

# Interconnector (UK) Limited



## IUK Access Agreement

**THIS IUK ACCESS AGREEMENT** is made on the [.....] day of [.....] 201[.....]

**BETWEEN:**

- (1) **INTERCONNECTOR (UK) LIMITED** a company registered in England (company registration no. 2989838) whose registered office is at 8th Floor, 61 Aldwych, London WC2B 4AE ("**IUK**"); and
  - (2) [.....] a company registered in [.....](company registration no. [.....]) whose [registered office][principal place of business] is at [.....] (the "**New IAA Shipper**").
- (A) IUK operates the Transportation System and the New IAA Shipper wishes to have access to the Transportation Services.
  - (B) The Parties intend that the New IAA Shipper will be admitted as an IAA Shipper subject to the terms and conditions set out below.

**1. Definitions and interpretation**

- 1.1 Capitalised words and expressions used in this Agreement shall have the meanings set out in Appendix B (Definitions and Interpretation).
- 1.2 The rules of interpretation set out in Appendix B (Definitions and Interpretation) shall apply to this Agreement.

**2. The IUK Access Agreement**

- 2.1 Clauses 1 to 7 of this IUK Access Agreement govern the admission of the New IAA Shipper to this IUK Access Agreement and the IUK Access Code.
- 2.2 Appendix A (General Terms and Conditions) to this IUK Access Agreement sets out general terms and conditions applicable to the provision of the Transportation Services by IUK to the IAA Shipper.
- 2.3 Appendix B (Definitions and Interpretation) to this IUK Access Agreement sets out the definitions and interpretation applicable to the IUK Access Agreement and the IUK Access Code.

**3. The IUK Access Code**

- 3.1 All Transportation Services provided to the IAA Shipper are governed by the procedures, rules and regulations contained in the IUK Access Code.

**4. Admission of the New IAA Shipper**

- 4.1 The New IAA Shipper is admitted by IUK as an IAA Shipper with effect from the Effective Date in consideration of:

- (a) the New IAA Shipper having satisfied the requirements to be an IAA Shipper; and
- (b) the New IAA Shipper's undertaking in Clause 4.2(c) below.

- 4.2 With effect from the Effective Date:

- (a) the New IAA Shipper accepts its admission as an IAA Shipper under Clause 4.1;
- (b) Appendix A (General Terms and Conditions) and Appendix B (Definitions and Interpretation) to this IUK Access Agreement and the IUK Access Code are given effect to and made binding between IUK and the New IAA Shipper;
- (c) the New IAA Shipper undertakes to comply with and perform its obligations under: Appendix A (General Terms and Conditions) and Appendix B (Definitions and Interpretation) to this IUK Access Agreement; the IUK Access Code; and Capacity Transactions to which it is a party;
- (d) all references to an IAA Shipper in Appendix A (General Terms and Conditions) and Appendix B (Definitions and Interpretation) to this IUK Access Agreement and the IUK Access Code include the New IAA Shipper.

**5. Commencement**

This IUK Access Agreement shall commence on [.....] (“**Effective Date**”) and shall continue in effect until it is terminated in accordance with Clause 6 of Appendix A (General Terms and Conditions) to this IUK Access Agreement.

**6. Single Agreement**

This IUK Access Agreement, the IUK Access Code and the Capacity Transactions of the IAA Shipper (if any) together form a single agreement between IUK and the IAA Shipper (“**Agreement**”).

**7. Notices**

For the purpose of Clause 10 of Appendix A (General Terms and Conditions) to the IUK Access Agreement, any notice to be given under this Agreement may be sent to the Parties as follows:

**IUK**

Address: 8th Floor, 61 Aldwych, London WC2B 4AE

Attn: The Commercial Manager

Fax: +44 (0) 20 7092 6501

**IAA Shipper**

Address: [ • ]

Attn: [ • ]

Fax: [ • ]

**IN WITNESS WHEREOF** this IUK Access Agreement has been signed on behalf of each of the Parties by a duly authorised signatory.

**SIGNED** for and on behalf of  
**INTERCONNECTOR (UK) LIMITED:**

.....  
Signature

.....  
Print name

.....  
Title

**SIGNED** for and on behalf of  
[.....]

.....  
Signature

.....  
Print name

.....  
Title

# **Appendix A**

## **General Terms and Conditions**

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## 1. Introduction and Interpretation

1.1 Clauses 1 to 16 of this Appendix A are the General Terms and Conditions and a reference to a Clause is to a Clause in these General Terms and Conditions.

## 2. Invoicing, Payment and Credit Terms

2.1 In each Month, IUK shall submit an invoice by no later than the tenth (10<sup>th</sup>) day to the IAA Shipper (either by the IUK Information System or otherwise) showing the Monthly Charge to be paid by the IAA Shipper for the immediately preceding Month and the amount of VAT payable (if any) in respect of each item in the invoice to which VAT applies.

2.2 The IAA Shipper shall pay the Monthly Charge:

- (a) in Pounds Sterling or Euros (as invoiced) in immediately available and freely transferable funds;
- (b) by the fourteenth (14<sup>th</sup>) day after receipt by the IAA Shipper of IUK's invoice or the Business Day which is immediately before the fourteenth (14<sup>th</sup>) day, if the fourteenth (14<sup>th</sup>) day itself is not a Business Day (the "**Due Date**").

2.3 Payment shall be treated as having been made when the full amount due is credited to the IUK bank account: (a) without any discount associated with the transfer of moneys; and (b) at the expense of the IAA Shipper (except that any expenses charged by IUK's bank with respect to such payment shall be borne by IUK).

2.4 If the IAA Shipper disputes any sum specified in an invoice, it shall pay:

- (a) the undisputed portion by the Due Date; and
- (b) any amount:
  - (i) agreed by the Parties or determined in accordance with the dispute resolution procedures set out in Clause 13 to be payable; and
  - (ii) interest calculated on those amounts as set out in Clause 2.5 below;

within fourteen (14) days after such agreement or determination, or the Business Day which is immediately before the fourteenth (14<sup>th</sup>) day, if the fourteenth (14<sup>th</sup>) day itself is not a Business Day.

2.5 Interest shall be payable by the IAA Shipper or IUK on a disputed amount which is agreed or determined to be payable. Interest shall accrue from the date such amount was originally payable to the date of actual payment at a rate of interest equal to the aggregate of LIBOR (three (3) months) plus two per cent (2%), compounded quarterly.

2.6 Should the IAA Shipper or IUK fail to make payment on the Due Date of any sum due, interest shall accrue at a rate of interest equal to the aggregate of LIBOR (1 month) plus three per cent (3%), compounded monthly, except for disputed amounts to which Clause 2.5 applies.

- 2.7 An invoice shall be deemed to be final and accepted by the IAA Shipper unless it has been disputed within ninety (90) days from its date of issue.
- 2.8 (a) All payments required to be made by the IAA Shipper shall be calculated without reference to any set-off, counterclaim or Tax and shall be made free and clear of and without any deduction for or withholding on account of any set-off, counterclaim or Tax and where the IAA Shipper is required to make payment subject to deduction or withholding, the sums to be paid to IUK by the IAA Shipper are to be increased to ensure that IUK receives the payment of all sums due had no such deduction or withholding been made.
- (b) Where IUK is required to make any payment on account of any set-off, counterclaim or Tax that arises in relation to any payment the IAA Shipper is to make or makes to IUK, the IAA Shipper indemnifies IUK for the amount of any such payment IUK is required to make, (together with related interest, penalties or other costs) provided that IUK shall use reasonable endeavours to minimise the amount of such payment. This indemnity shall not apply to corporation tax chargeable on IUK's profits.
- 2.9 The IAA Shipper shall by the date that is no later than ten (10) days before the first Gas Day in respect of which it holds Registered Capacity and from such date for the remainder of the Term:
- (a) maintain a long term debt rating in respect of its long term unsecured debt ("**Rating**") from Standard & Poor's Rating Services of at least BBB, from Moody's Investors Service Limited of at least Baa2 or from Fitch Ratings Incorporated of at least BBB or such other rating as may be determined by IUK (acting reasonably) to be sufficient (the "**Ratings Test**"); or
- (b) provide one or more of the following forms of credit support as may be required by IUK in respect of the IAA Shipper's obligations and liabilities under this Agreement that is of an amount equal to the greater of one hundred thousand Pounds Sterling (£100,000) and the aggregate of the IAA Shipper's estimated Monthly Charges in respect of the IAA Shipper's actual or potential Capacity Transactions for the following six (6) Months:
- (i) a guarantee executed by a company or an entity that is acceptable to IUK with a Rating at least equal to the Ratings Test in the form of IUK's standard published form of guarantee or such other form that is acceptable to IUK;
- (ii) an irrevocable standby letter of credit issued in favour of IUK opened or confirmed by an international bank that is acceptable to IUK and has a Rating at least equal to the Ratings Test and is in the form of IUK's standard published letter of credit or in such other form that is acceptable to IUK;
- (iii) cash cover in Pounds Sterling to IUK; or
- (iv) such other credit support in a form that is acceptable to IUK;
- the criteria in (a) and (b) above being the "**Credit Criteria**" and the provider of a guarantee, irrevocable standby letter of credit or other credit support being the "**Credit Support Provider**".
- 2.10 Any cash cover provided by the IAA Shipper under Clause 2.9(b)(iii) may be retained by IUK in an account in IUK's name or in an account over which IUK has a first ranking security interest and the



relevant funds may be applied by IUK without notice to the IAA Shipper to satisfy any payment obligations of the IAA Shipper when due and payable under this Agreement.

- 2.11 In the event of any event or circumstance being likely to occur or occurring which, in the opinion of IUK, has a material and adverse effect on or could have a material and adverse effect on the business, condition (financial or otherwise), operations, assets or prospects of the IAA Shipper, or its ability to perform its obligations under this Agreement (including the IAA Shipper ceasing to satisfy the Credit Criteria), IUK may give the IAA Shipper written notice requiring credit support in a form and amount specified under Clause 2.9(b).
- 2.12 The IAA Shipper shall immediately give IUK written notice if for any reason the IAA Shipper has ceased to or shall cease to comply with the Credit Criteria.
- 2.13 The IAA Shipper shall provide the following documents in connection with a guarantee provided under Clause 2.9(b)(i) by no later than five (5) Business Days before the effective date of the guarantee:
- (a) a copy, certified as a true copy by a duly authorised officer of the IAA Shipper's guarantor of the constitutional documents of the guarantor as at the date of the guarantee;
  - (b) a copy, certified as a true copy by a duly authorised officer of the guarantor, of a resolution of the board of directors (or a duly appointed committee of the directors) of the guarantor:
    - (i) approving the terms of, and the transactions contemplated by, the guarantee and resolving that it execute, deliver and perform the guarantee;
    - (ii) authorising a specified person or persons to execute the guarantee on its behalf;
    - (iii) authorising a specified person or persons, on its behalf, to sign or despatch all documents and notices to be signed or despatched by it under or in connection with the guarantee;
    - (iv) if applicable, a copy, certified as a true copy by a duly authorised officer of the guarantor of a resolution of the directors of the guarantor appointing such committee; and
  - (c) a legal opinion addressed to IUK on enforceability of the guarantee and on capacity and authority of the guarantor from external legal advisers to the guarantor in the jurisdiction of incorporation of the guarantor.

### **3. Representations and Warranties**

- 3.1 Each Party represents and warrants to the other that:
- (a) it has the full power and authority to execute, perform and observe this Agreement and any credit support provided under it;
  - (b) it has obtained all necessary governing body and shareholder approvals to authorise the execution, performance and observance of this Agreement and any credit support provided under it;

- (c) it has obtained, maintains in full force and effect and is compliant with: (i) the conditions of all necessary governmental and other consents, licences, authorisations, approvals and registrations required in connection with the performance of its obligations under this Agreement; or (ii) any credit support provided under it;
- (d) the execution, performance and observance by it of this Agreement and any credit support provided under it will not result in any breach of its articles of association or other constitutional documents, or any provision contained in any agreement or instrument to which it is a party or by which it is bound or any law, regulation, judgement, decree or order applicable to it; and
- (e) this Agreement and any credit support provided under it will, after it is executed, constitute legally valid and binding obligations, enforceable in accordance with its terms.

3.2 The IAA Shipper represents and warrants to IUK:

- (a) it shall have good title to all Natural Gas which it supplies or makes available, or which it causes to be supplied or made available, at the Entry Point(s) for delivery;
- (b) any such Natural Gas referred to in paragraph (a) will be free from all liens, charges, encumbrances, Taxes, assessments and adverse claims of every description;
- (c) it will comply with the Credit Criteria at all times during the Term;
- (d) it is a party to and compliant with any industry codes, agreements or documents it is required to be a party to in connection with the performance of its obligations under this Agreement;
- (e) it acts as principal and not as agent of any other person or entity;
- (f) it is not subject to an actual or potential Insolvency Event; and
- (g) there is not to its knowledge any pending or threatened litigation or any action, suit or proceeding against it that may affect its obligations under this Agreement, or any credit support provided under it.

3.3 The IAA Shipper indemnifies IUK in respect of a breach of the representations and warranties contained in Clause 3.2(a) or (b).

#### **4. Bribery and Corrupt Practices**

4.1 A Party shall (and shall procure that any Related Person shall):

- (a) comply with all applicable laws, statutes, regulations, codes related to anti-bribery and anti-corruption that is of mandatory application to IUK or the IAA Shipper (as the case may be) including without limitation the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions;

- (b) not engage in any activity, practice or conduct which would constitute an offence under Sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
  - (c) have and maintain in place during the Term policies and procedures to ensure compliance with this Clause 4.1.
- 4.2 IUK may, where it reasonably believes that there is a breach of Clause 4.1 by the IAA Shipper, at any time during the Term request that the IAA Shipper provide certification in writing, signed by two directors, that the IAA Shipper is and has been throughout the Term in full compliance with the requirements of Clause 4.1. IUK may also request such information as it might reasonably require to confirm such compliance.

## 5. Force Majeure

- 5.1 The expression "**Force Majeure**" shall mean any event(s) or circumstance(s) or combination of event(s) or circumstance(s) affecting the Transportation System beyond the control of a Party (the "**Affected Party**") acting and having acted in accordance with the standard of a Reasonable and Prudent Operator and which results in the Affected Party being unable to perform or delays performance (in whole or part) of any one or more of its obligations under this Agreement.
- 5.2 The events or circumstances described below (without limitation) constitute Force Majeure where they satisfy the requirements stated in Clause 5.1:
- (a) acts of God;
  - (b) forces of nature;
  - (c) wars, insurrections, acts of terrorism, riots;
  - (d) fires, landslides, floods, earthquakes, explosions;
  - (e) seriously adverse weather conditions;
  - (f) acts of any Governmental Authority or Regulator (whether or not legally valid);
  - (g) strikes, industrial action or unrest, lock-outs;
  - (h) breakdown or accidents affecting the Transportation System or any other facilities used by IUK for implementing all or any part of this Agreement; and
  - (i) unavailability of any of the following that are required in relation to the operation of the Transportation System: transport; raw materials; or energy supplies from third parties.
- 5.3 Notwithstanding anything in Clause 5.1 or 5.2 or any other provision in this Agreement, the following events or circumstances shall not be treated as being Force Majeure or caused thereby:
- (a) failure to pay money when due;
  - (b) failure to give any notice required by this Agreement unless such failure was due to Force Majeure affecting all means of serving notices specified in Clause 10;

(c) any event or circumstance or combination of events or circumstances resulting in restrictions on the gas supplies an IAA Shipper is to make available for delivery to the Transportation System at an Entry Point.

5.4 The Affected Party shall, for the duration of the Force Majeure, be relieved from performance of its obligations (other than its payment obligations) under this Agreement if, and to the extent that, it is unable to perform or is delayed in performance by Force Majeure (unless the Affected Party does not take reasonable steps to prevent or mitigate Force Majeure, including those described in Clause 5.7 below).

5.5 If the Affected Party is unable to take delivery of Natural Gas or to redeliver Natural Gas due to Force Majeure and the Affected Party takes reasonable steps to prevent or mitigate Force Majeure, as described in Clause 5.7 below, the Monthly Charge shall be adjusted for the Monthly, Quarterly and Annual Capacity Product(s) an IAA Shipper holds that is affected by the Force Majeure, so that the IAA Shipper shall pay:

(a) for the first three (3) months of the Force Majeure, ninety five percent (95%) of the Capacity Charges;

(b) where the Force Majeure continues for more than three (3) months, fifty percent (50%) of Capacity Charges for the period after the first three (3) months of the Force Majeure until the earlier of the Force Majeure ceasing and the twenty fourth (24) month after the start of the Force Majeure;

(c) where the Force Majeure continues for more than twenty four (24) months, no Capacity Charges for the period after the first twenty four (24) months of the Force Majeure until the Force Majeure ceases.

For the avoidance of doubt, the IAA Shipper shall pay the Monthly Charge in full: (i) in respect of its Registered Capacity that is not affected by Force Majeure; and (ii) for Daily and Within Day Capacity Products.

5.6 A Party that is aware of the likelihood of a situation concerning Force Majeure arising that will affect it (and the Affected Party where a Force Majeure has occurred), shall notify the other Party in writing, as soon as may be reasonably practicable, of:

(a) the cause of and the likely extent of such non-performance or likely non-performance;

(b) the date or likely date of its commencement; and

(c) the means proposed to be adopted to remedy or abate the Force Majeure.

The Parties shall (without prejudice to the provisions of Clause 5.7(a)) consult each other with a view to taking such steps as may be appropriate to mitigate the effects of such Force Majeure. The foregoing provisions of this Clause 5 shall apply whether or not such (or sufficient) written notice is given.

5.7 The Affected Party shall:

- (a) use reasonable endeavours and employ reasonable means (as would be used or employed by a Reasonable and Prudent Operator at a reasonable cost) to remedy or abate the Force Majeure as soon as reasonably possible;
- (b) resume performance as soon as reasonably possible after termination of the Force Majeure or after the Force Majeure has abated to an extent which permits resumption of such performance; and
- (c) notify the other Party as soon as reasonably practicable:
  - (i) after the Force Majeure has terminated or abated to an extent which permits resumption of performance to occur;
  - (ii) of the estimated date (or range of dates) when the Affected Party reasonably considers that resumption of performance is likely to occur; and
  - (iii) when resumption of performance in fact occurs.

## **6. Suspension and Termination**

6.1 Without affecting any other right or remedy available to it, IUK may suspend with immediate effect, access by the IAA Shipper to the Transportation Services under this Agreement and all Capacity Transactions arising under it for such period as IUK may, in its absolute discretion, determine if:

- (a) the IAA Shipper fails to pay any amount due on the Due Date or such other date on which payment falls due and that amount remains unpaid for a period of not less than three (3) days after being notified in writing by IUK to make payment;
- (b) the IAA Shipper commits a material breach of any term of this Agreement (other than payment terms) and the breach is irremediable or (if the breach is remediable) the IAA Shipper fails to remedy that breach within a period of three (3) days after being notified in writing by IUK to do so;
- (c) the IAA Shipper repeatedly breaches or is in persistent breach of any of the terms of this Agreement in such a manner as to reasonably justify the opinion that it has repudiated, rejected or disaffirmed in whole or in part the terms of this Agreement;
- (d) any warranty or representation given by the IAA Shipper in Clause 3 is found to be untrue or misleading; or
- (e) the IAA Shipper does not satisfy or ceases to satisfy the Credit Criteria or fails to provide credit support requested under Clause 2.11 within five (5) days after notice is given by IUK under Clause 2.11;
- (f) the Credit Support Provider in respect of an IAA Shipper ceases to be acceptable to IUK or fails to comply with any obligation under credit support.

6.2 Where an IAA Shipper's access is suspended under Clause 6.1:

- (a) such IAA Shipper may not use its Registered Capacity or acquire Offered Capacity under any Allocation Mechanism;
  - (b) IUK may include all or part of the Registered Capacity of the suspended IAA Shipper as Offered Capacity in an Allocation Mechanism as provided under paragraph 6.4 of Section B of the IUK Access Code;
  - (c) such IAA Shipper shall remain liable to pay IUK all Capacity Charges and other amounts which are due and payable to IUK and outstanding as at the date of such suspension or that fall due during the period of any suspension (except where IUK exercises its right to draw on credit support provided in respect of the suspended IAA Shipper to satisfy payment of all such amounts);
  - (d) IUK shall not be liable to pay any amounts or apply any rebates to amounts payable by the suspended IAA Shipper, including in respect of the suspended IAA Shipper's Registered Capacity that IUK re-allocates to another IAA Shipper under sub-paragraph (b), whether or not due, during the period of suspension.
- 6.3 Where IUK is satisfied that the circumstances leading to suspension of the IAA Shipper cease to exist, IUK shall:
- (a) (unless the IAA Shipper owes any amounts to IUK) apply any rebates and any payments owing from IUK to the IAA Shipper (including Re-allocated Capacity Payments under Section F paragraph 6 of the IUK Access Code in respect of any Re-Allocated Capacity) to set-off amounts due and owing from such IAA Shipper and IUK shall pay any balance that remains after such set-off to the IAA Shipper, within two (2) Months after the date on which the suspension ceases; and
  - (b) permit the IAA Shipper to use its Registered Capacity in respect of which the Capacity Period has not expired, provided that where all or part of the Registered Capacity of the IAA Shipper has been re-allocated to another IAA Shipper, the IAA Shipper may only use it once the period of re-allocation ends.
- 6.4 Without affecting any other right or remedy available to it, a Party may terminate this Agreement and all (and not some) outstanding Capacity Transactions under it with immediate effect by giving notice to the other Party if an Insolvency Event occurs in relation to the other Party or the other Party is in breach of Clause 4.1(a) or (b).
- 6.5 Without affecting any other right or remedy available to it, IUK may (at its absolute discretion) terminate this Agreement and all (and not some) outstanding Capacity Transactions under it by written notice to the IAA Shipper and designate a date of termination where an IAA Shipper's access has been suspended by IUK for a period of at least three (3) months under Clause 6.1 and the reason for such suspension is continuing.
- 6.6 Where IUK has terminated this Agreement and all outstanding Capacity Transactions under it under Clause 6.4 or 6.5, the IAA Shipper shall cease to be entitled to its Registered Capacity and access to the Transportation Services and shall be liable to pay IUK on a date specified by IUK an amount specified by IUK which shall be equal to the sum of:

- (a) all amounts due and payable that are unpaid by the IAA Shipper at the date of termination; and
- (b) all of the Monthly Charges that would have been payable by the IAA Shipper had this Agreement and all outstanding Capacity Transactions under it not been terminated,

(the “**Termination Amount**”) and payment of such Termination Amount shall constitute full and final satisfaction of an IAA Shipper’s obligations and liabilities under this Agreement.

Where the IAA Shipper holds Annual Capacity Product(s) at the date of termination for a Capacity Period of a Gas Year or longer, unless paragraph 6.4.3 of Section B of the IUK Access Code applies to such Capacity, IUK shall use reasonable endeavours to offer such Capacity Product(s) under an Allocation Mechanism following the date of termination (and no later than three (3) Months after the date of termination). Where, as a result, such Capacity Product(s) are allocated to another IAA Shipper, the Termination Amount due from the IAA Shipper under this Agreement shall be reduced by the amount IUK receives for such Capacity Product(s).

6.7 This Agreement may be terminated by:

- (a) the Parties upon agreement in writing at any time; or
- (b) an IAA Shipper, upon such IAA Shipper giving a reasonable period (not to be less than three (3) months) of notice in writing of such termination to IUK ;

subject to:

- (i) the relevant IAA Shipper not holding Registered Capacity in respect of any Gas Days after the date of termination;
- (ii) there being no outstanding or accrued obligations or liabilities of the relevant IAA Shipper in respect of Registered Capacity it holds on or before the date of termination; and
- (iii) there being no obligations or liabilities of the relevant IAA Shipper falling due after the date of termination in respect of Registered Capacity it holds on or before the date of termination.

6.8 Having regard to IUK’s statutory duties, in particular the obligation to take system integrity and efficient operation into account when making capacity available (under Article 16(1) of Regulation No 715/2009 of the European Parliament and of the Council) and its obligation to act in a manner to ensure that it always has available such resources to properly and efficiently participate in the operation of the Pipeline (under Standard Licence Condition 19(1) of the Interconnector Licence):

If at any time, after having considered all reasonable solutions, IUK decides it is unable economically to provide the Registered Capacity allocated to IAA Shippers, IUK may (after having notified Ofgem and CREG of its decision and the reasons for such decision) at its sole discretion terminate upon no less than twelve (12) months’ notice to all IAA Shippers this Agreement and all (and not part) of IUK’s obligations arising in respect of Capacity Transactions

for Registered Capacity to all IAA Shippers and shall repay to such IAA Shippers any cash cover provided before such termination date to IUK (if any) in respect of such Registered Capacity.

6.9 Where this Agreement is terminated under any of Clauses 6.7, 6.8 or 16.5:

- (a) the IAA Shipper will cease to be entitled to Registered Capacity and access to the Transportation Services; and
- (b) such termination will not affect accrued obligations and liabilities of the Parties outstanding at the date of termination provided that neither Party will have any further liabilities or obligations after the date of such termination.

6.10 This Clause 6.10 and Clauses 2, 3.3, 5.5, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 7, 8, 12, 13, 14 and 15 and Section H of the IUK Access Code shall survive termination of this Agreement. Clause 9 shall survive termination of this Agreement for the period specified in Clause 9.2.

## **7. Quality**

7.1 If the IAA Shipper makes available at any Entry Point during the Initial Period or the Bacton Entry Point after the Initial Period, Natural Gas which does not comply with the Specification, the IAA Shipper in addition to its obligations under Section H of the IUK Access Code (regardless of the cause or reason for such non-compliance) indemnifies:

- (a) IUK in respect of the intake into the Transportation System of such non-compliant Natural Gas including, without limitation:
  - (i) all costs and expenses incurred by IUK in clearing or cleaning all or part of the Transportation System as may be necessary following the acceptance of such non-compliant Natural Gas;
  - (ii) all costs and expenses incurred by IUK in taking such measures as are reasonably required to bring such Natural Gas within the Specification (including blending of the non-compliant Natural Gas);
  - (iii) all costs and expenses incurred by IUK in taking such measures that IUK is required to take in respect of such non-compliant Natural Gas to operate the Transportation System acting as a Reasonable and Prudent Operator in accordance with applicable laws and consents, to the extent not covered by (i) or (ii) above;
  - (iv) where applicable, any arrangements IUK makes on the IAA Shipper's behalf under paragraph 1.6(d) of Section H of the IUK Access Code;
  - (v) all claims, actions and demands made against IUK by other IUK Shippers in respect of pollution or other damage or loss to the Pipeline inventory; and
  - (vi) all claims, actions and demands (other than any claims, actions or demands referred to in (v) above) made against IUK by: (1) any Adjacent TSO; (2) any ATS Shippers; or (3) any other third Parties in so far as such claims, actions and demands result (directly or indirectly) from such non-compliant Natural Gas; and



- (b) each of the other IUK Shippers for any loss or damage suffered by such other IUK Shippers as a result of pollution or other damage or loss to the Pipeline inventory in consequence of the intake of such Natural Gas into the Transportation System and each other IUK Shipper shall have the benefit of such indemnity as if it were a Party;

provided that the cap on liability in Clause 8.6 does not apply and the IAA Shipper shall not be liable for Consequential Losses except for those costs and expenses listed under Clause 7.1(a)(vi).

7.2 If: (i) IUK makes available, at any time, at the Exit Point(s), Natural Gas which does not comply with the Specification; (ii) the Natural Gas made available by the IAA Shipper and all other IUK Shippers is compliant with such Specification at all Entry Points; and (iii) the IAA Shipper accepts such Natural Gas, then, unless Clause 7.3 applies, IUK indemnifies the IAA Shipper in respect of the acceptance of such Natural Gas including, without limitation:

- (a) all costs and expenses incurred by the IAA Shipper in clearing or cleaning any installation downstream of the Exit Point as may be necessary following the acceptance of such Natural Gas;
- (b) all costs and expenses incurred by the IAA Shipper in taking such measures as are reasonably required to bring such Natural Gas within the Specification; and
- (c) all claims, actions and demands made against the IAA Shipper by: (1) an Adjacent TSO; (2) any ATS Shippers; or (3) any other third parties in so far as such claims, actions and demands result (directly or indirectly) from the acceptance by the IAA Shipper of such Natural Gas which does not comply with the Specification;

provided that IUK shall not be liable for Consequential Losses and the cap on liability in Clause 8.5(a) does not apply.

7.3 Notwithstanding anything contained in this Agreement, if Natural Gas made available by IUK at the Exit Point(s) does not comply with the Specification as a result of:

- (a) another IUK Shipper making available non-compliant Natural Gas at any Entry Point; or
- (b) Force Majeure;

then IUK shall: (i) not be regarded as being in breach of this Agreement; and (ii) IUK shall have no liability therefor (nor shall there be any reduction in the Monthly Charge in respect thereof), and the IAA Shipper's remedy shall be limited to its rights (if any) against such other IUK Shipper(s) under the provisions corresponding to Clause 7.1(b) in IAA Shipper Agreements with IUK or Standard Transportation Agreements with IUK.

7.4 Where after the Initial Period, the IAA Shipper makes available Natural Gas at the Zeebrugge Entry Point which does not comply with the Specification (regardless of the reason for such non-compliance) and IUK accepts such non-compliant Natural Gas:

- (a) IUK shall claim from Fluxys all costs and expenses incurred by IUK (to the extent Fluxys is liable for such costs and expenses under the Interconnection Agreement between IUK and Fluxys):

- (i) in clearing or cleaning all or part of the Transportation System as may be necessary following the acceptance of such non-compliant Natural Gas;
  - (ii) in taking such measures as are reasonably required to bring such Natural Gas within the Specification (including blending of the non-compliant Natural Gas);
  - (iii) in taking such measures that IUK is required to take in respect of such non-compliant Natural Gas to operate the Transportation System acting as a Reasonable and Prudent Operator in accordance with applicable laws and consents, to the extent not covered by (i) and (ii) above;
  - (iv) in respect of all claims, actions and demands made against IUK by other IAA Shippers in respect of pollution or other loss or damage to the Pipeline inventory; and
  - (v) in respect of all claims, actions and demands (other than any claims, actions or demands referred to in (iv) above) made against IUK by: (1) National Grid Gas; (2) any ATS Shippers; or (3) any other third Parties in so far as such claims, actions and demands result (directly or indirectly) from such non-compliant Natural Gas;
- (b) the IAA Shipper that makes available such non-compliant Natural Gas indemnifies IUK without limitation:
- (i) where applicable, for any arrangements IUK makes on the IAA Shipper's behalf under paragraph 1.6(d) of Section H of the IUK Access Code;
  - (ii) for all costs and expenses listed in Clause 7.4(a) in respect of which Fluxys is not liable under the Interconnection Agreement between IUK and Fluxys;
  - (iii) for all costs and expenses listed in Clause 7.4(a) in respect of which Fluxys is liable under the Interconnection Agreement between IUK and Fluxys and which IUK is unable to recover from Fluxys; and
- (c) the IAA Shipper that makes available such non-compliant Natural Gas indemnifies each of the other IAA Shippers for any loss or damage suffered by such other IAA Shippers as a result of pollution or other damage or loss to the Pipeline inventory in consequence of the intake of such Natural Gas into the Transportation System and each other IAA Shipper shall have the benefit of such indemnity as if it were a Party;

provided that in respect of the liability of the IAA Shipper under sub-paragraphs (b) and (c) above, the cap on liability in Clause 8.6 does not apply and there is no liability for Consequential Losses except for those costs and expenses listed under Clause 7.4(a)(v).

## **8. Liability**

- 8.1 Save as provided in Clause 8.2, to the extent permitted by law, IUK shall not be liable for and the IAA Shipper shall (subject to the cap in Clause 8.6) at all times indemnify IUK in respect of:
- (a) all claims for loss of or physical damage to the IAA Shipper's property; and

- (b) all claims for loss of or physical damage to the property of, or in respect of the death of or any illness or personal injury affecting: (i) all employees and representatives of the IAA Shipper; and (ii) all contractors and subcontractors of the IAA Shipper; and (iii) all employees and representatives of such contractors and subcontractors;

however such claims may be caused or may arise (including, but not limited to, any claims caused or arising due to the negligence of one or more of IUK and the IAA Shipper), except that if any such claim as is referred to in (a) or (b) above shall be caused by Wilful Misconduct on the part of IUK then (subject to the cap in Clause 8.5) IUK shall be liable for all losses other than Consequential Losses incurred by the IAA Shipper in respect of any such claim.

8.2 Save as provided in Clause 8.1, to the extent permitted by law the IAA Shipper shall not be liable for and IUK shall (subject to the cap in Clause 8.5) at all times indemnify the IAA Shipper in respect of:

- (a) all claims for loss of or physical damage to IUK's property; and
- (b) all claims for loss of or physical damage to the property of, or in respect of the death of or any illness or personal injury affecting: (i) all employees and representatives of IUK; and (ii) all contractors and subcontractors of IUK; and (iii) all employees and representatives of such contractors and subcontractors;

however such claims may be caused or may arise (including, but not limited to, any claims caused or arising due to the negligence of one or more of IUK and the IAA Shipper), except that if any such claim as is referred to in (a) or (b) (above) is caused by Wilful Misconduct on the part of the IAA Shipper then (subject to the cap in Clause 8.6) the IAA Shipper shall be liable for all losses other than Consequential Losses incurred by IUK in respect of any such claim.

8.3 Subject to the IUK Access Code and the indemnities in Clauses 2.8(b), 3.3, 7.1(a)(v) and 7.4(b) and (c) above, neither IUK nor the IAA Shipper shall be liable to the other for:

- (a) any Consequential Losses or
- (b) any special or incidental loss or damage;

sustained as a result of any action or failure on the part of IUK or on the part of the IAA Shipper (including, for this purpose, their respective contractors, subcontractors, employees or representatives).

8.4 The Party in whose favour the indemnities contained in Clauses 8.1 or 8.2 (as the case may be) is given shall:

- (a) notify the indemnifying Party as soon as reasonably practicable of any claim or fact or circumstance which may give rise to a claim;
- (b) not make any admission of liability or any admission of any material fact or matter relating to a claim without the written agreement of the indemnifying Party; and

- (c) permit the indemnifying Party to conduct the defence and settlement of any claim (subject to the indemnifying Party undertaking to provide the other Party with such information in relation thereto as that other Party may from time to time reasonably request).

8.5 Notwithstanding anything to the contrary contained in this Agreement:

- (a) the maximum amount of IUK's liability:
  - (i) to the IAA Shipper under this Agreement for an event or a series of events (whether related or unrelated) arising from any breach of or an act or omission of IUK in the course of or in connection with its performance of this Agreement in any Gas Year is two million Pounds Sterling (£2,000,000); and
  - (ii) to all IAA Shippers under all IAA Shipper Agreements for an event or a series of events (whether related or unrelated) arising in any Gas Year is four million Pounds Sterling (£4,000,000) and where IUK would otherwise be liable for an aggregate amount to IAA Shippers in excess of four million Pounds Sterling (£4,000,000) in a Gas Year, IUK's liability to each IAA Shipper will be reduced on a pro rata basis so that such limit is not exceeded;

provided that such maximum amount shall not apply to the indemnity under Clause 7.2;

- (b) the right of the IAA Shipper to receive any payment from IUK subject to the maximum amount referred to in paragraph (a) shall be the sole and exclusive right and remedy that the IAA Shipper shall have (whether pursuant to this Agreement or at law) in respect of any liability of IUK to the IAA Shipper; and
- (c) the IAA Shipper irrevocably and unconditionally waives its rights under this Agreement and at law and releases and discharges IUK from all other or further liability which (but for this provision) IUK might have towards the IAA Shipper.

8.6 Notwithstanding anything to the contrary contained in this Agreement the maximum amount of the IAA Shipper's liability to IUK under this Agreement for any event or series of events (whether related or unrelated) arising from any breach of or an act or omission of the IAA Shipper in the course of or in connection with its performance under this Agreement in any Gas Year is two million Pounds Sterling (£2,000,000) except that such maximum amount shall not apply to a Termination Amount claimed in accordance with Clause 6.6 or the indemnities given under Clauses 2.8(b), 7.1 and 7.4(b) and (c).

## **9. Confidentiality**

9.1 Each Party shall give the other all such information:

- (a) as may be reasonably necessary and within that Party's control so as to enable the other to exercise its rights and carry out its obligations under this Agreement; or
- (b) that must be disclosed to the other Party to enable the other Party to comply with any applicable laws, rules or regulations or the request of a Regulator or Governmental Authority.

- 9.2 Any information acquired or received by either of the Parties from the other under or pursuant to this Agreement, where it is identified as confidential by the disclosing Party or which by its nature would in the ordinary course reasonably be considered confidential, shall be held strictly confidential while this Agreement is in force and for a period of five (5) years thereafter. Such information shall not be divulged in any way by either Party to any third party without the prior written approval of the other Party, unless it has become a matter of public record (other than as a result of any breach of this Clause 9).
- 9.3 Notwithstanding the provisions of Clause 9.2, a Party may disclose any information (in the case of (d), (e), (f), (j) and (k) after first having given notice in writing to the other Party of any intended disclosure where permitted under law):
- (a) to any Affiliated Company or to any professional advisers, auditors or consultants (to the extent required for the proper execution of their work) of such Party provided that the relevant Party at all times procures that any person to whom any such information is disclosed at all times treats that information as confidential in accordance with the provisions of this Clause 9;
  - (b) to any bona fide intending transferee of the whole or a significant part of the issued share capital of such Party or to any bona fide assignee of the whole or any part of such Party's interest under this Agreement provided that the relevant Party at all times procures that any person to whom any such information is disclosed at all times treats that information as confidential in accordance with the provisions of this Clause 9;
  - (c) to any financier or bank or financial institution from whom such Party has obtained or is seeking finance or finance related services provided that the relevant Party at all times procures that any person to whom any such information is disclosed at all times treats that information as confidential in accordance with the provisions of this Clause 9;
  - (d) to the extent required by law, rules or regulations or in relation to any stock market regulations;
  - (e) to the extent required by the order of any court having competent jurisdiction;
  - (f) to any competent tax authority;
  - (g) to any directors, officer or employee of the Party in question or to any person engaged in the provision of goods or services to or for such Party if disclosure is necessary or expedient to enable the Party in question to perform its obligations under this Agreement or to enforce its rights under this Agreement, provided that the relevant Party at all times procures that any person to whom any such information is disclosed at all times treats that information as confidential in accordance with the provisions of this Clause 9;
  - (h) to any Expert provided that such Expert has entered into a confidentiality undertaking as provided for in Clause 13.3 below;
  - (i) in the course of, and as required or reasonably necessary for the purposes of, any litigation or arbitration;
  - (j) to any Regulator;

(k) to any Governmental Authority having jurisdiction over the submitting Party.

9.4 For the avoidance of doubt, IUK may from time to time make publicly available aggregated information and information relating to the operation of the Transportation System.

## 10. Notices

10.1 Except for those communications that are referred to in Clause 11.1, a notice given to a Party under or in connection with this Agreement:

- (a) shall be in writing and in English;
- (b) shall be signed by or on behalf of the Party giving it;
- (c) shall be sent to the Party for the attention of the contact and at the address listed or referred to in clause 7 of the main body of this IUK Access Agreement (or to such other contact and address notified by the Party);
- (d) may be sent by a method listed in this Clause 10 except that a notice given under Clause 6 that is sent by email must also be sent by another method; and
- (e) unless proved otherwise is deemed received as set out in Clause 10.2 if prepared and sent in accordance with this Clause 10.

10.2 This table sets out:

- (a) delivery methods for sending a notice to a Party under this Agreement; and
- (b) for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this Clause have been satisfied subject to the provisions in Clause 10.3.

<b>Delivery method</b>	<b>Deemed delivery date and time</b>
Delivery by hand or by courier.	On signature of a delivery receipt or at the time the notice is left at the address.
Pre-paid first class recorded delivery post or other next working day delivery service providing proof of postage or delivery.	9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
Fax.	At the time of transmission answerback.
Email.	On the date and at the time it is sent to the email address.

10.3 For the purpose of Clause 10.2 and calculating deemed receipt:

- (a) all references to time are to local time in the place of deemed receipt; and

- (b) if deemed receipt would occur on a day other than a Business Day, receipt is deemed to take place at 9.00 am on the next Business Day in the place of receipt.
- 10.4 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 11. Communications and Exchange of Information**
- 11.1 All invoices, bids or applications to purchase Capacity, offers for Buy-back, Nominations, Allocations and other communications which are required to be given or made by the IAA Shipper to IUK or by IUK to the IAA Shipper in accordance with this Agreement shall be given or made electronically on the IUK Information System unless permitted to be made on the Joint Booking Platform under Section B of the IUK Access Code or such other method as specified by IUK.
- 11.2 Where the IUK Information System is not available, all invoices, bids or applications to purchase Capacity, offers for Buy-back, Nominations, Allocations and other communications shall for the duration of such event be given or made by such alternative means as are specified by IUK.
- 11.3 The IAA Shipper shall enter into a System User Agreement prior to being granted access to the IUK Information System.
- 11.4 All invoices, bids or applications to purchase Capacity, offers for Buy-back, Nominations, Allocations and other communications are:
- (a) given or made where they are entered on or electronically transmitted to the IUK Information System and may be accessed on the IUK Information System; and
  - (b) are deemed to have been received by the relevant recipient(s) at the time when they are given or made.

**12. General**

- 12.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter except to the extent that the Parties have entered into or subsequently enter into any other written agreement relating to the Transportation Services (if applicable). Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement. Nothing in this Clause 12.1 shall limit or exclude any liability for fraud.
- 12.2 Except as expressly provided in this Agreement, each Party shall pay its own costs incurred in connection with the negotiation, preparation, and execution of this Agreement.
- 12.3 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

- 12.4 A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.5 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by English law.
- 12.6 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 12.6 shall not affect the validity and enforceability of the rest of this Agreement.
- 12.7 This Agreement is drafted in the English language. If this Agreement is translated into any other language for any reason, the English language version shall prevail in the event of any inconsistency or discrepancy.
- 12.8 Any notice given under or in connection with this Agreement shall be in the English language. All other documents provided under or in connection with this Agreement shall be in the English language, or accompanied by a certified English translation. If such document is translated into any other language, the English language version shall prevail in the event of any inconsistency or discrepancy.
- 12.9 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 12.10 The IUK Access Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one IUK Access Agreement.
- 12.11 Except as expressly provided in Clause 7, 13, 14 and 15 in respect of IUK Shippers, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 12.12 Appendices A and B to the IUK Access Agreement and the IUK Access Code may be modified from time to time. Such modifications shall be apply to all IAA Shipper Agreements (including this IUK Access Agreement) and the IUK Access Code on a date designated by IUK following: (a) completion of public consultation and consultation with IUK Shippers as may be required under the Interconnector Licence or applicable law; and (b) receipt of approval from applicable Regulators of such modifications.



### **13. Resolution of Claims and Disputes**

13.1 If any dispute arises out of or in connection with this Agreement, the Parties shall submit the matter to be resolved in accordance with the procedures as described in the remainder of Clause 13 or as described in Clause 14 below.

13.2 If IUK:

(a) reasonably determines or is notified by the IAA Shipper (and IUK agrees with the IAA Shipper) that any matter which is to be referred to and determined by an Expert is a matter where the outcome is of common interest to more than one of the IAA Shippers; and

(b) notifies all such IAA Shippers in writing to such effect before the matter has been referred to an Expert for determination;

then that matter shall be treated as a matter which is to be referred and determined by the same Expert as part of one and the same expert determination procedure as set out in clause 13.3 below.

13.3 Where (nevertheless) any matter is to be determined by an Expert or the Parties agree that any particular matter shall be so determined by an Expert, then the process described below shall apply:

(a) an Expert (who shall be a person qualified by education, experience and training and who shall have no conflict of interest) shall be appointed to determine the matter in dispute. He shall be appointed by IUK after obtaining the agreement to the appointee from at least fifty percent (50%) of the IAA Shippers who are party to the relevant dispute. If the Parties have failed to agree on an Expert within fifteen (15) days, then an Expert shall be appointed by the London Court of International Arbitration, London;

(b) the Parties shall promptly provide the Expert with all information (written or oral) and other evidence which is reasonably required for the determination;

(c) the Expert shall initially produce his decision in draft form and shall circularise his draft decision to the Parties, who shall have a period of twenty-eight (28) days in which to revert to the Expert with comments as to matters of fact (but not further or otherwise). As soon as possible after the expiry of such period of twenty-eight (28) days the Expert (taking account of such, if any, of the comments of the Parties as to matters of fact as he in his sole discretion may see fit) shall finalise and render his decision (which shall be in writing in the English language and shall contain the full reasons in support of the decision), and such decision (save for any manifest error or fraud) shall be final and binding on all the Parties. The Expert shall be deemed not to act as an arbitrator, but shall render any decision as an Expert;

(d) the costs and expenses of the Expert shall be shared equally between the Parties;

(e) the Parties shall procure that the Expert shall sign an undertaking to be bound by the terms as to confidentiality contained in Clause 9 above.

## 14. Arbitration

- 14.1 All disputes, controversies and claims arising out of or in connection with this Agreement (except those that fall to be decided by an Expert as specifically provided for under this Agreement) shall be finally decided by arbitration under the Rules of Arbitration of the International Chamber of Commerce (the “**ICC Rules**”) by three (3) arbitrators (the “**Arbitrators**”) appointed by the International Court of Arbitration of the ICC (the “**ICC Court**”) in accordance with the said Rules. Any party to an IAA Shipper Agreement may initiate arbitration proceedings pursuant to the IAA Shipper Agreement against any other party to an IAA Shipper Agreement.
- 14.2 The ICC Court shall endeavour to select Arbitrators from countries whose laws expressly govern the agreements submitted to the ICC Court as a part of the request for arbitration.
- 14.3 The place of the arbitration shall be London, England, unless it is consolidated by agreement with respect to a dispute to which STA Shippers are a party, in which case the place of arbitration shall be Geneva, Switzerland. The language of the arbitration shall be English.
- 14.4 (a) IUK and the IAA Shipper each consents on the request of the other Party in accordance with Article 7 of the ICC Rules to the joinder of any other IAA Shipper to any arbitration commenced under this Clause 14; and
- (b) the IAA Shipper further hereby consents to be joined to any arbitration commenced under any other IAA Shipper Agreement on the request of any party to such arbitration in accordance with Article 7 of the ICC Rules; and
- (c) if more than one arbitration is commenced under any IAA Shipper Agreements and any party contends that two (2) or more arbitrations are substantially related and that the issues should be heard in one (1) proceeding, the arbitrators selected in the first-filed of such proceedings shall determine whether, in the interests of justice and efficiency, the proceedings should be consolidated before those arbitrators. IUK and the IAA Shipper each hereby gives its consent in accordance with Article 10 of the ICC Rules to such consolidation.
- 14.5 (a) A Party initiating arbitration proceedings pursuant to this Agreement shall prepare a written summary containing a sufficient statement of its case (the “**Summary**”), and if the Party initiating proceedings is the IAA Shipper it shall submit the Summary to IUK together with a fee in such reasonable sum as shall be demanded by IUK at the same time as submitting its request for arbitration to the Secretariat of the ICC Court.
- (b) Within seven (7) days of receipt of such Summary (where the Party initiating proceedings is the IAA Shipper), or within seven (7) days of submitting its Request for Arbitration to the Secretariat of the ICC Court (where the Party initiating proceedings is IUK), IUK shall send a copy of the Summary to all other IAA Shippers (a “**Notification**”).
- (c) Any party to any IAA Shipper Agreement may, within thirty (30) days from receipt of a Notification, intervene in the arbitration proceedings referred to in a Notification (provided that, in the opinion of the relevant arbitrators, such intervention is substantially related to the subject matter of the dispute under arbitration) by filing a written notice with the Secretariat of the ICC Court. Subject to Clause 9, such written notice shall contain the required information and a copy of each such notice shall be sent immediately to IUK. For

the avoidance of doubt, IUK and the IAA Shipper each hereby consents to the intervention in proceedings initiated under this Agreement of any party to any IAA Shipper Agreement.

- 14.6 (a) IUK and the IAA Shipper shall recognise any award rendered pursuant to arbitration proceedings commenced pursuant to this Agreement and any award pursuant to any arbitration proceedings commenced under any other IAA Shipper Agreement to which Clause 14.4 or Clause 14.5 applies (whether or not they participated in the arbitration proceedings).
- (b) The Parties hereby waive all judicial recourse against, or the setting aside of, the Award and intend this Clause to constitute a valid exclusion agreement in the sense of Article 192(1) of the Swiss Private International Law Act.
- (c) Awards shall be final and binding on the participating parties as from the date they are made. All awards may, if necessary, be enforced by any court having jurisdiction in the same manner as a judgement in such court.
- 14.7 The terms of reference for the Arbitrators shall ensure that, irrespective of any provisions in the ICC Rules, information disclosed under the arbitration proceedings is disclosed only to third parties who are bound by obligations of confidentiality which are at least as stringent as those applicable under Clause 9.

## **15. Applicable Law and Waiver of Immunity**

- 15.1 This Agreement shall be governed by and construed in accordance with the laws of England.
- 15.2 To the extent (if at all) that the IAA Shipper may in any jurisdiction in which proceedings may at any time be taken for the enforcement of this Agreement claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent (if at all) that in any such jurisdiction there may be attributed to the IAA Shipper or its assets any such immunity (whether or not claimed), the IAA Shipper irrevocably agrees not to claim and irrevocably and unconditionally waives such immunity to the fullest extent permitted by the laws of such jurisdiction and consents in respect of each jurisdiction in which proceedings may at any time be taken for the enforcement of this Agreement to the enforcement or execution of any order or judgment that may be made or given against it in any such proceedings.
- 15.3 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction over any matter (contractual or non-contractual) that is not referred to expert determination or arbitration under Clause 13 above.

## **16. Sanctions and Use of Proceeds**

- 16.1 Each Party shall comply with applicable Sanctions.
- 16.2 The IAA Shipper shall not use any revenue or benefit derived from any activity or dealing with a Restricted Person in discharging any obligation due or owing to IUK.
- 16.3 The IAA Shipper shall promptly upon becoming aware of them, give written notice to IUK of the details of:

- (a) the imposition on it of any Sanctions by any Sanctions Authority; or
- (b) any claim, action, suit, proceedings or investigation against it with respect to Sanctions by any Sanctions Authority.

A failure to give notice under this Clause 16.3 shall not result in suspension or termination under Clause 6.

16.4 Where, after the Effective Date, a Party becomes aware of a potential Illegality (as defined in Clause 16.5 below), it shall notify the other Party and:

- (a) either Party; or
- (b) both Parties;

may take such actions permitted by law to prevent such potential Illegality or mitigate the effects of such potential Illegality on the performance of obligation(s) under or in connection with Capacity Transaction(s) or this Agreement to the extent they may be affected by such potential Illegality.

16.5 Where, notwithstanding any actions taken under Clause 16.4, after the Effective Date, it:

- (a) becomes illegal due to the adoption of or change in any applicable law or the decision of a Regulator, Governmental Authority or court or tribunal of competent jurisdiction; or
- (b) will result in a breach of applicable Sanctions or non-compliance with the decision of a Sanctions Authority;

for a Party (“**Illegality Affected Party**”) to perform any obligation(s) under or in connection with this Agreement (an “**Illegality**”), the Illegality Affected Party may without liability and without affecting any rights or remedies available to it, take one or more of the following actions by giving notice to the other Party:

- (i) suspend performance of the Capacity Transaction(s) or this Agreement to the extent affected by the Illegality;
- (ii) terminate affected Capacity Transaction(s) or this Agreement where:
  - (1) it determines such termination is required to comply with applicable law or the decision of a Regulator, Governmental Authority or court or tribunal of competent jurisdiction, to avoid a breach of applicable Sanctions or to comply with the decision of a Sanctions Authority; or
  - (2) such Capacity Transaction(s) or this Agreement have been suspended under sub-paragraph (i) for more than two (2) Gas Years, the Illegality is still prevailing after such period of time and termination is permitted by applicable law.

16.6 For the avoidance of doubt, any events or circumstances that fall under this Clause 16 do not constitute Force Majeure.

**IUK Access Agreement**

**Appendix B**

**Definitions and Interpretation**

## Definitions and Interpretation

1.1. Except where expressly specified otherwise, the following expressions (when used in this Agreement) shall have the meanings set out against them below:-

“**ACER**” means the Agency for Cooperation of European Regulators established under Regulation (EC) No. 713/2009;

“**Acquiring Trade Notification Request**” has the meaning given in Section E paragraph 4 of the IUK Access Code;

“**Actual Compressor Electricity Unit Cost**” has the meaning given in Section F paragraph 9.2 of the IUK Access Code;

“**Adjacent TSO**” in relation to an AT System, means the operator for the time being of that AT System;

“**Adjusted Annual Electricity Charge Payment**” has the meaning given in Section F paragraph 9.2 of the IUK Access Code;

“**Affected Party**” has the meaning given in Clause 5.1 of Appendix A (General Terms and Conditions);

“**Affiliated Company**” means, in relation to either Party, any holding company or subsidiary company of that Party or any company which is a subsidiary of such a holding company, and the expressions “**holding company**” and “**subsidiary**” shall have the meanings specified in Section 1159 of the Companies Act 2006;

“**Agreement**” has the meaning given in Clause 6 of the main body of the IUK Access Agreement;

“**Allocation Mechanism**” has the meaning given in Section B paragraph 1.4 of the IUK Access Code;

“**Allowed Tolerance**” has the meaning given in Section E paragraph 2.3 of the IUK Access Code;

“**Annual**” has the meaning given in Section B paragraph 2.2(a) of the IUK Access Code;

“**Annual Electricity Charge Payment**” has the meaning given in Section F paragraph 9.2.1 of the IUK Access Code;

“**Annual Planned Maintenance**” has the meaning given in Section I paragraph 4.2.1 of the IUK Access Code;

“**Arbitrators**” has the meaning given in Clause 14 of Appendix A (General Terms and Conditions);

“**Assigned Capacity**” has the meaning given in Section B paragraph 8.1 of the IUK Access Code;

“**Assignment Period**” has the meaning given in Section B paragraph 8.1 of the IUK Access Code;

“**ATS Effective Hourly Quantity**” has the meaning given in Section C paragraph 2.1.3 of the IUK Access Code;

“**ATS Nomination**” has the meaning given in Section C paragraph 1.2.1 of the IUK Access Code;

**“ATS Processed Nomination Quantity”** has the meaning given in Section C paragraph 2.1.1 of the IUK Access Code;

**“ATS Shipper”** means in relation to an AT System, any person who is for the time being entitled to arrange with the operator of the AT System either (a) for Natural Gas which has been conveyed in the AT System to be delivered to the Transportation System at the relevant Entry Point or (b) for Natural Gas which has been conveyed in the Transportation System to be delivered to the AT System at the relevant Exit Point;

**“AT System”** means the National Transmission System or the Fluxys Transmission System;

**“AT System Entry Point Constraint”** and **“AT System Exit Point Constraint”** have the meanings given to those expressions in Section I paragraph 3.1 of the IUK Access Code;

**“Auction Premium”** has the meaning given in Annex B-1 paragraph 2.5.1(c) of the IUK Access Code;

**“Bacton Entry Point”**, **“Bacton Exit Point”** and **“Bacton Connection Point”** mean respectively the Entry Point, Exit Point and Connection Point at Bacton;

**“Bacton Measurement Facilities”** means the facilities described as such in Section G paragraph 2.1 of the IUK Access Code;

**“Balancing Charge”** has the meaning given in Section E paragraph 3.1 of the IUK Access Code;

**“Bar”** has the meaning specified or defined in ISO 1000 : 1981 (E);

**“Bulletin Board”** means the bulletin board referred to in Annex B-2, paragraph 1 of the IUK Access Code;

**“Bundled Capacity”** has the meaning given in Annex B-1 paragraph 2.3.1(a) of the IUK Access Code and references to **“Bundled”** are to Bundled Capacity;

**“Business Day”** means a day (other than a Saturday or a Sunday) on which banks are generally open for business in London;

**“Buy-back Offers”** has the meaning given in Section C paragraph 3.1.8 of the IUK Access Code;

**“Buy-back Payment”** has the meaning given in Section C paragraph 3.1.11 of the IUK Access Code;

**“Buy-back Period”** has the meaning given in Section C paragraph 3.1.1 of the IUK Access Code;

**“Buy-back Requirement”** has the meaning given in Section C paragraph 3.1.1 of the IUK access Code;

**“Capacity”** means Entry Capacity and/or Exit Capacity;

**“Capacity Assignment”** has the meaning given in Section B paragraph 3.4 of the IUK Access Code;

**“Capacity Assignment Date”** has the meaning given in Section B paragraph 8.1 of the IUK Access Code;

**“Capacity Assignment Notice”** has the meaning given in Section B paragraph 8.3 of the IUK Access Code;

**“Capacity Assignee”** has the meaning given in Section B paragraph 8.1 of the IUK Access Code;

**“Capacity Assignor”** has the meaning given in Section B paragraph 8.1 of the IUK Access Code;

**“Capacity Auction”** has the meaning given in Section B paragraph 1.4(b) of the IUK Access Code;

**“Capacity Auction Rules”** mean the rules set out in Annex B-1 of the IUK Access Code;

**“Capacity Charges”** means Entry Capacity Charges or Exit Capacity Charges or both;

**“Capacity Period”** has the meaning given in Section B paragraph 2.3 of the IUK Access Code;

**“Capacity Product”** has the meaning given in Section B paragraph 2.2 of the IUK Access Code;

**“Capacity Related Share”** of an IAA Shipper at any relevant time means a share which is equal to the proportion which the aggregate of that IAA Shipper’s Entry Capacity and Exit Capacity bears to the aggregate of all IAA Shippers’ Entry Capacity and Exit Capacity;

**“Capacity Transaction”** has the meaning given in Section B paragraph 5.2 of the IUK Access Code;

**“Capacity Transfer”** has the meaning given in Section B paragraph 3.3 of the IUK Access Code;

**“Capacity Transferee”** has the meaning given in Section B paragraph 7.1 of the IUK Access Code;

**“Capacity Transferor”** has the meaning given in Section B paragraph 7.1 of the IUK Access Code;

**“Capacity Transfer Request”** has the meaning given in Section B paragraph 7.2 of the IUK Access Code;

**“CET”** means Central European Time;

**“Charging Methodology”** means the charging methodology IUK is required to prepare under Standard Licence Condition 10 of the Interconnector Licence;

**“Charging Methodology Statement”** means the statement of charges to apply in a Gas Year as published by IUK in accordance with Standard Licence Condition 10 of the Interconnector Licence;

**“Class”** has the meaning given in Section B paragraph 2.1 of the IUK Access Code;

**“Coded Counterparty Information”** has the meaning given in Section C paragraph 1.2.1(c) of the IUK Access Code;

**“Commercial Direction”** means, in relation to a Connection Point:

- (a) Entry, when the sum of Confirmed Nomination Quantities for all IUK Shipper Entry Nominations exceed the sum of the Confirmed Nomination Quantities for all IUK Shipper Exit Nominations;
- (b) Exit, when the sum of Confirmed Nomination Quantities for all IUK Shipper Exit Nominations exceed the sum of the Confirmed Nomination Quantities for all IUK Shipper



Entry Nominations.

**“Compressor Electricity”** means electricity which is used to supply the electric drives for the gas compressors at the Zeebrugge Facilities;

**“Compressor Electricity Allocation”** has the meaning given in Section D paragraph 4.2.1 of the IUK Access Code;

**“Confirmation”** means any form or evidence (written or electronic) confirming sale by IUK and purchase by the IAA Shipper of Offered Capacity under an Allocation Mechanism;

**“Confirmed Nomination Quantity”** has the meaning given in Section C paragraph 2.2.1 of the IUK Access Code;

**“Connection Point”** means a point at which the Transportation System is connected to an AT System;

**“Constrained Connection Point”** has the meaning given in Section I paragraph 2.1(a) of the IUK Access Code;

**“Consequential Losses”** means:

- (a) any indirect cost, expense, loss or damage;
- (b) any consequential cost, expense, loss or damage;
- (c) to the extent not covered by paragraphs (a) or (b) and whether or not direct or indirect: any loss of use, loss of income, loss of actual or anticipated profits, loss of contract, loss of production, loss of revenue, loss of or damage to goodwill and reputation, loss of margin, loss caused by business interruption and, loss of anticipated savings;

**“corresponding ATS Nomination”** has the meaning given in Section C paragraph 1.2.1(c) of the IUK Access Code;

**“Counterparty ATS Shipper”** has the meaning given in Section C paragraph 1.2.1 of the IUK Access Code;

**“CREG”** means the Commission de Régulation de l'Electricité et du Gaz, of Belgium;

**“Credit Criteria”** has the meaning given in Clause 2.9 of Appendix A (General Terms and Conditions);

**“Credit Support Provider”** has the meaning given in Clause 2.9 of Appendix A (General Terms and Conditions);

**“Daily”** has the meaning given in Section B paragraph 2.2(d) of the IUK Access Code;

**“Daily Imbalance”** has the meaning given in Section E paragraph 2.2 of the IUK Access Code;

**“Daily Quantity”** has the meaning given in Section C paragraph 1.1.4 of the IUK Access Code;

**“Degree Celsius”** or **“C”** shall be determined as the particular interval between any temperature in Kelvin minus the temperature of two seven three decimal one five (273.15) Kelvin;

**“Disposing Trade Notification Request”** has the meaning given in Section E paragraph 4.2 of the IUK Access Code;

**“Due Date”** has the meaning given in Clause 2.2(b) of Appendix A (General Terms and Conditions);

**“Electricity Factor”** has the meaning given in Section D, paragraph 4.2.3 of the IUK Access Code;

**“Electricity Unit Cost”** has the meaning given in Section F paragraph 9.2.2 of the IUK Access Code;

**“Entry”** means the direction of flow of Natural Gas from the applicable AT System into the Transportation System;

**“Entry Allocation”** means any allocation of a Quantity of Natural Gas made by IUK pursuant to an Entry Nomination in accordance with Section D of the IUK Access Code;

**“Entry Capacity”** means capacity in the Transportation System available for use by an IAA Shipper in delivering gas to the Transportation System at the Bacton Entry Point or the Zeebrugge Entry Point;

**“Entry Capacity Charge”** has the meaning given in Section F paragraph 5.1 of the IUK Access Code;

**“Entry Nomination”** shall have the meaning given to that expression in Section C paragraph 1.1.2 of the IUK Access Code;

**“Entry Point”** means any Connection Point which allows the delivery of Natural Gas into the Transportation System from the relevant AT System (whether or not Natural Gas is physically flowing at that point at any given time);

**“Equivalent Adjacent TSO Capacity”** has the meaning given in Annex B-1 paragraph 2.3.1(c) of the IUK Access Code;

**“Estimated Compressor Electricity Unit Cost”** has the meaning given in Section F paragraph 9.2.1(a) of the IUK Access Code;

**“Euros”** and the sign “**€**” mean the lawful currency of the member states of the European Union that have adopted the single currency;

**“Euro LIBOR”** means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for Euros and a period of one month displayed on relevant pages of the Reuters screen (or any replacement of the Reuters page which displays that rate or the appropriate page of such other information service which publishes that rate from time to time in place of Reuters). The relevant rate will be determined as of 11.00 a.m. (London time) on the first day of the relevant month. If the relevant page or service is not, or ceases to be, available, then IUK may specify another page or service displaying the relevant rate, and if no such page or service is available, then the rate will be the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to IUK at its request by the principal London offices of three leading banks selected by IUK and which are the rates at which each of the relevant banks could borrow Euros in the London interbank market for the one month period were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size;

**“Exit”** means the direction of flow of Natural Gas from the Transportation System into the applicable AT System;

**“Exit Allocation”** means any allocation of a Quantity of Natural Gas made by IUK pursuant to an Exit Nomination in accordance with Section D of the IUK Access Code;

**“Exit Capacity”** means capacity in the Transportation System available for use by an IAA Shipper in offtaking gas from the Transportation System at the Zeebrugge Exit Point or the Bacton Exit Point;

**“Exit Capacity Charge”** has the meaning given in Section F, paragraph 5.2 of the IUK Access Code;

**“Exit Nomination”** shall have the meaning given to that expression in Section C paragraph 1.1.3 of the IUK Access Code;

**“Exit Point”** means any Connection Point which allows the redelivery of Natural Gas into the relevant AT System from the Transportation System (whether or not Natural Gas is physically flowing at that point at any given time);

**“Expert”** means an expert appointed in accordance with the provisions of Clause 13.3 of Appendix A (General Terms and Conditions);

**“Failed Delivery Quantity”** has the meaning given in Section H paragraph 2.4 of the IUK Access Code;

**“Firm”** has the meaning given to it in Section B, paragraph 2.1(a) of the IUK Access Code;

**“Fluxys”** means Fluxys Belgium SA, a company established under the laws of Belgium whose principal offices are at Avenue des Arts 31, 1040 Brussels, Belgium;

**“Fluxys Entry Cost”** means the FTS entry charge for Zeebrugge and transportation charge to Zeebrugge Hub;

**“Fluxys Exit Cost”** means FTS exit charge for Zeebrugge and transportation charge from Zeebrugge Hub;

**“Fluxys Transmission System”** or **“FTS”** means the Belgian high pressure gas transmission system currently owned and operated by Fluxys;

**“Force Majeure”** has the meaning given to that expression in Clause 5.1 of Appendix A (General Terms and Conditions);

**“Forced Buy-back”** has the meaning given to it In Section C, paragraph 3.2.1(d) of the IUK Access Code;

**“Forced Buy-back Price”** has the meaning given in Section F paragraph 7.1(b) of the IUK Access Code;

**“Forced Buy-back Requirement”** has the meaning given in Section C paragraph 3.2.1 of the IUK Access Code;

**“Fuel Gas”** means all Natural Gas used by IUK as described in paragraph 4.1 of Section D of the IUK Access Code;

**“Fuel Gas Allocation”** has the meaning given in Section D, paragraph 4.1.1;

**“Fuel Gas Factor”** has the meaning given in Section D, paragraph 4.1.3;

**“Gas Day”** means the period beginning at 06.00 hours (CET) on each day and ending at 06.00 hours (CET) on the next following day, and the date of any Gas Day shall be the date of its beginning as herein defined;

**“Gas Day D”** means the Gas Day for which any Nomination, Renomination, Entry Allocation or Exit Allocation is made in respect of delivery or redelivery of Natural Gas;

**“Gas Day D-1”** means the Gas Day immediately preceding Gas Day D and references in this Agreement to “D-” followed by a number shall be construed accordingly;

**“Gas Day D+1”** means the Gas Day immediately following Gas Day D and references in this Agreement to “D+” followed by a number shall be construed accordingly;

**“Gas Year”** means the period beginning on 1 October of any year and ending on 1 October of the next succeeding year;

**“General Terms and Conditions”** means the general terms and conditions contained in Appendix A to the IUK Access Agreement;

**“Good Industry Practice”** means any practice or standard generally recognised within the gas industry in the country where the relevant measurement facilities are located including compliance with any non-statutory code of practice and guidance notes issued by the relevant Governmental Authority or Regulator and as applicable from time to time;

**“Governmental Authority”** means:

- (a) any government of the United Kingdom or any political subdivision of the United Kingdom or any local jurisdiction in the United Kingdom;
- (b) any government of Belgium or any political subdivision of Belgium or any local jurisdiction in Belgium;
- (c) any governmental authority or statutory, legal, fiscal, monetary or administrative body (whether it be domestic, foreign, international, supranational, state or local and including, without limitation, any such authority or body of the European Communities) which operates or has jurisdiction, directly or indirectly, in the United Kingdom and/or in Belgium and/or over all or any part of the route of the Pipeline and/or the Bacton Facilities and/or the Zeebrugge Facilities, other than a Regulator;
- (d) any instrumentality, commission, court or agency of any of the above, however constituted;
- (e) any association, organisation, or institution of which any of the above is a member or to whose jurisdiction any of the above is subject or in whose activities any of the above is a participant;

(f) ACER;

**“Gross Calorific Value”** shall be measured “real” and means that number of Megajoules produced by the complete combustion at a constant pressure of one decimal zero one three two five (1.01325) Bar absolute of one (1) Normal Cubic Metre of Natural Gas being free of water vapour at twenty five (25) Degrees Celsius with excess air at the same temperature and pressure as the Natural Gas when the products of combustion are cooled to twenty five (25) Degrees Celsius and when the water formed by combustion is condensed to the liquid state;

**“GSMR”** means the Gas Safety (Management) Regulations 1996 (SI 1996 No. 551) including any amendment or modification thereto or any replacement regulations;

**“Hourly Quantity”** has the meaning given in Section C paragraph 1.1.4 of the IUK Access Code;

**“IAA Shipper”** means any person or entity that is for the time being entitled to access the Transportation Services pursuant to an IUK Access Agreement;

**“IAA Shipper Agreement”** means in relation to an IAA Shipper, the IUK Access Agreement to which such IAA Shipper is party, the IUK Access Code and any Capacity Transactions under such IUK Access Agreement;

**“ICC Court”** has the meaning given in Clause 14.1 of Appendix A (General Terms and Conditions);

**“ICC Rules”** has the meaning given in Clause 14.1 of Appendix A (General Terms and Conditions);

**“ID Code”** means a unique identification code issued by IUK to an IAA Shipper or by an ATS Agent to an ATS Shipper for the purposes of the Matching Procedures and the Equivalent Matching Procedures;

**“Illegality”** has the meaning given in Clause 16.5 of Appendix A (General Terms and Conditions);

**“Illegality Affected Party”** has the meaning given in Clause 16.5 of Appendix A (General Terms and Conditions);

**“Imbalance”** has the meaning given in Section E paragraph 2.1 of the IUK Access Code;

**“Indexation Factor”** means for Gas Year Y the ratio of  $RPI_Y/RPI_{Y-1}$  where:

RPI means the “CHAW” Index numbers of consumer prices – “RPI All Items” as published by the Office for National Statistics in the monthly Consumer Price Inflation Reference Tables (or any successor to such Index published by such Office or any other department of HM Government) at [www.ons.gov.uk](http://www.ons.gov.uk);

$RPI_Y$  = the average value of the RPI for the twelve month period ending on 30 June immediately prior to the commencement of Gas Year Y;

$RPI_{Y-1}$  = average RPI for twelve months ending 30 June prior to the commencement of Gas Year Y-1;

**“Initial Period”** means the period from Gas Day 1 November 2015 to Gas Day 30 September 2018 inclusive;

**“Initial Registration Fee”** has the meaning given in Section F, paragraph 3.1 of the IUK Access Code;

**“Inputs”** has the meaning given in Section E paragraph 1.1.2 of the IUK Access Code;

**“Intended Inputs”** has the meaning given in Section E paragraph 1.1.1(a) of the IUK Access Code;

**“Intended Outputs”** has the meaning given in Section E paragraph 1.1.1(b) of the IUK Access Code;

**“Insolvency Event”** means, in relation to a Party, that the Party:

- (a) is dissolved (other than pursuant to a solvent consolidation, amalgamation or merger);
- (b) is unable or admits its inability to pay its debts as they become due;
- (c) by reason of actual or anticipated financial difficulty makes an assignment, compromise or arrangement or composition with or for the benefit of all or a class of its creditors;
- (d) has instituted against it, or by it, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law, or a petition is presented for its winding-up or liquidation or the appointment of an administrator, other than, in the case of any such proceeding or petition instituted or presented against it, if such proceeding or petition is frivolous, vexatious or being contested in good faith and is not dismissed, discharged, stayed or restrained in each case within thirty (30) days of the institution or presentation thereof;
- (e) has a resolution passed for its winding-up, official management, liquidation or administration (other than pursuant to a solvent consolidation, amalgamation or merger);
- (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, administrative receiver, liquidator, compulsory manager, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (g) has a secured party enforce security over all or substantially all of its assets;
- (h) has any distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or all or substantially all of its assets and such process is not dismissed, discharged, stayed or restrained in each case within fourteen (14) days;
- (i) causes or is subject to any event with respect to it which under the applicable laws of any applicable has an analogous effect to any of the events specified in paragraphs (a) to (h) above;

**“Interconnection Agreement”** means an agreement between IUK and the relevant Adjacent TSO with respect to a Connection Point;

**“Interconnector Licence”** means the licence issued to IUK by Ofgem under section 7ZA of the Gas Act 1986;

**“Interruptible”** has the meaning given to it in Section B, paragraph 2.1(b) of the IUK Access Code;

**“Interruption Notice”** has the meaning given in Section I paragraph 1.2 of the IUK Access Code;

**"IUK Access Agreement"** and **"IAA"** means the agreement between IUK and the IAA Shipper for access to the Transportation Services;

**"IUK Access Code"** and **"IAC"** means the code published by IUK containing provisions governing access to the Transportation Services offered by IUK to IAA Shippers;

**"IUK Auction Premium"** has the meaning given in paragraph 2.6.1 Annex B-1 to the IUK Access Code;

**"IUK Information System"** means the IUK computer based information exchange system allowing the electronic transfer of information between IUK and each of: (a) the IAA Shippers; (b) other permitted users; and (c) Adjacent TSOs;

**"IUK Reserve Price"** has the meaning given in Annex B-1, paragraph 2.2 (e) of the IUK Access Code;

**"IUK Shipper"** means during the Initial Period an IAA Shipper, an STA Shipper or a Sub-Let Shipper and after the end of the Initial Period, an IAA Shipper;

**"IZT"** means IUK (Zeebrugge Terminal) S.C./C.V.;

**"JBP Clearing Price"** has the meaning given in Annex B-1 paragraph 2.5.1(b) of the IUK Access Code;

**"JBP Rules"** has the meaning given in Annex B-1 paragraph 1.2 of the IUK Access Code;

**"Joint Booking Platform"** has the meaning given in Section B paragraph 1.4(b) of the IUK Access Code;

**"Joint Booking Platform Operator"** has the meaning given in Annex B-1 paragraph 2.1.1 of the IUK Access Code;

**"Kilowatt Hour"** or **"kWh"** means three decimal six (3.6) Megajoules;

**"LIBOR (1 month)"** means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for pounds sterling and a period of one month displayed on pages LIBOR01 or LIBOR02 of the Reuters screen (or any replacement of the Reuters page which displays that rate or the appropriate page of such other information service which publishes that rate from time to time in place of Reuters). The relevant rate will be determined as of 11.00 a.m. (London time) on the first day of the relevant month. If the relevant page or service is not, or ceases to be, available, then IUK may specify another page or service displaying the relevant rate, and if no such page or service is available, then the rate will be the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to IUK at its request by the principal London offices of three leading banks selected by IUK and which are the rates at which each of the relevant banks could borrow pounds sterling in the London interbank market for the one month period were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size;

**"LIBOR (3 month)"** means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for pounds sterling and a period of one month displayed on pages LIBOR01 or LIBOR02 of the Reuters screen (or any replacement of the Reuters page which displays that rate or the appropriate page of such other information service which publishes that rate from time to time

in place of Reuters). The relevant rate will be determined as of 11.00 a.m. (London time) on the first day of the relevant three month period. If the relevant page or service is not, or ceases to be, available, then IUK may specify another page or service displaying the relevant rate, and if no such page or service is available, then the rate will be the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to IUK at its request by the principal London offices of three leading banks selected by IUK and which are the rates at which each of the relevant banks could borrow pounds sterling in the London interbank market for the three month period were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size;

**"LTUIOLI Capacity"** has the meaning given in Section B paragraph 6.2.1(a) of the IUK Access Code;

**"LTUIOLI Notice"** has the meaning given in Section B paragraph 6.2.1 of the IUK Access Code;

**"LTUIOLI Procedures"** mean the procedures set out in Section B paragraph 6.2.1 of the IUK Access Code;

**"LTUIOLI Regulations"** means the provisions of paragraph 2.2.5 of Annex I to Regulation (EC) No. 715/2009 as amended by Commission Decision of 24 August 2012 (2012/490/EU);

**"Lost Capacity"** has the meaning given in Section I paragraph 2.4 of the IUK Access Code;

**"Maintenance Days"** has the meaning given in Section I paragraph 4.4.1 of the IUK Access Code;

**"Maintenance Days Limit"** has the meaning given in Section I paragraph 4.4.1 of the IUK Access Code;

**"Matching Procedures"** means the procedures described in Section C paragraph 4.1.2 of the IUK Access Code;

**"Maximum Buy-back Price"** has the meaning given in Section F paragraph 7.1 of the IUK Access Code;

**"Maximum Constrained Quantity"** has the meaning given in Section I paragraph 2.1(b) of the IUK Access Code;

**"Maximum Deficit"** means a value in Pounds Sterling, in relation the Net OS Revenue Account, specified in the Charging Methodology Statement;

**"Megajoule"** or **"MJ"** means one million ( $10^6$ ) joules which shall be identical with the definition of the derived "SI Unit of Quantity of heat, "J"," as defined in ISO 1000 - 1981(E) SI Units and Recommendations for the Use of their Multiples and of certain other Units;

**"Month"** means the period starting on the first Gas Day of any calendar month and ending on the first Gas Day of the next succeeding calendar month;

**"Monthly"** has the meaning given in Section B paragraph 2.2(c) of the IUK Access Code;

**"Monthly Administration Fee"** has the meaning given in Section F, paragraph 3.2 of the IUK Access Code;



**“Monthly Charge”** means the aggregate amount payable by the IAA Shipper to IUK each Month as set out in Section F paragraph 4.2 of the IUK Access Code;

**“National Grid Gas”** or **“NGG”** means National Grid Gas plc as operator of the NTS;

**“National Grid Gas Licence”** means the gas transporter's licence treated as granted to National Grid Gas plc under section 7 of the Gas Act 1986, as amended by the Gas Act 1995;

**“National Transmission System”** or **“NTS”** means the principal pipeline system operated by National Grid Gas the conveyance of gas through which is authorised by the National Grid Gas Licence;

**“Natural Gas”** means any hydrocarbons or mixture of hydrocarbons and other gases consisting primarily of methane which at a temperature of fifteen (15) Celsius and at atmospheric pressure are or is predominantly in the gaseous state;

**“NBP Price”** means the NBP day-ahead price published in a reputable industry publication chosen by IUK in respect of the relevant Gas Day;

**“Negative Imbalance”** has the meaning given in Section E paragraph 2.6 of the IUK Access Code;

**“Negative Imbalance Daily Gas Price”** means the price (p/kWh) calculated as the lesser of:

(a) NBP Price + NGG Exit Cost + Reserve Price for Entry Capacity + 0.0171

and

(b) Zeebrugge Hub Price + Fluxys Exit Cost + Reserve Price for Entry Capacity + 0.0171

**“Net Aggregate Confirmed Nomination Quantity”** has the meaning given in Section D paragraph 1.2 of the IUK Access Code;

**“Net OS Revenue Account”** shall have the meaning given to that expression in Section F paragraph 10 of the IUK Access Code;

**“New IAA Shipper”** means the IAA Shipper that has executed this IUK Access Agreement;

**“NGG Entry Cost”** means the NTS entry capacity charge for Bacton and transportation charge to NBP;

**“NGG Exit Cost”** means NTS exit capacity charge for Bacton and transportation charge from NBP;

**“Nomination”** has the meaning given to that expression in Section C paragraph 1.1.1 of the IUK Access Code;

**“Nomination Effective Time”** has the meaning given in Section C, paragraph 1.3.1 of the IUK Access Code;

**“Nomination Quantity”** has the meaning given to that expression in Section C paragraph 1.1.4 of the IUK Access Code;

**“Normal Cubic Metre”** or **“Nm<sup>3</sup>”** of Natural Gas means the quantity of Natural Gas which at zero (0) Degrees Celsius and at an absolute pressure of one decimal zero one three two five (1.01325) Bar and when free of water vapour occupies the volume of one (1) cubic metre;

**“Notification”** has the meaning given in Clause 14.5(b) of Appendix A (General Terms and Conditions);

**“Nm<sup>3</sup>/h”** means Normal Cubic Metre per hour;

**“NTS”** means National Transmission System;

**“OBA”** has the meaning given in Section D paragraph 1.4 of the IUK Access Code;

**“OFAC”** means the Office of Foreign Assets Control of the United States Department of Treasury;

**“Offer Deadline”** has the meaning given in Section C paragraph 3.1.5 of the IUK Access Code;

**“Offered Capacity”** has the meaning given in Section B paragraph 1.2 of the IUK Access Code;

**“Ofgem”** means the Office of Gas and Electricity Markets;

**“Other IAA Shippers”** means each of the IAA Shippers other than the relevant IAA Shipper;

**“Outputs”** has the meaning given in Section E paragraph 1.1.3 of the IUK Access Code;

**“Overnomination”** has the meaning given in Section B paragraph 1.4(c) of the IUK Access Code;

**“Overnomination Rules”** has the meaning given in Section B paragraph 1.4(c) of the IUK Access Code;

**“Party”** means either IUK or the IAA Shipper as the context may require, and **“Parties”** means IUK and the IAA Shipper (together);

**“Pipeline”** means the pipeline constructed between the Bacton Facilities and the Zeebrugge Facilities;

**“Positive Imbalance”** has the meaning given in Section E paragraph 2.5 of the IUK Access Code;

**“Positive Imbalance Daily Gas Price”** means the price (p/kWh) calculated as the higher of:

(a) NBP Price - NGG Entry Cost - Reserve Price for Entry Capacity – 0.0171

and

(b) Zeebrugge Hub Price - Fluxys Entry Cost - Reserve Price for Entry Capacity – 0.0171;

**“Pounds Sterling”, “Sterling” and “pence”** and the signs **“£”** and **“p”** means the lawful currency of the United Kingdom;

**“Quantity of Natural Gas”** means a quantity of Natural Gas expressed in kWh;

**“Quarter”** means each quarter in a Gas Year commencing on 1 October, 1 January, 1 April and 1 July respectively;

**“Quarterly”** has the meaning given in Section B paragraph 2.2(b) of the IUK Access Code; **“Rating”** has the meaning given in Clause 2.9(a) of Appendix A (General Terms and Conditions);

**“Ratings Test”** has the meaning given in Clause 2.9(a) of Appendix A (General Terms and Conditions);

**“Re-Allocated Capacity”** means Capacity (including Surrendered Capacity) that is re-allocated from an IAA Shipper to another IAA Shipper in accordance with the IUK Access Code;

**“Re-Allocated Capacity Payment”** has the meaning given in Section F paragraph 6.1 of the IUK Access Code;

**“Reasonable and Prudent Operator”** means a person acting, in good faith, to perform its contractual obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances or conditions, and the expression **“Standard of a Reasonable and Prudent Operator”** shall be construed accordingly;

**“Reference Bank”** means HSBC Bank plc, acting through its principal London branch;

**“Registered Capacity”** has the meaning given in Section B paragraph 1.3 of the IUK Access Code;

**“Regulator”** means Ofgem or CREG, as the case may be;

**“Related Person”** means in relation to an IAA Shipper an Affiliated Company or the group of Affiliated Companies of which it is a member, or any director, officer, agent or employee of it or such Affiliated Company;

**“Released Capacity”** has the meaning given in Section B, paragraph 9.1(a) of the IUK Access Code;

**“Renomination”** has the meaning given in Section C paragraph 1.4.1 of the IUK Access Code;

**“Renomination Effective Time”** has the meaning given in Section C paragraph 1.4.2 of the IUK Access Code;

**“Reshuffled Capacity”** has the meaning given in Section B paragraph 9.1 of the IUK Access Code;

**“Reshuffling Process”** has the meaning given in Section B paragraph 9.1 of the IUK Access Code;

**“Reshuffling Rules”** has the meaning given in Section B paragraph 9.2 of the IUK Access Code;

**“Reshuffling Window”** has the meaning given in Section B paragraph 9.1 of the IUK Access Code;

**“Restricted Person”** means a person that is (i) listed on, or owned or controlled by a person listed on any Sanctions List; (ii) located in, incorporated under the laws of, or owned or controlled by, or acting on behalf of, a person located in or organised under the laws of a country or territory that is the target of country-wide Sanctions; or (iii) otherwise a target of Sanctions;

**“Sanctions”** means any economic sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by: (i) the United States government; (ii) the United Nations; (iii) the European Union; (iv) the United Kingdom; or (v) the Sanctions Authorities;

**"Sanctions Authorities"** means the respective governmental institutions and agencies of any of the United States, the United Nations, the European Union, the United Kingdom, including without limitation, OFAC, the United States Department of State, and Her Majesty's Treasury;

**"Sanctions List"** means the "Specially Designated Nationals and Blocked Persons" list issued by OFAC, the Consolidated List of Financial Sanctions Targets issued by Her Majesty's Treasury, or any similar list issued or maintained or made public by any of the Sanctions Authorities;

**"Secondary Market"** means the market (or other informal trading arrangements, whether or not linked) where Capacity is traded other than directly with IUK;

**"Short-Term Maintenance"** has the meaning given in Section I paragraph 4.3.1 of the IUK Access Code;

**"Shrinkage"** means Natural Gas used as described in Section D paragraph 4.3.1 of the IUK Access Code;

**"Shrinkage Allocation"** has the meaning given in Section D paragraph 4.3.1 of the IUK Access Code;

**"Shrinkage Factor"** has the meaning given in Section D paragraph 4.3.1 of the IUK Access Code;

**"Single Sided Nomination"** has the meaning given in Section C paragraph 1.2.2 of the IUK Access Code;

**"Specification"** has the meaning given in Section H paragraph 1.1 of the IUK Access Code;

**"SP Clearing Price"** means the price at which Entry Capacity or Exit Capacity is allocated to an IAA Shipper under a Subscription Process;

**"STA Capacity"** means forward flow and reverse flow capacity offered under the STA;

**"STA Shipper"** means a person that has access to the Transportation Services under a Standard Transportation Agreement;

**"Standard Transportation Agreement"** or **"STA"** means the agreement and all other agreements (including any form of Addendum and any form of Deed of Adherence, as may be appropriate in any given case) between IUK and its STA Shippers for the provision of Transportation Services by IUK;

**"Steering Difference"** has the meaning given in Section D paragraph 1.3 of the IUK Access Code;

**"Subscription Process"** has the meaning given in Section B paragraph 1.4(a) of the IUK Access Code;

**"Subscription Rules"** has the meaning given in Section B paragraph 1.4(a) of the IUK Access Code;

**"Sub-Let Shipper"** means a person with rights to transport gas purchased from an STA Shipper or another Sub-Let Shipper on the secondary market;

**"Summary"** has the meaning given in Clause 14.5(a) of Appendix A (General Terms and Conditions);

**“Surrender Notice”** has the meaning given in Section B paragraph 6.1.1 of the IUK Access Code;

**“Surrendered Capacity”** has the meaning given in Section B paragraph 6.3.2 of the IUK Access Code;

**“Surrendering Shipper”** has the meaning given in Section B paragraph 6.3.1 of the IUK Access Code;

**“System User Agreement”** means the agreement setting out the terms and conditions for the IAA Shipper to access and use the IUK Information System;

**“Tax”** shall be construed so as to include all present and future taxes, charges, imposts, duties, royalties, levies, deductions, withholdings or fees of any kind whatsoever, or any amount payable on account of or as security for any of the foregoing, payable at the instance of or imposed by any statutory, governmental, international, state, federal, provincial, local or municipal authority, agency, body or department whatsoever or monetary agency or European Communities institution, in each case whether in the United Kingdom, Belgium or elsewhere, together with any penalties, additions, fines, surcharges or interest relating thereto, and **“Taxes”** and **“Taxation”** shall be construed accordingly;

**“Term”** means the period from the Effective Date until the date of termination of this Agreement in accordance with its provisions;

**“Termination Amount”** has the meaning given in Clause 6.6 of Appendix A (General Terms and Conditions);

**“Total Nomination Quantity”** has the meaning given in Section C, paragraph 1.3.2 of the IUK Access Code;

**“Trade Notification”** has the meaning given in Section E paragraph 4.5 of the IUK Access Code;

**“Trade Notification Quantities”** has the meaning given in Section E paragraph 4.4 of the IUK Access Code;

**“Transfer End Date”** has the meaning given in Section B paragraph 7.7 of the IUK Access Code;

**“Transfer Period”** has the meaning given in Section B paragraph 7.1 of the IUK Access Code;

**“Transferred Capacity”** has the meaning given in Section B paragraph 7.1 of the IUK Access Code;

**“Transportation Services”** means those services IUK provides to an IUK Shipper in relation to the Transportation System;

**“Transportation System”** shall mean the Bacton Facilities, the Zeebrugge Facilities and the Pipeline;

**“Transportation System Constraint”** has the meaning given in paragraph 2.1 of Section I of the IUK Access Code;

**“Unbundled Capacity”** has the meaning given in Annex B-1 paragraph 2.3.1(b) of the IUK Access Code and references to **“Unbundled”** are to Unbundled Capacity;

**“Unsold Capacity”** has the meaning given in Section B paragraph 1.2(a) of the IUK Access Code;

**“Value Added Tax”** or **“VAT”** means (1) value added tax as provided for in the Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental thereto or in any primary or secondary legislation promulgated by the European Communities or any official body or agency of the European Communities and (2) the Belgian equivalent thereof and (3) any similar sales, consumption or turnover Tax replacing or introduced in addition to the foregoing (or any part thereof);

**“Voluntarily Surrendered Capacity”** has the meaning given in Section B paragraph 6.1.1(a) of the IUK Access Code;

**“Wilful Misconduct”** means an intentional and conscious or reckless disregard by either of the Parties and/or their respective officers, directors or employees (of the rank of manager or supervisor or above) of any provision of this Agreement but shall not include any error of judgement or mistake made in good faith in the exercise of any function authority or discretion arising out of and/or in connection with the performance by either Party of its obligations under this Agreement;

**“Within Day”** has the meaning given in Section B paragraph 2.2(e) of the IUK Access Code;

**“Wobbe Index”** when applied to Natural Gas means the Gross Calorific Value divided by the square root of the Relative Density;

**“Zeebrugge Entry Point”**, **“Zeebrugge Exit Point”** and **“Zeebrugge Connection Point”** mean respectively the Entry Point, Exit Point and Connection Point at Zeebrugge;

**“Zeebrugge Hub Price”** means the Zeebrugge day-ahead price published in a reputable industry publication in respect of the relevant Gas Day;

**“Zeebrugge Measurement Facilities”** means the facilities described as such in Section G paragraph 2.2 of the IUK Access Code.

1.2. The following rules of interpretation apply in this Agreement:

- (i) clause headings are for ease of reference only and shall not affect the construction of this Agreement;
- (ii) a person includes a natural person and a corporate or unincorporated body (whether or not having separate legal personality);
- (iii) a reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established;
- (iv) unless the context otherwise requires, words in the singular include the plural and in the plural include the singular;
- (v) unless the context otherwise requires, a reference to one gender includes a reference to the other genders;
- (vi) a reference to any person includes that person's personal representatives, successors and permitted assigns;

- (vii) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time except where stated otherwise;
- (viii) a reference to a statute or statutory provision includes all subordinate legislation made from time to time under that statute or statutory provision;
- (ix) a reference to writing or written includes fax and e-mail subject to the requirements of Clause 10 of Appendix A (General Terms and Conditions);
- (x) any obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (xi) any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing includes, in respect of any jurisdiction other than England, a reference to that which most nearly approximates to the English legal term in that jurisdiction;
- (xii) a reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other agreement or document as modified, replaced, assigned or novated (in each case, other than in breach of the provisions of this Agreement) from time to time except where stated otherwise;
- (xiii) any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (xiv) any reference to "indemnify" and "indemnifying" any person against any circumstances or in respect of any act, omission, event or matter shall include indemnifying and keeping that person fully indemnified and held harmless on a continuing basis and on demand from all actions, claims, demands and proceedings from time to time made against that person and all liabilities, losses, damages, fines and penalties and other payments, costs and expenses made or incurred by that person (including legal and other professional costs and associated value added tax) as a consequence of or which would not have arisen but for that circumstance, act, omission, event or matter.