

**DISTRIBUTION NETWORK  
ADVANCED RESERVATION OF CAPACITY AGREEMENT (“DN ARCA”)**

**between**

**NATIONAL GRID GAS PLC**

**and**

[ ]

**relating to the NTS/LDZ Offtake from the NTS to**

[ ] **Local Distribution Zone at**

[ ]

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

**BETWEEN:**

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

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

**WHEREAS:**

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

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

**1. INTERPRETATION**

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

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

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

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

**“ARCA NTS/LDZ Offtake”**: the NTS/LDZ Offtake located at the NTS/LDZ Offtake location identified in Schedule 1.

**“Authority”** shall mean the Gas and Electricity Markets Authority;

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

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

**“Exit Charge”**: means the NTS Exit Capacity Charge ([to be] set out in the Transportation Statement) for the Exit Zone applicable to the ARCA NTS/LDZ Offtake (and payable by Users at LDZ Supply Points and LDZ CSEPS pursuant to Uniform Network Code);

**“Existing NTS Offtake (Flat) Capacity”** means the amount of capacity specified in Schedule 1;

**“Existing NTS Offtake (Flexibility) Capacity”** means the amount of capacity specified in Schedule 1;

[**“Facilities Agreement”**: the agreement between National Grid NTS and the DNO for the construction of certain works in connection with the establishment (or enlargement) of the ARCA NTS/LDZ Offtake [including where appropriate works for the construction of the pipeline connecting the ARCA NTS/LDZ Offtake to the NTS]];

**“Incremental NTS Exit Capacity”**: the incremental NTS Offtake Flat Capacity and incremental NTS Offtake Flexibility Capacity identified in Schedule 1;

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

**“Maximum Permitted Rate”**: the maximum permitted rate defined and calculated in accordance with Uniform Network Code, TPD, Section J paragraph 3.10;

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

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

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

**“Reduction Period Start Date”**: the date upon which the System Reinforcement Works have been completed being not earlier than 06:00 hours

on [ ], or at 06:00 hours on such later date as determined under Clauses 3.4 or 10 or as notified by National Grid NTS under Clause 2.5;

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

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

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

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

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

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

## 2. DURATION

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

2.2 If by the end of the 14<sup>th</sup> day following the date of this Agreement National Grid NTS has not received evidence to its reasonable satisfaction that the DNO:

- (a) holds a Gas Transporter Licence under the Gas Act 1986 (as amended); and
- (b) has signed the Transporters Framework Agreement;

then National Grid NTS may within 28 days following signature of this Agreement terminate this Agreement.

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

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

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

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

2.5 In the event of any delay arising due to those circumstances set out in Clauses 2.3 and/or 2.4 above, National Grid NTS shall notify the DNO in writing of the delay as soon as reasonably practicable (and in any event no later than 28 days) after becoming aware of the delay and as soon thereafter as is reasonably practicable (and in any event no later than 28 days) notify the DNO

of the new Reduction Period Start Date once it has been determined by National Grid NTS and the Reduction Period Start Date shall be extended accordingly.

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

- 3.1 This Agreement shall remain in force notwithstanding any modification from time to time to the Uniform Network Code.
- 3.2 Nothing in this Agreement shall modify the terms on which, pursuant to the Uniform Network Code, the DNO may offtake gas from the NTS.
- 3.3 In the event that the Uniform Network Code is modified or changes are made to the Gas Act 1986 (as amended), the National Grid NTS Gas Transporters Licence, the DNO's Gas Transporters Licence, or the gas regulatory regime which would result in either Party being unable lawfully to perform this Agreement, the Parties agree to meet in good faith to discuss how this Agreement may be amended to take account of such modification or change. The Parties agree to make amendments to the terms of this Agreement from time to time to such extent (if any) as is necessary to make the terms of this Agreement consistent with the principles behind the relevant modifications or changes.
- 3.4 In the event that a Party is unable lawfully to perform its obligations as a result of any of the circumstances described in Clause 3.3 and the DNO has applied to the Authority for a determination under Section 19 of the Gas Act 1986 (as amended), the Reduction Period Start Date shall be postponed or the Reduction Period extended (as the case may be) by a period equal to the period from the date the said Section 19 application was made to the date the Authority's determination was issued.

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

- 4.1 National Grid NTS undertakes that it will:
  - (a) subject always to Clause 2.2, undertake such System reinforcement works as are necessary (not being the works that are the subject of any Facilities Agreement) (the "**System Reinforcement Works**"), so as to enable National Grid NTS to comply with paragraph (b) and (c);
  - (b) subject, where applicable, to the completion of:

- (i) the works that are the subject of any Facilities Agreement;
- (ii) any other works necessary to increase System capacity downstream of the NTS/LDZ Offtake;

ensure that by the Reduction Period Start Date there will be sufficient NTS Offtake (Flat) Capacity and/or NTS Offtake (Flexibility) Capacity available to ensure that the quantities specified in Schedule 1 are available for offtake at the ARCA NTS/LDZ Offtake at the Maximum Permitted Rate in accordance with Uniform Network Code provisions;

- (c) accept the DNO's application(s) (in accordance with the Uniform Network Code, TPD, Section B, paragraph 6) for NTS Offtake (Flat) Capacity and/or NTS Offtake (Flexibility) Capacity on and with effect from the Reduction Period Start Date, at the ARCA NTS/LDZ Offtake up to the respective amounts specified in Schedule 1;
- (d) maintain its Gas Transporter's Licence granted under the Gas Act 1986 (as amended) and if a third party acquires or is granted a Gas Transporter's Licence in relation to the NTS, procure that such third party shall assume and accept the obligations of National Grid NTS under this Agreement;

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

- 4.2 Nothing in this Agreement shall oblige National Grid NTS to accept any application by the DNO for NTS Offtake (Flat) Capacity and/or NTS Offtake (Flexibility) Capacity at the ARCA NTS/LDZ Offtake in an amount in excess of that specified in Schedule 1.
- 4.3 Nothing in this Agreement shall prejudice the DNO's right under the Uniform Network Code to apply for further NTS Offtake (Flat) Capacity and/or NTS Offtake (Flexibility) Capacity at the ARCA NTS/LDZ Offtake in respect of the Reduction Period.



- 4.4 The obligation of National Grid NTS to make gas available for offtake at the ARCA NTS/LDZ Offtake in accordance with the applicable provisions of Uniform Network Code will commence only on the Reduction Period Start Date and accordingly, notwithstanding Clause 4.1(c), and any acceptance of the DNO's application(s) in accordance with the applicable provisions of Uniform Network Code, National Grid NTS will not be liable to the DNO for, and the DNO hereby waives any rights in respect of, failure to make gas available for offtake at the ARCA NTS/LDZ Offtake at any time before the Reduction Period Start Date. save and except for liability for failure to make gas available in respect of Existing NTS Offtake (Flat) Capacity and Existing NTS Offtake (Flexibility) Capacity.

## 5. **DNO OBLIGATIONS**

- 5.1 The DNO will in accordance with the Uniform Network Code apply for NTS Offtake (Flat) Capacity and/or NTS Offtake (Flexibility) Capacity in respect of the amounts referred to in Schedule 1 and become registered as holding NTS Offtake (Flat) Capacity and/or NTS Offtake (Flexibility) Capacity.
- 5.2 In respect of its obligations under this Agreement, the DNO undertakes to ensure that it will maintain a credit rating in accordance with its Gas Transporter's Licence sufficient to meet its long term debt appropriate to the System Reinforcement Works Costs.

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

- 6.1 The Outstanding Amount will be reduced at the end of each Contract Year in the Reduction Period by an amount equal to the Registered Capacity in that Contract Year multiplied by the prevailing Exit Charge for each Day of such Contract Year.
- 6.2 Where at the end of the Reduction Period, the resultant value calculated in accordance with Clause 6.1 is a positive amount then subject always to Clause 6.3, the DNO shall pay to National Grid NTS in accordance with Clause 6.4 the ARCA Commitment.
- 6.3 Where the Registered Capacity is equal to (or greater than) the amount of Incremental NTS Exit Capacity for each and every Contract Year in the Reduction Period then payment of the ARCA Commitment shall be deemed to

have been discharged and the ARCA Commitment shall not be due and payable.

6.4 The ARCA Commitment shall be invoiced to the DNO by National Grid NTS and shall be due and payable by the DNO within 21 days of the date of the invoice.

6.5 Interest shall accrue on any amounts due and payable in accordance with this Agreement at the base lending rate from time to time of Barclays Bank plc plus two (2) percentage points per annum.

## **7. TERMINATION**

7.1 If this Agreement is terminated by the DNO after the Reduction Period Start Date for any reason, the DNO shall remain liable to National Grid NTS for any Outstanding Amount owing to National Grid NTS as at the date of termination and such amount shall be due and payable within twenty-one (21) days of receipt by the DNO of an invoice for the same.

7.2 The DNO may terminate this Agreement if National Grid NTS is in material breach of any of its obligations hereunder and where such breach is capable of remedy, fails to remedy such breach within 28 days from the date on which it was notified to do so by the DNO. If after expiry of that notice National Grid NTS has failed to remedy such breach, the DNO may issue a notice of its intention to terminate this Agreement, such termination to take effect after the expiry of 7 days from issue of the notice, provided that prior to the expiry of that period of 7 days, such breach has not been remedied by National Grid NTS.

7.3 If this Agreement is terminated by the DNO before the Reduction Period Start Date for any reason, the DNO shall pay to National Grid NTS an amount equal to the costs reasonably incurred or committed in the provision of the System Reinforcement Works as at the date of the termination notice. Such payment shall be due and payable within twenty-one (21) days of receipt by the DNO of an invoice for the same.

7.4 National Grid NTS may by serving notice on the DNO terminate this Agreement where the sum of the amounts of Registered Capacity over a period of any four consecutive Contract Years is less than 50% of the sum of the amounts of Incremental NTS Exit Capacity over such four year period and in such event the Outstanding Amount shall be due and payable within twenty-one (21) days of receipt by the DNO of an invoice for the same.

8. **ASSIGNMENT**

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

9. **LIABILITY**

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

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

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

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

10. **FORCE MAJEURE**

The Force Majeure provisions of Uniform Network Code, General Terms, Section B paragraph 3 shall apply to this Agreement. If a Force Majeure event occurs prior to the Reduction Period Start Date, the Reduction Period Start Date will be postponed by the duration of the Force Majeure event. If the Force Majeure event occurs during the Reduction Period, then the Reduction Period will be extended accordingly.

11. **CONFIDENTIALITY**

The Confidentiality provisions of the Uniform Network Code, TPD, Section V paragraph 5 shall apply to this Agreement.

12. **WAIVER**

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

13. **SEVERANCE**

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

14. **GOVERNING LAW**

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

15. **NOTICES**

(a) Any notice which for the purposes of this Agreement shall include invoices, nominations and notifications to be given by one Party to the other under this Agreement shall be delivered by hand to the Party in question or sent to such Party by recorded delivery letter or facsimile addressed to that Party at such address or such facsimile transmission number as the Party in question shall from time to time designate by written notice and until such notice shall be given the addresses and facsimile numbers of the Parties shall be as follows:-

(i) National Grid NTS

National Grid Gas plc





**SCHEDULE 1**

**1. NTS OFFTAKE CAPACITY**

The DNO has notified National Grid NTS that it [has applied for] [intends to apply for] and hold incremental NTS Offtake (Flat) Capacity and/or incremental NTS Offtake (Flexibility) Capacity at the following amounts at, the NTS/LDZ Offtake in respect of the first Contract Year:

|  |   |   |             |
|--|---|---|-------------|
| NTS/LDZ Offtake location                       | [ | ] |             |
| Existing NTS Offtake (Flat) Capacity:          | [ | ] | kWh per Day |
| Incremental NTS Offtake (Flat) Capacity        | [ | ] | kWh per Day |
| Total NTS Offtake (Flat)Capacity:              | [ | ] | kWh per Day |
| Existing NTS Offtake (Flexibility) Capacity    | [ | ] | kWh per Day |
| Incremental NTS Offtake (Flexibility) Capacity | [ | ] | kWh per Day |
| Total NTS Offtake (Flexibility)Capacity        | [ | ] | kWh per Day |
| Maximum Permitted Rate:                        | [ | ] | kW          |

**SCHEDULE 2**

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

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