

**CONFIDENTIALITY AGREEMENT**

**(where Applicant is seeking to accede to Code in the period following the hive down date)**

**between**

**NATIONAL GRID GAS PLC**

**And**

**[       ]**

**NG Legal  
NG House  
Warwick Technology Park  
Gallows Hill  
Warwick CV34 6DA  
T: 01926 654610  
F: 01926 655630**

**THIS AGREEMENT** is made the [ ] day of [ ]

**BETWEEN:**

- (1) **National Grid Gas plc**, (Registered No. 2006000) whose registered office is situated at 1–3 Strand, London WC2N 5EH (“**NGG**”) of the one part; and
- (2) [ ] (**Registered No.**) whose registered office is situated at (the “**Applicant**”) of the other part.

**WHEREAS:**

- (A) The Applicant is intending to apply to become bound by the NGG Network Code but has not at the date of this Agreement executed the Accession Agreement to become so bound.
- (B) Prior to executing the Accession Agreement, the Applicant wishes to obtain certain information to enable itself to be familiar with the NGG Network Code procedures at the time of its accession to the NGG Network Code.

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

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

“**Accession Agreement**” means the accession agreement to be entered into between NGG and the Applicant pursuant to which the Applicant shall accede to the NGG Shippers Framework Agreement for the purposes binding itself by the NGG Network Code.

“**Affiliate**” shall mean any holding company or subsidiary of a party to this Agreement or any company which is a subsidiary of any holding company of a party to this Agreement and the expressions “holding company” and “subsidiary” shall have the meanings respectively attributed to them by section 1159 of the Companies Act 2006 as amended.

“**Authorised Representatives**” means the employees and advisers of the Applicant and the employees of the Applicant’s agents and Affiliates.

“**Confidential Information**” means all data, reports, oral discussions and any information in any documents, computer disc, tape recording or other media of any kind which is disclosed to or made available to the Applicant relating to NGG other than information which is at the date of this Agreement or which subsequently enters the public domain other than as a result of a breach of this Agreement.

**“NGG Network Code”** means the document prepared by NGG pursuant to its Transporter’s Licence, as may be modified and supplemented from time to time, including replacement thereof.

**“NGG Shippers Framework Agreement”** means the Shippers Framework Agreement between NGG and each of its Shipper Users and each of its Trader Users.

**“Permitted Purpose”** means the use of the information provided by NGG to the Applicant for the training of, familiarisation with and assessment of the Network Code procedures by its Authorised Representatives prior to entry into the Accession Agreement.

**“Transporter’s Licence”** means a gas transporter licence granted under Section 7(2) of the Gas Act 1986.

**“UNC”** means the Uniform Network Code prepared pursuant to Standard Special Condition A11(6) of gas transporter’s licences, as from time to time modified.

- 1.2 Any term in this Agreement which is capitalised but not defined shall have the meaning as set out in the UNC.
2. In consideration of the disclosure to it of the Confidential Information the Applicant shall:
  - 2.1 keep the Confidential Information strictly confidential and shall not unless otherwise agreed in writing beforehand by NGG divulge or disclose it to any person other than those Authorised Representatives who need to know the same for the fulfilment of the Permitted Purpose and who have been required to hold the Confidential Information confidential on terms no less onerous than those set out in this Agreement;
  - 2.2 ensure that all employees, consultants, agency and temporary staff who are in possession of the Confidential Information are made fully aware of the provisions of this Agreement and comply with it;
  - 2.3 take all security precautions in the safekeeping of the Confidential Information.
3. This Confidentiality Agreement shall come into force on the date referred to above “Effective Date” and shall survive and continue until the Applicant has entered into the

Accession Agreement or for three years following the Effective Date in the event that the Applicant does enter into the Accession Agreement within such three years.

4. NGG reserves all rights in the Confidential Information and no rights or obligations other than those expressly recited herein are granted by or implied from this Agreement. In particular no licence is hereby granted directly or indirectly under any patent invention, discovery, copyright or other intellectual property obtained or licensable by NGG.
5. Nothing in this Agreement or its operation shall preclude or in any way restrict either party from continuing to engage in its business otherwise than in the breach of the terms of this Agreement.
6. Upon written request of NGG, except where the Applicant can show that the Applicant or its Authorised Representatives are required by law or regulation to retain the Confidential Information, the Applicant shall at its option either:
  - 6.1 return all the Confidential Information to NGG (together with any analyses, reports or other documents or media incorporating the Confidential Information); or
  - 6.2 promptly destroy all the Confidential Information and confirm in writing that such destruction has occurredand the Applicant shall ensure that any part of the Confidential Information not returned or destroyed is treated in accordance with the provisions of this Agreement.
7. The restrictions in this Agreement shall not apply to information which:
  - 7.1 is at the date of this Agreement in the public domain or which subsequently enters the public domain otherwise than as a result of a breach of this Agreement;
  - 7.2 prior to the date of this Agreement is in the Applicant's possession on a lawful basis;
  - 7.3 on or following the date of this Agreement is obtained by the Applicant from a third party which to the Applicant's best knowledge is not under a duty of non-disclosure to NGG;
  - 7.4 is required to be disclosed by the Applicant by applicable law or by a court of competent jurisdiction, juridical process, any government department or agency or regulatory authority (including but not limited to the Gas and Electricity Markets Authority) having jurisdiction over the Applicant or any of its Authorised

Representatives provided that NGG is given as much notice as practicable of any such disclosure.

8. Without prejudice to any other remedy available to NGG, the parties consent and agree that damages alone may not be an adequate remedy for any breach of this Agreement. Accordingly, NGG shall be entitled, without proof of special damages, to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.
9. The parties acknowledge and confirm that:
  - 9.1 the supply and receipt of Confidential Information is no indication that the Confidential Information will form the basis of any contract (other than this Agreement); and
  - 9.2 neither NGG nor any of its respective advisers, agents, directors, officers or employees accept any responsibility or liability whatsoever for, or make any representation, express or implied, with respect to the accuracy or completeness of the Confidential Information.
10. The waiver by NGG of any breach of any provision of this Agreement shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
11. The invalidity for any reason whatsoever of any provision of this Agreement shall in no way affect the remainder of this Agreement which shall in all other respects remain valid and enforceable.
12. This Agreement contains all the terms which the parties have agreed in relation to the subject matter of this Agreement. Neither party to this Agreement has been induced to enter into this Agreement by a statement or promise which it does not contain save that this clause shall not exclude any liability which one party would otherwise have to the other in respect of any statements made fraudulently by that party.
13. No amendment or modification of this Agreement shall be valid or binding upon the parties unless made in writing and signed on behalf of their respective representatives, duly authorised.
14. 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).

15. 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.

**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

**SIGNED** for and on behalf of

**National Grid Gas Plc**

Signature: .....

Signature: .....

Name: .....

Name: .....

Title: .....

Title: .....

In the presence of:

In the presence of:

Signature: .....

Signature: .....

Name: .....

Name: .....

Title: .....

Title: .....