

**ADVANCED RESERVATION OF CAPACITY AGREEMENT**

**Between**

**National Grid Gas plc**

**and**

**[ ]**

**relating to the [ ]**

**nationalgrid**

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Subject to Contract

**DOCUMENT HISTORY**

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## Advanced Reservation of Capacity Agreement

This Agreement dated [ ] of [ ] [20 ]

### Between

- (1) **National Grid Gas plc** registered in England and Wales with number 2006000 whose registered office is at 1-3 Strand, London, WC2N 5EH (**National Grid NTS**); and
- (2) [ ] [registered in [England and Wales] with number [ ] whose registered office is at [ ] (the **Reservation Party**)

### WHEREAS:

- (A) National Grid NTS is the owner and operator of the NTS.
- (B) The Reservation Party is not a User.
- (C) The Reservation Party wishes to nominate a User to be registered as holding Enduring Annual NTS Exit (Flat) Capacity at the Relevant NTS Exit Point.
- (D) Works need to be undertaken by (or on behalf) of National Grid NTS for the purposes of making available all (or part) of the Reserved Capacity at the Relevant NTS Exit Point.
- (E) National Grid NTS agrees to register a User nominated by the Reservation Party as holding Enduring Annual NTS Exit (Flat) Capacity at the Relevant NTS Exit Point subject to and in accordance with the terms of this Agreement.

### It is agreed:

## 1 Definitions and Interpretation

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

**Aggregate Annual Charges Amount** means the aggregate amount of NTS Exit Capacity Charges paid (or payable) by a Nominated User in respect of the Enduring Annual NTS Exit (Flat) Capacity registered pursuant to Clause 5.1 and held at the Relevant NTS Exit Point in respect of the Contract Year.

**Applicable Interest Rate** means the rate of interest, expressed as a percentage rate per annum, set for the relevant period as the statutory interest rate for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.

**ARCA Annual Commitment Amount** means, in relation to a Contract Year, an amount calculated in accordance with Clause 6.1.

**Contract Year** means the period of twelve (12) months commencing on the Reserved Capacity Start Date and each of the first, second and third anniversary of such date.

**Exit Capacity Release Methodology Statement** means the statement prepared and published by National Grid NTS in accordance with Special Condition C18 of National Grid NTS's Transporter's Licence as from time to time in force.

**General Terms** means the General Terms of the Uniform Network Code.

**Nominated User** means a User identified as such in a notice given under Clause 4.1.

**Outstanding Annual Commitment Amount** means an amount calculated in accordance with Clause 7.

**Party** means National Grid NTS or the Reservation Party and **Parties** means both of them.

**Prevailing Demonstration Date** means:

- (a) [ ] (**First Demonstration Date**); or
- (b) in the event the Reservation Party has not provided National Grid NTS with the Demonstration Information by the First Demonstration Date, the first anniversary of the First Demonstration Date (**Second Demonstration Date**); or
- (c) in the event the Reservation Party has not provided National Grid NTS with the Demonstration Information by the Second Demonstration Date, the second anniversary of the First Demonstration Date (**Third Demonstration Date**); or
- (d) in the event the Reservation Party has not provided National Grid NTS with the Demonstration Information by the Third Demonstration Date, such other date as National Grid NTS may agree in writing (**Ad-hoc Demonstration Date**).

**Relevant Design Costs** means all costs and expenses incurred in performing design works in respect of required Works including, but not limited to, feasibility studies, environmental assessments, conceptual and detailed design studies, consents and permissions, planning submissions and the cost of project procurement activities.

**Relevant NTS Exit Point** means the NTS Exit Point located at [ ], grid reference [ ].

**Reserved Capacity** means the amount of Enduring Annual NTS Exit (Flat) Capacity referred to in Schedule 1 to this Agreement.

**Reserved Capacity Period** means the period commencing at 06:00 hours on the Reserved Capacity Start Date and ending at 06:00 hours on the day following the fourth anniversary of such date.

**Reserved Capacity Start Date** means:

- (a) [ ]; or
- (b) where the Reservation Party has not provided the Demonstration Information by the Prevailing Demonstration Date, the date (being the first day of a calendar month) specified in the most recent notice (if any) given by National Grid NTS to the Reservation Party in accordance with Clause 3.2(a)(ii).

**Security Amount** means:

- (a) prior to the Reserved Capacity Start Date, the Total ARCA Commitment Amount;
- (b) on or after the Reserved Capacity Start Date, the Total ARCA Commitment Amount less any Outstanding Annual Commitment Amount paid and any Aggregate Annual Charges Amount.

**Security Document** means a form of security or surety in favour of, and acceptable to, National Grid NTS acting in accordance with its credit policy in force from time to time.

**Total ARCA Commitment Amount** means £[ ], being an amount equal to the aggregate of the ARCA Annual Commitment Amount for all of the Contract Years in the Reserved Capacity Period which amount shall be recalculated in the event of any notice given by National Grid to the Reservation Party in accordance with Clause 3.2 (a) ii

**TPD** means the Transportation Principal Document of the Uniform Network Code.

**Uniform Network Code** means the document defined in Standard Special Condition A11(6) of National Grid NTS's Transporter's Licence as from time to time modified pursuant to the terms thereof.

- 1.2 In this Agreement, unless the context otherwise requires:
- (a) terms defined in the Uniform Network Code and not defined in this Agreement shall have the same meanings as given in the Uniform Network Code;
  - (b) words in the singular may be interpreted as including the plural.
- 1.3 For the avoidance of doubt a breach of this Agreement will not constitute a breach of the Uniform Network Code.
- 1.4 The Reservation Party shall be responsible for obtaining and shall be deemed to have obtained and to be fully informed of the applicable Exit Capacity Release Methodology Statement.

## **2 Duration**

- 2.1 This Agreement shall be effective on the date of this Agreement and shall continue in full force and effect until:
- (a) the end of the Reserved Capacity Period or, earlier payment of the Total ARCA Commitment Amount; or
  - (b) earlier termination of the Agreement in accordance with Clause 10.
- 2.2 The Reservation Party shall remain liable after date of cessation or termination of this Agreement for:
- (a) any amount payable in respect of any period before the date of the cessation or termination of this Agreement; and
  - (b) any breach of this Agreement.

## **3 Demonstration**

- 3.1 For the purposes of this Agreement:
- (a) the Reservation Party shall provide the Demonstration Information (and any additional information requested by National Grid NTS pursuant to Clause 3.2(a)) to National Grid NTS by not later than the Prevailing Demonstration Date;
  - (b) the Reservation Party shall not be entitled to nominate a User to be registered as holding Enduring Annual NTS Exit (Flat) Capacity at the Relevant NTS Exit Point in accordance with Clause 4 until National Grid NTS has given notice in accordance with Clause 3.3.
  - (c) the Demonstration Information is listed in Schedule 2.
- 3.2 Subject to Clause 3.5, in the event the Reservation Party does not provide the Demonstration Information to National Grid NTS by the Prevailing Demonstration Date:
- (a) National Grid NTS may:

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- (i) request the Reservation Party to provide additional information (provided such information is consistent with information identified in the guidelines published by National Grid NTS pursuant to TPD Section B3.3.5(b));
    - (ii) notify the Reservation Party (by not later than ten (10) Business Days of the previous Prevailing Demonstration Date) of a new Reserved Capacity Start Date, which date may be up to twelve (12) months later than the previous Reserved Capacity Start Date and of a new Demonstration Date.
  - (b) Clause 5.1 shall only apply in respect of the new Reserved Capacity Start Date (and shall cease to apply and no longer have effect in respect of the previous Reserved Capacity Start Date).
- 3.3 National Grid NTS will notify the Reservation Party following the date on which it has received and is satisfied with all the Demonstration Information provided by the Reservation Party.
- 3.4 In the event that the Reservation Party does not provide the Demonstration Information to National Grid NTS by the Third Demonstration Date or any later Ad-hoc Demonstration Date:
- (a) the Reservation Party shall not be entitled to nominate a User as holding Enduring Annual NTS Exit (Flat) Capacity at the Relevant NTS Exit Point in accordance with Clause 4;
  - (b) the Relevant Design Costs, incurred by National Grid NTS prior to the Prevailing Demonstration Date, shall be payable by the Reservation Party;
  - (c) National Grid NTS may terminate this Agreement by notice in writing to the Reservation Party.
- 3.5 National Grid NTS shall determine (in its sole discretion) whether:
- (a) Works need to be undertaken at the Relevant NTS Exit Point in order to make available all (or part of) the Reserved Capacity;
  - (b) information provided by the Reservation Party constitutes Demonstration Information for the purposes of this Agreement.

## 4 Nomination of User

- 4.1 Following the date on which National Grid NTS gives notice under Clause 3.3, the Reservation Party may by notice to National Grid NTS nominate a User (the "**Nominated User**") to be registered as holding an amount of Enduring Annual NTS Exit (Flat) Capacity at the Relevant NTS Exit Point, which for all Nominated Users must not, in aggregate, exceed the Reserved Capacity.
- 4.2 Following receipt of a notice under Clause 4.1 National Grid NTS shall notify the Nominated User of the contents of the notice.
- 4.3 A notice under Clause 4.1 shall specify:
- (a) the identity of the Nominated User;
  - (b) the amount of the Enduring Annual NTS Exit (Flat) Capacity to be registered in the name of the Nominated User (which shall not in aggregate exceed the amount of Reserved Capacity available in respect of the period of registration);
  - (c) the date (being the first day of a calendar month), falling:
    - (i) not earlier than the Reserved Capacity Start Date; and

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(ii) not later than the last day of the Reserved Capacity Period;

from which the Nominated User is to be registered as holding Enduring Annual NTS Exit (Flat) Capacity at the Relevant NTS Exit Point.

4.4 National Grid NTS may reject the Reservation Party's notice where:

- (a) it does not comply with the requirements of Clause 4.3;
- (b) if the Nominated User applied for Enduring Annual NTS Exit (Flat) Capacity in accordance with TPD Section B3, National Grid NTS would be entitled to reject the application in accordance with TPD Section V3;
- (c) the Nominated User has not confirmed its acceptance to National Grid NTS of the details of the contents of the notice within five (5) Business Days of receipt of notification given by National Grid NTS under Clause 4.2;
- (d) it is given in contravention of Clause 3.4(a);

and where rejected any such notice shall have no effect.

4.5 Subject to Clause 5.2, the Reservation Party may give more than one notice in accordance with this Clause 4.

## **5 National Grid NTS Obligations**

5.1 Subject to Clause 8 National Grid NTS undertakes to register (for the purposes of the Uniform Network Code) the Nominated User as holding Enduring Annual NTS Exit (Flat) Capacity at the Relevant NTS Exit Point in such amount(s) and from such date as specified in the Reservation Party's notice under Clause 4.3.

5.2 Nothing in this Agreement shall:

- (a) require National Grid NTS to accept an application by a Nominated User for Enduring Annual NTS Exit (Flat) Capacity at the Relevant NTS Exit Point in an amount (taking into account any other nomination made pursuant to this Agreement) which exceeds the total amount of the Reserved Capacity;
- (b) prevent the Nominated User from applying pursuant to TPD Section B3 for further NTS Exit Capacity at the Relevant NTS Exit Point in respect of any day in the Reserved Capacity Period.

## **6 ARCA Annual Commitment Amount**

6.1 The ARCA Annual Commitment Amount for a Contract Year shall be calculated as follows:

$$ACA = P * Q * D$$

where:

ACA is the ARCA Annual Commitment Amount for the Contract Year;

P is the indicative Capacity Charge (as specified in Schedule 1) for Enduring Annual NTS Exit (Flat) Capacity at the Relevant NTS Exit Point applicable in respect of the first day of the Contract Year commencing on the Reserved Capacity Start Date;



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- Q is the amount of Reserved Capacity (as specified in Schedule 1); and  
D is the number of days in the Contract Year.

## 7 Outstanding Annual Commitment Amount

- 7.1 Where in respect of each Contract Year in the Reserved Capacity Period the Enduring Annual NTS Exit (Flat) Capacity registered at the Relevant NTS Exit Point pursuant to Clause 4.1 is:
- (a) equal to the Reserved Capacity, no amount shall be payable by the Reservation Party;
  - (b) less than the Reserved Capacity and the aggregate Annual Charges Amount is:
    - (i) greater than the ARCA Annual Commitment Amount for the Contract Year, the amount of such excess shall be added to the Aggregate Annual Charges Amount for the following Contract Year;
    - (ii) less than the ARCA Annual Commitment Amount for the Contract Year, the Reservation Party shall pay National Grid NTS the Outstanding Annual Commitment Amount.
- 7.2 The Outstanding Annual Commitment Amount for a Contract Year shall be calculated as follows:

$$OACA = ACA - AACA$$

where:

OACA is the Outstanding Annual Commitment Amount for the Contract Year;

ACA is the ARCA Annual Commitment Amount for the Contract Year; and

AACA is the Aggregate Annual Charges Amount for the Contract Year.

- 7.3 Where at the end of a Contract Year the Outstanding Annual Commitment Amount is positive, such amount shall be payable by the Reservation Party.
- 7.4 For the avoidance of doubt if the Outstanding Annual Commitment Amount for a Contract Year is negative or zero then no amount shall be payable by the Reservation Party in relation to such Contract Year.

## 8 Security

- 8.1 Where requested, the Reservation Party shall provide National Grid NTS with a Security Document (at its own cost) for an amount equal to the Security Amount within fourteen (14) days of the date of this Agreement.
- 8.2 The Reservation Party shall ensure a Security Document for an amount equal to the Security Amount remains valid and in full force and effect for the duration of this Agreement and the Reservation Party may require National Grid NTS to return the Security Document when the Security Amount is equal to zero.
- 8.3 Where National Grid NTS chooses not to request a Security Document, it shall notify the Reservation Party accordingly but may undertake a credit check at any time throughout the duration of this Agreement.
- 8.4 Where following a credit check in accordance with Clause 8.3 the Reservation Party's credit rating is judged to be below the Security Amount and/or where there is an increase in the

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Security Amount National Grid NTS shall notify the Reservation Party accordingly and no later than the 14th day following the submission of such notice the Reservation Party shall provide a Security Document to National Grid NTS for an amount equal to the Security Amount.

8.5 The Reservation Party may from time to time replace a Security Document (at its own cost) provided National Grid NTS shall not be required to agree to surrender, waive or release its rights under an existing Security Document until such time as the Reservation Party has provided a replacement Security Document which is valid and in full force and effect in respect of the Security Amount.

8.6 If the Reservation Party does not comply with:

- (a) the requirement in Clause 8.1, 8.2 or 8.4, National Grid NTS may terminate this Agreement by notice in writing to the Reservation Party;
- (b) the requirement in Clause 8.2 or 8.4, the Security Amount shall become immediately due and payable by the Reservation Party;

and nothing in this Agreement shall prevent National Grid NTS making a demand for the Security Amount under and in accordance with the terms of a Security Document.

## 9. Payment

9.1 All amounts payable in accordance with this Agreement shall be due and payable within twenty-one (21) days of the receipt by the Reservation Party of an invoice for the same.

9.2 All amounts payable by the Reservation Party pursuant to this Agreement are exclusive of any applicable value added tax (and accordingly value added tax shall be paid by the Reservation Party where payable in respect of any such amount).

9.3 Without prejudice to Clause 10, where any amount payable under an invoice is not paid by the due date in accordance with Clause 3.4(b) or Clause 7.3, the Reservation Party shall pay interest, after as well as before judgement, at the Applicable Interest Rate, on the unpaid amount from the due date until the day on which payment is made.

9.4 For the avoidance of doubt, Clause 9.3 shall not be construed as permitting late payment of any amount due for payment.

## 10. Termination

10.1 The Reservation Party may terminate this Agreement by notice in writing 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 twenty-eight (28) days from the date on which it was notified to do so by the Reservation Party.

10.2 National Grid NTS may terminate this Agreement by notice in writing:

- (a) pursuant to Clause 3.4(c);
- (b) pursuant to Clause 8.6(a);
- (c) in the event the Reservation Party suffers any of the events or circumstances of the type described in the TPD Section V4.3.1(e);
- (d) in the event Demonstration Information provided by the Reservation Party is shown to be false, misleading or materially inaccurate; or
- (e) the Reservation Party is in material breach of any of its obligations hereunder and where such breach is capable of remedy, fails to remedy such breach within twenty-eight (28) days from the date on which it was notified to do so by National Grid NTS.

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- 10.3 Where National Grid NTS terminates this Agreement, an amount equal to the Security Amount shall be payable by the Reservation Party except where terminated in accordance with Clause 3.4 (c) in which case the amount payable shall be calculated in accordance with Clause 3.4 (b).
- 10.4 Either Party may terminate this Agreement by giving notice to the other if notwithstanding Clause 13, a Force Majeure event continues for a period of more than twenty-four (24) consecutive months from the date upon which notice of the occurrence of the Force Majeure event was first notified by one Party to the other.

## 11 Assignment

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

## 12 Liability

- 12.1 Neither 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 the other Party for:
- (a) any direct loss directly resulting from such breach except physical damage to the property of any 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 the other Party to any person howsoever and whensoever arising.
- 12.2 Nothing in this Agreement shall exclude or limit the liability of a Party for death or personal injury resulting from the negligence of such Party.

## 13 Force Majeure

- 13.1 The provisions of General Terms, Section B3 shall apply for the purposes of this Agreement as if set out in full herein, for which purposes references therein to a Party shall be construed as references to a Party to this Agreement and references to the Code shall be construed as a reference to this Agreement.
- 13.2 Without prejudice to Clause 10.4, if a Force Majeure event occurs:
- (a) prior to the Reserved Capacity Start Date, then such date shall be delayed;
  - (b) during the Reserved Capacity Period, then such period shall be extended
- by a period equivalent to the duration of the Force Majeure event.
- 13.3 For the avoidance of doubt any provision of the Uniform Network Code relating to Force Majeure other than those contained in the General Terms, Section B3 shall not apply for the purposes of this Agreement.

## 14 Confidentiality

- 14.1 Subject to Clause 14.2 and 14.3 each Party shall keep confidential and shall not disclose any information:

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- (a) contained in this Agreement; or
  - (b) which relates to the affairs of the other obtained pursuant to, or in the course of negotiation, implementation or performance of this Agreement.
- 14.2 National Grid NTS may publish the amount of Reserved Capacity, the location of the Relevant NTS Exit Point and the Reserved Capacity Period.
- 14.3 Nothing in Clause 14.1 shall apply to:
- (a) any information which before it is obtained by a Party from the other is in the public domain;
  - (b) any information which after it is obtained by a Party from the other enters the public domain;
  - (c) the disclosure of information by a Party to any person, if and to the extent that such disclosure is required:
    - (i) to comply with the disclosing Party's duties under the Act or any other requirement of a Competent Authority;
    - (ii) to comply with any other Legal Requirement;
    - (iii) pursuant to any judicial or other arbitral process or tribunal having jurisdiction in relation to the disclosing Party; or
  - (d) the disclosure of information by National Grid NTS:
    - (i) to the extent that such disclosure is required to any person to comply with the conditions of its Transporter's Licence, or any document referred to in such licence with which National Grid NTS is required by virtue of the Act or such licence to comply;
    - (ii) to the Transporter Agency to the extent such disclosure is necessary for the purposes of the undertaking by the Transporter Agency of the Transporter Agency Activities.

## 15 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.

## 16 Severance

If any Clause (or any part thereof) 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.

## 17 Notices

- 17.1 Any notice required to be given for the purposes of 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:

- (a) National Grid NTS: [ ]; and
- (b) the Reservation Party: [ ].

17.2 All notices delivered by recorded delivery or hand or sent by facsimile shall be effective when received at the recipient's address as aforesaid.

17.3 Any notice given by facsimile transmission (but excluding any routine nominations, notices and communications) shall be subsequently confirmed by letter sent by recorded delivery or hand but without prejudice to the validity of the original notice if received.

## **18 Entire Agreement**

This Agreement is the entire agreement between the Parties and all prior representations, negotiations and undertakings are excluded from any construction of it or shall be superseded by this Agreement and of no effect. No collateral or other agreements under or in respect of this Agreement may have effect or be varied or amended save as this Agreement expressly permits and this Agreement may only be varied or amended by the written agreement of both Parties. Nothing in this Clause shall, however, operate to limit or exclude any liability for fraud.

## **19 Governing Law and Jurisdiction**

19.1 This Agreement and any dispute arising out of or in connection with it or its subject matter or formation (including non-contractual dispute) shall be governed by and construed in accordance with the law of England and Wales.

19.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes).

## **20 Third Parties**

Subject to any rights which may accrue to any successor or permitted assign of the Parties, no provision of this Agreement shall or may be construed as creating any right(s) enforceable by a third party and all third party rights as may be implied by law are excluded from this Agreement to the fullest extent permitted by law.

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**Signed** by the duly authorised representatives of the Parties hereto the day and year above written.

**Signed by** )  
duly authorised for and )  
on behalf of )  
**National Grid Gas plc** )

Print Name .....

Position .....

**Signed by** )  
duly authorised for and )  
on behalf of )  
**[ ]** )

Print Name .....

Position .....

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## Schedule 1 – Reserved Capacity and Indicative Capacity Charge

The Reserved Capacity is [        kWh/day]

The indicative Capacity Charge is [        p/kWh/day]

**Schedule 2 - Demonstration Information**