

# Interconnector (UK) Limited



## System User Agreement

Consultation Draft

THIS SYSTEM USER AGREEMENT is made on —[insert date] 201[•]

**BETWEEN:**

(1) **INTERCONNECTOR (UK) LIMITED** (registered number **2989838**)

—48<sup>th</sup> Floor, 10 Furnival Street61 Aldwych, London ~~WC2B 4AE~~EC4A 1AB ("IUK")

Tel: + 44(0) 20 ~~3621 78007092 6500~~

Fax: + 44(0) 20 ~~7242092 17106501~~

Email: helpdesk@interconnector.com

(2) [Insert Name of the System User] (registered number [•])

[Insert Address of the System User] (the "System User")

Tel: [Insert]

Fax: [Insert]

Email: [Insert]

**RECITALS:**

(A) This System User Agreement sets out the terms and conditions for the System User to access and use the Interconnector Shippers' Information System or its successor system.

**IT IS HEREBY AGREED AS FOLLOWS:**

**1. Access**

1.1 IUK will provide access to the System upon the terms and conditions set out in this System User Agreement, including, in particular, the General Terms and Conditions attached as Appendix A.

1.2 Each time a System User or a User accesses the System (and irrespective of whether the User has executed this System User Agreement), the System User shall be bound by this System User Agreement, including the General Terms and Conditions set out below (and with any amendments, variations or updates to this System User Agreement made from time to time in accordance with GTC 14 of the General Terms and Conditions).

**2. Consent of Users**

2.1 Each User (including a User Agent) shall consent to the General Terms and Conditions before access is granted to the System.

**EXECUTION**

**SIGNED** by [•]

For and on behalf of

**INTERCONNECTOR (UK) LIMITED:**

—SIGNED by [•]

—For and on behalf of

**[Insert Name of the System User]:**

Signed.....

—Signed.....

Position.....  
Position.....

\_\_\_\_\_

## APPENDIX A

### General Terms and Conditions to the System User Agreement

#### 1. Definitions and Interpretations

1.1 In this Agreement and its recitals, the following terms shall have the meanings set out against them below:

**“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 same meanings specified in section 1159 of the Companies Act 2006 as amended from time to time;

**“Available Hours”** –means all the hours of all the days in any calendar year excluding any period(s) of maintenance to the System on reasonable notice or any period(s) of emergency maintenance to the System when necessary on no notice or any period(s) of time where access to the System is impossible due to external events or circumstances outside IUK's control;

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

**“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, and any loss of contract, loss of production, loss of or revenue, loss of or damage to goodwill and reputation, loss caused by or any increased cost of working or of business interruption and loss of anticipated savings or any other economic or financial losses, damages, costs, charges and expenses or any indirect losses howsoever caused (whether or not foreseeable and irrespective of whether any such Consequential Loss is caused by the sole or concurrent negligence or default of either party or any other sole or concurrent tortious act or omission or breach of this System User Agreement by either party) but so that, in the event that IUK shall exercise its rights to terminate or suspend this System User Agreement, then the expression "Consequential Losses" (when used in that context and in relation to losses of IUK) shall not include any loss of income, revenues or profits of IUK under this System User Agreement (to the extent that in such events IUK shall be entitled to recover loss of income, revenue or profits from the System User);

**“Contingency Arrangements”** means such arrangements as IUK may adopt from time to time to deal with any material failures in the System and/or in the connections within the IUK Area of Responsibility;

**“Destructive Features”** has the meaning set out in GTC 3.6;

**“Effective Date”** means the date of this System User Agreement as set out above on which this System User Agreement is executed by both parties or such later date as IUK may nominate and notify to the System User;

“Enduring Period” means the period from 06:00 hours (CET) on 30 September 2018 until this Agreement is terminated;

“Gas Day” means the period beginning at 06.00 hours (CET) on a day and ending at 06.00 hours (CET) on the immediately following day;

“General Terms and Conditions” means these General Terms and Conditions to this System User Agreement and “GTC” shall refer to any one of them;

“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; and/or
- (b) any government of Belgium or any political subdivision of Belgium or any local jurisdiction in Belgium; and/or
- (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 IUK pipeline and/or the terminals and associated facilities at Bacton and/or Zeebrugge; and/or
- (d) any instrumentality, commission, court or agency of any of the above, however constituted; and/or
- (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;

(e)(f) the Agency for Cooperation of European Regulators established under Regulation (EC) No. 713/2009;

“IAA Shipper” means ~~a shipper or any other person or entity that~~ who is for the time being entitled to access the receive transportation services pursuant to an IUK Access Agreement;

“Initial Period” means the period from the Effective Date until 06:00 hours (CET) on 30 September 2018;

“Internet Access” means the System User Connection made via the Internet;

“IUK Access Agreement” and “IAA” means the agreement between IUK and the IAA Shipper for access to the for the supply of transportation services by IUK-;

“IUK Access Code”, and “IAC” and “Access Code” means the code published by IUK containing provisions governing access to for the transportation services offered by IUK to IAA Shippers;

“IUK Area of Responsibility” means the System and all or any of the hardware, software, technology or telecommunications used by or on behalf of IUK to provide the System User Connection including the data connection ~~through IUK's to the~~ internet or the cloud service

~~provider~~ but otherwise excluding access to the internet which facilitates the User's access, as modified from time to time by IUK;

“**IUK Shipper**” means during the Initial Period an IAA Shipper, ~~or,~~ an STA Shipper ~~or a Sub-Lessee~~ and during the Enduring Period after the Initial Period ~~“IUK Shippers” means all such an~~ IAA Shippers, ~~STA Shippers and Sub-Lessees;~~

“**IUK Privacy Policy**” means IUK's policy (as amended from time to time) on how IUK collects and handles Personal Information;

“**Personal Information**” shall have the meaning set out in GTC 7.2.1;

“**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 operator 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;

“**Regulator**” means any governmental or supra-governmental regulatory authority to which IUK is subject, including the Office of Gas and Electricity Markets (Ofgem) ~~or and the~~ Commission de Régulation de l'Electricité et du Gaz (CREG) ~~as the case may be and their successors;~~

“**Specified Purpose**” means the purpose of exercising rights and of fulfilling obligations under a 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, ~~executed on 16 December 1994,~~ for the provision of supply of transportation services by IUK, ~~as the same has been or may be amended from time to time;~~

“**STA Shipper**” means a ~~shipper or any other~~ person that has access to the ~~who is for the time being entitled to receive~~ transportation services under pursuant to a Standard Transportation Agreement;

“**Sub-Lessee**” means a person ~~who with has sub-let~~ rights to transport gas ~~purchased~~ from an STA Shipper on the secondary market and “Sub-Letting” shall be construed accordingly;

“**System**” means the following as modified from time to time by IUK:

- (a) ~~(a)~~ — the IUK online application hardware and software system known as ISIS or its successor which is used for the purpose of provision of services by or on behalf of IUK including the receipt ~~ing~~ and dissemination ~~of ng~~ information in connection with the transportation of gas through the IUK pipeline ~~Transportation Agreement;~~
- (b) ~~(b)~~ — links between the system in paragraph (a) and third party systems including systems of adjacent transmission operators, trading platforms, exchanges and any other essential applications;
- (c) ~~(c)~~ — the access passwords and security codes for such system (to the extent the same are under the control or in the possession of IUK); and

~~(a)(d)~~ ~~(d)~~ all System manuals, training manuals and related documentation in electronic and physical forms;

“**System User**” means an IUK Shipper ~~or a Sub-Lessee~~ who is party to a System User Agreement;

“**System User Agreement**” means (1) the document headed "System User Agreement" signed on behalf of IUK to which these General Terms and Conditions are attached; and (2) these General Terms and Conditions;

“**System User Area of Responsibility**” means all or any of the System User Equipment, System User Software, technology, telecommunications, access passwords or security codes under the control of or in the possession of the System User and which the System User intends to use, and uses, to access the System, excluding anything which is within the IUK Area of Responsibility;

“**System User Connections**” means the different methods by which the System User receives information from and/or sends information to the System such as Internet Access using a browser or Transmission Protocol;

“**System User Equipment**” means the items of equipment, excluding any item of equipment which is within the IUK Area of Responsibility, which the System User intends to use, and uses, to access the System and such items of equipment up to and including the data connection through the System User's internet service provider to the internet which facilitates the System User's access to the System ~~and~~;

“**System User Software**” means the third party web browser or other technology which the System User intends to use and uses to access the System;

“**Third Party Licensor**” means any third party owner of any intellectual property rights including copyright and database rights in or relating to the System as will on request be notified by IUK to the System User from time to time;

“**Transmission Protocol**” means the protocol used by the System User Connections and the System for exchanging Edig@s messages containing contractual data which protocol shall be either the AS2 (Applicability Statement 2) protocol or the AS4 (Applicability Statement 4) protocol;

“**Transportation Agreement**” means an agreement for the provision of transportation services by IUK including in the form of an STA or an IAA;

“**User**” means an employee, contractor, agent (including those of a User Agent), a User Agent or other representative nominated or appointed by a System User who has been granted access to the System by IUK;

“**User Agent**” means any company which the System User may from time to time inform IUK has been nominated or appointed by the System User as its agent for the purposes of access to and use of the System.†

- 1.2 References to this System User Agreement shall be deemed to include the General Terms and Conditions.
- 1.3 References to the parties shall include their respective heirs, successors in title, permitted assigns and personal representatives.

- 1.4 References to the parties shall include their respective directors, employees, servants and agents.
- 1.5 The headings of the Clauses of this System User Agreement are inserted for convenience or reference only and are not intended to be part of or to affect the meaning or interpretation of this System User Agreement.
- 1.6 Any undertaking by either party not to do any act or thing shall be deemed to include an undertaking not to permit or suffer the doing of that act or thing.
- 1.7 Words in the singular shall include the plural and vice versa and words of any gender include all genders.
- 1.8 References to Recitals, Clauses and General Terms and Conditions are to recitals, clauses and General Terms and Conditions of this System User Agreement, and the words "hereunder", "hereof", "hereto" and words of similar meaning shall be deemed to be references to this System User Agreement as a whole and not to any particular recital, clause or general term and condition of this System User Agreement.
- 1.9 The word "including" shall mean "including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word", and the word "include" and its derivatives shall be construed accordingly.

1.10 A reference to "writing" includes facsimile and email.

1.11 A reference to this System User Agreement or to any other agreement or document referred to in this System User Agreement is a reference to this System User 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 System User Agreement) from time to time except where stated otherwise;

1.12 Reference to a person includes a natural person and a corporate or unincorporated body (whether or not having a separate legal personality).

## 2. Duration

2.1 This System User Agreement shall commence on the Effective Date and shall continue:-

(1) where the System User is an ~~IUK STA Shipper or an IAA~~-Shipper:

(a) for the duration of its Transportation Agreement; or

(b) until this Agreement is terminated in accordance with GTC 10 or 11 or 12

(whichever is the earlier); and

(2) where the System User is a Sub-Lessee until the end of the Initial Period or such earlier date on which this System User Agreement is terminated as follows:

(a) ~~until this System User Agreement is terminated~~ in accordance with GTC 10 or 11 or 12 (whichever is the earlier); or

(b) by either party by way of written notice ~~terminates this System User Agreement~~ at any time after the System User ceases to be a Sub-Lessee of any STA Shipper but if no such notice of termination is given, the System User shall (until it becomes a Sub-Lessee under a new Sub-Letting) be entitled to access



and use the System only in relation to its own historical data (and the definition of "Specified Purpose" shall be construed accordingly).

### 3. Use of the System

- 3.1 IUK hereby permits the System User and, subject to GTC 3.2, any nominated Users from time to time, to access and use the System during the term of this Agreement on the terms and conditions set out in this Agreement.
- 3.2 The System User may from time to time nominate a company to act as User Agent to access the System on its behalf. IUK ~~may, in its absolute discretion, determine whether or not it~~ will permit any such nominee to access the System where such nominee can satisfy the System User's obligations under this Agreement as if it were a System User and IUK shall inform the System User accordingly.
- 3.3 The System User shall procure that each such User complies in all respects with the obligations set out in this System User Agreement and shall be liable for all actions or omissions of such Users as stipulated in GTC 3.4.
- 3.4 Any use of the System by any such System User and/or any such User shall (for the purpose of this Agreement) be deemed to be use by the System User, and the System User will be fully liable to IUK for all acts and/or omissions of any such User, and all the provisions of this Agreement shall be read and construed subject to this provision. Neither the System User nor its Users shall use, or allow access to use, the System for any other purpose than the Specified Purpose. In the event that the System User advises IUK that it has appointed a User Agent then, subject to this GTC 3, IUK will facilitate installation of a System User Connection directly with the User Agent subject to the consent of the System User first being obtained. IUK will disable the System User Connection issued to any User Agent if and when requested to do so by the System User.
- 3.5 IUK may grant more than one User concurrent access to the System on behalf of a System User, subject to any limit imposed by IUK, acting as Reasonable and Prudent Operator. The System User shall ensure that its Users comply with all rights and obligations pursuant to this System User Agreement and shall notify IUK immediately that such User ceases to act on behalf of that System User, whether through termination of employment, of agency agreement or otherwise.
- 3.6 Both parties shall use their respective best endeavours not to allow, permit or introduce into the System or the System User Equipment or the System User Software any viruses, worms or trojan horses or anything else which could damage, ~~im~~pose a threat to, or impair in any way the System or the System User Equipment or the System User Software (the "**Destructive Features**"). This shall include both parties implementing and maintaining appropriate policies and procedures designed to prevent such Destructive Features.
- 3.7 The System User shall not allow, permit or effect any breach of security in relation to the System User Area of Responsibility. IUK shall not allow, permit or effect any breach of security in relation to the IUK Area of Responsibility. The System User shall be responsible for all activities that occur within the System User Area of Responsibility.
- 3.8 -The System User shall report any errors or faults in the System to IUK as soon as practicable after the System User becomes aware of such errors or faults, and the System User shall

provide reasonable assistance to IUK in relation to such errors or faults for the purposes of correction. Where IUK discovers errors or faults in the System which affect the System User, IUK shall report such errors or faults to the System User as soon as practicable after IUK becomes aware of such errors or faults. IUK shall prioritise rectification of any such errors or faults and shall take all reasonable steps to rectify the same at the earliest possible opportunity.

- 3.9 The System User agrees that in using the System it shall not, nor shall it attempt to, gain access to or download data from the System other than that data which the System User is permitted to access or download.
- 3.10 Both parties acknowledge that they are aware that use of the System and the data on the System (whether by providing, accessing, utilising, storing or otherwise dealing with the same) may from time to time be subject to certain statutory and other legal requirements. Both parties undertake to comply with any such requirements.

#### **4. Changes to and Availability of the System**

- 4.1 IUK reserves the right to amend, revise or update any programs, information and facilities in relation to the System from time to time provided that any such changes are reasonable and do not materially diminish the quality of the System. Except in the case of emergency (such as for illustrative purposes and without limitation the security of the system being under an immediate threat) IUK will provide the System User with reasonable notice of any proposed changes and, where IUK reasonably believes it is appropriate, will consult with the System User before implementation.
- 4.2 IUK shall use all reasonable endeavours to ensure that the System and the connections within the IUK Area of Responsibility shall be available during the Available Hours. IUK has established and will maintain Contingency Arrangements to deal with any material failure in the System and/or the connections within the IUK Area of Responsibility but cannot guarantee that such Contingency Arrangements will ensure availability of the System or any such connections.
- 4.3 For the avoidance of doubt, IUK shall not be responsible for the System User Area of Responsibility, or the availability or performance of any or all hardware or any connected systems, software, technology or telecommunications outside the IUK Area of Responsibility. The System User is responsible at its own cost for ensuring that its ~~computer~~ systems meet all relevant technical specifications necessary to use the System or any service made available through it and that its systems are compatible with the System.

#### **5. Conditions of Use of Equipment and/or Access to the System**

- 5.1 IUK reserves the right to control and supervise all access to the System, ~~in its discretion~~ acting as a Reasonable and Prudent Operator, and any access to the System by the System User (and its Users) is subject to the following provisions:
- (1) The System User (and its Users) shall, prior to the initial connection of the System User Equipment and the System User Software with the System, have the System User Connections approved by IUK and, subject to the rights of IUK under GTC 5.1(2) below, the System User (and its Users) may connect the System User Equipment and System User Software using the System User Connection.
  - (2) IUK may at any time require the System User (and/or its Users) to disconnect the System User Connection or any part or parts thereof, if in the reasonable opinion of IUK any part

of the System User Equipment is or ~~may have been~~ the cause of, ~~or is likely to be the cause of,~~ failures, interruptions, errors or defects in the System. In the event that the System User (and/or its Users) is required to disconnect the System User Connection, IUK will as soon as possible thereafter advise the System User (and/or its Users) of such changes as must be made to the System User Equipment to enable the System User (and/or its Users) to re-obtain access to the System, ~~subject to any reasonable charges as IUK shall determine.~~

- (3) Any material breach of GTC 5.1(1) or unauthorised access to, or use of, the System within the System User Area of Responsibility will entitle IUK (in addition to any other remedy it may have) to suspend or terminate access to the System for the System User (and/or its Users) or the System User Connection and/or this System User Agreement immediately.

5.2 The System User shall not (without IUK's express prior written consent), and shall ensure that no -User or other person shall, within the System User Area of Responsibility:

- (1) make any additions, modifications, adjustments or alterations to the System; or
- (2) attempt to rectify, or permit any persons other than IUK or its agents to rectify, any fault or inaccuracy in the System; or
- (3) use the System User Software (when dealing in any way with the System or the information or facilities obtained therefrom) in a manner which would constitute a breach of the terms and conditions of the System User Agreement.

~~5.3 The System User shall, on reasonable notice and at reasonable times, permit IUK or its representatives or agents to have access to the System User Connection, the System User Equipment and/or the System User Software for the purposes of inspection of and testing the same or for any other purpose referred to herein.~~

## **6. Copyright, Trade Marks and Other Intellectual Property Rights relating to the System**

6.1 The System User acknowledges that any and all of the copyright, database right, trademarks, and other intellectual property rights subsisting in or used in connection with the System and infrastructure (including the manner in which it is presented or appears) and all information, documentation and manuals relating thereto are the property of IUK or the relevant Third Party Licensor as the case may be.

6.2 The System User shall not, during or after the expiry or termination of this Agreement, without the prior written consent of IUK or any relevant Third Party Licensor as the case may be or to the extent only permitted by any applicable law, abuse or permit the abuse of any copyright or database right in the System or adopt any trade mark or trade name that includes or is similar to, or may be mistaken for, the whole or any part of any trade mark or trade name used by IUK or any Third Party Licensor as the case may be.

6.3 IUK warrants to the System User that IUK or any relevant Third Party Licensor owns all copyright, database rights and any other intellectual property rights or similar rights in the selection and arrangement of the contents of the System and in the electronic materials necessary for its operation.

6.4 The System User acknowledges that IUK or any relevant Third Party Licensor owns all copyright, database rights and any other intellectual property rights or similar rights in the

selection and arrangement of the contents of the System and in the electronic materials necessary for its operation.

- 6.5 The System User undertakes not to reproduce, adapt, translate, arrange or make available to any third party, either directly or indirectly, any part of the System except to the extent that, and for so long as, the System User is expressly permitted to do so in accordance with this Agreement or as permitted by any mandatory provisions of law.

## **7. Confidential Information and Data Protection**

### **7.1 Confidential Information**

- (1) Any information acquired or received by either of the Parties from the other under or pursuant to a System User 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 System User 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 GTC 7).
- (2) Notwithstanding the provisions of GTC 7.1(1):
  - (a) any information which any party is required to submit to any Governmental Authority having jurisdiction over such party may be so submitted;
  - (b) any party may disclose any information (in the case of (iv), (v) and (vi) after first having given notice in writing to the other party of any intended disclosure):
    - (i) 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 GTC 7;
    - (ii) 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 a System User 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 GTC 7;
    - (iii) 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 GTC 7;
    - (iv) to the extent required by law or in relation to any stock market regulations;
    - (v) to the extent required by the order of any court having competent jurisdiction;
    - (vi) to any competent tax authority;

- (vii) 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 its System User Agreement or to enforce its rights under the System User 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 GTC 7;
- (viii) in the course of, and as required or reasonably necessary for the purposes of, any litigation; and/or
- (ix) to any Regulator.

## 7.2 Data Protection

- (1) IUK ~~shall~~will require basic information from a System User which may identify a User as an individual (“**Personal Information**”), such as a User's name and/or email address, in order to enable the User to access and/or use the System. IUK ~~may~~will only use such Personal Information for purposes set out in this Agreement or IUK's Privacy Policy ~~and the System User shall ensure it has the right to provide such Personal Information to enable IUK to use such Personal Information for the purposes set out in this Agreement or IUK's Privacy Policy.~~
- ~~(2) In particular, IUK may on occasion make use of Personal Information that it collects in order to administer the System and/or for notification purposes. IUK may for instance send Users information about updates to the System. If a User does not wish to allow IUK to make use of his/her Personal Information in this way, the User should email iuk.helpdesk@interconnector.com. IUK will also give a User the opportunity to opt out of future notifications whenever IUK sends a notification.~~
- ~~(3)~~(2) The Parties agree with respect to the sharing of Personal Information as anticipated by this Agreement they will be considered data controllers in common (as defined by applicable data protection legislation). Except (i) to the extent that IUK is required to do so by law; (ii) in connection with any legal proceedings (including prospective legal proceedings); or (iii) in order to establish, exercise or defend IUK's legal rights, IUK will not disclose a User's Personal Information to any other party without first obtaining the User's permission.
- ~~(4) IUK will take reasonable precautions to prevent the loss, misuse or alteration of a User's Personal Information. IUK's employees, contractors and agents may be given access to any Personal Information which IUK collects, but their use shall be limited to the performance of their duties in relation to facilitating a User's use of the System. IUK's employees, contractors and agents who have access to a User's Personal Information are required to keep that information confidential and are not permitted to use it for any purposes other than to enable a User to use the System.~~
- ~~(5)~~(3) The System User acknowledges that IUK may be required to transfer Personal Information outside the System User's country of residence to any country where IUK has facilities or engage third parties to provide services in relation to the System.

## 8. Liability

8.1 The System User shall be liable, notwithstanding any other remedies IUK may have against the System User (including the right to terminate this System User Agreement), to indemnify IUK for any loss, damage, cost and expenses (including loss of data) which IUK suffers in consequence of any breach of any of ~~the System User's~~ obligations under GTC 3.1 through 3.5 and/or 3.7.

8.2 Notwithstanding any other provision of this Agreement (including the provisions of GTC 4.2 and/or any approvals given by IUK pursuant to this Agreement and/or any changes to any System User Equipment required by IUK pursuant to this Agreement) IUK shall not be liable in contract or otherwise for any Consequential Losses. Notwithstanding any other provision of this Agreement, the System User shall similarly not be liable in contract or otherwise for any Consequential Losses.

8.3 Unless otherwise excluded pursuant to GTC 8.2, the total aggregate liability of IUK in respect of all claims in contract or otherwise for any loss or damage of any kind (excluding death or personal injury) sustained by the System User or others directly or indirectly making use of or arising in any way from the System (whether arising as a result of IUK's negligence, wilful default, misrepresentation or other breach or breaches of its duties or obligations) shall be limited for each incident or event or series of related incidents or events in aggregate to one hundred and twenty five thousand Pounds Sterling (£125,000).

8.4 Under no circumstances shall any payments or liabilities due and/or payable by IUK to the System User under a System User Agreement be set off or otherwise deducted from any moni~~eseys~~ or liabilities due and/or payable by the System User to IUK under a Transportation Agreement.

8.48.5 Unless otherwise excluded pursuant to GTC 8.2, the total aggregate liability of the System User including under Clause 9 in respect of all claims in contract or otherwise for any loss or damage of any kind (excluding death or personal injury) sustained by IUK or others directly or indirectly making use of or arising in any way from the System (whether arising as a result of the System User's negligence, wilful default, misrepresentation or other breach or breaches of its duties or obligations) shall be limited for each incident or event or series of related incidents or events in aggregate to two million Pounds Sterling (£2,000,000).

## 9. Indemnity

9.1 Subject to the second sentence in GTC 8.2, the System User undertakes fully and effectively to indemnify and keep indemnified at all times IUK against all actions, proceedings, reasonable costs, claims, demands, liabilities and reasonable expenses whatsoever (including reasonable legal and other fees and disbursements) sustained, incurred or paid by IUK directly or indirectly in respect of:

- (1) the access to and/or use (other than as permitted by this Agreement) of the System by the System User or by any of its Users (including by any User Agent) from time to time; and/or
- (2) any information, data or material produced by the System User or by any of its Users (including by any User Agent) from time to time which is obtained in whole or in part from the System; and/or

- (3) any breach of any of the provisions of this Agreement by the System User or by any of its Users (including by any User Agent); and/or
- (4) (where the System User is an STA Shipper), any failure during or in respect of the Initial Period by any Sub-Lessee of that System User duly to perform that Sub-Lessee's obligations under that Sub-Lessee's System User Agreement.

## 10. Suspension and Termination

### 10.1 Suspension

- (1) Without affecting any other right or remedy available to it under this Agreement, IUK may suspend, with immediate effect, access by any System User (and/or its Users) to the System and/or disconnect the System User Connection for such period as IUK may, in its absolute discretion determine if one or more of the following events occurs:
  - (a) the System User fails to pay any amount due which falls due to be paid under Clause 8 or 9 of this Agreement for the provision of access to the System on the due date for payment and that amount remains unpaid for a period of not less than thirty (30) days after notice is given in writing by IUK requesting such amounts;
  - (b) the System User commits a material breach of any of these General Terms and Conditions and the breach is irremediable or, if the breach is remediable, fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so; ~~or~~
  - (c) the System User repeatedly breaches any of these General Terms and Conditions in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement and does not remedy (where remediable) such breaches so as to reasonably justify the opinion that its conduct is consistent with it having the intention or ability to give effect to the terms of this Agreement within thirty (30) days after being notified in writing by IUK; ~~or~~
  - (d) an event giving rise to IUK's right to suspend services under a Transportation Agreement or to suspend a Transportation Agreement has occurred or is occurring in relation to the System User ~~fails to comply with its obligations under its Transportation Agreement.~~
- (2) The System User shall remain liable to pay IUK ~~all tariffs, fees, charges, expenses and other~~ amounts (if any) which fall due to be paid under Clause 8 or 9 of this Agreement during the period of any suspension of access to the System.
- (3) Where IUK is satisfied that the circumstances leading to suspension of the System User under GTC 10.1 have ceased to exist, IUK shall permit the System User to have access to the System.

### 10.2 Termination

- (1) Without affecting any other right or remedy available to it under this Agreement, either party may terminate this System User Agreement, with immediate effect by giving written notice to the other party: if any of the following events occur:

- (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;

~~the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;~~

~~the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;~~

~~a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole~~



~~purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;~~

~~an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;~~

~~the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;~~

~~a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachments is not discharged within 14 days;~~

~~unless, in the case of (a) (d) and (e) above, the relevant petition or other step is being actively contested in good faith by the party concerned with timely recourse to all appropriate measures and procedures.~~

(2) This System User Agreement may be terminated:

~~by the Parties upon agreement in writing at any time; or~~

~~by a System User Without affecting any other right or remedy available to it, either party may terminate a System User Agreement on giving a reasonable period (not to be less than ten (10) days ~~one month~~) of notice in writing to IUK;~~

~~where there are no outstanding or accrued obligations or liabilities of the System User under this Agreement or the Transportation Agreement and there are no obligations or liabilities of the System User that will fall due under this Agreement or the Transportation Agreement after the date of termination other than in respect of the monthly administration fee payable under the Transportation Agreement for the Month in which such termination occurs ~~the other party~~ provided that the Transportation Agreement is terminated in accordance with its terms at or around the same time as this Agreement.~~

(3) Without affecting any other right or remedy available to it under this Agreement, IUK may terminate a System User Agreement, with immediate effect by giving written notice to the System User where:

- (a) the System User is a STA Shipper and assigns all of its rights under an STA during the Initial Period; or
- (b) on termination (howsoever caused) of the Transportation Agreement (provided that during the Initial Period if the System User is a Sub-Lessee of more than one STA Shipper, this General Condition shall apply only upon termination of the Transportation Agreements of all such STA Shippers); or
- (c) access to the System for all Users of a System User has been suspended in accordance with any of GTC 10.1(a), (b) and (c) for thirty days and the breach or failure to pay as the case may be has not been remedied or in accordance with GTC 10.1(d) the event giving rise to suspension under the Transportation Agreement has not been remedied and the Transportation Agreement has been or will be terminated in accordance with its terms ~~for longer than six months.~~

10.3 Termination of this Agreement under GTC 10.2(1) or 10.2(3) shall be without prejudice to any accrued rights of either party and shall not affect any obligations which are expressed not to be affected by expiry or termination hereof.

## **11. Force Majeure**

11.1. Neither party shall be liable to the other in any way whatsoever for any event or circumstances beyond its reasonable control which delays, ~~hinders~~ or prevents that party from fulfilling its obligations under this System User Agreement. Such events or circumstances shall include in particular war, rebellion, acts of terrorism, civil commotion, strikes, lock-outs and industrial disputes, fire, explosion, earthquake, acts of God, flood, drought or bad weather, internet failure, or the requisitioning or other act or order by any ~~G~~governmental Authority department council or other constituted body. In the event that any circumstances covered by this GTC cannot be rectified or remedied or continues for a period of six (6) months or more either party may at its option upon written notice to the other party terminate this System User Agreement forthwith and without liability for such termination.

## **12. Assignment**

12.1 The System User shall not, without the prior written consent of IUK (such consent not to be unreasonably ~~withheld~~), assign or transfer this Agreement or any of its rights under this Agreement (nor assign, transfer or sub-contract the performance of any obligation hereunder) to any other person, firm or company.

12.2 In the event that the System User is an STA Shipper and wishes to assign (and shall assign) any of its rights to Capacity it shall, simultaneously with the execution of the instruments of assignment, procure the execution by the assignee of an agreement with IUK in the same form and containing the same terms and conditions (mutatis mutandis) as this Agreement (where the assignee is not already a party to a system user agreement with IUK). In any such case IUK agrees with the System User that IUK will execute such an agreement with any such assignee of Capacity (where the assignee is not already a party to a system user agreement with IUK) at the time when the Deed of Adherence in relation to such assignment is executed by IUK.

## **13. Notices**

13.1 Any notice to be given by either party to the other may be :

- (1) delivered by hand; or
- (2) sent by first class pre-paid post (within the United Kingdom) or pre-paid airmail to the address of the other party referred to at the beginning of this Agreement, or to such other address as may from time to time be notified in writing by the party concerned; or
- (3) sent by fax to the fax number of the other party referred to at the beginning of this Agreement, or to such fax number as may from time to time be notified in writing by the party concerned. If sent by fax, a confirming copy shall be sent by pre-paid post; or
- (4) sent by email to such email addresses as may from time to time be notified in writing by the party concerned.

All notices shall be in writing and 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.

13.2 Any such notice :

- (1) delivered by hand or sent by fax shall be deemed delivered at the time of delivery or sending or (if delivered or sent outside normal business hours in the place of receipt) at the commencement of business on the next working day in the place of receipt;
- (2) sent by post shall be deemed delivered on the next working day (in the case of first class post within the United Kingdom) or three working days after posting (in the case of airmail);
- (3) sent by email shall be deemed delivered at the time of receipt of an email response or “read receipt” from the recipient evidencing receipt.

#### **14. Amendment of System User Agreement**

14.1 IUK may amend this System User Agreement from time to time after receipt of approval from applicable Regulators, such amendments including, in particular, ~~those~~when necessary to meet the requirements of applicable laws and regulations and/or legally binding rulings from national or international courts or agencies.

14.2 IUK shall notify each System User of any proposed amendment and the date on which it will take effect. In determining such date, IUK will allow a reasonable period and opportunity prior to that date for the System Users to comment on and prepare for the changes introduced by the amendment.

14.3 Each User must consent to the amended System User Agreement before accessing the System after the date on which the amendment takes effect. —If a User accesses and/or uses the System following implementation of an amendment, the System User shall be deemed to have consented to be bound by this System User Agreement as amended.

#### **15. Waiver**

15.1 A waiver of any right or remedy under this System User Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

15.2 Failure, delay or neglect by IUK to enforce at any time any of the provisions of this System User Agreement or to exercise any right or remedy provided under this System User Agreement or by law shall not be construed as nor be deemed to be a waiver of that or any other right or remedy, nor shall it prevent or restrict any further enforcement of that provision or any other provision or exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this System User Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

#### **16. Entire Agreement**

16.1 This System User Agreement constitutes the entire agreement between the parties in relation to the use of and access to the System and supersedes, extinguishes and renders of no legal effect all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16.2 Each party acknowledges that, in entering into this System User Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, assurance or

warranty (whether made innocently or negligently) that is not set out in this System User Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this System User Agreement,

16.3 Nothing in this GTC 16 shall limit or exclude any liability for fraud.

#### **17. Partnership or Agency**

17.1 Nothing in this System User 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 the other party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

#### **18. Counterparts**

18.1 This System User 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 one agreement.

#### **19. Third Party Rights**

19.1 A person who is not a party to this System User Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

#### **20. Illegality**

20.1 In the event that any part of the terms, conditions or provisions contained in this System User 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 term, condition, provision or any part thereof shall be deemed deleted. Any modification to or deletion of a term, condition, provision or any part thereof under this GTC shall not affect the validity and enforceability of the rest of this System User Agreement.

#### **21. Language**

21.1 This System User Agreement is drafted in the English language. If this System User Agreement is translated into any other language, the English language version shall prevail.

#### **22. Law and Jurisdiction**

22.1 **Choice of Law:** This System User Agreement, its performance and any disputes (including non-contractual disputes or claims) arising out of or relating to this System User Agreement shall be governed by and construed in all respects in accordance with the laws of England.

~~22.2~~ **Jurisdiction:** Each party irrevocably agrees that the courts of England ~~and Wales~~ shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this System User Agreement or its subject matter or formation (including non-contractual disputes or claims).-

~~22.3~~22.2