

**BORD GÁIS ÉIREANN**

**and**

***[IDENTITY OF COMPANY TO BE INSERTED HERE]***

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**SHIPPER'S OPERATIONAL SITEWORKS SERVICES AGREEMENT**

***Revision 4.0***

***March 2005***

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**THIS AGREEMENT** made the                      day of                      200

**BETWEEN:**

**BORD GÁIS ÉIREANN** a statutory corporation having its principal place of business at P. O. Box 51, Gasworks Road, Cork (hereinafter referred to as “**Bord Gáis**” of the One Part.

and

*[Bord Gáis to insert identity of Company here]* whose principal place of business is *[Bord Gáis to insert identity of Company’s principal place of business]* (hereinafter referred to as “**the Company**”) of the Other Part.

**WHEREAS:**

1. Bord Gáis owns and operates the Distribution System and holds all necessary approvals and consents to operate the Distribution System.
2. The Company is a Shipper and desires from time to time to request pursuant to the terms of this Agreement Bord Gáis to carry out Siteworks in respect of NDM Supply Points, and proposed NDM Supply Points in accordance with the terms of this Agreement.
3. Bord Gáis is prepared to carry out the Operational Siteworks in accordance with the terms of this Agreement.
4. Bord Gáis and the Company agree that at all times Bord Gáis will where applicable own and operate the Equipment which will form part of the Distribution System owned and operated by Bord Gáis pursuant to the Code of Operations and that the execution and/or performance of this Agreement does not confer on the Company any entitlement to access to or any capacity on the Distribution System or on the Transportation System.

**NOW IT IS HEREBY AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

1.1 Unless otherwise defined in this Agreement, capitalised terms used in this Agreement shall have the meaning given to them in the Code of Operations.

1.2 In this Agreement:

**“Agreement”** means this agreement (including the Schedules attached hereto).

**“Applicant Shipper”** means a Shipper which has submitted an Operational Siteworks Request in respect of a meter fit and or a meter service unlock in respect of a Site where there is no Registered Shipper

**“Cancellation Fee”** shall mean charges payable by the Company pursuant to Clause 11 of this Agreement.

**“Cancellation Notice”** shall have the meaning in Clause 12 of this Agreement.

**“Equipment”** shall mean, but shall not be limited to, all pipes, meters, valves and all and any other ancillary equipment considered necessary by Bord Gáis for the purpose of implementing Operational Siteworks requested pursuant to this Agreement and all and any such equipment shall form part of the Distribution System.

**“Fixed Fee Operational Siteworks”** shall have the meaning in Clause 6.1.

**“General Termination Notice”** shall have the meaning in Clause 14

**“Operational Siteworks”** are activities outlined in the Siteworks Charges Document and which may be undertaken by Bord Gáis pursuant to this Agreement at the request of the Company and the performance of which may (by agreement between the Parties) include, but shall not be limited to:-

- (i) the provision of Equipment;
- (ii) the provision of all items and materials;
- (iii) the installation and testing of Equipment;
- (iv) any variations and work agreed in writing between Bord Gáis and the Company;
- (v) commissioning of metering Equipment;
- (vi) all relevant approvals or other permissions of whatever nature necessary to perform the Operational Siteworks where applicable;
- (vii) design, construction, commissioning, procurement, construction supervisions;
- (viii) remedial works, repair works;
- (ix) the fitting and exchange of meters including upgrading meters;
- (x) the exchange, locking, unlocking and isolation of meters;
- (xi) the installation of ancillary meter equipment
- (xii) special meter reads
- (xiii) any other works deemed necessary by Bord Gáis for the purpose of compliance with its obligations under this Agreement.

**“Operational Siteworks Costs”** shall mean, but shall not be limited to, all costs incurred or to be incurred directly or indirectly (including for avoidance of doubt attributable corporate overheads) by Bord Gáis in connection with or arising out of the provision of any Operational Siteworks provided to the Company pursuant to this Agreement.

**“Operational Siteworks Fee”** shall mean the amount payable by the Company in respect of any Operational Siteworks as specified in, or calculated in accordance with the Siteworks Charges Document and where relevant this Agreement.

**“Operational Siteworks Procedures”** shall mean the procedures under this Agreement which the CER from time to time agrees may be treated as procedures for the purpose of this Agreement.

**“Operational Siteworks Request”** shall mean a request for Operational Siteworks submitted by the Company to Bord Gáis in accordance with this Agreement.

**“Party”** means Bord Gáis or the Company (as appropriate) and Parties means both of them.

**“Quote”** shall mean a quote for the estimated cost of Operational Siteworks and where Bord Gáis so requires a statement of applicable terms and conditions including conditions precedent which Bord Gáis considers appropriate in connection with the performance of the Operational Siteworks requested and which terms and conditions shall be in addition to the terms of this Agreement as specified in Clause 5 of this Agreement.

**“Quotation Terms”** shall have the meaning in Clause 5.

**“Relevant Approval”** means any licence, consent, authorisation, permission, permit or other form of statutory approval of licence, consent, authorisation or permission issued by the Commission, Government or other relevant authority.

**“Site”** shall mean a premises owned or operated by either the Company or an End User and to be more particularly identified by the Company, in the case of each Operational Siteworks Request.

**“Site Attendance Fee”** shall mean that fee payable by the Company to Bord Gáis pursuant to Clause 7 of this Agreement.

**Siteworks Charges Document”** shall mean that document as published by Bord Gáis from time to time with the approval of the Commission outlining the Operational Siteworks Fee and/or the methodology by which the Operational Siteworks Fee shall be calculated and shall include any amendments, alterations or additions to such document as may be published by Bord Gáis from time to time with the approval of the Commission.

**“Siteworks Performance Document”** shall mean that document as published by Bord Gáis from time to time with the approval of the Commission outlining the time frames for certain activities in connection with the Operational Siteworks as specified therein.

**“Specific Termination Notice”** shall have the meaning in Clause 14

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

- (a) any gender includes the other,
- (b) a statute, bye law, regulation, delegated legislation or order is to the same as amended, modified or replaced from time to time and to any bye law, regulation, delegated legislation or order made thereunder,
- (c) any agreement or instrument is to the same as amended, novated, modified, supplemented or replaced from time to time.
- (d) a recital, clause or schedule is to a recital, clause or schedule, of this Agreement.

- (e) including means comprising but not by way of limitation to any class list or category;-
- (f) 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.
- (g) a person includes that persons legal or personal representative, permitted assigns and successors.
- (h) “time” shall be construed by reference to whatever time may from time to time be enforced in Ireland.
- (i) the singular shall include the plural and vice versa.

1.4 Where a word or expression is defined in this Agreement cognate words and expressions shall be construed accordingly.

1.5 In this Agreement headings are for ease of reference only and shall not affect its construction.

1.6 References to “this Agreement” shall mean the recitals and Clauses of this Agreement and the Schedules to be read as one document.

1.7 Where two or more persons are the Company, references in this Agreement to the Company are to those persons collectively and the obligations and liabilities of the Company are, and are to be treated as, undertaken jointly and severally by those persons.



## **2. EFFECTIVE DATE, CONTRACT PERIOD AND GENERAL OBLIGATION OF BORD GÁIS**

2.1 This Agreement shall come into effect on the 1<sup>st</sup> April 2005 and shall continue in full force and effect until the [*Bord Gáis to insert date*] or such later date as the Parties may agree in writing unless previously terminated in accordance with the provisions hereof.

2.2 Each of the Company and Bord Gáis shall act as a Reasonable and Prudent Operator in performing its respective rights and obligations under this Agreement.

## **3. OPERATIONAL SITEWORKS PROCEDURES**

The Operational Siteworks Procedures outline the process for carrying out Operational Siteworks on the Transportation System by Bord Gáis at the request of the Company.

## **4. PROCESSING OF REQUESTS FOR OPERATIONAL SITEWORKS**

4.1 For the avoidance of doubt the Parties acknowledge that an Operational Siteworks Request may only be submitted pursuant to this Agreement in respect of an NDM Supply Point at which the Company is the Registered Shipper or in respect of which the Company is an Applicant Shipper.

4.2 The Company may request Bord Gáis to carry out Operational Siteworks pursuant to this Agreement by submitting an Operational Siteworks Request to Bord Gáis incorporating the information listed in Schedule 1 of this Agreement and which Operational Siteworks Request shall be substantially in the format specified from time to time by Bord Gáis.

4.3 Where the Operational Siteworks Request submitted pursuant to Clause 4.2 is in respect of Operational Siteworks for which the Siteworks Charges

Document specifies that a Quote is to issue then subject to Clause 4.5 of this Agreement the provisions of Clause 5 of this Agreement shall apply.

- 4.4 Where the Operational Siteworks Request submitted pursuant to Clause 4.2 of this Agreement requests Operational Siteworks in respect of which the Siteworks Charges Document specifies a fixed fee then subject to Clause 4.5 of this Agreement the provisions of Clause 6 of this Agreement shall apply.
- 4.5 Where due to the magnitude of the Operational Siteworks requested Bord Gais is of the opinion that the Operational Siteworks should be undertaken pursuant to a separate agreement then Bord Gais shall within the earlier of 10 Business Days of receipt of the Operational Siteworks Request or the period specified in the Siteworks Performance Document notify the Company that it will require the Company to enter into such separate agreement for the provision of the Operational Siteworks and Bord Gais shall issue to the Company a draft agreement for consideration and shall not have any further obligations under this Agreement in respect of that particular Operational Siteworks Request.
- 4.6 Bord Gáis may reject any Operational Siteworks Request submitted pursuant to this Clause 4 for any of the reasons outlined in Schedule 2 of this Agreement. Where Bord Gáis rejects an Operational Siteworks Request pursuant to this Clause then Bord Gáis shall not have any further obligations to the Company in respect of that particular Operational Siteworks Request.
- 4.7 Any terms and conditions included in or attached by the Company to any Operational Siteworks Request issued (other than the terms and conditions of this Agreement) shall be considered by Bord Gais but shall have no effect unless same shall be accepted in writing by Bord Gáis.
- 4.8 If Bord Gáis does not accept such terms and conditions in any Operational Siteworks Request such non-acceptance shall not be deemed as a rejection of the Operational Siteworks Request and Bord Gáis shall process the Operational Siteworks Request without regard to such terms and conditions

but subject to the other terms of this Agreement and, where applicable the Quotation Terms.

## **5. QUOTES**

5.1 Bord Gáis, in respect of any Operational Siteworks Request to which this Clause relates and;

- (i) which is not rejected by Bord Gáis pursuant to this Agreement and;
- (ii) in respect of which Bord Gáis considers it necessary to undertake a Site visit; shall use reasonable endeavours to arrange a mutually convenient time for such Site visit for the purpose of assessing the Operational Siteworks requested and preparing the Quote.

5.2 Bord Gáis shall following the Site visit (where applicable), and receipt of any information reasonably required by Bord Gáis and where appropriate completion of design work within the number of days as specified in the Siteworks Performance Document in respect of the Operational Siteworks specified issue to the Company a Quote in relation to the provision of the Operational Siteworks incorporating a statement of:

- (i) the Siteworks Fee; and
- (ii) of the terms and conditions (if any) (the "Quotation Terms") which shall, in addition to the provisions of this Agreement apply to the performance of the Siteworks.

5.3 The Company may within three months of receipt from Bord Gáis of a Quote pursuant to Clause 5.2 of this Agreement hereof notify Bord Gáis of its acceptance of the Quote unless the Quote has been withdrawn by Bord Gáis pursuant to Clause 5.4. If the Company does not notify Bord Gáis of its acceptance of the Quote (and where relevant pay of the amount specified

therein) the Quote, shall, and shall be deemed to be withdrawn, and may not be accepted by the Company.

- 5.4 Bord Gáis may withdraw the Quote at any time prior to receipt from the Company of the acceptance specified in Clause 5.3 of this Agreement in the event that Bord Gáis is of the reasonable opinion that the then prevailing Quote should be withdrawn including as a result of any of the matters specified in Clause 5.8. Where the acceptance specified in Clause 5.3 of this Agreement is not received within the period specified in Clause 5.3 unless the said period shall have been extended in writing by Bord Gáis the Quote shall be null and void.
- 5.5 If the Company rejects the Quote then neither Party shall have any further obligation to the other pursuant to that particular Operational Siteworks Request save that the Company will have an obligation to discharge any Site Attendance Fee (where applicable) pursuant to Clause 7 of this Agreement.
- 5.6 No contract shall be deemed to exist in respect of the provision of Operational Siteworks the subject matter of an Operational Siteworks Request to which this Clause relates unless and until the Company notifies Bord Gáis in writing that it accepts the Quote whereupon the Quote and the acceptance thereof shall constitute an agreement between the Parties to perform the Operational Siteworks in accordance with the terms and conditions of this Agreement and the Quote. If the Company accepts the Quote Bord Gáis shall subject to Clause 7.1 of this Agreement and unless otherwise agreed in writing with the Company use reasonable endeavours to commence the Operational Siteworks requested within the time for commencement thereof specified in the Siteworks Performance Document or by such other date as may be agreed by the Parties.
- 5.7 Any Quote provided by Bord Gáis pursuant to Clause 5.2 of this Agreement shall be for the sole use of the Company and shall not be assigned or be capable of assignment by the Company.

- 5.8 If, at any time prior to acceptance by the Company of the Quote as a result of:
- (a) adverse or unanticipated Site conditions;
  - (b) information provided by the Company which is inaccurate or insufficient;
  - (c) health/safety and/or environmental considerations;
  - (d) any variation to the Operational Siteworks ;
  - (e) any other reason or circumstance not anticipated or provided for at the time of issue of the Quote;

Bord Gáis is of the opinion that any Quote, does not reflect the Operational Siteworks Costs which should be payable having regard to the Siteworks Charges Document, then Bord Gáis shall be entitled to withdraw the Quote and the Operational Siteworks Request to which the Quote relates shall be deemed to be rejected by Bord Gais.

## **6. FIXED FEE OPERATIONAL SITEWORKS**

- 6.1 This Clause shall apply to any Operational Siteworks which are specified to be Operational Siteworks in respect of which a fixed fee is payable (as identified in the Siteworks Charges Document).
- 6.2 Where the Siteworks Performance Document provides that such Operational Siteworks shall be performed by appointment Bord Gáis shall notify the Company of the date on which Bord Gáis proposes to perform the Operational Siteworks, and which proposed date shall, save where otherwise agreed between the Parties be within the time period for performance thereof specified in the Siteworks Performance Document. The Company may within 3 days of receipt of notification by Bord Gais of the date on which Bord Gais proposes to perform the Operational Siteworks notify Bord Gais that the

notified date is unsuitable to the Company. In such event the Parties shall use reasonable endeavours to agree a mutually convenient date for performance of the Operational Siteworks and it is acknowledged and accepted by the Company that such agreed date may be outside the period for performance of the Operational Siteworks specified in the Siteworks Performance Document

## **7. SITE ATTENDANCE FEE**

7.1 Where, Bord Gáis attends on Site at the times contemplated by Clause 5.6 or by Clause 6.2 with a view to commencing or performing any Operational Siteworks contemplated by this Agreement and is unable due to any of the reasons specified in Clauses 5.8 (a) to 5.8 (d) or 8.3 (b) to 8.3 (c) or for any other reason (other than the default of Bord Gáis) which prevents or renders it inappropriate to commence or perform Operational Siteworks or any part thereof, Bord Gáis shall be entitled to and the Company shall (in addition to any other payment due pursuant to this Agreement) pay in accordance with the terms of this Agreement the applicable Site Attendance Fee as specified in the Siteworks Charges Document.

7.2 Without prejudice to its entitlement to charge a Site Attendance Fee pursuant to Clause 7.1 Bord Gáis confirms that on attending on Site in accordance with Clause 7.1 of this Agreement it shall use reasonable endeavours to inform the Company and/or any End User occupying the Site of its attendance on Site.

## **8. BORD GÁIS OBLIGATIONS**

8.1 Subject to the terms of this Agreement and in consideration of the covenants by the Company and the performance by the Company of its obligations under this Agreement and subject to the Company accepting the Quote (where applicable) in accordance with the terms of this Agreement and complying with the Company obligations Bord Gáis shall;

- (a) respond as provided in this Agreement to any Operational Siteworks Request submitted in accordance with this Agreement provided always

that Bord Gáis shall not be obliged to respond to any such Operational Siteworks Request unless and until the requisite financial security is provided by the Company.

- (b) apply for and seek Relevant Approvals (save for those approvals whose responsibility it is Company's to procure pursuant to this Agreement) as Bord Gáis may consider reasonably necessary for the purposes of performing Operational Siteworks the subject matter of an Operational Siteworks Request;
- (c) perform the Operational Siteworks on the appointed day when Clause 6.2 applies;
- (d) in all other circumstances commence the Operational Siteworks in accordance with the terms of the Siteworks Performance Document.
- (e) subject to the procuring of all such Relevant Approvals (where relevant) use reasonable endeavours to procure the completion of Operational Siteworks in accordance with this Agreement and where applicable any Quotation Terms.
- (f) on completion of the relevant Operational Siteworks record such completion on the BGT Systems in accordance with the provisions of the Siteworks Performance Document.
- (g) supply all information which the Company may reasonably request or require for the proper performance of the Company's obligations pursuant to this Agreement or any related agreement which such information shall be adequate and accurate and may be reasonably relied upon by the Company.
- (h) comply with, and give all notices required by, any statute, any statutory instruments, rule or order, any regulation or bye law applicable to an Operational Siteworks Request ("the statutory requirements").

8.2 Bord Gáis shall perform its obligations pursuant to this Agreement with a view subject to Clause 8.3 to completing any Operational Siteworks in accordance with the terms of this Agreement.

8.3 The Company acknowledges that performance and completion of certain Operational Siteworks pursuant to this Agreement is subject to matters outside of Bord Gáis control, including inter alia:

- (a) the issue of Relevant Approvals;
- (b) any proceedings taken by any third party;
- (c) Site conditions including compliance with any applicable access requirements and compliance with any health and safety regulations and procedures;

The Company further acknowledges that Bord Gáis shall not have any liability whatsoever for delay or failure to complete the Operational Siteworks as the case may be, as a result of any matters to which this Clause 8.3 refers.

Notwithstanding that the aforementioned matters are outside of Bord Gáis control, Bord Gáis shall use its reasonable endeavours to address and mitigate any delays occasioned by the matters referred to at Clauses 8.3 (a) to 8.3 (c) above and the time period necessary for completion of any Operational Siteworks shall be deferred by such period as shall be reasonable and/or commensurate with such delay.

8.4 For the avoidance of doubt neither this Agreement nor the provision or performance by Bord Gais of any Operational Siteworks shall confer any right on the Company to capacity on the Transportation System or Supply Point Capacity it being acknowledged by the Parties that such capacity may only be reserved in accordance with the Code.



## **9. COMPANY OBLIGATIONS AND WARRANTIES**

9.1 The Company shall in accordance with the terms and conditions of this Agreement:

- (i) Promptly make all payments due under this Agreement or any related agreement.
- (ii) Use reasonable endeavours to provide safe, free and unrestricted access for Bord Gáis and its contractors and sub-contractors and their employees, servants or agents to any Site and to any and all property in respect of which access is reasonably required to carry out Operational Siteworks or for the proper provision by Bord Gáis of its obligations under this Agreement or any related agreement.
- (iii) Supply all information which Bord Gáis may reasonably request or require for the proper performance of Bord Gáis obligations pursuant to this Agreement or any related agreement which such information shall be adequate and accurate and may be reasonably relied upon by Bord Gáis.
- (iv) Not interfere with or restrict the carrying out of Bord Gáis obligations pursuant to this Agreement.
- (v) Comply with, and give all notices required by, any statute, any statutory instruments, rule or order, any regulation or bye law applicable to an Operational Siteworks Request (hereinafter called “the statutory requirements”).
- (vi) Confirm that the relevant End User in respect of any Operational Siteworks which are the subject of an Operational Siteworks Request is entitled to and will provide all facilities and access as Bord Gais may reasonably require in relation to the performance of the Operational Siteworks.

- (vii) Effect and maintain insurance cover as required by Clause 22 of this Agreement
- (viii) Effect and maintain financial security in respect of any Operational Siteworks contemplated by this Agreement in accordance with the Financial Security Policy.
- (ix) Use reasonable endeavours to assist Bord Gáis in any way which may be reasonably required by Bord Gáis to facilitate Bord Gáis in the performance of its obligations pursuant to this Agreement.

9.2 The Company warrants:

- (i) that it is entitled to authorise the performance of the Operational Siteworks at the Site;
- (ii) that it shall preserve the title of Bord Gáis to the Equipment at the Site.

**10. COMPLETION**

Any Operational Siteworks Request to which Clause 5 or Clause 6 of this Agreement applies shall be deemed to be completed on the date on which the Operational Siteworks are recorded on the BGT Systems as having been completed. The date of completion as indicated on the BGT Systems shall be conclusive evidence of the completion unless the Company shall have disputed such update within 14 days of same. Any such dispute shall be resolved pursuant to Clause 16 of this Agreement.

## **11. INVOICING AND PAYMENT**

11.1 The Company shall be liable for and shall pay to Bord Gáis Operational Siteworks Costs, Operational Siteworks Fees, Cancellation Fees, and Site Attendance Fees in accordance with this Agreement and the remaining provisions of this Clause 11.

(i) In respect of any Operational Siteworks Request to which Clause 5 of this Agreement applies the Operational Siteworks Fee payable shall be the amount as specified in the Quote in accordance with the provisions of Clause 5.

(ii) In any case in respect of Operational Siteworks to which Clause 6 of this Agreement applies the Operational Siteworks Fee payable shall be that amount as specified in the Siteworks Charges Document in respect of the particular Operational Siteworks requested.

11.2 In respect of any Operational Siteworks specified in the Siteworks Charges Document, the Operational Siteworks Fee shall be discharged by the Company to Bord Gáis in accordance with this Section 11:

11.3 In respect of amounts due and payable by the Company pursuant to this Agreement, in accordance with the remaining provisions of this Clause 11 Bord Gáis shall within 12 Business Days of the end of each calendar month, issue to the Company an Invoice in respect of:

(i) any Operational Siteworks Fees in respect of Fixed Fee Operational Siteworks performed;

(ii) any Operational Siteworks Fees, in respect of Operational Siteworks recorded on BGT Systems as having been completed in the Month prior to the issue of the Invoice;

(iii) any Cancellation Fees;

- (iv) any Site Attendance Fees;
- (v) any charges arising on termination; and
- (vi) any other sums then due and owing by the Company pursuant to this Agreement

11.4 In the event that this Agreement is terminated pursuant to Clause 14 the Company shall pay to Bord Gáis all Operational Siteworks Fees incurred up to the date of expiry of the General Termination Notice together with all costs incurred by Bord Gáis directly or indirectly as a result of such termination whether incurred before or after termination and for the avoidance of doubt to include any, Operational Siteworks Costs, Operational Siteworks Fees, Cancellation Fees and Site Attendance Fees. Bord Gáis shall be entitled to issue an Invoice or Invoices in respect of any such sum at any time after the expiry of the General Termination Notice.

11.5 The Company shall in accordance with Clause 9.1 (i) discharge the amount due as set out in the Invoice for the preceding Month by the 2<sup>nd</sup> last Business Day of each Month or 12 Days after issue of the Invoice or Invoices (whichever is later)

11.6 The amount payable pursuant to this Clause shall be as certified by the Head of Distribution of Bord Gáis or such other officer or employee of Bord Gáis and may be authorised in that regard by Bord Gáis from time to time. A certificate so signed shall be binding and final on the Parties.

11.7 If the Company fails to make payment within the period specified in Clause 11.5 on receipt of any Invoice contemplated by the Agreement then any such overdue payment shall bear interest, calculated and compounded monthly from the date which shall be, in respect of an Invoice for the preceding Month, the 2<sup>nd</sup> last Business Day of each Month or 12 days after issue of the Invoice

or Invoices (whichever is later) until the date on which payment is received at the annual rate of:

- (i) in the case of payments which are being the subject of a bona fide dispute Euribor plus 1% and;
- (ii) in the case of all other late payments Euribor plus 1.5%.

11.8 Each Invoice shall include the amount of any UK or Irish taxes (excluding Corporation Tax but including Value Added Tax) payable in respect of items billed in the Invoice.

11.9 In the event of the Company disputing any Invoice issued pursuant to this Clause 11 such dispute shall be resolved pursuant to Clause 16 of this Agreement save for the avoidance of doubt the Company shall discharge in full the amount of any such Invoice prior to the Company being entitled to invoke Clause 16 of this Agreement. After settlement or determination of any dispute over any Invoice:

- (a) Bord Gais shall be entitled to retain such portion of the amount (if any) of such Invoice which is agreed or adjudged to be properly payable by the Company; and/or
- (b) Bord Gais shall pay to the Company such portion of the amount (if any) of such Invoice which is agreed or adjudged not to be payable by the Company together with interest calculated in accordance with Clause 11.7(i).

## **12. CANCELLATION AND CANCELLATION FEES**

- 12.1 The Company may by notice in writing or by such other means agreed between the Parties (“Cancellation Notice”) to Bord Gáis within the time period specified in the Siteworks Charges Document for submission thereof cancel any Operational Siteworks Request, prior to performance thereof. If the Cancellation Notice is received by Bord Gais after the time period specified in the Siteworks Charges Document then the Company shall pay a fee (“Cancellation Fee”) to Bord Gais.
- 12.2 Any Cancellation Fee contemplated by Clause 12.1 shall in respect of the Operational Siteworks Request to which the Cancellation Notice relates be as indicated on the Siteworks Charges Document in respect of the Operational Siteworks specified by the Operational Siteworks Request.
- 12.3 For the avoidance of doubt any Cancellation Fee as contemplated by this Clause 12 may be invoiced by Bord Gáis and shall be payable by the Company in the manner specified in Clause 11 of this Agreement.

## **13. LIABILITY AND INDEMNITY**

- 13.1 Bord Gáis shall indemnify the Company and its employees against all losses, costs, damages and expenses arising out of or in connection with loss of or damage to any property of Bord Gáis or sickness, injury, disease or death of any employee of Bord Gáis in either case arising out of or in connection with Operational Siteworks save to the extent that such losses, costs, damages or expenses arise from the negligence of the Company and/or its employees, servants or agents or from the negligence of an End User and or its employees servants or agents.
- 13.2 The Company shall indemnify Bord Gáis and its employees against all losses, costs, damages and expenses arising out of, or in connection with, loss of or damage to the Company property (and the End User property where the End User is not the Company) or sickness injury disease or death of any employee

of the Company or End User in either case arising out of or in connection with the Operational Siteworks save to the extent such loss, cost, damage or expense arises from the negligence of Bord Gáis and/or its employees, servants or agents.

13.3 Neither Party shall be liable to the other for its respective loss of profit, loss of use, loss of contract and additional cost of working or production or heating, loss of goodwill or loss of business opportunity or other indirect or consequential loss arising from any reason whatsoever.

#### **14. TERMINATION (GENERAL AND SPECIFIC)**

##### ***SPECIFIC TERMINATION***

14.1 Bord Gáis shall be entitled to terminate its obligation to perform Operational Siteworks the subject matter of an Operational Siteworks Request properly submitted in accordance with the terms of this Agreement pursuant to this Agreement at any time by notice in writing to the other Party (the “Specific Termination Notice”) if;-

- (a) any Relevant Approvals required by Bord Gáis for the provision or performance of any Operational Siteworks shall be refused or withdrawn.
- (b) Bord Gáis shall fail or be unable to acquire access when reasonably required to any necessary Sites to facilitate any Operational Siteworks.
- (c) if any event of Force Majeure shall continue for a period of 3 months
- (d) where the Company ceases to be a Shipper
- (e) where the Company ceases to be a Registered Shipper or Applicant Shipper in respect of the NDM Supply Point in respect of which an Operational Siteworks Request has been lodged

- (f) where Bord Gáis further to an Operational Siteworks Request requests further information from the Company and the information provided by the Company in response to such request is insufficient to enable Bord Gáis to comply with its obligations pursuant to this Agreement
- (g) where the Company fails to comply with the Financial Security Policy
- (h) if any of the events specified in Clause 8.3 arise.

14.2 The Company shall be entitled without cause to terminate any Operational Siteworks requested pursuant to this Agreement at any time by notice in writing to Bord Gáis.

14.3 On issue by Bord Gáis of a Specific Termination Notice served in accordance with Clause 14.1 above, and/or on receipt by Bord Gáis of a notice in accordance with Clause 14.2 above:

- (i) Bord Gáis shall take such steps as shall be reasonably necessary and within its procurement to terminate the Operational Siteworks to which the Specific Termination Notice refers and where appropriate the termination of any construction contracts or other agreements entered into in connection therewith.
- (ii) Bord Gáis shall notify the Company of Operational Siteworks Costs incurred directly or indirectly in connection with the Operational Siteworks to which the Specific Termination Notice relates and all costs of and associated with the termination of all contracts and arrangements referable thereto (including any non recoverable cancellation charges and internal Bord Gáis costs).
- (iii) The Head of Distribution of Bord Gáis or his duly authorised representative shall issue to the Company a certificate of the costs payable by the Company pursuant to Clause 11 of this Agreement



together with copy invoices (where available) and the Company shall within 12 days of issue of such certificate discharge the amount specified on same to Bord Gáis.

The contract in respect of any particular Operational Siteworks Request shall terminate on the expiry of any Specific Termination Notice properly served and save in respect of the Continuing Obligations at Clause 15 below.

#### ***GENERAL TERMINATION***

14.4 Either Party shall be entitled to terminate this Agreement at any time by not less than 14 days notice in writing (the “General Termination Notice”) if:-

- (a) There is any material breach by the other Party of its obligations pursuant to the Code this Agreement any ancillary agreement or any related agreement which material breach shall not have been remedied within 28 days of issue of notice to such Party identifying the breach and requiring that same be remedied or;
- (b) The Company fails to comply with the Financial Security Policy;
- (c) The Company ceases to be a Shipper or;
- (d) In respect of any 6 month period the number of Operational Siteworks Requests in respect of which Bord Gais issues Specific Termination Notices contemplated by Clause 14.1 of this Agreement exceeds ten per cent (10%) of all Operational Siteworks Requests submitted by the Company pursuant to this Agreement.
- (e) any bona fide action or other steps are taken or legal proceedings are started (and are not withdrawn within fourteen (14) days) for the liquidation, winding-up, dissolution or for the appointment of a receiver, liquidator, administrator, examiner or similar officer of the Company or;

- (f) an encumbrancer takes possession of, or a liquidator, receiver or an administrator or examiner is appointed over a substantial part of the assets of the Company or any security granted by the Company becomes enforceable or;
- (g) the Company is unable to pay its debts as they fall due within the meaning of Section 214 of the Companies Act 1963 or enters into any composition, assignment, scheme or arrangement with creditors generally of such Company (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by Bord Gáis or;
- (h) the Company is suffering a distress, execution, sequestration or other process being levied or enforced upon or sued or against all or any substantial part of its assets, rights or revenues which is not discharged, stayed, or dismissed within thirty (30) days or;
- (i) any event equivalent or analogous to any of the events specified in this Clause occurs in relation to the Company in any jurisdiction.

14.5 On receipt of a General Termination Notice served in accordance with Clause 14.4 above;

- (i) Bord Gáis shall take such steps as shall be reasonably necessary and within its procurement to terminate all Operational Siteworks requested pursuant to this Agreement including the termination of any relevant construction contracts or other agreements entered into in connection therewith.
- (ii) Bord Gáis shall notify the Company of Operational Siteworks Costs incurred directly or indirectly in connection with any Operational Siteworks and all costs of and associated with the termination of all

contracts and arrangements referable thereto (including any non recoverable cancellation charges and internal Bord Gáis costs).

- (iii) The Head of Distribution of Bord Gáis shall issue to the Company a certificate of the costs payable by the Company pursuant to Clause 11 of this Agreement together with copy invoices (where available) and the Company shall within 12 Days of issue of such certificate discharge the amount specified on same to Bord Gáis.

This Agreement shall terminate on the expiry of any General Termination Notice properly served and save in respect of the Continuing Obligations at Clause 15 below.

## **15. CONTINUING OBLIGATIONS**

The obligations of the Parties as described in Clauses 9.1 (i) and (viii), 11, 13, 16, 18, 19, 20, 25 and 27 of this Agreement shall continue in full force and effect and be fully binding on the Parties notwithstanding termination or expiry.

## **16. DISPUTE RESOLUTION**

- 16.1 In the event of any dispute or difference arising between Bord Gáis and the Company in connection with or arising out of this Agreement or anything herein contained, or in connection with the rights or liabilities of either of the Parties hereto, the Parties shall endeavour to settle same by mutual agreement.
- 16.2 In the event of the Parties failing to reach such agreement within 30 days of receipt by either Party of a written notice of the dispute any dispute arising from this Agreement shall be referred to the Commission and shall be disposed of in accordance with the procedures as determined by the Commission from time to time. The Commission shall deliver its determination within 45 days or such other period as may be agreed between the Parties. The determination of the Commission shall be final and binding

on the Parties. The Commission shall be entitled to act pursuant to this Clause 16 notwithstanding that at the time of its appointment or at any time before it gives its determination, it has or may have some interest or duty which conflicts with or may conflict with its duties hereunder. The costs and expenses of any expert any independent advisor appointed by and reasonably required by the Commission pursuant to this Clause in the discharge of its duties and any costs of his or her appointment shall be borne equally by the Parties but each Party shall bear its own costs.

Provided always that in relation to a dispute in respect of any Invoice issued pursuant to this Agreement that the full amount of such Invoice shall be discharged by the Shipper prior to this Clause 16 applying in respect of such dispute.

## **17 FORCE MAJEURE**

17.1 If either Party is by reason of Force Majeure rendered unable wholly or in part to carry out its obligations under this Agreement, then upon notice in writing of such Force Majeure from the Party affected to the other Party, as soon as possible after the occurrence of the cause relied on, the Party affected shall be released from its obligations (other than the obligations to pay money) and suspended from the exercise of its rights under this Agreement to the extent to which they are affected by the circumstances of Force Majeure and for the period during which those circumstances exist; **PROVIDED THAT** the Party affected shall use all reasonable endeavours to prevent, avoid, overcome or mitigate the effects of such occurrence.

17.2 If the circumstances of Force Majeure exist for a continuous and uninterrupted period of three (3) months then subject to the proviso in Clause 9.1 either Party shall be entitled to terminate the Agreement on giving 14 days written notice to the other. Such termination shall be without prejudice to the accrued rights and obligations of the Parties up to the date of termination and no further payment shall be due to or by either Party after the date of termination.

17.3 Neither Party shall be liable for any breach of this Agreement (other than the obligations to pay money) caused by Force Majeure.

## **18 CONFIDENTIALITY**

Each Party shall at all times during the continuance of this Agreement utilise all information including for the avoidance of doubt any Quote supplied pursuant to Clause 5 of this Agreement received from the other Party (or any of its representatives or employees) only for the purpose of the performance of this Agreement and for no other purpose whatsoever and shall at all times both during the continuance of this Agreement and for a period of 2 years after its termination keep confidential all such information save to the extent that it has become publicly available otherwise than in breach of this Clause 18 with respect to the other Party's equipment or the business or financial affairs of the other Party strictly confidential.

## **19 NO WAIVER**

None of the provisions of this Agreement should be considered waived by a Party unless such waiver is given in writing and signed by a duly authorised representative of the Party making the waiver. No such waiver shall be a waiver of any past or future default or breach nor shall such waiver constitute a modification of any terms provision condition or covenant of the contract unless expressly so provided in such waiver.

## **20 ASSIGNMENT**

20.1 Neither Party shall, subject to Clause 20.2, be entitled under any circumstances whatsoever (including for the avoidance of doubt assignment of the benefit or burden of this Agreement by way of security) to assign this Agreement or any part thereof.

20.2 Bord Gáis shall be entitled to sub-contract the performance of any Operational Siteworks, or any part thereof.

## **21 MODIFICATION**

In the event that there shall be any legal requirement change in the law or regulation affecting the Distribution System or Bord Gáis or in the event that it is necessary to give affect to any requirement of any relevant regulatory body or competent authority (including the Commission), the Parties hereto shall negotiate such amendment as may be reasonably necessary to ensure that this Agreement shall comply with any such legal requirement, change in law regulation or requirements.

## **22. INSURANCE**

22.1 In respect of any Operational Siteworks Request the Company shall effect insurance to cover all liability undertaken by the Company pursuant to this Agreement and will pay and continue to pay all premia necessary for maintaining such insurance for the term of this Agreement.

22.2 Bord Gáis shall have the right to request on an annual basis from the Company confirmation from a broker of appropriate insurance cover in respect of Operational Siteworks.

22.3 The Company shall have the right to request on an annual basis from Bord Gáis confirmation from a broker of appropriate insurance cover in respect of Operational Siteworks.

22.4 Both Parties shall within 7 days of receipt of such request produce evidence from a broker of the existence of the relevant policies of insurance.

22.5 For the avoidance of doubt where Bord Gáis makes a request pursuant to Clause 22.3 of this Agreement and Bord Gáis notifies the Company in writing that it is not satisfied with the insurance cover furnished by the Company, Bord Gáis shall have the right not to commence the works until satisfactory evidence of the insurance is received.

## **23. INTELLECTUAL PROPERTY**

All patents, copyrights and other intellectual property (including but not limited to designs, patents, copyrights, trade names trade marks, service marks know-how and invention and to the extent of intellectual property embodied therein, documents, software or other items created or supplied by Bord Gáis in connection with any Siteworks shall remain the property of Bord Gáis and the Company shall ensure that on completion of the Operational Siteworks all such materials shall be returned to Bord Gáis.

## **24. ENTIRE AGREEMENT**

This Agreement (together with any documents referred to herein) constitutes the entire agreement between the Parties hereto in relation to the matters dealt with herein and no variation hereof shall be effective unless made in writing and executed by both Parties to this Agreement.

## **25 NOTICES**

25.1 Any notices required under this Agreement shall be made through BGT Systems or such other means that Bord Gáis may specify from time to time and in the case where such notices are specified by Bord Gais to be made by post or fax the notice shall be sent, in the case of Bord Gáis, to the principal place of business of Bord Gáis (as specified in the Code) and in the case of the Company, to the Company's address in the Republic of Ireland, specified below.

25.2 Such notice shall be deemed delivered when received in a legible form.

25.3 The Company's address for service is as follows:

Address: [ ]

Tel Number: [ ]

Fax Number: [ ]

25.4 If Bord Gáis changes its principal place of business it shall promptly notify the Company in writing.

25.5 If the Company changes its address for service in the Republic of Ireland (as specified above) it shall promptly notify Bord Gáis in writing.

## **26 PRIORITY OF DOCUMENTS**

In the event of a conflict between this Agreement and the terms of the Operational Siteworks Procedures, Siteworks Charges Document and the Siteworks Performance Document the terms of this Agreement shall prevail.

## **27 GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the Laws of the Republic of Ireland and the Parties submit to the exclusive jurisdiction of the Irish Courts.



**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  
**BORD GÁIS EIREANN:-**

Signature:

Name:

Title:

Date:

**SIGNED** for and on behalf of  
*[insert name of Company here]*

Signature:

Name:

Title:

Date:

## **SCHEDULE 1**

### **CONTENTS OF OPERATIONAL SITEWORKS REQUEST**

1. Any Operational Siteworks Request submitted by the Company shall specify:
  - (a) A description of the Operational Siteworks to be provided.
  - (b) Details of the Company including, but not limited to name, address and contact information.
  - (c) Where the End User is different to the Company, details of the End User including, but not limited to, name, address, site location and contact information.
  - (d) A reasonable description of the Site where the Operational Siteworks are to be performed
  - (e) Where applicable the Gas Point Registration Number of the Gas Point at which the Operational Siteworks are required.
  - (f) Where applicable the Supply Point Registration Number of the Supply Point at which the Operational Siteworks are required.
  - (g) Any information required pursuant to the Siteworks Performance Document or the Siteworks Charges Document.
  - (h) Such other information as may reasonably be required by Bord Gáis.

**SCHEDULE 2**  
**GROUND FOR REFUSAL**

1. Bord Gáis may reject a Operational Siteworks Request to which this Schedule applies for any of the following reasons:-
  - (a) The Operational Siteworks Request is not submitted in accordance with Clause 3 of this Agreement.
  - (b) The Company fails to comply with the Financial Security Policy.
  - (c) The Company is (or would otherwise be) in breach of the Code, this Agreement any ancillary agreement (where applicable) or any other legal requirement.
  - (d) Satisfactory evidence of the Company's public liability and employers liability insurance and insurance as specified in Clause 22 hereof has not been furnished to Bord Gáis satisfaction.
  - (e) The Operational Siteworks Request relates to works which Bord Gáis believes should be undertaken pursuant to a separate agreement.
  - (f) The Company is not the Registered Shipper in respect of the Supply Point or is not the Applicant Shipper.
  - (g) Any other reasonable ground which renders it inappropriate to undertake the particular Operational Siteworks requested in accordance with the terms of this Agreement.