

**26<sup>th</sup> November 2007**

**PHOENIX NATURAL GAS LIMITED**

**TRANSMISSION CODE**

**Phoenix Natural Gas Limited  
197 Airport Road West  
Belfast BT3 9ED  
Tel: 08454 555555  
Fax: 02890 555500**

---

## CONTENTS

### SECTION A: THE SYSTEM

1	Definition	A1
2	System Points	A1
3	Measurement Equipment	A1
4	PTL System Points	A2

### SECTION B: SYSTEM OPERATION AND MAINTENANCE

1	Capacity, nominations and allocations	B1
2	Balancing and scheduling and unauthorised flow	B1
3	Phoenix obligations	B2
4	Shrinkage	B3
5	Meter Readings	B3
6	Co-ordination with PTL	B3
7	Maintenance of the Phoenix System	B3
8	Failure to make gas available	B5

### SECTION C: SYSTEM CAPACITY

1	Introduction	C1
2	PTL Capacity	C1
3	Phoenix Capacity	C1
4	Sub-letting of PTL Capacity	C2
5	Notification by PTL	C2
6	Charges	C3

### SECTION D: ALLOCATION

1	Introduction	D1
2	PTL Allocated Quantities	D1
3	Phoenix Allocated Quantities	D2
4	Notification by PTL	D2

## **SECTION E: ENTRY AND EXIT REQUIREMENTS**

1	Introduction	E1
2	Delivery of gas	E1
3	Gas Specification at the Phoenix Entry Point	E2
4	Gas Specification at the Phoenix Exit Points	E3
5	Pressure	E4
6	Title and risk	E4
	Annex E-1: Gas Specification	E5

## **SECTION F: CHARGES, PAYMENT AND TAX**

1	Introduction	F1
2	Shipper payment obligations	F1
3	Phoenix payment obligations	F2
4	Content of PS Invoice	F2
5	Content of CC Invoice	F3
6	Outstanding Code Charges	F4
7	Periods of Invoicing	F5
8	Payment	F5
9	Interest	F6
10	Set off and disputed invoices	F7
11	Taxes and withholdings	F7
12	Audit	F8

## **SECTION G: CREDIT PROCEDURES**

1	Application to determine Required Level of Credit Support	G1
2	Calculation of Required Level of Credit Support	G1
3	Establishing a Provided Level of Credit Support	G2
4	Determination of whether Required Level of Credit Support has been established	G8
5	Credit Committee	G8

6	Reassessment of Required Level of Credit Support and Provided Level of Credit Support	G9
7	Duty to provide forecasts and information relating to the calculation of the Postalised Charges	G10
8	Shipper's who are not Gas Supplier's	G11

## **SECTION H: EMERGENCIES**

1	Emergencies	H1
2	Emergency Steps	H1
3	Emergency Contacts	H2
4	Phoenix to inform Shippers of an Emergency	H2
5	Entry Control in an Emergency	H3
6	Exit Control in an Emergency	H3
7	Consequences of an Emergency	H3
8	Audit following an Emergency	H3
9	Emergency procedures	H4

## **SECTION I: DISPUTES**

1	Dispute Resolution	I1
2	Mediation	I1
3	Expert Determination	I1
4	Costs of Dispute	I3

## **SECTION J: GENERAL**

1	Introduction	J1
2	Phoenix as a Shipper	J1
3	Accession	J2
4	Confidentiality	J4
5	Force Majeure	J6
6	Liability	J7
7	Termination	J9
8	Notices	J13

9	Waiver	J14
10	Severance	J14
11	Entire Agreement	J14
12	Gas Shippers or Shippers	J15
13	Third Party Rights	J15
14	Assignment	J15
15	Jurisdiction	J16
16	Governing Law	J16

#### **SECTION K: INTERPRETATION**

1	Definitions	K1
2	Interpretation	K5
3	Times and dates	K6
4	Technical interpretation	K7

#### **APPENDIXES**

1	Form of Guarantee
2	Form of Letter of Credit
3	Credit Committee Terms of Reference

## SECTION A: THE SYSTEM

### 1 Definition

- 1.1 The "**Phoenix System**" means the Phoenix Owned System and, in the context of;
- (a) the flow of gas into the distribution pipe-line owned and operated by Phoenix,
  - (b) the holding of capacity in respect of such gas flows,
- the Lisburn Exit Point.
- 1.2 The "**Phoenix Owned System**" means the transmission pipe-lines between:
- (a) Ballylumford and Torytown;
  - (b) Ballylumford and Larne;
  - (c) Torytown and Knocknagoney
- owned and operated by Phoenix, the conveyance of gas through which is authorised by the Phoenix Licence.
- 1.3 The Phoenix System does not include any exit points at which gas may be offtaken from the Phoenix System for the purposes of supply directly to particular premises.
- 1.4 The Phoenix System does not include any compression or pressure enhancement capabilities.

### 2 System Points

- 2.1 For the purposes of the Code and in relation to the Phoenix System:
- (a) the "**Greater Belfast Exit Point**" comprises each of the Individual Belfast Exit Points;
  - (b) the "**Carrickfergus Exit Point**" is the point at Carrickfergus at which gas can flow out of the Phoenix System and into the BGE (NI) System;
  - (c) an "**Individual Belfast Exit Point**" is one of the four points (which for the avoidance of doubt shall include the Lisburn Exit Point) at which gas can flow out of the Phoenix System and into a distribution pipe-line owned and operated by Phoenix, the conveyance of gas through which is authorised by the Phoenix Licence;
  - (d) "**Individual Exit Point**" means a point at which gas can flow out of the Phoenix System (which for the avoidance of doubt shall include the Lisburn Exit Point);
  - (e) the "**Phoenix Entry Point**" is the point at Ballylumford at which gas can flow into the Phoenix System and out of the PTL System;
  - (f) a "**Phoenix Exit Point**" is the Greater Belfast Exit Point and the Carrickfergus Exit Point.
  - (g) the "**Lisburn Exit Point**" is the point at which gas can flow out of the BGE (NI) System and into a distribution pipe-line owned and operated by Phoenix, the conveyance of gas through which is authorised by the Phoenix Licence

### **3 Measurement Equipment**

3.1 **"Measurement Equipment"** is metering, sampling, analysis and other equipment required to:

- (a) measure, sample and analyse gas flows; and
- (b) determine the volume, calorific values, quantity and characteristics of gas flows.

3.2 There is no Measurement Equipment installed at the Phoenix Entry Point (or the PTL Ballylumford Exit Point).

3.3 Measurement Equipment is installed and is operational at:

- (a) each Individual Belfast Exit Point; and
- (b) the Carrickfergus Exit Point.

### **4 PTL System Points**

4.1 For the purposes of the Code:

- (a) the **"PTL Ballylumford Exit Point"** is the exit point from the PTL System at Ballylumford at which gas flows out of the PTL System and into the Phoenix System (which point is immediately upstream of the Phoenix Entry Point); and
- (b) a **"PTL Phoenix Exit Point"** is a notional exit point from the PTL System comprised in the PTL Ballylumford Exit Point which, for the purposes of the PTL Code, corresponds to a Phoenix Exit Point, and in respect of which a Shipper may pursuant to the PTL Code:
  - (i) hold PTL Capacity;
  - (ii) make a PTL Nomination; and
  - (iii) be treated as offtaking a quantity of gas from the PTL System.

4.2 For the purposes of the Code a PTL Phoenix Exit Point **"corresponds"** to the Phoenix Exit Point which, for the purposes of the PTL Code, the PTL Phoenix Exit Point is defined as corresponding to.

## **SECTION B: SYSTEM OPERATION AND MAINTENANCE**

### **1 Capacity, nominations and allocations**

1.1 Pursuant to the PTL Code and in relation to a PTL Phoenix Exit Point a Shipper:

- (a) may apply for and hold PTL Capacity for a Day which corresponds to the capacity which the Shipper wishes to utilise in the Phoenix System by offtaking gas at the corresponding Phoenix Exit Point on such Day;
- (b) may make a nomination in respect of the offtake of gas on a Day from the PTL System which corresponds to the quantity of gas the Shipper intends or expects to offtake from the Phoenix System on such Day at the corresponding Phoenix Exit Point on such Day; and
- (c) may be treated as offtaking a quantity of gas on a Day from the PTL System which corresponds to the quantity of gas offtaken from the Phoenix System at the corresponding Phoenix Exit Point on such Day.

1.2 By reason of the technical and operational characteristics of the Phoenix System and the provisions of the PTL Code referred to in paragraph 1.1, for the purposes of the Code Shippers:

- (a) shall not be required to apply for Phoenix Capacity but shall be treated, in accordance with Section C, as holding Phoenix Capacity at a Phoenix Exit Point on a Day by reason of holding PTL Capacity on such Day at the relevant PTL Phoenix Exit Point;
- (b) shall not be required to submit nominations to Phoenix in respect of the delivery or offtake of gas from the Phoenix System;
- (c) shall be treated as offtaking a quantity of gas from the Phoenix System on a Day which, in accordance with Section D, is the same quantity which the Shipper is treated as offtaking from the PTL System at the PTL Ballylumford Exit Point (and therefore delivering to the Phoenix System) on such Day.

1.3 Accordingly, Phoenix will not be required for the purposes of the Code to:

- (a) invite applications for Phoenix Capacity;
- (b) accept or reject nominations from Shippers in respect of quantities of gas to be delivered or offtaken from the Phoenix System on a Day; or
- (c) allocate the total quantity of gas offtaken from the Phoenix System at a Phoenix Exit Point amongst those Shippers treated pursuant to the PTL Code as offtaking gas at the Phoenix Exit Point on a Day.

### **2 Balancing, scheduling and unauthorised flow**

2.1 Shippers are required to pay PTL certain charges pursuant to the PTL Code where:

- (a) the quantity of gas which the Shipper is treated as offtaking from the PTL System at a PTL Phoenix Exit Point on a Day differs from the quantity which the Shipper nominated for offtake at the PTL Phoenix Exit point on such Day;
- (b) the quantity of gas which the Shipper is treated as delivering to the PTL System on a Day for offtake from the PTL System at a PTL Phoenix Exit Point differs from the

quantity of gas which the Shipper is treated as offtaking from the PTL System at the PTL Phoenix Exit Point on such Day;

- (c) the quantity of gas, which for the purposes of PTL Code is treated as an interruptible allocated quantity of gas, the Shipper is treated as offtaking from the PTL System at a PTL Phoenix Exit Point on a Day exceeds, by more than the permitted tolerance, the interruptible quantity which the Shipper nominated for offtake at the PTL Phoenix Exit point on such Day.

2.2 By reason of the absence of Measurement Equipment at the PTL Ballylumford Exit Point (or Phoenix Entry Point):

- (a) PTL is unable to measure the quantity of gas offtaken from the PTL System at the PTL Ballylumford Exit Point;
- (b) PTL treats, for the purposes of the PTL Code, the quantity of gas offtaken from the PTL System at the PTL Ballylumford Exit Point on a Day as being equal to the aggregate quantity of gas offtaken from the Phoenix System on such Day as calculated by reference to meter readings obtained from the Measurement Equipment at each Phoenix Exit Point.

2.3 A Shippers' liability to pay the charges referred to in paragraph 2.1 is, by reason of paragraph 2.2, determined:

- (a) not by reference to the physical flow of gas across the PTL System; but
- (b) by reference to the physical flow of gas across the PTL System and the Phoenix System.

2.4 Accordingly, Phoenix does not carry out any operational balancing or operational scheduling activities (pursuant to the Code or otherwise) in respect of the Phoenix System and Shippers are not required under the Code to pay Phoenix any charges in respect of:

- (a) the differences between the quantity of gas offtaken from the Phoenix System on a Day and the quantity of gas the Shipper is deemed to have nominated for offtake on such Day;
- (b) the differences between the quantity of gas the Shipper is treated as having delivered to and offtaken from the Phoenix System on a Day;
- (c) the quantity of interruptible gas offtaken from the Phoenix System on a Day exceeding the quantity of interruptible gas the Shipper is deemed to have nominated for offtake on such Day.

### **3 Phoenix obligations**

3.1 Subject to paragraph 7 and Section H, Phoenix shall accept gas delivered to the Phoenix Entry Point by Shippers and make available gas for offtake from the Phoenix System at Phoenix Exit Points in accordance with the Code.

3.2 Phoenix shall make available, and Shippers shall be treated as holding, Phoenix Capacity in accordance with the Code.

3.3 Following the delivery of gas to the Phoenix System by Shippers on a Day, Phoenix shall not take any step or do anything, the intention, or result, of which is:

- (a) to create an imbalance between the quantities of gas delivered to and offtaken from the Phoenix System on such Day;
- (b) to change the specification following the delivery of gas to, and prior to the gas being made available for offtake from, the Phoenix System on such Day.

3.4 Subject to paragraph 7, Phoenix shall not undertake Maintenance on a Day the result of which is to restrict the offtake of gas from the Phoenix System at a Phoenix Exit Point.

3.5 Where Phoenix is under an obligation in relation to the offtake of gas at the Lisburn Exit Point, performance of which is dependent on the proper performance by BGE(UK)L of its contractual obligations owed to Phoenix in respect of the delivery of gas to the Lisburn Exit Point, Phoenix will not be in breach of its obligations under the Code where it is unable to perform its obligations in full or in part by reason of the failure of BGE(UK)L.

#### **4 Shrinkage**

All gas which is lost or otherwise unaccounted for in the Phoenix System is accounted for, together with gas lost or unaccounted for in PTL System, pursuant to the provisions of the PTL Code and accordingly there is no requirement in the Code to recognise or account for such gas.

#### **5 Meter Readings**

- 5.1 For the purposes of the PTL Code meter readings are obtained from the Measurement Equipment located at each Individual Exit Point in accordance with the terms of the Belfast Metering Agreement and the Northern Ireland Network Operators Agreement.
- 5.2 Accordingly there is no requirement in the Code for Phoenix or Shippers to obtain or provide meter readings from the Measurement Equipment located at each Individual Exit Point.

#### **6 Co-ordination with PTL**

PTL and Phoenix shall be party to an agreement in respect of:

- (a) the operational balancing and operational scheduling by PTL of the Phoenix System pursuant to which PTL carries out such activities in accordance with the terms of the PTL Code by reference to the physical flow of gas across the PTL System and the Phoenix System; and
- (b) the provision of certain information by PTL to Phoenix and by Phoenix to PTL for the purposes of the Code.

#### **7 Maintenance of the Phoenix System**

- 7.1 Phoenix shall maintain the Phoenix Owned System:
  - (a) in accordance with the provisions of the Code;
  - (b) to the standard of a Reasonable and Prudent Operator; and
  - (c) in accordance with all Legal Requirements.
- 7.2 For the purposes of the Code:

- (a) "**Maintenance**" includes any inspection, repair, replacement, reinstatement, reinforcement, re-commissioning, upgrade or extension of any part of the Phoenix Owned System and includes any works preparatory to such maintenance or required for the return to service of a part of the Phoenix Owned System after such maintenance;
  - (b) "**Maintenance Day**" mean a Day, whether consecutive to another Maintenance Day or not, determined by Phoenix, in accordance with this paragraph 7, as a Day during which acceptance of gas for delivery to or making gas available for offtake from that part of the Phoenix Owned System as may be subject to maintenance may be reduced (if necessary down to zero) due to Maintenance on the Phoenix Owned System; and
  - (c) "**Scheduled Maintenance**" means Maintenance carried out during a Maintenance Day.
- 7.3 A Shipper shall provide Phoenix, as soon as reasonably practicable, with such information Phoenix may reasonably require to:
- (a) plan the Maintenance of the Phoenix Owned System;
  - (b) comply with its obligations set out in paragraph 7.1; and
  - (c) prepare a Maintenance Programme.
- 7.4 For the purposes of this paragraph 7:
- (a) Phoenix shall prepare a maintenance programme for each calendar year (the "**Maintenance Programme**") in respect of Individual Exit Points at which Scheduled Maintenance will be carried out;
  - (b) the Maintenance Programme shall specify which Days in the relevant calendar year shall be Maintenance Days at the affected Individual Exit Point and the extent to which such Individual Exit Point shall be affected; and
  - (c) Scheduled Maintenance shall only be carried out between April and September in any calendar year unless there is a Legal Requirement or a requirement of any Competent Authority that such maintenance be carried out at any alternative time.
- 7.5 Phoenix shall plan any Scheduled Maintenance to:
- (a) minimise disruption to the Phoenix Owned System in as cost-effective, efficient and commercially prudent manner as is practicable; and
  - (b) co-ordinate it, where practicable, with the maintenance of the PTL System, the BGE (NI) System and the Phoenix Distribution System.
- 7.6 A Shipper offtaking gas at an Individual Exit Point at which Scheduled Maintenance is proposed shall meet with Phoenix at a mutually convenient time to discuss the Maintenance Programme for the following year with a view to concluding such consultations before 30 September prior to the relevant year and the Shipper shall notify Phoenix of the maintenance programmes in relation to any facilities downstream of an Individual Exit Point.
- 7.7 Phoenix shall send the Maintenance Programme for a calendar year to each Shipper which it reasonably expects to offtake gas during the relevant year at any affected Individual Exit Point by 30 December prior to the relevant year.
- 7.8 Phoenix shall be entitled to carry out Scheduled Maintenance on:

- (a) 15 Maintenance Days at each Individual Exit Point, other than the Lisburn Exit Point, comprised in the Greater Belfast Exit Point;
- (b) 3 Maintenance Days at the Carrickfergus Exit Point.

7.9 Phoenix may revise the nature, timing and duration of any Scheduled Maintenance by providing for additional Maintenance Days and/or by varying the date, period or extent, of any Scheduled Maintenance by giving any affected Shipper not less than 30 Business Days' notice unless a shorter period of notice is agreed by the affected Shipper.

## **8 Failure to make gas available**

8.1 Where by the sole reason of the negligence or Wilful Misconduct of Phoenix, Phoenix fail to make gas available for offtake from the Phoenix Owned System at an Individual Exit Point other than the Lisburn Exit Point, Phoenix shall pay the relevant Shipper an amount calculated in accordance with paragraph 8.2.

8.2 The amount payable by Phoenix to a Shipper in accordance with paragraph 8.1 shall be an amount equal to the lesser of:

- (a) £20,000 \*  $RPI_n / RPI_o$ ; and
- (b) the direct costs suffered by the Shipper as a result of the failure by Phoenix to make gas available for offtake.

## SECTION C: SYSTEM CAPACITY

### 1 Introduction

1.1 In accordance with the provisions of the Code:

- (a) a Shipper may deliver and offtake gas from the Phoenix System;
- (b) a Shipper is not required to apply for Phoenix Capacity but may be treated as holding Phoenix Capacity in accordance with this Section C.

1.2 For the purposes of the Code:

- (a) "**Phoenix Capacity**" is the capacity in the Phoenix System which a Shipper is treated as utilising in offtaking gas from the Phoenix System at a Phoenix Exit Point; and
- (b) "**PTL Capacity**" is capacity in the PTL System which a Shipper is treated as utilising in offtaking gas from the PTL System at the PTL Ballylumford Exit Point (including a PTL Phoenix Exit Point).

1.3 Phoenix Capacity is expressed in kWh/Day.

### 2 PTL Capacity

2.1 Pursuant to the provisions of the PTL Code:

- (a) a Shipper may apply for and hold PTL Capacity;
- (b) in relation to the PTL Ballylumford Exit Point, the amount of PTL Capacity a Shipper may apply for and hold is determined by reference to the amount of capacity the Shipper wishes to utilise in offtaking gas from the Phoenix System at Phoenix Exit Points; and
- (c) a Shipper may apply for and hold PTL Capacity at the PTL Ballylumford Exit Point in respect of each PTL Phoenix Exit Point at which it wishes to offtake gas from the Phoenix System at the corresponding Phoenix Exit Point.

2.2 Pursuant to the PTL Code the amount of PTL Capacity a Shipper is treated as holding in relation to a PTL Phoenix Exit Point on any Day may be increased or decreased in certain circumstances.

### 3 Phoenix Capacity

3.1 For the purposes of the Code, in respect of a Day:

- (a) the Distribution Operator shall be treated as holding, for the purposes of Section F, an amount of Phoenix Capacity at the Greater Belfast Exit Point which is equal to the amount of PTL Capacity which the Distribution Operator holds (pursuant to the PTL Code) in respect of the PTL Phoenix Exit Point which corresponds to the Greater Belfast Exit Point;
- (b) a Shipper shall be treated as holding, for the purposes of Section F, an amount of Phoenix Capacity at the Greater Belfast Exit Point which is equal to the amount of PTL Capacity which the Shipper holds (pursuant to the PTL Code) in respect of the PTL Phoenix Exit Point which corresponds to the Greater Belfast Exit Point;

- (c) a Shipper shall be treated as holding, for the purposes of Section F, an amount of Phoenix Capacity at the Carrickfergus Exit Point which is equal to the amount of PTL Capacity which the Shipper holds (pursuant to the PTL Code) in respect of the PTL Phoenix Exit Point which corresponds to the Carrickfergus Exit Point.
- 3.2 Where the amount of PTL Capacity a Shipper holds at the PTL Ballylumford Exit Point in respect of a PTL Phoenix Exit Point on a Day increases or decreases pursuant to the PTL Code (including by reason of a Capacity Transfer) the amount of Phoenix Capacity the Shipper is treated as holding at the corresponding Phoenix Exit Point shall be equal to the amount of PTL Capacity the Shipper holds (pursuant to the PTL Code) in respect of the PTL Phoenix Exit Point on a Day following such increase or decrease.
- 3.3 Where a Shipper ceases to hold PTL Capacity at the PTL Ballylumford Exit Point in respect of a Phoenix Exit Point with effect from any Day the Shipper shall be treated as ceasing to hold Phoenix Capacity at the corresponding Phoenix Exit Point with effect from the same Day.

#### **4 Sub-letting of PTL Capacity**

- 4.1 Where pursuant to the PTL Code a Shipper sub-lets all or part of the PTL Capacity held by the Shipper in relation to a PTL Phoenix Exit Point the Shipper shall be treated as having sub-let an equivalent amount of Phoenix Capacity in relation to the corresponding Phoenix Exit Point.
- 4.2 A Shipper shall give Phoenix notice of the sub-letting of PTL Capacity held in relation to a PTL Phoenix Exit Point at the same time as the Shipper gives notice to PTL pursuant to the PTL Code.
- 4.3 Where a Shipper is treated as sub-letting Phoenix Capacity:
- (a) the Shipper shall remain liable to Phoenix for the performance of all obligations under the Code insofar as they relate to the Phoenix Capacity which is sub-let;
  - (b) the Shipper shall indemnify, defend and hold harmless Phoenix from and against all liabilities, actions, proceedings, damages, expenses and costs arising from or in respect of any claim made by any third party in connection, directly or indirectly, with the sub-letting of Phoenix Capacity.

#### **5 Notification by PTL**

- 5.1 For the purposes of this Section C Phoenix will procure that PTL shall notify Phoenix of:
- (a) any application for an Exit Point Registration in respect of a PTL Phoenix Exit Point, the date from which the registration is proposed to be effective and the identity of the relevant PTL Shipper within 5 Business Days of receipt of the application by PTL;
  - (b) the issue or termination of an Exit Point Registration in respect of a PTL Phoenix Exit Point, the date from which the registration is to be effective or cease to be effective and the identity of the relevant PTL Shipper within 5 Business Days of the issue or cancellation of the registration by PTL;
  - (c) any application made to it for PTL Capacity at a PTL Phoenix Exit Point, the amount of PTL Capacity in respect of which the application is made and the identity of the relevant PTL Shipper within 5 Business Days of the receipt of the application by PTL;

- (d) the allocation of PTL Capacity to a PTL Shipper at a PTL Phoenix Exit Point, the amount of PTL Capacity allocated, the duration of the allocation and the identity of relevant PTL Shipper within 5 Business Days of the making of the allocation by PTL;
- (e) the revision to the amount of PTL Capacity allocated to a PTL Shipper at a PTL Phoenix Exit Point, the effective date of such revision for the purposes of the PTL Code and the reasons therefor within 5 Business Days of the making of the revised allocation by PTL;
- (f) any application made to it in respect of a Capacity Transfer at a PTL Phoenix Exit Point, the amount of PTL Capacity in respect of which the application is made, the duration of the proposed transfer and the identity of the relevant PTL Shippers within 5 Business Days of the receipt of the application by PTL; and
- (g) any sub-letting (or proposed sub-letting) by a PTL Shipper of PTL Capacity at a PTL Phoenix Exit Point, the amount of PTL Capacity in respect of which the sub-letting relates, the duration of the proposed sub-letting and the identity of the relevant PTL Shipper and third party within 5 Business Days of the receipt of a notice of sub-letting (or proposed sub-letting).

5.2 Where, in respect of a Day in relation to which Phoenix is required to submit an Invoice to a Shipper in accordance with Section F, PTL has not, 3 Business Days prior to the date the Invoice is to be submitted, notified Phoenix of the amount of PTL Capacity a Shipper holds at a PTL Phoenix Exit Point, the Monthly Postalised Capacity Payments shall be calculated on the basis that the Shipper held on the relevant Day an amount of Phoenix Capacity equal to the amount of PTL Capacity for the most recent preceding Day in relation to which PTL has given Phoenix proper notification in accordance with paragraph 5.1.

## **6 Charges**

- 6.1 For the purposes of Section F, a Shipper's liability to pay Monthly Postalised Capacity Payments shall be determined by reference to the amount of Phoenix Capacity the Shipper is treated as holding at a Phoenix Exit Point on each Day in the relevant Month in accordance with this Section C.
- 6.2 For the purposes of Section F, a Shipper's liability to pay Monthly Postalised Commodity Payments shall be determined in accordance with Section D3.4.
- 6.3 The rate of Monthly Postalised Capacity Payments and Monthly Postalised Commodity Payments payable at any time by a Shipper shall be as determined in accordance with the Phoenix Licence and set out in the Conveyance Charge Statement.
- 6.4 Monthly Postalised Capacity Payments and Monthly Postalised Commodity Payments shall be invoiced and payable in accordance with Section F.

## SECTION D: ALLOCATION

### 1 Introduction

1.1 For the purposes of the Code, in relation to a PTL Phoenix Exit Point:

- (a) in respect of a Shipper the "**PTL Daily Allocated Quantity**" for a Day shall be the quantity of gas which pursuant to the PTL Code the Shipper is, on the fifth Day following the Day on which the gas was offtaken, treated as having offtaken from the PTL System at the PTL Phoenix Exit Point on such Day;
- (b) in respect of a Shipper the "**Adjusted PTL Daily Allocated Quantity**" for a Day shall be the quantity of gas which pursuant to the PTL Code the Shipper is, following an adjustment (in each case in accordance with the PTL Code) as a result of:
  - (i) an error with the Measurement Equipment at an Individual Exit Point;
  - (ii) the absence of meter readings from Measurement Equipment at an Individual Exit Point; or
  - (iii) a re-allocation by Shippers of the quantities offtaken at the PTL Ballylumford Exit Point

treated as having offtaken from the PTL System at the PTL Phoenix Exit Point on such Day, which such quantity shall replace for the purposes of the Code the PTL Daily Allocated Quantity previously applying in respect of the Day;

- (c) a "**PTL Nomination**" is a nomination made by a Shipper pursuant to the PTL Code in respect of the offtake of gas from the PTL System at a PTL Phoenix Exit Point which has not been rejected by PTL under the PTL Code;
- (d) the "**PTL Nominated Quantity**" is the quantity of gas specified in a PTL Nomination.

1.2 For the purposes of the Code, in respect of a Day:

- (a) the "**System Daily Quantity Delivered**" is the total quantity of gas which is delivered to the Phoenix System by Shippers on such Day;
- (b) the "**Shipper Daily Quantity Delivered**" is the quantity of gas which, in accordance with Section E1.3, a Shipper delivered to the Phoenix System on such Day.

### 2 PTL Allocated Quantities

2.1 Pursuant to the PTL Code the total quantity of gas offtaken from the PTL System at the PTL Ballylumford Exit Point on a Day is allocated amongst those Shippers treated pursuant to the PTL Code as offtaking gas at the PTL Ballylumford Exit Point on such Day.

2.2 For the purposes of paragraph 2.1 the quantity of gas offtaken at the PTL Ballylumford Exit Point on a Day is calculated by PTL by reference to meter readings from the Measurement Equipment at Individual Belfast Exit Points and the Carrickfergus Exit Point in each case in accordance the terms of the Belfast Metering Agreement and the Northern Ireland Operators Agreement.

2.3 Accordingly for the purposes of the Code:

- (a) the quantity of gas which a Shipper shall be treated as delivering to the Phoenix System at the Phoenix Entry Point on a Day shall be equal to the quantity of gas which the Shipper is treated as offtaking from the PTL System at the PTL Ballylumford Exit Point on such Day; and
  - (b) the quantity of gas which a Shipper shall be treated as offtaking from the Phoenix System at Phoenix Exit Points on a Day shall be equal to the quantity of gas which the Shipper is treated as delivering to the Phoenix System at the Phoenix Entry Point on such Day.
- 2.4 For the purposes of paragraph 2.3 the quantity of gas which the Shipper is treated as having offtaken from the PTL System at each PTL Phoenix Exit Point comprised in the PTL Ballylumford Exit Point on such Day shall be the sum of the firm and interruptible quantities so allocated in accordance with the PTL Code.

### **3 Phoenix Allocated Quantities**

- 3.1 On any Day in respect of which a Shipper is treated for the purposes of the PTL Code as offtaking gas from the PTL System at a PTL Phoenix Exit Point the Shipper shall be treated as offtaking gas from the Phoenix System at the corresponding Phoenix Exit Point.
- 3.2 For the purposes of the Code a Shipper's "**Phoenix Daily Allocated Quantity**" on a Day in relation to a Phoenix Exit Point shall be:
- (a) except where paragraph (b) applies, a quantity of gas equal to the Shipper's PTL Daily Allocated Quantity on such Day at the PTL Phoenix Exit Point;
  - (b) where following an error in the Measurement Equipment at the Phoenix Exit Point, a quantity of gas equal to the Shipper's Adjusted PTL Daily Allocated Quantity on such Day at the relevant PTL Phoenix Exit Point.
- 3.3 In respect of a Day in relation to which PTL does not make available or Phoenix is not in receipt of the information referred to in paragraph 3.1 in respect of a PTL Phoenix Exit Point, the Phoenix Daily Allocated Quantity in respect of the corresponding Phoenix Exit Point shall be equal to the PTL Nominated Quantity under the PTL Nomination prevailing at the end of such Day.
- 3.4 For the purposes of Section F, a Shipper's liability to pay Monthly Postalised Commodity Payments on a Day shall be determined by reference to the Shipper's Phoenix Daily Allocated Quantity at a Phoenix Exit Point for such Day in accordance with Section D.
- 3.5 Where in respect of a Day in relation to which Phoenix is required to submit an Invoice to a Shipper in accordance with Section F, PTL has not, 7 Business Days prior to the date the Invoice is to be submitted, notified Phoenix of the Shipper's PTL Daily Allocated Quantity for a PTL Phoenix Exit Point in respect of such Day, the Monthly Postalised Commodity Payments shall be calculated on the basis of the Shipper's Phoenix Daily Allocated Quantity at the same Phoenix Exit Point for the Day falling 7 Days prior to the relevant Day.

### **4 Notification by PTL**

- 4.1 For the purposes of this Section D Phoenix shall procure that PTL shall notify Phoenix:
- (a) following the allocation of gas to a Shipper in relation to a PTL Phoenix Exit Point on a Day, of the Shipper's PTL Daily Allocated Quantity in respect of the PTL Phoenix Exit Point;

(b) following an error with the Measurement Equipment at a Phoenix Exit Point, of the Shipper's Adjusted PTL Daily Allocated Quantity.

4.2 Phoenix shall ensure that the information referred to in paragraph 3.1 is provided by PTL to Phoenix by not later than the time at which such information is to be made available to the relevant Shipper pursuant to the PTL Code.

## SECTION E: ENTRY AND EXIT REQUIREMENTS

### 1 Introduction

- 1.1 By reason of the absence of Measurement Equipment at the PTL Ballylumford Exit Point and the Phoenix Entry Point:
- (a) PTL and Shippers are unable to determine whether gas offtaken from the PTL System at the PTL Ballylumford Exit Point complies with the requirement as to specification in the PTL Code; and
  - (b) Phoenix is unable to determine whether or not gas delivered by a Shipper to the Phoenix System at the Phoenix Entry Point on a Day complies with the Gas Specification.
- 1.2 There is no Measurement Equipment at each Individual Exit Point which can measure the specification of gas offtaken from the Phoenix System at the relevant Individual Exit Point.
- 1.3 For the purposes of the PTL Code gas offtaken from the PTL System at the PTL Ballylumford Exit Point on a Day shall have the same specification as gas offtaken from the Phoenix System at Phoenix Exit Points on such Day.
- 1.4 Accordingly, for the purposes of the Code:
- (a) gas delivered to the Phoenix System at the Phoenix Entry Point on a Day shall have the same specification as the gas offtaken from the PTL System at the PTL Ballylumford Exit Point on such Day; and
  - (b) gas offtaken from the Phoenix System at Phoenix Exit Points on a Day shall have the same specification as the gas delivered to the Phoenix System at the Phoenix Entry Point on such Day.
- 1.5 Nothing in the Code confers on any person any entitlement to have any pipe-line, plant or other installation connected to the Phoenix System for the purposes of delivering gas to or offtaking gas from the Phoenix System.
- 1.6 Shippers delivering gas to the Phoenix System shall comply with the requirements of paragraph 3.
- 1.7 For the purposes of the Code:
- (a) "**Non-Compliant Gas**" is gas which does not comply with the Gas Specification;
  - (b) a "**Relevant Shipper**" is a Shipper who is treated as delivering gas to and offtaking gas from the Phoenix System on a Day.

### 2 Delivery of gas

- 2.1 All gas delivered to the Phoenix System at the Phoenix Entry Point on a Day shall be deemed to be delivered by the Relevant Shipper(s) irrespective of any act or omission of PTL or any other person.
- 2.2 For the purposes of this Section E the "**Relevant Proportion**" for a Relevant Shipper on a Day is the Shipper Daily Quantity Delivered for that Day divided by the System Daily Quantity Delivered for such Day.

- 2.3 The gas delivered or tendered for delivery to the Phoenix System shall for all purposes of the Code be assumed to be a single homogenous gas stream.
- 2.4 Where on a Day a Relevant Shipper delivers gas to the Phoenix System each such Relevant Shipper shall be treated as delivering gas of the same delivery characteristics as that delivered by each other such Relevant Shipper.

### **3 Gas Specification at the Phoenix Entry Point**

- 3.1 A Shipper shall not on any Day deliver Non-Compliant Gas to the Phoenix System at the Phoenix Entry Point.
- 3.2 Where Non-Compliant Gas is deemed to have been delivered to the Phoenix System on a Day, each Relevant Shipper shall be liable, in accordance with paragraph 1.4, to pay Phoenix an amount determined in accordance with paragraph 3.3.
- 3.3 Subject to paragraph 3.4, the amount payable by the Relevant Shipper to Phoenix pursuant to paragraph 3.2, shall be its Relevant Proportion of all reasonable costs and expenses reasonably incurred by Phoenix in consequence of the delivery of Non-Compliant Gas at the Phoenix Entry Point, including (without limitation) costs and expenses incurred:
- (a) in cleaning, clearing any part of the Phoenix System; and
  - (b) taking reasonable measures to secure that the Phoenix System can be operated in accordance with applicable Legal Requirements notwithstanding the delivery or continued delivery of Non-Compliant Gas.
- 3.4 Without prejudice to paragraph 3.7, the amount payable by the Relevant Shipper shall not exceed an amount equal to 10% of the quantity of Non-Compliant Gas which the Relevant Shipper is treated as having delivered to the Phoenix System on the Day multiplied by the Daily Gas Price.
- 3.5 Where any amount is payable to Phoenix pursuant to paragraph 3.3, Phoenix will as soon as reasonably practicable notify each Relevant Shipper specifying:
- (a) the Individual Exit Point(s) and Days on which Non-Compliant Gas was offtaken from the Phoenix System;
  - (b) the total quantity of Non-Compliant Gas and reasonable details of the respect(s) in which the Non-Compliant Gas did not comply with the Gas Specification;
  - (c) reasonable details of the costs and expenses referred to in paragraph 3.3 and the purposes for which they were incurred;
  - (d) each Relevant Shipper's Relevant Proportion
- and the amount payable by each Relevant Shipper shall be invoiced and payable in accordance with Section F.
- 3.6 Any dispute as to anything specified by Phoenix under paragraph 3.5 shall be referred to Expert Determination.
- 3.7 Where as a result of the delivery of Non-Compliant Gas to the Phoenix System by a Shipper the costs and expenses incurred by Phoenix for the purposes referred to in paragraph 3.3(a) and (b) exceed the amount recoverable from the Shipper pursuant to paragraph 3.4, such

excess amount shall be recoverable in full by Phoenix in accordance with condition 2.3A.7(e) of the Phoenix Licence.

#### **4 Gas Specification at Phoenix Exit Points**

- 4.1 Gas made available for offtake from the Phoenix System shall comply with the Gas Specification.
- 4.2 Irrespective of the absence of Measurement Equipment at the PTL Ballylumford Exit Point where gas is made available for offtake from the Phoenix System at a Phoenix Exit Point which does not comply with the Gas Specification a Relevant Shipper offtaking gas at the relevant Phoenix Exit Point may until such time as the gas so made available for offtake complies with the Gas Specification, either:
- (a) offtake or continue to offtake such Non-Compliant Gas; or
  - (b) decline to offtake or to continue to offtake such Non-Compliant Gas.
- 4.3 Where Non-Compliant Gas has been offtaken on any Day from the Phoenix System, the liability of Phoenix to a Relevant Shipper shall be limited to an amount determined in accordance with paragraph 4.4.
- 4.4 Without prejudice to paragraph 4.6, the amount payable by Phoenix to a Relevant Shipper shall be the lesser of:
- (a) any reasonable costs and expenses properly incurred by the Relevant Shipper as a result of the offtake of Non-Compliant Gas by the Relevant Shipper at a Phoenix Exit Point; and
  - (b) an amount equal to 10% of the quantity of Non-Compliant Gas that is allocated to the Relevant Shipper on such Day at a Phoenix Exit Point multiplied by the Daily Gas Price.
- 4.5 When a Relevant Shipper first becomes aware that Non-Compliant Gas is being, or has been, made available for offtake from the Phoenix System at a Phoenix Exit Point on any Day the Relevant Shipper shall, as soon as reasonably practicable, notify Phoenix specifying:
- (a) the relevant Phoenix Exit Point and the Day or Days on which Non-Compliant Gas was offtaken from the Phoenix System;
  - (b) reasonable details of the respect in which the gas did not comply with the Gas Specification;
  - (c) reasonable details of the costs and expenses referred to in paragraph 4.4 and the person to whom and purposes for which, they were incurred; and
  - (d) the total quantity of Non-Compliant Gas referred to in paragraph 4.2 and the Shipper's offtake proportion.
- 4.6 Any dispute as to anything specified by a Relevant Shipper under paragraph 4.5 shall be referred to Expert Determination.
- 4.7 Any amount payable by Phoenix pursuant to paragraph 4.4 shall be recoverable in full by Phoenix in accordance with condition 2.3A.7(e) of the Phoenix Licence.

## **5 Pressure**

- 5.1 Subject to paragraphs 5.2 and 5.3, Phoenix shall make available gas for offtake at an Individual Exit Point on a Day at a pressure equal to:
- (a) in respect of an Individual Exit Point other than the Lisburn Exit Point:
    - (i) the pressure at which gas was made available by PTL for offtake from the PTL System at the PTL Ballylumford Exit Point on such Day; less
    - (ii) the Agreed Pressure Drop applying in respect of such Day in respect of the Phoenix Exit Point as set out in the prevailing Pressure Report.
  - (b) in respect of the Lisburn Exit Point, the pressure at which gas was made available by BGE(UK)L for offtake from the BGE (NI) System at the Lisburn Exit Point.
- 5.2 Where in respect of any Day the Actual Pressure Drop is greater, the requirement to make available gas for offtake at a certain pressure shall, for the purposes of paragraph 5.1, be determined by reference to the Actual Pressure Drop and not the Agreed Pressure Drop.
- 5.3 Paragraph 5.1 shall not apply where the pressure immediately downstream of the relevant Phoenix Exit Point exceeds the pressure at which gas otherwise is to be made available in accordance with paragraph 5.1 or 5.2.
- 5.4 Any dispute as to the application of this paragraph 5 shall be referred to Expert Determination.

## **6 Title and risk**

- 6.1 Title and risk in gas delivered to the Phoenix System at the Phoenix Entry Point shall pass to Phoenix at the Phoenix Entry Point.
- 6.2 Each Shipper warrants to Phoenix:
- (a) that such Shipper will have title (at the Phoenix Entry Point) to all gas delivered to the Phoenix System at the Phoenix Entry Point;
  - (b) that all such gas will at the Phoenix Entry Point be free of lien, charge, encumbrance or adverse claim (as to title or otherwise), including any claim for any tax, royalty or other charge in respect of the production, gathering, processing and transportation arising on or before the delivery thereof to the Phoenix System.
- 6.3 Each Shipper shall indemnify Phoenix and hold it harmless against any loss, liability, damage, claim, action, proceeding, cost and expense suffered or incurred by or made or brought against Phoenix in consequence of a breach of the warranties in paragraph 6.2.
- 6.4 Title and risk in gas offtaken from the Phoenix System at an Individual Exit Point shall pass to the Shipper offtaking gas at the Individual Exit Point.
- 6.5 Phoenix warrants to each Shipper that Phoenix will have title (at an Individual Exit Point) to all gas made available for offtake from the Phoenix System at the Individual Exit Point and that such gas will be free of lien, charge, encumbrance or adverse claim (as to title or otherwise), including any claim for any tax, royalty or other charge in respect of the production, gathering, processing and transportation arising on or before the offtake thereof from the Phoenix System.

6.6 Phoenix shall indemnify each Shipper and hold it harmless against any loss, liability, damage, claim, action, proceeding, cost and expense suffered or incurred by or made or brought against Phoenix in consequence of a breach of the warranties in paragraph 6.5.

**ANNEX E-1****GAS SPECIFICATION**

<b>Composition/Specification</b>	<b>Range/Value</b>
Wobbe Index	47.2 – 54.7 MJ per cubic Metre
Gross Calorific Value	36.9 – 42.3 MJ per Cubic Metre
Relative Density	0.55 – 0.70
Hydrocarbon Dewpoint (maximum °C for specified maximum pressure)	< - 2° C up to and including 150 bar
Water Dewpoint (maximum °C for specified maximum pressure)	< - 10° C up to and including 150 bar
Fog, Dust and Liquids	Technically pure
Oxygen	0.5%
Non-combustibles	7%
Total Sulphur	50 mg/m <sup>3</sup>
Mercaptan Sulphur	8 mg/m <sup>3</sup>
Hydrogen Sulphide	5 mg/m <sup>3</sup>

## **SECTION F : CHARGES, PAYMENT AND TAX**

### **1 Introduction**

- 1.1 Phoenix shall, in accordance with the Phoenix Licence, invoice monthly each Gas Supplier in respect of the PS Transmission Amounts that that Shipper owes it and/or the PS Transmission Amounts that it owes that Gas Supplier in accordance with this Section F.
- 1.2 Phoenix shall invoice each Shipper monthly in respect of Code Charges and any other relevant charges which the Shipper owes to it and/or it owes to the Shipper in accordance with this Section F.
- 1.3 All monies due under the Phoenix Licence and the Code shall be invoiced and payable in accordance with this Section F.
- 1.4 A Shipper shall, notwithstanding any failure by Phoenix to make available gas for offtake from the Phoenix System in accordance with the Code or the Phoenix Licence for whatsoever reason, be obliged to pay charges and amounts which it has agreed to pay in accordance with paragraph 2.

### **2 Shipper payment obligations**

- 2.1 Subject to paragraph 2.2, a Shipper which is a Gas Supplier:
  - (a) subject to paragraph 8.1, undertakes to pay to Phoenix those elements of the PS Transmission Amounts which Phoenix is entitled to recover from that Gas Supplier in accordance with the Phoenix Licence; and
  - (b) undertakes to pay to Phoenix the Code Charges which Phoenix is entitled to recover from that Gas Supplier in accordance with the Code.
- 2.2 A Transit Shipper:
  - (a) shall not, subject to paragraph (b) below, be liable to pay Phoenix PS Transmission Amounts;
  - (b) subject to paragraph 8.1, undertakes to pay to Phoenix Monthly Postalised Capacity Payments in respect of Phoenix Capacity held by that Transit Shipper to the extent that that Transit Shipper holds an amount of Phoenix Capacity in excess of the amount of capacity it holds in the pipe-line system of any Downstream System Operator;
  - (b) undertakes to pay to Phoenix the Code Charges which Phoenix is entitled to recover from that Transit Shipper in accordance with the Code.
- 2.3 A Shipper which is not a Gas Supplier undertakes to pay Phoenix:
  - (a) those charges which Phoenix is entitled to recover from that Shipper in accordance with Condition 2.1A of the Phoenix Licence; and
  - (b) the Code Charges which Phoenix is entitled to recover from that Shipper in accordance with the Code;

### 3 Phoenix payment obligations

Phoenix undertakes to:

- (a) pay to a Gas Supplier the amount of any Reconciliation Payment and account for Debt Repayment due to the Gas Supplier in accordance with the Phoenix Licence; and
- (b) pay to a Gas Shipper the Code Charges which the Gas Shipper is entitled to receive from Phoenix in accordance with the Code.

### 4 Content of PS Invoice

4.1 Each invoice which Phoenix issues to a Gas Supplier in accordance with this Section F in respect of PS Transmission Amounts, together with any attachments thereto (a "**PS Invoice**"), shall set out the following:

- (a) the identity of the Gas Supplier;
- (b) the period to which the PS Invoice relates;
- (c) the information required to be stated in paragraphs 4.2, 4.3 and 4.4; and
- (d) a unique number by which the PS Invoice may be identified.

4.2 Each PS Invoice shall itemise the amounts due in respect of PS Transmission Amounts payable by that Gas Supplier to Phoenix, or by Phoenix to that Gas Supplier, and in either case, in accordance with the Phoenix Licence, by detailing, on a separate line, any sums due for each of the following:

- (a)
  - (i) Monthly Postalised Capacity Payment;
  - (ii) Monthly Postalised Commodity Payment;
  - (iii) Supplemental Payment;
  - (iv) Auxiliary Payment;
  - (v) Debt Payment;
  - (vi) Reconciliation Payment payable by the Gas Supplier to Phoenix;
  - (vii) Reconciliation Payment payable by Phoenix to the Gas Supplier; and
  - (viii) Debt Repayment;

(known collectively as "**PS Transmission Amounts**");

- (b) the amount payable in accordance with paragraphs 4.3(c) and 4.4(c); and
- (c) the amount of tax payable in accordance with paragraphs 4.3 and 4.4

provided that if any payment of PS Transmission Amounts due to Phoenix under the Code remains unpaid after the Due Date a PS Invoice shall be accompanied by a statement setting out the amount so overdue and an invoice of the amount of interest due on such overdue amount calculated to the date of the invoice.

- 4.3 Notwithstanding paragraph 2 but subject to paragraph 4.4, the total amount payable by the Gas Supplier in respect of PS Transmission Amounts shall be stated in the PS Invoice and shall be calculated in accordance with this paragraph 4.3 as:
- (a) the sum of the amounts detailed in paragraph 4.2(a)(i), (ii), (iii), (iv), (v) and (vi); less
  - (b) the sum of the amounts detailed in paragraph 4.2(a)(vii) and (viii); plus
  - (c) the applicable VAT; plus
  - (d) any tax payable on the sum of (a) less (b) in accordance with paragraph 11 (apart from that payable under (c)).
- 4.4 Notwithstanding paragraph 2 but subject to paragraph 11.1, where the sum of the figures referred to in paragraph 4.3(a) less those figures referred to in paragraph 4.3(b) is a negative value, this paragraph 4.4 shall apply instead of paragraph 4.3 so that the total amount payable by Phoenix in respect of PS Transmission Amounts shall be stated in the PS Invoice and shall be calculated in accordance with this paragraph 4.4 as:
- (a) the sum of the amounts detailed in paragraph 4.2(a)(vii) and (viii); less
  - (b) the sum of the amounts detailed in paragraph 4.2(a)(i), (ii), (iii), (iv), (v) and (vi); plus
  - (c) the applicable VAT; plus
  - (c) any tax payable on the sum of (a) less (b) in accordance with paragraph 11 (apart from that payable under (c)).
- 4.5 The provisions of this paragraph 4 shall apply, mutatis mutandis, to any Shipper who is not a Gas Supplier as adjusted to reflect those charges which such Shipper has agreed to pay in accordance with paragraph 2.3.

## **5 Content of CC Invoice**

- 5.1 Each invoice which Phoenix issues to a Shipper in accordance with this Section F in respect of Code Charges, together with any attachments thereto (a "**CC Invoice**"), shall set out the following:
- (a) the identity of the Shipper;
  - (b) the period to which the CC Invoice relates;
  - (c) the information required to be stated in paragraphs 5.2, 5.3 and 5.4; and
  - (d) a unique number by which the CC Invoice may be identified.
- 5.2 Each CC Invoice shall itemise the amounts due in respect of Code Charges payable by that Shipper to Phoenix, or by Phoenix to that Shipper, by detailing, on separate lines, any sums due from or to the Shipper for each of the following:
- (a) (i) Outstanding Code charges and
  - (ii) any other sum payable under the Code by or to the Shipper; and
  - (b) the amount payable in accordance with paragraph 5.3(c).

- 5.3 Subject to paragraph 5.4, the total amount payable by the Shipper in respect of Code Charges, shall be stated in the CC Invoice and shall be calculated as follows:
- (a) the sum of the amounts detailed in paragraph 5.2 (a) which are due to Phoenix; less
  - (b) the sum of the amounts detailed in paragraph 5.2 (a) which are due to the Shipper; plus
  - (c) the applicable VAT.
- 5.4 Where the sum of paragraph 5.3 (a) less paragraph 5.3 (b) is a negative value, this paragraph 5.4 shall, subject to paragraph 11, apply instead of paragraph 5.3 so that the total amount payable by Phoenix to the Shipper in respect of Code Charges shall be stated in the CC Invoice and shall be calculated as follows:
- (a) the sum of the amounts detailed in paragraph 5.2 which are payable to the Shipper; less
  - (b) the sum of the amounts detailed in paragraph 5.2 which are payable to Phoenix; plus
  - (c) the applicable VAT.

## **6 Outstanding Code Charges**

- 6.1 Phoenix shall be entitled to recover monies in respect of all Code Charges due and owing from a Shipper in accordance with paragraph 6.2 from all other Shippers in accordance with this paragraph 6.
- 6.2 If any payment of Code Charges due to Phoenix under the Code, remains unpaid in whole or in part, after:
- (a) the Due Date; and
  - (b) Phoenix has taken any steps available to it under the Code and all other reasonable steps to secure its recovery having taken into account any Directions of the Credit Committee in respect of the debt

Phoenix shall, subject to paragraph 6.6, be entitled to recover the outstanding payment (an "**Outstanding Code Charges**" which expression shall include any sum which Phoenix is entitled to recover in accordance with this paragraph 6) in accordance with paragraphs 6.3, 6.4 and 6.5.

- 6.3 Phoenix shall:
- (a) be entitled to recover from a Shipper a proportion of the aggregate of all Outstanding Code Charges, together with interest on such amount from any Due Date until the date of payment at LIBOR plus 0.75% compounded monthly, in the next Gas Year in 12 equal instalments not later than 10 business days after the end of each Month; and
  - (b) deposit any such Outstanding Code Charges recovered from a Shipper in a separate interest bearing account and apply all sums, including interest, in such account in accordance with paragraph 6.7.
- 6.4 The proportion of such amount that Phoenix shall recover from each Shipper shall be the proportion that the aggregate of the relevant Shipper's Phoenix Daily Allocated Quantities in respect of each Day in the Month in respect of which the relevant payment was not made bears

to the aggregate of each Shipper's Phoenix Daily Allocated Quantities in respect each Day in such Month provided that in any Month in which such quantities shall all be zero each Shipper shall be deemed to have an aggregate Phoenix Daily Allocated Quantities for all Days in such Month equal to 1MWh in relation to each Phoenix Exit Point at which the Shipper was treated as offtaking gas on any Day in such Month.

- 6.5 In the case of a liquidator, receiver or an administrator or an examiner being appointed over any part of the assets of a Shipper or any event similar, equivalent or analogous to any of such events occurring in relation to the Shipper in Great Britain or any other jurisdiction any payment due to Phoenix under the Code in respect of Code Charges remaining unpaid after the Due Date shall, upon such event occurring, be an Outstanding Code Charge recoverable in accordance with this paragraph 6.
- 6.6 Phoenix shall, to the extent that it recovers any Outstanding Code Charges from a Shipper in respect of which it subsequently receives a payment under a liquidation or administration, pay an amount equal to such payment received to the Shippers from which the Outstanding Code Charges was recovered pro rata to the proportions in which the Outstanding Code Charges was recovered provided that no Shipper shall be entitled to receive any sum greater than the amount it actually paid to Phoenix in respect of such Outstanding Code Charges.
- 6.7 A Shipper acknowledges that Phoenix shall, and Phoenix agrees to, apply all sums deposited in and interest earned on the account referred to in paragraph 6.3(b) in making an immediate payment of the Outstanding Code Charges due to Phoenix.

## **7 Periods of Invoicing**

- 7.1 Each Month Phoenix shall, as soon as reasonably practicable and in any event not later than the 10<sup>th</sup> Business Day after the end of such Month (the "**Invoice Day**"), submit a PS Invoice and a CC Invoice to each Shipper.
- 7.2 The provisions of paragraph 7.1 shall apply, mutates mutandis, to the invoice to be submitted by Phoenix to any Shipper who is not a Gas Supplier in respect of those charges which such Shipper has agreed to pay in accordance with paragraph 2.3(a).

## **8 Payment**

- 8.1 A Shipper shall:
- (a) pay to the PoT Account any balance specified in a PS Invoice in accordance with paragraph 4.3 by the Due Date provided that this obligation shall not be satisfied by any payment by a Shipper to Phoenix of any such balance specified in a PS Invoice; and
  - (b) pay to Phoenix any balance specified in a CC Invoice in accordance with paragraph 5.3 to Phoenix's account by the Due Date.
- 8.2 Phoenix shall:
- (a) pay to a Gas Supplier any balance specified in a PS Invoice in accordance with paragraph 4.4 by the eighth business day following the Due Date; and
  - (b) pay to the Shipper any balance specified in a CC Invoice in accordance with paragraph 5.4 by the Due Date.

8.3 All payments made under the Code to:

- (a) the PoT Account shall be made in Pounds Sterling by direct bank transfer or equivalent instantaneous transfer of funds to the following, or such other account of which Phoenix may, from time to time, give a Shipper written notice:

Account name: Postalisation Trustee Account

Bank: Ulster Bank Dublin Trust Company

Sort Code: 98-00-60

Account number: 48543060

- (b) Phoenix's account shall be made in Pounds Sterling by direct bank transfer or equivalent instantaneous transfer of funds to such account, as from time to time, notified in writing by Phoenix

8.4 Any payment under the Code to a Shipper shall be made in Pounds Sterling by direct bank transfer or equivalent instantaneous transfer of funds to such place in the United Kingdom of which the Shipper may, from time to time, give Phoenix written notice.

8.5 All amounts payable under the Code shall be paid:

- (a) free and clear of any restriction, reservation or condition; and
- (b) except to the extent, if any, required by law or expressly required under the Code, without deduction or withholding in respect of tax or on account of any amount due or to become due to the paying party, whether by way of set-off, counterclaim or otherwise.

8.6 The provisions of this paragraph 8 shall be apply, mutatis mutandis, to payments of each invoice to be submitted by Phoenix to any Shipper who is not a Gas Supplier in respect of those charges which such Shipper has agreed to pay in accordance with paragraph 2.3(a) save that such invoiced amounts shall be paid to Phoenix and to such account (not, for the avoidance of doubt, being the PoT Account) as Phoenix Transmission may, from time to time, give the Shipper written notice of.

## **9 Interest**

If a Shipper or Phoenix fails to pay any sum due in accordance with this Section F on the Due Date (other than payments which are notified by a Shipper as being the subject of a bona fide dispute in accordance with paragraph 10.3), interest on such overdue amount shall accrue, both before and after judgment, at LIBOR plus 3% compounded monthly from the Due Date until the date payment is made and be payable into the PoT Account.

## **10 Set off and disputed invoices**

10.1 Phoenix shall be entitled to set off against any repayment due to a Gas Supplier any amounts outstanding for payment by that Gas Supplier to Phoenix in respect of PS Transmission Amounts.

10.2 Where any sum invoiced in a PS Invoice is the subject of a dispute (whether bona fide or not) the Shipper shall pay the full amount of the PS Invoice without set off or withholding.

Phoenix shall, after settlement of the dispute, pay any amount agreed or determined to be payable within 7 days of such agreement or determination and interest on such amount shall accrue and be payable from the Due Date to the date of payment (both before and after any judgment) at LIBOR plus 3% compounded monthly from such Due Date until the date payment is made.

- 10.3 Where any sum invoiced in a CC Invoice is the subject of a bona fide dispute and the Shipper provides Phoenix with full details of the reasons as to why the disputed portion is disputed within 14 business days of receipt by the Shipper of the CC Invoice to which the dispute relates, the Shipper or Phoenix, whichever is applicable, shall:
- (a) pay the undisputed portion of the CC Invoice by the Due Date; and
  - (b) after settlement of the dispute, pay any amount agreed or determined to be payable within 7 days of such agreement or determination and interest on such amount shall accrue and be payable from the Due Date to the date of payment (both before and after any judgment) at LIBOR plus 3% compounded monthly from such Due Date until the date payment is made.

## **11 Taxes and withholdings**

- 11.1 If, in respect of any payment to be made to the PoT Account or Phoenix by a Shipper, any deduction or withholding is required to be made by the law of any country other than a country of the United Kingdom, the Shipper shall:
- (a) ensure that the amount of such withholding or deduction does not exceed the minimum so required; and
  - (b) forthwith pay into the PoT Account or to Phoenix, as appropriate, such additional amounts as will ensure that the net aggregate amount received into the PoT Account or by Phoenix will be equal to that which would have been received had no deduction or withholding been made.
- 11.2 All amounts expressed as payable by a Shipper under the Code are exclusive of Value Added Tax and accordingly the Shipper shall pay Value Added Tax where payable in respect of and in addition to any such amount.
- 11.3 A Shipper shall be responsible for the payment of any taxes, duties or other levies imposed on Phoenix, whether or not at the time of entering into the Code, in relation to the delivery, transportation, offtake, supply, or other disposition of its gas in connection with the Code other than Phoenix's corporation tax.
- 11.4 A Shipper shall indemnify, keep indemnified and hold harmless Phoenix from and against any charges, costs, claims or demands whatsoever arising in connection with the taxes, duties or other levies for which the Shipper is responsible in accordance with section 12.12.3 and any fines, penalties, or interest which may be charged to or claimed or demanded from Phoenix in connection with the non-payment or delayed payment of such taxes by the Shipper.
- 11.5 A PS Invoice and a CC Invoice shall include the amount of any fiscal imposts, taxes, VAT (or similar imposts), duties or levies imposed, whether or not in effect at the time of the parties entering into the Code, upon delivery, transportation, offtake, supply, appropriation or other disposition of a Shipper's gas.

11.6 If Phoenix is required to pay any sum to a Shipper in accordance with the Code it shall be entitled to deduct from such sum any amount that it is legally required to deduct and shall provide reasonable details of any amount so deducted.

## 12 Audit

12.1 A Shipper or PS Gas Supplier may, upon reasonable notice and during reasonable hours, subject to Section J4 and any obligations of confidentiality to which Phoenix is subject, have an independent auditor of international repute examine the books and records of Phoenix to the extent necessary to verify the accuracy of any accounting statement, charge or computation made in accordance with the Code provided that:

- (a) the Shipper or PS Gas Supplier has exercised its right under this paragraph 12 by giving written notice to Phoenix whilst it is, or within 24 months of it ceasing to be, a Shipper;
- (b) such books and records need not be preserved longer than a period of 6 years after the end of the Gas Year to which such books or records refer unless they relate to an existing dispute, in which case they will be retained until the end of such dispute; and
- (c) if such verification reveals any such inaccuracy Phoenix shall within 40 Business Days after such inaccuracy is established submit to the Shipper or PS Gas Supplier a statement showing all necessary adjustments to the accounting statement, charge or computation and Phoenix or the Shipper or PS Gas Supplier (as appropriate) shall, within 14 Business Days after the date of such statement make payment to the other party of the sum (if any) so due to that party.

12.2 The cost of any such audit shall be borne by the Shipper or PS Gas Supplier which requested it unless any such audit shall show an adjustment is necessary giving rise to a lesser charge to the Shipper or PS Gas Supplier than had been charged (an "**Adjustment Amount**") in which case the reasonable cost of such an audit shall be treated as an Operating Cost in accordance with the Phoenix Licence provided that:

- (a) such audit costs do not exceed the Adjustment Amount; and
- (b) the Adjustment Amount in aggregate exceeds £25,000 (adjusted at the start of each Gas Year in line with the arithmetic annual average value for the previous twelve months of the CPI published by the Office of National Statistics each month in respect of all items).

## SECTION G: CREDIT PROCEDURES

### 1 Application to determine Required Level of Credit Support

- 1.1 A:
- (a) Prospective Shipper shall, for the purposes of Section J3, request that Phoenix determine the initial Required Level of Credit Support;
  - (b) Shipper shall provide a Credit Application from time to time, on the occurrence of any of the events specified in paragraph 6.1(a) to (e).
- 1.2 Where a Prospective Shipper requests a determination by Phoenix for the purposes of Section J, where a re-assessment is required pursuant to one or more of paragraph 6.1(a) to (d) or where a Shipper requests a re-assessment pursuant to paragraph 6.1(e) within a Gas Year to which the re-assessment relates, such Prospective Shipper or Shipper (as appropriate) shall provide Phoenix with the following:
- (a) its Forecast Supplier Quantity for the next 12 Months;
  - (b) a forecast of the Firm Capacity it will hold for the next 12 Months; and
  - (c) if applicable, the information required by paragraph 3.6
- in the Prescribed Form (a "**Credit Application**"), indicating, in the case of both (a) and (b) above, what proportion of each figure is attributable to the first Gas Year to which such application relates.
- 1.3 Such a Prospective Shipper or Shipper shall provide, together with its Credit Application, a copy of its most recent audited accounts and such further information as Phoenix may reasonably require for the purposes of determining a Shipper's Required Level of Credit Support.
- 1.4 A person who is a Shipper before the date on which this section is first implemented shall submit a Credit Application within a Month of such implementation and its application shall, for the avoidance of doubt, be dealt with in accordance with the provisions of the Code in effect at the time of such application.

### 2 Calculation of Required Level of Credit Support

- 2.1 Subject to paragraph 2.4 the Required Level of Credit Support that a Shipper or Prospective Shipper shall be required to establish shall be of a value equal to 80 per cent of the sum of:
- (a) a forecast of the Forecast Postalised Charges that the Shipper or Prospective Shipper will incur in the next 12 Months on the Phoenix System calculated in accordance with paragraph 2.2; plus
  - (b) a forecast of the Code Charges that the Prospective Shipper or Shipper will incur during the next 12 Months on the Phoenix System calculated in accordance with paragraph 2.3.
- 2.2 Phoenix shall forecast the Forecast Postalised Charges that a Shipper or Prospective Shipper is likely to incur in the next 12 Months (the "**Credit Period**") based only upon the following:

- (a) the sum of:
  - (i) the higher of:
    - (1) the Shipper's or Prospective Shipper's estimated forecast in accordance with paragraph 1.2(a); and
    - (2) the Forecast Supplier Quantity which Phoenix reasonably estimates that the Shipper or Prospective Shipper will Exit from Phoenix's System during the Credit Period; and
  - (ii) the higher of:
    - (1) the Shipper's or Prospective Shipper's forecast in accordance with paragraph 1.2(b); and
    - (2) the Firm Capacity which Phoenix reasonably estimates that the Shipper or Prospective Shipper will hold during the Credit Period;
- (b) Phoenix's calculation of the Forecast Postalised Charges applicable to (a) above which shall be calculated as the sum of that element of the Forecast Postalised Charges that will be payable in respect of:
  - (i) the Firm Capacity estimated to be held by the Shipper or the Prospective Shipper in the Credit Period as determined in accordance with (a)(ii) above; and
  - (ii) the volume of gas estimated to be Exited by the Shipper or the Prospective Shipper in the Credit Period as determined in accordance with (a)(i) above;

which shall in each case be calculated in accordance with the Phoenix Licence.

2.3 Phoenix shall calculate forecast Code Charges as an amount equal to 80% of the Forecast Supplier Quantity calculated in accordance with paragraph 2.2(a)(i) multiplied by the Average Code Charge.

2.4 For the avoidance of doubt, a Transit Shipper's Required Level of Credit Support shall be calculated solely in accordance with paragraph 2.3.

### **3 Establishing a Provided Level of Credit Support**

3.1 Phoenix shall determine the Provided Level of Credit Support for a Shipper or a Prospective Shipper by reference to security which that Shipper or Prospective Shipper elects to provide in any one or combination of the following ways:

- (a) subject to paragraph 3.2, provision of security by way of "long term" Baa or higher investment grade rating as defined by Moody's, an Equivalent Rating from an Equivalent Agency, or, if the Securer does not hold a credit rating, by way of an Equivalent Rating based on the Accounting Ratios specified in paragraph 3.4;
- (b) subject to paragraph 3.2, provision of security given by way of guarantee from a Government or other entity (which entity is empowered to give such guarantee) in each case holding at least a "long term" Baa investment grade as defined by Moody's, an Equivalent Rating from an Equivalent Agency, or, if the Securer does not hold a credit rating, by way of an Equivalent Rating based on the Accounting Ratios specified in paragraph 3.4, which guarantee must, in any event, be given substantially

in the form of the guarantee set out in Appendix 1, or by way of the relevant Government or other entity, being a party to the relevant Accession Agreement with payment obligations in respect of the entire consideration and other liabilities thereunder and under the Code;

- (c) establishment of an escrow or other appropriate deposit which shall be with a UK branch of a financial institution with a "long term" A3 investment grade as defined by Moody's or an Equivalent Rating from an Equivalent Agency and which shall:
  - (i) be held in the name of Phoenix and the Shipper;
  - (ii) require the signatures of a duly authorised representative of Phoenix in order to authorise any withdrawals;
  - (iii) revert in title to Phoenix in the event of Shipper default to the extent of amounts accrued and due to Phoenix from the Shipper whether or not invoiced; and
  - (iv) include a penalty free notice period for payments out of the account of not more than 30 days;
- (d) guarantee or irrevocable standby letter of credit issued by a UK branch of a financial institution with a long term credit rating of not less than A3 as defined by Moody's or an Equivalent Rating from an Equivalent Agency, issued in favour of Phoenix in the form set out in Appendices 1 and 2 respectively or such other form as Phoenix may agree; and
- (e) depositing with Phoenix bonds with a maximum remaining term of 12 Months issued by a UK financial institution with a long term rating of A or above, or depositing with Phoenix treasury bills with a maximum remaining term of no more than 12 Months,

where "**Equivalent Agency**" means Fitch, IBCA, or Standard & Poor's and "**Equivalent Rating**" shall be construed accordingly. Security given by way of any of the methods described in (a) or (b) is "**Unsecured Credit Support**", and security given by way of any of the methods described in (c), (d) or (e) is "**Secured Credit Support**".

3.2 The maximum amount of credit which Phoenix may grant to a Shipper or Prospective Shipper based on Unsecured Credit Support ("**Maximum Allowed Unsecured Credit**") shall be limited to a value equal to the lower of:

- (a) 10% of the Securer's Net Assets; and
- (b) either:
  - (i) the amount listed in the table set out in paragraph 3.3 under the column heading "Maximum Allowed Unsecured Credit" on the row corresponding to that Securer's credit rating; or
  - (ii) the amount listed in the table set out in paragraph 3.3 under the column heading "Maximum Allowed Unsecured Credit" on the row corresponding to that Securer's Notional S&P Credit Rating as determined by Phoenix in accordance with paragraph 3.5,

where the "**Securer**" is the Shipper or Prospective Shipper (whichever is applicable) if the Unsecured Credit Support is provided under paragraph 3.1(a), or the guarantor if the Unsecured Credit Support is provided under paragraph 3.1(b).

3.3 Maximum Allowed Unsecured Credit shall be determined in accordance with the following table:

<b>Moody's Credit Rating</b>	<b>Standard &amp; Poor's Credit Rating</b>	<b>Maximum Allowed Unsecured Credit (£)</b>
Aaa	AAA	30,000,000
Aa	AA	22,000,000
A	A	16,000,000
Baa	BBB	10,000,000

3.4 Unsecured Credit Support provided by a Securer under sections 13.3.1(a) and/or (b) by way of Accounting Ratio shall be assigned a Notional S&P Credit Rating in accordance with the following tables and paragraph 3.5:

(a) Ratio ranges for Transmission Utilities

<b>Ratio ranges for Transmission Utilities</b>			
Accounting Ratio	Notional S&P Credit Rating		
	AA	A	BBB
FFO Interest Coverage	above 3.3	above 2.0 to 3.3	1.5 to 2.0
FFO to Total Debt (%)	above 15	above 10 to 15	5 to 10

(b) Ratio ranges for Distribution Utilities

<b>Ratio ranges for Distribution Utilities</b>			
Accounting Ratio	Notional S&P Credit Rating		
	AA	A	BBB
FFO Interest Coverage	above 5.0	above 3.0 to 5.0	2.0 to 3.0
FFO to Total Debt (%)	above 28	above 15 to 28	8 to 15

(c) Ratio ranges for Integrated Utilities

<b>Ratio ranges for Integrated Utilities</b>			
Accounting Ratio	Notional S&P Credit Rating		
	AA	A	BBB
FFO Interest Coverage	above 3.8	above 2.7 to 3.8	1.7 to 2.7
FFO to Total Debt (%)	above 20	above 15 to 20	7 to 15

(d) Ratio ranges for Generation Utilities

<b>Ratio ranges for Generation Utilities</b>			
Accounting Ratio	Notional S&P Credit Rating		
	AA	A	BBB
FFO Interest Coverage	above 5.5	above 3.9 to 5.5	2.5 to 3.9
FFO to Total Debt (%)	above 35	above 20 to 35	10 to 20

3.5 Phoenix, acting reasonably, and taking into account a Securer's submissions under paragraph 3.6(c), shall decide which Utility Categorisation applies to the Securer, shall reference the applicable table in paragraph 3.4(a), (b), (c) or (d) accordingly and:

- (a) in the event that both the FFO Interest Coverage ratio and the FFO to Total Debt ratio for that Securer yield values that fall within the ranges listed under the same Notional S&P Credit Rating column value, shall ascribe to the Securer that Notional S&P Credit Rating; or
- (b) in the event that the FFO Interest Coverage ratio and the FFO to Total Debt ratio for that Securer yield values that do not fall within the ranges listed under the same Notional S&P Credit Rating, shall ascribe to the Securer that Notional S&P Credit Rating that will yield the lower Maximum Allowed Unsecured Credit value.

3.6 A Securer providing, or intending to provide, Unsecured Credit Support by way of an Accounting Ratio shall provide Phoenix with the following information at the same time as, and each time that, it provides Phoenix with a Credit Application:

- (a) its most recently published set of annual audited accounts;
- (b) calculations of the Accounting Ratios specified in paragraph 3.4 cross-referenced to such accounts;
- (c) a submission requesting one of the Utility Categorisations in paragraph 3.4 to be applied to it, based on the information set out in its annual audited accounts; and
- (d) any other information that Phoenix might reasonably request.

3.7 Phoenix shall provide to each Shipper and PS Gas Supplier and to the Authority annually on the first Business Day of October and on the demand of any Shipper or PS Gas Supplier within 10 Business Days, a list of all Shippers that meet some or all of their Required Level of Credit Support through the provision of Unsecured Credit Support detailing the form of that Unsecured Credit Support, the extent to which it is provided and any information provided along with the Credit Application by each such Shipper.

3.8 Phoenix, a Designated Pipe-line Operator or a Shipper may, at any time, call a Credit Committee meeting, in accordance paragraph 5.2, to request that a Shipper or Prospective Shipper be disallowed from satisfying all or any part of its Required Level of Credit Support through the provision of all or any form of Unsecured Credit Support.

3.9 The Maximum Allowed Unsecured Credit values in this paragraph 3 will be adjusted on 1 October in each Gas Year by calculating the percentage difference between:

- (a) the CPI for the latest month for which the CPI is then available; and

(b) the CPI for the same month in the preceding Gas Year;

and increasing the Maximum Allowed Unsecured Credit figures listed in paragraph 3.3, as amended for any previous Gas Years in accordance with this paragraph 3.9, by that percentage difference.

- 3.10 Where a Shipper provides any form of Unsecured Credit Support as security it shall notify Phoenix immediately of any downgrading of the Securer's credit rating or material adverse change in the Securer's Accounting Ratios or any event of which it becomes aware which is likely to result in such downgrading or change from time to time.
- 3.11 If the Maximum Allowed Unsecured Credit permitted under paragraph 3.2 (as adjusted from time to time under paragraph 3.9) is less than the Required Level of Credit Support notified to the Shipper in accordance with paragraph 4, the Shipper shall provide an amount of Secured Credit Support equal to at least the difference between those two figures.
- 3.12 The maximum amount of credit which Phoenix may grant to a Shipper or Prospective Shipper based on Secured Credit Support shall be limited to the value of the Secured Credit Support.
- 3.13 If there is a downgrading in credit rating as described in paragraph 6.2, the relevant Shipper shall (if Phoenix determines that the Shipper's Provided Level of Credit Support is less than the Required Level of Credit Support) comply with its obligations under paragraph 4.2.
- 3.14 Phoenix shall be entitled to make a demand up to the full amount under a letter of credit referred to in paragraph 3.1(d) or a guarantee referred to in paragraph 3.1(b) or 3.1(d) in any of the following circumstances:
- (a) a non-payment of any amount due by the relevant Shipper under the Code or its Accession Agreement in respect of PS Transmission Amounts; or
  - (b) a non-payment of any amount (other than in respect of PS Transmission Amounts) due by the relevant Shipper under the Code or its Accession Agreement; or
  - (c) the issuer of the guarantee or letter of credit ceases to hold the minimum credit rating specified in paragraph 3.1(b) or 3.1(d) respectively and the Shipper does not comply with its obligations under section 4.2; or
  - (d) if:
    - (i) a guarantee referred to paragraph 3.1(b) or 3.1(d) or a letter of credit has been delivered for a Shipper pursuant to the Code; and
    - (ii) such guarantee or letter of credit (or replacement or extension thereof) has a scheduled expiry date earlier than the date which falls 50 days after the end of the period for which Firm Capacity has been booked by the Shipper; and
    - (iii) the Shipper fails to procure that, not later than one Month prior to the scheduled date of expiry of such guarantee or letter of credit (or of any replacement or extension thereof), PTL is the beneficiary of such level of Secured Credit Support as is (when aggregated with the part of the relevant Shipper's Required Level of Credit Support which at that time is met through the provision of Unsecured Credit Support) equal to the Shipper's Required Level of Credit Support,

always provided that if a demand is made under (a) or (b) above, such demand may not exceed the amount of the relevant non-payment.

- 3.15 Phoenix shall procure that the amount paid under a guarantee or letter of credit following any demand thereunder shall be paid into the PoT Account, unless such amount exceeds (the amount of any such excess, being the "**Excess Amount**") the PS Transmission Amounts overdue for payment by the Shipper at the time of such payment, in which case an amount equal to the overdue PS Transmission Amounts shall be paid into the PoT Account.
- 3.16 Such part of the Excess Amount as is equal to the overdue amounts referred to in paragraph 3.14(b) shall be paid into such bank account of Phoenix as is determined by Phoenix.
- 3.17 For the purposes of this Section G:
- (a) Phoenix shall procure that any balance of an Excess Amount (following payment of the sums specified in paragraph 3.16, above) which remains after the making of the payment described in paragraph 3.16 shall be credited to an interest bearing account of Phoenix in the United Kingdom with a clearing bank and shall at all times be segregated from all other monies of Phoenix and shall be free from any encumbrance arising or subsisting in favour of any person other than Phoenix;
  - (b) such amounts as are referred to in paragraph (a) (and all interest thereon) shall be held on trust by Phoenix for the benefit of the Shipper and Phoenix in accordance with the provisions of this section and the bank with which such monies are held shall be notified of such trust and of the beneficial interest of the Shipper in such monies;
  - (c) Phoenix shall be entitled to withdraw amounts from such account and apply the same in each of the circumstances where Phoenix would otherwise have been entitled to make a demand under a letter of credit or guarantee pursuant to paragraph 3.14(a) or (b) had such an instrument been issued in its favour at such time but in no other circumstances;
  - (d) if notwithstanding paragraph (c) Phoenix withdraws any amount from the escrow account other than in such circumstances, Phoenix shall reimburse the same to the Shipper on demand, with interest at LIBOR plus 1% from the date of withdrawal to the date of such reimbursement;
  - (e) if at any time at which monies are so held by Phoenix on trust for the Shipper the Shipper provides to Phoenix a letter of credit or a guarantee for the amount then held on such trust which conforms with the provisions of paragraph 3.1(b) or 3.1(d), then Phoenix shall return to the Shipper all monies then so held by Phoenix on such trust;
  - (f) if at any time following the termination of the Shipper's accession to the Code there are no amounts due and payable by the Shipper which are unpaid and no party to the Code remains under any obligation actual or contingent the observance or performance of which would give rise to an obligation on the Shipper to make a payment under the Code the trust created pursuant to this section shall be wound up and any monies then held by Phoenix on such trust shall be returned to the Shipper; and
  - (g) the perpetuity period under the rule against perpetuities, if applicable to any trust arising pursuant to this section, shall be the period of 80 years from the date of such trust arising.

#### **4 Determination of whether Required Level of Credit Support has been established**

- 4.1 Within 10 Business Days of receipt of a Credit Application (or from time to time pursuant to paragraph 6) Phoenix shall determine and inform the Shipper or Prospective Shipper of that determination by issuing to it a notice specifying:
- (a) the Required Level of Credit Support that that Shipper or Prospective Shipper shall be required to establish; and
  - (b) to what extent the Required Level of Credit Support has been met through the provision of Unsecured Credit Support and the amount, if any, of Secured Credit Support required to make up any deficiency.
- 4.2 A Shipper or Prospective Shipper whose Provided Level of Credit Support is less than its Required Level of Credit Support (including where Phoenix makes a determination to that effect following a re-assessment under paragraph 6.2) shall, within 10 Business Days from the issue of such notice by Phoenix, provide such additional security as is required to meet the Required Level of Credit Support, failing which [(an "**LPC Default**") Phoenix may exercise any rights which are or become available to it under paragraph 3.14 and, in the case of:
- (a) a Prospective Shipper, its Credit Application shall be rejected; and
  - (b) a Shipper, Phoenix shall convene a meeting of the Credit Committee in accordance with paragraph 5.1(b).

#### **5 Credit Committee**

- 5.1 Without limitation to any party's rights and obligations to call meetings of the Credit Committee under other sections of the Code, Phoenix shall convene a Credit Committee meeting if any Shipper defaults in any of the following ways (each a "**Default**"):
- (a) the non-payment by the Due Date of any PS Transmission Amount or Code Charge by any Shipper (an "**NPTP Default**" and an "**NPCC Default**" respectively); and/or
  - (b) if the Provided Level of Credit Support fails to meet the Required Level of Credit Support from time to time [(an "**LPC Default**")].
- 5.2 If any of Phoenix, any other Designated Pipe-line Operator or a PS Gas Supplier reasonably believes that a Shipper or Prospective Shipper should be disallowed from providing or continuing to provide any or all of its Provided Level of Credit Support by way of Unsecured Credit Support on the basis that allowing such support by such means would result in an unacceptable material increase in risk to the economic security of the NI Network, it may, at any time, call a Credit Committee meeting to propose that the Credit Committee give a Direction disallowing the Shipper or Prospective Shipper from being able to provide all or any of its Provided Level of Credit Support by way of Unsecured Credit Support (a "**US Default**").
- 5.3 If any of Phoenix or a PS Gas Supplier reasonably believes that failure by Phoenix or another Designated Pipe-line Operator to reassess a PS Gas Supplier's Required Level of Credit Support and/or PS Gas Supplier's Provided Level of Credit Support would result in an unacceptable material increase in risk to the security of the NI Network, it may, at any time, call a Credit Committee meeting to propose that the Credit Committee give a Direction requiring such reassessment.
- 5.4 A Shipper shall use reasonable endeavours to ensure that the Credit Committee shall operate and shall conduct itself in accordance with the Terms of Reference.

5.5 Phoenix and each Shipper shall promptly and fully comply with all Directions of the Credit Committee (including but not limited to the execution of any documents and performance of any actions required for the enforcement of any security provided by the Shipper, if instructed in the relevant Direction) provided that, where such Directions require the approval of the Authority, such approval has been given expressly in writing.

## **6 Reassessment of Required Level of Credit Support and Provided Level of Credit Support**

6.1 Phoenix will reassess a Shipper's Required Level of Credit Support in any of the following circumstances:

- (a) 12 Months after the Shipper's Required Level of Credit Support was last determined, assessed or reassessed;
- (b) a Shipper seeks to acquire additional PTL Capacity whether by an application or transfer in accordance with the PTL Code;
- (c) a Shipper's Forecast Supplier Quantity exceeding the level it estimated in accordance with paragraph 1.2(a);
- (d) the Credit Committee directing Phoenix to make a reassessment; or
- (e) on request from that Shipper at any time.

6.2 Phoenix will reassess a Shipper's Provided Level of Credit Support in any of the following circumstances:

- (a) 12 Months after the Shipper Provided Level of Credit Support was last determined, assessed or reassessed;
- (b) in the event of any form of Unsecured Credit Support being disallowed by the Credit Committee;
- (c) a period of 1 Month before the expiry of a guarantee or any form of Secured Credit Support provided by or for such Shipper unless, before the start of such period, that guarantee or Secured Credit Support is renewed to the satisfaction of Phoenix on substantially the same terms for an extended term;
- (d) a downgrading in the Shipper's, its guarantor's or any issuer of a letter of credit's credit rating or there being a material adverse change in the Shipper's its guarantor's or any issuer of a letter of credit's Accounting Ratios from time to time;
- (e) the Credit Committee directs Phoenix to make a reassessment; or
- (f) on request from that Shipper at any time.

6.3 Such reassessments of a Shipper's Required Level of Credit Support and Provided Level of Credit Support shall be conducted in accordance with the preceding provisions of this Section G as if a new Credit Application were submitted on the date of occurrence of any of the events specified in paragraph 6.

## **7 Duty to provide forecasts and information relating to the calculation of the Postalised Charges**

### **7.1 A Shipper shall:**

- (a) each Gas Year, provide the following forecasts and information to Phoenix, in each case no later than the 10th Business Day in June in respect of the next Gas Year (GY) and each of the following four Gas Years (GY+1 to GY+4):
  - (i) its Forecast Supplier Volumes together with:
    - (1) an explanation of the reasons why any Forecast Supplier Volume in respect of any of the Gas Years GY+1 to GY+4 are expected to be greater or less than its Forecast Supplier Volume in respect of GY;
    - (2) a breakdown showing the proportions of its Forecast Supplier Volumes in respect of each Exit Point attributable to each Quarter of GY; and
  - (ii) the assumptions on which the figures provided pursuant to paragraph 7.1(a) are based. In respect of power stations this shall include but not be limited to load factors, generation output and efficiency. In respect of a Shipper supplying gas to distribution networks this shall include but not be limited to numbers of consumers and average forecast volumes per consumer;
- (b) use its reasonable endeavours to ensure that all forecasts and information supplied in accordance with paragraph 7.1(a) are as accurate as possible having regard to the information and forecasts available to that Shipper and shall provide with such forecasts a full breakdown and reasoning as to how it has calculated those forecasts; and
- (c) promptly submit to Phoenix any further information, explanation and access to relevant documents and records, in each case as Phoenix reasonably requires in respect of the Forecast Supplier Volumes in order to satisfy its obligation to present similar information under Condition 2A.3.1 of the Phoenix Licence.

### **7.2 For the purposes of this Section G:**

- (a) in respect of each Gas Year commencing on or after the Designation Date, Phoenix shall provide each Shipper and PS Gas Supplier with a breakdown of the Quarterly Exit Quantities by Exit Point for the relevant Quarter and any other information required to be provided by Phoenix on a Quarterly basis under its Licence, no later than 10 Business Days after the end of each Quarter in a Gas Year;
- (b) at the same time as Phoenix provides the figures required under paragraph 7.2(a), Phoenix shall confirm to each Shipper and PS Gas Supplier whether it is aware of or has reason to believe that the Forecast Figures provided in accordance with Condition 2A.2.3.1(a) of the Phoenix Licence for the remainder of the current or any future Gas Years will or may be materially inaccurate. If Phoenix suspects such material inaccuracy, it shall provide details of the extent of such inaccuracy, and its reasons for such belief; and
- (c) Phoenix may fulfil its obligations under this paragraph 7.2, by submitting, together with one or more other Designated Pipe-line Operators, a joint report which shall comply with paragraph 7.2.

**8 Shipper's who are not Gas Supplier's**

The provisions of this Section F shall be apply, mutatis mutandis, to a Shipper who is not a Gas Supplier and adjusted to reflect those charges which such Shipper has agreed to pay in accordance with Section G2.3(a).

## SECTION H: EMERGENCIES

### 1 Emergencies

1.1 The existence of an Emergency under the Code shall be determined by Phoenix, acting as a Reasonable and Prudent Operator, irrespective of the cause of the Emergency, or whether Phoenix any other person may have caused, or contributed to, the Emergency.

1.2 An Emergency (an "**Emergency**"):

- (a) may exist by reason of an escape, or suspected escape, of gas; or
- (b) may exist in circumstances in which, in the opinion of Phoenix:
  - (i) the safety of the Phoenix System is significantly at risk;
  - (ii) the safe conveyance of gas in the Phoenix System is significantly at risk;
  - (iii) gas conveyed in the Phoenix System is at such a pressure or of such a quality as to constitute, when supplied to premises, a danger to life or property;
  - (iv) where Phoenix's ability to maintain safe pressures within the Phoenix System is affected or threatened by an interruption or disruption to the Phoenix System, an insufficiency of deliveries of gas to the Phoenix System, or by any actual or potential failure of or damage to any part of the Phoenix System; or
  - (v) in any other circumstances reasonably believed by Phoenix to constitute an Emergency; and
- (c) shall exist where Phoenix declares an Emergency in co-operation with the Northern Ireland Network Emergency Coordinator.

1.3 An Emergency shall continue until such time as Phoenix determines that the circumstances referred to in this paragraph 1 no longer apply, that no further Emergency Steps are required, and that normal operation of the Pipeline and implementation of the Code may be resumed.

### 2 Emergency Steps

2.1 Phoenix may take or require that a Shipper takes such steps ("**Emergency Steps**") as Phoenix deems, as a Reasonable and Prudent Operator, to be necessary:

- (a) to avert and/or reduce the probability of, or probable scale of, an Emergency;
- (b) to overcome or contain an Emergency and/or to avert or reduce the hazard presented by it;
- (c) to restore gas supply and normal operation of the Pipeline including making available additional gas; and/or
- (d) taking into account any steps that the Northern Ireland Network Emergency Coordinator may request Phoenix to take.

2.2 In view of the importance of co-ordination of Emergency Steps, a Shipper shall only take Emergency Steps pursuant to a request made by Phoenix.

2.3 During an Emergency each Shipper:

- (a) shall co-operate with Phoenix, to the extent within the Shipper's power (and without thereby rendering the Shipper unable to comply with any requirement to take Emergency Steps itself), so as to enable Phoenix to take Emergency Steps and in so doing comply with Phoenix's instructions and requests as soon as reasonably practicable; and
  - (b) shall, to the extent within its power, comply with Phoenix's instructions and requests to take Emergency Steps as soon as reasonably practicable.
- 2.4 Phoenix and each Shipper acknowledges that in an Emergency their interests shall be subordinated to the need to take Emergency Steps.
- 2.5 Without prejudice to Section F1.4, no Emergency Step taken by Phoenix, or at the request of Phoenix, by any Shipper, shall be a breach of any provision of the Code, and in particular Phoenix shall not be in breach of its obligation to accept gas delivered at the Phoenix Entry Point or to make gas available for offtake at a Phoenix Exit Point to the extent that it is as a result of any such Emergency Step so taken.
- 2.6 Phoenix may at its sole discretion on notice to Shippers amend or cancel any Emergency Step.

### **3 Emergency Contacts**

- 3.1 Each Shipper shall provide to Phoenix a single telephone and facsimile number at which Phoenix may contact, 24 hours a Day and on each Day of a Gas Year, in an Emergency for any purpose pursuant to this Section H a representative of the Shipper; and the name(s), title(s) and addresses of such representative.
- 3.2 The details required under paragraph 3.1 shall be provided by an applicant Shipper before becoming a Shipper and shall at all times be maintained up to date and a Shipper shall notify Phoenix of any change in such details promptly and, where possible, in advance of such change.
- 3.3 The representative referred to in paragraph 3.1 shall be a person having appropriate authority and responsibilities within a Shipper's organisation to act as the primary contact for Phoenix in the event of an Emergency.
- 3.4 If a Shipper does not provide such details, or cannot be contacted when required at the contact point referred to in paragraph 3.1, Phoenix may, having taken any steps to contact the relevant Shipper as would a Reasonable and Prudent Operator and without prejudice to the generality of this Section H, discontinue the offtake of gas by the Shipper at a Phoenix Exit Point; and in such circumstances, Phoenix shall not be liable for and the Shipper shall indemnify Phoenix in respect of, any costs incurred in connection with such discontinued offtake of gas.

### **4 Phoenix to inform Shippers of an Emergency**

Where an Emergency arises, Phoenix shall, as quickly as is reasonably practical, inform the Shippers of the affected Phoenix Exit Point(s) of the commencement and, so far as practicable, the nature, extent and expected duration of the Emergency and Phoenix shall, so far as practicable, thereafter keep such Shippers informed of any material changes and developments in respect of the Emergency and shall inform such Shippers as soon as reasonably practicable when Phoenix considers the Emergency is no longer continuing.

## **5 Entry Control in an Emergency**

In an Emergency Phoenix may take steps to increase or decrease the delivery and/or rate of flow of gas by issuing appropriate instructions to the Shippers, who in turn shall submit PTL Nominations (or PTL Renominations) as necessary and/or as requested by Phoenix to the extent practical but at all times using their reasonable endeavours.

## **6 Exit Control in an Emergency**

6.1 Where Emergency Steps include the reduction or discontinuance of the offtake of gas at an Phoenix Exit Point, Phoenix shall first seek voluntary reductions by Shippers by reference to each Shipper's prevailing Downstream Load Statement and if Phoenix cannot achieve the requisite reduction voluntarily it shall endeavour to reduce the offtake of gas from the Phoenix System, in so far as is practicable:

- (a) first at the Carrickfergus Exit Point; and
- (b) then at any other Individual Exit Point.

6.2 Where, pursuant to the Emergency, Phoenix instructs a Shipper to give any notification or communication to a supplier, the Shipper shall comply with that instruction.

6.3 Without prejudice to Phoenix's ability to take any Emergency Steps, Phoenix may take steps physically to isolate any Exit Point where Phoenix, acting as a Reasonable and Prudent Operator, is required to maintain the integrity of the Phoenix System, the Phoenix Distribution System the PTL System and/or the BGE (NI) System.

6.4 The order in which, following an Emergency, offtake of gas at Phoenix Exit Points will be restored will be the reverse of that referred to in paragraph 6.1.

## **7 Consequences of an Emergency**

7.1 Phoenix shall take steps to restore gas transportation and normal operation of the Phoenix System as soon as reasonably practicable after an Emergency.

7.2 Phoenix and the Shippers acknowledge that during an Emergency it may be necessary for each of them to divert resources from other activities which may potentially result in a temporary impairment of their abilities subsequently to perform their respective obligations pursuant to the Code and acknowledge that any such impairment resulting from such diversion of resources may be regarded as Force Majeure.

## **8 Audit following an Emergency**

8.1 In the event of an Emergency, an audit shall be undertaken by Phoenix to determine the cause and what, if any, remedial actions may need to be taken to minimise the likelihood of an Emergency arising again.

8.2 A copy of such audit report shall be provided to the Director and the Shippers, where requested.

8.3 The cost of such audit and effecting such remedial measures shall be recoverable in full by Phoenix in accordance with condition 2.3A.7(e) of the Phoenix Licence.

**9 Emergency procedures**

A Shipper shall co-operate with Phoenix in relation to the testing of Phoenix's emergency procedures provided that this shall not extend to a Shipper being required to take Emergency Steps.

## SECTION I : DISPUTES

### 1 Dispute Resolution

- 1.1 In the Code a "**Dispute**" means any controversy, claim or dispute arising out of or in connection with the Code or an Accession Agreement.
- 1.2 If a Dispute arises, it shall be referred, upon written notice from a party to the other party or parties (a "**Dispute Notice**"), to mediation in accordance with paragraph 2.
- 1.3 A Dispute which is not resolved by mediation within 30 days of the date of the Dispute Notice shall, subject to paragraphs 1.4 and 3, be settled by the courts of Northern Ireland in accordance with paragraphs 1.4 and 3.
- 1.4 Where the Code provides or the parties have agreed that a Dispute is to be resolved by the determination of an expert and the Dispute is not first resolved by mediation within 30 days of the date of the Dispute Notice, it shall be settled by an Expert (an "**Expert**") in accordance with paragraph 3 ("**Expert Determination**").

### 2 Mediation

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

### 3 Expert Determination

- 3.1 The procedure for the appointment of an Expert shall be as follows:
  - (a) the parties shall attempt to agree on the appointment of a single Expert to settle the Dispute;
  - (b) if within 15 business days of the date of the Dispute Notice the parties have been unable to agree on the choice of an Expert, any party may inform the President of the Institution of Gas Engineers and Managers (the "**President of the IGEM**") of the nature and complexity of the Dispute and request him to appoint a single Expert for the determination of the Dispute within 30 business days of the date of the Dispute Notice, and in doing so the President of the IGEM may take such independent advice as he thinks fit;
  - (c) if the President of the IGEM does not exist at the time of such request, refuses to make such an appointment, or fails to do so within 30 business days of the Dispute Notice, any of the parties may then apply to the President of the Law Society of Northern Ireland who shall appoint an Expert within 15 business days of being requested to do so;
  - (d) upon the Expert being agreed upon or appointed in accordance with this paragraph 3 the parties shall immediately notify the Expert of his appointment and shall request him to confirm within 5 business days whether or not he is willing and able to accept the appointment and, if he accepts the appointment, to confirm his independence. If no Expert can be appointed pursuant to this paragraph 3, the Dispute shall be finally settled by the courts of Northern Ireland in accordance with paragraph 5.
- 3.2 The Expert shall be a person suitably qualified by education, experience and/or training to determine the Dispute.

- 3.3 The Expert shall be entitled to: (a) seek such independent professional and/or technical advice; and (b) obtain secretarial assistance, as he may reasonably consider necessary.
- 3.4 The Expert and his assistants (if any) shall, as a prerequisite to the Expert's appointment, enter into a confidentiality undertaking with the parties in the same terms, mutatis mutandis, as required by Section 14 and pursuant to which the Expert and his assistants (if any) shall keep the fact that the Expert Determination is taking place and its outcome confidential.
- 3.5 (a) The Expert shall confirm to the parties before his appointment that he does not hold any interest or duty which would or potentially would conflict with the performance of his duties as an Expert.
- (b) If after his appointment the expert becomes aware of any interest or duty which does so conflict or potentially conflicts, the expert shall inform the parties forthwith of such conflict giving full details of it.
- (c) Any party may within 5 business days of the disclosure of any such conflict object to the appointment or continued appointment of an expert, in which case the expert shall not be or shall cease to be appointed and a new expert shall be selected and appointed in accordance with this paragraph 3 (and the rejected expert shall not be nominated for such selection).
- 3.6 The parties shall keep the fact that the Expert Determination is taking place and its outcome confidential provided that a Shipper may disclose the outcome to any of its customers to the extent that it demonstrates to Phoenix that it reasonably requires to do so provided further that any such Shipper shall ensure that any such customer complies with the obligations of Section J4 as if that customer were a party and following any request by Phoenix, obtains from that customer an undertaking in favour of Phoenix to do so.
- 3.7 Any and all communications between the parties and the Expert shall be made or confirmed in writing and a copy of such communications shall be provided simultaneously to the other Party or Parties. No meeting between the Expert and any of the Parties shall take place unless all the parties have been given a reasonable opportunity to attend.
- 3.8 The terms of reference of the Expert shall include the following:
- (a) that the Expert shall, as soon as practicable after the confirmation of his appointment, call the Parties to a meeting (which shall, together with all other meetings, be held in Northern Ireland) at which he shall clarify, and, if necessary, define the Dispute and give directions as to the future conduct of the Dispute;
- (b) that the Expert may from time to time give such directions as he sees fit;
- (c) that the Parties shall be entitled to supply data and information and make submissions to the Expert and that the Expert shall make his determination as soon as reasonably practicable and in any event within 30 business days of his appointment or such other time as agreed in writing by the parties;
- (d) that the Expert shall give full written reasons for his determination and shall furnish the parties with a draft of his proposed determination;
- (e) the parties shall be entitled to make representations to the Expert within 7 business days after the receipt of the draft of the Expert's proposed determination.

- 3.9 If an Expert becomes unwilling or unable to act, or does not act, in the matter in respect of which he is appointed, then another Expert shall be appointed in accordance with the procedure set out in paragraph 3.1.
- 3.10 If, within a reasonable period, but in any event not later than 90 business days after the acceptance of his appointment, the Expert has not made his determination, then, at the request of any of the parties, another Expert shall be appointed in accordance with paragraph 3.1 and, on acceptance of such appointment, the appointment of the previous Expert shall cease unless (prior to the date when the new Expert accepts his appointment) the Expert has made his determination, in which case such determination shall be binding and the instructions of the new Expert shall be withdrawn.
- 3.11 Subject to paragraph 6, the costs and expenses of the Expert, any independent advisers to the Expert and any costs of his or their appointment (if he is or they are appointed by the President of the IGEM or the President of the Law Society of England and Wales) shall be borne equally by the parties, but each party shall bear its own costs.
- 3.12 An Expert appointed under this Section I shall act as an expert and not as an arbitrator and the provisions of the Arbitration Act 1996 and any amendments or supplements to or re-enactments of them shall not apply to his determination.
- 3.13 The Expert's final determination shall be final and binding on the parties except in the event of fraud or where it is so clearly erroneous on its face that it would be unconscionable for it to stand, in which case another expert may be appointed in accordance with the provisions of paragraph 3.1.

#### **4 Costs of Dispute**

Phoenix's costs arising out of a Dispute shall be recoverable in full by Phoenix in accordance with condition 2.3A.7(e) of the Phoenix Licence.

## SECTION J : GENERAL

### 1 Introduction

- 1.1 References to the "**Code**" are to this Network Code Principal Document as from time to time modified in accordance with the Modification Rules or the Phoenix Licence; and references to the Code include the Code as given contractual effect by the Framework Agreement.
- 1.2 For the purposes of this Section J "**Network Code Framework Agreement**" or "**Framework Agreement**" means an agreement in such form as may be required by the Phoenix pursuant to which the Code is made binding upon Phoenix and each Shipper.
- 1.3 In this Section "**Party**" means in the context of the Network Code Framework Agreement, Phoenix or any Shipper.
- 1.4 Except where the Code expressly provides otherwise or disapplies this paragraph 1.4, neither the Code nor the Framework Agreement creates contractual rights or liabilities between Shippers inter se.
- 1.5 Paragraph 1.4 shall not apply in respect of paragraphs 9 to 16 (inclusive)

### 2 Phoenix as a Shipper

- 2.1 This paragraph 2 applies until such time as it is no longer required to apply by reason of the legal separation of the transmission, the distribution and the supply businesses carried on by Phoenix in accordance with the Phoenix Licence at the date of the Code.
- 2.2 For as long as the separation referred to in paragraph 2.1 remains to be implemented paragraph 2.3 shall apply.
- 2.3 Where this paragraph 2.3 applies:
- (a) the Code shall be treated as having effect between Phoenix in its capacity as the owner and operator of the Phoenix System ("**Transmission Capacity**") and Phoenix in each of its capacities as holder of a Supply Licence ("**Supplier Capacity**") and owner and operator of the Phoenix Distribution System ("**Distribution Capacity**") (each a "**Capacity**") and accordingly:
    - (i) references in the Code to a Shipper will be treated as including a reference to the Supplier Capacity and the Distribution Capacity;
    - (ii) it is acknowledged that the Code does not (and cannot) create contractual rights and liabilities between the two Capacities;
  - (b) Phoenix will:
    - (i) account for payments to be made by it pursuant to the Code in each Capacity;
    - (ii) secure accounting records are maintained sufficient to allow separate identification of the payments referred to in paragraph (i) and the calculation of the amount of such payments; and
    - (iii) nominate personnel in respect of each Capacity and such personnel shall conduct operations under the Code in accordance with the relevant Sections in respect of the Capacity in respect of which they have been so nominated;

- (c) references in the Code to Gas Supplier shall include Phoenix in its Supplier Capacity;
  - (e) paragraphs 3 to 16 (inclusive) shall not apply as between Phoenix in respect of each Capacity.
- 2.4 Nothing in this paragraph 2 shall require Phoenix to establish separate subsidiaries or (other than provided for in paragraph 2.3(b)) to prepare separate accounts, or maintain separate bank accounts, in respect of each Capacity.
- 2.5 This paragraph 2 is without prejudice to the requirements of the Phoenix Licence.
- 3 Accession**
- 3.1 Any person wishing to become a Shipper shall give Phoenix 20 Business Days' notice of its wish to be party to the Framework Agreement (a "**Prospective Shipper**").
- 3.2 Within 5 Business Days of receipt of such an application Phoenix will provide any Prospective Shipper with:
- (a) a Credit Application for completion, where required;
  - (b) an Accession Agreement for execution;
  - (c) the Code;
  - (d) the Modification Rules.
- 3.3 A Prospective Shipper wishing to become a Shipper shall provide to Phoenix:
- (a) evidence satisfactory to Phoenix that at a date no later than the date on which the Shipper is first bound by the terms of the Code (in accordance with this paragraph 3) the Shipper is bound by the terms of the PTL Code;
  - (b) where applicable, and in each case in respect of the PTL Ballylumford Exit Point:
    - (i) a copy of its application for an exit point registration in accordance with the PTL Code;
    - (ii) a copy of its application for PTL Capacity in accordance with the PTL Code;
    - (iii) a copy of any downstream load statement submitted to PTL in accordance with the PTL Code; and
  - (c) a completed Credit Application, where required.
  - (d) its postal address and email address for notices in accordance with paragraph 3.4 of the Terms of Reference.
- 3.4 After a Prospective Shipper has executed an Accession Agreement which is effective in accordance with its terms, the Prospective Shipper shall become a Shipper and may utilise Phoenix Capacity.
- 3.5 A Shipper shall provide Phoenix with a copy of any application for an exit point registration in respect of a Phoenix Exit Point which it submits to PTL pursuant to the PTL Code.

- 3.6 A Shipper will advise Phoenix in the event that PTL terminates an exit point registration in respect of a Phoenix Exit Point pursuant to the PTL Code.
- 3.7 A Shipper shall send Phoenix a copy of any downstream load statement submitted to PTL pursuant to the PTL Code.
- 3.8 A Shipper (a “Retiring Shipper”) may make an application to retire from the code in accordance with the conditions of this paragraph 3.8
- (a) A Retiring Shipper may, make an application to terminate its Accession Agreement by giving Phoenix not less than thirty five (35) Business Days written notice at any time.
  - (b) Phoenix shall respond to the Retiring Shipper, within twenty five (25) Business Days of receiving the application referred to in paragraph 3.8, indicating the requirements with which the Shipper must comply before the termination of its Accession Agreement may take effect and these requirements shall include (but not limited to) the requirements that the Retiring Shipper:
    - (i) has ceased to be a party to any agreement between Phoenix and the Shipper which incorporates the Code; and /or
    - (ii) has ceased to hold any Firm Capacity; and / or
    - (iii) has made a full payment of all amounts invoiced in respect of:
      - (1) PS Transmission Amounts
      - (2) Code Charges
      - (3) Supplemental Payments
      - (4) Auxiliary Payments; and
      - (5) Other amounts due pursuant to the Code
  - (c) Within ten (10) Business Days of the Retired Shipper confirming to Phoenix in writing (together with supporting documentation) that it has complied with the requirements of Phoenix under paragraph 3.8 (b), Phoenix shall confirm to the Retiring Shipper that it either:
    - (i) agrees that the Retiring Shipper has appropriately complied with each of its requirements under paragraph 3.8 (b), in which case, the Retiring Shipper shall be entitled to terminate the Accession Agreement forthwith on notice to Phoenix [copied to the Authority]; or
    - (ii) does not accept that the Retiring Shipper has appropriately complied with all of its requirements under paragraph 3.8 (b), and giving reasons for its decision, in which case, the Retiring Shipper shall be required to comply with the outstanding requirements before being entitled to terminate the Accession Agreement in accordance with this paragraph 3.8.
  - (d) Upon the termination of the Retiring Shipper’s Accession Agreement in accordance with this paragraph 3.8, a Retiring Shipper shall cease to be a Shipper for the purposes of the Code and the Retiring Shipper and Phoenix shall no longer be bound in relation to each other by this Code except to the extent set out in paragraphs 3.8 (e) and 3.8 (f)
  - (e) Termination of an Accession Agreement in accordance with this paragraph 3.8 shall not extinguish or relieve the Retiring Shipper from the performance of any obligation accrued

under this Code as at the time of termination which is agreed and acknowledged shall include payment of all or any of the following which are due, accrued or outstanding under this code in respect of the period up to and including the date on which the Accession Agreement is terminated:

- (i) PS Transmission Amounts;
  - (ii) Code Charges;
  - (iii) Supplemental Payments;
  - (iv) Auxiliary Payments; and /or
  - (v) Any other payments due pursuant to the Code
- (f) The Retiring Shipper shall pay any sums due in accordance with paragraph 3.8 (e) at the time by which and in the manner in which such payments would have been due and paid had the Retiring Shipper continued to be a Shipper. A Retiring Shipper that has ceased to be a Shipper at an Exit Point shall continue to be liable for all accrued payments or other amounts due to Phoenix notwithstanding that the Retired Shipper ceases to be the Shipper at that Exit Point and any payments due and owing in respect of any agreement at or in respect of such Exit Point shall be immediately due and payable. For the avoidance of doubt
- (i) the conditions of the Code continue to apply to a Retiring Shipper whose application for retirement from the Code has been accepted by Phoenix until such time as that Retiring Shipper has met all its obligations under the Code (prior to and arising out of termination) and
  - (ii) any financial security which the Retiring Shipper was obligated to provide to Phoenix pursuant to the code shall remain in place until all such payments have been discharged in full.

#### **4 Confidentiality**

##### 4.1 In the Code:

- (a) "**Confidential Information**" means:
- (i) in relation to Phoenix, any information relating to the affairs of a Shipper;
  - (ii) in relation to a Shipper, any information relating to Phoenix or another Shipper, obtained in connection with the Code other than its terms;
- (b) "**Disclosing Party**" means the party disclosing Confidential Information to a Receiving Party;
- (c) "**Permitted Purpose**" means any purpose related to a party's participation in the Code; and
- (d) "**Receiving Party**" means the party to which Confidential Information is disclosed by a Disclosing Party.

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

- 4.3 Paragraph 4.2 shall not apply to any Confidential Information which:
- (a) at, or after, the time of disclosure becomes part of the public domain (other than by reason of a breach of the Code by the Receiving Party);
  - (b) is known by the Receiving Party at the time it obtains the Confidential Information (save where the information is known by the Receiving Party as a result of it having previously been disclosed by the Disclosing Party to it); or
  - (c) is lawfully acquired by the Receiving Party from a third party otherwise than in breach of an obligation of confidentiality.
- 4.4 A Receiving Party may disclose Confidential Information without the written consent of the Disclosing Party:
- (a) to any employees, officers, directors, professional advisers and consultants of the Receiving Party to the extent that the disclosure is necessary in connection with the Permitted Purpose;
  - (b) to any of its Affiliates, or any person holding more than 25% of the issued share capital of the Receiving Party or any of that person's Affiliates, to the extent that the disclosure is necessary in connection with the Permitted Purpose;
  - (c) to any bona fide prospective transferee of more than 25% of the issued share capital of the Receiving Party or any of its Affiliates;
  - (d) to any bank or financial institution from which the Receiving Party is seeking or obtaining finance to the extent that the disclosure is necessary in connection with such finance;
  - (e) to any person appointed as Expert pursuant to the Code to the extent reasonably necessary for the performance of his duties to the extent required by law or by the order of any court having competent jurisdiction over the Receiving Party or the regulations of a recognised stock exchange or requested by any Competent Authority; and
  - (f) to the extent required by law or by the order of any court having competent jurisdiction over the Receiving Party or the regulations of a recognised stock exchange or requested by any Competent Authority.
- 4.5 A Receiving Party shall:
- (a) ensure that any person to whom the Receiving Party discloses information under paragraph 4.4 (a) to (e) complies with the obligations under paragraphs 4.1 to 4.4 as if that person were a party to the fullest extent practicable; and
  - (b) obtain from any person to whom the Receiving Party discloses information under paragraph 4.4 (c), (d) or (e) an undertaking in favour of the Disclosing Party to do so.
- 4.6 Whether a party ceases or continues to be bound by the Code its obligations of confidentiality shall remain in force in relation to any Confidential Information until such information is in the public domain or acquired, known or developed by the relevant Receiving Party in accordance with paragraph 4.3.

- 4.7 Any data which is processed, recorded or maintained in respect of the Pipeline shall belong to Phoenix, and subject to the provisions of the Code, Phoenix may use such data in such manner as Phoenix sees fit.
- 4.8 If a Shipper provides Phoenix with data the Shipper hereby grants to Phoenix a perpetual non-exclusive, royalty free licence in respect of such data and all intellectual rights in it to use, copy and adopt and deal with such data for purposes of the performance and implementation of the Code and other purposes contemplated by the Code but not otherwise; and paragraph 4.7 applies to any data derived from such data and all compilations created by or on behalf of Phoenix of such data.
- 4.9 If Phoenix provides or makes available data to a Shipper, the Shipper shall be entitled to use such data without charge for the purposes of the performance and the implementation of the Code and for other purposes contemplated by the Code, but not otherwise.

## **5 Force Majeure**

- 5.1 In the Code, "**Force Majeure**" means any event or circumstance, or any combination of events and/or circumstances, the occurrence of which is beyond the reasonable control of, and could not have been avoided by steps which might reasonably be expected to have been taken by a party acting as a Reasonable and Prudent Operator (the "**Affected Party**") and which causes or results in the failure of the Affected Party to perform or its delay in performing any of its obligations owed to any other Party or Parties (each an "**Other Party**") under the Code, including any:
- (a) war declared or undeclared, threat of war, act of public enemy, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism;
  - (b) act of God;
  - (c) strike, lockout or other industrial disturbance;
  - (d) explosion, fire, fault or failure of plant, equipment or other installation which the Affected Party could not prevent or overcome by the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same kind of undertaking under the same or similar circumstances;
  - (e) governmental restraint or the coming into force of any regulation, licence or Directive of any Competent Authority;
  - (f) suspension, withdrawal or change in the terms of any licence, permit or consent;
  - (g) structural shift or subsidence affecting generally a part or parts of the Pipeline or any area or areas of the route of the Pipeline;
  - (h) the occurrence of an event constituting force majeure for the purposes of the PTL Code.
- 5.2 Subject to paragraph 5.4 and without prejudice to any other provisions of the Code limiting or restricting the liability of the Affected Party, if by reason of an event of Force Majeure, the Affected Party is rendered unable wholly or in part to carry out its obligations under the Code then its obligations shall be suspended to the extent the Affected Party's ability to perform is hindered by the Force Majeure event.

- 5.3 A Force Majeure event shall not relieve a party from any liability or obligation to:
- (a) make payments due under the Code save to the extent that the failure to pay money is caused by a Force Majeure event affecting all reasonable means of payment, in which case, upon the cessation of the Force Majeure event, the Affected Party shall pay these unpaid monies together with interest on them at the rate of LIBOR calculated from the due date for payment to the actual date of payment; or
  - (b) give any notice due under the Code.
- 5.4 Following any occurrence of a Force Majeure event the Affected Party shall as soon as reasonably practicable notify the Other Party of the occurrence and nature of the Force Majeure event, the expected duration thereof (insofar as the same can reasonably be assessed), and the obligations of the Affected Party performance of which is affected by it and from time to time thereafter provide to the Other Party reasonable details of:
- (a) developments in the matters so notified; and
  - (b) the steps being taken by the Affected Party to overcome the Force Majeure event or its effects and to resume performance of its relevant obligations.
- 5.5 Any Party whose failure to perform obligations has been relieved under the provisions of this paragraph 5 shall resume the performance of such obligations as soon as reasonably practicable after the removal of the cause of the failure and shall notify the Other Party prior to its resumption.

## **6 Liability**

- 6.1 Subject to the further provisions of this paragraph 6, each Party agrees and acknowledges that:
- (a) no Party shall be liable to any other Party for loss arising from any breach of the Code or the Framework Agreement, other than (but without prejudice to any other provision of the Code which excludes or limits liability in respect of any breach) for loss directly resulting from such breach and which at the relevant date was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:
    - (i) physical damage to the property of any other Party; and/or
    - (ii) the liability (in law) of any other such Party to any other person for loss in respect of physical damage to the property of such person; and
  - (b) no Party shall in any circumstances be liable in respect of any breach of the Code or the Framework Agreement to any other Party for:
    - (i) any loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill, increased cost of working, or increased or additional costs in respect of the procurement or conveyance of gas;
    - (ii) any indirect economic or consequential loss; or
    - (iii) except as provided in paragraphs 6.1(a) and 6.5, loss resulting from the liability of any other Party to any other person howsoever and whensoever arising.
- 6.2 For the purposes of paragraph 6.1(a) the "**relevant date**" is the date of the Framework Agreement, except that where the breach in question would not have been a breach of the

Code but for a modification (pursuant to the Modification Rules or the Phoenix Licence) of the Code subsequent to the date of execution of the Framework Agreement, the relevant date shall be the date of such modification.

- 6.3 Subject to paragraph 6.13, the amount or amounts for which a Party may be liable to any other Party or Parties pursuant to paragraph 6.1(a) in respect of any one event or circumstance constituting or resulting in the first Party's breach of a provision of the Code or the Framework Agreement (or in the case of Phoenix, the failure by Phoenix to act as a Reasonable and Prudent Operator in the performance of its obligations in the Code or its negligence or Wilful Misconduct pursuant to Section B8) shall not exceed:
- (a) as respects the liability of Phoenix to any one Shipper or of any one Shipper to Phoenix, an amount equal to 2% of the total postalised revenue of Phoenix as stated in the most recently available annual audited accounts for Phoenix; and
  - (b) as respects the liability in aggregate of Phoenix to Shipper collectively or of Shippers collectively to Phoenix, an amount equal to 2% of the total postalised revenue of Phoenix as stated in the most recently available annual audited accounts for Phoenix.
- 6.4 Paragraph 6.1 is without prejudice to any provision of the Code which provides for an indemnity, or which provides for any Party to make a payment to another.
- 6.5 Nothing in the Code shall exclude, limit or constitute an indemnity in respect of the liability of any Party for death or personal injury resulting from the negligence of such Party.
- 6.6 The rights and remedies of the Parties pursuant to the Code and the Framework Agreement exclude and are in place of any rights or remedies of any Party in tort (including negligence and nuisance) or misrepresentation (other than fraudulent misrepresentation) in respect of the subject matter of the Code or the Framework Agreement; and accordingly, but without prejudice to paragraph 6.5, each Party (to the fullest extent permitted by law):
- (a) waives any rights or remedies; and
  - (b) releases each other Party from any duties or liabilities
- arising in tort or misrepresentation (other than fraudulent misrepresentation) in respect of the subject matter of the Code or the Framework Agreement.
- 6.7 Without prejudice to paragraph 6.6, where any provision of the Code provides for any amount to be payable by a Party upon or in respect of that Party's breach of any provision of the Code or the Framework Agreement, each Party agrees and acknowledges that the remedy conferred by such provision is exclusive of and is in substitution for any remedy in damages in respect of such breach or the event or circumstance giving rise thereto.
- 6.8 For the avoidance of doubt, nothing in this paragraph 6 shall prevent any Party from or restrict it in enforcing any obligation (including suing for a debt) owed to it under or pursuant to the Code or the Framework Agreement.
- 6.9 Each provision of this paragraph 6 shall be construed as a separate and severable contract term, and shall as respects any Shipper in relation to which an Accession Agreement has been terminated in accordance with paragraph 7 survive that User ceasing to be a User.
- 6.10 Subject to paragraph 6.14, the amount or amounts for which a Party may be liable to any other Party or Parties pursuant to any indemnity provided for in the Code in respect of any one event or circumstance giving rise to liability under such indemnity shall not exceed:

- (a) as respects the liability of Phoenix to any one Shipper or of any one Shipper to Phoenix, £5,000,000; and
  - (b) as respects the liability in aggregate of Phoenix to Shippers collectively or of Shippers collectively to Phoenix, £10,000,000.
- 6.11 Subject to paragraph 6.12, each Shipper shall, save as otherwise provided by the Code, indemnify and hold harmless Phoenix in respect of any claims against Phoenix made by any consumer to which such Shipper supplies gas, and any producer from which such Shipper procures gas in respect of any loss or damage incurred or claimed to have been incurred by such consumer or producer, against Phoenix in respect of any failure by Phoenix to accept the delivery of, or make available for offtake, gas, and all costs and expenses incurred by Phoenix in connection thereto.
- 6.12 The indemnity in favour of Phoenix set out in paragraph 6.11 shall not extend to any claims made against Phoenix in respect of any losses in respect of any unlawful act or save where such claims arose as a result of any action taken by Phoenix in accordance with the provisions of the Code, any claims in respect of physical damage.
- 6.13 Where a Party may be liable to any other Party pursuant to paragraph 6.1(a) in respect of any event or circumstance in addition constituting or resulting in the first Party's breach of a provision of the Distribution Code or Distribution Framework Agreement (provided such first Party is party thereto), the amount the first Party may be liable for pursuant to both the Code and the Distribution Code shall not exceed those limits specified in paragraph 6.3.
- 6.14 Where a Party may be liable to any other Party pursuant to any indemnity provided in the Code in respect of any event or circumstance in addition constituting or resulting in the first Party's liability pursuant to any indemnity provided in the Distribution Code (provided such first Party is party thereto), the amount the first Party may be liable for pursuant to both the Code and the Distribution Code shall not exceed those limits specified in paragraph 6.10.

## **7 Termination**

- 7.1 A Shipper may cease to be a Shipper ("**Discontinuing Shipper**") in accordance with this paragraph 7 and where a Shipper ceases to be a Shipper the Framework Agreement shall cease to bind the Shipper (being the Discontinuing Shipper) and Phoenix.
- 7.2 Phoenix shall declare a "**Termination Default**", if the Shipper:
- (a) fails to pay any sum due to Phoenix under a CC Invoice which is not the subject of a bona fide dispute in accordance with Section F10:
    - (i) within 15 Business Days of the Due Date (the "**Second Due Date**") provided that Phoenix shall have given the Shipper not less than 5 Business Days' written notice that such payment is overdue; or
    - (ii) by the Due Date on three or more occasions in respect of three or more separate CC Invoices;
  - (b) fails to pay any sum due to Phoenix under a PS Invoice:
    - (i) within 15 Business Days of the Due Date provided that Phoenix shall have given the Shipper not less than 5 Business Days' written notice that such payment is overdue; or

- (ii) by the Due Date on three or more occasions in respect of three or more separate PS Invoices;
- (c) having failed to submit a Nomination to PTL for a period exceeding 12 months, does not hold at the relevant time any Phoenix Capacity, provided that Phoenix shall have first consulted with the Shipper and obtained its agreement or the agreement of the Authority to such termination;
- (d) ceases to hold an exit point registration at the PTL Ballylumford Exit Point in accordance with the PTL Code;
- (e) ceases to hold a valid Gas Supply Licence unless that Shipper has prior written consent from the Authority to either
  - (i) hold Firm Capacity; or
  - (ii) have entitlement to Exit gas from the NI Network as if it had a Gas Supply Licence

provided that the Shipper submits to Phoenix a copy of such consent from the authority;

- (f) without a valid Gas Supply Licence but who has prior written consent from the Authority to either
  - (i) hold Firm Capacity; or
  - (ii) have entitlement to Exit gas from the NI Network as if it had a Gas Supply Licence

ceases to hold the relevant consent from the authority

or

- (g) is in LPC Default.

7.3 Within 2 Business Days of a Termination Default occurring, Phoenix shall send a Meeting Notice in accordance with paragraph 3 of the Terms of Reference convening a meeting of the Credit Committee and asking for Directions regarding the Termination Default.

7.4 Notwithstanding the foregoing, where, within 15 Business Days of the date on which the Meeting Notice was sent by Phoenix under paragraph 7.3, the Credit Committee has failed to decide Directions in respect of that Termination Default, Phoenix shall be entitled, with the Authority's consent to give the Shipper a Termination Notice.

7.5 Phoenix may give the relevant Shipper a Termination Notice to have effect from:

- (a) the date specified in a relevant Direction of the Credit Committee;
- (b) where a relevant Direction has been given but no date for termination is specified, forthwith;
- (c) where the Termination Default occurs under paragraph 7.2(c) with the relevant Shipper's consent, forthwith; and
- (d) if the Phoenix Licence is revoked, forthwith.

- 7.6 Where Phoenix or a Shipper:
- (a) is in breach of any of its obligations under the Code ("**Defaulting Party**"); and
  - (b) such breach has a material adverse effect on the other ("**Non-Defaulting Party**")
- (a "**Relevant Breach**"), the Non-Defaulting Party may, provided the Relevant Breach (and not any resulting termination) gives rise to a material increase in credit risk for PS Gas Suppliers, request, by sending a Meeting Notice in accordance with paragraph 3 of the Terms of Reference, the Credit Committee agree to the giving of a Termination Notice by the Non-Defaulting Party to the Defaulting Party.
- 7.7 Subject to paragraphs 7.6 and 7.8, at a meeting convened pursuant to paragraph 7.6 the Credit Committee may direct that the Non-Defaulting Party give the Defaulting Party a Termination Notice to have effect on the date specified by the Credit Committee.
- 7.8 If the circumstances, the subject of the Meeting Notice sent in accordance with paragraph 7.6, are in the opinion of the Credit Committee capable of being remedied as determined in a Direction, the Non-Defaulting Party shall give notice to the Defaulting Party, setting out in reasonable detail:
- (a) the circumstances constituting the Relevant Breach;
  - (b) the remedy required to be taken and the period within which the circumstances are to be remedied, which period shall be of such length as a Reasonable and Prudent Operator would require in order to remedy the circumstances taking into account (where appropriate) the availability of Maintenance Days and shall not, in any event, be less than 30 Business Days; and
  - (c) the date on which the Non-Defaulting Party may give the Defaulting Party a Termination Notice where the Relevant Breach has not been remedied within the period specified in a Direction or the notice given in accordance with this paragraph 7.8.
- 7.9 If the Relevant Breach, the subject of the Meeting Notice sent in accordance with paragraph 7.6, is not, in the opinion of the Credit Committee, capable of being remedied as determined in a Direction, the Non-Defaulting Party may give the Defaulting Party a Termination Notice forthwith.
- 7.10 Notwithstanding the foregoing, where, within 15 Business Days of the date on which the Meeting Notice was sent by the Non-Defaulting Party pursuant to paragraph 7.6, the Credit Committee has failed to decide Directions in respect of that Termination Default, the Non-Defaulting Party shall be entitled, with the Authority's consent, to give the Defaulting Party a Termination Notice.
- 7.11 Either Party shall be entitled by written notice to the other, the effect of which shall be that Phoenix and the relevant Shipper shall cease to be bound by the Framework Agreement from the date specified in such notice where:
- (a) an encumbrancer takes possession of, or a liquidator, receiver or an administrator or examiner is appointed over any part of the assets of the other party or any security granted by the other party becomes enforceable;
  - (b) the other party is unable to pay its debts as they fall due or suspends making payments (including without limitation payments of principal or interest with respect to all or any class of its debts);

- (c) the other party suffering a distress, execution, sequestration or other process being levied or enforced upon or sued or against all or any substantial part of its assets, rights or revenues which is not discharged, stayed, or dismissed within 30 Business Days;
- (d) the other party ceasing to carry on its business or a substantial part of its business (unless such cessation is intended to be, and is, temporary and occasioned as a consequence of a Force Majeure event); or
- (e) any event similar, equivalent or analogous to any of the events specified in this paragraph 7.12 occurs in relation to the other party in any jurisdiction

provided that in the event that an administrator has been appointed over any part of the assets of the other party a Direction of the Credit Committee shall have first been sought and fully complied with.

- 7.12 Where a Party ceases to be bound by the Framework Agreement such cessation shall not extinguish or relieve either Party from the performance of any obligation accrued under the Code as at the time of such Party ceased to be bound by the Framework Agreement.
- 7.13 Where a Shipper ceases to be bound by the Framework Agreement pursuant to paragraphs 7.5, 7.10 and 7.11 the following payments shall immediately fall due and payable by the relevant Shipper (and the "**Due Date**" in relation to such payments shall for the purposes of the Code be the date of termination):
- (a) all of the following which are due, accrued or outstanding to Phoenix under the Code in respect of the period up to and including the date of termination:
    - (i) all PS Transmission Amounts;
    - (ii) all Code Charges;
  - (b) the following:
    - (i) the Forecast Postalised Capacity Charge payable in respect of all Phoenix Capacity held by the Shipper in the remainder of the Gas Year after the date of termination; and
    - (ii) the Forecast Postalised Commodity Charge that would be payable in respect of the Shipper's aggregated Phoenix Daily Allocated Quantities if such quantities together were taken to equal 80% of all Phoenix Capacity held by the Shipper in the remainder of the Gas Year after the date of termination; and
    - (iii) Phoenix's estimate of the PS Transmission Amounts that would be payable in respect of all Phoenix Capacity held by the Shipper in all future Gas Years (had no such termination occurred) provided that such sums shall be adjusted to take account of:
      - (1) Phoenix's estimate of the amount (if any) by which it shall be able to mitigate the loss referred to in (iii) above;
      - (2) inflation (which shall be assumed to continue at the rate of RPI at the date of termination);
      - (3) any change in the PS Transmission Amounts to reflect any change in the capacity/commodity split of the tariff; and

- (4) the net present value of the amount payable at LIBOR,

provided that, for the avoidance of doubt, in relation to a Transit Shipper, only amounts referred to in paragraph 7.14(a)(ii) shall fall due and payable by that Transit Shipper.

7.14 Where a Shipper ceases to be bound by the Framework Agreement pursuant to paragraphs 7.5, 7.10 and 7.11 Phoenix shall, as soon as reasonably practicable, and in any event not later than the 5th Business Day following termination, issue the Shipper with an invoice (a **Termination Invoice**) which shall set out the following:

- (a) the identity of the Shipper;
- (b) the period to which the Termination Invoice relates; and
- (c) a detailed breakdown of each of the sums payable under paragraph 7.13.

7.15 The Shipper shall, no later than 30 Business Days following receipt of the Termination Invoice pay to the PoT Account all sums payable under paragraph 7.14, with the exception of payments due under paragraph 7.13(a)(ii), which shall be payable to Phoenix in accordance with the provisions of the Code.

7.16 If the Shipper fails to pay any sum due as detailed in the Termination Invoice by the date specified in paragraph 7.16, interest on such overdue amount shall accrue at LIBOR plus 3% compounded monthly from the date specified in paragraph 7.15 until the date payment is made.

## 8 Notices

8.1 Any notice or other communication given or made by a party under the Code shall be:

- (a) in writing and may be delivered by hand to the addressee, or sent by first class prepaid letter, to the address of the addressee or sent by fax to the addressee's fax transmission number specified in writing by the addressee or such other address or number as may be notified by a party to the other from time to time in writing for this purpose; and
- (b) deemed to have been given or made and delivered, if by hand, when left at the relevant address, if by letter, on the second day after posting, and if by fax transmission between the hours of 09:00 and 17:00 on Monday to Thursday and between the hours of 09:00 and 16:00 on Friday, at the time of receipt by the sender of confirmation of transmission and otherwise at 09:00 on the next Business Day after transmission;
- (c) marked clearly and conspicuously for the attention of Phoenix or the Shipper (as appropriate).

8.2 If a communication by fax is received in an incomplete or illegible form:

- (a) if the addressee so requests (by telephone or otherwise), the sender shall promptly retransmit the communication to the addressee; and
- (b) provided that the request for re-transmission was made within 24 hours after time of receipt (in accordance with paragraph 8.1) of the first fax, the communication shall not be deemed to have been received until the time (whether or not between 09:00 and 17:00 hours) of receipt by the sender of confirmation of such retransmission.

8.3 The Parties shall agree procedures for giving operational communications.

## **9 Waiver**

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

## **10 Severance**

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

## **11 Entire Agreement**

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

## **12 Shippers**

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

## **13 Third Party Rights**

A person who is not a party to the Code shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Code or any Accession Agreement or agreement expressed to be supplemental hereto notwithstanding that any such term may purport to confer or may be construed as conferring a benefit on such third party. The provisions of this paragraph 13 shall not affect any right or remedy of such third party which exists or is available apart from the Act.

## **14 Assignment**

- 14.1 Subject to paragraph 14.4 a party may assign its rights under the Code and the Accession Agreement:
- (a) to an Affiliate (the definition of Affiliate shall be amended for these purposes so that a shareholding of 33<sup>1</sup>/<sub>3</sub>% shall be considered to be control) of such party, provided that the assigning party shall continue to be bound by and liable under the Code, and the Accession Agreement;
  - (b) subject to paragraph 14.5 with the prior agreement in writing of each relevant other party or parties, which shall not unreasonably be withheld, to any person.
- 14.2 For the purposes of this paragraph 14 a relevant other party is:
- (a) where the assigning party is Shipper, Phoenix; and
  - (b) where the assigning party is Phoenix, each Shipper.
- 14.3 Except as provided in paragraph 14.1, or otherwise expressly provided in the Code, a party shall not assign or transfer and shall not purport to assign or transfer any of its rights or obligations under the Code, and the Accession Agreement.
- 14.4 No assignment shall be made to a person unless:
- (a) where the assigning party is Shipper, that person holds a Supply Licence if the assigning party has an Exit Point Registration in respect of an Exit Point in Northern Ireland;
  - (b) where the assigning party is Phoenix, that person holds a Licence to Convey Gas in Northern Ireland.
- 14.5 Where a Shipper assigns its rights under the Code and the Accession Agreement to a person (including a 33<sup>1</sup>/<sub>3</sub>% Affiliate) pursuant to paragraph 14.1 it shall be a condition precedent to such assignment that such person shall:
- (a) enter into an agreement with Phoenix covenanting to be bound by the Code and the Accession Agreement;
  - (b) satisfy the conditions precedent in the Accession Agreement.
- 14.6 Where any party assigns its rights under the Code and the Accession Agreement to a person pursuant to paragraph 14.1 the assigning party shall be released from its obligations under the Code and the Accession Agreement arising after the time at which the assignment is effective, but shall remain liable for any obligations accruing up to such time.
- 14.7 A reference in the Code and Accession Agreement to any party shall include a reference to that party's assigns.

## **15 Jurisdiction**

- 15.1 Subject and without prejudice to the provisions of Section J as to Expert Determination, all the Parties irrevocably agree that the courts of Northern Ireland are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Code and the Framework Agreement and that accordingly any suit, action or proceeding (collectively

"**proceedings**") arising out of or in connection with the Code or the Framework Agreement may be brought in such courts.

- 15.2 Each Party irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any proceedings in any such court as is referred to in paragraph 15.1 and any claim that any such proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any proceedings brought in Northern Ireland shall be conclusive and binding upon such Party and may be enforced in the courts of any other jurisdiction.
- 15.3 Any Party which is not a company incorporated under the Companies (Northern Ireland) Order 1986 shall provide to the Operator an address in Northern Ireland for service of process on its behalf in any proceedings.

## **16 Governing Law**

The Code and the Framework Agreement shall be governed by, and construed in all respects in accordance with, the law of Northern Ireland.

## SECTION K: INTERPRETATION

### 1 Definitions

In addition to the terms defined elsewhere in the Code, the following terms and expressions shall have the following meanings in the Code:

"**Accession Agreement**" means an agreement pursuant to which a Shipper accedes to the Framework Agreement;

"**Accounting Ratios**" means FFO Interest Coverage and FFO to Total Debt;

"**Actual Pressure Drop**" means, where greater than the Anticipated Pressure Drop, the actual drop in pressure consequent on the conveyance of gas in the Phoenix System;

"**Anticipated Pressure Drop**" means the anticipated drop in pressure consequent on the conveyance of gas in the Phoenix System as set out in the prevailing Pressure Report;

"**Auxiliary Payment**" has the meaning given to it in the Phoenix Licence;

"**Average Code Charges**" means the mean average Code Charge cost per unit of gas Exited from the Phoenix System, calculated by taking the sum of all Code Charges invoiced to Shippers by Phoenix in the 12 Month period ending on the end of the Month before the date in which the calculation is required to be performed, and dividing such sum by the quantity of gas exited from the Phoenix System over the same 12 Month period for the avoidance of doubt, for this purpose the quantity of gas exited includes that amount of gas exited by Transit Shippers at the Connected System Exit Point;

"**Belfast Metering Agreement**" means the agreement of that name between PTL and Phoenix;

"**BGE(UK)L**" means Bord Gais Eireann (UK) Limited;

"**BGE (NI) System**" means the transmission pipe-line and connected facilities owned and operated by BGE(UK)L and connected to the Phoenix Owned System at the Carrickfergus Exit Point;

"**Capacity Transfer**" has the meaning given to it in the PTL Code;

"**Code**" means this Network Code Principal Document as from time to time amended by the Modification Rules or the Phoenix Licence, and references to the Code are to the Code as given contractual effect by the Framework Agreement;

"**Code Charges**" means any charge the basis of which is set out in the Code (and not the Phoenix Licence) from time to time;

"**Conveyance Charge Statement**" means the statement of conveyance charges to be prepared by Phoenix in accordance with condition 2.3 of the Phoenix Licence;

"**CPI**" means the General Index of Consumer Prices – All Items (1996 = 100) as published in the Office of National Statistics "Monthly Digest of Statistics" (Series Identifier CHVJ) or, if such index is no longer published, such comparable alternative as the Authority deems appropriate;

"**Credit Committee**" has the meaning given in the Terms of Reference;

"**Debt Notice**" has the meaning given to it in the Phoenix Licence;

"**Debt Payment**" has the meaning given to it in the Phoenix Licence;

"**Debt Repayment**" has the meaning given to it in the Phoenix Licence;

"**Designated Pipe-line Operator**" means a person licensed to convey gas under Article 8(1)(a) of the Order through the NI Network;

"**Designation Date**" has the meaning given to it in the Phoenix Licence;

"**Directions**" means any direction made by the Credit Committee in accordance with Terms of Reference;

"**Distribution Framework Agreement**" means the agreement between Phoenix and each Shipper pursuant to which the Phoenix Distribution Code is given contractual effect;

"**Distribution Shipper**" means Phoenix, acting as a Shipper in the Distribution Capacity;

"**Distribution Utility**" means a utility that operates in a smaller service area than a transmission utility with increased exposure to the local market conditions and that delivers gas to customers at a level that can be used in homes and businesses;

"**Downstream Load Statement**" means the statement of that name to be submitted to PTL (and made available to Phoenix) establishing the maximum quantities of gas the PTL Shipper expects to offtake, from time to time, at a Phoenix Exit Point;

"**Due Date**" means the date on which payment of an invoice in respect of any PS Transmission Payment and Code Charges falls due, being the 10th Business Day in the Month next after the Month in which the relevant invoice was issued;

"**FFO Interest Coverage**" means the ratio of net income from continuing operations plus depreciation, amortisation, deferred income taxes and other non cash items and gross interest, to gross interest;

"**FFO to Total Debt**" means the net income from continuing operations plus depreciation, amortisation, deferred income taxes and other non cash items divided by total debt, expressed as a percentage;

"**Forecast Postalised Charges**" means, with respect to a Shipper, that Shipper's Forecast Postalised Capacity Charge and Forecast Postalised Commodity Charge;

"**Forecast Supplier Quantity**" has the meaning given to it in the Phoenix Licence;

"**Framework Agreement**" means the agreement between Phoenix and each Shipper pursuant to which the Code is given contractual effect;

"**Gas Specification**" means the specification or other requirements as to the composition, pressure and temperature and other characteristics of gas delivered at the Phoenix Entry Point specified in Annex E-1;

"**Gas Supplier**" has the meaning given to it in the Phoenix Licence Section 2A.1.1 Definitions;

"**Generation Utility**" means a utility involved in the production of electricity;

"**Integrated Utility**" means a utility which operates both as a Distribution Utility and Transmission Utility;

"**Meeting Notice**" has the meaning given to it in paragraph 3 of the Terms of Reference;

"**Modification Rules**" means the modification rules (which do not form part of and are not incorporated into the Code) prepared by Phoenix pursuant to the Phoenix Licence;

"**Monthly Postalised Capacity Payment**" has the meaning given to it in the Phoenix Licence;

"**Monthly Postalised Commodity Payment**" has the meaning given to it in the Phoenix Licence;

"**Net Assets**" means, on any particular date, Total Assets minus Total Liabilities, as of such date;

"**NI Network**" means the BGE (NI) System, the Phoenix System and the PTL System;

"**Northern Ireland Network Operators Agreement**" means the agreement of that name between PTL, BGE(UK)L and Phoenix;

"**Order**" means the Gas (Northern Ireland) Order 1996;

"**Phoenix**" means Phoenix Natural Gas Limited, as licensee under the Phoenix Licence;

"**Phoenix Distribution Code**" means the network code prepared by Phoenix and setting out the transportation arrangements in relation to the Phoenix Distribution System, as modified from time to time;

"**Phoenix Distribution System**" means the distribution system owned and operated by Phoenix;

"**Phoenix Licence**" means, at any time, the licence (as amended from time to time) to convey gas or participate in the conveyance of gas granted under Article 8 (1) (a) of the Gas (Northern Ireland) Order 1996 (as amended), which is held by Phoenix at that time;

"**Postalised System**" has the meaning given to it in the Phoenix Licence;

"**PoT Account**" means the bank account into which all monies paid by Gas Suppliers in respect of PS Transmission Payments should be paid in accordance with Section F;

"**Pressure Report**" means the Northern Ireland Gas Transmission System Pressure Report prepared by PTL and BGE(UK)L in consultation with Phoenix from time to time in accordance with the Northern Ireland Network Operators Agreement;

"**Provided Level of Credit Support**" means in respect of a Shipper or Prospective Shipper the sum of the Secured Credit Support and Unsecured Credit Support which it has provided to Phoenix in accordance with Section G;

"**PS Gas Supplier**" means any person who is entitled to exit gas from the Postalised System;

"**PTL**" means Premier Transmission Limited, as owner and operator of the PTL System;

"**PTL Code**" means the network code prepared by PTL pursuant to the terms of the PTL Licence, as from time to time modified;

**"PTL Framework Agreement"** means the agreement between PTL and each Shipper pursuant to which the PTL Code is given contractual effect;

**"PTL Licence"** means the Licence for the conveyance of gas granted to PTL, as from time to time in force;

**"PTL Shipper"** means a person other than PTL who is for the time being bound by the PTL Code pursuant to the PTL Framework Agreement (and who is bound to the Code pursuant to the Framework Agreement);

**"PTL System"** means the transmission pipe-line and connected facilities owned and operated by PTL and connected to the Phoenix System at the PTL Ballylumford Exit Point;

**"Quarterly Exit Quantities"** has the meaning given to it in the Phoenix Licence;

**"Reasonable and Prudent Operator"** means a person acting in good faith with the intention of performing its contractual obligations under the Code and who in doing so and in the general conduct of its undertaking, exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced operator complying with applicable law and engaged in the same type of undertaking and under the same or similar circumstances and conditions;

**"Reconciliation Payment"** has the meaning given to it in the Phoenix Licence;

**"Required Level of Credit Support"** means in respect of a Shipper or Prospective Shipper the minimum level of credit which Phoenix shall require such Shipper or Prospective Shipper to establish and maintain in accordance with Section G;

**"RPI"** means the Retail Price Index and is the standard classification index numbers of retail prices as published by the Office of National Statistics in the "Monthly Digest of Statistics" or any successor to such index published by such office or any department of HM Government;

**"RPI<sub>n</sub>"** means, and be calculated annually, the arithmetic average of the monthly values of RPI for the 12 months up to and including June of each year;

**"RPI<sub>0</sub>"** means the arithmetic average of the monthly values of RPI for the 12 months in the period July 1993 to June 1994;

**"Shipper"** means a person other than Phoenix (but subject to Section J2) who is for the time being bound by the Code pursuant to the Framework Agreement and who is bound to the PTL Code pursuant to the PTL Framework Agreement;

**"Supplemental Payment"** has the meaning given to it in the Phoenix Licence;

**"Supply Licence"** means a licence to convey gas granted under Article 8(1)(c) of the Order;

**"Terms of Reference"** means the Terms of Reference appended to the Code in Appendix 3;

**"Termination Notice"** means a notice setting out the date on which Phoenix or a Shipper shall cease to be bound by the Framework Agreement given in accordance with Section J7;

**"Total Assets"** means, on any particular date, all assets of the Securer which, in accordance with generally accepted accounting principles in the country in which that Securer is organised and on a basis consistent with prior periods, would be classified as assets upon the balance sheet of that Securer as of such date;

"**Total Liabilities**" means, on any particular date, all liabilities of the Securer which, in accordance with generally accepted accounting principles in the country in which that Securer is organised and on a basis consistent with prior periods, would be classified as liabilities upon the balance sheet of that Securer as of such date;

"**Transit Shipper**" means a Shipper which only ships gas through the Phoenix System for exit into another part of the NI Network (and which does not exit gas from the Phoenix System into a pipe-line outside of the NI Network);

"**Transmission Utility**" means a utility that operates in large, long life network assets that transport the utility in bulk form, usually at high voltages/pressures /volumes from a source of supply to a distribution system;

"**Utility Categorisation**" means the categorisation of a utility as one of the following: a Transmission Utility, a Distribution Utility, an Integrated Utility or a Generation Utility;

"**VAT**" means the tax applied pursuant to the Value Added Tax Act 1994 and

"**Wilful Misconduct**" means an intentional and conscious disregard of any obligation owed by Phoenix under the Code or any failure to act by Phoenix which is in reckless disregard of the consequences Phoenix knew such act or failure to act would have, but shall not in either case include an error of judgement or a mistake made in good faith.

## **2 Interpretation**

2.1 Unless the context otherwise requires, words and expressions defined in or for the purposes of the Order or the Phoenix Licence and not otherwise defined in the Code shall have the meanings ascribed thereto under the Order or the Phoenix Licence.

2.2 In the Code, unless the context otherwise requires:

- (a) a reference to a particular Section, paragraph, or Annex is to a paragraph or Section of or Annex to a Section of the Network Code Principal Document;
- (b) a reference in a particular Section to a particular paragraph is to a paragraph of that Section;
- (c) words in the singular may be interpreted as including the plural and vice versa;
- (d) the word "including" is to be construed without limitation; and
- (d) a derivative term of any defined or interpreted term shall be construed in accordance with the relevant definition or interpretation.

2.3 A reference in the Code to any Legal Requirement shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment (before or after the date of the Code) of that Legal Requirement in force at that time.

2.4 A reference to the Order includes where the context permits a reference to directions, prescriptions or regulations made pursuant to the Order.

2.5 Section and paragraph headings in the Code and clause headings in the Framework Agreement and shall not affect the interpretation of any provision thereof.

2.6 An "**Affiliate**" of a specified percentage in relation to a body corporate is:

- (a) another body corporate which holds not less than the specified percentage of the voting rights of the first body corporate; or
- (b) a subsidiary of the first body corporate or of such a body corporate as is referred to in paragraph (a);

and for these purposes "voting rights", "holding" voting rights and "subsidiary" are to be construed in accordance with Article 4 of the Companies (Northern Ireland) Order 1986.

### 3 Times and dates

#### 3.1 For the purposes of the Code:

- (a) "**Business Day**" means a Day other than a Saturday or a Sunday, or a Day which begins at 06:00 hours on a bank holiday in Northern Ireland;
- (b) "**Day**" means the period from 06:00 hours on one day until 06:00 hours on the following day;
- (c) "**Gas Year**" means the period from 1st October in any year until and including 30th September in the following year.

#### 3.2 Unless the context otherwise requires, a reference in the Code:

- (a) to a calendar day (such as 1st January) or a day of the week (such as Sunday) is to the Day which begins at 06:00 hours on that day;
- (b) to a week is to the period from 06:00 hours on a day until 06:00 hours on the 7th day following;
- (c) to a month (or a number of months) is to the period from 06:00 hours on a day in one month until 06:00 hours on the same day of the month which follows (or follows by the relevant number of months), or if there is no such day in such month 06:00 hours on the first day of the next following month;
- (d) to a calendar month is to the period from 06:00 hours on the first day of a month until 06:00 hours on the first day of the following month, and references to a particular calendar month (such as January) shall be construed accordingly;
- (e) to a year is to the period from 06:00 hours on a day in one year until 06:00 hours on the same day (or where the day in the first year was 29th February, on 1st March) in the following year; and
- (f) to a calendar year (such as 2004) is to be construed accordingly.

#### 3.3 References to times of the day in the Code are to official time in the United Kingdom.

#### 3.4 Except where otherwise provided:

- (a) where anything is to be done under the Code by or not later than a Day or any period under the Code is to run to a Day, such thing may be done or such period shall run up to the end of such Day; and
- (b) where anything is to be done under the Code from or not earlier than a Day or any period under the Code is to run from a Day, such thing may be done or such period shall run from the start of such Day.

- 3.5 Where under any provision of the Code the Operator or a Shipper is required to provide any information by a certain date or time, the relevant provision shall be taken to include a requirement that such information shall be provided not earlier than is reasonable before such date or time.

#### **4 Technical interpretation**

- 4.1 In the Code, unless the context otherwise requires, "**gas**" means any hydrocarbons or mixture of hydrocarbons and other gases consisting primarily of methane which at a temperature of 15<sup>0</sup>C and an absolute pressure of 1.01325 bar are or is predominantly in the gaseous state.

- 4.2 Unless the context otherwise requires, for the purposes the Code a "**quantity**" of gas is a quantity in kWh

- 4.3 The following terms have the following meanings in the Code:

"**bar**": the bar as defined in ISO 1000-1981(E);

"**Cubic Metre**" or "**m<sup>3</sup>**": when applied to gas, that amount of gas which at a temperature of 15<sup>0</sup>C and an absolute pressure of 1.01325 bar and being free of water vapour occupies 1 cubic metre;

"**degree Celsius**" and "**°C**": the particular interval between the temperature in Kelvin and the temperature 273.15 Kelvin as defined in ISO 1000-1981(E);

"**gauge**" or its abbreviation "**g**": when used in relation to pressure, the pressure in excess of 1 standard atmosphere where 1 standard atmosphere is 1.01325 bar;

"**calorific value**": that number of Megajoules produced by the complete combustion at a constant absolute pressure of 1.01325 bar of 1 Cubic Metre of gas at a temperature of 15<sup>0</sup>C with excess air at the same temperature and pressure as the gas when the products of combustion are cooled to 15<sup>0</sup>C and when the water formed by combustion is condensed to the liquid state and the products of combustion contain the same total mass of water vapour as the gas and air before combustion; and for the avoidance of doubt calorific value shall be REAL as defined in ISO 6976-1:1983(E);

"**hour**": the hour as defined in ISO 1000-1981(E);

"**Joule**": the joule as defined in ISO 1000-1981(E);

"**kilogram**": the kilogram as defined in ISO 1000-1981(E);

"**kWh**": 3,600,000 Joules;

"**mbar**": one thousandth of a bar;

"**MCM**": 1,000,000 Cubic Metres;

"**Megajoule**" or "**MJ**": 1,000,000 Joules;

"**metre**": the metre as defined in ISO 1000-1981(E);

"**mol%**": molecular percentage;

"**MW**": 1,000,000 Watts;

"**pascal**": the pascal as defined in ISO 1000-1981(E)

"**ppm**": parts per million by volume;

"**Relative Density**": shall mean the mass of a volume of dry gas divided by the mass (expressed in the same units) of an equal volume of dry standard air as defined in ISO 6976-1:1983(E) both such gases being at a temperature of 15<sup>0</sup>C and an absolute pressure of 1.01325 bar; and Relative Density (REAL) shall for the avoidance of doubt be REAL as defined in ISO 6976-1:1983(E);

"**second**": the second as defined in ISO 1000-1981(E);

"**Specific Gravity**": the mass of a volume of dry gas divided by the mass (expressed in the same units) of an equal volume of dry standard air (as defined in ISO 6976-1:1983(E)) both gases being at a temperature 15<sup>0</sup>C and an absolute pressure of 1.01325 bar;

"**Watt**": 1 Joule per second; and

"**Wobbe Index**": when applied to gas, the calorific value divided by the square root of the Relative Density.

## APPENDIX 1

### FORM OF GUARANTEE

**THIS GUARANTEE** is made the [ ] day of [ ] 200 [ ] by [ ] a company [registered in England and having its registered office] [whose principal place of business is] at [ ] (the "Guarantor") in favour of Phoenix Natural Gas Limited a company registered in Northern Ireland (Number NI264210) having its registered office at 197 Airport Road West, Belfast BT3 9ED ("Phoenix")

#### WHEREAS:

- (A) [ ] a company [registered in England and having its registered office] [whose principal place of business is] at [ ] (the "**Shipper**") is a party to an Accession Agreement dated [ ] (the "**Accession Agreement**") by which it has agreed to be bound by the terms of the Code.
- (B) This Guarantee is made pursuant to the Code for the purposes of providing security for indebtedness of the Shipper in respect of its payment obligations under the Code.
- (C) The Guarantor has capacity to enter into this Guarantee and has taken all steps necessary to ensure that this Guarantee is valid and binding upon it in accordance with the terms hereof.

[**NOW THIS DEED WITNESSETH** and the Guarantor hereby agrees] [**IT IS AGREED**] as follows:

1 In this Guarantee:

"**Code**" has the meaning set out in the Accession Agreement and the terms "**PS Transmission Amounts**" and "**Due Date**" have the respective meanings given to them under the Code;

"**Payment Default**" means any failure by the Shipper to pay an amount properly due under an invoice issued in accordance with the Code by the Due Date;

"**Demanded Sum**" means a Demanded Overdue Sum or a Demanded Security Default Sum;

"**Demanded Overdue Sum**" means the sum specified in a written demand from Phoenix pursuant to Clause 2 of this Guarantee representing the amount unpaid by the Shipper under an invoice issued in accordance with the Code by the Due Date;

"**Demanded Security Default Sum**" means the full amount of this Guarantee where the Shipper has failed to procure the provision of security replacing this Guarantee to Phoenix by the time and in the manner contemplated in Sections G3.13, 3.14 or 4.2 of the Code (and so that the expression "the full amount of this Guarantee" shall mean the amount stated in Clause 5, less the amounts previously paid by the Guarantor to Phoenix pursuant to this Guarantee); and

"**Security Default**" means a failure such as is referred to in the definition of Demanded Security Default Sum in this Clause 1.

2 Subject to Clause 3, below, [In consideration of the payment of £1 payable on demand by Phoenix to the Guarantor] if and whenever there is a Payment Default the Guarantor shall, as primary obligor and not merely as surety, within [14] days of receipt of a written demand from Phoenix pay [the Demanded Overdue Sum] [ ]% of the Demanded Overdue Sum] into the following bank account:

[ ]

3 Notwithstanding the provisions of Clause 2, if the written demand referred to in that Clause is accompanied by a certificate signed by or on behalf of Phoenix stating that the Demanded Overdue Sum exceeds any PS Transmission Amounts (as defined in the Code) which are overdue for payment by the Shipper at the time of such written demand, the Guarantor will make payment of the excess to such other account(s) as may be specified by Phoenix in such written demand.

4 [In consideration of the payment of £1 payable on demand by Phoenix to the Guarantor, if] [If] there is a Security Default, the Guarantor shall within [14] days of receipt of a written demand from Phoenix pay the Demanded Security Default Sum to such bank account of Phoenix as is specified in such written demand.

5 The Guarantor's aggregate liability to Phoenix hereunder in respect of Demanded Overdue Sums and Demanded Security Default Sums shall not be greater than [ ].

6 Amounts payable by the Guarantor under this Guarantee shall be paid free of any restriction, reservation or condition and, except to the extent required by law, without deduction or withholding in respect of tax or on account of any amount due or becoming due to the Guarantor whether by way of set-off, counterclaim or otherwise provided that if any such payment is subject to any such deduction or withholding, the Guarantor shall forthwith pay to Phoenix such further amounts as may be necessary to ensure that Phoenix receives an amount equal to that which would have been received had no deduction or withholding been made.

7 This Guarantee is a continuing guarantee and shall remain in effect until [ ] r until terminated by or with the consent of Phoenix [or until the Shipper has arranged the release of the Guarantor in accordance with the provisions of the Code (which shall apply to this Guarantee as though incorporated herein)] whichever occurs first but without prejudice to any rights then accrued under this Guarantee.

8 The obligations of the Guarantor under this Guarantee are in addition to and not in substitution for any other security which Phoenix may now or in the future hold in relation to the payment obligations of the Shipper under the Code ("**Liabilities**") or any of them and may be enforced without Phoenix first having recourse to any such security and without Phoenix first taking steps or proceedings against the Shipper.

9 Neither the obligations of the Guarantor under this Guarantee nor the rights, powers and remedies conferred upon Phoenix by this Guarantee or by law shall be discharged, impaired or otherwise affected, in whole or in part, by:

- (a) the winding-up, dissolution, administration or reorganisation of the Shipper or any change in its status, functions, control or ownership;
- (b) any of the Liabilities or any of the obligations of the Shipper under the Accession Agreement or the Code or any security in respect of the Liabilities being or becoming illegal, invalid or unenforceable in any respect;
- (c) time or other indulgence being granted or agreed to be granted by Phoenix or any other person to, or any composition or other arrangement made with or accepted from:
  - (i) the Shipper in respect of the Liabilities or any of them; or
  - (ii) any person in respect of any such security;
- (d) any amendment to, or any variation, waiver or release of any of the Accession Agreement, the Code, the Liabilities or any such security;

(e) any failure to enforce, realise or fully to realise the value of, or any release, discharge, exchange of substitution or any such security;

(f) any failure (whether intentional or not) to take, or fully to take, or perfect any security now or hereafter agreed to be taken in relation to the Liabilities or any of them;

(g) the release of any other person under the terms of any composition or arrangement with any creditor thereof; or

(h) any other act, event or omission (whether or not known to the Guarantor or Phoenix) which, but for this Clause 9, would or might operate to discharge, impair or otherwise affect any of the obligations of the Guarantor under this Guarantee or any of the rights, powers or remedies conferred upon Phoenix by law to the intent that the Guarantor's obligations under this Guarantee shall remain in full force and this Guarantee shall be construed accordingly as if there were no such act, event or omission.

10 Where any settlement or discharge (whether in respect of the obligations of the Shipper or otherwise) is made in whole or in part, or any arrangement is made on the faith of any payment, security or other disposition which is avoided or has to be repaid on bankruptcy, liquidation or otherwise without limitation, the liability of the Guarantor under this Guarantee shall continue and Phoenix shall be entitled to recover the value or amount of such obligations subsequently as if such settlement or discharge or arrangement had not occurred. Phoenix shall be entitled to concede or compromise any claim that any payment, security or other disposition is liable to avoidance or repayment.

11 Until all amounts which may be or become payable under the Code or this Guarantee have been irrevocably paid in full:

(a) the Guarantor shall not as a result of this Guarantee or any payment or performance under this Guarantee be subrogated to any right or security of Phoenix or, in competition with Phoenix, claim or prove against the Shipper or any other person or demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in breach of this provision shall be held by the Guarantor in trust for and shall be promptly paid to Phoenix; and

(b) the Guarantor shall not hold any security from the Shipper in respect of this Guarantee and any such security which is held in breach of this provision shall be held by the Guarantor in trust for and shall promptly be transferred to Phoenix.

12 The Guarantor represents and warrants to Phoenix as follows:

(a) it has the power to enter into and perform, and has taken all necessary action to authorise the entry into, performance and delivery of, this Guarantee and the transactions contemplated hereby;

(b) this Guarantee constitutes its legal, valid and binding obligation enforceable against it;

(c) the entry into and performance by it of, and the transactions contemplated by, this Guarantee do not and will not:-

(i) conflict with any existing law or regulation or judicial or official order;  
or

(ii) conflict with its constitutional documents; or

(iii) conflict with any document which is binding upon it or any of its assets;

(d) all authorisations required to be obtained by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, this Guarantee have been obtained or effected (as appropriate) and are in full force and effect;

(e) it has not entered into this Guarantee in reliance upon, nor has it been induced to enter into this Guarantee by any representation, warranty or undertaking made by or on behalf of Phoenix (whether express or implied) which is not set out in this Guarantee.

13 Any notice to or demand on the Guarantor under this Guarantee may be delivered or sent by first class recorded delivery post or facsimile transmission to the Guarantor at its address appearing in this Guarantee or at such other address as it may have notified to Phoenix at the address for Phoenix stated in this Guarantee (or such other address as is notified by it to the Guarantor from time to time).

14 Phoenix shall be entitled by notice in writing to the Guarantor to assign the benefit of this Guarantee at any time to any person to whom it assigns or transfers its rights under the Accession Agreement without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this Guarantee.

15 The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Guarantee.

16 This Guarantee shall be governed by and construed in accordance with the laws of England and the Guarantor hereby submits to the exclusive jurisdiction of the courts of England [and appoints/insert name and address of person/company registered/resident in United Kingdom for service of notices and other communications under or relating to this Guarantee].

17 [The Guarantor shall be [jointly and severally liable] together with [insert name of other guarantor(s) of the Shipper] to pay [each and every Demanded Sum] [severally liable to pay to Phoenix such percentage as is specified in Clause 2 or 3 of this Guarantee of each and every Demanded Sum].]

[**IN WITNESS** whereof the Guarantor has caused this Guarantee to be executed as its deed the day and year first before written.]

[The Common Seal of [ ] was hereunto affixed in the presence of: [ ]]

## APPENDIX 2

### FORM OF LETTER OF CREDIT

Phoenix Natural Gas Limited  
197 Airport Road West  
Belfast  
BT3 9ED

1 We, by this letter, establish in your favour our irrevocable standby letter of credit No [ ] ("**this letter of credit**") for the account of [ ] (the "**Shipper**") available for drawing in one or more amounts. This letter of credit is issued in connection with the Shipper's payment obligations under the Code to which Phoenix and the Shipper are (or are about to be) bound (together the "**Documents**" which term shall include any document, as from time to time modified, which is by virtue of such Code or Accession Agreement made binding on the Shipper).

2 We understand that amendments or other variations or extensions may from time to time be made to the terms of the Documents and our obligations under this letter of credit, as set out below, will apply notwithstanding any such amendments or other variations or extensions provided that our maximum aggregate liability to you under this letter of credit shall not exceed [ ] and that we shall not be required to pay claims made by you under this letter of credit which are received by us after the expiry date of this letter of credit.

3 Subject to paragraph 4 below, we shall make all payments under this letter of credit into the following bank account:

[ ]

on your first written demand for payment when such demand is presented to us at [ ] accompanied by your certificate that the Shipper:

- (a) has failed to meet its payment obligations under the Documents; or
- (b) has failed to procure the provision of replacement security to you by the time and in the manner contemplated in Sections G3.13, 3.14 or 4.2 of the Code.

4 The amount of your demand under this letter of credit shall not, where your demand is accompanied by a certificate in the form described in paragraph 3(a) above, be greater than the total amount of sums then due and payable by the Shipper pursuant to the Documents.

5 Notwithstanding the provisions of paragraph 4, if the written demand referred to in that paragraph is accompanied by a certificate signed by or on your behalf stating that the amount demanded exceeds the PS Transmission Amounts (as defined in the Code) which are overdue for payment by the Shipper at the time of such written demand, we will make payment of the excess under this letter of credit to such other account(s) as may be specified by you in such written demand.

6 This letter of credit will expire on [ ] and the demand(s) and certificates(s) referred to in paragraph 3 and 5 of this letter of credit must be presented by you to us on or before that date. We undertake that all demands made in accordance with this letter of credit will be met with due honour.

7 This letter of credit is a transaction separate and independent from any other on which it may be based.

8 This letter of credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 revision) International Chamber of Commerce Publication No 500 insofar as the same are applicable (but so that article 41 thereof shall be deemed excluded and the second sentence of article

17 thereof shall be deemed excluded for this purpose with effect that, if this letter of credit expires during any interruption of business referred to in the first sentence of such Article, we shall remain liable to make payment under this letter of credit in respect of any demand no later than 15 business days after we have notified you that our business has ceased to be so interrupted), and, to the extent not inconsistent therewith, shall be governed by and construed in accordance with English Law and in the event of any dispute relating thereto we hereby agree to submit to the exclusive jurisdiction of the Courts of England

9 Amounts payable by us under this letter of credit shall be paid free of any restriction, reservation or condition and, except to the extent required by law, without deduction or withholding in respect of tax or on account of any amount due or becoming due to us, whether by way of set-off, counterclaim or otherwise, provided that if any such payment is subject to any such deduction or withholding, we shall forthwith pay to you such further amounts as may be necessary to ensure that you receive an amount equal to that which would have been received had no deduction or withholding been made.

Signed

[ ]

As a duly authorised signatory for and on behalf of [ ].

## APPENDIX 3

### CREDIT COMMITTEE TERMS OF REFERENCE

#### 1 Purpose of the Committee

- 1.1 The Credit Committee is appointed, on behalf of Designated Pipe-line Operators, PS Gas Suppliers and Shippers to manage the credit risk associated with the following defaults by a PS Gas Supplier or Shipper:
- (a) the non-payment by a PS Gas Supplier of any PS Transmission Payment (an "**NPTP Default**") or Code Charge (an "**NPCC Default**");
  - (b) a "**Termination Default**" which shall occur in any of the following circumstances:
    - (i) if the Provided Level of Credit Support fails to meet the Required Level of Credit Support from time to time [(an "**LPC Default**")];
    - (ii) the non-payment of all or part of a PS Invoice by a PS Gas Supplier by the Second Due Date;
    - (iii) the non-payment of all or part of any three or more PS Invoices by a PS Gas Supplier by their respective Due Dates;
    - (iv) the non-payment of all or part of a CC Invoice by a PS Gas Supplier by the Second Due Date;
    - (v) the non-payment of all or part of any three or more CC Invoices by a PS Gas Supplier by their respective Due Dates;
    - (vi) if a PS Gas Supplier shall have failed to submit a Nomination to the relevant Designated Pipe-line Operator for a period exceeding 12 months and having ceased to hold any Firm Capacity provided that that Designated Pipe-line Operator shall have first consulted with the PS Gas Supplier and obtained its agreement or the agreement of the Authority to such termination;
    - (vii) if a PS Gas Supplier, if it has an Exit Point Registration in respect of an Exit Point in Northern Ireland, has ceased to hold a valid Gas Supply Licence.
    - (viii) if a Shipper, if it has an Exit Point Registration in respect of an Exit Point in Northern Ireland, has ceased to hold a valid Gas Supply Licence unless that Shipper has prior written consent from the Authority to either:
      - (1) hold firm capacity; or
      - (2) has entitlement to Exit gas from the NI Network as if it had a Gas Supply Licenceprovided that the Shipper submits to the relevant Designated Pipe-line Operator a copy of such consent from the Authority
    - (ix) if a Shipper has an Exit Point Registration in respect of an Exit Point in Northern Ireland, without a valid Gas Supply Licence and on the basis that the Shipper has prior written consent from the Authority to either:

- (1) hold firm capacity; or
- (2) has entitlement to Exit gas from the NI Network as if it had a Gas Supply Licence

and such Shipper ceases to hold the relevant consent from the Authority.

- (x) if there is a breach as referred to in Section J7.6 of the Code and such breach is referred to the Credit Committee in accordance with Section J7.6 of the Code

provided that, in respect of (iv) or (v), none of the CC Invoices to which they relate, is subject to a bona fide dispute in accordance with Section G10.3 of the Code; or

- (c) if an administrator is appointed over any part of the assets of a Designated Pipe-line Operator or PS Gas Supplier (an "**Administration Default**").

1.2 The Credit Committee shall also be empowered to direct, subject to the Authority's consent, and pursuant to a request made by a Designated Pipe-line Operator or PS Gas Supplier in accordance with Section G5.2 of the Code, whether a PS Gas Supplier should be barred from meeting all or any part of its Provided Level of Credit Support through the provision of any or all forms of Unsecured Credit Support. Any such request shall be deemed a "**US Default**" on the part of the PS Gas Supplier in respect of which the request is made.

1.3 Each of the defaults referred to in paragraphs 1.1 and 1.2 shall be a "**Default**" for the purposes of these Terms of Reference ("**Terms**") and the relevant PS Gas Supplier shall be the "**Defaulting Shipper**".

1.4 The Credit Committee shall from time to time, when called upon in accordance with these Terms, instruct a Designated Pipe-line Operator from whose Designated Network a Defaulting Shipper exits gas (a "**Primary DPO**") and the Defaulting Shipper as to the steps to be taken as a consequence of or in relation to the Default in accordance with the Terms.

1.5 The Terms shall come into effect on 1 October 2004.

## 2 **Interpretation**

2.1 Except as expressly provided in these Terms or where the context otherwise requires, all terms that are defined in the Network Code to which these Terms are attached, where used in these Terms, shall have the same meaning as is ascribed to them in the Network Code. A reference to a section of a Network Code in these Terms shall, if appropriate, be treated as a reference to the equivalent section in another Network Code.

2.2 The following terms, when used in these Terms, except where expressly stated to the contrary or unless the context otherwise requires, shall have the corresponding meaning set out below:

**"Business Hours"** means any time between the 09:00 and 17:00 hours on a Business Day;

**"Code Charges"** means any amounts payable by a PS Gas Supplier under a CC Invoice in accordance with a Designated Pipe-line Operator's Network Code;

**"Defaulting Shipper"** has the meaning given to it in paragraph 1.3;

<b>"Direction"</b>	means a direction of the Credit Committee, in respect of a Default, that is issued to the relevant Primary DPO, any other Designated Pipe-line Operators and/or to a PS Gas Supplier in relation to the relevant Default and which direction is given in accordance with paragraph 6.1 of these Terms;
<b>"Licence"</b>	means the licence to convey gas held by the relevant Designated Pipe-line Operator;
<b>"Meeting Notice"</b>	means a notice of a Credit Committee meeting containing all information listed in paragraph 3.3 of these Terms (if available);
<b>"Members"</b>	means all members of the Credit Committee, being: <ul style="list-style-type: none"> <li>(a) all Designated Pipe-line Operators;</li> <li>(b) all PS Gas Suppliers from time to time; and</li> <li>(c) the Authority;</li> </ul>
<b>"Network"</b>	means, in relation to gas pipe-lines owned by the relevant Designated Pipe-line Operator, the gas pipe-lines designated by an order made pursuant to Article 59 of the Energy (Northern Ireland) Order 2003;
<b>"Network Code"</b>	means a particular Designated Pipe-line Operator's code governing the terms on which PS Gas Suppliers which are party to or bound by that code may convey gas through the Designated Pipe-line Operator's pipe-line network;
<b>"NI Network"</b>	means the system comprising all gas pipe-lines designated as being subject to a common tariff pursuant to all orders made pursuant to Article 59 of the Energy (Northern Ireland) Order 2003 in force at such time;
<b>"Primary DPO"</b>	has the meaning given to it in paragraph 1.4;
<b>"PSA"</b>	has the meaning given to that term in each Designated Pipe-line Operator's Licence;
<b>"PS Gas Supplier"</b>	means any person who is entitled to exit gas from the NI Network; and
<b>"PS Transmission Payments"</b>	means any payment which a Designated Pipe-line Operator is entitled or obliged to charge a PS Gas Supplier in accordance with Condition 2A of such Designated Pipe-line Operator's Licence.
<b>"Shipper"</b>	has the meaning given to it in Section K Interpretation of the Code

### 3 Convening the Committee

#### 3.1 Meetings of the Credit Committee:

- (a) shall be convened by a Primary DPO on the occurrence of any Default; or

- (b) may be requisitioned by any PS Gas Supplier or Designated Pipe-line Operator if it is permitted to do so in accordance with the provisions of a Network Code,

on the giving of no less than 3 Business Days' written notice (a "**Meeting Notice**") to all of the Members in accordance with the provisions of this paragraph 3.

3.2 A meeting of the Credit Committee may be called on shorter notice than required under paragraph 3.1 of these Terms if all Members entitled to vote on the particular matter or matters to be considered unanimously agree.

3.3 A Meeting Notice shall include:

- (a) details of the time and place of the meeting;
- (b) any information required to be submitted under paragraph 4.4(a)
- (c) the name(s) of the Member(s) calling or requisitioning the meeting;
- (d) if issued in respect of a Default, the Defaulting Shipper's identity and full details of the Default;
- (e) if requisitioned under paragraph 3.1(b) the reason(s) for such a requisition, including full details of the matters to be discussed at the meeting, and the Directions sought by the requisitioner; and
- (f) the name of the proposed chairman.

3.4 Each Meeting Notice shall be served by the Member calling the meeting on each other Member by post to their respective addresses as specified in Schedule 1 to these Terms, or by fax and post to a Member who supplies a fax number in Schedule 1 or to such other address and/or fax number as may be, from time to time, notified by a Member to each other Member as its address and/or fax number for the receipt of notices.

3.5 The Credit Committee shall convene at the time and date appointed in the Meeting Notice, such time to be within normal Business Hours and, subject to paragraph 3.2, no less than 3 Business Days and no more than 10 Business Days after the issue of such Meeting Notice. Meetings shall take place at the offices of the Authority unless another venue is unanimously agreed by all the Members entitled to attend such meeting.

#### 4 **Chairman, Quorum and Adjournment**

4.1 The chairman of a meeting of the Credit Committee (the "**Chairman**") shall be the relevant Primary DPO, provided that if the Primary DPO which is appointed Chairman is not present at the meeting then, before any business is conducted at such a meeting, the Member(s) present shall appoint a Chairman by agreement and provided further that the Chairman shall be any one of the Designated Pipe-line Operators or the Authority present at the meeting, and if no agreement is reached, shall be the Authority. If there is more than one Primary DPO in relation to the relevant PS Gas Supplier, or if there is no relevant Primary DPO then the Authority shall decide (having regard to the matters to be discussed at the meeting and any relevant financial consequences such matters may have in respect of each Primary DPO or other Designated Pipe-line Operator) which of the Primary DPOs or (where there is no Primary DPO) the Designated Pipe-line Operators shall be the Chairman.

4.2 The quorum for a meeting of the Credit Committee shall be at least two PS Gas Suppliers entitled to vote in accordance with paragraph 5.3 (as subject to paragraph 5.2) on the matters in respect of which the meeting is called unless either:

- (a) only one PS Gas Supplier is eligible to vote on such matters, in which case the quorum shall be that PS Gas Supplier; or
  - (b) no PS Gas Supplier is eligible to vote on such matters, in which case the Chairman shall constitute a quorum.
- 4.3 If, within 30 minutes of the time appointed for the convening of a Credit Committee meeting, a quorum is not present, the Chairman may adjourn the meeting to any time in Business Hours not less than two Business Days, and not more than ten Business Days, after the day on which the meeting was convened. Notice of an adjourned meeting (an "**Adjourned Meeting Notice**") shall be sent to all Members by the Chairman on the day of such adjournment. Such Adjourned Meeting Notice shall contain the same details as required to be included in a Meeting Notice in accordance with paragraph 3 of these Terms. If at such adjourned meeting there is no quorum as provided for under paragraph 4.2, one PS Gas Supplier entitled to vote at that adjourned meeting shall comprise a quorum or, if no PS Gas Supplier is entitled to vote at that adjourned meeting, the Chairman shall constitute a quorum.
- 4.4 Subject to paragraph 4.7, before the meeting, the Chairman shall be responsible for:
- (a) procuring in a timely manner any information required for the proper discussion of issues to be considered at the meeting, including the submission of requests for information from the Primary DPO and Defaulting Shipper prior to the meeting; and
  - (b) requesting from the PSA the PS Invoices required to calculate the voting rights of each member in accordance with paragraph 8.1.
- 4.5 At the meeting, the Chairman shall be responsible for:
- (a) chairing that meeting of the Credit Committee;
  - (b) directing a discussion of:
    - (i) the nature of the Default or Defaults, if any, under consideration, with, where appropriate, the aid of any information (including any draft Directions) provided by the Primary DPO prior to the meeting;
    - (ii) appropriate steps to be taken by the Primary DPO to remedy the Default, with reference to the Licence and the relevant Network Code; and
    - (iii) appropriate sanctions, if any, to be applied by the Primary DPO to the Defaulting Shipper.
- 4.6 After the meeting, the Chairman shall be responsible for:
- (a) producing minutes of the meeting; and
  - (b) distributing written copies of those minutes and any Directions to all Members in accordance with paragraphs 7.9 and 8.4.

## 5 **Composition and Entitlement to Vote**

- 5.1 On each matter considered by a Credit Committee meeting, Members of the Credit Committee shall be divided into Members entitled to vote ("**Voting Members**") and Members not entitled to vote ("**Non-Voting Members**"). For the avoidance of doubt, if a Member is not entitled to vote on a particular matter due to paragraph 5.2 they may, subject always to paragraph 5.2, vote on other matters under consideration at the same meeting.

- 5.2 The following Members shall be Non-Voting Members in respect of a particular matter under consideration at a Meeting:
- (a) the Authority;
  - (b) each Designated Pipe-line Operator;
  - (c) the PS Gas Supplier in respect of which the Default under consideration arose; and
  - (d) in relation to any Directions which are put to the vote of the Credit Committee that pertain to an NPCC Default, PS Gas Suppliers not party to the relevant Network Code.
- 5.3 Subject to paragraphs 5.2(c) and (d) each PS Gas Supplier shall be a Voting Member in respect of a matter under consideration at a Meeting.
- 5.4 If no Member at the relevant quorate meeting is entitled to vote the Chairman shall have a vote. In no other circumstances shall the Chairman, in that capacity, be entitled to vote at meetings.

## 6 Credit Committee Powers

- 6.1 Subject to paragraphs 6.2 and 6.3, the Credit Committee shall have the power to make any of the following directions (each a "**Direction**") in accordance with these Terms and the terms of the Network Code:
- (a) where a Termination Default or an Administration Default has occurred, require a Primary DPO to terminate its Defaulting Shipper's Accession Agreement;
  - (b) where a Termination Default or an Administration Default has occurred, require a Primary DPO not to terminate its Defaulting Shipper's Accession Agreement;
  - (c) where a breach referred to in Section J7.6 of the Network Code has occurred, to determine whether that breach of the Network Code is capable of remedy;
  - (d) where any Default has occurred, require a Primary DPO to enforce a specified sum of the security it holds in relation to its Defaulting Shipper in favour of the PoT Account in the case of an NPTP Default, or the Primary DPO's Account in respect of an NPCC Default;
  - (e) where any Default has occurred, require a Primary DPO to settle a claim for non-payment against its Defaulting Shipper on such terms as the Credit Committee determines;
  - (f) where an LPC Default has occurred, require the Primary DPO to waive the requirement for a Defaulting Shipper to provide the Provided Level of Credit Support which would otherwise be required of that Defaulting Shipper, for a specified period;
  - (g) in the event of an NPTP Default or an NPCC Default, require the Primary DPO to agree a payment plan on such terms as the Credit Committee directs with a Defaulting Shipper which specifies dates on which future payments will be made;
  - (h) where any Default has occurred, require a Primary DPO to engage the services of recognised legal and/or financial professionals in relation to that resolution of the circumstances giving rise to a Default;

- (i) where the Voting Members of the Credit Committee reasonably believe further pursuit of a non-payment is likely to be economically detrimental to the PS Gas Suppliers, they may vote to direct a Primary DPO that no further action need be taken in respect of that non-payment;
- (j) in the event of a US Default, a Direction in accordance with paragraph 1.2;
- (k) where any Default has occurred, require a Primary DPO to disallow the Defaulting Shipper from:
  - (i) acquiring Firm Capacity by a transfer;
  - (ii) reserving additional Firm Capacity;
  - (iii) submitting a Nomination in respect of an Interruptible Nominated Quantity; or
  - (iv) applying for any Exit Point Registration; and
- (l) where a request for a Direction from the Credit Committee has been made under Section G5.3 of the Code, require a Primary DPO to re-assess a PS Gas Supplier's Required Level of Credit Support and/or a PS Gas Supplier's Provided Level of Credit Support,

provided that, the Credit Committee shall not be permitted to make any Direction which may delay or frustrate the application of the procedures for the recovery of Debt Payments from PS Gas Suppliers in accordance with any relevant Licence.

6.2 Any Direction given under the powers conferred at paragraph 6.1(b), paragraph 6.1(f), paragraph 6.1(j) or paragraph 6.1(a) (but in relation to 6.1(a), only where in relation to a Termination Default, such Termination Default relates to a breach as referred to in Section J7.6 of the Network Code) shall not be capable of exercise unless and until the Authority has given its consent.

6.3 Where the Credit Committee makes a Direction under paragraph 6.1(d) in respect of:

- (a) an NPTP Default, it may only direct the Primary DPO to enforce security up to the value calculated in accordance with Section G3.2 of the Network Code or, where appropriate, the equivalent sections in another Network Code; and
- (b) an NPCC Default, it may only direct the Primary DPO to enforce security up to the value calculated in accordance with Section G3.3 of the Network Code or, where appropriate, the equivalent sections in another Network Code.

## 7 **Attendance and Proceedings at Meetings**

7.1 Each Member may be represented by up to three persons at a Credit Committee meeting.

7.2 On receipt of a Meeting Notice and until the issue of a Direction, all Members shall meet as frequently as is reasonably necessary to carry out their duties.

7.3 A person shall be treated as present in person at a meeting notwithstanding that he is not physically present at the place where the meeting is held if he is in continuous communication with the meeting by conference telephone or other communication equipment permitting each person physically present at or so in communication with the meeting to hear and be heard by each other person.

- 7.4 If any Member fails or is unable to attend a meeting (an "**Absent Member**") it may in writing appoint a nominee (a "**Nominee**") to speak and/or vote for it. A Nominee may be any other Member of the Credit Committee who consents to act as a Nominee on the Absent Member's behalf. Any Member, present at a meeting of the Credit Committee, and acting as Nominee only counts once toward the quorum (on its own behalf) and may not vote on behalf of the Absent Member on any matter in respect of which the Nominee or the Absent Member is a Non-Voting Member.
- 7.5 Members shall keep confidential all information which comes into their possession in carrying out their duties under these Terms and shall not communicate any Credit Committee or personal view regarding any matter discussed at a Credit Committee meeting to any person who is not a Member except with the consent of the Credit Committee, where its respective licence or Network Code requires, where the Authority requires, or as required by law.
- 7.6 Any Voting Member may require that a Defaulting Shipper be excluded from any part of the relevant meeting of the Credit Committee.
- 7.7 Members shall use all reasonable endeavours to make Directions promptly and to the best of their ability, and shall conduct themselves honestly and diligently whilst carrying out their duties under these Terms and shall act without undue discrimination against any PS Gas Supplier.
- 7.8 The proceedings of the Credit Committee shall be conducted in private.
- 7.9 The Chairman shall keep a minute of the meeting of the Credit Committee and shall circulate such minute to all Members present within 3 Business Days of the relevant Meeting except such minute shall not be circulated to, or otherwise provided to the Defaulting Shipper. The Chairman shall send a copy of such minute to the Authority, and any Member who disputes the accuracy of such minute shall make such amendments or additions it sees fit and send those amendments or additions to the Authority within 3 Business Days of receipt of the minute from the Chairman.
- 7.10 A person shall not represent a Member if:
- (a) the Authority has given notice to the person that circumstances exist which in the opinion of the Authority would make it difficult for such person to act in the best interests of the Credit Committee or render such representation detrimental to the fair operation of the Credit Committee;
  - (b) he becomes bankrupt or compounds with his creditors;
  - (c) he, or any body of which he is, or has been, a director, partner or controller be the subject of any complaint or investigation of misconduct or of malpractice in connection with his or its business affairs and the Authority decides that it is undesirable that he represent a Member; or
  - (d) he is dismissed or requested to resign from any office of employment or from any fiduciary office or position of trust, whether or not remunerated, and the Authority resolves that it is undesirable that he represent a Member.

## 8 **Directions and Voting**

- 8.1 At a meeting a Voting Member shall hold one vote per £1 worth of PS Transmission Payments invoiced to it during the six Months immediately prior to the Month in which the meeting is convened.

8.2 Directions may be passed by the written consent of all Members who would, if present at a meeting of the Credit Committee called to decide such a matter, be Voting Members and shall be in the form submitted to all Members by the convening Member prior to a meeting, and, if passed, will obviate the need for such meeting.

8.3 Directions shall be passed by the Credit Committee:

- (a) at a quorate meeting by a simple majority of the votes cast by Members present and entitled to vote (abstentions not forming part of the count for these purposes); or
- (b) by the Chairman on receipt of the written consent of all Members entitled to vote to any draft Directions submitted to all Members in writing prior to the meeting.

8.4 Written copies of all Directions passed at a meeting shall be sent to all Members no later than three Business Days after the meeting is concluded by the Chairman.

## 9 **Fees and Expenses**

9.1 Members of the Credit Committee shall be responsible for their own costs and expenses incurred in fulfilling their duties.

## 10 **Modification**

10.1 For the avoidance of doubt these Terms may be modified in accordance with the Modification Rules.

## **SCHEDULE**

### **Addresses**

**[For each Designated Pipe-line Operator and all Shippers]**