

## DEED OF UNDERTAKING

Executed for the purposes of Standard Licence Condition 18 of the Gas Supply Licence.

This DEED OF UNDERTAKING is entered into on .....

By [.....] ~~EDF Energy Customers Plc~~ ("the Supplier") a company registered in England and Wales under company registration number [.....] ~~2228297~~ whose registered principal office is at [.....] ~~40 Grosvenor Place, Victoria, London, SW1X 7EN.~~

In favour of each of

- (1) National Grid Gas plc ("**National Grid**") a company registered in England and Wales under company registration number 2006000 whose registered office is at 1-3 Strand, London EC2N 5EH,
- (2) National Grid Gas Distribution Limited ("**NGGDL**") a company registered in England and Wales under company registration number 10080864 whose registered office is at 1-3 Strand, London WC2N 5EH,
- (3) Southern Gas Networks plc ("**Southern Gas**") a company registered in England and Wales under company registration number 05167021 whose registered office is at St Lawrence House, Station Approach, Horley, Surrey RH6 9HJ,
- (4) Scotland Gas Networks plc ("**Scotland Gas**") a company registered in Scotland under company registration number SC264065 whose registered office is at Axis House, 5 Lonehead Drive, Newbridge, Edinburgh EH28 8TG,
- (5) Northern Gas Networks Limited ("**Northern Gas**") a company registered in England and Wales under company registration number 05167070 whose registered office is at 1100 Century Way, Thorpe Park Business Park, Colton, Leeds LS15 8TU; and
- (6) Wales & West Utilities Limited ("**Wales and West**") a company registered in England and Wales under company registration number 05046791 whose registered office is at Wales and West House, Sponsor Close, Coedkernew, Newport NP10 8FZ, (each a "Gas Transporter") pursuant to Condition 18 of the Standard Licence Conditions of Gas Supplier's Licences incorporated by reference in the licence (the "Supplier's Licence") granted (or treated as granted) to the Supplier pursuant to Section 7(A)(1) of the Gas Act 1986 (as amended) ("the Act").

### WHEREAS

- A. Pursuant to the said Condition 18 the Supplier is required to give a Relevant Gas Transporter a binding undertaking in the specified terms where the Supplier supplies as to any premises in relation to which a Gas Transporter is the Relevant Gas Transporter.

NOW THIS DEED WITNESSETH AND IT IS HEREBY AGREED as follows:

### 1 Interpretation

- 1.1 For the purposes of this Deed:

References to Premises are to premises in relation to which a Gas Transporter is the Relevant Gas Transporter;

- (a) Relevant Gas Transporter in relation to any premises to which gas is supplied by the Supplier means:
  - (i) a Gas Transporter that conveys gas to those premises and to whose pipeline system those premises are Directly Connected; or
  - (ii) where those premises are Secondary Premises, a Gas Transporter that conveys gas to the Relevant Primary Premises and to whose pipeline system the Relevant Primary Premises are Directly Connected; and
  - (iii) gas conveyed by a Gas Transporter in its role as system operator of the National Grid NTS;
- (b) Premises are **Relevant Premises** at any time where the Conditions in Clause 1.2 are satisfied in relation to those Premises at that time;
- (c) **Uniform Network Code** means the network code prepared by Gas Transporters as from time to time modified, pursuant to the licence granted or treated as granted to them pursuant to Section 7 of the Act;
- (d) Relevant Premises are **Supplier Relevant Premises** where:
  - (i) The Supplier is, at the time at which the Transportation Arrangements are (as described in Clause 1.2(i)) terminated, the relevant supplier; and
  - (ii) The Relevant Gas Transporter has given notice to the Supplier that such arrangements have been so terminated;
- (e) In relation to any Supplier Relevant Premises the **Relevant Period** is the period commencing on the Day after a Relevant Gas Transporter gave the notice referred to in paragraph (d)(ii) above and ending on the day before the Condition in Clause 1.2(ii) ceases to be satisfied;
- (f) **Offtake Quantity** in respect of an Premises means the quantity of gas taken out of a Gas Transporter's pipeline system during the period by reference to which any Transportation Charges or Energy Balancing Charges are to be determined for the purposes of supply to those Premises, ascertained in accordance with the terms of the Transportation Arrangements;
- (g) **Day** means a period of 24 hours commencing at 05:00 hours on any day;
- (h) **Business Day** means a day other than a Saturday or Sunday or a Day which begins at 08:00 hours on a bank holiday in England and Wales;
- (i) **National Grid NTS** shall have the meaning given in the Uniform Network Code;
- (j) **Transportation Arrangements** means the arrangements referred to in Clause 1.2(i);
- (k) **Transportation Charges** means Transportation Charges (as defined in the Uniform Network Code) or the equivalent charges (in respect of the use of the Relevant Gas

Transporter's System) where the Transportation Arrangement was not made on the terms of the Uniform Network Code;

- (l) **Energy Balancing Charges** means Energy Balancing Charges (as defined in the Uniform Network Code) or, where the Transportation Arrangement was not made on the terms of the Uniform Network Code, the equivalent charges (in respect of quantities, or the difference between quantities, delivered to and offtaken from National Grid NTS pipeline system (as defined in the Uniform Network Code));
- (m) Words and expressions defined in the Supplier's Licence and not otherwise defined herein shall have the meanings ascribed thereto in the Supplier's Licence.

1.2 The conditions in this clause are that, in relation to the Premises in question:

- (a) arrangements made between a Relevant Gas Transporter and a gas shipper for the conveyance of gas to those Premises have for any reason been terminated; and
- (b) no other such arrangements between such Relevant Gas Transporter and any other shipper have come into force.

1.3 Where:

- (a) there were Transportation Arrangements between a Relevant Gas Transporter and a gas shipper pursuant to more than one contract; and
- (b) such arrangements differed as to the manner of determining any Transportation Charges or Energy Balancing Charges,

this Deed shall apply separately as respect the Transportation Arrangements pursuant to each such contract.

## 2 Undertaking

2.1 The Supplier undertakes to each Relevant Gas Transporter that, in relation to any Supplier Relevant Premises, the Supplier will for the Relevant Period pay to the Relevant Gas Transporter on demand the amounts specified in Clause 3.1.

2.2 The Supplier undertakes to provide to each of the Relevant Gas Transporters an instrument of security in a form acceptable to each of such Relevant Gas Transporter within 2 Business Days of the Relevant Gas Transporter giving notice to the Supplier that the Transportation Arrangements in respect of the Relevant Supplier Premises have been terminated. The instrument of security shall be for such amount sufficient to cover the amounts set out in clause 3.1 below likely to be incurred during the period of 25 Business Days commencing on the date of such notice. Such instrument of security shall remain in force until all payments due to be made by the Supplier pursuant to this Deed have been received by the Relevant Gas Transporter and arrangements between such Relevant Gas Transporter and a replacement shipper have been put in place.

2.3 This Deed shall continue in force and the undertaking pursuant hereto shall be irrevocable) until and unless either the Supplier gives each of the Gas Transporters a binding undertaking in changed specified terms or in compliance with any modification of the said Condition 18 requiring the giving of an undertaking in terms other than these, or the Supplier ceases to be required to give (or to have given) an undertaking pursuant to the said Condition 18.

2.4 If the Supplier fails to provide or maintain security in accordance with Clause 2.2 above or make any payment due in accordance with this deed, then the Relevant Gas Transporter may elect to treat the Supplier as having failed to comply with this undertaking and take such further action as it considers necessary.

### 3 Calculations and Payment

3.1 The amounts payable by the Supplier under Clause 2.1 are Relevant Transportation Charges and ~~the attributable proportion of~~ Relevant Energy Balancing Charges for each Day (or any other period by reference to which such charges are calculated) in the Relevant Period, provided that no sum shall be payable by the Supplier under Clause 2.1 in respect of Supplier Relevant Premises to or at which more than one shipper ships gas if, immediately before the time at which the condition in paragraph 1.2(i) began to apply, the Supplier had no arrangement with the shipper, in respect of which that condition applies, to ship gas to or at those Supplier Relevant Premises.

3.2 For the purposes of Clause 3.1:

(a) **Relevant Transportation Charges** are the amounts, which would have been payable, if the Transportation Arrangements had not been terminated, by the shipper concerned by way of Transportation Charges:

- (i) accruing in respect of, or determined by reference to the Supplier Relevant Premises, the offtake quantity in respect of the Supplier Relevant Premises, and the offtake capacity entitlements referable to the Supplier Relevant Premises; and
- (ii) as to the attributable proportion thereof, accruing in respect of or determined by reference to offtake capacity entitlements not referable to particular premises; where offtake capacity entitlements means entitlements (under the transportation arrangements) of the shipper concerned (ascertained as though the shipper had maintained and rebooked or renewed on expiry such entitlements) in respect of capacity treated as utilised when gas is offtaken from the Relevant Gas Transporter's pipeline system;

(b) For the purposes of this Clause 3, the attributable proportion is the proportion determined as the offtake quantity in respect of the Supplier Relevant Premises divided by the aggregate of the offtake quantities in respect of all Relevant Premises;

~~(c)~~ **Relevant Energy Balancing Charges** are the amounts, which would have been payable by the shipper concerned, less any amounts which would have been payable to the shipper concerned, by way of Energy Balancing Charges if the Transportation Arrangements had not been terminated, by reference to the ~~aggregate of the~~ offtake quantities in respect of ~~all the Supplier~~ Relevant Premises, and if the shipper concerned:

- ~~(i) where paragraph (d) applies, had introduced into National Grid NTS's pipeline system, on any Day in the relevant period, the quantity of gas referred to in that paragraph;~~
- ~~(ii) -except as provided in (i) above, had not at any time during the relevant period introduced or arranged to introduce any gas into National Grid NTS's pipeline system, and~~

(iii) \_\_\_\_\_ had made accurate nominations (in accordance with the terms of the Transportation Arrangements) of offtake quantities;

(d) This paragraph (d) applies where, pursuant to a provision of the Uniform Network Code made in contemplation of undertakings given pursuant to the said Standard Licence Condition 18, another shipper has arranged to provide a quantity of gas on a Day which (pursuant to that provision) is to be treated as if it had been introduced into National Grid NTS's pipeline system by the shipper concerned.

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- 3.3 Where there are several Supplier Relevant Premises the amounts payable by the Supplier pursuant to Clause 2 may be demanded and shall be paid on an aggregate basis.
- 3.4 The Supplier shall pay on written demand from the Relevant Gas Transporter the amounts specified in Clause 3.1. If the Supplier fails to pay any sum payable under this Deed, then the Supplier shall pay interest at the rate at which and on the terms on which interest would have been payable by the shipper concerned pursuant to the terms of the Transportation Arrangements if such a shipper had defaulted in the payment of such a sum.
- 3.5 All sums payable by the Supplier under this Deed shall be paid free and clear of any deductions, withholdings, set-offs or counterclaims save only as may be required by law, and together with all applicable value added tax.

#### 4 Miscellaneous

- 4.1 The Supplier shall be liable under this Deed as a sole principal debtor and not as surety, and it shall not be discharged and its liability shall not be affected by anything, which would discharge it or affect its liability as surety, and this Deed shall remain in full force and effect notwithstanding any payment made by the Supplier hereunder.
- 4.2 This Deed is in addition to any security or surety in favour of a Gas Transporter and may be enforced without first having recourse under any such security or surety.
- 4.3 No failure or delay by a Gas Transporter in exercising any right, power or remedy in connection with this Deed will operate as a waiver thereof, and no single or partial exercise thereof will preclude any other or further exercise thereof or the exercise of any other such right, power or remedy.
- 4.4 The right, powers and remedies provided in this Deed are cumulative and not exclusive of any other rights, powers or remedies.
- 4.5 A waiver of any breach of this Deed shall not be deemed to be a waiver of any subsequent breach; and no release, compounding or compromise of any liability of, or time or indulgence given to the Supplier by a Gas Transporter (in its absolute discretion) shall prejudice or affect a Gas Transporter's rights against the Supplier.
- 4.6 Except as otherwise provided herein this Deed contains the whole agreement between the parties relating to the subject matter of this Deed at the date hereof to the exclusion of any terms implied by law which may be excluded by contract.
- 4.7 No variation of this Deed shall be effective unless in writing and signed by or on behalf of each of the parties.
- 4.8 This Deed is personal to the parties and the rights and obligations of the parties may not be assigned or otherwise transferred.

- 4.9 If any provision in this Deed shall be held to be illegal, invalid or unenforceable, in whole or in part, under the law of any jurisdiction, the legality, validity or enforceability of such provision or part under the law of any other jurisdiction shall not be affected.
- 4.10 Any notice, claim or demand in connection with this Deed shall be in writing; and the provisions of Section 46(1) of the Gas Act 1986 (as amended) shall apply if such provisions were set out herein and as if for the words "this Part or regulations made under this Part" (in the former) and "these conditions" (in the latter) there were substituted the words "this Deed".
- 4.11 The Deed shall be governed by and construed in accordance with English law; and each of the Gas Transporters and the Supplier irrevocably agree that the courts of England are to have exclusive jurisdiction in relation to any dispute arising out of or in connection with this Deed, and submits to the jurisdiction of such courts.

IN WITNESS WHEREOF this Deed has been executed as a Deed on the date first above stated.

EXECUTED as a Deed by [ \_\_\_\_\_ ] ~~EDF Energy Customers Plc~~

Acting by [a Director and its Secretary] [two Directors];

Signature of Director .....

Signature of [Secretary] [Director] .....