as calculated under 3.1 will be adjusted accordingly.
- 6.2 Without prejudice to clause 6.1, the physical flows of Natural Gas at the Relevant Storage Facility may differ from the quantities in respect of which the Customer made Nominations.
- 6.3 The Customer hereby authorises and appoints the Storage Operator as its agent to submit to National Grid Gas on behalf of the Customer each Day an Entry Allocation Statement or Exit Allocation Statement (in respect to the Storage Connection Point) in which the quantity specified as delivered to or off taken from the NTS by the Customer is equal to the quantity to be allocated to the Customer (as withdrawn or injected by it) in respect of the Relevant Storage Facility in accordance with this Agreement. The Storage Operator shall be deemed to have submitted an Entry Allocation Statement or (as the case may be) an Exit Allocation Statement where the quantity allocated to the Customer as injected or (as the case may be) withdrawn from the Relevant Storage Facility on a Day in accordance with this Agreement is equal to the quantity determined as delivered to or (as the case may be) offtaken from the NTS on such Day by the Customer at the relevant Storage Connection Point in accordance with the provisions of the Network Code which apply where no such Entry Allocation Statement or Exit Allocation Statement is submitted in respect of a Day.

## 7 STORAGE TRANSFERS

### 7.1 Basis of transfer

- (a) The Customer or another user of the Relevant Storage Facility (as the case may be) (the "**Transferor Storage Customer**") may at any time:
- (i) transfer all or part of its Available Storage Space or its Available Storage Injectability or its Available Storage Deliverability in the Relevant Storage Facility to; or
  - (ii) make a Storage Gas Transfer in respect of a quantity of Natural Gas in relation to the Relevant Storage Facility in favour of,
- such other user of the Relevant Storage Facility or the Customer (as the case may be) (the "**Transferee Storage Customer**"), subject to and in accordance with this clause 7.1.
- (b) For the purposes of this Agreement, a Customer's "**Available**" Storage Space or Storage Injectability or Storage Deliverability in respect of any Gas Flow Day is the Storage Space or Storage Injectability or Storage Deliverability which the User holds in respect of that Gas Flow Day after taking account of any Storage Capacity Transfer, determined in accordance with paragraph 7.4(b).
- (c) For the purposes of this Agreement:
- (i) a "**Storage Space Transfer**", a "**Storage Injectability Transfer**" and a "**Storage Deliverability Transfer**" are respectively a transfer of Storage

Space, a transfer of Storage Injectability and a transfer of Storage Deliverability in accordance with clause 7.1(a)(i) and a "**Storage Capacity Transfer**" is a Storage Space Transfer and/or a Storage Injectability Transfer and/or a Storage Deliverability Transfer;

- (ii) a "**Storage Gas Transfer**" is an arrangement between two users of the Relevant Storage Facility made for the purposes of clause 7.5;
  - (iii) a "**Storage Transfer**" is a Storage Capacity Transfer or a Storage Gas Transfer.
- (d) A Storage Injectability Transfer may be for any hour or consecutive hours (being full hours only) or Day or consecutive Days within the period for which the Transferor Storage Customer holds (by virtue of registration or any Storage Injectability Transfer) such capacity and a Storage Deliverability Transfer may be for any hour or consecutive hours (being full hours only) or Day or consecutive Days within the period for which the Transferor Storage Customer holds (by virtue of registration or any Storage Deliverability Transfer) such capacity; and a Storage Space Transfer shall be for any Day or consecutive Days within the period for which the Transferor Storage Customer holds (by virtue of registration or any Storage Space Transfer) such capacity.
- (e) In respect of a Storage Transfer or proposed Storage Transfer:
- (i) in the case of a Storage Capacity Transfer, the "**Transferred Storage Capacity**" is the Storage Capacity which is (or is to be) transferred;
  - (ii) in the case of a Storage Gas Transfer, the "**Transferred Gas-in-Storage**" is the quantity subject to such Storage Gas Transfer;
  - (iii) the "**Storage Transfer Period**" is in the case of a Storage Injectability Transfer or a Storage Deliverability Transfer the hour or hours (being full hours only) or the Day or Days, and in the case of a Storage Space Transfer the period, in accordance with clause 7.1(d), for which the transferred capacity is (or is to be) transferred;
  - (iv) in the case of a Storage Gas Transfer the "**Transfer Date**" is the Day on and with effect from which the Storage Gas Transfer is to take effect.

## 7.2 Storage Gas and Capacity Transfers

- (a) The Customer may not transfer Storage Space or make a Storage Gas Transfer where as a result either the Transferee Storage Customer or the Transferor Storage Customer would have Gas-in-Storage in excess of its Available Storage Space.
- (b) The Transferred Gas-in-Storage under a Storage Gas Transfer shall not exceed the amount of the Transferor Storage Customer's Gas-in-Storage.
- (c) The Storage Operator may but shall not be required to reject a Storage Transfer in respect of which the requirements of clause 7.2(a) or 7.2(b) are not satisfied; and where the Storage Operator does not reject such a Storage Transfer the Storage Transfer will take effect.

## 7.3 Procedure

- (a) Where a Customer proposes to make a Storage Transfer, each of the Transferor Storage Customer and the Transferee Storage Customer must notify the proposed Storage Transfer to the Storage Operator specifying:
  - (i) the identity of the Transferor Storage Customer;



- (ii) the identity of the Transferee Storage Customer;
  - (iii) whether the Storage Transfer is a Storage Space Transfer, a Storage Injectability Transfer, a Storage Deliverability Transfer or a Storage Gas Transfer, or a combination in accordance with clause 7.3(b);
  - (iv) the amount of the Transferred Storage Capacity, or (as the case may be) Transferred Gas-in-Storage; and
  - (v) in the case of a Storage Capacity Transfer, the Storage Transfer Period, or in the case of a Storage Gas Transfer, the Transfer Date.
- (b) A combined notification may (and where required to satisfy the condition in clause 7.2(a) shall) be made in respect of a Storage Space Transfer and Storage Gas Transfer at the Relevant Storage Facility.
- (c) A proposed Storage Space Transfer or a proposed Storage Gas Transfer may not be notified later than 04:00 hours on the Transfer Date or (as the case may be) Day or first Day of the Storage Transfer Period. A proposed Storage Injectability Transfer or a proposed Storage Deliverability Transfer may not be notified later than one (1) hour prior to the commencement of the Storage Transfer Period.
- (d) The Storage Operator may reject a Storage Transfer:
- (i) in accordance with clause 7.2(c); or
  - (ii) where either the Transferor Storage Customer or the Transferee Storage Customer does not notify the Storage Transfer in accordance with clause 7.3(a) or 7.3(c).
- (e) A Storage Transfer shall be effective if it is approved by the Storage Operator or is not rejected by the Storage Operator within 60 minutes after it was notified by the Transferor Storage Customer or (if later) the Transferee Storage Customer under clause 7.3(a).

#### **7.4 Effect of Storage Capacity Transfer**

- (a) Except for the purposes of clause 7.3(c), and subject to clause 7.6, the Transferee Storage Customer will be treated during the Storage Transfer Period as holding the Transferred Storage Capacity.
- (b) A Customer's Available Storage Capacity in the Relevant Storage Facility on a Day will be determined as its registered Storage Capacity, adjusted in respect of any Storage Capacity Transfer(s) by adding the Transferred Storage Capacity where the Customer was the Transferee Storage Customer, and deducting the Transferred Storage Capacity where the Customer was the Transferor Storage Customer, subject to clause 7.6.
- (c) A Customer will remain liable for Storage Capacity Charges in respect of its Registered Storage Capacity irrespective of any Storage Capacity Transfer.

#### **7.5 Effect of Storage Gas Transfer**

With effect from (and including) the Transfer Date, the Transferred Gas-in-Storage will be added to the Transferee Storage Customer's Gas-in-Storage and deducted from the Transferor Storage Customer's Gas-in-Storage.

#### **7.6 Effect of Termination**

- (a) Where during the Storage Transfer Period in respect of a Storage Capacity Transfer the Transferor Storage Customer ceases to be a user of the Relevant Storage Facility:
- (i) the Storage Operator will so notify the Transferee Storage Customer as soon as reasonably practicable and in any event not more than 5 Business Days after giving a notice (the "Storage Termination Notice") to the Transferor Storage Customer of the termination by the Storage Operator of the contract that gives rise to the right of the Transferor Storage Customer to be a user of the Relevant Storage Facility;
  - (ii) with effect from the date (the "Storage Discontinuance Date") on which the Transferor Storage Customer ceases to be a user of the Relevant Storage Facility, the Storage Capacity Transfer will lapse and the Transferee Storage Customer will cease to be treated as holding the Transferred Storage Capacity;
  - (iii) the Transferee Storage Customer may elect to be registered in accordance with clause 7.6(b) as holding Storage Capacity (in addition to any such capacity held other than by virtue of the Storage Capacity Transfer) in the Relevant Storage Facility:
    - (A) in an amount not exceeding the Transferred Storage Capacity; and
    - (B) for (in the case of a Storage Injectability Transfer or a Storage Deliverability Transfer) any hour or consecutive hours (being full hours only) or Day or consecutive Days within the Storage Transfer Period, or (in the case of a Storage Space Transfer) a period from any Day (before or after the date of such election, but not before the Storage Discontinuance Date) in the Storage Transfer Period until the end of the Storage Transfer Period.
- (b) Where under clause 7.6(a) the Transferee Storage Customer elects to be registered as holding Storage Capacity:
- (i) the Transferee Storage Customer shall notify the Storage Operator, as soon as reasonably practicable and in any event not more than 5 Business Days after the Storage Operator's notice under clause 7.6.(a), of such election, specifying the Storage Capacity and period in accordance with clauses 7.6.1(c)(i) and (ii);
  - (ii) the Transferee Storage Customer will be registered as holding Storage Capacity in the amount and for the period elected (notwithstanding any other requirement of the Network Code as to the prior notice required for or the period of registration); and
  - (iii) the Transferee Storage Customer will accordingly be liable for Storage Capacity Charges in respect of the elected Storage Capacity at the Relevant Storage Facility for the elected period.
- (c) Where during the Storage Transfer Period in respect of a Storage Capacity Transfer the Transferee Storage Customer ceases, pursuant to clause 11, to be a Customer for the purposes of this Agreement:
- (i) the Storage Operator will so notify the Transferor Storage Customer as soon as reasonably practicable and in any event not more than 5 Business Days after giving a Storage Termination Notice to the Transferee Storage Customer;
  - (ii) with effect from the Storage Discontinuance Date, the Storage Capacity Transfer will lapse and the Transferee Storage Customer will cease to be treated as holding the Transferred Storage Capacity which will revert to (and be treated as held by) the Transferor Storage Customer.

- (d) For the avoidance of doubt, the fact that a Customer shall cease to be a Customer for the purposes of this Agreement under clause 11 shall not affect any Storage Gas Transfer made before the Storage Discontinuance Date.

## **8 STORAGE CONNECTION POINT**

- 8.1 The Customer shall deliver to the Storage Operator Natural Gas for injection to the Relevant Storage Facility at the Storage Connection Point.
- 8.2 The Storage Operator shall deliver to the Customer Natural Gas withdrawn from the Relevant Storage Facility at the Storage Connection Point.
- 8.3 The Storage Operator will measure the volumes of injected and/or withdrawn Natural Gas in accordance with the measurement procedure specified in the Storage Connection Agreement.
- 8.4 Title and risk of loss or damage to the Natural Gas delivered hereunder shall pass at the Storage Connection Point to the Storage Operator in the case of injection and to the Customer in the case of withdrawal.
- 8.5 Natural Gas delivered under clauses 8.1 and 8.2 shall be in accordance with the Quality Specification.
- 8.6 The maximum rate at which Natural Gas may be injected or withdrawn into the Relevant Storage Facility shall be in accordance with the provisions of the Storage Connection Agreement.

## **9 UNAVAILABILITY OF INJECTION AND WITHDRAWAL**

### **9.1 Maintenance**

- (a) Over the Maintenance Period, the Relevant Storage Facility shall be unavailable to the Customer for injection and withdrawal.
- (b) In addition, the Relevant Storage Facility shall be completely or partially unavailable to the Customer for injection and/or withdrawal on Days National Grid Gas is carrying out maintenance to the NTS such that (as a result of such maintenance) National Grid Gas is unable to make available Natural Gas at the Storage Connection Point.
- (c) The Storage Operator 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 National Grid Gas being unable to make available Gas at the Storage Connection Point.
- (d) The Storage Operator shall use all reasonable endeavours to minimise the duration of the Maintenance Period.

### **9.2 Functional Availability**

- (a) The Relevant Storage Facility is completely or partially unavailable to the Customer for injection and/or withdrawal during any period of Force Majeure.
- (b) The Storage Operator shall use all reasonable endeavours to ensure that the Storage Operator's chosen mode of operation of the Relevant Storage Facility prior to the Nomination by the Customer shall not compromise the Storage Operator's ability to fulfil its obligation under this Agreement.

- (c) If for any other reason the Relevant Storage Facility is completely or partially unavailable to the Customer for injection and/or withdrawal, then (notwithstanding any other obligations or rights of the Storage Operator or the Customer) the Storage Operator shall notify the Customer immediately of such unavailability, the reasons therefore and the estimated period during which such unavailability will continue.

### 9.3 **Interruption of the Customer's withdrawal by the Storage Operator**

- (a) The Storage Operator has the right to interrupt any Withdrawal Nomination of the Customer on any Day and Hour over the Term of this Agreement for its own withdrawals in accordance with clause 9.3(b). For the avoidance of doubt, the Storage Operator shall not interrupt the Customer's Withdrawal Nomination in respect of the withdrawals by the Customer for any Gas Flow Day in the Run-off Period.
- (b) The Storage Operator may at any time submit to the Customer a notice ("**Interruption Notice**") which shall specify:
  - (i) the time (the "**Interruption Effective Time**"), on the Hour, with effect from which such Interruption Notice is to take effect;
  - (ii) whether the interruption is in part or in full;
  - (iii) if the interruption is in part, the reduced Effective Withdrawal Rate available to the Customer;
  - (iv) the total end of day quantity to be interrupted by the Storage Operator; and
  - (v) the estimated duration of the interruption;
- (c) An Interruption Notice shall be submitted by the Storage Operator not later than 90 minutes before the Interruption Effective Time.
- (d) In the event that the Storage Operator does so interrupt the Customer's withdrawal, the Customer's Nominated Withdrawal Quantity shall be deemed to be reduced accordingly.
- (e) In the event that the Storage Operator does so interrupt the Customer's withdrawal, the Storage Operator undertakes to the Customer that the physical flow of Natural Gas out of the Relevant Storage Facility during the period of interruption shall not be less than corresponding physical flow of Natural Gas from the Relevant Storage Facility had the Storage Operator acted upon the Customer's Withdrawal Nomination prevailing immediately before the Interruption Notice was given or any subsequent revised Withdrawal Nomination submitted after the Interruption Notice was given.

### 9.4 **Other unavailability to the Customer**

- (a) On any Day or Hour during a Gas Supply Emergency the Storage Operator may take steps to increase flow rates at the Relevant Storage Facility in order to comply with National Grid Gas's instructions pursuant of the Network Code notwithstanding the Customer's nomination on such Day.
- (b) Where in respect of any Day or Hour the withdrawal of Natural Gas at the Storage Connection Point is affected as a result of a pressure in the NTS at the Storage Connection Point exceeding the maximum delivery pressure specified in the Storage Connection Agreement, or of any other transportation constraints affecting the withdrawals of Natural Gas, the Customer shall be interrupted.

## **10 FORCE MAJEURE AND ILLEGALITY**

10.1 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 obligation 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.

### **10.2 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 10, 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.

### **10.3 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).

### **10.4 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 will apply, for which purpose the Party giving notice pursuant to this clause 10.4 shall be the "Affected Party" and the other Party shall be the "Notifying Party".

## **11 CONVERSION AND CALCULATION**

### **11.1 kWh and Therms**

Where:

- (a) a Nomination is by reference to a quantity of Natural Gas in Therms, and the Network Code requires such nomination to be stated in kWh; or

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

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

## 11.2 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.

## 12 CHARGES AND INVOICING

### 12.1 Charges

The charges payable by the Customer shall be exclusive of Taxes, VAT and Climate Change Levy and shall comprise:

- (a) the Capacity Charge;
- (b) the Injection Charge; and
- (c) the Withdrawal Charge.

### 12.2 Capacity Charge

The Capacity Charge shall be payable Monthly in arrears in accordance with clause 12.5; provided that no Capacity Charge shall be payable in respect of the Run-off Period.

### 12.3 Injection Charge

For each Gas Flow Day, the Injection Charge shall be payable in respect of the Injected Quantity for that Gas Flow Day and shall be payable in accordance with clause 12.5.

### 12.4 Withdrawal Charge

For each Gas Flow Day, the Withdrawal Charge shall be payable in respect of the Withdrawn Quantity for that Gas Flow Day and shall be payable in accordance with clause 12.5.

### 12.5 Monthly Invoicing

The Storage Operator 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 specifying:

- (a) the sum payable in respect of the Capacity Charge for each Day in the Invoice Period;
- (b) the sum payable in respect of the Injection Charge for the Invoice Period, such sum being equal to the product of the Injection Charge and the aggregate of the Injected Quantity for each Day in the Invoice Period;

- (c) the sum payable in respect of the Withdrawal Charge for the Invoice Period, such sum being equal to the product of the Withdrawal Charge and the aggregate of the Withdrawn Quantity for each Day in the Invoice Period;
- (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), (d) and (e) above.

#### 12.6 Other Invoices

Each Party shall promptly provide the other with valid VAT invoices specifying any sums (other than those referred to in clause 12.1) due or owing under this Agreement.

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

### 13 PAYMENT

#### 13.1 Payment

- (a) On or before the later of the twentieth day of the Month following the end of each Invoice Period, or the tenth day following receipt by the Customer of an invoice supplied by the Storage Operator pursuant to clause 12.5, (the "Due Date") the Customer shall pay to the Storage Operator any amount due, as indicated by the invoice for that period.
- (b) On or before the tenth day following receipt of an invoice provided under clause 12.6 (the "Due Date"), the receiving Party shall pay to the other Party any amount due as indicated by that invoice.
- (c) 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.
- (d) 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 a Party disagrees in good faith with any sum shown by any invoice or statement received pursuant to clause 12.5 or clause 12.6 as being payable by that Party, 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 other Party. 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, or clause 15, 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 three per cent.

## **14 DEFAULT**

- 14.1 To the extent the Storage Operator fails to inject or withdraw the Nominated Injection Quantity or Nominated Withdrawal Quantity (as the case may be) in circumstances where such failure is not excused by Force Majeure or where clause 9 does not apply, such failure shall be a Default.
- 14.2 To the extent that on any Day (the "Default Day"), the Storage Operator is in Default, Liquidated Damages shall apply and such Liquidated Damages shall be the Customer's sole remedy under this Agreement in respect of any Default.

In the case of under-injections, the Liquidated Damages due shall be the amount of the under-injection multiplied by the Default Price. In the case of under-withdrawals, the Liquidated Damages due shall be the amount of the under-withdrawal multiplied by the Default Price.

- 14.3 The maximum aggregate liability of the Storage Operator over the term of this Agreement in respect of Default shall be the Aggregate Liability Cap.

## **15 EARLY TERMINATION**

### **15.1 Termination Procedure**

If an Early Termination Event occurs in relation to either Party (the "Affected Party") the other Party (the "Notifying Party") may upon 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 Effect of Termination**

- (a) The Affected Party will pay the Notifying Party's reasonable costs, expenses and legal fees directly arising from an early termination of this Agreement pursuant to clause 15.1 if the Early Termination Event is an event falling within paragraphs (a), (b) or (c) of the definition of "Early Termination Event".
- (b) The Storage Operator shall retain all Gas-in-Storage at the time of the early termination of this Agreement pursuant to clause 15.1 and shall pay the Customer for such Gas-in-Storage:
- (i) if the Early Termination Event is an event falling within paragraphs (a), (b) or (c) of the definition of "Early Termination Event":
    - (A) and if the Affected Party is the Storage Operator, at a rate equal to the Mid Point Bid/Offer Price quoted by Heren on the date of the Early Termination Event for the Highest Price Day; or
    - (B) and if the Affected Party is the Customer, at a rate equal to the Mid Point Bid/Offer Price quoted by Heren on the date of the Early Termination Event;
  - (ii) if the Early Termination Event is an event falling within paragraph (d) of the definition of "Early Termination Event", at a rate equal to the Mid Point Bid/Offer Price quoted by Heren on the date of the Early Termination Event.



- (c) Upon an early termination of this Agreement pursuant to clause 15.1, if the Early Termination Event is an event falling within paragraphs (a), (b) or (c) of the definition of "Early Termination Event" the Affected Party shall pay the Notifying Party a sum equal to the Capacity Charge multiplied by the number of Days from the Day after the date of termination of this Agreement to the Day that would have been the end of the Term had this Agreement not been terminated.
- (d) The Parties have agreed that the provisions of this clause 15.2 represent a genuine and reasonable pre-estimate of the damages likely to be suffered by the Notifying Party as a result of the termination of the storage services due to an Early Termination Event affecting the Affected Party and such agreement has been made by the Parties with the knowledge that the actual losses suffered by the Affected Party as a result of the Early Termination Event may be more or less than the amounts payable in accordance with this clause 15.2.

## **16 RENEWAL OF AGREEMENT**

- 16.1 The Storage Operator and the Customer agree to enter into discussions no later than two (2) months prior to the end of the Term to discuss a possible renewal of this Agreement on the same or similar terms. For the avoidance of doubt, no Party is obliged to renew this Agreement.
- 16.2 If both Parties agree to renew this Agreement:
  - (a) any Customer's Gas-in-Storage at the end of the Terms shall be transferred to Gas-in-Storage at the start date of to the new agreement; and
  - (b) clause 17 shall not be applicable.

## **17 RECONCILIATION**

- 17.1 If on the date of expiry of the Run-off Period (the "Expiry Date") the Gas-in-Storage volume is greater than zero (the "Reconciliation Quantity"), the Storage Operator shall retain the Reconciliation Quantity and shall pay the Customer for the Reconciliation Quantity in accordance with clause 17.2, except where the Reconciliation Quantity arises as a result of a failure by the Storage Operator to withdraw the Nominated Withdrawal Quantity for the final Day of the Term in which case the provisions of clause 17.3 shall apply.
- 17.2 Where this clause applies, the Storage Operator shall pay the Customer for the Reconciliation Quantity at rate equal to the Mid Point Bid/Offer Price quoted by Heren on the Expiry Date less 25%.
- 17.3 Where this clause applies, the Storage Operator shall pay the Customer for the Reconciliation Quantity at a rate equal to the Mid Point Bid/Offer Price quoted by Heren on the Expiry Date. Payment by the Storage Operator to the Customer shall be made in accordance with clause 13.

## **18 WARRANTIES AND LIABILITIES**

### **18.1 The Storage Operator Warranty**

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

## 18.2 **Customer Warranty**

The Customer warrants to the Storage Operator that, at the Delivery Point, Natural Gas to be injected shall be free from lien, charge, encumbrance or adverse claim (as to title or otherwise) including any claim for any Tax, royalty or other charge arising on or before injection. The Customer shall indemnify the Storage Operator 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 Storage Operator in consequence of a breach of this warranty.

## 18.3 **Consequential Loss**

Save as expressly provided in this Agreement, neither Party shall have any liability to the other for any breach of this Agreement, whether in contract or tort, or in law or equity (regardless of whether such breach was occasioned by negligence), and in particular (but without limitation), neither Party shall have any liability for consequential, incidental or indirect loss or loss of profit or loss of business opportunity arising out of or in connection with this Agreement.

## 18.4 **No Third Party Rights**

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

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

### 19.1 **No Assignment**

Except as expressly provided under clause 19.2, neither Party shall be entitled at any time to assign any or all of its rights under this Agreement and/or transfer any or all of its obligations under this Agreement to a third party without the prior written consent of the other Party.

### 19.2 **Right of Assignment**

No consent shall be required pursuant to clause 19.1 in the case of an assignment by a Party to an Affiliate provided that:

- (a) the Affiliate is technically capable or performing the Party's obligations under this Agreement; and
- (b) the assigning Party shall not be relieved of any obligations that such Affiliate fails to perform.

### 19.3 **Successors and Assigns**

This Agreement shall ensure to and bind the Parties and their respective successors and permitted assigns.

## 20 **COMMUNICATIONS**

### 20.1 **Addresses for Communications**

All nominations, notices, consents, communications and invoices to be made or given under this Agreement ("Communications") shall be in writing and delivered:

- (a) in the case of the Storage Operator, 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: 0870 1910636

Facsimile number: 0870 1910647

(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: 01926 656613

or to such other address or facsimile number notified by a Party to the other from time to time in accordance with this clause 20.

## 20.2 **Method of Communications**

Communications shall only be given by prepaid post or delivered by hand or sent by facsimile or, if so agreed in writing by the Parties, transmitted by electronic means provided that Nominations shall always be sent by facsimile or, if so agreed, by electronic means.

## 20.3 **Time for Receipt**

Communications shall be deemed to have been received:

(a) in the case of facsimile or deliveries by hand:

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

(ii) if the Communication is a Nomination or other notice pursuant to any of the provisions in clauses 4, 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.

## 21 **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.

## 22 **CONFIDENTIALITY**

### 22.1 **No Disclosure**

Subject to 22.2, 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.

## 22.2 Exceptions

The obligations in clause 22.1 shall not apply:

- (a) to the extent such disclosure is required by applicable law, order, or regulation or in connection with any judicial, arbitration or administrative proceeding or the rules of any recognised stock or securities exchange;
- (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 26.

## 23 REPRESENTATION, VARIATION AND WAIVER

### 23.1 Representation

For the purposes of this clause 23.1, "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.

### **23.2 Variation**

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

### **23.3 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.

### **23.4 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.

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

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

24.2 The Parties shall agree such further rules and procedures for the implementation of the provisions of this Agreement as may be necessary or appropriate for the efficient performance of this Agreement, including in relation to the making and implementation of Nominations.

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

25.1 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.

25.2 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.

25.3 If the Parties are unable to agree on any amendments which need to be made to this Agreement pursuant to clause 25.1 or clause 25.2, the matter shall be referred to an Expert for determination in accordance with clause 26.

## **26 EXPERT**

26.1 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 26 shall have effect.

- 26.2 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.
- 26.3 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.
- 26.4 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.
- 26.5 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.
- 26.6 The Expert's final determination shall be final and binding on the Parties except in the case of manifest error.
- 26.7 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 Storage Operator**

By: \_\_\_\_\_

## SCHEDULE 1

**Storage Operator:** [ ], registered under company number[ ] and whose registered office is at [ ]

**Relevant Storage Facility:** [ ]

**Capacity Charge:** [ ] pence per kWh per day

**Injection Charge:** [ ] pence per kWh

**Withdrawal Charge:** [ ] pence/kWh

**Run-off Period:** A period of seven (7) Days commencing at the end of the Term

**Start Date:** 06:00 hours on [1 May 2008]

**Term:** The period commencing on the Start Date and ending at 05:59 hours on [1 May 2009]

**Initial or registered Storage Deliverability:** [ ] kWh/Day

**Initial or registered Storage Injectability:** [ ] kWh/Day

**Initial or registered Storage Injectability:** [ ] kWh

**Maintenance Period:** From 06:00 hours on [ ] until 05:59 hours on [ ]

**Injection Period:** From 06:00 hours on [ ] to 05:59 hours on [ ]

**Injection Response Time:** [ ] hours on [ ]

**Withdrawal Response Time:** [ ] minutes before the exact hour at which the Withdrawal Nomination or revised Withdrawal Nomination is to take effect

**Aggregate Liability Cap:** [ ] pounds sterling

**Address of the Storage Operator for notices:** [ ]

Marked for the attention of: [ ]

Fax number: [ ]

**SCHEDULE 2**  
**FORM OF NOMINATION**

[No:]

[Current Date:]

[Current Time:]

[Customer:]

[Type of Nomination:                    [Injection/Withdrawal]]

[Current Nomination:]

[New Nomination:]

[Gas Flow Day:]

**NATIONAL GRID GAS PLC**

By:

Title: