

**CODE OF OPERATIONS  
PART I**

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**LEGAL AND GENERAL**

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**VERSION 5.03**

**Comprises version 5.02 published as of 16 April 2018**

**Incorporating the following Modifications**

- 1. Modification A092; Trading Platform;**
- 2. Modifications A091 and A093; Introduction of RNG Entry Points.**
- 3. Modification A094; Modification of Shipper Portfolio Tolerances;**
- 4. Modification A095; Calculation of Daily Imbalance Charges;**
- 5. Modifications A096 and A096A Data Sharing – GDPR;**
- 6. Modification A097 Final Exit Allocation Amendment Date;**
- 7. Modification A098 Reduction of Capacity Overrun Multipliers.**

## Part I

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## 1. **MODIFICATIONS**

### 1.1 **Modifications**

1.1.1 For the purposes of this Code, “Modification” means a revision, amendment, variation or modification to the Code (excluding the Schedules and the Procedures) or to any Consultation Interconnection Provision and “Modify” and “Modified” shall be construed accordingly.

1.1.2 The Transporter shall only Modify the Code:

- (a) upon and in accordance with a direction of the Commission in accordance with its statutory rights; or
- (b) with the prior written approval of the Commission in accordance with the provisions of Section 1.3 below.

1.1.3 The Commission may in accordance with its Statutory Rights direct the Transporter to Modify the Code:

- (a) without a Modification having first been proposed or processed in accordance with Section 1.3; or
- (b) in a manner which varies any Modification which has been proposed pursuant to Section 1.3.

1.1.4 The Transporter shall amend any Schedule or Procedure with the prior written approval of the Commission or in accordance with any direction of the Commission issued in accordance with its any legal or statutory entitlement of the Commission and not otherwise.

1.1.5 The Transporter may consult with Shippers regarding any modification of any Consultation Interconnection Provision in accordance with this Section 1 or such other process as may be determined by the Transporter with the approval of the Commission.

### 1.2 **Establishment of the Code Modification Forum**

1.2.1 There is hereby established a forum for the purposes of considering proposed Modifications and undertaking such other functions as the Commission may from time to time determine (the “Forum”). The Forum shall consist of:

- (a) a chairperson appointed in accordance with Section 1.2.2, or his or her nominee;
- (b) the Transporter;
- (c) the Shippers; and

- (d) such Third Parties and other parties as the Commission shall from time to time direct.

1.2.2 The chairperson of the Forum shall be appointed by the Commission, and may be removed by the Commission.

### 1.3 Proposed Modifications

1.3.1 A Modification may be proposed pursuant to this Section 1.3 by the Commission, the Transporter, a Shipper or a Third Party. The Parties shall at all times comply with this Section 1.3 in proposing Modifications.

1.3.2 A proposed Modification shall:

- (a) be in writing in a format recommended by the Transporter and approved by the Commission;
- (b) set out in sufficient detail the nature and purpose of, and rationale for, the proposed Modification;
- (c) specify whether the Modification is in relation to a Consultation Interconnection Provision(s);
- (d) identify the proposer and nominate an individual as the proposer's representative in relation to the proposed Modification;
- (e) identify the date by which the proposer believes the Modification is required to be implemented (if any) and, where a date has been identified, provide the reasons for identifying such date; and

where a Modification relates to a Consultation Interconnection Provision the proposed Modification may identify alternate proposals whereby the objective of the proposed Modification may be achieved.

1.3.3 A copy of a proposed Modification shall be provided by the proposer to both the Commission (unless proposed by the Commission) and the Transporter (unless proposed by the Transporter).

1.3.4 If the Commission determines that a Modification is urgently required, the Commission may direct, and, in the case of a modification related to a Consultation Interconnection Provision the Commission may authorise the Transporter to implement the Modification (including any modification to a Consultation Interconnection Provision) within such timeframe as the Commission directs and, in accordance with Section 1.1.2 the Transporter shall implement or be authorised to implement (as the case may be) such Modification accordingly.

1.3.5 Subject to Section 1.3.4, the Transporter shall, as soon as is reasonably practicable but in any event within five (5) Business Days of receipt of a

proposed Modification, acknowledge receipt of the proposed Modification and determine whether it complies with Section 1.3.2 and:

- (a) if the Transporter determines that the proposed Modification complies with Section 1.3.2, the Transporter shall:
  - (i) allocate a number to the proposed Modification;
  - (ii) circulate the proposed Modification to the Forum;
  - (iii) attach to the proposed Modification the date upon which it was published; and
  - (iv) table the proposed Modification on the agenda of the next meeting of the Forum that takes place not less than ten (10) days after circulation of the proposed Modification in (ii) above; or
- (b) if the Transporter determines that the proposed Modification does not comply with Section 1.3.2, the Transporter shall notify the proposer and the Commission in writing why it was determined that the proposed Modification does not comply with Section 1.3.2.

The Transporter shall publish a proposed Modification which complies with Section 1.3.2 on the Transporter's website within ten (10) Business Days of the receipt by the Transporter of the proposed Modification;

- 1.3.6 The proposer shall present the proposed Modification at the meeting of the Forum referred to in Section 1.3.5(a)(iv), or such later date as agreed by the Forum.
- 1.3.7 The Forum shall undertake such further consultation in relation to any proposed Modification as the Commission may determine and may undertake such other consideration of the proposed Modification as the Forum considers is appropriate, including:
  - (a) consulting with any third party that the Forum deems appropriate; and/or
  - (b) establishing working groups to consider the Modification or any specific issues relating thereto and reporting back as appropriate together with the provision of any report relating thereto.
- 1.3.8 The Transporter shall receive comments from any person in relation to a proposed Modification at any time up to fifteen (15) Business Days after the meeting of the Forum at which it is initially presented (or such other period directed by the Commission or, in the absence of a direction from the Commission, such other period as is agreed at the meeting of the Forum at which the proposed Modification is initially presented) (and where the Modification includes alternative proposals comments in respect of each alternative proposal shall be identified separately).

- 1.3.9 Comments received by the Transporter pursuant to Section 1.3.8 shall be:
- (a) provided to the Commission by the Transporter and advised to the Forum within five (5) Business Days after the last day for receipt of comments; and
  - (b) to the extent legally permissible and taking into account any commercially sensitive information published on the Transporter's website within ten (10) Business Days after the last day for receipt of comments.
- 1.3.10 The Transporter shall, at the request of the Commission, provide a preliminary report to the Forum in relation to the impact on the system, implementation timeframe and costs of any proposed Modification, such report to be provided as soon as is reasonably practicable following its request.
- 1.3.11 The proposer, if instructed to do so by the Commission shall within a timeframe directed by the Commission:
- (a) clarify in writing, or in such other manner as the Commission directs, any aspect of a proposed Modification including each alternative proposal;
  - (b) convene meetings of and/or chair meetings of any working groups in relation to the proposed Modification;
  - (c) prepare a written response to issues raised at the meeting at which the proposed Modification was initially presented; as part of the consultation undertaken pursuant to Section 1.3.7; in the comments published pursuant to Section 1.3.9; and/or in the report provided by the Transporter pursuant to Section 1.3.10; and/or
  - (d) undertake such other actions as the Commission reasonably directs in connection with the consideration of the proposed Modification.
- 1.3.12 Any response prepared pursuant to Section 1.3.11(c) shall be provided in writing to the Commission and the Transporter (unless prepared by the Transporter) and the Transporter shall publish a copy of such response on its website as soon as possible following receipt or provision of such response to the Commission and the Transporter, as applicable, and notify Forum members of the website update by email.
- 1.3.13 A proposed Modification may, subject to 1.3.14, be withdrawn by the proposer at any time, by notice in writing to the Commission and the Transporter. The Transporter shall publish any such notice on its website as soon as possible following receipt and the Transporter shall notify Forum members of the website update by email.

- 1.3.14 In the event that an amendment is sought to a proposed Modification by the Commission, the Transporter, a Shipper or a Third Party, the Forum shall comply with any directions of the Commission in relation to the process for consideration of the suggested amended proposed Modification.
- 1.3.15 The Transporter may, and in any event if directed to do so by the Commission shall within a timeframe determined by the Commission in consultation with the Transporter, prepare and submit a final report to the Commission including:
- (a) a statement as to the consultation which has taken place in relation to the proposed Modification;
  - (b) a recommendation to the Commission in relation to the proposed Modification where the Forum has reached a consensus;
  - (c) an outline of the submissions received in relation to the proposed Modification and the views of the members of the Forum where the Forum has not reached a consensus; and
  - (d) any issues of a technical, operational or financial nature raised by the Transporter.
- 1.3.16 The Transporter shall publish a copy of any report prepared pursuant to Section 1.3.15 on the Transporter's website immediately following provision to the Commission and notify Forum members of the website update by email. Forum members may make representations to the Commission if they feel their positions have not been accurately represented in such report. Any such representations may be published.
- 1.3.17 If the Transporter is directed to do so by the Commission, it shall prepare legal drafting, setting out the detailed amendments required to the Code, required by a proposed Modification. Such legal drafting shall be:
- (a) prepared within such time period as may reasonably be directed by the Commission or, in the absence of any time period being specified, the Transporter shall use reasonable endeavours to issue legal drafting to the Commission within fifteen (15) Business Days of receipt of the Commission's direction (taking into account the complexity of the drafting thereof);
  - (b) when directed by the Commission, published on the Transporter's website and the Transporter shall notify Forum members of the website update by email.
- 1.3.18 The legal drafting in connection with a Consultation Interconnection Provision shall be determined in accordance with the provision of the



applicable Interconnection Agreement (or in the case of the Moffat Interconnection Agreement and the GNI Tripartite Agreement).

- 1.3.19 Legal drafting in relation to a proposed Modification may, at the request of any member of the Forum, be discussed at the next meeting of the Forum which takes place not less than ten (10) days following publication. The Forum shall undertake such further consultation in relation to any proposed Modification as the Commission may direct or, in the absence of such direction, as the Forum considers is appropriate.
- 1.3.20 If the Transporter is directed by the Commission to implement a Modification or is notified by the Commission that it approves the implementation of a Modification, whether or not such consent is subject to any conditions, the Transporter shall immediately publish the Modification and a copy of the Commission's direction or approval, as the case may be, on the Transporter's website and the Transporter shall notify Forum members of the website update by email.
- 1.3.21 If the Forum is notified by the Commission that it has rejected a proposed Modification, the Modification shall be rejected and the Forum shall take no further action. The Commission may reject any Modification
- 1.3.22 If the Transporter (or its Affiliate) is obliged in accordance with any applicable Interconnection Agreement (and/or in the case of the Moffat Interconnection Point in accordance with the GNI Tripartite Agreement) to give effect to any matter the subject matter of the Modification the Transporter shall or shall be authorised (as the case may be) to give effect to such Modification.

#### 1.4 **Effective Date of Modifications**

- 1.4.1 A Modification shall subject to section 1.4.2 be implemented with effect from the day specified by the Commission following an appropriate notice period.
- 1.4.2 A Modification in respect of a Consultation Interconnection Provision shall be implemented with effect from the earlier of the date:
- (a) with effect from which the Transporter (or its Affiliate) is legally obliged (in any applicable jurisdiction) to give effect to such Modification;
  - (b) the day specified by the Commission

subject always where applicable to the agreement of and the date on which any relevant Adjacent TSO is obliged to give effect to the equivalent provision in accordance with the Interconnected System Transportation Arrangements.

- 1.4.3 Each Party shall comply with the Code insofar as is applicable and as modified from time to time, from the date and time that any such Modification becomes effective.

## 2. LIABILITIES AND INDEMNITIES

2.1 Subject to Section 2.16, neither the Transporter nor a Shipper nor any of their respective officers, employees or agents shall in any circumstances be liable, whether for breach of contract, tort or otherwise, for any Consequential Loss.

2.2 Save as expressly provided elsewhere in this Code, each Shipper shall indemnify and keep indemnified the Transporter from and against all actions, proceedings, suits, claims, demands, damages, losses, costs, charges, expenses and fines arising from:

2.2.1 personal injury to, illness or death of, any of the Shipper's own officers, directors, employees and agents and/or those of its Affiliates, contractors and/or sub-contractors; and

2.2.2 loss of or damage to the Shipper's own property (including IT systems) or the property of its Affiliates, contractors and/or sub-contractors and/or its and/or their respective officers, directors, employees and agents,

howsoever arising from the Transporter's breach of any of its obligations under or in connection with this Code and/or the Framework Agreement and/or any Ancillary Agreement entered into by the Shipper or from the Transporter's negligent act or omission save to the extent that any liability, loss or damage arises or results from Wilful Misconduct on the part of the Transporter.

2.3 Save as expressly provided elsewhere in this Code and/or any Ancillary Agreement, the Transporter shall indemnify and keep indemnified each Shipper from and against all actions, proceedings, suits, claims, demands, damages, losses, costs, charges, expenses and fines arising from:

2.3.1 personal injury to, illness or death of, any of the Transporter's own officers, directors, employees and agents and/or those of its Affiliates, contractors and/or sub-contractors; and

2.3.2 loss of or damage to the Transporter's own property (including IT systems) or to the Transportation System or to the property of the Transporters Affiliates, contractors and/or sub-contractors and/or its or their respective officers, directors, employees and agents,

howsoever arising from a Shipper's breach of any of its obligations under or in connection with this Code and/or the Framework Agreement and/or any Ancillary Agreement entered into by the Shipper or from a Shipper's negligent act or omission save to the extent that any liability, loss or damage arises or results from Wilful Misconduct on the part of a Shipper.

2.4 Subject to Sections 2.15, 2.1, 2.3, 2.12.1 and 9.4.7 (and other than as expressly provided in Part G (*Technical*) Section 5.10 (*Capacity Charge Rebate*) and in Part G (*Technical*) Section 1.5 (*Off-Spec Gas*)), under no circumstances shall the Transporter be liable to a Shipper under this Code and/or the Framework Agreement and/or any

Ancillary Agreement entered into by the Shipper for any loss or damage howsoever arising and by whomsoever caused whether for breach of contract, tort or generally at common law, equity or otherwise howsoever else arising in respect of the Transporter's acts or omissions, (whether under this Code and/or the Framework Agreement and/or any applicable CSA, Interconnection Agreement or IP OBA Provisions and/or any Ancillary Agreement entered into by the Shipper) (including, for the avoidance of doubt, in respect of any liability which may otherwise arise in respect of any incorrect, incomplete or inaccurate information) save for:

- 2.4.1 Transmission System Shrinkage Gas Costs payable by a Shipper to the extent that such costs have arisen solely as a result of the failure of the Transporter to act as a Reasonable and Prudent Operator provided that the Transporter's liability for such costs in any one Gas Year shall not exceed the total limitation sum of twenty five thousand three hundred and ninety five Euro (€25,395) (adjusted annually in accordance with CPI). For the avoidance of doubt, the Transporter shall have no liability to any Shipper in respect of any Distribution System Shrinkage Costs in respect of any period of time during which such costs are included in the Tariff;
- 2.4.2 any losses incurred by a Shipper directly arising from a failure by the Transporter to act as a Reasonable and Prudent Operator (i) in performing its obligations under this Code and/or any Ancillary Agreement or any Interconnection Agreement to accept quantities of Natural Gas made available for delivery to the Transportation System by or for a Shipper in accordance with the terms of this Code and/or any Ancillary Agreement and/or (ii) in performing its obligations under this Code and/or any Ancillary Agreement to make Natural Gas available for offtake by a Shipper in accordance with the terms of this Code and/or any Ancillary Agreement other than quantities of Natural Gas to be offtaken pursuant to Interruptible CSEP Exit Nominations or IP Nominations which are Interruptible in accordance with this Code, provided that:
  - (a) the Transporter's liability for such losses shall be subject to a minimum period of continuous interruption of fifteen (15) minutes (and disregarding any such period of interruption for operational reasons and/or in accordance with any applicable Interconnection Agreement) in the case of any such failure of the Transporter in relation to an Interconnection Point, an Entry Point connected to the Transmission System, a LDM Exit Point or the Sub-Sea I/C Offtake;
  - (b) the Transporter's liability for such losses shall be subject to a minimum period of continuous interruption of fifteen (15) minutes (following notification by a Shipper) in the case of any such failure of the Transporter in relation to a TCDM Exit Point and provided further that any such liability shall not exceed the amount of Capacity Charges which the Transporter calculates as being payable by the Shipper in relation to DM Exit Capacity held by the Shipper in respect of the

affected TCDM Exit Point on the Day(s) on which the continuous interruption of fifteen (15) minutes occurs and on the basis of such Capacity Charges being calculated as being payable on a daily basis;

- (c) the Transporter's liability for such losses shall be subject to a minimum period of continuous interruption of forty eight (48) hours (following notification by a Shipper) in the case of any such failure by the Transporter in relation to a Supply Point and provided further that where the continuous interruption continues in excess of forty eight (48) hours any such liability shall not exceed the amount of Capacity Charges which the Transporter calculates as being payable by the Shipper in relation to the affected Supply Point Capacity held by the Shipper in respect of such Supply Point for any period of continuous interruption which exceeds forty eight (48) hours and on the basis of such Capacity Charges being calculated as being payable on a daily basis; and
- (d) the Transporter's liability to each Shipper in respect of each incident (or series of related incidents) arising as a result of a failure by the Transporter to act as a Reasonable and Prudent Operator (and taking into account and including such other liabilities as the Transporter may be liable for, to such Shipper under this Code and/or any Ancillary Agreement in respect of any such incident (or series of related incidents)) shall not exceed a total limitation sum of one hundred and twenty six thousand nine hundred and seventy four Euro (€126,974) (adjusted annually in accordance with CPI); and

2.4.3 any losses incurred by a Shipper directly arising as a result of the Wilful Misconduct of the Transporter (i) in performing its obligations under this Code and/or any Ancillary Agreement to accept quantities of Natural Gas made available for delivery to the Transportation System by a Shipper in accordance with the terms of this Code and/or any Ancillary Agreement and/or (ii) in performing its obligations under this Code and/or any Ancillary Agreement to make Natural Gas available for offtake by a Shipper in accordance with the terms of this Code and/or any Ancillary Agreement, other than Natural Gas nominated for offtake pursuant to Interruptible CSEP Exit Nominations, Natural Gas nominated pursuant to IP Nominations which are Interruptible in accordance with this Code provided that:

- (a) the Transporter's liability for such losses shall be subject to a minimum period of continuous interruption of fifteen (15) minutes (and disregarding any periods of interruption for operational reasons and/or interruption as contemplated by any applicable Interconnection Agreement) in the case of any such failure of the Transporter in relation to an IP Entry Point or Entry Point connected to the Transmission System, a LDM Exit Point or the Sub-Sea I/C Offtake;

- (b) the Transporter's liability for such losses shall be subject to a minimum period of continuous interruption of fifteen (15) minutes (following notification by a Shipper) in the case of any such failure of the Transporter in relation to a TCDM Exit Point and provided further that any such liability shall not exceed the amount of Capacity Charges which the Transporter calculates as being payable by the Shipper in relation to DM Exit Capacity held by the Shipper in respect of the affected TCDM Exit Point on the Day(s) on which the continuous interruption of fifteen (15) minutes occurs and on the basis of such Capacity Charges being calculated as being payable on a daily basis;
  - (c) the Transporter's liability for such losses shall be subject to a minimum period of continuous interruption of forty eight (48) hours (following notification by a Shipper) in the case of any such failure by the Transporter in relation to a Supply Point and provided further that where the continuous interruption continues in excess of forty eight (48) hours any such liability shall not exceed the amount of Capacity Charges which the Transporter calculates as being payable by the Shipper in relation to the affected Supply Point Capacity held by the Shipper in respect of such Supply Point for any period of continuous interruption which exceeds forty eight (48) hours and on the basis of such Capacity Charges being calculated as being payable on a daily basis; and
  - (d) the Transporter's liability to each Shipper in respect of each incident (or series of related incidents) arising as a result of the Wilful Misconduct of the Transporter (and taking into account and including such other liabilities as the Transporter may be liable for, to such Shipper under this Code and/or any Ancillary Agreement in respect of such incident (or series of related incidents)) shall not exceed a total limitation sum of four hundred and forty four thousand four hundred and eight Euro (€444,408) (adjusted annually in accordance with CPI).
- 2.5 The aggregate liability of the Transporter in any one Gas Year howsoever arising out of or in connection with this Code, including Framework Agreements and Ancillary Agreements, whether for breach of contract, tort or otherwise including for the avoidance of doubt any liabilities in relation to Part G (*Technical*) Section 1.5 (*Off-Spec Gas*) and Sections 2.4.1, 2.4.2 and 2.4.3 and 2.8 of this Part I) including interest in accordance with Section 2.7 and irrespective of the number of incidents shall not exceed in any one (1) Gas Year a total limitation sum of three million eight hundred and nine thousand and two hundred and fourteen Euro (€3,809,214) (adjusted annually in accordance with CPI) (the "Annual Liability Cap").
- 2.6 The Transporter shall, to the extent that any sums due to Shippers in respect of any one Gas Year (including any interest in accordance with Section 2.7) would otherwise in aggregate exceed the Annual Liability Cap for that Gas Year, only be obliged to pay each Shipper a proportion of the sum which would otherwise be payable to the

Shipper, such that the total payments to Shippers in respect of the Gas Year do not exceed the Annual Liability Cap. The proportion referred to in this Section 2.6 shall be the same as the proportion which a Shipper's Capacity Booking(s) in respect of which the Transporter has incurred liability under this Code and/or any Ancillary Agreement and/or any Framework Agreement in a Gas Year bears to the aggregate of all Shippers' Capacity Bookings in respect of which the Transporter has incurred such liability in the Gas Year.

- 2.7 If the Transporter agrees in writing, or if it is determined pursuant to Section 6 (*Dispute Resolution*) that the Transporter has incurred a liability to a Shipper in respect of a matter referred to in this Section 2 in a Gas Year, interest on such liability shall accrue from the date of such agreement or determination until such time as the Transporter's liability to the Shipper is finally determined in accordance with Section 2.8. The rate of interest payable in respect of any such liability shall be equivalent to the deposit interest rate payable by such bank in Ireland as the Transporter may specify to Shippers pursuant to Section 11.4.3 in respect of a deposit equivalent to the amount of such liability. The Transporter and each Shipper agrees that such liability shall be discharged in accordance with Section 2.8.
- 2.8 The Transporter shall pay any such sums properly due to a Shipper in respect of any liability incurred and properly due and payable under Section 2.7 as soon as reasonably practicable after the aggregate liability of the Transporter in respect of a Gas Year has been ascertained and after having determined the amounts properly due to each Shipper having due regard to Section 2.6. Any such sums shall be paid within twenty eight (28) days after the amount of the Transporter's liability to such Shipper has been fully ascertained in accordance with Section 2.6. If the Transporter fails to make a payment to the Shipper within such period of twenty eight (28) days such overdue payment shall bear interest from the expiry of the twenty eight (28) day period until the date upon which payment is made at (a rate of) EURIBOR plus two (2) per cent.
- 2.9 The Transporter and each Shipper shall use reasonable endeavours to mitigate the loss and/or damage (if any) incurred by each of them, (i) 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 and/or the Framework Agreement and/or any Ancillary Agreement whether arising from its negligence or tortious act(s) or omission(s) or otherwise howsoever arising as a result of the said breach and, (ii) 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 and/or the Framework Agreement and/or any Ancillary Agreement whether arising from their respective negligence or tortious act(s) or omission(s) or otherwise howsoever arising as a result of the said breach.
- 2.10 Save where otherwise expressly referenced, the liabilities of the Transporter as set out in, Part G (*Technical*) Section 1.5 (*Off-Spec Gas*) and this Section 2 shall constitute the entire liability of the Transporter in respect of its obligations under this Code, IP OBA Provisions, any applicable CSA, Interconnection Agreement or the GNI Tripartite Agreement each Shipper's Framework Agreement and any Ancillary Agreement (whether for breach of contract, tort or generally at common law, equity 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.

- 2.11 The Transporter, for the avoidance of doubt, shall not be liable to a Shipper for:
- 2.11.1 the consequences of any decision taken by the Transporter acting as a Reasonable and Prudent Operator in accordance with this Code and/or the Framework Agreement and/or any Ancillary Agreement including any decision to withhold, reduce or limit any quantity of Natural Gas made available to or for offtake by a Shipper at an IP Entry Point, Entry Point or from an Offtake Point or at an IP CSEP or the Sub-Sea I/C Offtake respectively as a consequence of the Transporter performing its duties and obligations pursuant to this Code and/or the Framework Agreement and/or any Ancillary Agreement (including as a result of a Shipper's acts or omissions, or being misinformed by a Shipper);
  - 2.11.2 Unaccounted For Gas and Own Use Gas other than as specified in Section 2.4.1;
  - 2.11.3 any loss or damage incurred by a party as a result of any loss of data or any inaccuracy of data;
  - 2.11.4 any loss or damage incurred by a party as a result of third party claims other than as specified in Section 2.12.1;
  - 2.11.5 any loss or damage as a result of Off-Spec Gas other than as specified in Part G (*Technical*) Section 1.5.3;
  - 2.11.6 any loss or damage as a result of failure by the Transporter to make Natural Gas, nominated pursuant to an Interruptible CSEP Exit Nomination, available for offtake;
  - 2.11.7 any loss or damage as a result of failure by the Transporter to make IP VExit Capacity available or the failure by the Transporter to make gas nominated pursuant to a IP VExit Nomination available for offtake; or
  - 2.11.8 any loss or damage as a result of a failure by the Transporter to make IP VEntry Capacity available or a failure by the Transporter to accept delivery of Natural Gas nominated pursuant to a IP VEntry Nomination.
  - 2.11.9 any loss or damage as a result of any delay or failure by the Transporter (or its Affiliate) or any Adjacent TSO in complying with any applicable Interconnection Agreement or IP OBA Provisions.
- 2.12 In respect of any claims, action or liability arising in respect of any third party (not being a Shipper or a party in any way connected, whether directly or indirectly, with the supply of Natural Gas to a Shipper and/or connected directly or indirectly with the Transportation System, including an Upstream Operator or Adjacent TSO) and subject



always to, and save as elsewhere specifically provided for in, the provisions of this Code:

- 2.12.1 the Transporter shall indemnify a Shipper in respect of such third party claims, actions or liabilities where the same arises as a result of any breach by the Transporter of its obligations under this Code and/or any Ancillary Agreement as a result of its Wilful Misconduct subject to the provisions of this Section 2; and
  - 2.12.2 a Shipper shall indemnify the Transporter in respect of such third party claims, actions or liabilities where the same arise as a result of a breach by the Shipper of its obligations under this Code and/or any Ancillary Agreement and/or as a result of its Wilful Misconduct.
- 2.13 A Shipper shall, in addition to the indemnity set out in Section 2.12.2, indemnify the Transporter in respect of any claims, actions or liabilities (save third party claims in respect of death or personal injury) including for the avoidance of doubt any claims by Interconnected System Shippers where such claims, actions or liabilities arise as a result of, or out of the performance, or breach by the Transporter, of its obligations under this Code or the IP Matching Procedure or any applicable IP OBA Provision and/or any Ancillary Agreement and irrespective of whether such action, claim or liability arises in contract, tort or otherwise.
- 2.14 Affiliate
  - 2.14.1 Any relief from, exclusion, or limitation of liability in favour of the Transporter under this Section 2 and the Code shall extend to and apply also for the benefit of the Affiliate of the Transporter executing the Interconnection Agreement and the GNI Tripartite Agreement at the Moffat Interconnection Point together with their and each of their directors, officers and employees. The Affiliate of the Transporter executing the Interconnection Agreement and the GNI Tripartite Agreement at the Moffat Interconnection Point and its directors, officers and employees shall have the benefit of such relief from exclusion, or limitation of liability only in respect of any claim which relates to circumstances that are within the ambit of this Code in the same circumstances under which the Transporter would have had the benefit of such relief from exclusion or limitation of liability pursuant to this Code.
  - 2.14.2 Where the Affiliate of the Transporter is entitled to the benefit of relief from, exclusion or limitation of, liability pursuant to this Section 2 of the Code the Transporter shall be entitled to enforce such indemnity or relief or exclusion or limitation of liability on its behalf. The Transporter shall obtain and hold such right and benefit in trust and may exercise the same for and on behalf of the Affiliate).
  - 2.14.3 The limits of liability as specified in the Code shall constitute aggregate liability limits in respect of the Transporter and the Affiliate of the

Transporter executing the Interconnection Agreement and the GNI Tripartite Agreement.

## 2.15 Interpretation

2.15.1 Each of the sub-sections of this Section 2 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 sub-sections shall remain in full force and effect and shall continue to bind the Transporter and each Shipper; and
- (b) survive termination of a Shipper's Framework Agreement and/or any Ancillary Agreement entered into by a Shipper.

2.15.2 For the avoidance of doubt, all references to the Transporter (or to a party where such party is the Transporter) in this Section 2 shall include the Transporter where it is designated by the Commission as the GPRO and/or the National Gas Emergency Manager and where it is requested to perform services on behalf of the GPRO and/or to carry out the functions of the National Gas Emergency Manager.

2.15.3 For the avoidance of doubt, a breach of any Procedure shall be treated as a breach of this Code for the purposes of this Section 2.

2.15.4 The Transporter shall not be in breach of this Code where the Transporter is unable to perform any obligation(s) pursuant to this Code or any Ancillary Agreement as a result of any breach or non-performance by an End User of the provisions of any End User Agreement or as a result of any failure of any End User to execute the End User Agreement.

2.15.5 The Transporter shall not be in breach of this Code where the Transporter is unable to perform any obligation pursuant to this Code as a result of a breach or non-performance by any person (other than the Transporter) of the provisions of any applicable Interconnection Agreement, Connected System Agreement, IP OBA Provisions, the GNI Tripartite Agreement or the Sub-Sea I/C Offtake Agreement.

2.16 Without prejudice to Sections 2.2 and 2.3, nothing in this Code and/or any Ancillary Agreement shall exclude or limit the liability of the Transporter or a Shipper for fraud or for death or personal injury resulting from the negligence of the Transporter or a Shipper, or any of their respective officers, employees or agents.

### 3. **FORCE MAJEURE**

#### 3.1 **Meaning of Force Majeure**

3.1.1 For the purposes of this Code, "Force Majeure" means in respect of the Transporter and/or any Shipper, any event or circumstance or combination of events or circumstances which is beyond its reasonable control acting as a Reasonable and Prudent Operator and which prevents the Transporter and/or Shipper from, or causes delay or impediment to, the Transporter and/or Shipper in fulfilling all or any of its or their obligations under this Code and/or any Ancillary Agreement. Without prejudice to the generality of the foregoing, such events or circumstances shall include:

- (a) any act or event which arises out of, or is attributable to, an act of God;
- (b) war, hostilities (whether or not war has been declared), terrorist action, sabotage, acts of vandalism, revolution, acts of any civil or military authority, riot or civil commotion;
- (c) disaster, fire, flood, epidemic or explosion;
- (d) any Legal Requirement, Ireland, U.K. or Isle of Man governmental direction or restriction, the laws, regulations, orders, direction or restriction of the European Union or the suspension or withdrawal of any consent provided that the suspension and/or withdrawal of a consent shall not constitute Force Majeure where such consent is withdrawn as a result of any action or omission by the holder of such consent as a result of a breach of the relevant Transportation Licence or Shipping Licence (as the case may be) or negligence by such holder or failure by it to act as an RPO;
- (e) the order of any court or regulatory authority in any of the jurisdictions through which the Transportation System passes, or the order of any governmental authority materially affecting industry generally in any of the jurisdictions through which the Transportation System passes;
- (f) shortage or unavailability of property, goods, labour or services;
- (g) breakage of, or accidental damage to, machinery, equipment or pipes;
- (h) strike, lock-out or other industrial trade dispute;
- (i) archaeological and historical investigations and/or discoveries; and
- (j) structural shift or subsidence affecting generally a part or parts of the Transportation System or any area or areas of the route of any pipeline or facilities forming part of the Transportation System.

#### 3.2 **Effect of Force Majeure**

3.2.1 For the purposes of this Section 3:

- (a) "Affected Party" means the Transporter and/or a Shipper (as the case may be) which is unable to perform as a result of Force Majeure; and
- (b) "Other Party" means the Transporter and/or a Shipper (as the case may be) which is not directly affected by Force Majeure, but is affected by the Affected Party's inability to perform.

3.2.2 Subject to Section 3.3, and without prejudice to any other provision of this Code limiting or restricting the liability of the Transporter or Shipper(s), if by reason of Force Majeure the Transporter or Shipper(s) is or are rendered unable wholly or in part to carry out its or their respective obligations under this Code and/or a relevant Ancillary Agreement then:

- (a) if the Transporter is rendered unable to so perform, the Transporter shall notify the Shipper or Shippers affected by the Transporter's inability to perform and the Transporter's obligations will be suspended to the extent that the Transporter's ability to perform is hindered by Force Majeure; or
- (b) if a Shipper is rendered unable to so perform, the Shipper shall notify the Transporter in writing of the event and its inability to perform, and such Shipper's obligations will be suspended to the extent that the Shipper's ability to perform is hindered by Force Majeure; and
- (c) if the Transporter considers that an event notified by a Shipper pursuant to Section 3.2.2(b) constitutes Force Majeure affecting the Transportation System as a whole or any localised part thereof the Transporter shall, as soon as reasonably practicable, notify the Shipper and any other Shipper who may be affected by the event that the event constitutes Force Majeure and the Transporter's and each such Shipper's obligations will be suspended to the extent that their respective ability to perform is hindered by Force Majeure,

and, in the case of (a) and/or (b) and/or (c), the Transporter shall be entitled to suspend any of the provisions of this Code and/or any Ancillary Agreement during the period of the Force Majeure which the Transporter, in its reasonable opinion, considers to be appropriate (including those provisions which relate to the deemed acceptance or rejection by the Transporter of Nominations or Renominations, or the deemed acceptance of any Within-Day Exit Capacity Transfer Requests, or any provisions which specify a time limit for certain actions or steps to be taken).

### 3.3 **Extent of Relief**

3.3.1 Force Majeure shall not relieve either the Transporter or a Shipper from any liability or obligation to:

- (a) make payments due under this Code and/or any Ancillary Agreement (including for the avoidance of doubt any Capacity Charges or IP

Capacity Charges) save to the extent that the failure to pay money is caused by Force Majeure or a circumstance affecting all reasonable means of payment, in which event, upon the cessation of such Force Majeure event, the Affected Party shall pay, in addition, interest on any amounts due hereunder at the rate of EURIBOR plus one (1) per cent calculated from the due date for payment to the actual date of payment;  
or

- (b) give any notice or other communication which may be required pursuant to this Code and/or the Framework Agreement and/or any Ancillary Agreement entered into by a Shipper save where either the Transporter or a Shipper is unable to give any such notice or communication due to Force Majeure affecting the GNI (IT) Systems (or any part thereof) in which case any such notice or communication shall be made in accordance with any direction which the Transporter may give as to the means of communication in such circumstances.

3.3.2 The Affected Party shall be relieved of liability under Section 3.2.2 only for so long as, and to the extent that, the occurrence of Force Majeure and/or the effects of such occurrence could not be overcome by measures which the Affected Party might reasonably be expected to take with a view to resuming performance of its obligations but for the avoidance of doubt the Affected Party shall not be required to settle any strikes, lock-out or other industrial trade disputes which constitute Force Majeure.

3.3.3 The Other Party shall be relieved of liability to perform any of its obligations under this Code and/or any Ancillary Agreement if, and to the extent that, the Other Party is rendered unable wholly or in part to perform any of its obligations as a result of the Affected Party being prevented from or delayed or hindered in the performance of any of its obligations by reason of Force Majeure.

#### 3.4 Information

3.4.1 Relief under Section 3.2 shall not be given in relation to Force Majeure which relates to any Entry Point, Exit Point, any Interconnection Point or the Sub-Sea I/C Offtake unless the Affected Party has, as soon as reasonably practicable, but in any event within twenty one (21) days of the occurrence of the Force Majeure, or within such longer period as may be approved by the Commission, supplied the Other Party with a report giving reasonable details of:

- (a) the place and nature of the Force Majeure (and reason for such event so far as such information is reasonably available); and
- (b) the obligations the performance of which are delayed or prevented and the estimated period during which such performance may be suspended.

- 3.4.2 In relation to Force Majeure which relates to any Supply Points, the Other Party may request the Affected Party to supply the Other Party with a report containing details of the matters specified in Section 3.4.1(a) and 3.4.1(b). Such report shall be supplied by the Affected Party to the Other Party within twenty one (21) days of the date of the request.

### 3.5 **Resumption of Performance**

Any Party whose failure to perform obligations has been relieved under the provisions of this Section 3 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 resumption.

### 3.6 Notice to the Commission

- 3.6.1 The Transporter shall provide to the Commission a copy of each notification issued by the Transporter pursuant to this Section 3.
- 3.6.2 A Shipper shall provide to the Commission a copy of each notification issued by that Shipper pursuant to this Section 3.

## 4. SUSPENSION AND TERMINATION

### 4.1 Suspension

- 4.1.1 The Transporter shall have the right to issue a notice (the "Suspension Notice") to a Shipper pursuant to the provisions of this Section 4 in the event that a Shipper is in default or in breach of any provision of this Code and/or any Ancillary Agreement and/or the Framework Agreement and pursuant to Section 11.6 (*Interest and Payment Default*). A Suspension Notice issued by the Transporter pursuant to this Section 4 shall identify the default or breach to which the Suspension Notice relates and may specify the action to be taken by the Shipper to remedy such breach or default. The Transporter shall provide to the Commission a copy of any Suspension Notice issued by the Transporter pursuant to this Section 4.1.1.
- 4.1.2 The Transporter's right to issue a Suspension Notice pursuant to this Section 4 and/or Section 11.6 shall be without prejudice to any other right or remedy available to the Transporter under this Code and/or the Framework Agreement and/or any Ancillary Agreement or at law (including the Transporter's rights pursuant to Part B (*General Principles*) and the Transporter's right to suspend the offtake of or discontinue the supply of Natural Gas at an Offtake Point in accordance with Part H (*Operations*) Section 4.4 (*Natural Gas Offtaken at an Offtake Point: Compressors*) and/or Section 4.5 (*Discontinuance of Supply at an Offtake Point*)).
- 4.1.3 The Transporter may through the issuance of a Suspension Notice and having due regard to the circumstances of the breach or default to which the Suspension Notice relates:
- (a) suspend or limit any right or rights of the Shipper in whole or in part pursuant to this Code or any Ancillary Agreement (including the Shipper's right to submit IP Nominations, Nominations and/or Renominations, effect IP Capacity Trades, Entry Capacity Trades or Exit Capacity Transfers or effect IP Capacity Booking and/or Capacity Bookings) as identified in the Suspension Notice; and/or
  - (b) suspend or limit the right of the Shipper to tender Natural Gas for delivery to, or offtake Natural Gas from, the Transportation System at such one or more IP Entry Points, Entry Points, IP VEntry, Exit Points, IP VExit, Supply Points, the Sub-Sea I/C Offtake or a IP VExit as shall be specified in the Suspension Notice; and/or
  - (c) suspend or limit the right of the Shipper to enter into IP Capacity Trades, Entry Point Transfers, Entry Capacity Trades or to become the Registered Shipper at a DM Offtake or a NDM Supply Point in accordance with the Change of Shipper Procedures or to submit IBP Nominations or IBP Renominations, and/or

- (d) a Shippers right to submit Short Term Entry Capacity Request(s) or Short Term LDM Exit Capacity Request(s).

provided always that the Suspension Notice shall relate to the Capacity Booking and, in the case of DM Exit Capacity, DM Supply Point Capacity, NDM Exit Capacity or NDM Supply Point Capacity, shall relate to the category of capacity in respect of which the breach or default has occurred and the Shipper shall have the right to dispute the issue by the Transporter of any Suspension Notice pursuant to this Section 4.1 (other than a Suspension Notice given as a result of circumstances specified in Section 11 (*Invoicing and Payment*)) in accordance with Section 6 (*Dispute Resolution*).

- 4.1.4 Any such Suspension Notice shall have immediate effect upon the issuance of the Suspension Notice or shall have effect from such time as may be specified in the Suspension Notice subject to any instruction of the Commission issued pursuant to Section 6 (*Dispute Resolution*).
- 4.1.5 The Transporter shall, if the Transporter is of the reasonable opinion that the Shipper has taken or is taking such action as is appropriate to remedy the default or breach and the Transporter considers the continuation of the Suspension Notice is no longer appropriate in all the circumstances, either limit the effect of the Suspension Notice, or by notice to the Shipper (a "Suspension Cancellation Notice") cancel the Suspension Notice. Any such Suspension Cancellation Notice shall have immediate effect upon the issuance of the Suspension Cancellation Notice or shall have effect from such time as may be specified in the Suspension Cancellation Notice.
- 4.1.6 The Transporter shall issue a Suspension Cancellation Notice to the Shipper when, in the Transporter's reasonable opinion, the Shipper has remedied the default or breach specified in such Suspension Notice or in accordance with any instructions in that regard issued by the Commission pursuant to Section 6 (*Dispute Resolution*).
- 4.1.7 Where the Suspension Notice is in respect of a Shippers IP Capacity Booking of Bundled IP Capacity the Transporter may but shall not be obliged to notify the Adjacent TSO of such suspension and where the Suspension Notice suspends or limits the Shipper's right to submit IP Nominations or IP Renominations, the Transporter may develop a IP Nomination Processed Quantity of zero in respect of any IP Nomination which the IP Shipper may submit contrary to any such Suspension Notice.

## 4.2 Specific Termination

- 4.2.1 The Transporter shall have the right in accordance with this Section 4 to terminate a Shipper's IP Capacity Booking or Capacity Booking in respect of capacity reserved by a Shipper at an IP Entry Point, an Entry Point, or at or in respect of an Offtake Point or the Shipper's Capacity Booking at an IP VExit or the Shipper's Capacity Booking at a IP VEntry or a Shipper's



entry on the Inch Storage Register by notice (the "Transporter's Specific Termination Notice") to the Shipper as follows:

- (a) in the event that the Shipper is in material breach of any of its obligations under this Code and/or the Framework Agreement and/or any Ancillary Agreement in relation to a IP Capacity Booking or a Capacity Booking made by the Shipper (other than an obligation to make payment, in relation to which the provisions of Section 4.2.1(b) and Section 11.6.3 shall apply, or an obligation to provide or maintain financial security, in relation to which the provisions of Section 4.2.1(c) shall apply) and the Shipper has failed to remedy such breach (if the breach is capable of being remedied) within such period as is specified for that purpose in a notice issued by the Transporter specifying:
  - (i) the breach giving full particulars; and
  - (ii) (in reasonable detail) the remedy and the period (which shall be a period of such length as a Reasonable and Prudent Operator would require in order to remedy such breach and which shall be, in any event, not less than sixty (60) Business Days) within which to remedy the breach; or
- (b) in accordance with Section 11.6.3; or
- (c) in the event that a Shipper fails to provide or maintain financial security as required by Section 5 (*Credit Requirements*) in relation to a Capacity Booking or IP Capacity Booking and (subject to 4.2.1(d)) that failure is not remedied before the expiry of ten (10) Business Days from the date on which the Transporter has notified the Shipper that the Shipper is in breach of its obligations to provide or maintain such financial security; or
- (d) without prejudice to (c) above the Shipper has booked Yearly IP Capacity or Quarterly IP Capacity at an Interconnection Point and has not provided Financial Security in accordance with the Financial Security Policy not less than ten (10) Business Days prior to the date on which the Rolling Monthly IP Capacity Auction is held for Monthly Capacity which has the same Effective Date as the Effective Date of the applicable Yearly IP Capacity or Quarterly IP Capacity (as the case may be).
- (e) in the event that a Suspension Notice relating to a breach of any of the Shipper's obligations relating to a particular IP Capacity Booking or Capacity Booking is issued (other than a Suspension Notice which relates to a breach of any obligation of a Shipper to make payment pursuant to Section 11.4 and/or 11.6, or a breach of a Shipper's obligation to provide or maintain financial security pursuant to Section 5 (*Credit Requirements*)) and no Suspension Cancellation Notice is

served by the Transporter before the expiry of ten (10) days from the date of the Suspension Notice.

The Transporter shall provide to the Commission a copy of any Transporter's Specific Termination Notice issued pursuant to this Section 4.2.1. Where the Transporters specific Termination Notice relates to an IP Capacity Booking for Bundled Capacity the Transporter may inform the Adjacent TSO and the JBP Operator.

- 4.2.2 The Transporter's right to issue a Transporter's Specific Termination Notice pursuant to this Section 4.2 shall be without prejudice to any other right or remedy that the Transporter may have against the Shipper under this Code and/or the Framework Agreement and/or any Ancillary Agreement (including the Transporter's right to suspend the offtake of, or discontinue the supply of, Natural Gas at an Offtake Point or a IP VExit in accordance with Part H (*Operations*) Section 7 (*Interconnection Points*) Section 4.4 (*Natural Gas Offtaken at an Offtake Point: Compressors*) and/or Section 4.5 (*Discontinuance of Supply at an Offtake Point*)).
- 4.2.3 Any termination by the Transporter pursuant to this Section 4.2 shall, subject to any instruction of the Commission issued pursuant to Section 6 (*Dispute Resolution*), take effect at the end of the notice period specified for that purpose in the Transporter's Specific Termination Notice, which in respect of a Shippers Specific Termination Notice issued in relation to Section 4.2.1(d) above shall be not less than three (3) Business Days. in respect of a Transporter's Specific Termination Notice issued in relation to Section 4.2.1(b), Section 4.2.1(c) or shall be not less than ten (10) Business Days and in respect of a Transporter's Specific Termination Notice issued in relation to Section 4.2.1(a) or Section 4.2.1(e) shall be not less than twenty one (21) days, unless:
- (a) the Shipper has remedied the breach (if capable of remedy) and the Transporter has withdrawn the Transporter's Specific Termination Notice before the expiry of the notice period; or
  - (b) in the case of any such Transporter's Specific Termination Notice the Commission has instructed the Transporter pursuant to Section 6 (*Dispute Resolution*) to withdraw or suspend such Transporter's Specific Termination Notice.

For the avoidance of doubt the Transporter shall withdraw a Transporter's Specific Termination Notice before the expiry of the notice period specified therein if:

- (i) the Shipper has remedied the breach (if capable of remedy) prior to the expiry of the said notice period; or

- (ii) the Commission has instructed the Transporter pursuant to Section 6 (*Dispute Resolution*) to withdraw such Transporter's Specific Termination Notice.

4.2.4 A Shipper shall have the right in accordance with this Section 4 to terminate an IP Capacity Booking or a Capacity Booking made by the Shipper by notice (the "Shipper's Specific Termination Notice") in the event that:

- (a) the Transporter is in material breach of any of its obligations under this Code and/or the Framework Agreement and/or any Ancillary Agreement in relation to any such IP Capacity Booking or Capacity Booking made by the Shipper and the Transporter shall have failed to remedy such breach (if the breach is capable of being remedied) within such period as is specified for the purpose in a written notice from the Shipper to the Transporter. The Shipper shall in such notice:
  - (i) specify the breach giving full particulars; and
  - (ii) specify (in reasonable detail) the remedy and the period (which shall be a period of such length as a Reasonable and Prudent Operator would require in order to remedy such breach and which shall be, in any event, not less than sixty (60) Business Days) within which to remedy the breach.
- (b) the Capacity Booking is at or in respect of a LDM Supply Point and:
  - (i) Natural Gas is no longer required for consumption in the End User Facilities downstream of the LDM Supply Point as a result of discontinuance or cesser of business operations at such End User Facilities; and
  - (ii) the Shipper's Specific Termination Notice relates to all Capacity Bookings at or in respect of such LDM Supply Point.

The Shipper shall when submitting the Shipper Specific Termination Notice pursuant to Section 4.2.4(b) undertake to secure that any Capacity Transfers in respect of Capacity Booking, the subject matter of the Shipper's Specific Termination Notice and/or at the LDM Supply Point is terminated.

A Shipper shall provide to the Commission a copy of any Shipper's Specific Termination Notice pursuant to this Section 4.2.4.

4.2.5 Any termination by a Shipper pursuant to Section 4.2.4 shall, subject to any instruction by the Commission pursuant to Section 6 (*Dispute Resolution*), take effect at the end of the notice period specified for that purpose in the Shipper's Specific Termination Notice, which shall be not less than twenty one (21) days, unless the Transporter has remedied the breach (if capable of remedy) and the Shipper has withdrawn the Shipper's

Specific Termination Notice before the expiry of the notice period or the Commission has issued an instruction to withdraw the Shipper's Specific Termination Notice pursuant to Section 6 (*Dispute Resolution*).

For the avoidance of doubt the Shipper shall withdraw a Shipper's Specific Termination Notice before the expiry of the notice period specified therein if:

- (a) The Transporter has remedied the breach prior to the expiry of said notice period; or
- (b) The Commission has instructed the Shipper pursuant to Section 6 (*Dispute Resolution*) to withdraw or suspend such Shipper's specific Termination Notice.

4.2.6 Any termination by a Shipper pursuant to Section 4.2.4(b) shall unless the Shipper shall have withdrawn any such Shipper's Specific Termination Notice take effect on the first day of the calendar month which is not less than two months after the date upon which the Shipper's Specific Termination Notice shall have been received by the Transporter or such later day (being the first day of a calendar month) as shall have been agreed between the Shipper and Transporter, provided always that:

- (a) the Shipper shall have discharged all outstanding charges with respect to the LDM Supply Point pursuant to the Code, including those pursuant to any Connection or Siteworks Agreement; and
- (b) any relevant Capacity Transfers or IP Capacity Trades shall have been cancelled or terminated.

### 4.3 Consequences of Specific Termination

4.3.1 If a IP Capacity Booking or Capacity Booking is terminated by the Transporter in accordance with Section 4.2, such termination shall not extinguish or relieve the Shipper from:

- (a) the performance of any obligation or the discharge of any liability accrued in respect of such IP Capacity Booking or Capacity Booking as at the date on which the IP Capacity Booking or Capacity Booking (as the case may be) is terminated by the Transporter in accordance with Section 4.2;
- (b) where the Transporter's Specific Termination Notice relates to a LDM Capacity Booking, an Entry Capacity Booking, a Sub-Sea I/C Offtake Capacity Booking, the obligation to pay any and all amounts which may be due under the LDM Capacity Booking or Entry Capacity Booking or the Sub-Sea I/C Offtake Capacity Booking and/or this Code in respect of the remainder of the Capacity Booking Period of the Entry Capacity Booking or LDM Capacity Booking or Sub-Sea I/C Offtake Capacity Booking which would have been due pursuant thereto had it not been

terminated prematurely under the provisions of this Section 4 and any such outstanding payments shall, where relevant, be accelerated such as to become due and payable immediately upon such termination;

- (c) any obligation of the Shipper to pay any amounts due and owing pursuant to any Operational Siteworks Agreement and/or Siteworks Connections Agreement entered into by the Shipper; and
- (d) any obligation to pay any and all amounts, when due and ascertained, in relation to the Disbursements Account.

For the avoidance of doubt the payment by the Shipper of sums due pursuant to Section 4.3.1(b) shall not relieve the Transporter of its obligation to mitigate any outstanding amounts as might be payable by the Shipper in respect of the unexpired period of the LDM Capacity Booking.

- 4.3.2 Where the Transporter has terminated a Shipper's Capacity Booking in respect of capacity reserved at or in respect of a DM Offtake and/or a NDM Supply Point, such Shipper shall be liable to the Transporter for all charges payable with respect to such Capacity for the period commencing at the time of the Capacity Booking and ending on whichever is the later to occur of:

- (a) the last Day of the then current Gas Year; and
- (b) the Day which is six (6) months after the date of termination of the Capacity Booking,

and any such outstanding payments shall, where relevant, be accelerated such as to become due and payable immediately upon such termination provided always in the event that another Shipper becomes a Registered Shipper at the relevant Offtake Point the terminated Shipper's liability pursuant to this Section 4.3.2 shall be limited to the period ending on the date upon which the other Shipper becomes a Registered Shipper at the Offtake Point and to the extent that the terminated Shipper shall have paid on termination any charges in respect of the relevant DM Offtake or NDM Supply Point for a period subsequent to that date, the Transporter shall refund such charges to the terminated Shipper.

- 4.3.3 In addition to any other right which the Transporter may have if it terminates a Shipper's Capacity Booking or IP Capacity Booking in accordance with this Section 4, the Transporter may disconnect the relevant Offtake Point and the Shipper shall promptly indemnify the Transporter for all costs of disconnection.

- 4.3.4 If a IP Capacity Booking or a Capacity Booking is terminated by a Shipper in accordance with Section 4.2:

- (a) such termination shall not extinguish or relieve the Shipper from:

- (i) the performance of any obligation or the discharge of any liability accrued in respect of such IP Capacity Booking or Capacity Booking as at the time at which the IP Capacity Booking or Capacity Booking (as the case may be) is terminated by the Shipper in accordance with Section 4.2 provided however, the Shipper shall be relieved of the performance of any obligation or the discharge of any liability pursuant to a LDM Capacity Booking, Entry Capacity Booking or Sub-Sea I/C Offtake Capacity Booking in respect of the part of the Capacity Booking Period of the Entry Capacity Booking, LDM Capacity Booking or Sub-Sea I/C Offtake Capacity Booking subsequent to the termination or which would have been due pursuant thereto had it not been terminated prematurely under the provisions of Section 4.2;
- (ii) the performance of all of a Shipper's obligations (other than the Shipper's obligations relating to the Capacity Booking which is the subject of the Specific Termination Notice) arising under the Code and/or the Framework Agreement and/or any Ancillary Agreement which shall continue in full force and effect;
- (iii) any obligation of the Shipper to pay any amounts due and owing pursuant to any Siteworks Agreement and/or Siteworks Connections Agreement entered into by the Shipper;
- (iv) any obligation to pay any and all amounts, when due and ascertained, in relation to the Disbursements Account; and
- (b) the Transporter shall be entitled to disconnect the relevant Offtake Points.
- (c) where the Capacity Booking has been terminated in accordance with Section 4.2.6 the Transporter shall be entitled to isolate the relevant LDM Supply Point.

#### 4.3.5 If an IP Capacity Booking:

- (a) in respect of Bundled IP Capacity of a Shipper is terminated the Transporter may but shall not be obliged to notify the Adjacent TSO of such termination.
- (b) in respect of Yearly IP Capacity or Quarterly IP Capacity is terminated in accordance with Section 4.2.1(d) the Transporter may include the IP Capacity the subject matter of the cancelled IP Capacity Booking in the next available Rolling Monthly IP Capacity Auction.

#### 4.4 General Termination Rights

4.4.1 The party not in default (the "Non-Defaulting Party") shall have the right to terminate the Framework Agreement by issuing a Termination Notice, subject to such Non-Defaulting Party having issued to the Commission not less than three (3) Business Days notice of its intention to issue such Termination Notice to the party in default (the "Defaulting Party") on or at any time after the occurrence of any of the following events or circumstances:

- (a) in the case of the Defaulting Party being:
  - (i) a Shipper, where the Defaulting Party is in material or persistent breach of any of its obligations (other than an obligation to make payment in relation to which the provisions of Section 4.4.1(b)(i) shall apply, or an obligation to provide or maintain financial security, in relation to which the provisions of Section 4.4.1(b)(ii) shall apply) under this Code and/or any Ancillary Agreement and/or the Framework Agreement and/or where a breach by a Shipper has a material effect on the ability of the Transporter to perform its obligations in respect of any other Shipper pursuant to the Code or where, in the reasonable opinion of the Transporter, a breach by a Shipper affects the operational integrity of the Transportation System or any localised part thereof; or
  - (ii) a Shipper at an Interconnection Point and the Shipper has in respect of two (2) or more IP Capacity Bookings in any two (2) consecutive Gas Years failed to comply with the Financial Security Policy and the Transporter has as a consequence of such failure issued a Specific Termination Notice under Section 4.2.1(d) in respect of such IP Capacity Bookings;
  - (iii) the Transporter, where the Defaulting Party is in breach of any of its obligations under this Code and/or the Framework Agreement and/or any Ancillary Agreement and such breach has a material adverse effect on the Non-Defaulting Party,

and the Defaulting Party has failed to remedy such breach (if the breach is capable of being remedied) within such period as is specified for the purpose in a notice ("Default Notice") issued by the Non-Defaulting Party to the Defaulting Party. Any such Default Notice shall specify:

- (1) the breach giving full particulars;
- (2) (in reasonable detail) the remedy and the period (which shall be a period of such length as a Reasonable and Prudent Operator would require in order to remedy such breach and

which shall be, in any event, not less than sixty (60) Business Days) within which to remedy the breach;

- (b) in the case of the Defaulting Party being a Shipper:
  - (i) in accordance with Section 11.6.3; or
  - (ii) the Shipper fails to provide or maintain security as required by Section 5 (*Credit Requirements*) and that failure is not remedied before [the expiry of ten (10) Business Days] from the date on which notice is given of such failure by the Transporter to the Shipper.
- (c) The Non-Defaulting Party shall provide to the Commission a copy of any Default Notice issued by such Non-Defaulting Party.

4.4.2 The Non-Defaulting Party shall have the right to terminate the Framework Agreement forthwith by issuing a Termination Notice subject to such Non-Defaulting Party having issued to the Commission not less than three (3) Business Days notice of its intention to issue such Termination Notice on the Defaulting Party upon the occurrence of any of the following events:

- (a) any bona fide action or other steps are taken or legal proceedings are started (and are not withdrawn within fourteen (14) days) for the liquidation, winding-up, dissolution, or for the appointment of a receiver, liquidator, administrator, examiner or similar officer of the Defaulting Party;
- (b) an encumbrancer takes possession of, or a liquidator, receiver or an administrator or examiner is appointed over a substantial part of the assets of the Defaulting Party or any security granted by the Defaulting Party becomes enforceable (and, in the case of the Defaulting Party being the Transporter, a substantial part of its assets shall mean the Transportation System);
- (c) the Defaulting Party is unable to pay its debts as they fall due within the meaning of Section 570 of the Companies Act 2014 or enters into any composition, assignment, scheme or arrangement with creditors generally of such party (other than for the purpose of a bona fide solvent reconstruction or amalgamation) provided that, for the purposes of this Section 4.4.2(c), Section 570 of the Companies Act 2014 shall have effect as if for "€10,000" in 570(a)(i) and €20,000 in Section 570(b)(ii) of the Companies Act 2014 there was substituted "€65,000";
- (d) a distress, execution, sequestration or other process being levied or enforced upon or sued against all or any substantial part of its assets, rights or revenues of the Defaulting Party which is not discharged, stayed, or dismissed within thirty (30) days;



- (e) any event equivalent or analogous to any of the events specified in Sections 4.4.2(a), 4.4.2(b), 4.4.2(c) or 4.4.2(d) occurring in respect of the Defaulting Party in any jurisdiction;
  - (f) the Shipper is the Defaulting Party in receipt of two (2) or more Suspension Notices within any twelve (12) month period;
  - (g) the Shipper is the Defaulting Party and ceases to hold a Shipping Licence; or
  - (h) The Shipper is the Defaulting Party and ceases to have the legal, technical and/or operational ability to perform its obligations under this Code.
- 4.4.3 The Non-Defaulting Party's right to terminate pursuant to this Section 4.4 shall be without prejudice to any other right or remedy that the Non-Defaulting Party may have against the Defaulting Party under this Code and/or the Framework Agreement and/or any Ancillary Agreement (including any rights or remedies of the Transporter pursuant to Part B (*General Principles*) and the Transporter's right to suspend the offtake of, or discontinue the supply of, Natural Gas at an Offtake Point in accordance with Part H (*Operations*) Section 4.4 (*Natural Gas Offtaken at an Offtake Point: Compressors*) and/or Section 4.5 (*Discontinuance of Supply at an Offtake Point*).
- 4.4.4 Any termination pursuant to this Section 4.4 shall take effect as follows:
- (a) with immediate effect upon issue of a Termination Notice in respect of any termination pursuant to Section 4.4.2; and
  - (b) at the end of the notice period specified for that purpose in the Termination Notice, which, in respect of a Termination Notice issued in relation to Section 4.4.1(b) shall be not less than ten (10) Business Days and in respect of a Termination Notice issued in relation to Section 4.4.1(a)(i) or Section 4.4.1(a)(ii) shall be not less than twenty one (21) days, unless (i) the Defaulting Party has remedied the breach (if capable of remedy) and the Non-Defaulting Party has withdrawn the Termination Notice before the expiry of the notice period or (ii) in the case of a Termination Notice issued by the Transporter pursuant to Section 4.4.1(b), the Commission has instructed the Transporter, pursuant to Section 6 (*Dispute Resolution*), to withdraw or suspend such Termination Notice.
- 4.4.5 The Non-Defaulting Party shall withdraw a Termination Notice before the expiry of the notice period specified therein if:
- (a) The Defaulting Party has remedied the breach prior to the expiry of such notice period; or

- (b) The Commission has instructed the withdrawal of such Termination Notice pursuant to Section 6 (*Dispute Resolution*).

#### 4.5 Consequences of General Termination

4.5.1 If a Shipper's Framework Agreement is terminated by the Transporter in accordance with Section 4.4 the balance of all payments due, accrued or outstanding to the Transporter under this Code and/or any Ancillary Agreement at the time of termination shall immediately fall due and payable by the Shipper to the Transporter. Such payments shall include the following:

- (a) payment of any and all amounts which may be due under an IP Capacity Booking and/or Entry Capacity Booking in respect of the remainder of the IP Capacity Booking Period of the applicable IP Capacity Booking or Capacity Booking Period for the Entry Capacity Booking or which would have been due pursuant thereto had it not been terminated prematurely under the provisions of this Section 4 and any such outstanding payments shall, where relevant, be accelerated such as to become due and payable immediately upon such termination;
- (b) payment of all amounts payable in respect of capacity reserved at or in respect of a DM Offtake and/or a NDM Supply Point for the period commencing at the time of the relevant Capacity Booking and ending on whichever is the later to occur of:
  - (i) the last Day of the then current Gas Year; and
  - (ii) the Day which is six (6) months after the date of termination of the relevant Capacity Booking,

and any such outstanding payments shall, where relevant, be accelerated such as to become due and payable immediately upon such termination provided always in the event that another Shipper becomes a Registered Shipper at the relevant Offtake Point the terminated Shipper's liability pursuant to this Section 4.5.1 shall be limited to the period ending on the date upon which the other Shipper becomes a Registered Shipper at the Offtake Point and to the extent that the terminated Shipper shall have paid on termination any charges in respect of the relevant DM Offtake or NDM Supply Point for a period subsequent to that date, the Transporter shall refund such charges to the terminated Shipper;

- (c) payment of any and all amounts which may be due under a LDM Capacity Booking or Sub-Sea I/C Offtake Capacity Booking in respect of the remainder of the Capacity Booking Period of the LDM Capacity Booking or Sub-Sea I/C Offtake Capacity Booking (as the case may be) or which would have been due pursuant thereto had it not been terminated prematurely under the provisions of this Section 4 and any

such outstanding payments shall, where relevant, be accelerated such as to become due and payable immediately upon such termination;

- (d) payment of any and all amounts which may be due under any IP Capacity Booking or Capacity Booking of Short Term IP Capacity or Short Term Capacity in respect of the remainder of the IP Capacity Booking period or Capacity Booking Period of such IP Capacity Booking or Capacity Booking as the case may be with respect to IP Short Term Capacity, Short Term Capacity and which would have been due pursuant thereto had it not been terminated prematurely under the provisions of this Section 4 and any such outstanding payment shall where relevant be accelerated such as to become due and payable immediately upon such termination;
- (e) any payments due and owing pursuant to any Siteworks Agreement and/or Siteworks Connections Agreement entered into by a Shipper; and
- (f) payment, when due and ascertained, of all amounts payable by the Shipper in relation to the Disbursements Account.

For the avoidance of doubt the payment by the Shipper of sums due pursuant to Section 4.5.1(c) shall not relieve the Transporter of its obligation to mitigate any outstanding amount as might be payable by the Shipper in respect of the unexpired period of the LDM Capacity Booking.

- 4.5.2 All IP Capacity Bookings and Capacity Bookings of the Shipper, all Ancillary Agreements and any other agreements entered into by the Shipper and the Transporter pursuant to this Code shall terminate immediately upon termination of the Framework Agreement and the Shipper shall cease to be Registered Shipper at each IP Entry Point, Entry Point, Offtake Point, IP CSEP, IP VExit, IP VEntry or otherwise in accordance with the Code.
- 4.5.3 Termination of a Shipper's Framework Agreement shall not extinguish or relieve the Shipper from:
  - (a) the performance of any obligation or the discharge of any liability accrued at that time under this Code, the Framework Agreement and/or any Ancillary Agreement; or
  - (b) the remedy of any outstanding breach (where such a breach is capable of remedy) under this Code, the Framework Agreement and/or any Ancillary Agreement.
- 4.5.4 If a Shipper's Framework Agreement is terminated by the Shipper in accordance with Section 4.4 or Section 4.7, all IP Capacity Booking and Capacity Bookings of the Shipper and all Ancillary Agreements entered into by the Shipper shall terminate at the same time and the Shipper shall cease to be Registered Shipper at each IP Entry Point, Entry Point, Exit

Point, IP CSEP, IP VExit, IP VEntry or otherwise in accordance with the Code. Any such termination shall not extinguish or relieve the Shipper from:

- (a) the payment of any amounts due to the Transporter (including payment of any and all of the capacity component of the Tariff which may be due under the terms of this Code and all amounts payable by the Shipper in relation to the Disbursements Account) under this Code, the Framework Agreement and/or any Ancillary Agreement as at the date of the termination of the Framework Agreement;
- (b) any payments due and owing pursuant to any Siteworks Agreement and/or Siteworks Connections Agreement as at the date of the termination of the Framework Agreement, which shall become immediately payable; or
- (c) the remedy of any outstanding breach (where such a breach is capable of remedy) under this Code, the Framework Agreement and/or any Ancillary Agreement.

#### 4.6 **Change in Control of the Shipper**

- 4.6.1 Each Shipper shall notify the Transporter as soon as reasonably possible of any change of Control or proposed change of Control of the Shipper.
- 4.6.2 If the Shipper fails to satisfy the Transporter that the change of Control will not affect materially the legal, technical and/or operational ability of the Shipper to perform the Shipper's obligations under this Code or the ability of the Shipper to comply with the Financial Security Policy then the Transporter may terminate the Framework Agreement in accordance with the provisions of Section 4.4.
- 4.6.3 For the purposes of this Code, "Control" means the ability of a party to direct the affairs of another party whether by way of contract, ownership of shares or otherwise (including for the avoidance of doubt the declaration of a trust conferring a beneficial interest).

#### 4.7 **Shipper Discontinuance**

- 4.7.1 Neither the Transporter nor a Shipper may terminate the Framework Agreement, including any such party's obligations under this Code and/or any Ancillary Agreement, other than in accordance with the provisions of Section 4.2, Section 4.4 or this Section 4.7.
- 4.7.2 Provided that:
  - (a) a Shipper is no longer the Registered Shipper at any IP Entry Point, Entry Point, Exit Point, IP CSEP, IP VEntry, IP VExit, Connected System Exit Point, the Sub-Sea I/C Offtake or Supply Point;

- (b) all amounts payable or which may become payable by the Shipper to the Transporter pursuant to any provision of this Code (including, for the avoidance of doubt, the Disbursements Account), the Framework Agreement and/or any Ancillary Agreement and/or any other agreement entered into by the Transporter and the Shipper have been paid in full; and
- (c) any outstanding breaches of this Code or any of the agreements specified in Section 4.7.2(b) shall have been remedied or waived by the other party,

either Party may terminate the Framework Agreement, including any such Party's obligations under this Code and/or any Ancillary Agreement (unless already terminated in accordance with Section 4.4), by giving to the other Party not less than twenty one (21) days' notice provided always that a Shipper in receipt of notice of termination in accordance with this Section 4.7 may, prior to the expiry of the notice period specified therein, notify the Transporter that such Shipper wishes to remain a Shipper for the purposes of this Code, in which case the Transporter shall withdraw the notice of termination issued.

#### 4.8 **Interpretation**

For the avoidance of doubt, a breach of any Procedure and/or a breach of any Ancillary Agreement shall be treated as a breach of this Code for the purposes of this Section 4.

#### 4.9 **Notice to the Commission**

- 4.9.1 The Transporter shall provide to the Commission a copy of each notification issued by the Transporter pursuant to this Section 4.
- 4.9.2 A Shipper shall provide to the Commission a copy of each notification issued by that Shipper pursuant to this Section 4.

#### 4.10 **Notice to JBP Operator**

- 4.10.1 The Transporter shall notify the JBP Operator when a Shipper which is a JBP User ceases to be a Shipper pursuant to this Code.
- 4.10.2 The Transporter may notify any applicable Adjacent TSO of any notice issued to the JBP Operator pursuant to Section 4.10.1.

## 5. **CREDIT REQUIREMENTS**

- 5.1 The Transporter shall keep, maintain and publish a Financial Security Policy.
- 5.2 Each Shipper shall comply with the Financial Security Policy at all times.
- 5.3 Each Shipper shall provide to the Transporter such financial security as may be prescribed pursuant to the Financial Security Policy and in respect of the amounts calculated in accordance with the Financial Security Policy and shall ensure that such financial security remains in full force and effect.
- 5.4 Each Shipper shall immediately notify the Transporter upon any change to any credit rating relating to such Shipper and upon any change to any credit rating relating to any credit support provider of such Shipper and shall provide the necessary details in respect of such change as prescribed by, and in accordance with, the Financial Security Policy. In addition, the Shipper shall procure that its credit support provider(s) shall immediately notify the Transporter upon any change of credit rating relating to such credit support provider.
- 5.5 The Transporter may, in its absolute discretion, serve on any Shipper that fails to comply with the obligation to provide and/or maintain Financial Security, or fails to adhere to the terms of the Financial Security Policy, a Suspension Notice pursuant to Section 4.1 or a Transporter's Specific Termination Notice pursuant to Section 4.2 or a Termination Notice pursuant to Section 4.4.1.

## 6. DISPUTE RESOLUTION

### 6.1 Overview

6.1.1 For the purposes of this Section 6:

- (a) a "Dispute" means any controversy, difference or dispute whatsoever arising out of or in connection with this Code and/or the Framework Agreement and/or any Ancillary Agreement including any question regarding the existence, validity, interpretation, breach or termination of the same;
- (b) a "Dispute Notice" means a written notice setting out the material particulars of the matters which are in Dispute, the identity of the Parties to the Dispute and, save in respect of a dispute to which Section 6.1.2 refers, whether the Party sending such notice wishes the Dispute to be resolved pursuant to the process in Section 6.2 or Section 6.3;
- (c) "Technical Issues" means technical issues arising pursuant to Part C (*Capacity*); Part D (*Nominations, Allocations and NDM Supply Point Reconciliation*), Section 2 (*Allocations*); Part E (*Balancing and Shrinkage*); Part F (*Administration*), Sections 2 (*Classification*), 5 (*Meter Data Services*) and 6 (*Siteworks*); Part G (*Technical*), Sections 1 (*Specifications: Quality and Pressure*), 3 (*Measurement*) and 4 (*Measurement Equipment Verification*) or Part H (*Operations*), Section 2 (*Physical Congestion*) Part H (*Operations*) Section 2A (*Congestion Management Procedures*) of this Code; and
- (d) in respect of any Dispute, "Parties" means the Transporter, the Shipper and/or Shippers who are party to that Dispute, and "Party" shall be construed accordingly.

For the avoidance of doubt any dispute between a Shipper and the JBP Operator (in relation to any matters concerning the performance of activities on the JBP) shall be determined in accordance with the JBP Users T &C's.

6.1.2 In the case of a Dispute in relation to:

- (a) Part B (*General Principles*);
- (b) Part G (*Technical*), Sections 2 (*System Planning*) and 5 (*Maintenance*);
- (c) Part H (*Operations*), Section 1 (*Emergencies*);
- (d) [Sections 1 (*Modifications*), 4.6 (*Change in Control of the Shipper*), 4.7 (*Shipper Discontinuance*), 4.8 (*Interpretation*), 4.9 (*Notice to the Commission*), 12.1 (*Application to be a Shipper*); 12.4 (*GNI (IT) Systems*), 12.5 (*Assignment and Subcontracting*), 12.7 (*Severance*) and 12.9 (*Publication of Documents*);]

- (e) the issue or the threatened or anticipated issue of a Suspension Notice (as referred to in Section 4.1.3), Specific Termination Notice or Termination Notice;
- (f) an Invoice pursuant to Section 11.7.2,

either Party may at any time refer such Dispute to the Commission for determination in accordance with Section 6.2, by service of a Dispute Notice on the other Party or Parties and the Commission.

6.1.3 In the case of a Dispute in relation to any matter other than a matter referred to in Section 6.1.2, a Party shall give to the other Party or Parties written notice setting out the material particulars of the Dispute. The Parties shall use reasonable endeavours to resolve the Dispute and if such a Dispute has not been resolved by the Parties within twenty one (21) Business Days after the date of such notice setting out the material particulars of the Dispute, it may be referred by any Party to either:

- (a) determination by the Commission pursuant to Section 6.2 by service of a Dispute Notice on the other Party or Parties and the Commission, provided that if the Commission notifies all Parties in writing that it is neither necessary nor appropriate for the Commission to determine such Dispute, the Dispute shall be deemed to be referred to alternative dispute resolution pursuant to Section 6.3 on the date of such notice from the Commission; or
- (b) alternative dispute resolution pursuant to Section 6.3 by service of a Dispute Notice on the other Party or Parties,

provided that if one Party to a Dispute refers such Dispute to alternative dispute resolution pursuant to 6.1.3(b), the recipient of such Dispute Notice may within 10 Business Days of receipt notify the other Party and the Commission that it wishes to have the Dispute determined by the Commission, in which case the Dispute shall be deemed to have been referred to the Commission, subject always to the rights of the Commission pursuant to Section 6.1.3(a) to determine that it is neither necessary nor appropriate for the Commission to determine such Dispute.

6.1.4 Either Party may at any time send a copy of a Dispute Notice to the Commission. The Commission may on receipt of a Dispute Notice or the application of any Party:

- (a) instruct a Party not to issue to the other Party a Suspension Notice, a Specific Termination Notice and/or a Termination Notice (as the case may be) in respect of the event that is the subject matter of the Dispute Notice; and/or
- (b) where a Suspension Notice, a Specific Termination Notice and/or a Termination Notice has been issued in respect of the event that is the



subject matter of the Dispute Notice, instruct the relevant Party to withdraw or suspend the effect of any such Suspension Notice, Specific Termination Notice or Termination Notice so issued,

in each case subject to further variation or withdrawal by the Commission of such instruction or final resolution of the Dispute; and

- 6.1.5 Any Suspension Notice, Specific Termination Notice or Termination Notice shall take effect in accordance with their terms and with the provisions of Section 4 (*Suspension and Termination*), save to the extent that the relevant Party has been otherwise instructed by the Commission pursuant to Section 6.1.4.
- 6.1.6 Nothing in this Section 6 shall prohibit any Party from exercising its rights (if any) under Irish or EU law, including any right to make a complaint pursuant to Article 41(11) of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC or any applicable national legislation implementing same, provided however:
- (a) if a Party issues a Dispute Notice pursuant to the provisions of this Section 6, then unless the Party in receipt of such Dispute Notice notifies the other Party and the Commission within 14 days of receipt of the Dispute Notice that it wishes to exercise its right (if any) to submit the event or issues the subject matter of the Dispute by way of complaint or otherwise pursuant to Article 41(11) of Directive 2009/73/EC or any applicable national legislation implementing such Directive, both Parties to the dispute shall be deemed to have waived (to the extent permitted by law) their respective rights to submit the event or issues the subject matter of the Dispute by way of complaint as aforesaid; and
  - (b) if a Party submits a dispute by way of complaint or otherwise pursuant to Article 41(1) of Directive 2009/73/EC or any applicable national legislation implementing such Directive (and other than in accordance with the Code) or if a Party in receipt of a Dispute Notice notifies the other Party and the Commission of its requirement to exercise its right (if any) to have the issues the subject matter of the Dispute referred for resolution pursuant to Article 41(11) of Directive 2009/73/EC or any applicable national legislation implementing such Directive and the Commission accepts that the Party which has notified the Commission of its requirement to exercise such right does in fact have such right, then and in that event the Dispute shall be referred for resolution accordingly and the Parties shall be deemed to have waived their right to have such Dispute resolved in accordance with the remaining provisions of this Section 6 of the Code,

and in either event, the liability of the Parties shall be limited as provided in this Code irrespective of whether the Dispute is resolved in accordance with the procedures contained in this Section 6 or as a result of the issue of a decision following a complaint or otherwise refer the dispute for resolution pursuant to Article 41(11) of Directive 2009/73/EC or any applicable national legislation implementing such Directive and the Parties shall, notwithstanding any award or decision as a result of the exercise by a party of a legal right, not be entitled to recover any compensation or damages to the extent that such award or damages exceed the limits of liability prescribed in this Code and to the extent that any such compensation or damages may be awarded, the Parties hereby waive the right to any award of damages or compensation which exceeds those expressed limits of liability.

- 6.1.7 Nothing in Section 6.1.6 shall oblige the Commission to determine a Dispute or complaint unless it is legally obliged to do so.

## 6.2 Determination by the Commission

- 6.2.1 A Dispute referred to the Commission pursuant to Section 6.1.2 or 6.1.3(a) shall be determined by the Commission in accordance with such dispute resolution procedures as may be prescribed by the Commission from time to time.
- 6.2.2 The Parties shall comply with any and all directions, requests or instructions issued by the Commission in connection with any such Dispute including:
- (a) provision of any information requested by the Commission; and/or
  - (b) attending any meetings or hearings scheduled by the Commission.
- 6.2.3 Subject to any right of appeal or other right which may exist at law, the decision of the Commission in relation to any Dispute referred to it under Section 6.1 or 6.2 shall be final and binding upon the Parties.

## 6.3 Alternative Dispute Resolution

### 6.3.1 Mediation

- (a) Where a Dispute is referred or deemed to have been referred to alternative dispute resolution pursuant to Section 6.1.3, it shall be first referred to a single mediator (the "Mediator") to be agreed between the Parties or, failing such agreement, to be appointed by the Commission.
- (b) The Mediator and its assistants (if any) shall, as a pre-requisite to the Mediator's appointment, enter into a confidentiality undertaking with the Parties in the same terms as required by Section 9 (*Confidentiality and Data Protection*).

- (c) The mediation shall be carried out within thirty (30) days of the date of the Dispute Notice and the Parties shall use reasonable endeavours to resolve the Dispute within this time period.
- (d) Any mediation shall be carried out on a without prejudice basis.
- (e) The Parties shall, unless they agree otherwise, bear their own costs and expenses arising from such mediation, and the Parties shall bear the fees and expenses of the Mediator and all administrative costs arising from such mediation equally.

### 6.3.2 **Expert Determination**

- (a) A Dispute relating exclusively to Technical Issues which is not resolved by mediation within thirty (30) days of the date of the Dispute Notice may be referred by any Party by notice in writing to the other Party or Parties to determination by an Expert in accordance with this Section 6.3.2 (“Expert Referral Notice”).
- (b) If a Party considers that the Dispute does not relate exclusively to Technical Issues then it may, within ten (10) days after the date of the Expert Referral Notice serve service a notice of objection (“Notice of Objection”) on the other Party or Parties and the Commission.
- (c) If a Notice of Objection is served pursuant to Section 6.3.2(b) the Commission shall determine whether the Dispute relates exclusively to Technical Issues.
- (d) If a Notice of Objection is served pursuant to Section 6.3.2(b) and the Commission decides that the Dispute relates exclusively to Technical Issues or if no Notice of Objection is served within the timeframe referred to in Section 6.3.2(b) the Dispute shall be determined in accordance with this Section 6.3.2.
- (e) If a Notice of Objection is served pursuant to Section 6.3.2(b) and the Commission decides that the Dispute does not relate exclusively to Technical Issues, this Section 6.3.2 shall not apply and the Dispute shall be deemed to be referred to arbitration pursuant to Section 6.3.3 on the date of notice from the Commission.
- (f) The procedure for the appointment of an Expert shall be as follows:
  - (i) the Parties shall attempt to agree on the appointment of a single Expert to settle the Dispute;
  - (ii) if by the later of twenty (20) days after the date of the Expert Referral Notice and ten (10) days after the decision of the Commission pursuant to Section 6.3.2(d), the Parties have been unable to agree on the choice of an Expert, any Party may inform

the Commission of the nature and complexity of the Dispute and request it to appoint a single Expert for the determination of the Dispute;

- (iii) if the Commission refuses to make such an appointment or does not do so by the later of thirty five (35) days after the date of the Expert Referral Notice and twenty five (25) days after the decision of the Commission pursuant to Section 6.3.2(d), any of the Parties may then request the President for the time being of the Institute of Engineers of Ireland to appoint an Expert within fifteen (15) days of being requested to do so;
- (iv) upon the Expert being agreed on or appointed in accordance with this Section 6.3.2(f) the Parties shall immediately notify the Expert of his appointment and shall request him to confirm within seven (7) days whether or not he is willing and able to accept the appointment and, if he accepts the appointment, to confirm his independence;
- (v) the Expert shall be a person suitably qualified by education, experience and/or training to determine the Dispute;
- (vi) the Expert shall be entitled to:
  - (1) seek such independent professional (including legal) and/or technical advice; and
  - (2) obtain secretarial assistance,as he may deem reasonably necessary; and
- (vii) the Expert and his assistants (if any) shall, as a pre-requisite to the Expert's appointment, enter into a confidentiality undertaking with the Parties in the same terms as required by Section 9 (*Confidentiality and Data Protection*).
- (g) Any and all communications between the Parties and the Expert shall be made or confirmed in writing and a copy of such communications shall be provided simultaneously to the other Party or Parties. No meeting between the Expert and any of the Parties shall take place unless all the Parties have been given a reasonable opportunity to attend.
- (h) The terms of reference of the Expert shall include the following:
  - (i) that the Expert shall, as soon as practicable after the confirmation of his appointment, call the Parties to a meeting (which shall, together with all other meetings, be held in Ireland) at which he shall clarify, and, if necessary, define the Dispute and give directions as to the future conduct of the Dispute;

- (ii) that the Expert may, from time to time, give such directions as he sees fit;
  - (iii) that the Parties 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 shall furnish the Parties with a draft of his proposed determination, together with full written reasons, within thirty (30) days of his appointment or such other time as agreed in writing by the Parties;
  - (iv) that the Expert shall give full written reasons for his determination;
  - (v) the Parties shall be entitled to make representations to the Expert within thirty (30) days after the receipt of the draft of the Expert's proposed determination; and
  - (vi) the Expert shall issue his final determination as soon as is reasonably practicable after the expiry of the time period referred to in Section 6.3.2(h)(v).
- (i) If an Expert declines appointment or after appointment dies or is removed by order of a competent court or is incapable of acting and the Parties do not by agreement fill the vacancy, then another Expert shall be appointed by the Commission or the President for the time being of the Institute of Engineers of Ireland or his nominee, as the case may be, in accordance with the procedures set out in Section 6.3.2(f).
  - (j) If, within a reasonable period, but in any event not later than one hundred and twenty (120) days after the acceptance of his appointment, the Expert has not made his determination, then, at the request of any of the Parties, another Expert shall be appointed in accordance with this Section 6.3.2, 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.
  - (k) The Expert shall be entitled to act as an expert notwithstanding that, at the time of the appointment or at any time before he gives determination, he has or may have some interest or duty which conflicts or may conflict with his function under such appointment, provided that he has disclosed any such interest or duty of which he is aware before accepting such appointment (or promptly upon any such interest or duty arising subsequent to such appointment) and the Parties have, within seven (7) days after such disclosure or such longer period agreed between the Parties, confirmed their agreement to his appointment.

- (l) 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 agreement between the Parties, or by the Commission or by the Institute of Engineers of Ireland) shall be borne equally by the Parties and each Party shall bear its own costs.
- (m) An Expert appointed under this Agreement shall act as an expert and not as an arbitrator and the provisions of the Arbitration Acts 1954 to 1998 shall not apply to his determination.
- (n) Subject to any right of appeal or other right which may exist at law, the determination of the Expert shall be final and binding upon the Parties.

### 6.3.3 **Arbitration**

- (a) Any Dispute in relation to any matter other than a matter referred to in Section 6.1.2 or 6.3.2(a) which is not resolved by mediation within thirty (30) days of the date of the Dispute Notice may be referred by any Party to arbitration pursuant to this clause 6.3.3.
- (b) The procedure for the appointment of an arbitrator shall be as follows:
  - (i) The arbitrator shall be a person agreed between the Parties or, if the Parties cannot agree within ten (10) days after the referral to arbitration, any Party may inform the Commission of the nature and complexity of the Dispute and request it to appoint a single arbitrator for the determination of the Dispute;
  - (ii) if the Commission refuses to make such an appointment or does not do so within ten (10) days after the date of being requested to do so, any of the Parties may then request the President for the time being of the Institute of Engineers of Ireland to appoint an arbitrator within fifteen (15) days of being requested to do so; and
  - (iii) if the arbitrator declines appointment or after appointment dies or is removed by order of a competent court or is incapable of acting and the Parties do not by agreement fill the vacancy, then another arbitrator shall be appointed by the Commission at the request of any Party or, if the Commission refuses to make such an appointment or does not do so within ten (10) days after the date of being requested to do so, any Party may request the President for the time being of the Institute of Engineers of Ireland or his nominee to make such an appointment in accordance with the procedures set out in Section 6.3.3(b)(ii).
- (c) Subject to any right of appeal or other right which may exist at law, the arbitrator's award shall be final and binding on the Parties. The arbitration shall take place in Ireland and the language of the arbitration shall be English.

- (d) Unless otherwise agreed by the Parties, any reference to arbitration shall be conducted in accordance with the [Institute of Engineers of Ireland Arbitration Procedure (2000)] or any amendment or modification thereof being in force at the time of the appointment of the arbitrator.
- (e) Any such reference to arbitration shall be deemed to be a submission to arbitration within the meaning of the Arbitration Acts 1954 to 2010.

## 7. DELIVERY OF GAS: TITLE AND RISK

### 7.1 Overview

7.1.1 Title and risk in Natural Gas delivered by a Shipper at an IP Entry Point or at an Entry Point to the Transportation System shall pass (in accordance with the provisions of this Code) to the Transporter at the relevant point of delivery in respect of such IP Entry Point, Entry Point or IP VEntry (as the case may be).

7.1.2 Title and risk in Natural Gas offtaken by a Shipper from the Transportation System shall, in accordance with the provisions of this Code, pass to the Shipper at the relevant Offtake Point, the Sub-Sea I/C Offtake, the IP CSEP, Connected System Exit Point or IPV Exit (as the case may be).

### 7.2 Each Shipper warrants to the Transporter that:

7.2.1 it has title (at the point of delivery) to all Natural Gas made available for delivery or tendered for delivery to the Transportation System at an IP Entry Point or Entry Point by that Shipper;

7.2.2 all such Natural Gas (at such point of delivery) is free of any lien, charge, encumbrance or adverse claim (as to title or otherwise), including any claim for any tax, royalty or other charge in respect of the production, gathering, processing and tendering of Natural Gas arising on or before delivery thereof to the Transportation System; and

7.2.3 it has the right to take title to all such Natural Gas made available for delivery by the Transporter to such Shipper and offtaken by such Shipper at an Offtake Point, the Sub-Sea I/C Offtake, IP CSEP or, Connected System Exit Point (as the case may be).

7.3 The warranties in Section 7.2 shall be treated as satisfied where the Shipper has arranged for delivery or tendered for delivery of Natural Gas to the Transportation System by a person or persons who has or jointly have title (at the point of delivery) to such Natural Gas and such person passes, or persons jointly pass, title to such Natural Gas to the Transporter.

7.4 Each Shipper shall indemnify the Transporter and hold it harmless against any loss, liability, damage, claim, action, proceeding, cost and expense suffered or incurred by or made or brought against the Transporter (including any claim by a third party to title in Natural Gas delivered by a Shipper at an IP Entry Point or Entry Point or offtaken by a Shipper at an Offtake Point or IP CSEP or Connected System Exit Point or Sub-Sea I/C Offtake) in consequence of any breach of the warranties in Section 7.2.

7.5 The Transporter shall have and retain (subject to the provisions of any Ancillary Agreement and/or this Code) full, complete and unencumbered rights of action with respect to certain commercial/non-regulated aspects of the Transportation System, in



respect of the delivery of Natural Gas into, or the offtake of Natural Gas from, the Transportation System.

## 8. NOTICES

- 8.1 References in this Section 8 to a notice are to any notice, application, request, approval, instruction or other communication to be given, made or submitted by one party to another under this Code, a Framework Agreement and/or any Ancillary Agreement.
- 8.2 All notices required under this Code in relation to a Single Sided IP Nomination (where the Transporter is the Initiating TSO) and all Double Sided IP Nominations, Nominations, Renominations, Allocations, Exit Capacity Transfers, Entry Capacity Trades, Entry Point Transfers, After Day Trades, LDM Supply Point Capacity Title Transfers, reservations of capacity and notices issued by or to the GPRO in respect of any Change of Shipper shall be issued through and utilising the GNI (IT) Systems and the Transporter and each of the Shippers consent hereby to the receipt and delivery of notices through and utilising the GNI (IT) Systems, provided however that when the Transporter declares the GNI (IT) Systems are not operational, such notices shall be issued in accordance with any direction given by the Transporter pursuant to Section 8.8. For the avoidance of doubt, the Transporter may declare the GNI (IT) Systems not operational in whole or in part in respect of some or all Shippers.
- 8.3 All Single Sided IP Nominations at an Interconnection Point at which the Transporter in the Matching TSO shall be submitted to the Initiating TSO at that IP in accordance with the Interconnected System Transportation Arrangements of the applicable Adjacent TSO.
- 8.4 All notices related to JBP Transactions shall be submitted utilising the JBP.
- 8.5 All notices other than those referred to in Section 8.2, 8.3 or 8.4 which are required under this Code in relation to the transportation of Natural Gas and all notices with respect to Section 2.A (Contractual Congestion Management) the (including notices in relation to Operational Flow Orders, Difficult Days, Restricted Capacity Days, or Procedures) may be issued through and utilising the GNI (IT) Systems or in such other manner as may be determined by the Transporter from time to time.
- 8.6 Any other notices required under this Code, shall, save where otherwise expressly provided, be:
- 8.6.1 in writing; and
  - 8.6.2 delivered in person or sent by registered post (and by air mail if posted overseas) or by fax to the party due to receive the notice at the relevant address specified in Section 8.6 or such other address as identified from time to time.
- 8.7 Each Party hereby agrees that:
- 8.7.1 by making, giving or submitting a notice (which comprises an application or request) to the Transporter by means of the GNI (IT) Systems, each Shipper shall (without prejudice to any right of a Shipper to withdraw a

notice in accordance with this Code prior to its acceptance by the Transporter) be bound by such notice (as amended or varied where appropriate) in respect of the subject matter(s) of the said application/request;

- 8.7.2 any such notice shall not bind the Transporter until such time as it is accepted by the Transporter, or is deemed to have been accepted pursuant to this Code, (or as otherwise may be provided pursuant to the Code) as the case may be, by means of the GNI (IT) Systems;
- 8.7.3 the giving or submission of any notice (which comprises an application or request) to the Transporter together with the Transporter's acceptance, or deemed acceptance thereof, will constitute a written agreement (subject to and incorporating the provisions of the Code) between the Transporter and the Shipper in respect of the subject matter of the notice, application or request in satisfaction of any applicable Legal Requirement that requires an agreement to be in writing, signed or delivered, or otherwise;
- 8.7.4 it shall waive any right which it may have to challenge the enforceability of any agreement referred to in Section 8.5.3 solely on the basis of an absence of written memorandum and/or a written signature and/or on the basis that such agreement was concluded electronically by means of the GNI (IT) Systems or utilising the JBP (where applicable). The Transporter's records of all agreements concluded electronically by a Shipper will be conclusive and binding on the Shipper and the Transporter, as the case may be;
- 8.7.5 a Shipper making, giving or submitting a notice to the Transporter by means of the GNI (IT) Systems or utilising the JBP (where applicable) shall not indicate or otherwise require that such notice be acknowledged by the Transporter and the Transporter shall not be required to provide an acknowledgement in respect of such notice. The absence of any acknowledgement by the Transporter of such notice shall not in any way affect the establishment of any legal rights and obligations arising from such notice and the Transporter's acceptance or deemed acceptance thereof; and
- 8.7.6 any notice made, given or submitted by means of the GNI (IT) Systems shall be taken to have been sent when it enters the GNI (IT) Systems. Any such notice shall be taken to have been sent from and received at the place of business of the Transporter, as specified in Section 8.8.
- 8.7.7 any notice made, given or submitted by means of the JBP shall be taken to have been sent or received in accordance with the JBP Users T&C's.

8.8 The address referred to in Section 8.5 is:

- 8.8.1 in the case of the Transporter, save where the Transporter has specified by written notice to a Shipper another address to which notices to it shall be given:

Gas Networks Ireland  
 PO Box 51  
 Gasworks Road  
 Cork  
 Ireland

[Fax: + 353 (0)21 453 4646 (as amended from time to time)];

and

- 8.8.2 in the case of a Shipper, the Shipper's address for service in Ireland as specified in its Framework Agreement. In the event of a change of address of a Shipper, such Shipper shall notify the Transporter of the correct address for service immediately.

- 8.9 A notice given under Section 8.4 shall be deemed received:

- 8.9.1 if delivered in person, when actually received at the address;
- 8.9.2 if sent by registered post, on the third (3<sup>rd</sup>) day following the day of posting or, if sent by airmail from overseas, on the fifth (5<sup>th</sup>) day following the day of posting; and
- 8.9.3 if sent by fax, when confirmation of its complete transmission has been recorded by the sender's fax machine, provided that in the event that there is a dispute in respect of the time when the notice sent by fax was received, the time of receipt shall be:
- (a) in the case of a fax sent by a Shipper, the time of receipt of such fax recorded by the Transporter's fax machine, save that in the event of a fault with the Transporter's fax machine the time of receipt shall be the time of actual receipt; and
  - (b) in the case of a fax sent by the Transporter, the time of complete transmission of such fax recorded by the Transporter's fax machine save that in the event of a fault with the Transporter's fax machine the time of receipt shall be the time of actual receipt,

provided that supplemental evidence in support of and/or demonstrating the above receipt/sending of notices may be addressed by appropriate means (such as, by way of example, telephone data records).

- 8.10 Where the GNI (IT) Systems are not operational (in whole or in part) such that it may not be possible to give some or all notices under Section 8.2, the Transporter shall direct Shippers to provide notices in such form and using such methods of communication as may be reasonable and practicable and reserves the right, and may

(in its reasonable discretion) elect, (i) to suspend any of the provisions of this Code and/or any Ancillary Agreement in whole or in part such that the Shipper shall not be entitled to submit notices by means of GNI (IT) Systems or otherwise in respect of any of the matters which have been suspended and/or (ii) to declare an Emergency and/or (iii) to declare that an event of Force Majeure is deemed to occur such that the Transporter shall not thereby be obliged during the period when the GNI (IT) Systems are not operational (in whole or in part) to issue notices under Sections 8.2 or 8.4 respectively and shall not be liable for any loss and/or damage arising as a result thereof.

- 8.11 The JBP is not and shall not be deemed to form part of the GNI (IT) Systems the provision of this Section 8 shall not apply to the JBP. The provisions of Part H (*Operations*) Section 7 (*Interconnection Points*) shall apply with respect to the JBP Operator, the JBP and the JBP Processes.

## 9. CONFIDENTIALITY AND DATA PROTECTION

### 9.1 Definitions

9.1.1 "Confidential Information" means:

(a) in relation to the Transporter:

- (i) any data or other information relating to or received from a Shipper obtained in the course of the implementation of, or pursuant to, this Code and/or any Ancillary Agreement and/or any Procedures and/or the code of operations which was superseded by this Code or the performance of its obligations thereunder (whether in writing, orally or by any other means and whether directly or indirectly); or
- (ii) the terms of each of the Ancillary Agreements and the Framework Agreement,

provided that in respect of any information relating to a Shipper, the Transporter shall be entitled to use such information as may be necessary for it to carry out its obligations under this Code, its Transportation Licences, any applicable Interconnection Agreement, IP OBA Provisions, IP Matching Procedures and/or the Framework Agreement and/or any Ancillary Agreement and/or any Procedures; and

(b) in relation to each Shipper:

- (i) any data or other information relating to the Transporter, the Transportation System or another Shipper which is obtained in the course of the implementation of, or under, or pursuant to, this Code, its Shipping Licence and/or the Framework Agreement and/or any Ancillary Agreement and/or any Procedures or the performance of its obligations thereunder (whether in writing,

orally or by any other means and whether directly or indirectly);  
or

(ii) the terms of each of its Ancillary Agreements.

9.1.2 Confidential Information shall not include the terms of this Code and/or the Framework Agreement and/or any Ancillary Agreement or any data or other information which:

- (a) at the time of disclosure or at any time thereafter becomes part of the public domain other than by reason of a breach of this Code and/or the Framework Agreement and/or any Ancillary Agreement;
- (b) is known by the Receiving Party at the time of its receipt or acquisition other than by reason of a breach of this Code and/or the Framework Agreement and/or any Ancillary Agreement;
- (c) is subsequently lawfully acquired by the Receiving Party from another source in a non-confidential manner otherwise than in breach of an obligation of confidentiality; or
- (d) which the Transporter (or its Affiliate) is required to disclose in accordance with or to give effect to this Code, any IP Matching Procedure, any applicable Interconnection Agreement, the GNI Tripartite Agreement or IP OBA Provisions.

9.1.3 “Data Controller” has the meaning in Data Protection Law.

9.1.4 “Data Processor” has the meaning in Data Protection Law.

9.1.5 “Data Protection Law” means:

- (a) the Data Protection Acts 1988 and 2003 to the extent not repealed;
- (b) the General Data Protection Regulation (Regulation (EU) 2016/679 (“GDPR”);
- (c) the Data Protection Act 2018;
- (d) all other data protection laws and laws relating to the data and information of individuals in force or applicable in Ireland from time to time;

9.1.6 “Data Subject” means “data subject” as defined in Section 1 of the Data Protection Law.

9.1.7 “Disclosed Personal Data” means

- (a) any Transporter Personal Data disclosed by the Transporter to the Shipper pursuant to this Code;
  - (b) any Shipper Personal Data disclosed by the Shipper to the Transporter pursuant to the Code;
- 9.1.8 “Disclosing Data Controller” means the Transporter and/or the Shipper (as the case may be) in its capacity as Data Controller disclosing Personal Data to the Shipper or Transporter (as the case may be).
- 9.1.9 "Disclosing Party" means the party disclosing Confidential Information to a Receiving Party and shall include a Disclosing Data Controller as applicable.
- 9.1.10 “Model Clauses” means the standard contractual clauses as adopted by the European Commission from time to time concerning the transfers of personal data outside of the EEA.
- 9.1.11 “Model Clause Procedure” means the procedure of that name published by the Transporter from time to time with the approval of the Commission.
- 9.1.12 “Personal Data” means “personal data” as defined in Data Protection Law.
- 9.1.13 “Personal Data Breach” means “personal data breach” as defined in Data Protection Law.
- 9.1.14 “Receiving Data Controller” means the Transporter or Shipper (as the case may be) as Data Controller receiving Personal Data from the Shipper or Transporter as the case may be.
- 9.1.15 "Receiving Party" means the party to whom Confidential Information is disclosed by a Disclosing Party.
- 9.1.16 “Shipper Personal Data” means the Personal Data which is disclosed by the Transporter to a Shipper under this Code.
- 9.1.17 “Transporter Personal Data” means the Personal Data which is disclosed by the Transporter to a Shipper under this Code.

## 9.2 Interpretation

- 9.2.1 For the avoidance of doubt, all references to the Transporter (or to a Party where such Party is the Transporter) in this Section 9 shall include the Transporter where it is designated by the Commission as the GPRO and/or the National Gas Emergency Manager and/or where it performs or is requested to perform services on behalf of the GPRO and/or to carry out the functions of or on behalf of the National Gas Emergency Manager.
- 9.2.2 References to the Code in this Section 9 shall include a reference to Procedures and/or any Ancillary Agreement as the context so requires.

## 9.3 Obligations to keep confidential

- 9.3.1 Confidential Information shall not be disclosed in whole or in part by a Receiving Party to any other person or used for any purpose other than that contemplated by this Code, Transportation Licence or Shipping Licence, and subject to Data Protection Law the Receiving Party shall make every effort to prevent the use or disclosure of Confidential Information unless the Receiving Party obtains the prior written consent of the Disclosing Party.
- 9.3.2 Each Shipper shall be entitled to disclose Confidential Information to each of its End Users provided that such Confidential Information relates only to the End User(s) to which it is disclosed. Each Shipper shall procure that each of its End Users shall keep confidential any Confidential Information disclosed to it for any reason. Each Shipper shall be liable to the Transporter for any breach of this Section 9 by any of its End Users.

## 9.4 Exceptions

- 9.4.1 Notwithstanding the provisions of Section 9.3, but subject to the provisions of Sections 9.3.3, 9.4.2 to 9.4.6, (and further subject to Section 9.6 where Confidential Information is Personal Data) Confidential Information may be disclosed by a Receiving Party:
- (a) to a professional advisor of, or a consultant to, the Receiving Party;
  - (b) to any Affiliate of the Receiving Party;
  - (c) to any bona fide potential transferee or assignee of the whole or a significant part of the issued share capital of the Receiving Party or any Affiliate thereof or of the Receiving Party's interest under, or related to, this Code or any relevant Ancillary Agreements, provided that the Receiving Party obtains the prior written agreement of the potential transferee or assignee that it shall only use the disclosed Confidential Information for the purposes of the potential transfer or assignment;



- (d) to any bank or financial institution from whom the Receiving Party, with respect to its operations under this Code, is seeking or obtaining finance, provided that the Receiving Party obtains the prior written agreement of the bank or financial institution that it shall only use the disclosed Confidential Information for the purposes of the intended finance;
- (e) to the extent required by law or the regulations of a recognised stock exchange, or any governmental agency;
- (f) to the extent required by the order of any court or statutory body having competent jurisdiction over the Receiving Party;
- (g) to the extent required by the Transportation Licences of the Transporter (including (where relevant) any obligations of the Transporter as the designated GPRO or as appointed to provide any services to or on behalf of the GPRO);
- (h) to the extent required by the Shipping Licence of any Shipper;
- (i) to the extent required by the Commission in the performance of its statutory duties;
- (j) to any person to which disputes are referred for resolution in accordance with Section 6 (Dispute Resolution);
- (k) to a Connected System Operator solely for the purpose of any Connected System Agreement (including the negotiation and implementation thereof) or where such Confidential Information is disclosed in connection with the Transportation System and/or the Connected System;
- (l) to any Adjacent TSO for the purpose of any Interconnection Agreement, IP Matching Procedures or IP OBA Provisions (including the negotiation or implementation thereof) or where the Confidential Information is disclosed in connection with the Transportation System and the Interconnected System.
- (m) with respect to a LDM Offtake to any Shipper which is a Registered Shipper at the LDM Offtake;
- (n) to the End User;
- (o) with respect to the Sub-Sea I/C Offtake to any counterparty to the Sub-Sea I/C Offtake Agreement.
- (p) to the JBP Operator.

9.4.2 Where the Receiving Party is a Shipper and reasonably determines that a disclosure of the type mentioned in Section 9.4.1(e) is required, whether

or not the requirement has the force of law, the disclosure or announcement shall, so far as it is practicable, only be made by the Receiving Party after consultation with the Transporter and after taking into account the Transporter's reasonable requirements as to its timing, content and method of communication.

- 9.4.3 If Section 9.4.2 applies and it is not practicable for the Receiving Party, acting in good faith, to consult with the Transporter before the disclosure is made, the Receiving Party shall, to the extent permitted by law, inform the Transporter of the circumstances, timing, content and method of communication of the disclosure immediately after such disclosure is made.
- 9.4.4 The Receiving Party shall, with respect to the disclosure of Confidential Information according to Sections 9.4.1(a) to 9.4.1(n), keep the disclosure of such Confidential Information to the minimum necessary for the purpose for which it is disclosed.
- 9.4.5 Where disclosure of Confidential Information is made to any third party appropriate safeguards shall be made as a pre-requisite to such disclosure by the Receiving Party to prevent that third party from making any further disclosure of the disclosed Confidential Information without the consent of both the Disclosing Party and the Receiving Party.
- 9.4.6 Where disclosure is made by a Receiving Party to a third party in accordance with Sections 9.4.1(a), 9.4.1(c) or 9.4.1(d), the Receiving Party shall, in addition to making any other appropriate safeguards under Section 9.4.5, and as a pre-requisite to such disclosure, procure that such third party enters into a confidentiality agreement with the Receiving Party.
- 9.4.7 A Receiving Party shall at the reasonable request of the Disclosing Party enforce as against a third party any such confidentiality agreement entered into with such third party in accordance with the requirements of this Section 9. A Receiving Party shall indemnify and keep indemnified the Disclosing Party from and against any actions, costs, claims or liabilities, which may arise as a result of the disclosure by the Receiving Party or such third party of Confidential Information in breach of this Code or any such confidentiality agreement.

## 9.5 **Survival**

- 9.5.1 The provisions of this Section 9 shall, subject to Section 9.5.2, continue to bind the Transporter and each of the Shippers for the duration of this Code and/or any Ancillary Agreements and for three (3) years thereafter.
- 9.5.2 If a Shipper ceases to be bound by this Code (a "Discontinuing Shipper") the provisions of this Section 9 shall continue to bind the Discontinuing

Shipper and, in relation to the Discontinuing Shipper, the Transporter and each remaining Shipper for three (3) years from the date the Discontinuing Shipper ceases to be bound by this Code and/or the Framework Agreement and/or any Ancillary Agreements.

## 9.6 Data & Data Protection

- 9.6.1 Any data (other than Personal Data submitted to the Transporter by a Shipper) which is processed, recorded or maintained by the Transporter (including any such data processed, recorded or maintained by the Transporter in performing its obligations as designated GPRO or in the performance of services to or on behalf of the GPRO) either on the GNI (IT) Systems or otherwise shall subject to Section 9.6.3(a) be the property of the Transporter and, subject to the provisions of this Code and/or any Ancillary Agreement and/or any Legal Requirement the Transporter may use such data in such manner as the Transporter considers appropriate.
- 9.6.2 Subject to the obligations of the Transporter pursuant to any Legal Requirement and the rights and obligations of the Transporter with respect to Measurement Equipment owned by third parties, for the avoidance of doubt, all data (other than Personal Data submitted to the Transporter by a Shipper) arising from the use of Measurement Equipment and the associated intellectual property rights shall belong to the Transporter who may use such data as it reasonably thinks fit, subject to this Section 9 and any other data publication requirements.
- 9.6.3 The Shipper is responsible for the content of all data which it provides to the Transporter. Each time a Shipper provides data (other than Personal Data) to the Transporter:
- (a) the Shipper hereby grants to the Transporter a perpetual non-exclusive, royalty free licence in respect of such data and all intellectual rights therein to use, copy, adapt, make available, and deal with such data for the purposes of performance and implementation of this Code and/or any Ancillary Agreement and other purposes contemplated by this Code but not otherwise;
  - (b) the Shipper warrants that such data shall, when provided, be accurate, complete and up-to-date; and
  - (c) Sections 9.6.1 and 9.6.3 shall apply to any data derived from such data referenced therein and all compilations of such data created by or on behalf of the Transporter.
- 9.6.4 The Transporter and the Shipper acknowledge that for the purposes of Data Protection Law:
- (a) the Transporter and the Shipper may both be Data Controllers in respect of Personal Data processed for the purpose of certain activities

contemplated by this Code and in that event the provisions contained in Section 9.6.8 will apply;

- (b) the Shipper may be the Data Controller and the Transporter may be the Data Processor in respect of Personal Data processed for the purpose of certain activities contemplated by this Code and, in that event, the provisions contained in Section 9.6.9 will apply;
- (c) the Transporter may be the Data Controller and the Shipper may be the Data Processor in respect of Personal Data processed for the purpose of certain other activities contemplated by this Code and in that event the provisions contained in Section 9.6.9 will apply;
- (d) for the purpose of Data Protection Law where both the Transporter and the Shipper are Data Controllers, the Transporter and each Shipper are independent Data Controllers and not joint Data Controllers; and
- (e) where one Party processes (within the meaning of the Data Protection Law) Personal Data on behalf of the other Party as a result of activities contemplated by this Code, it does so on and in accordance with that other Party's documented instructions.

9.6.5 Where the Transporter and Shipper provide data (including Personal Data), or make such data available, to each other pursuant to this Code, the party receiving the data shall be entitled to process such data only for the purposes of the performance and the implementation of this Code and/or any Ancillary Agreement and for other purposes contemplated by this Code, but not otherwise.

9.6.6 Each party warrants to the other that where it processes (within the meaning of Data Protection Law) Personal Data for the purposes of the performance of its obligations or exercise of its rights under and implementation of this Code and/or any Ancillary Agreement and other purposes contemplated by this Code, it shall comply with the provisions of Data Protection Law.

9.6.7 ~The Shipper warrants to the Transporter that each time the Shipper submits Personal Data to the Transporter for processing (within the meaning of Data Protection Law) for any purpose related to a Change of Shipper Request such Personal Data:

- (i) shall have been obtained by the Shipper for one or more specified, explicit and legitimate purposes related to this Code and to which the Data Subject has given explicit consent, including the exchange of Personal Data to other Shippers via the GNI (IT) Systems;
- (ii) shall have been processed fairly by the Shipper (within the meaning of Data Protection Law); and

(iii) shall, when submitted, be accurate, complete and up to date.

9.6.8 The Transporter and each Shipper agrees in their respective capacity as a Receiving Data Controller, of Disclosed Personal Data disclosed or provided to it by the Disclosing Data Controller, that:

- (a) it will use and process the Disclosed Personal Data only in accordance with Data Protection Law;
- (b) it will comply with any obligations it may have under Data Protection Law to provide Data Subjects with information regarding its receipt and use of the Disclosed Personal Data;
- (c) it will maintain written records of the processing activities in relation to the Disclosed Personal Data as are required under Data Protection Law (including Article 30 of GDPR);
- (d) it will comply with its obligations under Data Protection Law where a Data Subject exercises his or her rights in respect of the Disclosed Personal Data under Data Protection Law;
- (e) it will not disclose the Disclosed Personal Data to any third party except in accordance with Data Protection Law;
- (f) it will not transfer or host the Disclosed Personal Data outside the European Economic Area except in accordance with Data Protection Law;
- (g) it will implement such technical and organisational measures as are necessary to ensure appropriate security for the Disclosed Personal Data and to satisfy the security obligations imposed upon a controller under Data Protection Law (including protection against unauthorised or unlawful processing of Disclosed Personal Data and against accidental, unauthorised or unlawful loss, destruction, alteration, disclosure of, or damage or access to, Disclosed Personal Data transmitted, stored or otherwise processed);
- (h) it shall notify the other Party of any issue affecting the security of Personal Data for which that other Party is responsible as Data Controller; and

9.6.9 Where one Party processes (within the meaning of Data Protection Law) Personal Data as Data Processor on behalf of the other Party then the Party acting as Data Processor:

- (a) acknowledges that where it acts as Data Processor on behalf of the other Party as Data Controller, it has certain specific obligations as Data Processor under Data Protection Law;

- (b) warrants to the other Party that it shall, having regard to the state of technological development and cost of implementing any measures, take appropriate security measures against unauthorised access to or unauthorised alteration, disclosure or destruction of Personal Data and against all other unlawful forms of processing (within the meaning of Data Protection Law);
- (c) shall notify the other Party of any issue affecting the security of Personal Data for which that other Party is responsible as Data Controller;
- (d) shall ensure that the persons authorised by it to process such Personal Data are bound by appropriate confidentiality obligations;
- (e) shall implement such technical and organisational security measures as are required to comply with the data security obligations under Data Protection Law;
- (f) shall not engage any sub-processor without the prior written consent of the other Party and where the other Party has consented to the appointment of a sub-processor, shall not replace or engage other sub-processors without the prior written consent of the Other Party;
- (g) where any sub-contractor will be processing such Personal Data, shall ensure that a written contract exists between them and the sub-contractor containing clauses equivalent to those imposed in this Section;
- (h) shall inform the Data Controller without delay and in any event within 3 Business Days in the event of receiving a request from a Data Subject to exercise their rights under Data Protection Law and provide such co-operation and assistance as may be required to enable the Data Controller to deal with such request or complaint in accordance with the provisions of Data Protection Law;
- (i) shall assist the Data Controller by implementing appropriate technical and organisational measures to allow the Data Controller to comply with requests from Data Subjects to exercise their rights under Data Protection Law;
  - (i) shall assist the Data Controller in ensuring compliance with its obligations in respect of security of Personal Data, data protection impact assessments and prior consultation requirements under Data Protection Law;
  - (ii) when the Data Processor ceases to provide services relating to data processing the Data Processor shall: (i) at the choice of the Data Controller, delete or return all such Personal Data to the Data Controller; and (ii) delete all existing copies of such Personal Data

unless EU law or the laws of the EU Member State require storage of the Personal Data; and

- (j) shall make available to the Data Controller all information necessary to demonstrate compliance with the obligations laid down in this Section.
- 9.6.10 Each Party warrants to the other Party that each time it submits Personal Data to that other Party for processing (within the meaning of Data Protection Law) such Personal Data shall have been obtained and submitted in compliance with Data Protection Law.
- 9.6.11 The Shipper additionally warrants to the Transporter that each time the Shipper submits Personal Data to the Transporter for processing (within the meaning of Data Protection Law) for any purpose related to a Change of Shipper Request such Personal Data:
- (a) shall have been obtained by the Shipper for one or more specified, explicit and legitimate purposes related to this Code and to which the Data Subject has given explicit consent, including the exchange of Personal Data to other Shippers via the GNI(IT) Systems;
  - (b) shall have been processed fairly by the Shipper (within the meaning of Data Protection Law); and
  - (c) shall, when submitted, be accurate, complete and up to date.
- 9.6.12 The Shipper warrants that where Personal Data which is Personal Data within the meaning of Article 9 of the GDPR is disclosed then one of the exceptions contained in Article 9.2 applies to that Personal Data.
- 9.6.13 Each Party shall indemnify, keep indemnified, and defend (if so requested by the other Party) at its own expense, the other Party against any actions, costs, claims or liabilities, incurred by that other Party or for which either Party may become liable in consequence of any breach of their respective warranties as contained in Section 9.6.3, 9.6.6, 9.6.7, 9.6.9, 9.6.10, 9.6.11 and 9.6.12.
- 9.6.14 Each Party, acting as Data Processor with respect to Personal Data, on behalf of another Party (as Data Controller) in accordance with this Code shall provide to such Party (in its capacity as Data Controller) such information as regards the processing by the Data Processor of Personal Data for and on behalf of such Data Controller as the Data Controller may reasonably require in order to enable the Data Controller to address or respond to any lawful enquiry or investigation pursuant to Data Protection Law with respect to the processing of such Personal Data.
- 9.6.15 Either Party may authorise a third party to process (within the meaning of Data Protection Law) Personal Data submitted to it by the other Party provided that:

- (a) the terms authorising such a third party are in writing and contain substantially the same obligations as that of the authorising Party pursuant to this Section 9.6; and
  - (b) such terms also prohibit the transfer of Personal Data outside the European Economic Area unless there is a data protection agreement which requires compliance with Data Protection Law in relation to that Personal Data.
- 9.6.16 If the Transporter provides data or makes data available to a Shipper pursuant to this Code, the Shipper shall be entitled to use such data only for the purposes of the performance and the implementation of this Code and/or any Ancillary Agreement and for other purposes contemplated by this Code, but not otherwise.
- 9.6.17 The Transporter shall, to the extent that it keeps and, where applicable, processes (within the meaning of Data Protection Law) Personal Data for the purposes of the performance of its obligations or exercise of its rights under and implementation of this Code and/or any Ancillary Agreement and other purposes contemplated by this Code, comply with the provisions of Data Protection Law, any amendments or re-enactments thereof, and all regulations made thereunder.
- 9.6.18 The Shipper shall, to the extent that it keeps and, where applicable, processes (within the meaning of Data Protection Law) Personal Data for the purposes of the performance of its obligations or exercise of its rights under and implementation of this Code and/or any Ancillary Agreement and other purposes contemplated by this Code, comply with the provisions of Data Protection Law, any amendments or re-enactments thereof, and all regulations made thereunder.

## 9.7 **Transfer of Data outside of the EEA**

- 9.7.1 If either Party wishes to transfer or host Personal Data outside of the EEA (or if either Party wishes to request the other Party to transfer Personal Data to it outside of the EEA) then the Party wishing to transfer or host Personal Data outside of the EEA (and or requesting the other Party to transfer such Personal Data to it outside of the EEA) shall notify the other Party accordingly, and
- (a) shall provide to the other Party evidence that the European Commission has decided that the country in question ensures an adequate level of protection in accordance with Article 45 of GDPR; or
  - (b) shall provide to the other Party evidence (to the reasonable satisfaction of the other Party) that the proposed transfer is within a corporate group and binding corporate rules apply and are in place as set out in Article 47 of GDPR; or



- (c) the parties may execute the appropriate Model Clauses in accordance with the Model Clause Procedures;

and no such Personal Data shall be transferred or hosted outside of the EEA until (a) or (b) above have been and continue to be complied with and/or appropriate Model Clauses have been concluded between the Parties in accordance with the Model Clauses Procedure and in any case only for such period as it shall be permitted to lawfully transfer and or host Personal Data outside the EEA in accordance with such provisions.

- 9.7.2 It is acknowledged by the Parties that the Model Clauses may cease to apply and/or may be replaced or superseded from time to time by or in accordance with EU Regulations or may be declared by a Competent Authority not to be effective to provide for lawful disclosure of Personal Data in which case the Transporter will replace or amend the Model Clauses Procedure and
  - (a) Personal Data shall not be transferred or hosted outside of the EEA in accordance with the superseded Model Clauses (and/or any Ancillary Agreement giving effect to them) with effect from the date that such Model Clauses cease to apply or be effective; and
  - (b) any then existing Ancillary Agreement giving effect to the superseded Model Clauses shall no longer be effective to facilitate disclosure or hosting of Personal Data outside of the EEA; and
  - (c) the Parties may enter into new arrangements in accordance with any new or revised Model Clauses in accordance with any revised Model Clauses Procedures
- 9.7.3 Any agreement put in place between the Transporter and a Shipper pursuant to the Model Clauses Procedure shall be an Ancillary Agreement for the purpose of this Code and notwithstanding Part B (General Principles) in the event of any conflict between such Ancillary Agreement and this Code the provisions of such Ancillary Agreement shall prevail to the extent necessary to comply with Data Protection Law only and to maintain the effectiveness of the Model Clauses.
- 9.7.4 No Personal Data shall be transferred outside of the European Economic Area by a Party acting as Data Processor or any of its agents or sub-processors without the prior written consent of the Party which disclosed that Personal Data which consent may be subject to terms and conditions (including, without limitation, that the data importer enters into model clauses in the form approved by the European Commission and, where relevant, complies with the provisions regarding sub-processors contained in such model clauses in respect of any sub-processors).

**9.8 Confidential Information under Previous Codes**

In relation to any Shipper which was bound by the code of operations which was superseded by this Code, such Shipper agrees that the provisions of this Section 9 only shall apply to any information or data that was disclosed by or to the Shipper under that code (and the provisions of such code in respect of such information or data as may have been disclosed thereunder shall be suspended or terminated accordingly and have no application).

**9.9 JBP Operator and JBP**

The provisions of this Section 9 shall not apply to information submitted by the Shipper to the JBP Operator or the Transporter (utilising or through the JBP or the JBP Operator).

10. **TAXES AND DUTIES**

- 10.1 Subject to Section 2 (*Liabilities and Indemnities*), each Shipper shall be responsible for such Shipper's payment of any fiscal imposts, taxes, duties or levies imposed, whether or not at the time of entering into the Framework Agreement, upon delivery, transportation, supply, offtake, appropriation or other disposition of the Shipper's Natural Gas.
- 10.2 A Shipper shall indemnify, keep indemnified and hold harmless the Transporter from all actions, proceedings, claims, demands, damages, losses, costs, charges, expenses, and fines and any interest thereon arising as a result of or in connection with any failure by each Shipper, Interconnected System Shipper, Third Party Shipper or any of its or their subcontractors or agents to comply with this Section 10.

## 11. INVOICING AND PAYMENT

### 11.1 Introduction

11.1.1 The amounts payable by the Transporter and the Shippers under this Code, Procedures (where applicable) and/or any Ancillary Agreement will be invoiced and paid in accordance with this Section 11.

11.1.2 For the purposes of this Section 11:

- (a) "Invoice" means an invoice submitted by the Transporter to a Shipper;
- (b) "Invoice Item" means an item shown as payable by the Transporter or by a Shipper in an Invoice;
- (c) "Invoice Amount" means, in relation to an Invoice Item, the amount shown as payable by the Shipper or the Transporter in respect of the Invoice Item in the Invoice.

### 11.2 Content

11.2.1 Each Invoice shall include:

- (a) the identity of the Shipper;
- (b) the period to which the Invoice relates;
- (c) the Invoice Amount in respect of each Invoice Item;
- (d) a unique number by which the Invoice may be identified;
- (e) the tax payable pursuant to the Invoice; and
- (f) the date on which the Invoice is issued.

### 11.3 Monthly Invoice and Annual Invoice

11.3.1 Each Month the Transporter shall, as soon as reasonably practicable (and in any event not later than twelve (12) Business Days after the end of the relevant Month), submit monthly invoices (each a "Monthly Invoice") to each Shipper with reasonable supporting details in respect of those Invoice Items included in such Monthly Invoice.

11.3.2 Following the end of each Gas Year, the Transporter shall submit annual invoices (each an "Annual Invoice") to each Shipper with reasonable supporting details in respect of those Invoice Items included in such Annual Invoice. Each Annual Invoice shall specify the Gas Year to which it relates.

11.3.3 The Transporter shall be entitled to issue one or more Monthly Invoices or Annual Invoices as the Transporter considers appropriate in respect of charges due and payable pursuant to the Code and/or any Ancillary

Agreement provided that the Transporter shall identify separately Transmission System related charges and Distribution System related charges.

- 11.3.4 IP Capacity Charges pursuant to Part C (*Capacity*), Exit Capacity Charges pursuant to Part C (*Capacity*), Entry Capacity Charges pursuant to Part C (*Capacity*), Section 4.4.2, capacity charges in relation to Supply Point Capacity and capacity charges in relation to IP VExit Capacity shall be calculated and invoiced on a monthly basis and included in a Monthly Invoice and capacity charges in relation to IP VEntry Capacity and capacity charges in relation to IP CSEP Offtake Capacity.
- 11.3.5 Commodity Charges shall be payable by a Shipper in respect of the quantities of Natural Gas specified in each such Shipper's IP Entry Allocations, Entry Allocation(s), IP VEntry Allocation(s), IP CSEP Offtake Allocations, Exit Allocation(s), IP VExit Allocations(s) and/or Supply Point Allocation(s) and shall be calculated and invoiced on a monthly basis and included in a Monthly Invoice.
- 11.3.6 Invoice Items which may be included in Invoices include the following:
- (a) IP Capacity Charges, Exit Capacity Charges, Entry Capacity Charges and capacity charges in relation to Supply Point Capacity;
  - (b) any Commodity Charges;
  - (c) any Balancing Charges;
  - (d) any IP Overrun Charges and any Overrun Charges;
  - (e) any Shrinkage Costs;
  - (f) any other costs properly arising under this Code or any Ancillary Agreement (including charges to ensure that the Transporter is Cash Neutral in relation to Balancing Gas, Shrinkage Gas and Non-Compliant Gas);
  - (g) any Auction Premium payable to the Transporter.
  - (h) any Scheduling Charges;
  - (i) any Reconciliation charges;
  - (j) any adjustments to the commodity component of the Tariff payable by a Shipper as a result of meter data cleansing pursuant to Part G (*Technical*) Section 3.9 (*Meter Data Cleansing*);
  - (k) any failure to interrupt charges, including IP VExit Failure to Interrupt Charges and/or IP VEntry Failure to Interrupt Charges;

- (l) any other sums due and owing at the time of issue of an Invoice from each Shipper to the Transporter or from the Transporter to each Shipper (as the case may be) under this Code or the relevant Ancillary Agreement; and
- (m) any amounts payable pursuant to Advance Buyback Agreements; and
- (n) any credit to which the Shipper is entitled in accordance with Part H (*Operations*) Section 2A;
- (o) any applicable IP Registration Fee; or
- (p) any applicable Capacity Charge Rebate
- (q) any other amount due or payable pursuant to this Code.

11.3.7 Where:

- (a) an IP Capacity Trade;
- (b) an Entry Capacity Trade;
- (c) an LDM Exit Capacity Transfer; or
- (d) a LDM Supply Point Title Transfer

has taken place, the Shipper which reserved the Primary Capacity or Primary IP Capacity shall remain liable to the Transporter for the relevant IP Capacity Charges and/or Capacity Charges in respect of the Primary IP Capacity or Primary Capacity as if the relevant trade or transfer had not taken place. All other applicable charges shall be payable by the Shipper which reserved the Primary IP Capacity or Primary Capacity and the Shipper utilising the relevant Secondary Capacity (as the case may be) in accordance with this Code.

## 11.4 Payments

11.4.1 Subject to Section 11.7 each Shipper shall pay to the Transporter the sum set out in the Monthly Invoices or the Annual Invoices by the date which is:

- (a) in the case of the Monthly Invoices, the second (2<sup>nd</sup>) last Business Day of each Month or twelve (12) days after the issue of the Monthly Invoice (whichever is the later); and
- (b) in the case of the Annual Invoices, the second (2<sup>nd</sup>) last Business Day of the Month in which the Annual Invoice is issued or twelve (12) days after the issue of the Annual Invoice (whichever is the later),

(in each case, the "Due Date").

- 11.4.2 If the Due Date calculated in accordance with Section 11.4.1 is not a Business Day, then the Due Date shall be the next Business Day following the Due Date calculated in accordance with Section 11.4.1.
- 11.4.3 Payments under this Code shall be made in Euro (€) by direct bank transfer or equivalent instantaneous transfer of funds to such bank in Ireland as the Transporter may from time to time specify to each Shipper in writing.
- 11.4.4 Amounts payable under this Code shall be paid:
- (a) free and clear of any restriction, reservation or condition; and
  - (b) without deduction on account of any amount due or to become due to the person paying, whether by way of set off, counterclaim or otherwise except:
    - (i) to the extent required by law; or
    - (ii) as expressly authorised by the Transporter; or
    - (iii) pursuant to Part E (*Balancing and Shrinkage*) Section [1.4] (*Disbursements Account*).
- 11.4.5 For the avoidance of doubt, a Shipper's obligation to pay any amounts pursuant to this Code and/or the Framework Agreement and/or any Ancillary Agreement shall not be affected by the existence of any circumstance under which, in accordance with this Code, the Transporter is not obliged to, or is not in breach of its obligation to, make Natural Gas available for offtake from an Offtake Point or at the IP CSEP or to accept deliveries of Natural Gas at an IP Entry Point or at an Entry Point.

## 11.5 Taxes

- 11.5.1 An Invoice shall include the amount of any UK or Ireland taxes (excluding Corporation Tax but including Value Added Tax) payable in respect of the Invoice.
- 11.5.2 Except to the extent (if any) required by law, amounts payable under this Code and/or the Framework Agreement and/or any Ancillary Agreement shall be paid without deduction or withholding in respect of tax.

## 11.6 Interest and Payment Default

- 11.6.1 If a Shipper fails to make a payment on the Due Date, such overdue payment shall bear interest, calculated and compounded monthly, from the Due Date until the date on which the payment is received at the annual rate of EURIBOR plus two (2) per cent.

- 11.6.2 If a Shipper fails to make a payment the Transporter may issue a Suspension Notice on the first (1<sup>st</sup>) Business Day after the Due Date to the Shipper in accordance with Section 4.1.1. The Suspension Notice shall specify that some or all of the Shipper's rights under this Code, the Framework Agreement and/or any Ancillary Agreement shall be suspended with effect from the fifth (5<sup>th</sup>) Business Day following the Due Date.
- 11.6.3 If after ten (10) Business Days following the Due Date in respect of an Invoice, the Shipper has not paid all outstanding sums in respect of such Invoice (including any interest on such sums) or if the Transporter has requested payment of such sums pursuant to the financial security provided to the Transporter in respect of the financial obligations of the Shipper and the Shipper has not provided additional financial security so as to satisfy the requirements of the Financial Security Policy having due regard to any payment made or to be made pursuant to a demand issued by the Transporter in respect of such financial security, the Transporter, may issue a Transporter's Specific Termination Notice pursuant to Section 4.2.1 and/or a Termination Notice pursuant to Section 4.4.1.

## 11.7 Disputes

- 11.7.1 If there is any bona fide question or dispute as to the proper calculation of any Invoice Amount payable by a Shipper or whether such Invoice Amount is properly payable, the Shipper shall notify the Transporter of such question or dispute as soon as reasonably practicable after receipt of the Invoice and provide the Transporter with full details of the reasons why the Invoice Amount is disputed. When any invoice sum is in dispute, the Shipper shall pay the whole Invoice Amount (including the disputed portion) when due in accordance with the foregoing provisions of this Section 11.
- 11.7.2 Promptly after receiving notice of a bona fide question or dispute pursuant to Section 11.7.1, the Transporter shall consult with the Shipper with a view to resolving the question or dispute, failing which the dispute shall be referred to the Commission for determination in accordance with Section 6 (*Dispute Resolution*). After settlement or determination of any dispute over any Invoice Amount, the Transporter shall repay the Shipper such portion of the Invoice Amount (if any) which is agreed or adjudged not to be payable by the Shipper (together with interest at the annual rate of EURIBOR plus one (1) per cent calculated as from the date of receipt by Transporter of the disputed amount until the date of repayment of such amount).
- 11.7.3 The Transporter shall notify the Shipper as soon as reasonably practicable upon becoming aware that any Invoice Amount may not have been properly calculated or any Invoice Amount may not have been properly



payable, and shall provide the Shipper with full details of such error as soon as they are available.

The Transporter shall include in the next subsequent relevant Invoice issued by the Transporter to the Shipper (being an Invoice which includes or is appropriate to the Invoice Item to which the error relates) an Invoice Item in respect of any adjustment to any Invoice Amount in order to correct any error in any previous Invoice Amount and which error has been notified to the Shipper pursuant to this Section 11.7.3.

## 12. GENERAL

### 12.1 Application to be a Shipper

12.1.1 In order to become a Shipper a person (the "Applicant") must:

- (a) satisfy or secure satisfaction of the requirements in Section 12.1.2; and
- (b) on satisfaction of the requirements in Section 12.1.2, execute the Framework Agreement and deliver same to the Transporter and thereby agree to be bound by this Code.

12.1.2 The requirements referred to in Section 12.1.1(a) are as follows:

- (a) the Applicant shall have submitted a written request to the Transporter, in such form as the Transporter may from time to time prescribe, including the following details:
  - (i) the name of the Applicant;
  - (ii) the legal nature of the Applicant and, where the Applicant is not a company incorporated under the Companies Act 2014 (as amended), such further information concerning the constitution of the Applicant (including a legal opinion as to the capacity of the Applicant to be a party to the Code and to the enforceability of the Framework Agreement, the Code and any agreements concluded thereunder or with respect thereto) as the Transporter may reasonably require;
  - (iii) the address, telephone and facsimile numbers of the Applicant, and details of the individual for whose attention notice is to be marked for the purposes of notice under Section 8 (*Notices*);
  - (iv) the Applicant's desired date of accession; and
  - (v) any other details that the Transporter may from time to time request;
- (b) a Shipping Licence shall have been granted to the Applicant which is in force and in respect of which no notice of revocation has been given, and the Applicant shall have provided a copy of such licence to the Transporter;
- (c) the Applicant shall have satisfied the Transporter that the Shipper has the legal, technical and operational ability to perform the Shipper's obligations pursuant to this Code;
- (d) the Applicant shall have provided the emergency contact details required under Part H (*Operations*) Section [1.6]; and

- (e) the Applicant shall have confirmed that it is in possession of a copy of this Code and such other documents referred to in this Code or the Framework Agreement.

#### 12.1.3 Effective date

The Applicant will become a Shipper with effect from the date on which the Framework Agreement executed and delivered by the Applicant in accordance with Section 12.1.1(b) becomes effective.

#### 12.1.4 Restricted authorisation of Shipper

Where the Shipping Licence held by a Shipper limits or restricts the premises to which the Shipper may arrange for the conveyance of Natural Gas by the Transportation System or in any other way limits or restricts the activities which the Shipper is authorised to carry on:

- (a) the Shipper shall be solely responsible for compliance with such limit or restriction and, subject to Section 12.1.4(b), the Transporter shall not in the implementation of this Code as respects such Shipper be concerned with such limit or restriction; but
- (b) the Transporter shall be at liberty in its discretion to (but shall not be required to) withhold from the Shipper any right or entitlement pursuant to this Code so as to give effect to such limit or restriction; and
- (c) notwithstanding any such limit or restriction on the Shipper's activities, such limit or restriction shall not relieve the Shipper from its liabilities for Tariffs or otherwise in accordance with this Code and/or the Framework Agreement and/or any Ancillary Agreement.

#### 12.1.5 Single Shipper admission

Unless expressly otherwise provided in this Code or agreed by the Transporter, a person may only be one Shipper, and accordingly a person who is for the time being a Shipper may not make a further application to be admitted as a Shipper. Without prejudice to the foregoing a Shipper may apply for, have and utilise separate Shipper identification ("Shipper ID") for any particular purposes pursuant to this Code and shall so apply for and utilise a separate Shipper ID where the Transporter so consents.

Where the Transporter agrees that a Shipper may have or hold a separate ID (notwithstanding any prior existing Shipper ID's) then the Shipper shall apply for such Shipper ID (or required form of Shipper ID) in accordance with Section 12.2.

For the avoidance of doubt a Shipper ID shall be separate to a Shippers EIC.

## 12.2 Application for Shipper ID

- 12.2.1 A Shipper which wishes to hold, or is required to hold a separate Shipper ID for the purpose of this Code shall submit an application to the Transporter (a “Shipper ID Application”) incorporating such information as may be necessary to enable the Transporter to process such application including the following:
- (a) details of any existing Shipper ID held by the Shipper;
  - (b) details of the Shippers EIC (if any);
  - (c) the purpose for which the new form of Shipper ID is required;
  - (d) the provision of the Code pursuant to which a new form of Shipper ID is required (where applicable); and
  - (e) the date with effect from which the Shipper wishes to utilise the separate Shipper ID.
- 12.2.2 If the Transporter is satisfied that the Shipper should be provided with or is required to hold a separate Shipper ID then the Transporter shall:
- (a) notify the Shipper of the separate form of Shipper ID for the purpose of the Code; and
  - (b) notify the Shipper of the date with effect from which the Shipper may utilise the separate Shipper ID pursuant to this Code.
- 12.2.3 Where a Shipper has more than one Shipper ID for the purposes of this Code then such Shipper shall:
- (a) save as provided in (b) be treated in all respects pursuant to this Code as if it was a separate and independent Shipper in respect of each such Shipper ID and references in this Code to the identity of the Shipper shall (unless the context requires otherwise) be deemed a reference to the relevant Shipper ID;
  - (b) notwithstanding sub-paragraph (a) a Shipper shall be entitled to provide a single financial security pursuant to the Financial Security Policy in respect of all obligations pursuant to this Code irrespective of whether a Shipper has one or more Shipper ID and the provisions of Part I (Section 2) shall apply in aggregate in respect of all of the Shipper ID’s held by the Shipper and the limitations contained therein shall apply with respect to the Shipper irrespective of the number of Shipper IDs which may be held by such Shipper.

### 12.3 Operating Actions

Notwithstanding Part E (*Balancing and Shrinkage*) Section 1.3.4 and Section 2.4.3(a), where the Transporter is performing an Operating Action it shall not be deemed to be acting in the capacity of a Shipper nor shall it be bound by any of the obligations imposed by this Code on Shippers. Notwithstanding the foregoing where the Transporter is performing an Operating Action it may, for the purpose of Part D (*Nominations, Allocations and NDM Supply Point Reconciliation*) be entitled to submit IP Nominations, Nominations and IBP Nominations and receive IP Allocations and Allocations in the same manner as a Shipper.

### 12.4 GNI (IT) Systems

#### 12.4.1 Access to GNI (IT) Systems

- (a) A Shipper shall be entitled to access to GNI (IT) Systems (or any part thereof) in accordance with this Code and any applicable Procedures for the activities related to the shipping of Natural Gas consistent with the purpose contemplated by the Code and where applicable any Siteworks Agreement or Ancillary Agreement.
- (b) Shippers acknowledge that the Transporter may permit persons (other than Shippers) to have access to and use of GNI (IT) Systems, including
  - (i) for purpose of communications with the Operator of a Connected System;
  - (ii) a Bi-Directional CSP Agent;
  - (iii) any persons appointed pursuant to any Entry Point Procedures and/or for the purpose of implementing any IP OBA Provisions; and/or
  - (iv) any Adjacent TSO.

#### 12.4.2 Licence

- (a) Subject to provisions of this Code and any applicable Procedures and for the purposes referred to in Section 12.4.1(a) the Transporter hereby licences the Shipper(s):
  - (i) to have access to and use of the GNI (IT) Systems;
  - (ii) to use the Hardware and the Software; and
  - (iii) make use of any manual or other materials provided by the Transporter in respect of the GNI (IT) Systems.
- (b) The Licence granted in this Section 12.4.2 to the Shipper is royalty free, non-exclusive and non-transferable. The Shipper shall be liable for all costs and charges incurred by the Shipper arising out of or in connection

with its use of and access to GNI (IT) Systems. The Shipper shall not be liable to the Transporter for costs and charges arising out of or in connection with the Shipper's use of and access to GNI (IT) Systems save where otherwise outlined in any schedule of charges approved by the Commission or as outlined in any applicable Procedures.

- (c) The Software may be upgraded or varied from time to time and the Transporter shall notify Shippers of such variation or upgrade in accordance with the Release Management Procedures.
- (d) The Shipper shall at the written request of the Transporter return or destroy any version of the Software for which a revised version has been issued in accordance with the Code.
- (e) Shipper(s) shall comply with the GNI (IT) Systems Access Procedures and the Release Management Procedures.

#### 12.4.3 Usernames and Passwords

- (a) The Transporter:
  - (i) subject to Sections 12.4.3(b)(i) and 12.4.6 shall provide the Shipper with one or more usernames and passwords which will enable its Authorised Users to access and use the GNI (IT) Systems or any applicable part in accordance with the notification made under Section 12.4.3(b) for the purposes set out in Section 12.4.3(b); for the avoidance of doubt the Shipper shall receive separate usernames and passwords with respect to each Shipper ID;
  - (ii) may change usernames and passwords and/or require the Shipper to change passwords and shall give reasonable prior notice to the Shipper of such change. The Transporter shall not be required to provide prior notice where such change is required urgently to protect the security of the GNI (IT) Systems. Where no prior notice is provided to the Shipper, the Transporter shall advise the Shipper as soon as practicable thereafter;
  - (iii) shall not share the Shipper's usernames and passwords with anyone other than the Shipper;
  - (iv) shall conclusively assume (in the absence of manifest error on the part of the Transporter) that any person (other than the Transporter) accessing the GNI (IT) Systems using usernames and passwords issued to such Shipper is acting with the consent and on the authority of the Shipper; and
  - (v) shall as soon as practicable discontinue access to the GNI (IT) Systems by a Shipper and/or all or any of its Authorised Users

where it has been notified in writing by the Shipper in accordance with Section 12.4.3(b)(vi) or Section 12.4.3(b)(vii).

(b) The Shipper:

- (i) shall in respect of each Shipper ID notify the Transporter in writing of the identity and relevant details of each of its Authorised Users and in respect of each Authorised User the electronic information systems comprised within the GNI (IT) Systems in respect of which access is sought;
- (ii) agrees that certain passwords may expire on a periodic basis (as may be advised by the Transporter from time to time) requiring the Shipper to input a new password;
- (iii) shall be solely responsible for notifying changes to usernames and passwords to each of its Authorised Users. The Transporter shall have no responsibility in this regard;
- (iv) shall not share any username and password with anyone other than the Authorised User in respect of which such username and password have been issued. Use of each username and password shall be confined to the Authorised Users in respect of which such username and password have been issued;
- (v) will endeavour to prevent access to the GNI (IT) Systems using each of the usernames and passwords issued to each of its Authorised Users by persons other than each of the Authorised Users in respect of which each such username and password has been issued;
- (vi) shall notify the Transporter in writing where it reasonably believes that any of the usernames or passwords issued to the Shipper have been compromised; and
- (vii) shall inform the Transporter in writing whenever it desires to terminate access to the GNI (IT) Systems that has been granted to any Authorised User of that Shipper. The Shipper shall be solely responsible for any and all unauthorised or otherwise improper use of usernames and passwords by any of its Authorised Users, including those whom are no longer employed or controlled by the Shipper, save to the extent that the Transporter has failed to comply with its obligations pursuant to Clause 12.4.3(a)(v).

12.4.4 Security

- (a) The Transporter shall be entitled to rely on information and data submitted by the Shipper through its access to and use of the GNI (IT)

Systems save to the extent that the Transporter has failed to comply with its obligations pursuant to Section 12.4.3(a)(v).

- (b) The Transporter shall be entitled to take all steps necessary to protect the security of the GNI (IT) Systems at any time, including, but not limited to, immediately discontinuing access by the Shipper and its Authorised Users or any one or more of them to the GNI (IT) Systems where the Transporter suspects that the security of the GNI (IT) Systems has been or is likely to be compromised. The Transporter shall not be required to give prior notice where it requires to take steps to urgently protect the security of the GNI (IT) Systems;
- (c) The Transporter shall be entitled to take all reasonable steps to modify, optimise or improve the GNI (IT) Systems at any time and shall give reasonable prior notice thereof to the Shipper in accordance with the Release Management Procedures;
- (d) The Transporter shall be entitled to contact or cooperate with any law enforcement, regulatory or other competent authority in connection with a Shipper's access to the GNI (IT) Systems and use of the Hardware and Software. Such contact and cooperation may include disclosure of the identity of, and the information transmitted or received by, any person accessing the GNI (IT) Systems.
- (e) The Transporter and each Shipper shall:
  - (i) maintain security procedures to ensure that its premises (from which the GNI (IT) Systems are accessed), its computer network, and its computer systems are sufficiently secure to prevent unauthorised access to the GNI (IT) Systems;
  - (ii) not transmit any unlawful, threatening, libellous, defamatory, obscene, scandalous, inflammatory, pornographic or profane material to or through the GNI (IT) Systems;
  - (iii) use reasonable endeavours to ensure that no unauthorised access to or use of the GNI (IT) Systems occurs from its premises (from which the GNI (IT) Systems are accessed), or through its computer network, or through its computer systems by means of, but not limited to:
    - (aa) Hacking (i.e., unauthorised access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures).
    - (bb) Interception (i.e., unauthorised monitoring of data or traffic on any network or system).



- (cc) Intentional Interference (i.e. unauthorised interference with service to any user, host or network including, without limitation, denial-of-service attacks, other flooding techniques, deliberate attempts to overload a system and broadcast attacks).
- (dd) Falsification of Origin (i.e., forging of any TCP-IP packet header, e-mail header or any part of a message header).
- (dd) Avoiding System Restrictions (i.e., unauthorised use of manual or electronic means to avoid any use limitations placed on the users).
- (f) implement and maintain policies and procedures consistent with standard industry practice to protect against harmful code, viruses or programming instructions from being transmitted or received to the other party by reason of the performance of their obligations under this Agreement and each party shall notify the other party if it has reason to believe that any such code, virus or programming instruction has been so transmitted or received.
- (g) The Shipper shall procure that each of its Authorised User's premises, computer networks and computer systems complies with the requirements of Section 12.4.4(e) above.

#### 12.4.5 Digital Certificates

The Transporter shall provide the Shipper with Digital Certificates and the Shipper shall comply with the GNI (IT) Systems Access Procedures with respect to such Digital Certificates.

#### 12.4.6 Training and Provision of Support and Information

The Transporter shall not be obliged to furnish a username and password to the Shipper for use by an Authorised User until such time as each such Authorised User has in accordance with the GNI (IT) Systems Access Procedures and to the satisfaction of the Transporter completed a course of training provided by or on behalf of the Transporter with respect to the GNI (IT) Systems.

#### 12.4.7 Intellectual Property

- (a) The Transporter warrants that the Software and intellectual property rights therein are and shall at all times for the duration of this Agreement remain the property of the Transporter and/or its Affiliates and/or where applicable, any licensor of the Software.
- (b) The Shipper's sole rights in respect of the GNI (IT) Systems and/or the Software shall be as provided pursuant to the Code.

- (c) The Shipper shall (and the Shipper shall procure that each of its Authorised Users shall) not do or omit to do anything which prejudices the proprietary rights of the Transporter and/or its Affiliates and/or where applicable any licensor of the Software in the GNI (IT) Systems, the Hardware, the Software or any information, manuals or materials provided by the Transporter to the Shipper, including, but not limited to:
- (i) copying the Software and any manuals or other materials provided by the Transporter in respect of the GNI (IT) Systems (save to the extent permitted by law or where the Shipper has obtained the prior written consent of the Transporter);
  - (ii) using the GNI (IT) Systems to prepare a derivative work or attempting to reverse-engineer or reverse-engineering the GNI (IT) Systems or the Software.
  - (iii) sub-licensing the use of the Software, the Hardware and any manual or other materials provided by the Transporter in respect of the GNI (IT) Systems;
  - (iv) de-compiling, disassembling or modifying the whole or any part of the Software.

#### 12.4.8 Availability of GNI (IT) Systems

- (a) The Transporter shall use reasonable endeavours to maintain availability of the GNI (IT) Systems (subject to the Transporter carrying out scheduled and non-scheduled work on the GNI (IT) Systems intended to ensure proper functioning and maintenance of the GNI (IT) Systems which may result in temporary unavailability of the GNI (IT) Systems) and to correct any errors in the GNI (IT) Systems.
- (b) Notwithstanding the foregoing neither the Transporter nor its Affiliates shall have any liability to a Shipper(s) in respect of any temporary unavailability of, error or malfunction in the GNI (IT) Systems and Shippers waive any and all rights of action against the Transporter and its Affiliates in respect of the Software, the Hardware and/or the GNI (IT) Systems and waive all liability of the Transporter and its Affiliates with respect thereto.
- (c) The JBP does not form part of the GNI (IT) Systems and availability of and access to the JBP shall be governed by:
- (i) in the case of Shippers the JBP Users T&C's; and/or
  - (ii) in the case of the Transporter the agreement between the JBP Operator and the Transporter.

#### 12.4.9 Suspension and Termination

- (a) Upon termination with respect to a Shipper in accordance with Part I (*Legal and General*), Section 4.4 (*General Termination Rights*) of the Code:
- (i) the Shippers authority to access and use of the GNI (IT) Systems and use of the Hardware and the Software shall be revoked;
  - (ii) where requested by the Transporter the Shipper shall return the Software, Hardware, and all information, training manuals and materials in the possession or under its control to the Transporter and ensure that its Authorised Users discontinue access to and use of the GNI (IT) Systems, the Hardware and the Software; and
  - (iii) the Shipper shall cease to use all Confidential Information obtained as a result of accessing the GNI (IT) Systems and using the Hardware, information, training manuals and materials Software and, in such event:
    - (aa) the Shipper will return to the Transporter, or shall destroy (as the Transporter may direct), such of the original versions of any such information and copies thereof that are in its possession; and
    - (bb) the Shipper shall destroy all documents, memoranda, notes and other writings whatsoever prepared by it or in its possession which incorporate any such information.
- (b) In the event of the suspension in whole or in part of the Shipper's rights pursuant to the Code or any Ancillary Agreement in accordance with Part I (*Legal and General*), Section 4.1 (*Suspension*) or specific termination of any of the Shipper's rights pursuant to the Code or any Ancillary Agreement in accordance with Part I (*Legal and General*), Section 4.2 (*Specific Termination*) or in the event of any breach by the Shipper of Section 12.4:
- (i) the Transporter shall revoke or limit (as appropriate) access to and use of the GNI (IT) Systems and use of the Hardware and Software permitted under this Section 12.4; and
  - (ii) the Shipper shall ensure that its Authorised Users comply with any limitation imposed by the Transporter pursuant to this Section 12.4 on the Shipper's access to and use of the GNI (IT) Systems, the Hardware and the Software.

#### 12.4.10 Warranties and Disclaimer

- (a) The Transporter will use reasonable endeavours to make GNI (IT) Systems available in accordance with this Code and applicable Procedures. The Transporter:

- (i) disclaims all warranties, express or implied, including, without limitation, the implied warranties of merchantability, title, and fitness for a particular purpose;
- (ii) does not warrant that access to, or use of the GNI (IT) Systems will be uninterrupted or error-free, or that any software or services will meet any particular criteria of performance or quality; and
- (iii) has not made any express or implied representations, assurances and/or warranties regarding the use or availability of the GNI (IT) Systems.

12.4.11 Notwithstanding any other provisions of this Code, or any Ancillary Agreement the Shipper shall not be entitled to exercise any of its rights of a Shipper under this Code or any Ancillary Agreement which require submission and/or receipt of applications or notices utilising the GNI (IT) Systems unless and until such Shipper has received all relevant usernames and passwords required to access and utilise the GNI (IT) Systems in accordance with this Section 12.4.

12.4.12 A Shipper shall be liable for all Tariffs and financial obligations pursuant to this Code and any Ancillary Agreement notwithstanding that the Shipper is not entitled in accordance with the provisions of this Section 12.4 to exercise such Shipper's rights or receive notices pursuant to this Code or any Ancillary Agreement notwithstanding that the Shipper's right to utilise GNI (IT) Systems may have been revoked or suspended in accordance with the Code.

## 12.5 Assignment and Subcontracting

### 12.5.1 Assignment by the Transporter

The Transporter may assign or transfer some or all of its rights and obligations arising under this Code and/or any Framework Agreement and/or any Ancillary Agreement to any person who holds a Natural Gas Transmission Licence and/or a Natural Gas Distribution Licence granted by the Commission pursuant to the Act without the consent of any Shipper, provided that in such an event the Transporter can demonstrate to the satisfaction of the Commission that the person has the legal, technical and operational ability to comply with the obligations which it will undertake. The Transporter shall be relieved of all obligations pursuant to this Code, the Framework Agreement and/or any Ancillary Agreement when such assignment or transfer takes effect provided that the assignee shall have assumed such obligations, and all rights of the Transporter pursuant to the Code and/or the Framework Agreement and/or any Ancillary Agreement shall (save where expressly provided to the contrary) be exercisable by such assignee.

### 12.5.2 Assignment by Shippers

- (a) except as provided in Section 12.5.2(b) and (c) no Shipper shall be entitled to assign or purport to assign or otherwise transfer in any way (including by a declaration of trust) the whole or any part of its interest under this Code (including any IP Capacity Booking or Capacity Booking) and/or the Framework Agreement and/or any Ancillary Agreement.
- (b) a Shipper (the “Assigning Shipper”) which is the Registered Shipper at an LDM Offtake may with the prior written consent of the Transporter apply to the Transporter (in writing) to assign such Shipper’s Capacity Booking in whole (but not in part) with respect to Long Term LDM Exit Capacity (and where applicable LDM Supply Point Capacity) and the Booked LDM Exit Capacity Quantity and the Booked LDM Supply Point Capacity Quantity (if any) pursuant to the Capacity Booking, to another Shipper (the “Assignee Shipper”) in accordance with this Section 12.5.2. It shall be reasonable for the Transporter to withhold consent if the Assigning Shipper is unable to demonstrate to the reasonable satisfaction of the Transporter that the proposed Assignee Shipper is a Shipper and that the proposed Assignee Shipper has the legal, technical and/or operational ability to comply with the obligations which it will undertake and/or has the ability to comply with the Financial Security Policy. The consent of the Transporter to the submission of an application to assign shall not in any way adversely affect or preclude the Transporter from exercising its right to reject an application pursuant to the remaining provisions of this Section 12.5.2.
- (c) the proposed Assigning Shipper and the proposed Assignee Shipper shall submit a joint application to the Transporter to effect an assignment in whole (but not in part) of a Capacity Booking at an LDM Offtake including such information as the Transporter may require to process the application including:
  - (i) the Capacity Booking to which the application relates;
  - (ii) the amount of the Booked LDM Exit Capacity Quantity (and the Booked LDM Supply Point Capacity Quantity (if any));
  - (iii) the LDM Offtake to which the Capacity Booking relates;
  - (iv) the identity of the proposed Assigning Shipper;
  - (v) the identity of the proposed Assignee Shipper;
  - (vi) the date (which shall be the first day of a calendar month) on which the assignment is requested to take effect;

- (vii) a warranty that the consent of the End User has been obtained with respect to the assignment and exhibiting a copy of any such End User consent; and
  - (viii) a copy of the consent of the Commission (where such consent is required).
- (d) The Transporter shall reject an application submitted pursuant to Section 12.5.2(c) if:
- (i) the application is not submitted in accordance with this Section 12.5.2;
  - (ii) the application is received less than ten (10) Business Days prior to the requested date on which it is to take effect;
  - (iii) the application has not been signed by the proposed Assigning Shipper or the proposed Assignee Shipper;
  - (iv) the proposed Assignee Shipper has not provided such financial security as may be required in accordance with the Financial Security Policy within three (3) Business Days of receipt of the application;
  - (v) the proposed Assignee Shipper is in breach of the Code or any Ancillary Agreement;
  - (vi) the Capacity Booking referred to in the application is not a Long Term Capacity Booking at an LDM Offtake;
  - (vii) the amount of the Booked LDM Exit Capacity Quantity and the Booked LDM Supply Point Capacity Quantity (if any) specified in the application is not equal to the entirety of the Booked LDM Exit Capacity Quantity and the Booked LDM Supply Point Capacity Quantity (if any) held pursuant to the relevant Capacity Booking; or
  - (viii) the Capacity Booking has been effected pursuant to a LDM Agreement and the Assigning Shipper has not procured that the proposed Assignee Shipper has provided to the Transporter a direct covenant (in favour of the Transporter and in a form reasonably satisfactory to the Transporter) that the Assignee Shipper will observe and perform the obligations under the LDM Agreement together with a certified copy of the assignment or transfer (excluding terms in relation to the consideration paid or payable).
- (e) The Transporter shall notify each of the proposed Assigning Shipper and the Assignee Shipper as to whether the application has been

rejected or accepted within seven (7) Business Days of receipt thereof. If the Transporter does not notify the Shipper as aforesaid the application shall be deemed rejected. Where the Transporter rejects the application the Transporter shall notify the Shippers of the reason for such rejection unless such reason is attributable to one only of the Shippers in which case the Transporter will only notify such Shipper of the reason for such rejection.

Where the Transporter accepts an assignment application in accordance with this Section 12.5.2 then:

- (a) the Assignee Shipper shall become a Registered Shipper at the LDM Offtake with effect from the effective date of the requested assignment as specified in the assignment application (or as otherwise agreed between the Transporter and the Assigning Shipper and the Assignee Shipper) and for the unexpired duration of the Capacity Booking of the Assigning Shipper and shall be entitled to the Booked LDM Exit Capacity Quantity (and the Booked LDM Supply Point Quantity (if any));
- (b) the acceptance by the Transporter of the assignment application shall not relieve the Assigning Shipper of any accrued rights or obligations (including financial obligations); and
- (c) the Assigning Shipper shall cease to be a Registered Shipper at the LDM Offtake pursuant to the relevant Capacity Booking.

#### 12.5.3 Subcontracting and Agency

- (a) The Transporter shall at all times have the right to sub-contract or delegate (including by appointment of an agent) in whole or in part the performance of its rights and obligations under this Code and/or any Ancillary Agreement to a third party without the consent of the Shipper provided that the Transporter shall not thereby be relieved of any of its obligations under this Code and shall be responsible for any failure or non-performance of such third party as if the Transporter itself had failed to fulfil the relevant obligation.
- (b) A Shipper shall only be entitled to sub-contract or delegate (including by appointment of an agent) in whole or in part the performance of any of its rights or obligations under this Code and/or any Ancillary Agreement to a third party subject to the prior written consent of the Transporter (such consent not to be unreasonably withheld) as follows:
  - (i) in the case of an Interconnection Point the Shipper may subcontract or appoint an agent to carry out the performance of all (but not part of) its rights and obligations in respect of IP Capacity

at such Interconnection Point provided however, the Shipper shall be responsible to make appropriate arrangements with the JBP Operator with respect to the performance by any such agent or subcontractor of any of the Shippers rights and obligations to the extent that same must be performed on the JBP, including in respect of JBP Transactions.

- (ii) where a Shipper has reserved Entry Capacity at an Entry Point, it may sub-contract, or appoint an agent to carry out, the performance of all (but not part) of its rights and obligations in respect of such Entry Capacity at such Entry Point;
- (iii) where a Shipper has reserved Capacity at or in respect of an LDM Offtake, it may sub-contract, or appoint an agent to carry out, the performance of all (but not part) of its rights and obligations in respect of all such Shipper's LDM Capacity Bookings at or in respect of such LDM Offtake;
- (iv) in the case of DM Shippers, such Shippers may, in respect of their aggregate DM Exit Capacity and/or DM Supply Point Capacity, sub-contract, or appoint an agent to carry out, the performance of all (but not part) of its rights and obligations in respect of such DM Exit Capacity and/or DM Supply Point Capacity including for the avoidance of doubt its Short Term Aggregate DM Exit Capacity; and
- (v) in the case of NDM Shippers, such Shippers may, in respect of their aggregate NDM Exit Capacity and/or NDM Supply Point Capacity, sub-contract, or appoint an agent to carry out, the performance of all (but not part) of its rights and obligations in respect of such NDM Exit Capacity and/or NDM Supply Point Capacity.

Notwithstanding the consent of the Transporter to the subcontracting or delegation (including by appointment of an agent) by a Shipper of the performance of any of its rights or obligations under this Code to a third party, the Shipper shall not be relieved of any of its obligations under this Code and shall be responsible for any failure or non-performance of such third party as if the Shipper itself had failed to fulfil the relevant obligation.

#### 12.5.4 Costs incurred by Transporter

Where a Shipper makes an assignment under Section 12.5.2 or sub-contracts or appoints an agent under Section 12.5.3(b), the Shipper shall be liable to and shall reimburse the Transporter for any administrative or other costs that the Transporter may incur as a result of such assignment or sub-contract.



## 12.6 **Waiver**

The failure to exercise or delay in exercising a right or remedy provided by this Code, and/or the Framework Agreement and/or any Ancillary Agreement or provided by law does not impair or constitute a waiver of the right or remedy or an impairment of or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Code, the Framework Agreement or any Ancillary Agreement or provided by law prevents further exercise of the right or remedy or the exercise of another right or remedy.

## 12.7 **Severance**

If any provision (or part thereof) of this Code and/or the Framework Agreement and/or any Ancillary Agreement is or becomes invalid, illegal or unenforceable, the validity, illegality or enforceability of any other part of that provision or any other provision of this Code, the Framework Agreement and any Ancillary Agreement shall not be affected and the remaining part of that provision and any other remaining provisions of this Code, the Framework Agreement and any Ancillary Agreement shall continue in full force and effect.

## 12.8 **Entire Agreement**

12.8.1 This Code, the Framework Agreement, each Ancillary Agreement and each electronic contract (effected pursuant to this Code) entered into by a Shipper and the Transporter constitute the entire agreement between the parties, and supersede any previous agreements between the parties relating to the subject matter thereof.

12.8.2 Each party acknowledges that it has entered into this Code, the Framework Agreement and/or any Ancillary Agreement to which it is a party and is contracting for the transportation of Natural Gas by the Transporter in the Transportation System based solely upon the express representation and warranties set out in this Code (and including, for the avoidance of doubt, the Framework Agreement and/or any Ancillary Agreement) and the parties expressly negate any other representation of warranty, written or oral, expressed or implied prior to the execution of the Framework Agreement or any Ancillary Agreement, as the case may be (except in the case of fraud).

## 12.9 **Publication of Documents**

12.9.1 The Transporter shall maintain and publish from time to time in such form as the Commission may direct: -

- (a) the Code, the Schedules and the Procedures;
- (b) all Modifications or proposed Modifications and any other documents in connection with the proposed Modifications which are required to be published pursuant to Part I (*Legal and General*) Section 1;

- (c) the standard form Framework Agreement and standard form Ancillary Agreements (as amended from time to time);
- (d) a list of all of the Policies and Procedures; and
- (e) all Policies (as amended from time to time).

#### 12.10 **Governing Law**

- 12.10.1 This Code shall be governed by and construed in accordance with the laws of Ireland.
- 12.10.2 The Transporter and each Shipper recognises and agrees that the provisions of this Code, any Procedures, the Framework Agreement, and/or any Ancillary Agreement and the obligations of the Transporter and each Shipper, shall, notwithstanding any other provision contained herein, be subject to any Directive including the provisions of the treaties entered into between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland dated (i) 29 April 1993 (the "Interconnector Treaty") and (ii) 24 September 2004 the ("Second Interconnector Treaty") and any and all such other laws or regulations having the force of law as may affect the Transportation System.