

# Final Modification Report No.22 Legal & General

15<sup>th</sup> September 2015

GNI (UK) has prepared this report under section 8 of its Transportation Code Modification Rules.

## **A Description of the nature and purpose of the modification**

This proposal is being made to revise various legal and general elements of the GNI (UK) Code as a result of changes made in Code Modifications 14, 15, 16, 17, 18, 19, 20 and 21. These Modifications have been raised to address EU requirements and implement an entry-exit transmission model in Northern Ireland. This Modification Proposal is to ensure the remaining elements of the Code (largely legal 'boilerplate') are updated accordingly.

## **B Third Party Representations**

No Third Party representations were received in response to this Proposed Code Modification.

## **C The clauses of the Transportation Code that require amendment**

This proposal will introduce revised sections for:

- Liabilities and Indemnities
- Force Majeure
- Termination
- Confidentiality
- General (system, agents, assignment etc) and
- Governing Law and Dispute Resolution

It will also introduce Transition section T10 which deals with the implementation of the revisions to these Code sections and the associated definitions in Appendix 1. Minor changes to Appendix 5 (Credit Committee terms) are also required.

## **D Impact on other Designated Pipeline Operator's Network Codes:**

GNI (UK) has worked with BGTL and PTL to develop a co-ordinated approach to the Codes, and the TSOs are aiming to keep the changes to the GNI (UK) Code and the Premier Transmission Code as aligned/identical as possible. Premier Transmission is issuing a corresponding Modification Proposal, and the necessary changes will be made to the BGTL Code via a Modification Proposal later this summer.

## **E Changes relative to the Initial Modification Report**

There is one minor amendment (highlighted in yellow) to the defined term for the South North Interconnection Point, removing references to Gaslink and BGE which are no longer applicable following the recent restructure of Gaslink and BGE into Gas Networks Ireland. There is also a set of minor amendments, namely the inclusion of modified text for section 2 to include the reasons for interruption, where required, of Interruptible VRF IP Exit Capacity. This is required for compliance with the CAM Regulation (EU 984/2013, Article 25) which stipulates that this information should be included in the general terms and conditions for Shippers. This text makes no change to the operational procedures which will be utilised as it is purely explanatory (and also includes a couple of minor typographical additions), hence the TSOs consider that it is practical to include this text via this Code Modification Proposal, despite not having been included in the Initial Modification Report. Text is also included in the Transition Section T10 to bring this change into effect.

## **F Final Legal Text**

Please find below the final legal text for this Code Modification Proposal, set out in the following order:

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• Section 14. Liabilities and Indemnities – revised text	4
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Amend sections 2.7.11 and 2.7.12 to read as follows:

**Revisions to IP Nominations for Interruptible VRF IP Exit Capacity**

2.7.11 The provisions in sections 2.7.12 to 2.7.13 apply to VRF IP Exit Renominations and references in those sections to VRF IP Exit Nominations include VRF IP Exit Renominations. Interruptible VRF IP Exit Capacity may be interrupted by the Transporter in the following circumstances:

(i) due to lack of availability of reverse flow capacity at the Interconnection Point and/or

(ii) in an Emergency (in which case, for the avoidance of doubt, sections 2.7.5 to 2.7.10 also apply).

2.7.12 Where Premier Transmission is required to interrupt Interruptible VRF IP Exit Capacity in respect of a Gas Flow Day, it shall:

- (a) inform Shippers as soon as possible that their VRF IP Exit Nominations are going to be curtailed;
- (b) determine the total quantity of gas nominated under VRF IP Exit Nominations which is required to be curtailed (the “**Curtailment Quantity**”);
- (c) make revisions to all Confirmed IP Nomination Quantities that relate to VRF IP Exit Nominations for the Gas Flow Day, which have been received by the most recent preceding Hour Bar, on a pro-rata basis such that the aggregate reduction in the quantity so nominated is equal to the Curtailment Quantity;
- (d) perform Matching with the revised Confirmed IP Nomination Quantities;
- (d) notify Shippers of their revised Confirmed IP Nomination Quantities that relate to VRF IP Exit Nominations and that have been Matched within 2 hours; and
- (e) reject any VRF IP Exit Nominations submitted after the Hour Bar until section 2.7.13 applies.

Amend Section 14 to read as follows:

## 14. LIABILITIES AND INDEMNITIES

### 14.1 Failure to deliver ~~Firm-Exit~~ Nominated Quantity

14.1.1 If a Shipper's ~~Firm Allocated Quantity-Exit Allocation~~ at an Exit Point is greater or less than its ~~Firm-Exit~~ Nominated Quantity in respect of that Exit Point each calculated by reference to the same Nomination on any Day (a "~~Mismatched—Firm Delivery~~Mismatched Delivery") the Shipper may, subject to this Section 14.1, if the ~~Mismatched Firm Delivery~~Mismatched Delivery occurs solely as a result of:

- (a) the negligence of the Transporter in connection with the provision of, or failure to provide the service to which this Code relates, claim from the Transporter an amount calculated as follows:

$$R = (U - 2\%) \times \frac{(Ax0.8)}{365} \times \frac{B}{C}$$

- (b) the Wilful Misconduct of the Transporter in connection with the provision of, or failure to provide the service to which this Code relates, claim from the Transporter an amount calculated as follows:

$$R = (U - 2\%) \times \frac{(Ax0.8)}{365} \times \frac{B}{C} \times 1.5$$

where in (a) and (b):

R = the amount due to the Shipper in pounds;

U = the percentage by which the Shipper's ~~Exit Allocation~~Firm Allocated Quantity on any Day is more or less than its ~~Firm-Exit~~ Nominated Quantity in respect of such Day;

A = the Total Allowed Conveyance Revenue at the time of the act of the ~~Mismatched Firm Delivery~~Mismatched Delivery;

B = the aggregate ~~MDQ-Exit Capacity~~ of the Shipper (reserved prior to the date ~~on which~~of the ~~Mismatched—Firm Delivery~~Mismatched Delivery occurred); ~~and~~ in respect of the ~~period~~Gas Flow Day on which ~~and after~~ the ~~Mismatched Firm Delivery~~Mismatched Delivery occurred; ~~reserved at the time it occurred~~ in the Gas Year in which ~~the Mismatched Firm Delivery~~ occurred divided by 365;

C = the aggregate of the ~~MDQs-Exit Capacity~~ of all Shippers holding ~~Firm-Exit~~ Capacity (reserved prior to the date ~~of on~~ which the ~~Mismatched Firm Delivery~~Mismatched Delivery occurred); ~~and~~ in respect of the ~~period~~ Gas Flow Day on

which ~~and after the Mismatched Firm Delivery~~ Mismatched Delivery occurred; ~~reserved at the time it occurred) in the Gas Year in which the Mismatched Firm Delivery occurred divided by 365~~

provided that in no event shall a Shipper be entitled to claim an amount under both (a) and (b) above and provided further that such claim shall be subject always to Section 14.7 and provided always that where there are no Shippers holding Firm-Exit Capacity (C is zero), then this ~~s~~Section 14.1 shall not apply.

14.1.2 A Shipper's Firm-Exit Nominated Quantity in respect of an Exit Point ~~pursuant to a capacity booking~~ shall, for the purposes of this Section 14.1, be the Firm-Exit Nominated Quantity prevailing:

- (a) before any reduction to the Firm-Exit Nominated Quantity prescribed by a Flow Order where the reduction was necessary as a result of the negligence or Wilful Misconduct of the Transporter; and
- (b) after any reduction to the Firm-Exit Nominated Quantity prescribed by a Flow Order where the reduction was not necessary as a result of the negligence or Wilful Misconduct of the Transporter.

14.1.3 A Shipper's ~~Firm Allocated Quantity~~ Exit Allocation in respect of an Exit Point shall, for the purposes of this Section 14.1, be the ~~Firm Allocated Quantity derived from a Final Allocation (applied separately to each Firm Nomination submitted)~~ quantity in its Final Exit Allocation.

14.1.4 A Shipper agrees and acknowledges, for the avoidance of doubt, that a Mismatched Firm Delivery ~~Mismatched Delivery~~ shall not have occurred, for the purposes of Section 14.1.1 in the following, amongst other, circumstances:

- (a) if such a Mismatched Firm Delivery ~~Mismatched Delivery~~: (i) shall have occurred in any circumstance where the Transporter is relieved (in accordance with Section 8.3.3) of its obligation to provide pressure, (ii) during Scheduled Maintenance, or (iii) where the Transporter is relieved (in accordance with Section 15) of its obligations under this Code; or
- (b) ~~on a Reduced Profile Day or a Reduced Reserved Capacity Day where an Exceptional Event has been declared~~ if the Transporter declared such an ~~on a Reduced Profile Day or Reduced Reserved Capacity Day~~ Exceptional Event for any reason other than as a result of its negligence or Wilful Misconduct.

## 14.2 ~~Failure to deliver Interruptible Nominated Quantities Not Used~~

~~14.2.1 If a Shipper's Interruptible Allocated Quantity at an Exit Point is greater or less than its Interruptible Nominated Quantity in respect of that Exit Point each calculated by reference to the same Nomination on any Day on which the Transporter shall have failed to declare a Reduced Interruptible Capacity Day (a "Mismatched Interruptible~~

~~Delivery<sup>2)</sup> the Shipper may, subject to this Section 14.2, if the Mismatched Interruptible Delivery occurs solely as a result of:~~

~~(a) the negligence of the Transporter in connection with the provision of, or failure to provide, the service to which this Code relates claim from the Transporter an amount calculated as follows:~~

$$\frac{R}{365} = \frac{(U - 2\%) \times (A \times 0.8) \times B}{C}$$

~~(b) the Wilful Misconduct of the Transporter in connection with the provision of, or failure to provide, the service to which this Code relates claim from the Transporter an amount calculated as follows:~~

$$\frac{R}{365} = \frac{(U - 2\%) \times (A \times 0.8) \times B \times 1.5}{C}$$

Where in (a) and (b):

~~R = the amount due to the Shipper in pounds;~~

~~U = the percentage by which the Shipper's Interruptible Allocated Quantity on any Day is more or less than its Interruptible Nominated Quantity in respect of such Day;~~

~~A = the Total Allowed Conveyance Revenue at the time of the act of the Mismatched Interruptible Delivery;~~

~~B = the aggregate of the Shipper's Interruptible Allocated Quantities in the Gas Year in which the Mismatched Interruptible Delivery occurred up to the date of the shortfall divided by the number of Days in respect of which the Shipper received Interruptible Allocated Quantities; and~~

~~C = the aggregate of all the Shipper's Interruptible Allocated Quantities in the Gas Year in which the Mismatched Interruptible Delivery occurred up to the date of the shortfall divided by the number of Days in respect of which all the Shippers received Interruptible Allocated Quantities.~~

~~provided that in no event shall a Shipper be entitled to claim an amount under (a) and (b) above.~~

~~14.2.2 A Shipper's Interruptible Nominated Quantity in respect of an Exit Point shall, for the purpose of Section 14.2 be the Interruptible Nominated Quantity prevailing:~~

~~(a) before any reduction to the Interruptible Nominated Quantity prescribed by a Flow Order where the reduction was necessary as a result of the negligence or Wilful Misconduct of the Transporter;~~

~~(b) after any reduction to the Interruptible Nominated Quantity prescribed by a Flow Order where the reduction was not necessary as a result of the negligence or Wilful Misconduct of the Transporter;~~

~~(c) — before any adjustment to an Interruptible Nominated Quantity made in accordance with Section 2.13.4.~~

~~14.2.3 — A Shipper's Interruptible Allocated Quantity in respect of an Exit Point shall for the purpose of Section 14.2 be the Interruptible Allocated Quantity derived from a Final Allocation (and applied separately with respect to each Interruptible Nomination).~~

~~14.2.4 — A Shipper agrees and acknowledges, for the avoidance of doubt that a Mismatched Interruptible Delivery shall not have occurred for the purpose of Section 14.2.1 in the following, amongst other, circumstances:~~

~~(a) — if such Mismatched Interruptible Delivery shall have arisen in any circumstances where the Transporter is relieved (in accordance with Section 8.3.3) of its obligation to provide pressure, during Scheduled Maintenance, or where the Transporter is relieved (in accordance with Section 15 (Force Majeure)) of its obligations under this Code; and~~

~~(b) — where the Transporter has declared a Reduced Profile Day, a Reduced Firm Capacity Day or a Reduced Interruptible Capacity Day if the Transporter declared such Day for any reason other than as a result of its negligence or Wilful Misconduct.~~

### 14.3 Shrinkage Gas

14.3.1 If there is Shrinkage Gas which results solely from the negligence or Wilful Misconduct of the Transporter, the Shipper's sole remedy against the Transporter at common law, in equity or otherwise shall be to claim the lesser of:

(a) the proportion of a Shipper's Balancing Imbalance Charges and Balancing Gas costs that are attributable to Shrinkage Gas; or

(b)  $£20,000 \times \frac{RPI_n}{RPI_o}$

### 14.4 Other breach by Transporter

14.4.1 Any claim which a Shipper may make against the Transporter in respect of any breach by the Transporter of a provision of or other act or omission of the Transporter in relation to this Code, which is not made in accordance with Section 14.1.1 or 14.2 shall not exceed in any Gas Year the following:

$£20,000 \times \frac{RPI_n}{RPI_o}$

### 14.5 Sole liability and remedy

14.5.1 The Transporter's sole liability to the Shipper and the Shipper's sole remedy against the Transporter at common law, in equity or otherwise in relation to or in connection with the provision of or failure to provide transportation services pursuant to this Code whether as a result of a failure by the Transporter to act as an RPO, a breach of this

Code or the negligence or Wilful Misconduct of the Transporter or otherwise shall be as stated in Sections 8.9.3, 14.1, 14.2, 14.3 and 14.4.

14.5.2 For the avoidance of doubt the Transporter shall have no liability with respect to ~~Interruptible VRF Nominated Quantities~~ VRF IP Exit Nominations.

#### **14.6 Aggregate liability to all Shippers**

14.6.1 Notwithstanding any of the preceding provisions of this Section 14, the Shipper agrees and acknowledges that the aggregate liability of the Transporter to any and all of the Shippers in respect of any and all losses and/or damages incurred by any and all of them in respect of each Gas Year (including such loss or damage as is specifically referenced in this Code and for which compensation is specifically provided therein) and which (with the exception of a liability of the Transporter to a Shipper in accordance with Section 14.9) directly arises as a result of:

- (a) any failure by the Transporter to act as an RPO in connection with this Code;
- (b) any breach by the Transporter of any of its obligations under this Code;
- (c) the negligence or Wilful Misconduct of the Transporter in connection with this Code

or otherwise in connection with this Code, shall in no circumstances exceed, in aggregate, a maximum annual cap equal to two (2) per cent of the Total Allowed Conveyance Revenue in respect of each Gas Year calculated pursuant to the Licence.

14.6.2 If the Transporter agrees in writing, or if the court determines, that the Transporter has incurred a liability to a Shipper in respect of a matter referred to in Section 14.6.1 in a Gas Year, the Transporter and each Shipper agrees that such liability shall be treated in accordance with Section 14.6.3.

14.6.3 The Transporter shall pay any such sums properly due to Shippers in respect of any liability referred to in Section 14.6.2 in the first invoice issued in the next Gas Year together with interest on such payment from the date that the liability was incurred until the date of payment at LIBOR plus one (1) per cent.

14.6.4 The Transporter shall, to the extent that any sums due to Shippers in accordance with Section 14.6.3 in aggregate exceed two (2) per cent of the Total Allowed Conveyance Revenue, pro rata payments due to Shippers such that the total payments do not exceed two (2) per cent of the Total Allowed Conveyance Revenue.

#### **14.7 Exclusive remedies**

14.7.1 Save as expressly provided elsewhere in this Code, the liabilities of the Transporter set out in this Section 14 shall constitute the entire liability of the Transporter to the Shipper in respect of the matters to which this Section 14 relates and the Transporter's obligations under this Code (whether arising under contract, tort or howsoever else arising) and shall be in lieu of any and all other rights, claims or remedies which a Shipper may possess howsoever arising, and in the event of any conflict between the



provisions of this Section 14 and the other provisions of this Code this Section 14 shall prevail.

#### **14.8 Consequential loss**

14.8.1 Subject to Section 14.10, neither the Transporter nor a Shipper nor any of their respective officers, employees or agents shall in any circumstances be liable, whether in contract or tort, for any breach of, or otherwise in relation to, this Code in respect of any Consequential Loss.

#### **14.9 Liability for death/injury**

14.9.1 Without prejudice to Sections 14.15 and 14.16, nothing in this Code shall exclude or limit the liability of the Transporter or a Shipper for death or personal injury resulting from the negligence of the Transporter or a Shipper or any of its officers, employees or agents.

#### **14.10 Pre-estimate of loss**

14.10.1 Where any provision of this Code provides for any amount to be payable by a partyParty upon or in respect of that partyParty's breach of any provision of this Code, each partyParty agrees and acknowledges that 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 has been the subject of discussion and negotiation, and the amount provided to be payable is reasonable and represents no more than a genuine pre-estimate of the loss of the partyParty to which such amount is payable.

#### **14.11 Mitigation of loss**

14.11.1 Each of the Transporter and Shippers shall use reasonable endeavours to mitigate the loss and/or damage (if any) incurred by them:

- (a) in the case of loss and/or damage suffered by the Transporter, as a result of a breach by a Shipper of its obligations under this Code whether arising from its negligence or tortious act(s) or omission(s) or otherwise howsoever arising as a result of the said breach; and
- (b) in the case of loss and/or damage suffered by a Shipper as a result of a breach by the Transporter or another Shipper of their respective obligations under this Code whether arising from their respective negligence or tortious acts(s) or omission(s) or otherwise howsoever arising as a result of the said breach.

#### **14.12 No liability**

14.12.1 The Transporter, for the avoidance of doubt, shall not be liable for the consequences of any decision taken by the Transporter acting as an RPO in accordance with this Code including, without limitation, any decision to withhold, reduce or limit any quantity of Natural Gas made available for offtake by or to a Shipper at respectively an Entry Point or from an Exit Point as a consequence of the Transporter performing its duties and obligations pursuant to this Code (including as a result of a Shipper's acts or omissions, or being misinformed by Shipper).

### **14.13 Severability**

14.13.1 Each sub-section in this Section 14 shall:

- (a) be construed as a separate and severable contract term, and if one or more of such sub-sections is held to be invalid, unlawful or otherwise unenforceable the other or others of such sub-sections shall remain in full force and effect shall continue to bind the Transporter and the Shippers: and
- (b) survive termination of this Code.

### **14.14 Transporter to indemnify Shippers**

14.14.1 Save as expressly provided elsewhere in the Code, the Transporter shall be liable to each Shipper for and indemnify, defend and hold harmless each Shipper from and against any and all Indemnified Liabilities, in respect of:

- (a) injury to or sickness, disease or death of any of the Transporter's own officers, directors, employees and agents and/or those of its Affiliates, contractors, sub-contractors; and
- (b) damage to or loss of property of the Transporter or the property of its Affiliates, contractors, sub-contractors and its and their respective officers, directors, employees and agents howsoever arising in respect of this Code including out of the Shippers breach of this Code, or the Shipper's breach of statutory duty in respect of this Code or from the negligence of the Shipper save to the extent that any Indemnified Liabilities arise from the Wilful Misconduct of the Shipper.

### **14.15 Shippers to indemnify Transporter**

14.15.1 Save as expressly provided elsewhere in the Code, each Shipper shall be liable to the Transporter for and indemnify, defend and hold harmless the Transporter from and against any and all Indemnified Liabilities, in respect of:

- (a) injury to or sickness, disease or death of any of the Shipper's own officers, directors, employees and agents and/or those of its Affiliates, contractors, sub-contractors; and
- (b) damage to or loss of property of each Shipper or the property of its Affiliates, contractors, sub-contractors and its and their respective officers, directors, employees and agents howsoever arising in respect of this Code including out of the Transporter's breach of this Code or the Transporter's breach of statutory duty in respect of this Code or from the negligence of the Transporter save to the extent that any Indemnified Liabilities arise from the Wilful Misconduct of the Transporter.

### **14.16 Insurance**

14.16.1 The Transporter shall effect and maintain throughout the life of this Code and each Shipper shall effect and maintain for so long as it is a Shipper insurance policies which shall include:

- (a) general third party insurance with a limit per occurrence or series of occurrences arising from one event of not less £10,000,000 (ten million pounds sterling); and
- (b) insurance of not less than the greater of that required by applicable workmen's compensation or employer's liability legislation from time to time and £5,000,000 (five million pounds sterling) per occurrence or series of occurrences arising from any one event.

14.16.2 The Transporter and each Shipper shall each ensure that its insurers include in their insurance policies to be obtained under Section 14.16.1(a) a waiver of the subrogation rights of its insurer in respect of the matters indemnified in Sections 14.14 and 14.15 respectively for the benefit of the other partyParty except in the case of the Wilful Misconduct of the Transporter or each Shipper (as appropriate) and provide evidence of this to the other partyParty on request.

#### 14.17 Claims in relation to an Adjacent Transporter

##### 14.17.1 Each Shipper:

- (a) undertakes to the Transporter that it will not make, raise or assert any claim or action of any kind against the Adjacent Transporter arising out of the Adjacent Transporter's failure to comply with any of its obligations under the South-North Connected System Agreement; and
- ~~(b)~~ shall indemnify and keep indemnified the Transporter from and against any and all demands, claims, losses, costs, liabilities and damages of any kind whatsoever and howsoever arising (and whether arising under any indemnity or other contractual obligation or in any other way) which the Transporter may suffer or incur directly or indirectly in relation to or arising from or in connection with any contravention by that Shipper of the undertaking in (a) above.

*Amend Section 15 to read as follows:*

## **FORCE MAJEURE**

### **15.1 Definition**

For the purposes of this Code:

**"Force Majeure"** means any event or circumstance or any combination of events and/or circumstances, the occurrence of which is beyond the reasonable control of, and could not have been avoided by steps which might reasonably be expected to have been taken by a PpartyParty acting as an RPO (the **"Affected Party"**) and which causes or results in the failure of the Affected Party to perform or its delay in performing any of its obligations owed to any other Pparty or Pparties (each an **"Other Party"**) under this Code and all Ancillary Agreements to this Code, including any:

- (a) war declared or undeclared, threat of war, act of public enemy, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, criminal damage;
- (b) act of God;
- (c) strike, lockout or other industrial disturbance;
- (d) explosion, fire, fault or failure of plant, equipment or other installation which the Affected Party could not prevent or overcome by the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same kind of undertaking under the same or similar circumstances;
- (e) governmental restraint on the coming into force of any regulation, license or Legal Requirement of any Competent Authority;
- (f) suspension, withdrawal or change in the terms of any licence, permit or consent; and
- (g) structural shift or subsidence affecting generally a part or parts of the Transportation System or any area or areas of the route of the North-West Pipeline or South-North Pipeline and
- (h) any event or circumstance analogous to (a), (b), (c) or (g) affecting the Upstream System, ~~or~~ any Connected System.

### **15.2 Relief from obligations**

15.1.1 Subject to Section 15.3 and without prejudice to any other provisions of this Code limiting or restricting the liability of the Affected Party, if by reason of an event of Force Majeure the Affected Party is rendered unable wholly or in part to carry out its

obligations under this Code then its obligations shall be suspended to the extent the Affected Party's ability to perform is hindered by the Force Majeure event.

### 15.3 No relief

15.3.1 A Force Majeure event shall not relieve a Pparty from any liability or obligation to:

- (a) make payments due under this Code save to the extent that the failure to pay money is caused by a Force Majeure event affecting all reasonable means of payment, in which case, upon the cessation of the Force Majeure event, the Affected Party shall pay these unpaid monies together with interest on them at the rate of LIBOR calculated from the due date for payment to the actual date of payment; or
- (b) give any notice due under this Code.

### 15.4 Report of Force Majeure event

15.4.1 Following any occurrence of a Force Majeure event, the Affected Party shall as soon as reasonably practicable, but in any event within twenty one (21) days of the occurrence of the Force Majeure event, notify the Other Party in writing of the occurrence and nature of the Force Majeure event, the expected duration thereof, (insofar as the same can reasonably be assessed), and the obligations of the Affected Party's performance of which is affected by such Force Majeure event, and from time to time thereafter provide to the Other Party reasonable details of:

- (a) developments in the matters so notified;
- (b) the steps being taken by the Affected Party (using reasonable efforts in accordance with the standards of an RPO) to overcome the Force Majeure event or its effects and to resume performance of its relevant obligations; and
- (c) any other information as the Other Party may reasonably request

provided always that any relevant information which cannot be made available within the said twenty one (21) day period shall be supplied as soon as it is available and that the Affected Party shall not be prevented from using such information in support of its Force Majeure claim.

### 15.5 Resumption of obligations

15.5.1 Any party-Party whose failure to perform obligations has been relieved under the provisions of this Section 15 shall resume the performance of such obligations as soon as reasonably practicable after the removal of the cause(s) of such failure and shall notify the Other Party prior to its resumption.

.....

*Amend Section 16 to read as follows:*

## 16. TERMINATION

### 16.1 Introduction

A Shipper agrees that its Accession Agreement may be terminated in accordance with this Section 16 or Section 17.10. Upon the termination of a Shipper's Accession Agreement it shall no longer be a Shipper and the Shipper and the Transporter shall no longer be bound in relation to each other by this Code except to the extent set out in Sections 16.5 17.5 and 17.6.

### 16.2 Termination by the Transporter

16.2.1 The Transporter shall declare a "**Termination Default**", if the Shipper:

- (a) fails to pay any sum due to the Transporter under a CC Invoice which is not the subject of a bona fide dispute in accordance with Section 12.11:
  - (i) ~~within fifteen (15) Business Days of the Due Date (by the "Second Due Date")~~ provided that the Transporter shall have given the Shipper not less than ~~five (5)~~ Business Days' written notice that such payment is overdue; or
  - (ii) by the Due Date on ~~three (3)~~ or more occasions in respect of ~~three (3)~~ or more separate CC Invoices;
- (b) fails to pay any sum due to the Transporter under a PS Invoice:
  - (i) ~~within fifteen (15) Business Days of the by the Second Due Date~~ provided that the Transporter shall have given the Shipper not less than ~~five (5)~~ Business Days' written notice that such payment is overdue; or
  - (ii) by the Due Date on ~~three (3)~~ or more occasions in respect of ~~three (3)~~ or more separate PS Invoices;
- ~~(bb) fails to pay any sum due to the Transporter under an STC/VRF/BB Invoice:
  - (1) ~~within fifteen (15) Business Days of the Due Date (the "Second Due Date")~~ provided that the Transporter shall have given the Shipper not less than ~~five (5)~~ Business Days written notice that such payment is overdue; or
  - (2) ~~by the Due Date on three (3) or more occasions in respect of three (3) or more separate STC/VRF/BB Invoices.~~~~
- (c) having failed to submit a Nomination or Trade Nomination to the Transporter for a period exceeding ~~twelve (12)~~ months, does not hold at the relevant time any Firm-Exit Capacity and/or IP Capacity, provided that the Transporter shall have first consulted with the Shipper and obtained its agreement or the agreement of the Authority to such termination;

(d) having an Exit Point Registration in respect of an Exit Point in Northern Ireland, ceases to hold a valid Gas Supply Licence unless that Shipper has prior written consent from the Authority to either:

- (i) hold ~~Firm Exit Capacity or Interruptible Capacity~~ and/or IP Capacity;  
or
- (ii) have entitlement to Enter gas to or Exit gas from the NI Network as if it had a Gas Supply Licence;

provided that the Shipper submits to the Transporter a copy of such consent from the Authority;

(e) having an ~~Exit Point~~ Registration ~~in respect of an Exit Point in Northern Ireland~~, without a valid gas Supply Licence and on the basis that the Shipper has prior written consent from the Authority to either:

- (i) hold ~~Firm Exit Capacity or Interruptible Capacity~~ and/or IP Capacity;  
or
- (ii) have entitlement to Enter gas to or Exit gas from the NI Network as if it had a Gas Supply Licence;

ceases to hold the relevant consent from the Authority; or

(f) is in LPC Default.

16.2.2 Within ~~two (2)~~ Business Days of a Termination Default occurring, the Transporter shall send a Meeting Notice in accordance with paragraph 3 of the Terms of Reference convening a meeting of the Credit Committee and asking for Directions regarding the Termination Default.

16.2.3 Notwithstanding the foregoing, where, within ~~fifteen (15)~~ Business Days of the date on which the Meeting Notice was sent by the Transporter under Section 16.2.2, the Credit Committee has failed to decide Directions in respect of that Termination Default, the Transporter shall be entitled, with the Authority's consent, to terminate the relevant Accession Agreement by written notice.

16.2.4 Without limiting any other rights to terminate an Accession Agreement which the Transporter has under this Code, the Transporter shall be entitled to terminate any Accession Agreement with effect from:

- (a) the date specified in a relevant Direction of the Credit Committee;
- (b) where a relevant Direction has been given but no date for termination is specified, forthwith;
- (c) where the Termination Default occurs under Section 16.2.1(c) with the relevant Shipper's consent, forthwith; and
- (d) if the Transporter's Licence is terminated, forthwith.

## 16.3 Termination by either ~~party~~**Party** for breach

### 16.3.1A In this Section 16.3:

- (a) “Defaulting Party” means either the Transporter or a Shipper who is in breach of any of its obligations under this Code; and
- (b) “Non-Defaulting Party” means whichever of the Transporter or a Shipper is not the Defaulting Party.

### Breach to be referred to the Credit Committee

- 16.3.1 ~~Save for where Section 16.2.1 or Section 16.3.7 applies, if the Transporter or a Shipper~~ **Defaulting Party** is in breach of ~~Section 16.3.2~~ any of its obligations under this Code (the **“Defaulting Party”**) and that breach gives rise to a material increase in credit risk for PS Gas Suppliers the ~~party~~ which is not in breach (the **“Non-Defaulting Party”**) may request, by sending a Meeting Notice in accordance with paragraph 3 of the Terms of Reference, the Credit Committee to agree to allow termination of the relevant Accession Agreement, provided that such referral to the Credit Committee may only be made where the relevant breach itself (and not any resulting termination) gives rise to a material increase in credit risk for PS Gas Suppliers. ~~Where the relevant breach is not to be referred to the Credit Committee as provided in this Section, either party may terminate the relevant Accession Agreement in accordance with this Section 16.3.~~
- 16.3.2 ~~The Transporter or a Shipper is in breach of this Section 16.3.2 if it is in breach of any of its obligations under this Code and that breach has a material adverse effect on the Non-Defaulting Party.~~ Not Used
- 16.3.3 Subject to Sections 16.3.1 and 16.3.4, at a meeting convened pursuant to Section 16.3.1 the Credit Committee may direct the Non-Defaulting **Party** to send the Defaulting **Party** a ~~notice~~ (a **“Termination Notice”**) specifying the date on which the Accession Agreement is to be terminated.
- 16.3.4 If the breach, the subject of the Meeting Notice sent in accordance with Section 16.3.1, is in the opinion of the Credit Committee capable of being remedied as determined in a Direction, the Termination Notice shall set out in reasonable detail:
- (a) the alleged breach;
  - (a) the remedy required to be taken and the period within which the breach is required to be remedied, which period shall be of such length as a Reasonable and Prudent Operator would require in order to remedy the breach taking into account (where appropriate) the availability of Maintenance Days and shall not, in any event, be less than ~~thirty (30)~~ Business Days; and
  - (b) the date on which the Accession Agreement shall terminate if the relevant breach has not been remedied within the period specified in such Direction or in the Termination Notice in accordance with (b), above.



- 16.3.5 If the breach, the subject of the Meeting Notice sent in accordance with Section 16.3.1, is not, in the opinion of the Credit Committee, capable of being remedied as determined in a Direction, the Termination Notice may, with the Authority's consent, specify that the relevant Accession Agreement shall terminate forthwith or on any date thereafter.
- 16.3.6 Notwithstanding the foregoing, where, within ~~fifteen (15)~~ Business Days of the date on which the Meeting Notice was sent by the Transporter under Section 16.3.1, the Credit Committee has failed to decide Directions in respect of ~~that Termination Default~~the alleged breach, the Transporter shall be entitled, with the Authority's consent, to terminate the relevant Accession Agreement by written notice.

### Other Breaches

16.3.7 Save for where Section 16.2.1 or Section 16.3.1 apply, if the Defaulting Party is in breach of any of its obligations under this Code, and that breach has a material adverse effect on:

- (a) the Non-Defaulting Party; or
- (b) where the Non-Defaulting Party is the Transporter, the Transporter determines that the breach by the Shipper has a material adverse effect on any other Shipper which has acceded to this Code;

the Non-Defaulting Party may issue a Termination Notice to the Defaulting Party, subject to Section 16.3.8, specifying the date on which the Accession Agreement is to be terminated. For the avoidance of doubt, this Section 16.3.7 may not be invoked if the breach gives rise to a material increase in credit risk for PS Gas Suppliers in which case Section 16.3.1 should be invoked.

16.3.8 If the breach, the subject of the Termination Notice sent in accordance with Section 16.3.7, is in the opinion of the Non-Defaulting Party capable of being remedied, the Termination Notice shall set out in reasonable detail:

- (a) the alleged breach;
- (b) the remedy required to be taken and the period within which the breach is required to be remedied, which period shall be of such length as a Reasonable and Prudent Operator would require in order to remedy the breach taking into account (where appropriate) the availability of Maintenance Days and shall not, in any event, be less than 30 Business Days; and
- (c) the date on which the Accession Agreement shall terminate if the relevant breach has not been remedied within the period specified in the Termination Notice in accordance with (b), above.

16.3.9 If the breach the subject of the Termination Notice sent in accordance with Section 16.3.7 is not, in the opinion of the Non-Defaulting Party, capable of being remedied the Non-Defaulting Party shall be entitled[, with the Authority's consent.] to terminate the Accession Agreement by written notice.

16.3.10 For the avoidance of doubt, a breach referred to in Section 16.3.7 above shall include, but not be limited to, termination of a Shipper's accession agreement under the PTL Transportation Code for any reason whatsoever.

#### **16.4 Termination by either partyParty on liquidation**

16.4.1 Either partyParty shall be entitled by written notice to the other to terminate the Accession Agreement forthwith in the event that:

- (a) an encumbrancer takes possession of, or a liquidator, receiver or an administrator or examiner is appointed over any part of the assets of the other partyParty or any security granted by the other partyParty becomes enforceable;
- (b) the other partyParty is unable to pay its debts as they fall due or suspends making payments (including without limitation payments of principal or interest with respect to all or any class of its debts);
- (c) the other partyParty suffering a distress, execution, sequestration or other process being levied or enforced upon or sued or against all or any substantial part of its assets, rights or revenues which is not discharged, stayed, or dismissed within thirty (30) Business Days;
- (d) the other partyParty ceasing to carry on its business or a substantial part of its business (unless, such cessation is intended to be, and is, temporary and occasioned as a consequence of a Force Majeure event); or
- (e) any event similar, equivalent or analogous to any of the events specified in this Section 16.4 occurs in relation to the other partyParty in any jurisdiction

provided that in the event that an administrator has been appointed over any part of the assets of the other partyParty a Direction of the Credit Committee shall have first been sought and fully complied with.

#### **16.5 Consequences of termination**

16.5.1 Termination of an Accession Agreement shall not extinguish or relieve either partyParty to that agreement from the performance of any obligation accrued under this Code as at the time of termination.

16.5.2 Upon termination by the Transporter under Sections 16.2, 16.3 or 16.4 the following payments shall immediately fall due and payable by the Shipper (and the “**Due Date**” in relation to such payments shall for the purposes of this Code be the date of termination):

- (a) all of the following which are due, accrued or outstanding to the Transporter under this Code in respect of the period up to and including the date of termination:
  - (i) all PS Transmission Amounts; and
  - (ii) all PS Code Charges; ~~and~~

~~(iii) all STC/VRF/BB Charges.~~

(b) the following:

- (i) the ~~Forecast Postalised Capacity Charge payable~~ Payable IP Capacity Price in respect of all ~~Firm-IP Capacity~~ and the Payable Exit Capacity Price in respect of all Exit Capacity held by the Shipper in the remainder of the Gas Year after the date of termination; and
- (ii) the Forecast Postalised Commodity Charge that would be payable in respect of the Shipper's ~~Firm Allocated Quantities and Interruptible Allocated Quantities aggregate Exit Allocations~~ if such quantities were taken to equal 80% of all ~~Firm-Exit~~ Capacity held by the Shipper in the remainder of the Gas Year after the date of termination; and
- (iii) the Transporter's estimate of the PS Transmission Amounts that would be payable in respect of all ~~Firm-Exit~~ Capacity and IP Capacity held by the Shipper in all future Gas Years (had no such termination occurred) provided that such sums shall be adjusted to take account of:
  - (aa) the Transporter's estimate of the amount (if any) by which it shall be able to mitigate the loss referred to in (iii) above;
  - (bb) inflation (which shall be assumed to continue at the rate of RPI at the date of termination); and
  - (cc) ~~any change in the PS Transmission Amounts to reflect any change in the capacity/commodity split of the tariff;~~ and the net present value of the amount payable at LIBOR,

~~(iv) the Transporter's estimate of the STC/VRF/BB Charges that would be payable in respect of all Daily Capacity held by the Shipper in the remainder of the Month in which the date of termination falls and the immediately succeeding Month.~~

~~provided that, for the avoidance of doubt, in relation to a Transit Shipper, only amounts referred to in Section 16.5.2(a)(ii), 16.5.2.(a)(iii) and 16.5.2(b)(iv) shall fall due and payable by that Transit Shipper.~~

16.5.3 Upon termination under Sections 16.2, 16.3 or 16.4, the Transporter shall, as soon as reasonably practicable, and in any event not later than the ~~fifth~~ (5<sup>th</sup>) Business Day following termination, issue the Shipper with an invoice (a "Termination Invoice") which shall set out the following:

- (a) the identity of the Shipper;
- (b) the period to which the Termination Invoice relates; and
- (c) a detailed breakdown of each of the sums payable under Section 16.5.2.

- 16.5.4 The Shipper shall, no later than ~~thirty (30)~~ Business Days following receipt of the Termination Invoice pay to the PoT Account all sums payable under Section 16.5.2, with the exception of payments due under Section 16.5.2(a)(ii), which shall be payable to the Transporter in accordance with the provisions of this Code.
- 16.5.5 If the Shipper fails to pay any sum due as detailed in the Termination Invoice by the date specified in Section 16.5.4, interest on such overdue amount shall accrue at LIBOR plus 3% compounded monthly from the date specified in Section 16.5.4 until the date payment is made.

## 16.6 Consequences of termination in respect of capacity

### 16.6.1 In this Code:

- (a) a “**Terminating Shipper**” means a Shipper whose Accession Agreement is terminating pursuant to Sections 16.2, 16.3 or 16.4 of this Code;
- (b) an “**Election Notice**” is a notice provided to a Transferee Shipper in accordance with Section 16.6.2(a) whereby the Transferee Shipper may elect to become registered as holding IP Capacity and/or Exit Capacity which was the subject of an IP Capacity Transfer or an Exit Capacity Transfer;

### 16.6.2 Where a Terminating Shipper is a Transferor Shipper:

- (a) the Transporter shall notify the Transferee Shipper as soon as reasonably practical and no later than 5 Business Days after issuing a Termination Notice and provide the Transferee Shipper with an Election Notice and details of the PS Transmission Amounts payable in respect of the IP Capacity that was subject to the IP Capacity Transfer and/or the Exit Capacity that was subject to the Exit Capacity Transfer;
- (b) the Transferee Shipper may elect to become registered as holding all or part of the IP Capacity that was subject to the IP Capacity Transfer and/or the Exit Capacity that was subject to the Exit Capacity Transfer, by returning the Election Notice to the Transporter within [2 Business Days of receipt] specifying the relevant amount of IP Capacity and the IP Capacity Period and/or the relevant amount of Exit Capacity and the Exit Capacity Period which the Transferee Shipper elects to become registered as holding;
- (c) where the Transferee Shipper elects to become registered as holding the IP Capacity and/or Exit Capacity referred to in the Election Notice, its Registered IP Capacity or Registered Exit Capacity, as applicable, shall be increased by the amount and for the period specified in the Election Notice, and it shall be liable for all charges payable in respect of such IP Capacity or Exit Capacity from the date of termination of the Terminating Shipper’s Accession Agreement;
- (d) where the Transferee Shipper does not elect to become registered as holding the IP Capacity and/or Exit Capacity referred to in the Election Notice, the IP Capacity Transfer or Exit Capacity Transfer, as applicable, shall lapse and the Terminating Shipper shall remain liable for all PS Transmission Amounts payable as determined in accordance with Section 16.5.2;

- (e) PS Transmission Amounts payable shall be determined by reference to the applicable Payable IP Capacity Price for the IP Capacity Period or the applicable Payable Exit Capacity Price for the Exit Capacity Period, as applicable, (including any Premium bid by the Transferor Shipper).

16.6.3 Where a Terminating Shipper is a Transferee Shipper:

- (a) the Transporter shall notify the Transferor Shipper as soon as reasonably practical and within 5 Business Days after giving a Termination Notice to the Transferee Shipper; and
- (b) with effect from the date of termination of the Terminating Shipper's Accession Agreement, the applicable IP Capacity Transfer and/or Exit Capacity Transfer shall lapse and the Available IP Capacity and/or Available Exit Capacity of the Transferor Shipper will be increased by the amount and for the IP Capacity Period and/or Exit Capacity Period of the IP Capacity Transfer and/or Exit Capacity Transfer.

**16.7 Return of IP Capacity and/or Exit Capacity to the market**

16.7.1 Pursuant to Section 16.5.2(b)(iii)(aa), to the extent that the Transporter determines that it may be able to mitigate loss by making IP Capacity and/or Exit Capacity available to other Shippers, it shall:

- (a) offer such IP Capacity and/or Exit Capacity to other Shippers in accordance with this Section 16.7; and
- (b) reduce its estimate of PS Transmission Amounts payable by the Terminating Shipper accordingly.

16.7.2 Where Section 16.7.1 applies in respect of IP Capacity [or the Transporter is otherwise directed by the Authority to release a quantity of IP Entry Capacity for a certain IP Capacity Period], then:

- (a) it shall add the amount of such IP Entry Capacity to the Unsold Technical IP Capacity at the IP in the next available Auctions for the relevant IP Capacity Period; and
- (b) for the avoidance of doubt, such IP Entry Capacity will be allocated in accordance with Section 1A.16.3 as Unsold Technical IP Entry Capacity

16.7.3 Where Section 16.7.1 applies in respect of Exit Capacity, the Transporter shall:

- (a) add the amount of such Exit Capacity to the unsold Technical Exit Capacity for the relevant Ext Capacity Period; and
- (b) for the avoidance of doubt, such Exit Capacity will be allocated in accordance with Section 1B.11 as unsold Technical Exit Capacity.

**16.8 Notification to the Adjacent Transporter**

16.8.1 Where a Terminating Shipper holds Bundled IP Capacity, the Transporter will inform the Adjacent Transporter and the amount of Bundled Capacity held by the Terminating Shipper.

.....

*Insert the following new Section 17.10.7 and Section 17.10.8 immediately after Section 17.10.6:*

- 17.10.7 For the avoidance of doubt, a Shipper may not reduce or cancel its IP Entry Capacity or its Exit Capacity if it wishes to retire from the Code other than by way of:
- (a) an accepted Surrender Offer or accepted IP Capacity Assignment Application in respect of IP Entry Capacity; or
  - (b) an accepted Exit Capacity Surrender Application or an accepted Exit Capacity Assignment Application in respect of Exit Capacity.
- 17.10.8 Where a Retiring Shipper which holds Bundled IP Entry Capacity makes an application to terminate its Accession Agreement under Section 17.10.1, the Transporter shall inform the Adjacent Transporter.

.....

*Amend Section 18 to read as follows*

## **18. CONFIDENTIALITY**

### **18.1 Definitions**

18.1.1 For the purposes of this Code:

- (a) **"Confidential Information"** means:
  - (i) in relation to the Transporter:
    - (1) any information relating to the affairs of a Shipper obtained in the course of the implementation of the Code, which for the avoidance of doubt includes but is not limited to information obtained from an Adjacent Transporter or the Capacity Platform Operator; or
    - (2) the terms of each Ancillary Agreement (other than the Code) in relation to each Shipper; and
  - (ii) in relation to the Shipper:
    - (1) any information relating to the Transporter or another Shipper which is obtained in the course of the implementation of the Code, which for the avoidance of doubt includes but is not limited to information obtained by the Adjacent Transporter or the Capacity Platform Operator; or
    - (2) the terms of its Ancillary Agreements (other than the Code);
- (b) **"Disclosing Party"** means the Pparty disclosing Confidential Information to a Receiving Party;
- (c) **"Permitted Purpose"** means any purpose related to a Pparty's participation in this Code including in relation to the preparation of the ~~NI Pressure/Capacity Report~~ Ten Year Statement; and
- (d) **"Receiving Party"** means the Pparty to which Confidential Information is disclosed by a Disclosing Party.

### **18.2 Confidentiality**

A Receiving Party shall not, except as provided in Sections 18.3 and 18.4, disclose any Confidential Information to any other person or use any Confidential Information other than for the Permitted Purpose without the prior written consent of the Disclosing Party.

### **18.3 Exceptions**

Section 18.2 shall not apply to any Confidential Information which:

- 18.3.1 at, or after, the time of disclosure becomes part of the public domain (other than by reason of a breach of this Code by the Receiving Party);

- 18.3.2 is known by the Receiving Party at the time it obtains the Confidential Information (save where the information is known by the Receiving Party as a result of it having previously been disclosed by the Disclosing Party to it);
- 18.3.3 is lawfully acquired by the Receiving Party from a third party otherwise than in breach of an obligation of confidentiality; or
- 18.3.4 ~~any information which~~ is required to be disclosed to holders of conveyance licences for the purpose of the operation or management of the Postalised Network Disbursement Procedure or the ~~BGE (NI)~~ Postalised Network Disbursement Bank Account.
- 18.3.5 any information which is required to be disclosed to the Connected System Operator at the South-North Entry Point.

#### 18.4 Rights of disclosure

- 18.4.1 A Receiving Party may disclose Confidential Information without the written consent of the Disclosing Party:
  - (a) to any employees, officers, directors, professional advisors and consultants of the Receiving Party to the extent that the disclosure is necessary in connection with the Permitted Purpose;
  - (b) to any of its Affiliates, or any person holding more than 25% of the issued share capital of the Receiving Party or any of that persons Affiliates, to the extent that the disclosure is necessary in connection with the Permitted Purpose;
  - (c) to any bona fide prospective transferee of more than 25% of the issued share capital of the Receiving Party or any of its Affiliates;
  - (d) to any bank or financial institution from which the Receiving Party is seeking or obtaining finance to the extent that the disclosure is necessary in connection with such finance;
  - (e) to any person appointed as Expert pursuant to this Code to the extent reasonably necessary for the performance of his duties to the extent required by law or by the order of any court having competent jurisdiction over the Receiving Party or the regulations of a recognised stock exchange or requested by any Competent Authority;
  - (f) to the extent required by law or by the order of any court having competent jurisdiction over the Receiving Party or the regulations of a recognised stock exchange or requested by any Competent Authority; and
  - (g) to a Connected System Operator.
- 18.4.2 A Receiving Party shall:



- (a) ensure that any person to whom the Receiving Party discloses information under Sections 18.4.1(a) to (f) complies with the obligations of Sections 18.1 to 18.5 as if that person were a Party to the fullest extent practicable; and
- (b) obtain from any person to whom the Receiving Party discloses information under Sections 18.4.1(c), (d) or (e) an undertaking in favour of the Disclosing Party to do so.

18.4.3 The Transporter may disclose Confidential Information without the consent of the Disclosing Party to:

- (i) any other Designated Pipeline Operator holding a valid licence to convey gas to the extent the Transporter reasonably considers such disclosure is necessary for the purposes of IP Capacity and Exit Capacity allocation and/or IP Entry Nominations and Exit Nominations;
- (ii) the Adjacent Transporter where such disclosure is provided for or contemplated by this Code or the South-North Connected Systems Agreement;
- (iv) the Capacity Platform Operator, and Section 1A.6.9 shall apply.

**18.5 Survival**

18.5.1 Whether a Party ceases or continues to be bound by this Code, its obligations of confidentiality under this Code shall remain in force in relation to any Confidential Information until such information is in the public domain or acquired, known or developed by the relevant Receiving Party in accordance with Section 18.3.

**18.6 Data ownership**

18.6.1 Any data which is processed, recorded or maintained in respect of the Transportation System shall belong to the Transporter, and subject to the provisions of this Code, the Transporter may use such data in such manner as the Transporter sees fit.

18.6.2 If a Shipper provides the Transporter with data the Shipper hereby grants to the Transporter a perpetual non-exclusive, royalty free licence in respect of such data and all intellectual property rights in it to use, copy and adopt and deal with such data for purposes of the performance and implementation of this Code and other purposes contemplated by this Code but not otherwise. Section 18.6.1 applies to any data derived from such data and all compilations created by or on behalf of the Transporter of such data.

18.6.3 If the Transporter provides or makes available data to a Shipper, the Shipper shall be entitled to use such data without charge for the purposes of the performance and the implementation of this Code and for other purposes contemplated by this Code, but not otherwise.

*Amend Section 19 to read as follows:*

## **19. GENERAL**

### **19.1 Gas Transportation Management System (GTMS)**

- 19.1.1 The Transporter proposes to establish an information exchange system for the purposes of supporting the implementation of this Code or any operational procedures established in respect of this Code or the operation of the Transportation System ("GTMS").
- 19.1.2 The Transporter may, from time to time, prescribe which communications shall be made by the ~~P~~parties in respect of this Code or the operation of the Transportation System using the GTMS ("**GTMS Communication**") and the form of any GTMS Communication.
- 19.1.3 Subject to Section 19.2, if the Transporter does so prescribe that a communication shall be a GTMS Communication and does so prescribe the form of the GTMS Communication, the communication may only be given by a Shipper by that means and in that form and any communication given by a Shipper by any other means or in any other form shall be deemed to have not been given for the purposes of this Code the operation of the Transportation System.
- 19.1.4 The Transporter and each Shipper agrees that any GTMS Communication shall have legal effect for the purposes of this Code.
- 19.1.5 The GTMS may, upon giving a Shipper reasonable notice, be reasonably modified from time to time by the Transporter.
- 19.1.6 Where the Shipper uses an agent or other parties for the provision or submission of data, the Shipper shall ensure that such parties adhere to the provisions of Sections 19.1, 19.2, 19.3 and 19.4.

### **19.2 Failure of GTMS**

- 19.2.1 The Transporter may, acting as an RPO, by firstly consulting with and then notifying any Shipper that would be affected, suspend the giving of any communication by the GTMS for so long as the Transporter shall prescribe. In this event any communication in relation to the Code shall be given by fax in accordance with Section 19.5.
- 19.2.2 A Shipper may request the Transporter to suspend the giving of any communication by the GTMS where it considers access to it is prevented or restricted. The Transporter shall suspend the giving of any communication by the GTMS if, acting as an RPO, it believes the request of the Shipper to be reasonable.
- 19.2.3 The Shipper shall at the request of the Transporter provide any information reasonably requested by the Transporter in order to investigate, diagnose, test the GTMS or repair any faults.
- 19.2.4 The Transporter may plan outages for maintenance of the GTMS at any time, but will endeavour to minimise the business impact of such outages to all ~~parties~~Shippers. The

Transporter will endeavour to give Shippers at least ~~ten~~(10) Business Days prior notice of any such planned outage together with, where possible, an estimate of the expected duration of such outage.

### 19.3 Licence to use GTMS

19.3.1 Subject to Section 19.1 the Transporter licences a Shipper, for the purposes contemplated by this Code, but not otherwise:

- (a) to have access to and use the GTMS;
- (b) to use the software installed in respect of the GTMS if any; and
- (c) make use of any manual or other materials provided by the Transporter in respect of the GTMS

(collectively the "**Licensed Software and Materials**") provided that a Shipper shall only use the Licensed Software and Materials for its own internal purposes and for its business operations.

19.3.2 The licence granted in this Section 19.3 to a Shipper is royalty free, non-exclusive and non-transferable and shall terminate automatically upon that Shipper ceasing to be a Shipper for any reason.

19.3.3 The Licensed Software and Materials and all copyright and other intellectual property rights of whatever nature in the Licensed Software and Materials are and shall at all times remain, as between the Transporter and a Shipper, the property of the Transporter or the software licensor.

19.3.4 A Shipper shall not:

- (a) use the Licensed Software and Materials other than as permitted in accordance with Section 19.3.1;
- (b) copy the Licensed Software and Materials;
- (c) sub-license the use of the Licensed Software and Materials;
- (d) except as may be permitted by law, de-compile, disassemble or modify the whole or any part of the software comprised in the Licensed Software and Materials; or
- (e) without the prior written consent of the Transporter permit any unauthorised party to use the Licensed Software and Materials .

19.3.5 If through the GTMS a Shipper obtains or receives unauthorised access to information concerning another Shipper, or receives a communication sent to another Shipper, the receiving Shipper will promptly so inform the Transporter and will close the screen on which such information or communication appears or delete the same from its

equipment without making any copy of it (and destroying any copy accidentally made) and make no further use of it.

#### 19.4 **Provision and return of Licensed Software and Materials**

- 19.4.1 The Transporter shall provide one copy of the Licensed Software and Materials to a Shipper promptly after it becoming a Shipper, as applicable.
- 19.4.2 The Transporter may make a reasonable charge for any additional copies of the Licensed Software and Materials or training requested by a Shipper.
- 19.4.3 The Transporter shall have no obligation to provide a Shipper with computer hardware, telephone lines or equipment to secure access to the GTMS.
- 19.4.4 If a Shipper ceases to be entitled to use the GTMS for any reason it shall return any Licensed Software and Materials with which it has been provided and ensure that its employees and other representatives discontinue access to and use of GTMS. If a Shipper has damaged or lost any Licensed Software and Materials it shall reimburse the Transporter any reasonable costs and expenses incurred by the Transporter in respect of such loss.
- 19.4.5 A Shipper shall on the written request of the Transporter return or destroy any version of the Licensed Software and Materials for which a revised version has been issued.

#### 19.5 **Notices**

- 19.5.1 Any notice or other communication (other than a communication given in accordance with any procedure established under Section 19.1.2) given or made by a Party under this Code shall be:
  - (a) in writing and may be delivered by hand to the addressee, or sent by first class prepaid letter, to the address of the addressee or sent by fax to the addressee's fax transmission number specified in writing by the addressee or such other address or number as may be notified by a Party to the other from time to time in writing for this purpose;
  - (b) deemed to have been given or made and delivered, if by hand, when left at the relevant address, if by letter, on the second day after posting, and if by fax transmission between the hours of 09:00 and 17:00 on Monday to Thursday and between the hours of 09:00 and 16:00 on Friday, at the time of receipt by the sender of confirmation of transmission and otherwise at 09:00 on the next business day after transmission; and
  - (c) marked clearly and conspicuously for the attention of the Transporter or the Shipper (as appropriate).
- 19.5.2 If a communication by fax is received in an incomplete or illegible form:
  - (a) if the addressee so requests (by telephone or otherwise), the sender shall promptly retransmit the communication to the addressee; and

- (b) provided that the request for re-transmission was made within twenty four (24) hours after time of receipt (in accordance with Section 19.5.1) of the first fax, the communication shall not be deemed to have been received until the time (whether or not between 09:00 and 17:00 hours) of receipt by the sender of confirmation of such retransmission.

19.5.3 The **P**parties shall agree procedures for giving operational communications.

#### 19.6 **Waiver**

19.6.1 No delay by or omission of any **P**party in exercising any right, power, privilege or remedy under this Code shall operate to impair such right, power, privilege or remedy or be construed as a waiver of it.

19.6.2 Any single or partial exercise of any such right, privilege or remedy shall not preclude any other or future exercise thereof or the exercise of any other right, power, privilege or remedy.

#### 19.7 **Severance**

19.7.1 If any provision of this Code is or becomes invalid, unenforceable or illegal, or is declared to be invalid, unenforceable or illegal by any court of competent jurisdiction or by order of any other Competent Authority, such invalidity, unenforceable or illegality shall not prejudice or affect the remaining provisions of this Code, which shall continue in full force and effect notwithstanding the same.

#### 19.8 **Entire Agreement**

19.8.1 Subject to Section 19.8.3, this Code and the relevant Accession Agreement contain or expressly refer to the entire agreement between the **P**parties with respect to their subject matter, and supersede all previous agreements or understandings between the **P**parties with respect thereto, and any warranty, condition or other term implied at law or by custom is (to the fullest extent permitted by law) expressly excluded from them.

19.8.2 The Transporter and a Shipper acknowledge that in entering into any Accession Agreement it does not rely on any representation, warranty or other understanding not expressly contained in this Code or such Accession Agreement.

19.8.3 Nothing contained in a document (other than an Accession Agreement) referred to in this Code, beyond what is expressly contemplated by this Code as being contained in such document or is necessary for the purposes of giving effect to a provision of this Code, shall modify or have any effect for the purposes of this Code or be construed as relevant to the interpretation of this Code unless the Authority approved such document in writing.

#### 19.9 **Gas users or shippers**

19.9.1 Nothing in this Code or the Accession Agreement shall be construed as imposing upon the Transporter any obligation or duty to or enforceable by a user or a shipper of Natural Gas upstream or downstream of the Transportation System, except if such user or

shipper is a Pparty to this Code and no Shipper shall make any commitment to any such user or shipper binding on or purporting to bind the Transporter.

#### 19.10 Third party rights

19.10.1 A person who is not a party to this Code shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Code or any Accession Agreement or ancillary agreement expressed to be supplemental hereto notwithstanding that any such term may purport to confer or may be construed as conferring a benefit on such third party. The provisions of this Section 19.10 shall not affect any right or remedy of such third party that exists or is available apart from the Act.

#### 19.11 Assignment

19.11.1 Subject to Sections 19.11.4 and 19.11.5 a Pparty may assign its rights under this Code and the Accession Agreement:

- (a) to an Affiliate (the definition of Affiliate shall be amended for these purposes so that a shareholding of 33<sup>1</sup>/<sub>3</sub>% shall be considered to be control) of such Pparty, provided that the assigning Pparty shall continue to be bound by and liable under this Code and the Accession Agreement; and
- (b) subject to Section 19.11.5, with the prior agreement in writing of each relevant other Pparty or Pparties, which shall not unreasonably be withheld, to any person.

19.11.2 For the purposes of this Section 19.11 a relevant other Pparty is:

- (a) where the assigning Pparty is Shipper, the Transporter; and
- (b) where the assigning Pparty is the Transporter, each Shipper.

19.11.3 Except as provided in Section 19.11.1 or otherwise expressly provided in this Code, a Pparty shall not assign or transfer and shall not purport to assign or transfer any of its rights or obligations under this Code, and the Accession Agreement.

19.11.4 No assignment shall be made to a person unless:

- (a) where the assigning Pparty is a Shipper, that person holds a Gas Supply Licence if the assigning Pparty has an Exit Point Registration in respect of an Exit Point in Northern Ireland;
- (b) where the assigning Pparty is the Transporter, that person holds a licence to convey Natural Gas in Northern Ireland.

19.11.5 Where a Shipper assigns its rights under this Code and the Accession Agreement to a person (including a 33<sup>1</sup>/<sub>3</sub>% Affiliate) pursuant to Section 19.11.1 it shall be a condition precedent to such assignment that such person shall:

- (a) enter into an agreement, in the Prescribed Form, with the Transporter covenanting to be bound by this Code and the Accession Agreement; and

(b) satisfy the conditions precedent in the Accession Agreement.

19.11.6 Where any Pparty assigns its rights under this Code and the Accession Agreement to a person pursuant to Section 19.11.1 the assigning Pparty shall be released from its obligations under this Code and the Accession Agreement arising after the time at which the assignment is effective, but shall remain liable for any obligations accruing up to such time.

19.11.7 A reference in this Code and the Accession Agreement to any Pparty shall include a reference to that Pparty's assigns.

#### 19.12 Agents

19.12.1 A Shipper shall be entitled, by notice in writing to the Transporter, to require that the Transporter receives all notices from and gives all notices to and otherwise communicates with the nominated agent of such Shipper ( and not such Shipper) for all purposes under Sections 2, 3 and 6 of this Code provided that such Shipper shall remain liable to the Transporter in respect of the performance of all its obligations under this Code.

#### 19.13 Code Review

19.13.1 It is acknowledged that the pipeline ("**South-North Pipeline**") may give rise to a requirement for certain amendments to be made to this Code.

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## 20. GOVERNING LAW AND DISPUTE RESOLUTION

### 20.1 Governing Law

20.1.1 This Code will be governed by and construed in accordance with the laws of Northern Ireland.

### 20.2 Dispute Resolution

20.2.1 In this Code a "**Dispute**" means any controversy, claim or Dispute arising out of or in connection with this Code or an Accession Agreement.

20.2.2 If a Dispute arises, it shall be referred, upon written notice from a Pparty to the other Pparty or Pparties (a "**Dispute Notice**"), to mediation in accordance with Section 20.3.

20.2.3 A Dispute which is not resolved by mediation within ~~thirty~~(30) Business Days of the date of the Dispute Notice shall, subject to Section 20.2.4 and 20.4, be settled by the courts of Northern Ireland in accordance with Section 20.5.

20.2.4 Where this Code provides or the Pparties have agreed that a Dispute is to be resolved by the determination of an Expert and the Dispute is not first resolved by mediation within ~~thirty~~(30) Business Days of the date of the Dispute Notice, it shall be settled by the Expert in accordance with Section 20.4 ("**Expert Determination**").

### 20.3 Mediation

20.3.1 If a Dispute arises (other than a Dispute being determined by an Expert) the Pparties shall attempt to settle it in accordance with the Centre for Dispute Resolutions (CEDR) Model Mediation Procedure.

### 20.4 Expert Determination

20.4.1 The procedure for the appointment of an Expert shall be as follows:

- (a) the Pparties shall attempt to agree on the appointment of a single Expert to settle the Dispute;
- (b) if within ~~fifteen~~(15) Business Days of the date of the Dispute Notice the Pparties have been unable to agree on the choice of an Expert, any Pparty may inform the President of the Institution of Gas Engineers and Managers (the "**President of the IGEM**") of the nature and complexity of the Dispute and request him to appoint a single Expert for the determination of the Dispute within ~~thirty~~(30) Business Days of the date of the Dispute Notice, and in doing so the President of the IGEM may take such independent advice as he thinks fit;
- (c) if the President of the IGEM does not exist at the time of such request, refuses to make such an appointment, or fails to do so within ~~thirty~~(30) Business Days of the Dispute Notice, any of the Pparties may then apply to the President of the Law Society of Northern Ireland who shall appoint an Expert within ~~fifteen~~(15) Business Days of being requested to do so;
- (d) upon the Expert being agreed upon or appointed in accordance with this Section 20.4, the Pparties shall immediately notify the Expert of his appointment and



shall request him to confirm within ~~five (5)~~ Business Days whether or not he is willing and able to accept the appointment and, if he accepts the appointment, to confirm his independence.

- 20.4.2 If no Expert can be appointed pursuant to this Section 20.4, the Dispute shall be finally settled by the courts of Northern Ireland in accordance with Section 20.5.
- 20.4.3 The Expert shall be a person suitably qualified by education, experience and/or training to determine the Dispute.
- 20.4.4 The Expert shall be entitled to:
- (a) seek such independent professional (including legal) and/or technical advice; and
  - (b) obtain secretarial assistance, as he may reasonably consider necessary.
- 20.4.5 The Expert and his assistants (if any) shall, as a prerequisite to the Expert's appointment, enter into a confidentiality undertaking with the Pparties in the same terms, applied *mutatis mutandis*, as required by Section 18 and pursuant to which the Expert and his assistants (if any) shall keep the fact that the Expert Determination is taking place and its outcome confidential.
- 20.4.6 The Expert shall confirm to the Pparties before his appointment that he does not hold any interest or duty which would or potentially would conflict with the performance of his duties as an Expert.
- 20.4.7 If, after his appointment, the Expert becomes aware of any interest or duty which does so conflict or potentially conflicts, he shall inform the Pparties forthwith of such conflict giving full details of it.
- 20.4.8 Any Pparty may within ~~five (5)~~ Business Days of the disclosure of any such conflict object to the appointment or continued appointment of the relevant Expert, in which case the Expert shall not be or shall cease to be appointed and a new Expert shall be selected and appointed in accordance with this Section 20.4 (and the rejected Expert shall not be nominated for such selection).
- 20.4.9 The Pparties shall keep the fact that the Expert Determination is taking place and its outcome confidential provided that the relevant Shipper may disclose the outcome to any of its customers to the extent that it demonstrates to the Transporter that it reasonably requires to do so, provided further that any such Shipper shall ensure that any such customer complies with the obligations of Sections 18.1 to 18.4 as if that customer were a Pparty to this Code and following any request by the Transporter, obtains from that customer an undertaking in favour of the Transporter to do so.
- 20.4.10 Any and all communications between the Pparties and the Expert shall be made or confirmed in writing and a copy of such communications shall be provided simultaneously to the other Pparty or Pparties. No meeting between the Expert and any

of the Pparties shall take place unless all the Pparties have been given a reasonable opportunity to attend.

20.4.11 The terms of reference of the Expert shall include the following:

- (a) that the Expert shall, as soon as reasonably practicable after the confirmation of his appointment, call the Pparties to a meeting (which shall, together with all other meetings, be held in Northern Ireland) at which he shall clarify, and, if necessary, define the Dispute and give directions as to the future conduct of the Dispute;
- (b) that the Expert may, from time to time, give such directions as he sees fit;
- (c) that the Pparties shall be entitled to supply data and information and make submissions to the Expert and that the Expert shall make his determination as soon as reasonably practicable and in any event within ~~thirty~~(30) Business Days of his appointment or such other time as agreed in writing by the Pparties;
- (d) that the Expert shall give full written reasons for his determination and shall furnish the Pparties with a draft of his proposed determination; and
- (e) that the Pparties shall be entitled to make representations to the Expert within ~~seven~~(7) Business Days after the receipt of the draft of the Expert's proposed determination.

20.4.12 If an Expert becomes unwilling or unable to act, or does not act, in the matter in respect of which he is appointed, then another Expert shall be appointed in accordance with the procedure set out in Section 20.4.1.

20.4.13 If, within a reasonable period, but in any event not later than ~~ninety~~(90) Business Days after the acceptance of his appointment, the Expert has not made his determination, then, at the request of any of the Pparties, another Expert shall be appointed in accordance with Section 20.4.1 and, on acceptance of such appointment, the appointment of the previous Expert shall cease unless (prior to the date when the new Expert accepts his appointment) the Expert has made his determination, in which case such determination shall be binding and the instructions of the new Expert shall be withdrawn.

20.4.14 Subject to Section 20.6, the costs and expenses of the Expert, any independent advisers to the Expert and any costs of his or their appointment (if he is or they are appointed by the President of the IGEM or the President of the Law Society of Northern Ireland) shall be borne equally by the Pparties, but each Pparty shall bear its own costs.

20.4.15 An Expert appointed under this Section 20.4 shall act as an expert and not as an arbitrator and the provisions of the Arbitration Act 1996 and any amendments or supplements to or re-enactments of them shall not apply to his determination.

20.4.16 The Expert's final determination shall be final and binding on the **P**parties except in the event of fraud or where such final determination is so clearly erroneous on its face that it would be unconscionable for it to stand, in which case another Expert may be appointed in accordance with the provisions of Section 20.4.1.

**20.5 Courts of Northern Ireland**

20.5.1 Subject to the provisions of this Section 20 the Transporter and a Shipper irrevocably agree that the courts of Northern Ireland shall have exclusive jurisdiction to settle any Dispute which may arise out of or in connection with this Code and/or its Accession Agreement.

20.5.2 Each **P**party irrevocably waives any objection which it may have to the laying of the venue of any proceedings in the courts of Northern Ireland and any claim that any such proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgement in any proceedings brought in the courts of Northern Ireland shall be conclusive and binding upon such **P**party and may be enforced in the courts of any other jurisdiction.

**20.6 Costs of Dispute**

20.6.1 The Transporter's costs arising out of a Dispute shall be treated as an Unforeseen Operating Expenditure unless an Expert or court directs that the Transporter has failed to act as an RPO.

.....

*Insert the following new Section T10 immediately after Section T9:*

## **Transition Section T10**

### **T10.1 Introduction**

T10.1.1 This Section T10 sets out the provisions which will apply to Shippers from the T10 Implementation Date and sets out when the provisions of:

- (a) the modified
  - (i) Section 14 (*Liabilities and Indemnities*);
  - (ii) Section 15 (*Force Majeure*);
  - (iii) Section 16 (*Termination*);
  - (iv) Section 18 (*Confidentiality*);
  - (v) Section 19 (*General*);
  - (vi) Section 20 (*Governing Law and Dispute Resolution*);
  - (vii) Appendix 3 Part I;
  - (viii) Appendix 4, paragraph 1.1(10);
  - (ix) Appendix 4, paragraph 6.1(C);
  - (x) Appendix 4, paragraph 6.2;
  
- (b) the new:
  - (i) Section 17.10.7; and
  - (ii) Section 17.10.8;

(T10.1.1(a) and (b) together are referred to in this Section T10 as the "**Modified Legal and General Sections**"); ~~and~~

- (c) **the revisions to Sections 2.7.11 and 2.7.12 (the "Section 2 Amendments")**
- (d) the modified Appendix 1 (*Definitions and Interpretation*) (the "**Legal and General Modified Appendix 1**");

all as set out in Code Modification 22, shall be effective in accordance with this Section T10. Existing terms or Sections of the Code in force prior to Code Modification 22 becoming effective in accordance with this Section T10 are referred to in this Section T10 as "**Unmodified**"

T10.1.2 In this Section T10:

- (a) **“T10 Implementation Date”** means the date of implementation of this Section T10 which shall be 11<sup>th</sup> September 2015 or, if later, the date the Authority approves Code Modification 22;
- (b) **“Legal and General Operational Date”** means 1<sup>st</sup> October 2015.

## **T10.2 Commencement of Modified Legal and General Sections and Legal and General Modified Appendix 1**

T10.2.1 The Modified Legal and General Sections and Legal and General Modified Appendix 1 shall apply in respect of Gas Flow Days from the Legal and General Operational Date and for all Gas Flow Days thereafter.

T10.2.2 The Unmodified Sections 14, 15, 16, 18, 19 and 20, **the Unmodified Appendix 3 Part I and the Unmodified Appendix 4 paragraphs 1.1(10), 6.1(C) and 6.2** shall apply in respect of all Gas Flow Days up to and including 30<sup>th</sup> September 2015 but not thereafter.

## **T10.3 Section 2 Amendments**

**T10.3.1 The Section 2 Amendments shall, from the T10 Implementation Date, revise the text of Section 2 set out in Code Modification 16 and shall become effective in accordance with section T4.2.**

## **T10.4 Successional Changes to Appendix 1**

T10.4.1 In this Section T10:

- (a) **“CAM Modified Appendix 1”** and **“CAM Effective Date”** have the meanings given to them in Section T2 implemented or to be implemented in accordance with Code Modification 14;
- (b) **“Nominations Modified Appendix 1”** has the meaning given to it in Section T4 implemented or to be implemented in accordance with Code Modification 16;
- (c) **“Allocations Modified Appendix 1”** has the meaning given to it in Section T5 implemented or to be implemented in accordance with Code Modification 17;
- (d) **“Invoicing and Credit Modified Appendix 1”** has the meaning given to it in Section T6 implemented or to be implemented in accordance with Code Modification 18;
- (e) **“Balancing Modified Appendix 1”** has the meaning given to it in Section T7 implemented or to be implemented in accordance with Code Modification 19;
- (f) **“Section 6 Modified Appendix 1”** has the meaning given to it in Section T8 implemented or to be implemented in accordance with Code Modification 20;
- (g) **“CMP Modified Appendix 1”** has the meaning given to it in Section T9 implemented or to be implemented in accordance with Code Modification 21;

together the “**Modified Appendix 1 Terms**”

| T10.43.2 Legal and General Modified Appendix 1 adds new defined terms to the Code and where relevant modifies terms set out in the Modified Appendix 1 Terms.

| T10.43.3 Terms contained in Unmodified Appendix 1 which are not otherwise amended or deleted by the Modified Appendix 1 Terms or any other subsequent Code Modifications shall continue to apply in this Code after the CAM Effective Date.

.....

Amend Appendix 1 with new and revised definitions to read as follows:

## APPENDIX 1

### DEFINITIONS AND INTERPRETATION

"**Affiliate**" in relation to either the Transporter or a Shipper means:

- (a) a company or corporation that is either a Holding Company or a Subsidiary of such party; or
- (b) a company or corporation that is a Subsidiary of a Holding Company of which such party is also a Subsidiary;

and the words "**Holding Company**" and "**Subsidiary**" shall have the same meaning assigned to them, regardless of the place of incorporation of the Party, as in [Article 4 section 1159](#) of the [NI Order 1986 Companies Act 2006](#) (as amended);

"**Authority**" means the Northern Ireland Authority for [Energy Utility](#) Regulation;

"**Defaulting Party**" has the meaning given to it in Section 16.3.1 [A\(a\)](#);

~~"**Disclosing Party**" means the party disclosing Confidential Information to a Receiving Party~~ [has the meaning given to it in Section 18.1.1\(b\)](#);

~~"**Election Notice**"~~ [has the meaning given to it in Section 16.6.1\(b\)](#);

"**Gas Flow Day**" means, in relation to the application of any provision of the Code, the Day in relation to deliveries, offtakes or flow of Natural Gas or other operations on which such provision is to apply [and "Gas Flow Days" shall be construed accordingly](#);

~~"**Gaslink**"~~ [means the operator of the transportation system in the Republic of Ireland](#);

~~"**LPS Bid Round**"~~ [has the meaning given to it in Section 1A.8.4\(c\)](#);

~~"**Mismatched Interruptible Delivery**"~~ [has the meaning given to it in Section 14.2.1](#);

"**Mismatched Firm Delivery**" has the meaning given to it in Section 14.1.1;

~~"**Non-Defaulting Party**"~~ [has the meaning given to it in Section 16.3.1A\(b\)](#);

"**PS Gas Supplier**" means any person who is entitled to exit gas from the Postalised System [and "PS Gas Suppliers" shall be construed accordingly](#);

~~"**Receiving Party**"~~ [means the party to whom Confidential Information is disclosed by a Disclosing Party](#) [has the meaning given to it in Section 18.1.1\(d\)](#);

~~"**Second Due Date**"~~ [has the meaning given to it in Section 16.2.1](#) [means 15 Business Days after the Due Date](#);

"**Shipper**" means a person other than the Transporter who, for the time being, has acceded to and is bound by the Code through the Accession Agreement and has an entitlement to transport Natural Gas

through the Transportation System or any part thereof for offtake at an Exit Point, whether for its own use or for use by a third party as an End User (the term "Shipper" shall include a Shipper's permitted successors and/or assigns and the term "Shippers" shall be construed accordingly);

"**South-North Connected System Agreement**" or "**South-North CSA**" has the meaning given to it in Section 7.2.3(b);

"**South-North Entry Point**" shall mean the Entry Point at Gormanston, Co. Meath located at the point of interconnection between the Transportation System and the transportation system in Ireland (owned by BGE the Transporter and operated by Gaslink);

"**Termination Notice**" ~~has the meaning given to it in Section 16.3.3~~ means a notice to terminate an Accession Agreement served by a Party pursuant to Section 16.3.3 and 16.3.4 or Section 16.3.7 and 16.3.8, as applicable;

"**Terminating Shipper**" has the meaning given to it in Section 16.6.1(a);

"**Transporter**" means ~~BGE (UK) Limited conducting its business in Northern Ireland under the name BGE (Northern Ireland) or BGE (NI) GNI (UK) Limited a company incorporated in England and Wales with company number 02827969~~, and its permitted successors and/or assigns acting in its capacity as an owner/operator of the Transportation System and providing transportation services to Shippers;

*Insert the following new wording at the end of Appendix 1: Interpretation*

In this Code, references to "**BGE (UK) Limited**" and "**BGE (NI)**" mean the Transporter.

.....



*Amend the first paragraph of Appendix 3 Part I as follows:*

**THIS GUARANTEE** is made the [ ] day of [ ] 200[ .] by [ ] a company [registered in England and having its registered office] [whose principal place of business is] at [ ] (the "**Guarantor**") in favour of ~~BGE (UK) Limited~~ GNI (UK) Limited a company registered in England (Number 2827969) ~~[having its registered office at 35 St Thomas Street, London, SE1 9RP]~~ 5<sup>th</sup> Floor, 6 St. Andrew Street, London, EC4A 3AE having a place of business at Brighthouse Bay, Kirkcudbright, DG6 4TR, Scotland ("**BGE (UK)**")

.....

*Amend Appendix 4, paragraph 1.1(10) to read as follows:*

- (10) if there is a breach of ~~s~~Section 16.3.12 of the Network Code and such breach is referred to the Credit Committee in accordance with the provisions of ~~S~~section 16.3.1 of the relevant Network Code,

*Amend Appendix 4, paragraph 6.1(C) to read as follows:*

- (C) where a breach of ~~S~~section 16.3.12 of the Network Code has occurred, to determine whether that breach of the Network Code is capable of remedy;

*Amend Appendix 4, paragraph 6.2 to read as follows:*

- 6.2 Any Direction given under the powers conferred at paragraph 6.1(B), paragraph 6.1(F), paragraph 6.1 (J) or paragraph 6.1(A) (but in relation to 6.1(A), only where in relation to a Termination Default, such Termination Default relates to a breach of ~~s~~Section 16.3.12 of the Network Code) shall not be capable of exercise unless and until the Authority has given its consent.