

BORD GÁIS ÉIREANN

as the Transporter

and

[COMPANY]

as a Shipper

LDM AGREEMENT

VERSION 1.01
POST CONSULTATION DRAFT

18 FEBRUARY 2005

IMPORTANT NOTE

The Commission directed Bord Gáis Éireann to develop legal drafting of the Unified Code of Operations ("**UCOP**") to reflect the Business Rules published by the Commission on 23 July 2004 and the underlying principles of the GMOWG Business Models, and to publish the legal drafting so developed for consultation with industry.

The consultation legal drafting in respect of the LDM Agreement was published on the 19th November, 2004. The attached represents the legal drafting of the LDM Agreement re-drafted by Bord Gáis Éireann in accordance with the directions of the Commission following consultation with industry participants including the Commission, Shippers and the Transporter.

CONTENTS

| Clause | Page |
|---|-------------|
| 1. Definitions and Interpretation | 2 |
| 2. Conditions Precedent | 4 |
| 3. Term..... | 5 |
| 4. Code of Operations | 5 |
| 5. Offtake Point..... | 5 |
| 6. Capacity | 5 |
| 7. Nominations and Renominations..... | 6 |
| 8. Notice Period | 6 |
| 9. Information and Confidentiality | 6 |
| 10. Payments | 7 |
| 11. Assignment | 7 |
| 12. Liabilities | 7 |
| 13. End User Contact Details..... | 7 |
| 14. General..... | 8 |
| Schedule 1 LDM OFFTAKE POINT PARAMETERS..... | 10 |

"Effective Date" means the date of signature of this Agreement by the Parties;

"End User's Offtake Facilities" means the plant, machinery and equipment to be designed, owned and operated by the Transporter (including control valves and metering equipment) located immediately upstream of the LDM Offtake as referred to in Schedule 1;

"LDM Capacity Booking Period" has the meaning given to that term in the Code and, for the purposes of this Agreement, is the LDM Capacity Booking Period specified in Clause 3;

"LDM Offtake" as defined in the Code, means more particularly the flange, weld or other agreed mark at the fence line boundary at which the outlet pipe from the End User's Offtake Facilities crosses and meets the End User's Facilities;

"MHQ" or **"Maximum Hourly Quantity"** has the meaning given to that term in the Code and, for the purposes of this Agreement, is the MHQ specified in Schedule 1;

"Parties" means the Transporter or the Shipper and **"Party"** means any one of them;

"Payment Start Date" means the first day of the LDM Capacity Booking Period;

"Ramp Rate" is the rate specified as such in Schedule 1;

"Shipper's Conditions Precedent" means the conditions set out in Clause 2.3;

"Start Date" means the later of the Day after the Day upon which: (a) the last of the Conditions Precedent is satisfied; or (b) the Transporter determines that all Conditions Precedent shall be deemed to have been satisfied, provided always that such date shall be no earlier than the first Day of the LDM Capacity Booking Period; and

"Transporter's Conditions Precedent" means the conditions set out in Clause 2.2.

1.3 Unless the context otherwise requires any reference in this Agreement:

1.3.1 to a particular Part, Section or Appendix is to a Part, Section or Appendix of the Code of Operations;

1.3.2 to a particular Clause, Schedule or Recital is to a Clause, Schedule or Recital to this Agreement;

1.3.3 to a statute, by-law, regulation, delegated legislation or order shall be construed as being to a statute, by-law, regulation or order of Ireland;

1.3.4 to the word "including" or to the word "include" shall be construed without limitation;

1.3.5 to a person shall be construed as a reference to any person, firm, company, corporation, government or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing;

- 1.3.6 to the singular shall include the plural and vice versa;
- 1.3.7 to a "day", "month" and "year" shall be to a calendar day, calendar month and calendar year, respectively; and
- 1.3.8 to any gender includes the other.
- 1.4 Any reference in this Agreement to a statute, by-law, regulation, delegated legislation or order is to the same as amended, modified or replaced from time to time and to any by-law, regulation, delegated legislation or order made thereunder.
- 1.5 Any reference in this Agreement to any agreement or instrument is to the same as amended, novated, modified, supplemented, revised or replaced from time to time.
- 1.6 Any reference in this Agreement to time shall be construed by reference to whatever time may from time to time be in effect in Ireland.
- 1.7 Where a word or expression is defined in this Agreement, cognate words and expressions shall be construed accordingly.
- 1.8 Headings in this Agreement are for ease of reference only and shall not affect its construction.
- 1.9 References to "this Agreement" shall mean the Recitals, Clauses and Schedules of this Agreement and shall be read as one document together with the Code of Operations.

2. **CONDITIONS PRECEDENT**

- 2.1 This Agreement shall be binding upon the Parties as and from the Effective Date but performance by each of the Parties of their respective obligations under this Agreement (other than, for the avoidance of doubt, the provisions of this Clause 2 and Clause 4 which shall be in full force and effect from the Effective Date) shall be conditional upon each of the Transporter's Conditions Precedent and Shipper's Conditions Precedent, as set forth in sub-Clauses 2.2 and 2.3, being satisfied in full (or waived by both Parties) and shall accordingly commence on the Start Date.
- 2.2 *The Transporter shall be required to have obtained or provided to the Shipper the following Conditions Precedent:*
 - 2.2.1 *Such Conditions Precedent as the Parties deem relevant at the time of the Agreement as follows:*
 - (a) [•].
- 2.3 The Shipper shall be required to have obtained and provided to the Transporter the following Conditions Precedent:
 - 2.3.1 the LDM Offtake together with any other facilities (including any connecting pipelines upstream of such LDM Offtake) required by the Transporter for the performance of its obligations hereunder being completed and certified in writing by the Transporter as being operational;

- 2.3.2 financial security in accordance with the Financial Security Policy of the Transporter in respect of the Shipper's financial obligations; and
- 2.3.3 *such other Conditions Precedent as the Parties deem relevant at the time of the Agreement as follows:*
- (a) [•].
- 2.4 Each Party shall notify the other in writing of the satisfaction of each of the relevant Conditions Precedent (as appropriate) that it is required to obtain under this Clause 2 and shall, prior thereto, keep the other informed at least monthly of the progress it is making in satisfying each of such Conditions Precedent.
- 2.5 Notwithstanding any other provision of this Agreement, if any of the Conditions Precedent have not been satisfied, or waived by both Parties, in either case by [•] (or such later date as the Parties may otherwise agree in writing), this Agreement may be terminated forthwith by one Party serving written notice on the other Party to such effect at any time thereafter and whilst such Condition(s) Precedent remain unsatisfied. Until such time as such notice is given, the Transporter and the Shipper shall continue to use all reasonable endeavours to satisfy their respective outstanding Conditions Precedent as soon as is reasonably practical.
- 2.6 Upon the termination of this Agreement under Clause 2.5, neither Party shall have any obligation to the other, save in respect of its continuing obligations under this Agreement and the Code.
3. **TERM**
- This Agreement shall come into effect in accordance with the provisions set forth in Clause 2.1 and shall continue in full force and effect for a period of [•] Contract Years ("**LDM Capacity Booking Period**") unless varied or terminated in accordance with the express terms of this Agreement.
4. **CODE OF OPERATIONS**
- The terms and conditions of this Agreement are supplemental to and not in substitution for the terms and conditions of the Code.
5. **OFFTAKE POINT**
- The Transporter shall make available for offtake Natural Gas, in accordance with and subject to the terms of this Agreement, at the LDM Offtake.
6. **CAPACITY**
- 6.1 The Shipper shall be entitled to:
- 6.1.1 LDM Exit Capacity in accordance with this Agreement and as set out in Schedule 1 and subject to any Capacity Transfer effected in accordance with this Agreement and the Code[; and]

6.1.2 [LDM Supply Point Capacity in accordance with this Agreement and as set out in Schedule 1 and subject to any LDM Supply Point Capacity Title Transfer effected in accordance with this Agreement and the Code].

6.2 Nothing herein contained shall, or shall be deemed to, oblige the Transporter to approve any Exit Capacity Transfer or LDM Supply Point Capacity Title Transfer.

7. **NOMINATIONS AND RENOMINATIONS**

7.1 All Exit Nominations and/or Exit Renominations (as the case may be) submitted by the Shipper in respect of the LDM Offtake, in addition to compliance with Part D (*Nominations, Allocations and NDM Supply Point Reconciliation*) Section 1 (*Nominations*) of the Code, shall:

7.1.1 include accurate information in respect of the quantities of Natural Gas (and rates and times of offtake) that the Shipper intends or expects to offtake from the Transportation System at the LDM Offtake in respect of a Day and, more particularly in the case of an Exit Renomination, with effect from the Renomination Start Time; and

7.1.2 include an hourly offtake profile (in kWh) and specify, in respect of each hour of each Day to which a Nomination or a Renomination relates, a quantity which is less than or equal to the MHQ in respect of such LDM Offtake as specified in Schedule 1.

7.2 The Shipper acknowledges that the MHQ specified in Schedule 1 is the MHQ applicable in respect of the LDM Offtake and is not exclusive to the Shipper pursuant to this Agreement.

8. **NOTICE PERIOD**

8.1 The notice periods in respect of Renominations shall be as specified in Schedule 1. All such notice periods shall commence on the hour which commences not less than fifteen (15) minutes after receipt by the Transporter of the relevant Renomination.

9. **INFORMATION AND CONFIDENTIALITY**

9.1 Subject to Clause 9.2, the confidentiality provisions contained in the Code shall apply, *mutatis mutandis*, to this Agreement.

9.2 Notwithstanding any provisions of the Code, any Party to this Agreement may disclose information obtained from the other Party to this Agreement to any other Shipper which is party to a LDM Agreement in respect of the LDM Offtake specified in the Schedule hereto.

10. **PAYMENTS**

10.1 The Shipper shall pay the applicable Tariff (as amended from time to time) to the Transporter in respect of the capacity reserved for the Capacity Booking Period in accordance with the payment terms specified in the Code.

10.2 If a Competent Authority introduces any Directive in relation to charges for the transportation of Natural Gas which affects the Tariff(s), the Parties hereby agree to be bound by the Directive and that the Tariff(s) payable shall be in accordance with the Directive.

11. **ASSIGNMENT**

11.1 The parties shall be entitled to assign or transfer their respective rights and obligations pursuant to this Agreement save in accordance with the provisions of Part I (*Legal and General*) Section 12 (*General*) of the Code but not otherwise.

12. **LIABILITIES**

A Party shall not be liable (whether in contract, tort or howsoever else arising at common law or in equity) in respect of its obligations under this Agreement (other than any payment obligations), other than as specifically set out in the Code (to the extent relevant to this Agreement) and the sole remedies of a Party under this Agreement shall be as set forth in the Code and/or this Agreement.

13. **END USER CONTACT DETAILS**

13.1 For the purposes of any written notice to be sent to the End User in accordance with the provisions of this Agreement, the End User's address for notice is:

Address:

Telephone:

Fax:

For the attention of [*Job Title*]:

13.2 The End User's 24 hour emergency contact details (as required by the provisions of the Code) are:

Address:

Telephone (24 hours/365 days):

Fax (24 hours/365 days):

Email (24 hours/365 days):

13.3 The End User's Authorised Representative is:

Title:

Contact Details:

14. **GENERAL**

14.1 **Entire Agreement**

Each Party acknowledges that it has entered into this Agreement and is contracting for the transportation of Natural Gas in the Transportation System to be made available for offtake at the LDM Offtake by the Transporter based solely upon the express representations and warranties set out in this Agreement (including the Code) and the Parties expressly negate any other representation or warranty, written or oral, expressed or implied prior to the execution of this Agreement (except in the case of fraud).

14.2 **Variation**

This Agreement may not be varied except by an agreement in writing signed by the Parties.

14.3 **Counterparts**

This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, is original and all of which together evidence the same agreement.

14.4 **Governing Law**

This Agreement shall be governed by, and construed in accordance with, the laws of Ireland.

IN WITNESS WHEREOF this Agreement has been duly executed by the undersigned signatories on behalf of each of the Parties with effect as of the day and year first above written and each signatory hereby warrants that they have the authority to sign on behalf of the Party they are purporting to bind.

SIGNED for and on behalf of

By:

Name:

Title:

SIGNED for and on behalf of

BORD GÁIS ÉIREANN

By:

Name:

Title:

