

V2.0 July 2024

GAS DEMAND SIDE RESPONSE (DSR) AGREEMENT

BETWEEN

NATIONAL GAS TRANSMISSION plc

AND

[CONSUMER]



**National Gas Transmission Legal
National Grid House
Warwick Technology Park
Gallows Hill
Warwick CV34 6DA
T: 01926 653000**

INDEX

CLAUSES	PAGE
1. DEFINITIONS AND INTERPRETATION.....	1
2. DURATION	6
3. DSR OPTION.....	6
4. EXERCISE OF DSR OPTION	7
5. FEES.....	8
6. FAILURE TO COMPLY WITH DSR OPTION	9
7. PAYMENT	10
8. CREDIT.....	11
9. LIABILITY.....	12
10. TERMINATION	13
11. WARRANTIES AND UNDERTAKINGS.....	13
12. ASSIGNMENT, SUCCESSION, ETC.....	14
13. COMMUNICATIONS	14
14. CONFIDENTIALITY.....	15
15. REPRESENTATION, VARIATION AND WAIVER	15
16. CHANGES TO UNC, PUBLICATIONS, ETC.....	16
17. PARTIES TO CO-OPERATE, ETC	16
18. EXPERT.....	16
19. THIRD PARTY RIGHTS	17
20. GOVERNING LAW.....	17
21. ANTI-CORRUPTION AND ANTI-SLAVERY.....	17
22. COUNTERPARTS.....	17
SCHEDULE 1 GLOSSARY	199
SCHEDULE 2 DSR OPTION DETAILS	222
SCHEDULE 3 CONSUMER DETAILS.....	233

THIS AGREEMENT is made the [] day of []

BETWEEN:

- (1) **National Gas Transmission plc**, a company incorporated in England and Wales (with company number 02006000), with its registered office at National Grid House, Warwick Technology Park, Gallows Hill, Warwick CV34 6DA, United Kingdom ("**NGT**"); and
- (2) [] [a company incorporated in [] (with company number []), with its registered office at [] (the "**Consumer**").

WHEREAS:

- (A) The Consumer has submitted the DSR Option Offer to NGT in respect of the specified Winter Period pursuant a DSR Annual Invitation published by NGT, and NGT has accepted that offer, which gives rise to the DSR Option on and subject to the terms of this Agreement.
- (B) Pursuant to the DSR Option NGT engages the Consumer to provide Demand Side Response services for WD and/or D-1 and/or D-5 product options in respect of the gas consumed by the Consumer at their Site, and the Consumer agrees to provide such option to NGT in accordance with the terms and conditions in this Agreement.

IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 Except as is otherwise expressly provided herein or unless the context otherwise requires, the terms defined in this Clause shall have the following meanings and derivative expressions shall be construed accordingly:

"**5-Day-Ahead Option**" or "**D-5**" has the meaning in the UNC;

"**Actual Consumption Quantity**" is, in respect of an Exercise Day, the quantity of gas consumed by the Consumer at the Site as determined in accordance with the UNC, and where applicable, the Network Exit Agreement;

"**Actual Consumption Rate**" is, in respect of any hour during an Exercise Day, the rate of consumption of gas by the Consumer at the Site as determined in accordance with the UNC, and where applicable, the Network Exit Agreement;

"**Affected Party**" has the meaning set out in Clause 10.1;

"**Affiliate**" means in relation to a company, a company which is affiliated to it and a company is deemed to be affiliated to another if the first company is controlled by, under common control with or controls the other; a company shall be deemed to have control of another if (directly or indirectly) it owns or controls a majority of the voting shares of, or is entitled (directly or indirectly) to appoint a majority of the directors of, the other company;

"**Agreement**" means this agreement and the Schedules attached hereto;

"**Anti-Bribery Laws**" means any and all statutes, statutory instruments, bye-laws, orders, directives, treaties, decrees and laws (including any common law, judgment, demand, order or decision of any Competent Authority) which relate to anti-bribery and/or anti-corruption, including the Bribery Act 2010;

"**Anti-Slavery Laws**" means any and all statutes, statutory instruments, bye-laws, orders, directives, treaties, decrees and laws (including any common law, judgment, demand, order or decision of any Competent Authority) which relate to slavery or servitude, forced or compulsory labour and/or human trafficking, including the Modern Slavery Act 2015;

"**Available Exercise Day**" has the meaning given in the UNC;

"**Available Exercise Quantity**" has the meaning in Clause 4.8;

"**Base Rate**" means the base rate for the time being of National Westminster Bank plc;

"**Business Day**" has the meaning given in the UNC;

"**CDSP**" has the meaning given in the UNC;

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

"**Communications**" has the meaning given in Clause 13;

"**Competent Authority**" means any court of competent jurisdiction and any local, national or supra national agency, authority, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or of the European Union, including, for the avoidance of doubt, the Gas and Electricity Markets Authority;

"**Daily Option Fee**" has the meaning given in Clause 5.1;

"**Day**" has the meaning given in the UNC;

"**Day-Ahead Option**" or "**DA**" has the meaning given in the UNC;

"**Demand Side Response**" has the meaning given in the UNC;

"**Dispute**" has the meaning given in Clause 18.1;

"**DSR Cessation Notice**" has the meaning given in the UNC;

"**DSR Lead Time**" is, in relation to a Within-Day Option, the period in hours specified in Schedule 2;

"**DSR Option**" is the DSR Option (as defined in the UNC) established by NGT's acceptance of the Consumer's DSR Option Offer and provided for in this Agreement;

"**DSR Option Invitation**" has the meaning given in the UNC;

"**DSR Option Offer**" has the meaning given in the UNC;

"**DSR Participant**" has the meaning given in the UNC;

"**DSR Reduced Quantity**" has the meaning given in the UNC, and in relation to the DSR Option is the reduced level of consumption at the Site specified in Schedule 2;

"**DSR Reduced Rate**" has the meaning given in the UNC;

"**Due Date**" has the meaning given in Clause 7.4;

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

- (a) a Party 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 thirty (30) days of its presentation;

- (b) a Party fails to make payment and fails to remedy the same within ten (10) Business Days of receiving notice of such breach from the other Party;
- (c) a Party commits a material or persistent breach of any of its obligations under this Agreement (which:
 - (i) is not capable of being cured; or
 - (ii) is capable of being cured, but is not cured within the reasonable time period specified in the notice given in accordance with Clause 10.1;
- (d) the Consumer is in breach of the requirements of either Clause 8 or 21; or
- (e) the Consumer ceases to occupy the Site or carry on any business at the Site requiring a supply of gas.

"**Effective Date**" means the date of this Agreement;

"**exercise**" means the exercise by NGT of the DSR Option in accordance with Clause 4.3;

"**Exercise Day**" has the meaning given in the UNC;

"**Exercise Fee**" has the meaning given in Clause 5.4;

"**Exercise Price**" means, in relation the DSR Option, the price (in p/kWh/Day) specified in Schedule 2;

"**Expert**" has the meaning given in Clause 18.2;

"**Exercise Instruction**" means the instruction issued by NGT to reduce demand at the Site in accordance with Clause 4.3;

"**failure day**" has the meaning given in Clause 6.1;

"**Hour**" means any period of sixty (60) minutes beginning on the hour;

"**gas**" has the meaning given in the UNC;

"**Gas Year**" has the meaning given in the UNC;

"**kWh**" has the meaning given in the UNC;

"**Legal Requirement**" means any Act of Parliament, regulation, rule, order, official directive (in each case having the force of law), licence, present or future directive, request, requirement, instruction, code of practice, direction or rule of any Competent Authority and any modification, extension or replacement thereof;

"**Maximum Exercise Period**" has the meaning given in the UNC and in relation to the DSR Option, is the number of Days (if any) specified as such in Schedule 2;

"**Minimum Exercise Interval**" has the meaning given in the UNC and , in relation to the DSR Option, is the period of Days (if any) specified as such in Schedule 2;

"**Monthly Option Fee**" has the meaning given in Clause 5.1;

"**Network Exit Agreement**" is the agreement of that name between a gas transporter and the Consumer (or the operator of the Site) in respect of the offtake of gas from the gas transporter's system at the Site;

"**Notifying Party**" has the meaning given in Clause 10.1;

"**NTS**" means the National Transmission System (as defined in the UNC) operated by NGT;

"**Option Fee Instalments**" has the meaning given in the UNC;

"**Option Price**" means, in relation to the DSR Option, the price (in p/kWh/Day) specified in Schedule 2;

"**Option Quantity**" means, in relation to the DSR Option, the Winter Average Demand less the DSR Reduced Quantity;

"**Party**" means either party to this Agreement and its successors and/ or permitted assigns, and "**Parties**" shall be construed accordingly;

"**Reasonable and Prudent Operator**" means a person seeking to perform its contractual obligations and in so doing and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances and conditions (and any reference to the "standard of a Reasonable and Prudent Operator" shall be construed accordingly);

"**Registered User**" means the User in whose name the Supply Point (as defined in the UNC) at the Site is registered for the purposes of the UNC and who is responsible for the offtake of gas from the gas transporter's system at the Supply Meter Point (as defined in the UNC) comprised in such Supply Point;

"**Representative**" means, in relation to a Party, its Affiliates together with each of their directors' officers, employees, contractors, sub-contractor and agents;

"**Schedule**" means a schedule to this Agreement;

"**Supplier**" means the person with whom the Consumer has a gas supply contract in respect of the supply gas for consumption by the Consumer at the Site;

"**Site**" means the site owned and/or operated by the Consumer specified in Schedule 2;

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

"**Term**" has the meaning given in Clause 2.1;

"**UNC**" means the uniform network code prepared by NGT (together with other gas transporters) pursuant to standard special condition A11(3) of NGT's gas transporter licence, as such code is amended, varied, supplemented or modified or replaced from time to time;

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

"**Within-Day Option**" or "**WD**" has the meaning given in the UNC;

"**Winter Average Demand**" has the meaning given in the UNC, and in relation to the DSR Option is the quantity specified in Schedule 2 or otherwise notified by NGT to the Consumer in accordance with Clause 3.4;

"**Winter Average Demand Forecast**" has the meaning given in the UNC; and

"**Winter Period**" has the meaning given in the UNC, and in relation to the DSR Option is the period specified in Schedule 2.

1.2 For ease of reference, Schedule 1 sets out the meanings given in the UNC for the terms defined in Clause 1.1 by reference to the UNC.

1.3 In this Agreement, unless otherwise specified:

- (a) in the case of conflict between anything in the main body of this Agreement and anything in a Schedule or attachment hereto, the provisions of the main body of this Agreement shall prevail;
- (b) in the computation of periods of time from a specified day (or Day) to a later specified day (or Day), **from** means "**from and including**" and **until** or **to** means **to and including**;
- (c) all dates and periods of time shall be determined by reference to the Gregorian calendar; and times of day are times of day in England;
- (d) **include**, **including** and **in particular** shall not be construed as being by way of limitation, illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;
- (e) the index and headings are for ease of reference only and shall not be taken into account in construing this Agreement;
- (f) references to this Agreement or any other documents shall be construed as references to this Agreement or that other document as amended, varied, novated, supplemented, or replaced from time to time;
- (g) the expression **this Clause** shall, unless followed by reference to a specific provision, refer to the whole Clause (not merely the sub-Clause or other provision) in which the expression occurs;
- (h) references to Clauses are to clauses of this Agreement;
- (i) references to **legislation** include any statute, bye-law, regulation, rule, subordinate or delegated legislation or order; and reference to any **legislation** is to such legislation as amended, modified or consolidated from time to time, and to any legislation replacing it or made under it, save insofar as any such amendment, modification, consolidation or replacement made after the date of this Agreement would impose any increased or new liability on any Party or otherwise adversely affect the rights of any Party;
- (j) references to a **person** (or to a word importing a person) shall be construed so as to include any individual, corporation, partnership, trust, unincorporated organisation or other legal entity, and that person's successors in title and assigns or transferees;
- (k) reference to any gender includes the others; and words in the singular include the plural and vice versa;
- (l) where a word or expression is defined, cognate words and expressions shall be construed accordingly; and
- (m) all capitalised terms not otherwise defined in this Agreement shall have the meanings respectively specified in the UNC.

1.4 Where more than one DSR Option is specified in Schedule 2, a reference in this Agreement to:

- (a) 'the DSR Option', shall be construed as a separate reference to each DSR Option specified in Schedule 2;
- (b) 'the details specified in Schedule 2', shall be construed as a reference, in relation to the DSR Option, to the details so specified which relate to that DSR Option.

2. DURATION

- 2.1 This Agreement shall come into force on the Effective Date and shall, subject to Clause 10, continue in effect until 05:00 hours on the 1 July following the end of the last Winter Period specified in Schedule 2 (the "**Term**").
- 2.2 Notwithstanding the expiry or termination of this Agreement Clause 10 and the provisions contained herein relating to confidentiality, governing law and jurisdiction shall continue to apply without limit in time.
- 2.3 Termination of this Agreement shall be without prejudice to any accrued rights and liabilities existing at the date thereof.

3. DSR OPTION

- 3.1 The Consumer agrees to provide to NGT the DSR Option in accordance with the terms and conditions of this Agreement and on the basis of the details specified in Schedule 2.
- 3.2 In complying with the DSR Option the Consumer shall not knowingly or recklessly pursue any course of conduct (either alone or with some other person) which is likely to prejudice:
 - (a) the safe and efficient operation, from day to day, by NGT of the NTS;
 - (b) the safe, economic and efficient balancing by NGT of the NTS; or
 - (c) the due functioning of the arrangements provided for in the UNC.
- 3.3 In consideration of the Consumer agreeing to provide the DSR Option NGT agrees to pay the Consumer:
 - (a) the Monthly Option Fee; and
 - (b) upon exercise of the DSR Option, the Exercise Fee.
- 3.4 Where the DSR Option relates to the Winter Period in Gas Year Y+1 or Y+2 NGT shall:
 - (a) where the Option Quantity is determined using the Consumer's actual daily demand from the preceding 3 Winter Periods, determine and notify to the Consumer the Winter Average Demand and the Option Quantity for Gas Year Y+1 or Y+2 by no later than 30 June in Gas Year Y and Gas Year Y+1; and
 - (b) where the Option Quantity is determined using the Consumer's Winter Average Demand Forecast, notify the Consumer of the Option Quantity at the time at which the DSR Option is accepted.
- 3.5 Where the Option Quantity for Gas Year Y+1 or Y+2 is less than one hundred thousand (100,000) kWh the DSR Option for the Gas Year shall lapse with immediate effect on the date NGT gives notice of the Option Quantity to the Consumer under Clause 3.4 (and the Consumer shall not be entitled to any payment in respect of the DSR Option).
- 3.6 The Consumer may on notice to NGT by no later than 31 July preceding the Winter Period to which the DSR Option relates, withdraw the DSR Option, in which case the DSR Option shall

lapse with immediate effect on the date of the Consumer's notice (and the Consumer shall not be entitled to any payment in respect of the DSR Option).

4. EXERCISE OF DSR OPTION

- 4.1 NGT may exercise the DSR Option by instructing the Consumer to reduce the quantity of gas consumed at the Site on any Available Exercise Day during the Term subject to the provisions of this Agreement.
- 4.2 NGT will not exercise the DSR Option in respect of a Day if;
- (a) the period from (but not including) the last discontinuous Exercise Day to (and including) that Day is less than the Minimum Exercise Interval, where applicable;
 - (b) the number of consecutive Days (or part thereof) in the Winter Period would (following such exercise) exceed the Maximum Exercise Period, where applicable;
 - (c) in the case of a Within-Day Option Offer, the number of hours that would remain in the Day after the DSR Lead Time is less than the minimum number of hours specified by the Consumer in the DSR Option, where applicable;
 - (d) a DSR Cessation Notice has been issued and is in force.
- 4.3 Where NGT wishes to exercise the DSR Option, it shall serve a notice (an "**Exercise Instruction**") on the Consumer in accordance with Clause 4.4 and subject to Clause 4.5, and the Consumer shall comply with such Exercise Instruction.
- 4.4 An Exercise Instruction shall:
- (a) specify the identity of the Consumer;
 - (b) specify the Site;
 - (c) specify whether the DSR Option is a Within-Day Option, Day-Ahead Option or 5-Day-Ahead Option;
 - (d) specify the Available Exercise Day to which it relates;
 - (e) in the case of a Within-Day Option, specify the start time, which shall not be less than the DSR Lead Time after the Exercise Instruction is given;
 - (f) specify the DSR Reduced Quantity or (in the case of a Within-Day Option) the DSR Reduced Rate;
 - (g) be communicated in accordance with Clause 13; and
 - (h) comply with the terms set out in this Clause 4 and this Agreement generally.
- 4.5 NGT may serve an Exercise Instruction on the Consumer:
- (a) subject to Clause 4.2(c), in the case of a Within-Day Option, no later than the time which is the DSR Lead Time before the end of the Day;
 - (b) in the case of a Day-Ahead Option, no later than 17:00 hours on Day D-1;
 - (c) in the case of a 5-Day-Ahead Option, no later than 17:00 hours on Day D-5.
- 4.6 As soon as reasonably practicable following receipt of an Exercise Instruction the Consumer shall confirm to NGT (by electronic means) receipt of the Exercise Instruction; provided any

failure to send such confirmation shall not relieve the Consumer from its obligation to comply with the Exercise Instruction.

4.7 Where NGT exercises the DSR Option:

- (a) in the case of a Within-Day Option, with effect from the DSR Lead Time after notice of exercise:
 - (i) the Consumer will reduce the rate of consumption of gas at the Site on the Exercise Day to the DSR Reduced Rate;
 - (ii) if the rate of consumption is less than the DSR Reduced Rate, not increase the rate of consumption above the DSR Reduced Rate;
- (b) in the case of a Day-Ahead Option or a 5-Day-Ahead Option not consume on the Exercise Day more than the DSR Reduced Quantity.

4.8 Where NGT exercises the DSR Option, the "**Available Exercise Quantity**" is:

- (a) in the case of a Within-Day Option, the quantity determined as:

$$OQ * H / 24$$

where:

OQ is the Option Quantity;

H is the number of hours from the Exercise Effective Time to the end of the Day;

- (b) in the in the case of a Day-Ahead Option or 5-Day-Ahead Option, the Option Quantity.

4.9 The Consumer shall be treated as complying with an Exercise Instruction (and accordingly with the requirements of Clause 4.7) on an Exercise Day where:

- (a) in the case of a Within-Day Option, with effect from the DSR Lead Time after notice of exercise:
 - (i) the Actual Consumption Rate is no greater than the DSR Reduced Rate;
 - (ii) if the rate of consumption is less than the DSR Reduced Rate, the Actual Consumption Rate is not increased above the DSR Reduced Rate;
- (b) in the case of a Day-Ahead Option or a 5-Day-Ahead Option, the Actual Consumption Quantity is no more than the DSR Reduced Quantity.

4.10 The Consumer agrees that following an Exercise Day NGT may request consumption data in respect of the Site for the Exercise Day from the CDSP (and the Consumer acknowledges the CDSP may provide such information to NGT) for the purposes of enabling NGT to determine whether or not the Consumer complied with the Exercise Instruction.

4.11 Where NGT exercises the DSR Option it shall notify the DN Operator and any other person as may be required pursuant to the UNC.

5. FEES

5.1 In respect of the DSR Option:

- (a) the "**Daily Option Fee**" is the amount (in £ per Day of the Winter Period) calculated as the Option Price multiplied by the Option Quantity;

- (b) the "**Monthly Option Fee**" is, in respect of each month in the Winter Period, the Daily Option Fee multiplied by the number of Days in the month.
- 5.2 Subject to Clause 5.3, the Monthly Option Fee shall be payable by NGT to the Consumer in respect of each month in the Winter Period.
- 5.3 Where the Option Quantity is determined using the Consumer's Winter Average Demand Forecast:
- (a) the Monthly Option Fee in respect of the months of January, February, March and April shall retained by NGT until actual demand data for the Winter Period is available;
- (b) not later than 2 months after the end of the Winter Period in respect of which the DSR Option Offer applies, NGT shall determine the mean daily quantity of gas consumed during such Winter Period by the Consumer at the Site as determined in accordance with the UNC, and where applicable, the Network Exit Agreement; and
- (c) such retained Monthly Option Fees shall be paid to the Consumer, subject to any deductions to be made by NGT calculated in accordance with Clause 6, if the quantity determined in this Clause 5.3(b) is greater than or equal to 90% of the Consumer's Winter Average Demand Forecast and not otherwise.
- 5.4 The Monthly Option Fee shall remain payable notwithstanding the issue of any DSR Cessation Notice.
- 5.5 Where NGT exercises the DSR Option the "**Exercise Fee**" is the Available Exercise Quantity multiplied by the Exercise Price.
- 5.6 The Exercise Fee shall be payable by NGT to the Consumer where NGT exercises the DSR Option and the Consumer complies with the Exercise Instruction.
- 5.7 The Monthly Option Fee and the Exercise Fee shall be exclusive of Taxes, VAT and the Climate Change Levy.
- 5.8 The Monthly Option Fee and the Exercise Fee shall be payable by NGT in accordance with Clause 7.

6. FAILURE TO COMPLY WITH DSR OPTION

- 6.1 For the purposes of this Agreement a "**failure day**" is an Exercise Day on which the Consumer failed to comply with an Exercise Instruction and in respect of which this Clause 6 shall apply.
- 6.2 No amount is payable by NGT to the Consumer in respect of the Exercise Fee in relation to a failure day.
- 6.3 Subject to Clause 6.5, the Consumer shall pay NGT an amount calculated as:

$$\text{DOF} * 1.1 * D * (\text{FD} / \text{TD})$$

where:

DOF is the Daily Option Fee;

D is the number of Days in the Winter Period;

FD is the number of failure days in the Winter Period;

TD is the number of Exercise Days in the Winter Period.

- 6.4 Amounts payable in respect of a failure day shall be payable by the Consumer in accordance with Clause 7.
- 6.5 Where Clause 8.2(a) applies, not later than 2 months after the end of the relevant Winter Period, NGT shall determine whether any failure days have occurred and where:
- (a) each Exercise Day was also a failure day, none of the Monthly Option Fees shall be payable to the Consumer;
 - (b) there were no Exercise Days or no failure days, all Monthly Option Fees retained by NGT shall be payable to the Consumer;
 - (c) not all Exercise Days were failure days, Monthly Option Fees retained by NGT shall be payable to the Consumer after deductions by NGT calculated in accordance with Clause 6.3.

7. PAYMENT

- 7.1 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.
- 7.2 Payments by NGT to the Consumer shall be made to the bank account specified in Schedule 3 (as may be amended by the Consumer from time to time on not less than thirty (30) days' notice).
- 7.3 Payments by the Consumer to NGT shall be made to the bank account as notified by NGT within thirty (30) days of the Effective Date (as may be amended by NGT from time to time on not less than thirty (30) days' notice).
- 7.4 The "**Due Date**" shall be:
- (a) in relation to the Monthly Option Fee, subject to Clause 7.4(b), the twelfth (12th) Day following the twenty-third (23rd) Business Day after the last Day of the month to which the fee relates;
 - (b) in relation to payment of retained Monthly Option Fees pursuant to Clauses 5.3 and 6.5, as soon as reasonably practicable after completion of NGT's assessments referred to in those Clauses;
 - (c) in relation the Exercise Fee, the twentieth (20th) Day after the last Day of the month in which the Exercise Day occurred and to which the fee relates;
 - (d) in relation to an amount payable by the Consumer pursuant to Clause 6.3, the day which is the twelfth (12th) Day after receipt of an invoice from NGT (such invoice to be issued as soon as reasonably practicable after the end of the Winter Period in which the failure day occurred).
- 7.5 Notwithstanding any other provisions of this Clause 7, either party shall be entitled to set off any amounts due by the other pursuant to this Agreement (irrespective of whether any such amounts have been invoiced or not) against any amounts due by it to the other pursuant to this Agreement.
- 7.6 If a Party disagrees in good faith with any sum shown by any invoice or statement received as being payable by that Party, it shall pay the undisputed amount by the Due Date and shall promptly give notice of the amount in dispute and the reasons therefor to the other Party, and the Parties shall seek to settle the disputed amount as soon as practicable.
- 7.7 Upon determination or agreement of such dispute, any amount underpaid or overpaid shall be paid within five (5) 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 underpaid or overpaid amount.

- 7.8 If a Party fails on the Due Date to make payment as required pursuant to Clause 7.1, interest shall accrue from day to day, after as well as before any judgement, on the unpaid amount, from the Due Date until the date of payment, at a rate equal to the Base Rate plus one per cent (1%).

8. CREDIT

8.1 Definitions

For the purposes of this Clause 8, in relation to the Consumer:

- (a) "**Aggregate Option Fee**" means the aggregate of the Monthly Option Fee payable in respect of the first DSR Option specified in Schedule 2;
- (b) "**Cash Deposit**" has the meaning given to that term in Clause 8.5(c);
- (c) "**Consumer Contract Limit**" is the amount stated as the 'Contract Limit' in a report provided to NGT by Creditsafe in relation to the Consumer;
- (d) "**Credit Security**" means credit cover provided by the Consumer in accordance with the provisions of this Clause 8;
- (e) "**Required Credit Amount**" is:
 - (i) where the Consumer Contract Limit is greater than an amount equal to 1.1 * the Aggregate Option Fee, zero;
 - (ii) where paragraph (i) above does not apply, an amount equal to 1.1 * the Aggregate Option Fee less the Consumer Contract Limit;
- (f) "**Security Document**" means a letter of credit or parent company guarantee;
- (g) "**Security Provider**" means a person who, in accordance with the provisions of this Agreement, provides a Security Document in respect of the Consumer's obligations for the purposes of this Clause 8.

8.2 Where the Required Credit Amount is greater than zero, the Consumer:

- (a) may elect that NGT retains its Monthly Option Fees in respect of a Winter Period until after such Winter Period; or
- (b) shall be required to provide NGT with Credit Security equal to the Required Credit Amount.

8.3 Where the Consumer is required to provide Credit Security under Clause 8.2, the Consumer must:

- (a) provide the Credit Security to NGT by no later than 30 November in the first Winter Period specified in Schedule 2;
- (b) maintain the Credit Security until the end of the Term.

8.4 The Consumer shall be entitled to the return of the Credit Security (subject to any demand in respect of such by NGT) on ten (10) days' notice to NGT, to be given no earlier than the end of the Term.

- 8.5 For the purposes of Clause 8.2, the Consumer may provide Credit Security in the form of:
- (a) letter of credit substantially in the form specified in the DSR Annual Invitation for the Required Credit Amount and in accordance with Clause 8.6;
 - (b) a parent company guarantee substantially in the form specified in the DSR Annual Invitation for the Required Credit Amount; or
 - (c) a Cash Deposit with NGT in an amount in pounds sterling in cleared funds equal to the Required Credit Amount as deposited by the Consumer in such bank account as notified to the Consumer by NGT.
- 8.6 A letter of credit provided by the Consumer shall be:
- (a) an unconditional irrevocable standby letter of credit in pounds sterling, issued by a United Kingdom clearing bank or other bank or financial institution acceptable to NGT (acting reasonably) available for payment at a London branch of the issuing bank;
 - (b) payable on demand by NGT, without notice to the Consumer, upon NGT certifying that the Consumer has failed to pay any amount payable under this Agreement when due;
 - (c) valid for an initial period of not less than one (1) year.
- 8.7 Where the Consumer has provided a letter of credit to NGT not less than twenty (20) Business Days before the letter of credit is due to expire, the Consumer will provide to NGT:
- (a) confirmation from the issuing bank that the validity of the letter of credit will be extended by a further period of not less than one (1) year or (if shorter) the period remaining to the end of the Term; or
 - (b) a new letter of credit, commencing no later than the expiry of the current letter of credit, for the same amount and complying with the requirements of this Clause 8.
- 8.8 Where the Consumer fails to pay NGT any amount payable in accordance with this Agreement NGT may without notice to the Consumer make a demand for the full amount payable under the Credit Security.

9. LIABILITY

- 9.1 The maximum aggregate liability of a Party to the other Party under or in connection with this Agreement shall not exceed one million pounds sterling (£1,000,000), subject to any liability which cannot be excluded or limited by law.
- 9.2 Without prejudice to the other provisions of this Clause 9, the rights and remedies of the Parties set out in this Agreement in respect of the non-performance or breach by a Party of this Agreement or for any other claim of whatsoever nature arising out of or in relation to this Agreement shall be the exclusive remedies of the Parties and shall exclude and are in place of any other rights or remedies of either Party howsoever arising (whether at law, in equity or in consequence of any statutory duty, strict or tortious liability or otherwise).
- 9.3 The provisions of Clause 9.2 shall be without prejudice to the rights of a Party to seek injunctive or declaratory relief in respect of that Party's rights and interests and/or the covenants and obligations of the other Party in accordance with this Agreement.
- 9.4 Where any provision of this Agreement provides for any amount to be payable by a Party upon or in respect of that Party's non-performance or breach of any provision of this Agreement both Parties agree and acknowledge that:

- (a) without prejudice to Clause 9.2, the remedy conferred by such provision is exclusive of and is in substitution for any remedy in damages in respect of such breach or the event or circumstances giving rise thereto; and
 - (b) the amount provided to be payable represents a genuine and reasonable pre-estimate of the damages likely to be suffered by the Party to which such amount is payable and such agreement has been made by the Parties with the knowledge that the actual losses suffered by the Party to which such amount is payable may be more or less than the amounts specified in the relevant provision.
- 9.5 NGT will not be liable to the Consumer for any costs, charges, fees or expenses for which the Consumer may be liable for to any other user of the Site or any third party in connection with the DSR Option.
- 9.6 In no circumstances shall a Party be liable to the other Party for any consequential, incidental or indirect loss or loss of profit or loss of business opportunity arising out of or in connection with the non-performance or breach by the other Party of this Agreement.

10. TERMINATION

- 10.1 If an Early Termination Event occurs in relation to either Party (the "**Affected Party**") the other Party (the "**Notifying Party**") may upon written notice to the Affected Party, to be given no later than thirty (30) days after the discovery by the Notifying Party of the occurrence of an Early Termination Event, specify a cure period (if appropriate) or elect to terminate this Agreement with immediate effect.
- 10.2 In addition to termination under Clause 10.1, this Agreement shall terminate with immediate effect in the event:
- (a) each DSR Option specified in Schedule 2 has lapsed in accordance with Clause 3.5;
 - (b) the Consumer has given notice to NGT under Clause 3.6 in respect of each DSR Option specified in Schedule 2.
- 10.3 In the event this Agreement is terminated the Monthly Option Fee shall cease to be payable by NGT to the Consumer with effect from the date on which this Agreement is terminated in accordance with Clause 10.1.
- 10.4 The Affected Party will pay the Notifying Party's documented reasonable costs, expenses and legal fees directly arising from an early termination of this Agreement pursuant to Clause 10.1.
- 10.5 Termination of this Agreement shall be without prejudice to the rights and liabilities of NGT and the Consumer accrued prior to or as a result of such termination.

11. WARRANTIES AND UNDERTAKINGS

- 11.1 Each Party represents and warrants to the other that:
- (a) it has obtained and will maintain at all times during the Term all licences, authorisations, permits, consents and other approvals necessary to enter into this Agreement and to enable it to fulfil its obligations under this Agreement; and
 - (b) it has negotiated, entered into and executed this Agreement as principal (and not as agent or in any other capacity, fiduciary or otherwise).

12. ASSIGNMENT, SUCCESSION, ETC

- 12.1 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 (such consent not to be unreasonably withheld or delayed).
- 12.2 In the event NGT consents to the transfer by the Consumer of all of its rights and obligations under this Agreement to a third party, the Monthly Option Fee shall cease to be payable by NGT to the Consumer with effect from the date such transfer is effective.
- 12.3 This Agreement shall be binding upon and ensure for the benefit of the Parties' respective successors and permitted assigns.
- 12.4 Except as expressly provided in this Agreement, this Agreement does not constitute either Party as the associate, agent, partner or legal representative of the other for any purposes whatsoever, and neither Party shall have any express or implied right or authority to assume or to create any obligation or liability on behalf of or in the name of the other Party.

13. COMMUNICATIONS

- 13.1 All communications (including any invoice) to be given under this Agreement ("**Communications**") shall be in writing and delivered:

- (a) in the case of the Consumer, to the address specified in the Schedule 3;
- (b) in the case of NGT (other than invoices) to:

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

For the attention of: Network Manager

Telephone number: 0870 1910636

Email address: Box.GNCC.ControlRoom@nationalgas.com

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

Email address: Box.GasContractServices@nationalgas.com

or to such other address or email address notified by a Party to the other from time to time in accordance with this Clause 13.

- 13.2 The following Communications shall only be given by electronic means, provided that:
- (a) Exercise Instructions shall initially be communicated by telephone to the operational contacts provided in Schedule 3 and confirmed by NGT by electronic means; and
- (b) invoices (including, for the avoidance of doubt, credit notes) under Clause 7 shall always be sent by electronic means.
- 13.3 Communications shall be deemed to have been received on the day of delivery if such day is a Business Day, or otherwise on the next following Business Day, and in the case of Communications sent by electronic means at the time that the electronic communication was sent, as evidenced by the time stamp on the communication indicating the time of sending provided the Party sending the communication is not subsequently in receipt of a non-delivery message.

14. CONFIDENTIALITY

14.1 Subject to Clause 14.2, 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.

14.2 The obligations in Clause 14.1 shall not apply:

- (a) to disclosure by the Consumer to the Registered User or the Supplier (or any such prospective person) of the DSR Option or its exercise by NGT;
- (b) to disclosure by NGT of any details of the DSR Option:
 - (i) for the purposes of NGT reporting on the outcome of the DSR Annual Invitation in accordance with the requirements of the UNC;
 - (ii) the CDSP to the extent required for the purposes of the operation of this Agreement;
- (c) to the extent such disclosure is required by any applicable Legal Requirement or in connection with any judicial, arbitration or administrative proceeding or the rules of any recognised stock or securities exchange or any provision of the UNC and provided the disclosing Party (to the extent permitted by applicable Legal Requirement) informs the other Party of the disclosure;
- (d) 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;
- (e) 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;
- (f) 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;
- (g) 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;
- (h) to the Consumer to the extent that such disclosure is reasonably necessary to give effect to any provisions of this Agreement; and
- (i) to any Expert appointed in accordance with Clause 18.

15. REPRESENTATION, VARIATION AND WAIVER

15.1 For the purpose of this Agreement:

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

- (c) 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.
 - (d) either 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.
 - (e) 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.
- 15.2 No variation to this Agreement shall be valid, unless it is in writing and signed by an authorised representative of each Party.
- 15.3 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.
- 15.4 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.

16. CHANGES TO UNC, PUBLICATIONS, ETC

- 16.1 If any changes shall be made to the UNC 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.
- 16.2 In the event that any of the publications or prices referred to in this Agreement ceases to be published, or the information contained in any such publication 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, prices or information, so that this Agreement may continue in force, achieving substantially the same commercial effect.
- 16.3 If the Parties are unable to agree on any amendments which need to be made to this Agreement pursuant to Clause 16.1 or Clause 16.2, the matter shall be referred to an Expert for determination in accordance with Clause 18.

17. PARTIES TO CO-OPERATE, ETC

- 17.1 Each Party shall co-operate with the other in the performance of this Agreement, including in relation to the making, confirming and implementing of Exercise Instructions.
- 17.2 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, confirming and implementation of Exercise Instructions.

18. EXPERT

- 18.1 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 "**Dispute**") the provisions of this Clause 18 shall have effect.

- 18.2 The expert chosen to determine the Dispute (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 (or its successor body).
- 18.3 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 Dispute and the remuneration of the Expert.
- 18.4 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.
- 18.5 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.
- 18.6 The Expert's final determination shall be final and binding on the Parties except in the case of manifest error.
- 18.7 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.

19. THIRD PARTY RIGHTS

The Parties do not intend that any terms of this Agreement, nor any rights or benefits expressly or impliedly conferred by it, be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement; and the Parties may rescind or vary this Agreement, in whole or in part, without the consent of any such person.

20. GOVERNING LAW

This Agreement and any dispute, controversy, proceedings or claims of whatever nature arising out of or in any way relating to this Agreement or its formation (including any non-contractual disputes or claims) 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.

21. ANTI-CORRUPTION AND ANTI-SLAVERY

- 21.1 Each Party warrants and undertakes that it has during the negotiations of this Agreement and shall in connection with its performance of this Agreement continue to:
- (a) comply with all applicable Anti-Bribery Laws and Anti-Slavery Laws;
 - (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 or under the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in the UK; and
 - (c) notify the other party as soon as reasonably practicable upon becoming aware of any breach of this Clause 21.
- 21.2 Each Party will, in connection with this Agreement, maintain in place throughout the Term appropriate policies and procedures to ensure compliance with all applicable Anti-Bribery Laws and Anti-Slavery Laws.

22. COUNTERPARTS

This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart shall constitute an original of this Agreement, but together the counterparts shall constitute one document.

IN WITNESS whereof the duly authorised representatives of the parties have executed this Agreement the day and first year before written.

SIGNED for and on behalf of
National Gas Transmission plc

SIGNED for and on behalf of
[]

Signed:.....

Signed:.....

Name:

Name:

Position:

Position:

SCHEDULE 1

GLOSSARY

Defined Term	UNC Definition
5-Day-Ahead Option	A DSR Option which may be exercised by National Gas Transmission on Day D-5.
Available Exercise Day	A Day in respect of which National Gas Transmission may exercise a DSR Option, in accordance with TPD Section D.
Business Day	A Day other than a Saturday or a Sunday or a Day which begins at 05:00 hours on a bank holiday in England and Wales.
CDSP	Is the person for the time being appointed by the Transporters as central data services provider pursuant to the CDSP Licence Condition.
Day	The period from 05:00 hours on one day until 05:00 hours on the following day.
Day-Ahead Option	A DSR Option which may be exercised by National Gas Transmission on Day D-1.
Demand Side Response	Is a reduction in an eligible consumer's rate of gas offtake by or to a specified quantity in the period following a forecast supply deficit at D-5 or declaration of a Margins Notice or Gas Balancing Notification described in the DSR Methodology.
DSR Cessation Notice	If directed by the Authority National Gas Transmission will temporarily or permanently cease operation of the DSR Methodology. National Gas Transmission shall issue a notice to Users and the Market Operator (by means of publication on its website and such additional means of communication as National Gas Transmission may determine as appropriate) informing them of such cessation and the date from which it shall take effect (a "DSR Cessation Notice").
DSR Option	Is a commitment from a DSR Participant in respect of an eligible Supply Meter Point to provide DSR in a particular Winter Period.
DSR Option Invitation	An invitation to be issued by National Gas Transmission to all Users and published no later than 31 August in each Gas Year (Y-1).
DSR Option Offer	Is an offer made by a DSR Participant to National Gas Transmission to enter into a DSR Option.

DSR Participant	Is an eligible User or eligible Consumer that may enter into a commitment with National Gas Transmission to provide DSR as provided in TPD section D.
DSR Reduced Quantity	In relation to a DSR Option is the reduced level of offtake (as provided in TPD Section D) expressed as a daily quantity in kWh.
DSR Reduced Rate	The rate of offtake (in kWh/Day) determined as the DSR Reduced Quantity divided by 24.
Exercise Day	An Available Exercise Day in respect of which National Gas Transmission exercises a DSR Option, and an Exercise Day is "discontinuous" where the preceding Day was not an Exercise Day in respect of that DSR Option.
gas	Unless the context otherwise requires, "gas" means any hydrocarbons or mixture of hydrocarbons and other gases consisting primarily of methane which at a temperature of 15 °C and an absolute pressure of 1.01325 bar are or is predominantly in the gaseous state.
Gas Year	The period from 1 October in any year until and including 30 September in the following year.
kWh	3,600,000 Joules.
NTS	Is the pipeline system for the time being designated by National Gas Transmission as such, and described in National Gas Transmission's Ten Year Statement.
Supply Point	Is a System Exit Point comprising the Supply Meter Point for the time being registered in the name of a User pursuant to a Supply Point Registration, or (for the purposes of this Section G only) the subject of a Proposed Supply Point Registration.
Supply Meter Point	An Individual System Exit Point at which gas may (in accordance with the Code) be offtaken from the Total System for the purposes of supply directly to particular premises.
Option Fee Instalments	Where a DSR Option is in force, National Gas Transmission shall pay the Option Fee to the DSR Participant in monthly instalments ("Option Fee Instalments") in respect of each month (m) of the relevant Winter Period.
Within-Day Option	A DSR Option which may be exercised by National Gas Transmission on Day D.

<p>Winter Average Demand</p>	<p>The "Winter Average Demand" for a Supply Meter Point in respect of a DSR Option for a Winter Period is calculated as:</p> $\sum \text{SMPDQ} / N$ <p>where:</p> <p>\sum is the sum over all relevant Days in the preceding 3 Winter Periods;</p> <p>SMPDQ is Supply Meter Point Daily Quantity;</p> <p>N is the number of relevant Days in the preceding 3 Winter Periods;</p> <p>and where a relevant Day is any Day other than:</p> <p>(a) a Day in respect of which a DSR Option was exercised in respect of, or on which (during a Network Gas Supply Emergency) National Gas Transmission required a reduction or discontinuance of the offtake of gas at, the Supply Meter Point; or</p> <p>(b) a Day before the Day on which offtake of gas at the Supply Meter Point started.</p>
<p>Winter Average Demand Forecast</p>	<p>A Consumer's forecast of its Winter Average Demand, submitted as part of its DSR Option Offer, with accompanying rationale.</p>
<p>Winter Period</p>	<p>The period from 1st November in any year until and including 30 April in the following year.</p>

SCHEDULE 2

DSR OPTION DETAILS

DSR Option for Winter Period: [Y] [Y+1] [Y+2]

Supply Meter Point Reference Number	[]
Gemini Logical Meter Number	[]
Site	[]
Winter Period	1 November 20[] to 30 April 20[]
Winter Average Demand	[]
DSR Reduced Quantity	[] kWh
Option Quantity	[] kWh
Option Price	[] pence per kWh/Day
Exercise Price	[] pence per kWh
Product Type	[Within-Day Option] [Day-Ahead Option] [5-Day-Ahead Option]
Lead Time (Within-Day Options only)	[] hours
Minimum Exercise Interval (if applicable)	[] Days
Maximum Exercise Period (if applicable)	[] Days
Minimum number of hours that must remain after the DSR Lead Time on any Exercise Day (Within-Day Options only) (if applicable)	[] hours

SCHEDULE 3 - CONSUMER DETAILS

Please supply 2 operational contacts in priority order that the Gas National Control Centre can contact if the DSR Option is to be exercised.

Consumer Address	[]
1.Consumer Operational Contact	Name: [] Job Title:[] Office Phone number: [] Mobile Phone number: [] Email: []
2.Consumer Operational Contact	Name: [] Job Title:[] Office Phone number: [] Mobile Phone number: [] Email: [] []
Bank Details	Bank Name: [] Bank Address:[] Bank Sort Code/[] IBAN:[]