

DATED []

DEPOSIT DEED

BETWEEN

National Gas Transmission Plc

and

[]

- 1.2 References to Clauses are to the clauses of this Deed, unless otherwise stated.
- 1.3 This Deed is effective from and including the Effective Date.
- 2.1 Neither the Deposit nor any part of it shall constitute a debt owed by National Gas Transmission to the Consumer and the Consumer shall not deal with the Deposit or any part thereof (whether by way of assignment charge or otherwise) or be entitled to require repayment of the Deposit until any of the events set out in Clause 2.2 below have occurred.
- 2.2 The events referred to in Clause 2.1 above are:-
- (a) the Consumer has no present or future, actual or contingent liability to National Gas Transmission in respect of DSR Indebtedness or otherwise (it being acknowledged that the termination of the DSR Agreement shall not prejudice National Gas Transmission's rights under this Deed);
 - (b) the Consumer provides any other security, acceptable to National Gas Transmission, in respect of the DSR Indebtedness; or
 - (c) any request from the Consumer for a release of the Deposit in accordance with the provisions of the DSR Agreement and satisfaction of the conditions for such release.
- 2.3 For the avoidance of doubt the parties agree that the amount of the Deposit may be changed from time to time with the prior written consent of National Gas Transmission.
- 3.1 The Consumer hereby authorises National Gas Transmission at any time and from time to time at its sole discretion (and without prejudice to any other rights or remedies available to it) to apply all or any part of the Deposit for its own account in order to discharge at any time and from time to time the sums specified below:
- (a) the aggregate amount of DSR Indebtedness for which the Consumer is at any time liable and which has become due for payment;
 - (b) the amount of any loss or damage suffered by National Gas Transmission as the result of any breach of any obligation on the part of the Consumer under this Deed including the amount of any legal or other costs incurred by National Gas Transmission as a result of non-

payment of amounts payable or other sums or expenses on a full indemnity basis;

(c) the amount of any tax (including, but not limited to, value added tax) that National Gas Transmission is liable to pay in consequence of the receipt of any part of the Deposit.

3.2 National Gas Transmission shall notify the Consumer of any appropriation pursuant to clause 3.1 in writing within 14 days of making such appropriation.

3.3 The Consumer shall immediately, following such notification referred to in Clause 3.2 above, make a further deposit into the account of an amount equivalent to the amount appropriated pursuant to clause 3.1.

4.1 Subject to Clause 4.3 National Gas Transmission shall pay to the Consumer interest (subject to deduction of tax as required by law) on the amount of the Deposit at 6 monthly intervals in arrears calculated from the date of payment as set out in Clause 4.2 below.

4.2 Interest payable in accordance with Clause 4.1 above shall accrue from day to day on the amount of the Deposit at the end of that day at a rate equal to the base rate of Barclays Bank plc at the end of that day.

4.3 If any sums are outstanding from the Consumer to National Gas Transmission pursuant to the DSR Agreement and/or there are outstanding from the Consumer to National Gas Transmission any sums of the kind referred to in clause 3.1 above, National Gas Transmission may, instead of paying any interest due to the Consumer as is equivalent to the amount outstanding, retain the whole or any part of such sum as an addition to the Deposit and/or apply the whole or any part of such sum in whole or partial discharge (as the case may be) of such outstanding amount and pay the balance of such interest (if any) to the Consumer.

5. National Gas Transmission will if so required in writing by the Consumer advise the Consumer of the then amount of the Deposit as soon as reasonably practicable after receipt of such request.

6. Nothing in this Deed shall require National Gas Transmission to satisfy any liability of the Consumer out of the Deposit and unless and until National Gas Transmission exercises its right to apply the Deposit against any such liability neither the existence of the Deposit nor the availability of National Gas Transmission's rights under this Deed shall have the effect of discharging any liability of the Consumer or of preventing National Gas Transmission from enforcing any such liability (or any other security which it may hold for any such liability) in any manner it thinks fit.

7. The existence of the Deposit shall not:
- (a) prejudice National Gas Transmission's ability to proceed against the Consumer for any failure to satisfy any DSR Indebtedness or any other breach of any other obligation under the DSR Agreement;
 - (b) entitle the Consumer to withhold any monies or fail to satisfy any DSR Indebtedness or any other indebtedness; or
 - (c) be regarded as an advance or deemed payment of any DSR Indebtedness or any other indebtedness.
8. No failure or delay by National Gas Transmission in exercising any power, right or remedy under this Deed or at law shall operate as a waiver of it nor shall any single or partial exercise or waiver of any such power, right or remedy preclude its further exercise or the exercise of any other power, right or remedy.
- 9.1 This Deed shall:
- (a) be in addition to any present or future Collateral Instrument, right or remedy held by or available to National Gas Transmission; and
 - (b) not be in any way be prejudiced or affected by:
 - (i) the existence of any Collateral Instrument, rights or remedies; or
 - (ii) any Collateral Instrument becoming wholly or in part void, voidable or unenforceable on any ground; or
 - (iii) National Gas Transmission dealing with, exchanging, varying or failing to perfect or enforce any Collateral Instrument; or
 - (iv) National Gas Transmission giving time for payment or indulgence or compounding with any person liable under a Collateral Instrument.
- 9.2 National Gas Transmission shall not be obliged to make any claim or demand on the Consumer or to resort to any Collateral Instrument or other means of payment now or in future held by or available to it before enforcing this Deed.
- 9.3 No action taken or omitted by National Gas Transmission in connection with any Collateral Instrument or the DSR Agreement or other payment or any variation, modification, amendment, supplement, novation or replacement of

any Collateral Instrument or the DSR Agreement shall discharge, reduce, prejudice or affect the liabilities or liability of the Consumer under this Deed.

- 9.4 For the purposes of this Clause “Collateral Instruments” means notes, bills of exchange, certificates of deposit and other negotiable and non-negotiable instruments, guarantees, letters of credit, deposit agreements, indemnities and other assurances against financial loss, and any other documents or instruments which contain or evidence an obligation (with or without security) to pay, discharge or be responsible directly or indirectly for, any indebtedness or liabilities of the Consumer, and includes any document or instrument creating or evidencing an encumbrance, however defined and includes, without limitation, escrow agreements.
10. The Consumer may not assign or transfer any of its rights or obligations under this Deed. National Gas Transmission may only assign its rights under this Deed to a person in favour of whom an assignment has been made in respect of the benefit of the DSR Indebtedness.
11. National Gas Transmission’s rights under this Deed are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as National Gas Transmission deems expedient.
12. A person who is not a party to this Deed (including any employee, officer, agent, representative or sub-contractor of any party) shall not have the right to enforce any term of this Deed which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Consumer and National Gas Transmission, which agreement must refer to this Clause.
13. Each of the provisions of this Deed is severable and distinct from the others. If at any time one or more of such provisions is or becomes invalid illegal or unenforceable the validity legality or unenforceability of the remaining provisions of this Deed shall not in any way be affected or impaired.
14. Any notices to be served under this Deed shall be served in accordance with any relevant clauses within the DSR Agreement.
- 15.1 This Deed and any non-contractual obligations arising from or in connection with it shall be governed by and construed in accordance with English Law.
- 15.2 Subject to Clauses 15.4 and 15.5, the courts of England have exclusive jurisdiction to settle any disputes arising out of or connected with this Deed (including a dispute regarding the existence validity or termination of this Deed or the consequences of its nullity) (a “**Dispute**”).

- 15.3 Subject to Clauses 15.4 and 15.5, the parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes between them and accordingly that they will not argue to the contrary.
- 15.4 This Clause 15 is for the benefit of National Gas Transmission only. As a result and notwithstanding Clauses 15.2 and 15.3 it does not prevent National Gas Transmission from:
- 15.4.1 taking proceedings relating to a Dispute in any other courts (and the Consumer waives any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum); or
- 15.4.2 referring a Dispute to be finally settled by arbitration under the Rules of Arbitration and Conciliation of the International Chamber of Commerce by two or more arbitrators appointed pursuant to such Rules.
- 15.5 To the extent allowed by law, National Gas Transmission may take concurrent proceedings in any number of jurisdictions.
- 15.6 [The Consumer authorises and appoints ***[name]*** of ***[legal representatives or related company in England and Wales]*** (or such other person in England as it may from time to time substitute by notice to National Gas Transmission) to accept service of all legal process arising out of or connected with this Deed. Service on such person (or substitute) shall be deemed to be service on the Consumer. Except upon a substitution, the Consumer shall not revoke any such authority or appointment and shall at all times maintain an agent for service of process in England. If any agent ceases for any reason to be an agent, the Consumer shall forthwith appoint another agent and advise National Gas Transmission accordingly.]⁵
- 15.7 [The Consumer waives any right of state immunity which it may have in respect of any proceedings or action (which shall include any attachment or arrest prior to judgment and any enforcement proceedings including execution) commenced by National Gas Transmission against the Consumer under or in connection with this Deed.]⁶

⁵ This clause 15.6 is only necessary if the Consumer is a foreign company. The process agent should be an independent law firm.

⁶ This clause 15.7 is only necessary if the Consumer is a governmental authority (whether foreign or in England and Wales).

IN WITNESS the parties hereto have duly executed this Deed the day and year first before written

Executed as a Deed by affixing the common seal of

NATIONAL GAS TRANSMISSION PLC

in the presence of:

.....

Member of Board Sealing Committee

Executed as a deed by

.....

[NAME OF EXECUTING COMPANY]

[SIGNATURE OF DIRECTOR]

acting by [NAME OF DIRECTOR],

Director

a director, in the presence of:

.....

[SIGNATURE OF WITNESS]

[NAME OF WITNESS [IN BLOCK CAPITALS]]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]