

## Proposed Modification & Initial Modification Report No.37

### Legal and General

8<sup>th</sup> July 2015

Please find attached details of Proposed Modification 37 and Initial Modification Report 37 raised by Premier Transmission Ltd (PTL) as required under Section 2 and 3 of the PTL Transportation Code Modification Rules.

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

This proposal is being made to revise various legal and general elements of the PTL Code as a result of changes made in Code Modifications 28, 29, 30, 31, 32, 33, 34, 35 and 36. These Modifications have been raised to address EU requirements and implement an entry-exit transmission model in Northern Ireland. This Modification Proposal is to ensure the remaining elements of the Code (largely legal 'boilerplate') are updated accordingly.

#### **B How the modification better facilitates the relevant objective**

The Relevant Objective, (condition 2.4 of the PTL Licence) will be better facilitated by the Licensee's Network Code as a result of this modification. The proposed changes will contribute to the secure, safe, reliable, efficient and economic development of the Network by ensuring that the legal and general elements of the PTL Code are revised to reflect the introduction of an entry-exit regime in Northern Ireland and to maintain compliance with EU Regulations.

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

This proposal will introduce revised sections for:

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

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

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

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

**E The date proposed for implementation**

PTL suggests that the proposed implementation date is 11<sup>th</sup> September 2015.

**F How to Respond**

Please send responses no later than 7<sup>th</sup> August 2015 to:

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## **G. Further Information on the Modification Proposal**

### **Introduction**

The text of this proposal has been developed following Industry Consultation on the CAM Business Rules published on 1<sup>st</sup> December 2014. Part B of those Business Rules (section 25, 26, 27, 30 and 31) set out the approach the TSOs proposed to take in respect of the 'boilerplate' sections of the Code. The following paragraphs set out what was proposed in respect of each section of the Code, and where applicable, any changes or development to the approach described in the CAM Business Rules.

### **Overview and Changes relative to Business Rules**

#### **1. Liabilities and Indemnities**

- 1.1. The Business Rules outlined that this section would be revised to ensure that 'failure to deliver' terms apply at entry as well as exit.
- 1.2. In developing the Code, the TSOs have concluded that since the OBA regime will apply in respect of IP Entry Points and for VRF IP Exit Nominations, and Shippers will be allocated the quantity nominated in all but exceptional/emergency circumstances, it is not appropriate to introduce a 'failure to deliver' arrangement in respect of IP Entry Points or to retain one for VRF IP Exit Points. The arrangements at exit have been retained in their existing form, with updated terminology to reflect the entry-exit model.
- 1.3. This section also contains (at 14.17) an indemnity from Shippers to the TSOs as a result of the development of the inter-TSO arrangements at the IPs. This is in the form of a requirement for Shippers not to pursue action against an Adjacent Transporter for any failure under the inter-TSO arrangements at an IP, and where a Shipper takes such action (in contravention of the Code), it shall be required to reimburse the relevant TSO (i.e. indemnify it) if that TSO incurs any costs associated with that action.
- 1.4. It should be noted that along with this requirement for an indemnity, the TSOs have provided in the Allocations (section 3.7.7) for a Shipper to query its allocations up until D+4. This is intended to provide the opportunity for a Shipper to address any issue it may have, rather than needing to resort to legal action against the Adjacent Transporter.

#### **2. Force Majeure**

- 2.1. The Business Rules outlined that the TSOs did not anticipate any major changes to the section on Force Majeure.
- 2.2. The Code text has been developed in line with this, and contains only editorial and other minor amendments.

### **3. Termination**

- 3.1. The Business Rules outlined that the fundamental principles of termination (particularly for non-payment of invoices) would remain as they were, although amendment might be needed for new types of capacity, and that the TSOs would review this section to ensure alignment of debt recovery procedures and the return of unused capacity to market.
- 3.2. In relation to non-payment of invoices, the Code text has been developed to reflect the entry-exit regime, but since the charges for new types of capacity will all be invoiced on the same PS Transmission Invoice, there has not been a need to separately identify the new types of capacity in this section. Non-payment of any PS Transmission Invoice still constitutes Termination Default under the terms of this section.
- 3.3. In developing the Code text the TSOs identified that there was a need to clarify the procedures in case of a breach of the Code which did not necessarily lead to a material increase in credit risk for Shippers. In particular the TSOs have in mind the Code obligations for the provision of accurate forecasts and accurate nominations both of which may lead to detrimental effects (e.g. higher balancing costs) for other Shippers but not necessarily an increase in credit risk. The TSOs have therefore introduced a separate section for 'Other breach'. This was previously incorporated within section 16.3.1 and 16.3.2, but the procedures for such a breach (i.e. one that didn't require consideration by the Credit Committee) were unclear. The proposed new sections 16.3.7 to 16.3.9 are intended to give clarity on the process steps in such situations.
- 3.4. In relation to the return of unused (entry and exit) capacity to market, the TSOs are proposing new sections 16.6 and 16.7 on the consequences of termination in respect of capacity. These are outlined below.
- 3.5. Section 16.6 describes the process steps which should apply if a terminating Shipper has either traded capacity to another party (i.e. is a Transferor) or has bought capacity from another Shipper (i.e. is a Transferee) on the secondary market. Where the terminating Shipper is a Transferor, the Transferee is given the opportunity to permanently hold the capacity, and it can inform the TSO of its wishes using an 'Election Notice'. Where the terminating Shipper is a Transferee, the Transferor simply gets the rights and obligations associated with the capacity back.
- 3.6. Section 16.7 describes how the TSOs will return capacity to the market in the event of termination, with a view to mitigating potential losses as a result of the terminating Shipper. It includes the possibility that this course of action might be directed by the Authority, and also notification to the Adjacent Transporter where a terminating Shipper holds Bundled Capacity, as required by the inter-TSO arrangements at IPs.
- 3.7. In addition, the TSOs are proposing minor changes to section 17 in respect of voluntary retirement from the Code, to clarify that a Shipper must continue to hold

capacity which it has been allocated and cannot reduce or cancel its capacity other than by the means provided in the Code (surrender or assignment).

#### **4. Confidentiality**

- 4.1. The Business Rules outlined that this, and the following 'General' sections of the Code, would be revised to ensure that the new processes introduced as a result of the implementation of EU Codes are appropriately covered.
- 4.2. The proposed Code text on Confidentiality has been developed to include references to the Adjacent Transporter and the Capacity Platform Operator. Otherwise the amendments are editorial and to correct references to the type of capacity.

#### **5. General (system, agents, assignment etc) and Governing Law and Dispute Resolution**

- 5.1. In line with the Business Rules, the proposed Code text contains only minor editorial corrections, revised references to appropriate defined terms, and the old Transition Section (which was applicable when the PTL Code first came into force) and the associated terms have been removed.

#### **6. Transition Section T10**

- 6.1. This brings the revisions to the Code text into force.

#### **7. Appendix 5**

- 7.1. This section contains some updated cross references

## Proposed Legal Text

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

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• Section 14. Liabilities and Indemnities – revised text	7
• Section 15. Force Majeure – revised text	15
• Section 16. Termination - revised text	17
• Section 17. revised section 17.10.7 and 17.10.8	25
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• Section 21. Governing Law and Dispute Resolution	37
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• Appendix 5 – revised section 1.1 (10)	44

Amend section 14 to read as follows:

## 14. LIABILITIES AND INDEMNITIES

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

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

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

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

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

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

where in (a) and (b):

R = the amount due to the Shipper in pounds;

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

A = is the total revenue of Premier Transmission as stated in its most recent annual report and audited accounts published at the time of the act of the ~~Mismatched Firm Delivery~~Mismatched Delivery;

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

C = the aggregate of the ~~MDQs~~Exit Capacity of all Shippers holding ~~Firm-Exit~~ Capacity (reserved prior to the date on which the ~~Mismatched Firm Delivery~~Mismatched Delivery occurred) ~~and reserved~~, in respect of the ~~period~~Gas Flow Day on which ~~and after~~ the ~~Mismatched Firm Delivery~~Mismatched Delivery occurred, ~~at the time it occurred in the Gas Year in which the Mismatched Firm Delivery~~ occurred divided by 365

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

14.1.2 A Shipper's ~~Firm-Exit~~ Nominated Quantity in respect of an Exit Point shall, for the purposes of section 14.1, be the ~~Firm-Exit~~ Nominated Quantity prevailing:

(a) before any reduction to the ~~Firm-Exit~~ Nominated Quantity prescribed by a Flow Order where the reduction was necessary as a result of the negligence or Wilful Misconduct of Premier Transmission;

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

~~(c) before any adjustment to a Firm Nominated Quantity made in accordance with section 2.7.4 or 2.7.5.~~

14.1.3 A Shipper's ~~Firm-Allocated Quantity~~ Exit Allocation in respect of an Exit Point shall, for the purposes of section 14.1, be ~~the Firm-Allocated Quantity derived from a Final Allocation~~ the quantity in its Final Exit Allocation.

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

(a) if such a ~~Mismatched Firm Delivery~~ Mismatched Delivery shall have occurred in any circumstance where Premier Transmission is relieved (in accordance with section 8.3.2) of its obligation to provide pressure, during Scheduled Maintenance, or where Premier Transmission is relieved (in accordance with section 15 (Force Majeure)) of its obligations under this Code; or

(b) ~~when an D-1 Predicted Capacity Shortfall or Day-D Capacity Shortfall Exceptional Event~~ has been declared, if Premier Transmission declared such ~~Day-Exceptional Event~~ Event for any reason other than as a result of its negligence or Wilful Misconduct.

**14.2 ~~Failure to deliver Interruptible Nominated Quantity~~ Liability in relation to a VRF IP Exit Nomination**

~~14.2.1 If a Shipper's Interruptible Allocated Quantity at an Exit Point is greater or less than its Interruptible Nominated Quantity in respect of that Exit Point on any Day on which Premier Transmission shall have failed to give the requisite notice of interruption (a "Mismatched Interruptible Delivery") the Shipper may, subject to this section 14.2, if the Mismatched Interruptible Delivery occurs solely as a result of:~~

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

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

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

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



where in (a) and (b):

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

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

~~A = is the total revenue of Premier Transmission as stated in its most recent annual report and audited accounts published at the time of the act of the Mismatched Interruptible Delivery;~~

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

~~C = the aggregate of the MDQs of all Shippers holding Interruptible Capacity (reserved prior to the date on which the Mismatched Interruptible Delivery occurred and reserved, in respect of the period on which and after the Mismatched Interruptible Delivery occurred, at the time it occurred) in the Gas Year in which the Mismatched Interruptible Delivery occurred divided by 365~~

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

~~14.2.2 A Shipper's Interruptible Nominated Quantity in respect of an Exit Point shall, for the purposes of section 14.1, be the Interruptible Nominated Quantity prevailing:~~

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

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

~~(c) before any adjustment to a Firm Interruptible Quantity made in accordance with section 2.11.4.~~

~~14.2.3 A Shipper's Interruptible Allocated Quantity in respect of an Exit Point shall, for the purposes of section 14.1, be the Interruptible Allocated Quantity derived from a Final Allocation.~~

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

~~(a) if such Mismatched Interruptible Delivery shall have arisen in any circumstance where Premier Transmission is relieved (in accordance with section 8.3.2) of its obligation to provide pressure, during Scheduled Maintenance, or where Premier Transmission is relieved (in accordance with section 15 (Force Majeure)) of its obligations under this Code;~~

~~(b) — when Premier Transmission has declared a D-1 Predicted Capacity Shortfall Day or D Capacity Shortfall if Premier Transmission declared such Day for any reason other than as a result of its negligence or Wilful Misconduct.~~

14.2.15 Each Shipper:

- (a) undertakes to Premier Transmission and BGE (UK) that it will not make, raise or assert any claim or action of any kind against Premier Transmission and/or BGE (UK) with respect to any matters which relate directly or indirectly to (i) any arrangements which are in place at any time or from time to time between Premier Transmission and BGE (UK) in relation to the interruptible virtual reverse flow service which is made available pursuant to this Code, including, for the avoidance of doubt, the exercise or performance of any right or obligation pursuant to such arrangements or (ii) any ~~Interruptible VRF Nominated Quantity~~ VRF IP Exit Nomination or otherwise to the provision by Premier Transmission of an interruptible virtual reverse flow service to that Shipper pursuant to this Code or the said arrangements; and
- (b) shall indemnify and keep indemnified Premier Transmission from and against any and all demands, claims, losses, costs, liabilities and damages of any kind whatsoever and howsoever arising (and whether arising under any indemnity or other contractual obligation or in any other way) which Premier Transmission may suffer or incur directly or indirectly in relation to or arising from or in connection with any contravention by that Shipper of the undertaking in (a) above.

14.3 Shrinkage Gas

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

- (a) the proportion of a Shipper's ~~Balancing Imbalance~~ Charges and Balancing Gas costs that are attributable to Shrinkage Gas; or
- (b) £20,000 x  $\frac{RPI_n}{RPI_o}$

14.4 Other breach by Premier Transmission

Any claim which a Shipper may make against Premier Transmission in respect of any breach by Premier Transmission of a provision of or other act or omission of Premier Transmission in relation to this Code, which is not made in accordance with section 14.1.1 ~~or 14.2.4~~, shall not exceed in any Gas Year the following:

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

14.5 Sole liability and remedy

Premier Transmission's sole liability to the Shipper and the Shipper's sole remedy against Premier Transmission at common law, in equity or otherwise in relation to or in connection with the provision of or failure to provide transportation services pursuant to this Code whether as a result of a failure by Premier Transmission to act as a Reasonable and Prudent

Operator, a breach of this Code or the negligence or Wilful Misconduct of Premier Transmission or otherwise shall be as stated in sections 8.9.3, 14.1, and 14.2, 14.3 and 14.4.

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

14.6.1 ~~The~~ Shipper agrees and acknowledges that the aggregate liability of Premier Transmission to all of the Shippers in respect of all losses and/or damages incurred by all of them in respect of each Gas Year (including such loss or damage as is specifically referenced in this Code and for which compensation is specifically provided therein) and which (with the exception of a liability of Premier Transmission to a Shipper in accordance with section 14.8) arises as a result of:

- (a) any failure by Premier Transmission to act as a Reasonable and Prudent Operator in connection with this Code;
- (b) any breach by Premier Transmission of any of its obligations under this Code;
- (c) the negligence or Wilful Misconduct of Premier Transmission in connection with this Code;

or otherwise in connection with this Code, shall in no circumstances exceed, in aggregate, a maximum annual cap equal to 2% of the total Licence revenue of Premier Transmission, as stated in its last annual audited accounts.

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

14.6.3 Premier Transmission shall, subject to section 14.6.4, pay any such sums due to Shippers in respect of any liability referred to in section 14.6.2 in the first invoice issued in the next Gas Year together with interest on such payment from the date that the liability was incurred until the date of payment at LIBOR plus 1%.

14.6.4 Premier Transmission shall, to the extent that any sums due to Shippers in accordance with section 14.6.3 exceed two percent of the total revenue of Premier Transmission as stated in its last published annual report and accounts, reduce any payments to Shippers pro rata to the sums due to the Shippers.

#### **14.7 Exclusive remedies**

The liabilities of Premier Transmission set out in this section 14 shall constitute the entire liability of Premier Transmission to the Shipper in respect of the matters to which this section 14 relates and Premier Transmission's obligations under this Code (whether arising under contract, tort or howsoever else arising) and shall be in lieu of any and all other rights, claims or remedies which a Shipper may possess howsoever arising. In the event of any conflict between the provisions of this section 14 and the other provisions of this Code this section 14 shall prevail.

#### **14.8 Consequential loss**

Premier Transmission and a Shipper agree that the other shall not in any circumstances be liable to it in respect of any breach of, or otherwise in relation to, this Code in respect of:

14.8.1 any loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill, or increased cost of working;

14.8.2 any indirect or consequential loss; or

14.8.3 loss resulting from the liability of the other Pparty to any other person howsoever and when ever arising.

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

Nothing in this Code shall exclude or limit the liability of a Pparty for death or personal injury resulting from the negligence of a Pparty or any of its officers, employees or agents.

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

Where any provision of this Code provides for any amount to be payable by a Pparty upon or in respect of that Pparty's breach of any provision of this Code, each Pparty agrees and acknowledges that the remedy conferred by such provision is exclusive of and is in substitution for any remedy in damages in respect of such breach or the event or circumstances giving rise thereto and has been the subject of discussion and negotiation, and the amount provided to be payable is reasonable and represents no more than a genuine pre-estimate of the loss of the Pparty to which such amount is payable.

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

Each Pparty shall use reasonable endeavours to mitigate the loss and damage (if any) incurred by it as a result of breach by a Pparty of its obligations under this Code as a result of negligence or tortious act or omission by the other Pparty.

#### **14.12 No liability**

Premier Transmission, for the avoidance of doubt, shall not be liable for the consequences of any decision taken by Premier Transmission acting as a Reasonable and Prudent Operator in accordance with this Code to withhold, reduce or limit any quantity of gas made available for off-take by a Shipper as a consequence of Premier Transmission performing its duties and obligations pursuant to this Code, or as a result of a Shipper's acts or omissions, or being misinformed by Shipper.

#### **14.13 Severability**

Each sub-section in this section 14 shall;

(a) be construed as a separate and severable contract term, and if one or more of such sub-sections is held to be invalid, unlawful or otherwise unenforceable the other or others of such sub-sections shall remain in full force and effect shall continue to bind the Pparties; and

(b) survive termination of this Code.

#### **14.14 Premier Transmission to indemnify Shippers**

Premier Transmission shall be liable to each Shipper for and indemnify, defend and hold harmless each Shipper from and against any and all Indemnified Liabilities, in respect of:

14.14.1 injury to or sickness, disease or death of any person employed by or engaged on behalf of Premier Transmission; or

14.14.2 damage to or loss of property of Premier Transmission, howsoever arising in respect of this Code including out of the Shippers breach of this Code, or the Shipper's breach of statutory duty in respect of this Code or from the negligence of the Shipper save to the extent that any Indemnified Liabilities arise from the Wilful Misconduct of the Shipper.

#### **14.15 Shippers to indemnify Premier Transmission**

Each Shipper shall be liable to Premier Transmission for and indemnify, defend and hold harmless Premier Transmission from and against any and all Indemnified Liabilities, in respect of:

14.15.1 injury to or sickness, disease or death of any person employed by or engaged on behalf of the Shipper; or

14.15.2 damage to or loss of property of each Shipper howsoever arising in respect of this Code including out of Premier Transmission's breach of this Code or Premier Transmission's breach of statutory duty in respect of this Code or from the negligence of Premier Transmission save to the extent that any Indemnified Liabilities arise from the Wilful Misconduct of Premier Transmission.

#### **14.16 Insurance**

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

(a) general third party insurance with a limit per occurrence or series of occurrences arising from one event of not less £10,000,000 (ten million pounds sterling);

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

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

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

Each Shipper:

(a) undertakes to Premier Transmission that it will not make, raise or assert any claim or action of any kind against the Adjacent Transporter arising out of the Adjacent Transporter's failure to comply with any of its obligations under the Tripartite Agreement; and

(b) shall indemnify and keep indemnified Premier Transmission from and against any and all demands, claims, losses, costs, liabilities and damages of any kind whatsoever and howsoever arising (and whether arising under any indemnity or other contractual obligation or in any other way) which Premier Transmission may suffer or incur directly or indirectly in relation to or arising from or in connection with any contravention by that Shipper of the undertaking in (a) above.

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Amend section 15 to read as follows:

## 15. FORCE MAJEURE

### 15.1 Definition

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

- 15.1.1 war declared or undeclared, threat of war, act of public enemy, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism;
- 15.1.2 act of God;
- 15.1.3 strike, lockout or other industrial disturbance;
- 15.1.4 explosion, fire, fault or failure of plant, equipment or other installation which the Affected Party could not prevent or overcome by the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same kind of undertaking under the same or similar circumstances;
- 15.1.5 governmental restraint or the coming into force of any regulation, licence or Directive of any Competent Authority;
- 15.1.6 suspension, withdrawal or change in the terms of any licence, permit or consent;
- 15.1.7 structural shift or subsidence affecting generally a part or parts of the Transportation System or any area or areas of the route of the **p**Pipeline;
- 15.1.8 the occurrence of an event of force majeure under the BGE (UK) Transportation Agreement or the ~~Moffat Administration Agreement – Tripartite Agreement~~ in respect of which a **P**party has sought relief from its obligations.

### 15.2 Relief from obligations

Subject to section 15.3 and without prejudice to any other provisions of this Code limiting or restricting the liability of the Affected Party, if by reason of an event of Force Majeure, the Affected Party is rendered unable wholly or in part to carry out its obligations under this Code then its obligations shall be suspended to the extent the Affected Party's ability to perform is hindered by the Force Majeure event.

### 15.3 No relief

A Force Majeure event shall not relieve a **P**party from any liability or obligation to:

- 15.3.1 make payments due under this Code save to the extent that the failure to pay money is caused by a Force Majeure event affecting all reasonable means of payment, in which case, upon the cessation of the Force Majeure event, the Affected Party shall pay these unpaid monies together with interest on them at the

rate of LIBOR calculated from the due date for payment to the actual date of payment; or

15.3.2 give any notice due under this Code.

#### **15.4 Report of Force Majeure event**

Following any occurrence of a Force Majeure event the Affected Party shall as soon as reasonably practicable notify the Other Party of the occurrence and nature of the Force Majeure event, the expected duration thereof, (insofar as the same can reasonably be assessed), and the obligations of the Affected Party performance of which is affected by it and from time to time thereafter provide to the Other Party reasonable details of:

15.4.1 developments in the matters so notified, and

15.4.2 the steps being taken by the Affected Party to overcome the Force Majeure event or its effects and to resume performance of its relevant obligations.

#### **15.5 Resumption of obligations**

Any Party whose failure to perform obligations has been relieved under the provisions of this section 15, shall resume the performance of such obligations as soon as reasonably practicable after the removal of the cause of the failure and shall notify the Other Party prior to its resumption.

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Amend section 16 to read as follows:

## 16. TERMINATION

### 16.1 Introduction

A Shipper agrees that its Accession Agreement may be terminated in accordance with this section 16 or section 17.810. 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 sections 16.5, 17.10.5 and 17.10.6.

### 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 fifteen (15) Business Days of the Due Date (by the "Second Due Date")~~ provided that Premier Transmission shall have given the Shipper not less than ~~five (5)~~ Business Days' written notice that such payment is overdue; or
- (ii) by the Due Date on ~~three (3)~~ or more occasions in respect of ~~three (3)~~ or more separate CC Invoices;

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

- (i) ~~within fifteen (15) Business Days of the Due Date~~ by the Second Due Date provided that Premier Transmission shall have given the Shipper not less than ~~five (5)~~ Business Days' written notice that such payment is overdue; or
- (ii) by the Due Date on ~~three (3)~~ or more occasions in respect of ~~three (3)~~ or more separate PS Invoices;

~~(bb) fails to pay any sum due to Premier Transmission under an STC/VRF/BB Invoice:~~

- ~~(i) within fifteen (15) Business Days of the Due Date (by the "Second Due Date") provided that Premier Transmission shall have given the Shipper not less than five (5) Business Days written notice that such payment is overdue; or~~
- ~~(ii) by the Due Date on three (3) or more occasions in respect of three (3) or more separate STC/VRF/BB Invoices;~~

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

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

- (i) hold Firm-Exit Capacity and/or IP Capacity; or

(ii) have entitlement to Enter gas to or Exit gas from the NI Network as if it had a Gas Supply Licence,

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

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

(i) hold ~~Firm~~ Exit Capacity and/or IP Capacity; or

(ii) have entitlement to Enter gas to or Exit gas from the NI Network as if it had a Gas Supply Licence,

ceases to hold the relevant consent from the Authority.

(f) is in LPC Default.

16.2.2 Within ~~two (2)~~ 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 Notwithstanding the foregoing, where, within ~~fifteen (15)~~ Business Days of the date on which the 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, to terminate the relevant Accession Agreement by written notice.

16.2.4 Without limiting any other rights to terminate an Accession Agreement which Premier Transmission has under this Code, 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 ~~P~~party for breach

#### 16.3.1A In this section 16.3:

(a) "Defaulting Party" means either Premier Transmission or a Shipper who is in in breach of any of its obligations under this Code; and

(b) "Non-Defaulting Party" means whichever of Premier Transmission or a Shipper is not the Defaulting Party.

### Breach to be referred to the Credit Committee

16.3.1 ~~Save for where section 16.2.1 or section 16.3.7 applies, if Premier Transmission or a Shipper the Defaulting Party is in breach of section 16.3.2 any of its obligations under this Code (the "Defaulting Party") and that breach gives rise to a material increase in credit risk for PS Gas Suppliers, the party which is not in breach (the "Non-Defaulting Party") may request, by sending a Meeting Notice in accordance with paragraph 3 of the Terms of Reference, the Credit Committee to agree to allow termination of the relevant Accession Agreement, provided that such referral to the Credit Committee may only be made where the relevant breach itself (and not any resulting termination) gives rise to a material increase in credit risk for PS Gas Suppliers. Where the relevant breach is not to be referred to the Credit Committee as provided in this section, either party may terminate the relevant Accession Agreement in accordance with this section 16.3.~~

16.3.2 ~~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. Not Used~~

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

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

- (a) the alleged breach;
- (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 ~~thirty (30)~~ Business Days; and
- (c) the date on which the Accession Agreement shall terminate if the relevant breach has not been remedied within the period specified in such Direction or in the Termination Notice in accordance with (b), above.

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

16.3.6 Notwithstanding the foregoing, where, within ~~fifteen (15)~~ Business Days of the date on which the Meeting Notice was sent by Premier Transmission under section 16.3.1, the Credit Committee has failed to decide Directions in respect of ~~that Termination Default~~ the alleged breach, Premier Transmission shall be entitled, with the Authority's consent, to terminate the relevant Accession Agreement by written notice.

### Other Breaches

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

(a) the Non-Defaulting Party; or

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

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

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

(a) the alleged breach;

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

(c) the date on which the Accession Agreement shall terminate if the relevant breach has not been remedied within the period specified in the Termination Notice in accordance with (b), above.

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

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

16.4.1 Either Pparty 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 Pparty or any security granted by the other Pparty becomes enforceable;
- (b) the other Pparty 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 Pparty suffering a distress, execution, sequestration or other process being levied or enforced upon or sued or against all or any substantial part of its assets, rights or revenues which is not discharged, stayed, or dismissed within ~~thirty~~ (30) Business Days;
- (d) the other Pparty 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 in accordance with this section 16, 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; and

(ii) all PS Code Charges; ~~and~~

~~(iii) all STCA/VRF/BB Charges;~~

- (b) the following:

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

(ii) the Forecast Postalised Commodity Charge that would be payable in respect of the Shipper's aggregated ~~Firm Allocated Quantities and Interruptible Allocated Quantities~~ Exit Allocations if such quantities together were taken to equal 80% of all ~~Firm Exit~~ Capacity held by the Shipper in the remainder of the Gas Year after the date of termination; and

(iii) Premier Transmission's estimate of the PS Transmission Amounts that would be payable in respect of all ~~Firm Exit~~ Capacity and IP Capacity held by the Shipper in all future Gas Years (had no such termination occurred) provided that such sums shall be adjusted to take account of:

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

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

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

~~(cc)~~ the net present value of the amount payable at LIBOR;

~~(iv) Premier Transmission's estimate of the STCA/VRF/BB Charges that would be payable in respect of all Daily Capacity held by the Shipper in the remainder~~

~~of the Month in which the date of termination falls and the immediately succeeding Month;~~

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

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

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

16.5.4 The Shipper shall, no later than ~~thirty~~ (30) Business Days following receipt of the Termination Invoice pay to the PoT Account all sums payable under section 16.5.2, with the exception of payments due under section 16.5.2(a)(ii), ~~16.5.2 (a)(iii) and 16.5.2 (b)(iv)~~, 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.

## 16.6 Consequences of termination in respect of capacity

### 16.6.1 In this Code:

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

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

- (a) Premier Transmission shall notify the Transferee Shipper as soon as reasonably practical and no later than 5 Business Days after issuing a Termination Notice and provide the Transferee Shipper with an Election Notice and details of the PS Transmission Amounts payable in respect of the IP Capacity that was subject to the IP Capacity Transfer and/or the Exit Capacity that was subject to the Exit Capacity Transfer;
- (b) the Transferee Shipper may elect to become registered as holding all or part of the IP Capacity that was subject to the IP Capacity Transfer and/or the Exit Capacity that was subject to the Exit Capacity Transfer, by returning the Election Notice to the Transporter within [2 Business Days of receipt] specifying the relevant amount of IP Capacity and the IP Capacity Period and/or the relevant amount of Exit Capacity and the Exit Capacity Period which the Transferree Shipper elects to become registered as holding;

- (c) where the Transferee Shipper elects to become registered as holding the IP Capacity and/or Exit Capacity referred to in the Election Notice, its Registered IP Capacity or Registered Exit Capacity, as applicable, shall be increased by the amount and for the period specified in the Election Notice, and it shall be liable for all charges payable in respect of such IP Capacity or Exit Capacity from the date of termination of the Terminating Shipper's Accession Agreement;
- (d) where the Transferee Shipper does not elect to become registered as holding the IP Capacity and/or Exit Capacity referred to in the Election Notice, the IP Capacity Transfer or Exit Capacity Transfer, as applicable, shall lapse and the Terminating Shipper shall remain liable for all PS Transmission Amounts payable as determined in accordance with Section 16.5.2;
- (e) PS Transmission Amounts payable shall be determined by reference to the applicable Payable IP Capacity Price for the IP Capacity Period or the applicable Payable Exit Capacity Price for the Exit Capacity Period, as applicable, (including any Premium bid by the Transferor Shipper).

16.6.3 Where a Terminating Shipper is a Transferee Shipper:

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

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

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

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

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

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

16.7.3 Where Section 16.7.1 applies in respect of Exit Capacity, Premier Transmission shall:

- (a) add the amount of such Exit Capacity to the unsold Technical Exit Capacity for the relevant Ext Capacity Period; and

(b) for the avoidance of doubt, such Exit Capacity will be allocated in accordance with Section 1B.11 as unsold Technical Exit Capacity.

**16.8 Notification to the Adjacent Transporter**

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

.....



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

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

Amend section 19 to read as follows:

## 19. CONFIDENTIALITY

### 19.1 Definitions

In this Code:

19.1.1 **"Confidential Information"** means:

- (a) in relation to Premier Transmission, any information relating to the affairs of a Shipper;
- (b) in relation to a Shipper, any information relating to Premier Transmission or another Shipper,

obtained in connection with this Code, other than its terms, which for the avoidance of doubt includes (but is not limited to) information obtained from an Adjacent Transporter or the Capacity Platform Operator;

19.1.2 **"Disclosing Party"** means the Pparty disclosing Confidential Information to a Receiving Party;

19.1.3 **"Permitted Purpose"** means any purpose related to a Pparty's participation in this Code including in relation to the preparation of the NI Pressure / Capacity Report Ten Year Statement; and

19.1.4 **"Receiving Party"** means the Pparty to which Confidential Information is disclosed by a Disclosing Party.

### 19.2 Confidentiality

A Receiving Party shall not, except as provided in section 19.3 and 19.4, disclose any Confidential Information to any other person, or use any Confidential Information other than for the Permitted Purpose, without the written consent of the Disclosing Party.

### 19.3 Exceptions

Section 19.2 shall not apply to any Confidential Information which:

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

19.3.2 is known by the Receiving Party at the time it obtains the Confidential Information (save where the information is known by the Receiving Party as a result of it having previously been disclosed by the Disclosing Party to it); ~~or~~

19.3.3 is lawfully acquired by the Receiving Party from a third party otherwise than in breach of an obligation of confidentiality; ~~or~~

19.3.4 ~~any information which~~ is required to be discharged to holders of conveyance licences for the purpose of the operation or management of the Postalised Network Disbursement Procedure or the ~~BGE(NI)~~ Postalised Network Disbursement Bank Account.

## 19.4 Rights of disclosure

19.4.1 A Receiving Party may disclose Confidential Information without the consent of the Disclosing Party:

- (a) to any employees, officers, directors, professional advisors and consultants of the Receiving Party to the extent that the disclosure is necessary in connection with the Permitted Purpose;
- (b) to any of its Affiliates, or any person holding more than ~~twenty five (25)~~ % of the issued share capital of the Receiving Party or any of that persons Affiliates, to the extent that the disclosure is necessary in connection with the Permitted Purpose;
- (c) to any bona fide prospective transferee of more than ~~twenty five (25)~~ % of the issued share capital of the Receiving Party or any of its Affiliates;
- (d) to any bank or financial institution from which the Receiving Party is seeking or obtaining finance to the extent that the disclosure is necessary in connection with such finance;
- (e) to any person appointed as Expert pursuant to this Code to the extent reasonably necessary for the performance of his duties to the extent required by law or by the order of any court having competent jurisdiction over the Receiving Party or the regulations of a recognised stock exchange or requested by any Competent Authority; and
- (f) to the extent required by law or by the order of any court having competent jurisdiction over the Receiving Party or the regulations of a recognised stock exchange or requested by any Competent Authority.

19.4.2 A Receiving Party shall:

- (a) ensure that any person to whom the Receiving Party discloses information under sections 19.4.1 (a) to (e) complies with the obligations of this section 19.1 to 19.5 as if that person were a party to the fullest extent practicable; and
- (b) obtain from any person to whom the Receiving Party discloses information under sections 19.4.1 (c), (d) or (e) an undertaking in favour of the Disclosing Party to do so.

19.4.3 Premier Transmission may disclose Confidential Information without the consent of the Disclosing Party to Belfast Gas to the extent Premier Transmission reasonably considers is necessary in order for it to comply with the ~~{Network Code Interface}~~ Agreement entered into by Premier Transmission and Belfast Gas ~~{during December 2004}~~ ~~{and published by Premier Transmission on its website}~~.

19.4.4 Premier Transmission shall require that Belfast Gas complies with its obligations in respect of confidentiality set out in such ~~{Network Code Interface}~~ Agreement in relation to the information which Premier Transmission discloses to Belfast Gas in accordance with section 19.4.3.

19.4.5 Premier Transmission may disclose Confidential Information without the consent of the Disclosing Party to:

- (i) any other Designated Pipeline Operator holding a valid licence to convey gas to the extent Premier Transmission reasonably considers such disclosure is necessary for the purposes of ~~capacity-IP Capacity and Exit Capacity~~ allocation and/or in relation to ~~Interruptible~~-VRF IP Exit Nominations and Interruptible VRF IP Exit Capacity;

(ii) an Adjacent Transporter where such disclosure is provided for or contemplated by this Code or the Tripartite Agreement;

(iii) BGE (UK) for the purposes contemplated by the Tripartite Agreement; and

(iv) the Capacity Platform Operator, and section 1A.6.9 shall apply.

## 19.5 Survival

Whether a Party ceases or continues to be bound by this Code its obligations of confidentiality shall remain in force in relation to any Confidential Information until such information is in the public domain or acquired, known or developed by the relevant Receiving Party in accordance with section 19.3.

## 19.6 Data Ownership

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

19.6.2 If a Shipper provides Premier Transmission with data the Shipper hereby grants to Premier Transmission a perpetual non-exclusive, royalty free licence in respect of such data and all intellectual property rights in it to use, copy and adopt and deal with such data for purposes of the performance and implementation of this Code and other purposes contemplated by this Code but not otherwise. Section 19.6.1 applies to any data derived from such data and all compilations created by or on behalf of Premier Transmission of such data.

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

.....

Amend section 20 to read as follows:

## 20. GENERAL

### Communications

#### 20.1 Gas Transportation Management and Billing System: Aligne

20.1.1 Premier Transmission proposes to establish an information exchange system for the purposes of supporting the implementation of this Code or any operational procedures established in respect of this Code or the operation of the PTL System (an “**Aligne System**”).

~~20.1.2 Premier Transmission proposes to establish an Ancillary System (the “**Ancillary System**”) for the purposes of supporting the implementation of the Capacity Booking Optimisation Methodology and the provision of Firm Capacity Notices in relation to Daily Capacity and Firm Capacity purchase pursuant to section 1.16. The Ancillary System shall, for the purposes of the Code, form part of the Aligne System.~~

~~20.1.3~~ 20.1.2 Premier Transmission may, from time to time, prescribe which communications shall be made by the Parties in respect of this Code or the operation of the PTL System using the Aligne System (an “**Aligne Communication**”) and the form of any Aligne Communication. ~~For the avoidance of doubt, communications using the Ancillary System shall, for the purposes of the Code, be Aligne Communications.~~

~~20.1.4~~ 20.1.3 Subject to section 20.2, ~~if~~ Premier Transmission does so prescribe that a communication shall be an Aligne Communication and the form of the Aligne Communication, the communication may only be given by a Shipper by that means and in that form and any communication given by a Shipper by any other means or in any other form shall be deemed to have not been given for the purposes of this Code or the operation of the PTL System.

~~20.1.5~~ 20.1.4 Premier Transmission and each Shipper agrees that any Aligne Communication shall have legal effect for the purposes of this Code.

~~20.1.6~~ 20.1.5 The Aligne System may, upon giving a Shipper reasonable notice, be reasonably modified from time to time by Premier Transmission.

#### 20.2 Failure of Aligne System

20.2.1 Premier Transmission may, acting as a Reasonable and Prudent Operator, by firstly consulting with and then notifying any Shipper which would be affected, suspend the giving of any communication by the Aligne System for so long as Premier Transmission shall prescribe. In this event any communication in relation to the Code shall be given by fax in accordance with section 20.5.

20.2.2 A Shipper may request Premier Transmission to suspend the giving of any communication by the Aligne System where it considers access to it is prevented or restricted. Premier Transmission shall suspend the giving of any communication by the Aligne System if, acting as a Reasonable and Prudent Operator, it believes the request of the Shipper to be reasonable.

20.2.3 The Shipper shall at the request of Premier Transmission provide any information reasonably requested by Premier Transmission in order to investigate, diagnose, test the Aligne System or repair any faults.

20.2.4 Premier Transmission may plan outages for maintenance of the Aligné System at any time, but will endeavour to minimise the business impact of such outages to ~~all parties~~ Shippers. Premier Transmission will endeavour to give Shippers at least 10 Business days prior notice of any such planned outage together with, where possible, an estimate of the expected duration of such outage.

### 20.3 Licence to use Aligné System

20.3.1 Subject to ~~this~~ section 20.1 Premier Transmission licences a Shipper, for the purposes contemplated by this Code, but not otherwise:

- (a) to have access to and use the Aligné System;
- (b) to use the software installed in respect of the Aligné System; and
- (c) ~~to~~ make use of any manual or other materials provided by Premier Transmission in respect of the Aligné System;

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

20.3.2 The licence granted in section 20.3.1~~2~~ to a Shipper is royalty free, non-exclusive and non-transferable and shall terminate automatically upon that Shipper ceasing to be a Shipper for any reason.

20.3.3 The Licensed Software and Materials and all copyright and other intellectual property rights of whatever nature in the Licensed Software and Materials are and shall at all times remain, as between Premier Transmission and a Shipper, the property of Premier Transmission.

20.3.4 A Shipper shall not:

- (a) use the Licensed Software and Materials other than as permitted in accordance with section 20.3.1;
- (b) copy the Licensed Software and Materials;
- (c) sub-license the use of the Licensed Software and Materials;
- (d) except as may be permitted by law, decompile, disassemble or modify the whole or any part of the software comprised in the Licensed Software and Materials;
- (e) without the prior written consent of Premier Transmission permit any unauthorised party to use the Licensed Software and Materials.

20.3.5 If through the Aligné System a Shipper obtains or receives unauthorised access to information concerning another Shipper, or receives a communication sent to another Shipper, the receiving Shipper will promptly so inform Premier Transmission and will close the screen on which such information or communication appears or delete the same from its equipment without making any copy of it (and destroying any copy accidentally made) and make no further use of it.

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

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

#### **20.5 Notices**

- 20.5.1 Any notice or other communication (other than a communication given in accordance with any procedure established under section 20.1.32) given or made by a Party under this Code shall be:
- (a) in writing and may be delivered by hand to the addressee, or sent by first class prepaid letter, to the address of the addressee or sent by fax to the addressee's fax transmission number specified in writing by the addressee or such other address or number as may be notified by a Party to the other from time to time in writing for this purpose; and
  - (b) deemed to have been given or made and delivered, if by hand, when left at the relevant address, if by letter, on the second day after posting, and if by fax transmission between the hours of 09:00 and 17:00 on Monday to Thursday and between the hours of 09:00 and 16:00 on Friday, at the time of receipt by the sender of confirmation of transmission and otherwise at 09:00 on the next business day after transmission;
  - (c) marked clearly and conspicuously for the attention of Premier Transmission or the Shipper (as appropriate).
- 20.5.2 If a communication by fax is received in an incomplete or illegible form:

- (a) if the addressee so requests (by telephone or otherwise), the sender shall promptly retransmit the communication to the addressee; and
- (b) provided that the request for re-transmission was made within twenty four (24) hours after time of receipt (in accordance with section 20.5.1) of the first fax, the communication shall not be deemed to have been received until the time (whether or not between 09:00 and 17:00 hours) of receipt by the sender of confirmation of such retransmission.

20.5.3 The Parties shall agree procedures for giving operational communications.

### **Other general sections**

#### **20.6 Waiver**

- 20.6.1 No delay by or omission of any Party in exercising any right, power, privilege or remedy under this Code shall operate to impair such right, power, privilege or remedy or be construed as a waiver of it.
- 20.6.2 Any single or partial exercise of any such right, privilege or remedy shall not preclude any other or future exercise thereof or the exercise of any other right, power, privilege or remedy.

#### **20.7 Severance**

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

#### **20.8 Entire Agreement**

- 20.8.1 Subject to section 20.8.3 this Code and an Accession Agreement (as respects the Parties to it) contain or expressly refer to the entire agreement between the Parties with respect to their subject matter, and supersede all previous agreements or understandings between the Parties with respect thereto; and any warranty, condition or other term implied at law or by custom is (to the fullest extent permitted by law) expressly excluded from them.
- 20.8.2 Premier Transmission and a Shipper acknowledge that in entering into any Accession Agreement it does not rely on any representation, warranty or other understanding not expressly contained in this Code or such Accession Agreement.
- 20.8.3 Nothing contained in a document (other than an Accession Agreement) referred to in this Code, beyond what is expressly contemplated by this Code as being contained in such document or is necessary for the purposes of giving effect to a provision of this Code, shall modify or have any effect for the purposes of this Code or be construed as relevant to the interpretation of this Code unless the Authority approves such document in writing.



## 20.9 Gas users or shippers

Nothing in this Code or the Accession Agreement shall be construed as imposing upon Premier Transmission any obligation or duty to or enforceable by a user or a shipper of gas downstream of the Transportation System, except if such user or shipper is a Pparty to this Code and no Shipper shall make any commitment to any such user or shipper binding on or purporting to bind Premier Transmission.

## 20.10 Third party rights

20.10.1 Subject to section 20.10.2, a person who is not a party to this Code shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Code or any Accession Agreement or agreement expressed to be supplemental hereto notwithstanding that any such term may purport to confer or may be construed as conferring a benefit on such third party. The provisions of this section 20.10 shall not affect any right or remedy of such third party which exists or is available apart from the Act.

20.10.2 Section 20.10.1 shall not apply in relation to any obligation on the part of a Shipper pursuant to Section 14.2.5 and BGE (UK) may enforce any term of such section against a Shipper and the provisions of such section shall create rights which are enforceable by BGE (UK) against Shippers.

20.10.3 Subject to compliance by Premier Transmission with any requirement for consultation under any applicable law or regulation and approval by the Authority of any code modification, Premier Transmission may rescind and / or vary any of the provisions of Section 14.2.5 without notice to or the consent of any Shipper or other third party.

## 20.11 Assignment

20.11.1 Subject to section 20.11.4 and 20.11.5 a Pparty may assign its rights under this Code and the Accession Agreement:

(i) to an Affiliate (the definition of Affiliate shall be amended for these purposes so that a shareholding of  $33\frac{1}{3}\%$  shall be considered to be control) of such Pparty, provided that the assigning Pparty shall continue to be bound by and liable under this Code, and the Accession Agreement;

(ii) subject to section 20.11.5 with the prior agreement in writing of each relevant other Pparty or Pparties, which shall not unreasonably be withheld, to any person.

20.11.2 For the purposes of this section 20.11 a relevant other Pparty is:

(i) where the assigning Pparty is a Shipper, Premier Transmission; and

(ii) where the assigning Pparty is Premier Transmission, each Shipper.

20.11.3 Except as provided in section 20.11.1, or otherwise expressly provided in this Code, a Pparty shall not assign or transfer and shall not purport to assign or transfer any of its rights or obligations under this Code, and the Accession Agreement.

20.11.4 No assignment shall be made to a person unless:

- (i) where the assigning Pparty is a Shipper, that person holds a Gas Supply Licence if the assigning Pparty has an IP Registration in respect of an IP or an Exit Point Registration in respect of an Exit Point in Northern Ireland;
- (ii) where the assigning Pparty is Premier Transmission, that person holds a Licence to Convey Gas in Northern Ireland.

20.11.5 Where a Shipper assigns its rights under this Code and the Accession Agreement to a person (including a 33<sup>1</sup>/<sub>3</sub>% Affiliate) pursuant to section 20.11.1 it shall be a condition precedent to such assignment that such person shall:

- (a) enter into an agreement in the Prescribed Form with Premier Transmission covenanting to be bound by this Code and the Accession Agreement;
- (b) satisfy the conditions precedent in the Accession Agreement.

20.11.6 Where any Pparty assigns its rights under this Code and the Accession Agreement to a person pursuant to section 20.11.1 the assigning Pparty shall be released from its obligations under this Code and the Accession Agreement arising after the time at which the assignment is effective, but shall remain liable for any obligations accruing up to such time.

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

## 20.12 Definitions and interpretations

Unless the context otherwise requires, the definitions and rules of interpretation in appendix 1 shall apply to this Code.

## 20.13 Agents

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

## Transitional provisions

### ~~20.13 — Survival of existing capacity reservations~~

~~Upon a Prospective Shipper, which is a party to an existing transportation agreement with Premier Transmission pursuant to which it is entitled to firm capacity in the Transportation System (an “Existing Transportation Agreement”):~~

~~20.13.1. agreeing with Premier Transmission to the termination of its Existing Transportation Agreement; and~~

~~20.13.2 having executed a relevant Accession Agreement and acceding to the Code and becoming a Shipper,~~

~~Premier Transmission shall, notwithstanding section 1.5, issue to the Shipper, a Firm Capacity Notice allocating to it Firm Capacity for each Gas Year of an amount equal to the firm capacity held under its Existing Transportation Agreement in such years.~~

## ~~20.14 — Initial Capacity Reservation~~

### ~~20.14.1 — In this Code~~

#### ~~"Incremental Capacity~~

~~"Period" — the period commencing on the date declared by Premier Transmission being a date consistent with BGE (UK) having revised Premier Transmission's capacity holding in the BGE (UK) Upstream System and ending on 30th September 2001;~~

#### ~~"Initial Capacity~~

~~"Reservation Period" — means a period notified by Premier Transmission to Shippers on not less than five (5) Business Days notice commencing on the later of:~~

~~(a) — the date which is five (5) Business Days after the date on which the Authority has confirmed in writing to Premier Transmission that the Authority does not object to this Code being put in place; and~~

~~(b) — the date declared by Premier Transmission being a date consistent with BGE (UK) having revised Premier Transmission's capacity holding in the BGE (UK) Upstream System;~~

~~and ending five (5) Business Days later.~~

~~20.14.2 — A Shipper may, during the Initial Capacity Reservation Period, submit to Premier Transmission a Firm Capacity Application in respect of the Incremental Capacity Period and for any future Gas Year.~~

~~20.14.3 — Premier Transmission shall apply section 1.3, 1.4 and 1.5, *mutatis mutandis*, to any Firm Capacity Applications which it receives during the Initial Capacity Reservation Period provided that Premier Transmission shall issue a Firm Capacity Notice to each Shipper to which Available Firm Capacity shall be allocated not later than fifteen (15) Business Days after the end of the Initial Capacity Reservation Period.~~

~~20.14.4 A Shipper which does not submit a Firm Capacity Application during the Initial Capacity Reservation Period may only submit a Firm Capacity Application after the Code coming into effect in accordance with the provisions of the Code.~~

~~20.14.5 It is agreed, for the avoidance of doubt, that when applying these transitional provisions Available Firm Capacity will exclude firm capacity reserved under all Existing Transportation Agreements.~~

~~**20.15 Initial Accession to the Code**~~

~~In respect of any Shipper acceding to the Code within the first two (2) months after the date of this Code, Premier Transmission may (notwithstanding any other provision of this Code) in respect of any of the requirements for acceding to this Code (including any requirements set out in section 13) agree to shorten any of the relevant time periods in order to facilitate the accession by Shippers to this Code in a timely manner.~~

~~**20.16 Agents**~~

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

*Amend section 21 to read as follows:*

## **21. GOVERNING LAW AND DISPUTE RESOLUTION**

### **21.1 Governing Law**

This Code will be governed by and construed in accordance with the laws of England and Wales.

### **21.2 Dispute Resolution**

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

21.2.2 If a Dispute arises, it shall be referred, upon written notice from a Pparty to the other Pparty or Pparties (a "**Dispute Notice**"), to mediation in accordance with section 21.3.

21.2.3 A Dispute which is not resolved by mediation within thirty (30) days of the date of the Dispute Notice shall, subject to section 21.2.4 and 21.4, be settled by the courts of England in accordance with section 21.5.

21.2.4 Where this Code provides or the Pparties have agreed that a Dispute is to be resolved by the determination of an expert and the Dispute is not first resolved by mediation within thirty (30) days of the date of the Dispute Notice, it shall be settled by an Expert (an "**Expert**") in accordance with section 21.4 ("**Expert Determination**").

### **21.3 Mediation**

21.3.1 If a Dispute arises the Pparties shall attempt to settle it in accordance with the Centre for Dispute Resolutions (CEDR) Model Mediation Procedure.

### **21.4 Expert Determination**

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

- (a) the Pparties shall attempt to agree on the appointment of a single Expert to settle the Dispute;
- (b) if within fifteen (15) Business Days of the date of the Dispute Notice the Pparties have been unable to agree on the choice of an Expert, any Pparty may inform the President of Institution of Gas Engineers and Managers (the "**President of the IGEM**") of the nature and complexity of the Dispute and request him to appoint a single Expert for the determination of the Dispute within ~~thirty (30)~~ Business Days of the date of the Dispute Notice, and in doing so the President of the IGEM may take such independent advice as he thinks fit;
- (c) if the President of the IGEM does not exist at the time of such request, refuses to make such an appointment, or fails to do so within ~~thirty (30)~~ Business Days of the Dispute Notice, any of the Pparties may then apply to the President of the Law Society of England and Wales who shall appoint an Expert within ~~fifteen (15)~~ Business Days of being requested to do so;
- (d) upon the Expert being agreed upon or appointed in accordance with this section 21.4 the Pparties shall immediately notify the Expert of his appointment and shall request him to confirm within 5 Business Days whether or not he is willing and

able to accept the appointment and, if he accepts the appointment, to confirm his independence. If no Expert can be appointed pursuant to section 21.4, the Dispute shall be finally settled by the courts of England in accordance with section 21.5.

- 21.4.2 The Expert shall be a person suitably qualified by education, experience and/or training to determine the Dispute.
- 21.4.3 The Expert shall be entitled to: (a) seek such independent professional and/or technical advice; and (b) obtain secretarial assistance, as he may reasonably consider necessary.
- 21.4.4 The Expert and his assistants (if any) shall, as a prerequisite to the Expert's appointment, enter into a confidentiality undertaking with the Pparties in the same terms, *mutatis mutandis*, as required by section 19 (*Confidentiality*) and pursuant to which the Expert and his assistants (if any) shall keep the fact that the Expert Determination is taking place and its outcome confidential.
- 21.4.5 (a) The Expert shall confirm to the Pparties before his appointment that he does not hold any interest or duty which would or potentially would conflict with the performance of his duties as an Expert.
- (b) If after his appointment the expert becomes aware of any interest or duty which does so conflict or potentially conflicts, the expert shall inform the Pparties forthwith of such conflict giving full details of it.
- (c) Any Pparty may within five (5) Business Days of the disclosure of any such conflict object to the appointment or continued appointment of an expert, in which case the expert shall not be or shall cease to be appointed and a new expert shall be selected and appointed in accordance with this section 21.4 (and the rejected expert shall not be nominated for such selection).
- 21.4.6 The Pparties shall keep the fact that the Expert Determination is taking place and its outcome confidential provided that a Shipper may disclose the outcome to any of its customers to the extent that it demonstrates to Premier Transmission that it reasonably requires to do so provided further that any such Shipper shall ensure that any such customer complies with the obligations of section 19.1 to 19.5 as if that customer were a Pparty and following any request by Premier Transmission, obtains from that customer an undertaking in favour of Premier Transmission to do so.
- 21.4.7 Any and all communications between the Pparties and the Expert shall be made or confirmed in writing and a copy of such communications shall be provided simultaneously to the other Party or Parties. No meeting between the Expert and any of the Parties shall take place unless all the Pparties have been given a reasonable opportunity to attend.
- 21.4.8 The terms of reference of the Expert shall include the following:
- 21.4.8.1 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 England) at which he shall clarify, and, if necessary, define the Dispute and give directions as to the future conduct of the Dispute;
- 21.4.8.2 that the Expert may, from time to time give such directions as he sees fit;
- 21.4.8.3 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 within ~~thirty (30)~~ Business Days of his appointment or such other time as agreed in writing by the Pparties;

- 21.4.8.4 that the Expert shall give full written reasons for his determination and shall furnish the Pparties with a draft of his proposed determination;
- 21.4.8.5 the Pparties shall be entitled to make representations to the Expert within ~~seven~~ (7) Business Days after the receipt of the draft of the Expert's proposed determination.
- 21.4.9 If an Expert becomes unwilling or unable to act, or does not act, in the matter in respect of which he is appointed, then another Expert shall be appointed in accordance with the procedure set out in section 21.4.1.
- 21.4.10 If, within a reasonable period, but in any event not later than ~~ninety~~ (90) Business Days after the acceptance of his appointment, the Expert has not made his determination, then, at the request of any of the Pparties, another Expert shall be appointed in accordance with section 21.4.1 and, on acceptance of such appointment, the appointment of the previous Expert shall cease unless (prior to the date when the new Expert accepts his appointment) the Expert has made his determination, in which case such determination shall be binding and the instructions of the new Expert shall be withdrawn.
- 21.4.11 Subject to section 21.6, the costs and expenses of the Expert, any independent advisers to the Expert and any costs of his or their appointment (if he is or they are appointed by the President of the IGEM or the President of the Law Society of England and Wales) shall be borne equally by the Pparties, but each Pparty shall bear its own costs.
- 21.4.12 An Expert appointed under this section 21 shall act as an expert and not as an arbitrator and the provisions of the Arbitration Act 1996 and any amendments or supplements to or re-enactments of them shall not apply to his determination.
- 21.4.13 The Expert's final determination shall be final and binding on the Pparties except in the event of fraud or where it is so clearly erroneous on its face that it would be unconscionable for it to stand, in which case another expert may be appointed in accordance with the provisions of section 21.4.1.

## 21.5 English Courts

- 21.5.1 Subject to the provisions of this section 21, Premier Transmission and a Shipper irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any Dispute which may arise out of or in connection with this Code and/or its Accession Agreement.
- 21.5.2 Each Pparty irrevocably waives any objection which it may have to the laying of the venue of any proceedings in the courts of England and any claim that any such proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgement in any proceedings brought in the English courts shall be conclusive and binding upon such Pparty and may be enforced in the courts of any other jurisdiction.

## 21.6 Costs of Dispute

Premier Transmission's costs arising out of a Dispute shall be treated as an Eligible Pass-Through Cost in accordance with the Licence unless an Expert or court directs that Premier Transmission has failed to act as a Reasonable and Prudent Operator.

.....

*Insert the following new section T10 immediately after section T9*

## **Transition Section T10**

### **T10.1 Introduction**

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

- (a) the modified:
  - (i) section 14 (*Liabilities and Indemnities*);
  - (ii) section 15 (*Force Majeure*);
  - (iii) section 16 (*Termination*);
  - (iv) section 19 (*Confidentiality*);
  - (v) section 20 (*General*);
  - (vi) section 21 (*Governing Law and Dispute Resolution*);
  - (vii) Appendix 5, paragraph 1.1(10);
  - (viii) Appendix 5, paragraph 6.1(C);
  - (ix) Appendix 5, paragraph 6.2;
  
- (b) the new:
  - (i) section 17.10.7; and
  - (ii) section 17.10.8;

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

- (c) the modified Appendix 1 (*Definitions and Interpretation*) (the "**Legal and General Modified Appendix 1**");

all as set out in Code Modification 37 shall be effective in accordance with this section T10. Existing terms or sections of the Code in force prior to Code Modification 37 becoming effective in accordance with this section T10 are referred to in this section T10 as "**Unmodified**"

T10.1.2 In this section T10:

- (a) "**T10 Implementation Date**" means the date of implementation of this section T10 which shall be 11<sup>th</sup> September or, if later, the date the Authority approves Code Modification 37;



- (b) **“Legal and General Operational Date”** means 1<sup>st</sup> October 2015.

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

T10.2.1 The Modified Legal and General Sections and Legal and General Modified Appendix 1 shall apply in respect of the Gas Flow Day commencing at 05:00 on the Legal and General Operational Date and for all Gas Flow Days thereafter.

T10.2.2 The Unmodified sections 14, 15, 16, 18, 19 and 20 shall apply in respect of all Gas Flow Days up to and including 30<sup>th</sup> September 2015 but not in respect of Gas Flow Days thereafter.

### **T10.3 Successional Changes to Appendix 1**

T10.3.1 In this section T10:

- (a) **“CAM Modified Appendix 1”** and **“CAM Effective Date”** have the meanings given to them in section T2 implemented or to be implemented in accordance with Code Modification 28;
- (b) **“Nominations Modified Appendix 1”** has the meaning given to it in section T4 implemented or to be implemented in accordance with Code Modification 31;
- (c) **“Allocations Modified Appendix 1”** has the meaning given to it in section T5 implemented or to be implemented in accordance with Code Modification 32;
- (d) **“Invoicing and Credit Modified Appendix 1”** has the meaning given to it in section T6 implemented or to be implemented in accordance with Code Modification 33;
- (e) **“Balancing Modified Appendix 1”** has the meaning given to it in section T7 implemented or to be implemented in accordance with Code Modification 34;
- (f) **“Section 6 Modified Appendix 1”** has the meaning given to it in section T8 implemented or to be implemented in accordance with Code Modification 35;
- (g) **“CMP Modified Appendix 1”** has the meaning given to it in section T8 implemented or to be implemented in accordance with Code Modification 36;

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

T10.3.2 Legal and General Modified Appendix 1 adds new defined terms to the Code and where relevant modifies terms set out in the Modified Appendix 1 Terms.

T10.3.3 Terms contained in Unmodified Appendix 1 which are not otherwise amended or deleted by the Modified Appendix 1 Terms or any other subsequent Code Modifications shall continue to apply in this Code after the CAM Effective Date.

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

## DEFINITIONS

**“Affiliate”** in relation to any pParty means a company which is either a holding company or a subsidiary of such pParty or a company or corporation which is a subsidiary of a holding company of which such Pparty is also a subsidiary and the words "holding company" and "subsidiary" shall have the same meaning given to them, regardless of the place of incorporation of the Pparty, in section ~~736~~1159 of the Companies Act ~~1985~~2006 as amended from time to time save that the expression in the section “a majority” shall be deemed to be “one half”;

~~**“Ancillary System”** has the meaning given to it in section 20.1.2;~~

**“Authority”** means the Northern Ireland Authority for Energy Utility Regulation;

**“BGE (UK) Transportation Agreement”**

means the agreement dated 21 August 1996 made between BGE (UK) and Premier Transmission pursuant to which BGE (UK) transports gas for Premier Transmission through the BGE (UK) Upstream System as amended and restated from time to time;

**“Defaulting Party”** has the meaning given to it in section 16.3.1 A(a);

~~**“Election Notice”** has the meaning given to it in section 16.6.1(b);~~

~~**“Existing Transportation Agreement”** has the meaning given to it in section 20.13;~~

~~**“Incremental Capacity Period”** has the meaning given to it in section 20.14.1;~~

~~**“Initial Capacity Reservation Period”** has the meaning given to it in section 20.14.1;~~

**“Force Majeure”** has the meaning given to it in section 15.1.4;

**“Gas Flow Day”** means, in relation to the application of any provision of this Code, the Day in relation to deliveries, offtakes or flow of gas or other operations on which such provision is to apply and “Gas Flow Days” shall be construed accordingly;

~~“LPS Bid Round”~~ has the meaning given to it in section 1A.8.4(c);

~~“Mismatched Interruptible Delivery”~~ has the meaning given to it in section 14.2.1;

**“Mismatched Firm-Delivery”** has the meaning given to it in ~~s~~Section 14.1.1;

**“Non-Defaulting Party”** has the meaning given to it in section 16.3.1 A(b);

**“PS Gas Supplier”** means any person who is entitled to exit gas from the Postalised System and “PS Gas Suppliers” shall be construed accordingly;

**“Second Due Date”** ~~shall have the meaning given to it in section 16.2.1(a)(i)~~ means 15 Business Days after the Due Date;

**“Shipper”** means a person other than Premier Transmission who, for the time being, has acceded to and is bound by this Code by an Accession Agreement and “Shippers” shall be construed accordingly;

**“Termination Notice”** ~~has the meaning given to it in section 16.3.1~~ means a notice to terminate an Accession Agreement served by a Party pursuant to section 16.3.3 and 16.3.4 or section 16.3.7 and 16.3.8, as applicable;

~~“Terminating Shipper”~~ has the meaning given to it in section 16.6.1(a);

~~“Tripartite Agreement”~~ means the tripartite agreement in relation to arrangements at the interconnection point at Moffat between National Grid, BGE(UK) and Premier Transmission dated [TBC];

*Amend Appendix 5, paragraph 1.1(10) to read as follows:*

- | (10) if there is a breach of section 16.3.~~12~~ of the Network Code and such breach is referred to the Credit Committee in accordance with the provisions of section 16.3.1 of the relevant Network Code,

*Amend Appendix 5, paragraph 6.1(C) to read as follows:*

- | (C) where a breach of section 16.3.~~12~~ of the Network Code has occurred, to determine whether that breach of the Network Code is capable of remedy;

.....

*Amend Appendix 5, paragraph 6.2 to read as follows:*

- | 6.2 Any Direction given under the powers conferred at paragraph 6.1(B), paragraph 6.1(F), paragraph 6.1 (J) or paragraph 6.1(A) (but in relation to 6.1(A), only where in relation to a Termination Default, such Termination Default relates to a breach of section 16.3.~~12~~ of the Network Code) shall not be capable of exercise unless and until the Authority has given its consent.