16. TERMINATION

16.1 Introduction

A Shipper agrees that its Accession Agreement may be terminated in accordance with this section 16. Upon the termination of a Shipper’s Accession Agreement it shall no longer be a Shipper and the Shipper and Premier Transmission shall no longer be bound in relation to each other by this Code except to the extent set out in section 16.5.

16.2 Termination by Premier Transmission

16.2.1 Premier Transmission shall declare a ‘Termination Default’, if the Shipper:

(a) fails to pay any sum due to Premier Transmission under a CC Invoice which is not the subject of a bona fide dispute in accordance with section 12.11:

(i) within 15 Business Days of the Due Date (the ‘Second Due Date’) provided that Premier Transmission shall have given the Shipper not less than 5 Business Days’ written notice that such payment is overdue; or

(ii) by the Due Date on three or more occasions in respect of three or more separate CC Invoices;

(b) fails to pay any sum due to Premier Transmission under a PS Invoice:

(i) within 15 Business Days of the Due Date provided that Premier Transmission shall have given the Shipper not less than 5 Business Days’ written notice that such payment is overdue; or

(ii) by the Due Date on three or more occasions in respect of three or more separate PS Invoices;

(c) having failed to submit a Nomination to Premier Transmission for a period exceeding 12 months, does not hold at the relevant time any Firm Capacity, provided that Premier Transmission shall have first consulted with the Shipper and obtained its agreement or the agreement of the Credit Committee to such termination;

(d) having an Exit Point Registration in respect of an Exit Point in Northern Ireland, ceases to hold a valid Gas Supply Licence; or

(e) is in LPC Default.

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

16.2.3 Premier Transmission and the Shipper shall act in accordance with the Directions of the Credit Committee, and with the consent of the Authority, where such consent is required under the Terms of Reference, in respect of any such Directions.

16.2.4 Where, within 15 Business Days of the date on which the Credit Committee Meeting Notice was sent by Premier Transmission under section 16.2.2, the Credit Committee has failed to decide Directions in respect of that Termination Default, Premier Transmission shall be entitled, with the Authority’s consent in accordance
with paragraph 6 of the Terms of Reference, to terminate the relevant Accession Agreement by written notice.

16.2.5 Premier Transmission shall be entitled to terminate any Accession Agreement with effect from:

(a) the date specified in a relevant Direction of the Credit Committee;

(b) where a relevant Direction has been given but no date for termination is specified, forthwith;

(c) where the Termination Default occurs under section 16.2.1(c) with the relevant Shipper’s consent, forthwith; and

(d) if Premier Transmission’s Licence is terminated, forthwith.

16.3 Termination by either party for breach

16.3.1 If Premier Transmission or a Shipper is in breach of section 16.3.2 (the “Defaulting Party”) the party which is not in breach (the “Non-Defaulting Party”) may request, by sending a Meeting Notice in accordance with paragraph 3 of the Terms of Reference, to the Credit Committee to agree to allow termination of the relevant Accession Agreement, with the Authority’s consent in accordance with paragraph 6 of the Terms of Reference.

16.3.2 Premier Transmission or a Shipper is in breach of this section 16.3.2 if it is in breach of any of its obligations under this Code and that breach has a material adverse effect on the Non-Defaulting Party.

16.3.3 Subject to section 16.3.4, at a meeting convened pursuant to section 16.3.1 the Credit Committee may direct the Non-Defaulting party to send the Defaulting Party a notice (a “Termination Notice”) specifying the date on which the Accession Agreement is to be terminated.

16.3.4 If the breach, the subject of the Meeting Notice sent in accordance with section 16.3.1, is in the opinion of the Credit Committee capable of being remedied as determined in a Direction, the Termination Notice shall set out in reasonable detail:

(a) the alleged breach; and

(b) the remedy required to be taken and the period within which the breach is required to be remedied, which period shall be of such length as a Reasonable and Prudent Operator would require in order to remedy the breach taking into account (where appropriate) the availability of Maintenance Days and shall not, in any event, be less than 30 Business Days.

16.3.5 If the breach, the subject of the Meeting Notice sent in accordance with section 16.3.1, is not, in the opinion of the Credit Committee, capable of being remedied as determined in a Direction, the Termination Notice may, with the Authority’s consent, specify that the relevant Accession Agreement is to be terminated forthwith or on any date thereafter.

16.3.6 Where, within 15 Business Days of the date on which the Credit Committee Meeting Notice was sent by Premier Transmission under section 16.3.1, the Credit Committee has failed to decide Directions in respect of that Termination Default, Premier Transmission shall be entitled, with the Authority’s consent in accordance with paragraph 6 of the Terms of Reference, to terminate the relevant Accession Agreement by written notice.
16.4 Termination by either party on liquidation

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

(a) an encumbrancer takes possession of, or a liquidator, receiver or an administrator or examiner is appointed over any part of the assets of the other party or any security granted by the other party becomes enforceable;

(b) the other party is unable to pay its debts as they fall due or suspends making payments (including without limitation payments of principal or interest with respect to all or any class of its debts);

(c) the other party suffering a distress, execution, sequestration or other process being levied or enforced upon or sued or against all or any substantial part of its assets, rights or revenues which is not discharged, stayed, or dismissed within 30 Business Days;

(d) the other party ceasing to carry on its business or a substantial part of its business (unless, such cessation is intended to be, and is, temporary and occasioned as a consequence of a Force Majeure event); or

(e) any event similar, equivalent or analogous to any of the events specified in this section 16.4 occurs in relation to the other party in any jurisdiction provided that in the event that an administrator has been appointed over any part of the assets of the other party a Direction of the Credit Committee shall have first been sought and fully complied with.

16.5 Consequences of termination

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

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

(a) all of the following which are due, accrued or outstanding to Premier Transmission under this Code in respect of the period up to and including the date of termination:

   (i) all PS Transmission Amounts;

   (ii) all Code Charges

(b) the following:

   (i) the Forecast Postalised Capacity Charge payable in respect of all Firm Capacity held by the Shipper in the remainder of the Gas Year after the date of termination; and

   (ii) the Forecast Postalised Commodity Charge that would be payable in respect of the Shipper’s aggregated Firm Allocated Quantities and Interruptible Allocated Quantities if such quantities together were taken to equal 80% of all Firm Capacity held by the Shipper in the remainder of the Gas Year after the date of termination; and
(iii) Premier Transmission’s estimate of the PS Transmission Amounts that would be payable in respect of all Firm Capacity held by the Shipper in all future Gas Years (had no such termination occurred) provided that such sums shall be adjusted to take account of:

(aa) Premier Transmission’s estimate of the amount (if any) by which it shall be able to mitigate the loss referred to in (ii) above;

(bb) inflation (which shall be assumed to continue at the rate of RPI at the date of termination);

(cc) any change in the PS Transmission Amounts to reflect any change in the capacity/commodity split of the tariff; and

(dd) the net present value of the amount payable at LIBOR.

16.5.3 Upon termination under sections 16.2, 16.3 or 16.4, Premier Transmission shall, as soon as reasonably practicable, and in any event not later than the 5th business day following termination, issue the Shipper with an invoice (a “Termination Invoice”) which shall set out the following:

(a) the identity of the Shipper;

(b) the period to which the Termination Invoice relates;

(c) a detailed breakdown of each of the sums payable under section 16.5.2.

16.5.4 The Shipper shall, no later than 30 business days following receipt of the Termination Invoice pay to the PoT Account all sums payable under section 16.5.2, with the exception of payments due under section 16.5.2(a)(ii), which shall be payable to Premier Transmission in accordance with the provisions of this Code.

16.5.5 If the Shipper fails to pay any sum due as detailed in the Termination Invoice by the date specified in section 16.5.4, interest on such overdue amount shall accrue at LIBOR plus 3% compounded monthly from the date specified in section 16.5.4 until the date payment is made.