FINAL FORM

DATED 2008

(1) GASLINK INDEPENDENT SYSTEM OPERATOR LIMITED
(2) BORD GÁIS ÉIREANN
(3) BGE (UK) LIMITED

OPERATING AGREEMENT

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## CONTENTS

<table>
<thead>
<tr>
<th>CLAUSE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. PURPOSE OF THE AGREEMENT</td>
<td>3</td>
</tr>
<tr>
<td>2. EFFECTIVE DATE AND TRANSITIONAL ARRANGEMENTS</td>
<td>4</td>
</tr>
<tr>
<td>3. BGE GROUP TRANSPORTATION SYSTEM</td>
<td>4</td>
</tr>
<tr>
<td>4. TRANSPORTATION ASSETS</td>
<td>5</td>
</tr>
<tr>
<td>5. INTERACTION OF CERTAIN OWNER RIGHTS WITH THE PERFORMANCE OF BGN FUNCTIONS</td>
<td>6</td>
</tr>
<tr>
<td>6. STANDARDS AND COMPLIANCE FUNCTIONS</td>
<td>9</td>
</tr>
<tr>
<td>7. PLANNING FUNCTIONS</td>
<td>10</td>
</tr>
<tr>
<td>8. DEVELOPMENT FUNCTIONS</td>
<td>13</td>
</tr>
<tr>
<td>9. OPERATIONS AND MAINTENANCE FUNCTIONS</td>
<td>15</td>
</tr>
<tr>
<td>10. MARKET ARRANGEMENTS</td>
<td>17</td>
</tr>
<tr>
<td>11. INTERACTION REGARDING SYSTEM FUNCTIONS</td>
<td>18</td>
</tr>
<tr>
<td>12. DISPUTE RESOLUTION</td>
<td>21</td>
</tr>
<tr>
<td>13. INFORMATION AND ACCESS TO MARKET FACING SYSTEMS</td>
<td>30</td>
</tr>
<tr>
<td>14. PUBLICITY</td>
<td>32</td>
</tr>
<tr>
<td>15. PERSONNEL AND HEALTH AND SAFETY</td>
<td>32</td>
</tr>
<tr>
<td>16. CONFIDENTIALITY</td>
<td>33</td>
</tr>
<tr>
<td>17. LIMITATION OF LIABILITIES AND INDEMNITIES</td>
<td>34</td>
</tr>
<tr>
<td>18. DURATION</td>
<td>40</td>
</tr>
<tr>
<td>19. FORCE MAJEURE</td>
<td>40</td>
</tr>
<tr>
<td>20. COSTS</td>
<td>41</td>
</tr>
<tr>
<td>21. GENERAL</td>
<td>41</td>
</tr>
<tr>
<td>22. NOTICES</td>
<td>44</td>
</tr>
<tr>
<td>23. GOVERNING LAW AND JURISDICTION</td>
<td>45</td>
</tr>
</tbody>
</table>

SCHEDULE 1 ..................................................................................................... 47

SCHEDULE 2 ..................................................................................................... 60
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>TRANSITIONAL ARRANGEMENTS</td>
<td>60</td>
</tr>
<tr>
<td>SCHEDULE 3</td>
<td>61</td>
</tr>
<tr>
<td>ACCESS PROTOCOL</td>
<td>61</td>
</tr>
<tr>
<td>SCHEDULE 4</td>
<td>62</td>
</tr>
<tr>
<td>COMMERCIAL AGREEMENTS</td>
<td>62</td>
</tr>
<tr>
<td>SCHEDULE 5</td>
<td>63</td>
</tr>
<tr>
<td>BGE OWNER RIGHTS IN CONNECTION WITH PLAN PROCESSES</td>
<td>63</td>
</tr>
<tr>
<td>SCHEDULE 6</td>
<td>68</td>
</tr>
<tr>
<td>NEW STANDARDS AND CHANGES TO STANDARDS</td>
<td>68</td>
</tr>
<tr>
<td>SCHEDULE 7</td>
<td>69</td>
</tr>
<tr>
<td>PRICE CONTROL WORK PLAN AND ANNUAL WORK PLAN</td>
<td>69</td>
</tr>
<tr>
<td>SCHEDULE 8</td>
<td>72</td>
</tr>
<tr>
<td>PLANNING PROCESSES</td>
<td>72</td>
</tr>
<tr>
<td>SCHEDULE 9</td>
<td>75</td>
</tr>
<tr>
<td>DEVELOPMENT FUNCTIONS</td>
<td>75</td>
</tr>
<tr>
<td>SCHEDULE 10</td>
<td>77</td>
</tr>
<tr>
<td>OPERATIONS AND MAINTENANCE FUNCTIONS</td>
<td>77</td>
</tr>
<tr>
<td>SCHEDULE 11</td>
<td>85</td>
</tr>
<tr>
<td>MARKET ARRANGEMENTS FOR OPERATION OF BGE GROUP TRANSPORTATION SYSTEM</td>
<td>85</td>
</tr>
<tr>
<td>SCHEDULE 12</td>
<td>88</td>
</tr>
<tr>
<td>MARKET FACING SYSTEMS LICENCE TERMS</td>
<td>88</td>
</tr>
<tr>
<td>SCHEDULE 13</td>
<td>96</td>
</tr>
<tr>
<td>CONFIDENTIAL INFORMATION PROTOCOL</td>
<td>96</td>
</tr>
</tbody>
</table>
THIS AGREEMENT is made on 2008

BETWEEN:

(1) **GASLINK INDEPENDENT SYSTEM OPERATOR LIMITED**, a company incorporated in Ireland (registered no. 447782), whose registered office is at Gasworks Road, Cork (“Gaslink”); and

(2) **BORD GÁIS ÉIREANN**, a body corporate established under the Gas Act 1976 whose principal place of business is at Gasworks Road, Cork (“BGE”) acting on its own behalf and as agent for BGE(UK) Limited in respect of the Relevant BGE(UK) Assets; and

(3) **BGE (UK) LIMITED**, a company incorporated in England and Wales (Registered No. 0287969) and having an office at Brighouse Bay, Kilcudbright, Scotland (“BGE(UK)”).

RECITALS

(A) The gas market in Ireland is being restructured pursuant to the Regulations to facilitate competition in supply activities in compliance with the Directive.

(B) Gaslink has been established by law to be the independent system operator for the BGE Transportation System. Regulation 8 requires BGE and Gaslink to enter into negotiations in good faith with a view to entering into one or more agreements providing for the terms on which each of them will fulfil their respective functions with respect to the BGE Transportation System. Any such agreement is subject to the approval of the Commission.

(C) Regulation 11 sets out the functions of Gaslink and BGE in respect of the BGE Transportation System with effect from the Transfer Date. It provides that as from the Transfer Date responsibility for the operation, maintenance and development of the BGE Transportation System is vested in Gaslink which shall operate, maintain and develop that system in accordance with the Regulations and in a manner consistent with Article 8 of the Directive and that such responsibility includes but is not limited to identifying works necessary for the effective operation, maintenance and development of the BGE Transportation System. Regulation 11 provides that, as soon as practicable after identifying works necessary for the effective operation, maintenance and development of the BGE Transportation System, Gaslink shall give directions to BGE with respect to carrying out those works and BGE shall take all practicable steps to ensure that such directions are complied with by the date or within the period specified in those directions or by such later date or within such extended period as Gaslink may allow.

(D) Regulation 12 provides that Gaslink is declared to be independent of BGE as regards its organisation, and its power to make decisions with respect to carrying out its responsibility for operating the BGE Transportation System and that Gaslink is entitled to make decisions, independently of BGE, for the operation, maintenance and development of the BGE Transportation System. It also provides that BGE shall not engage in any conduct that interferes with or is likely to prejudice Gaslink as regards its responsibility for the day-to-day operation, maintenance and development of the BGE Transportation System nor make any decision about the construction or improvement of the BGE Transportation System that is within the ambit of the annual plan prepared or approved by BGE.
(E) Regulation 12 further provides that nothing in that Regulation affects the right of BGE to take appropriate steps to ensure the protection of the economic and management supervision rights of BGE with respect to securing a return on assets, whether owned by BGE or Gaslink; it also allows BGE to require that Gaslink complies with an annual financial plan prepared or approved by BGE for the purposes of the Regulations and to impose global limits on the amount of debt that Gaslink may incur at any specified time or during any specified period (together referred to in this Agreement as the "Regulations Rights").

(F) As outlined above the Regulations provide for the functions of Gaslink and BGE, and for the entry into this Agreement, in respect of the BGE Transportation System. Certain parts of the BGE Interconnector System are owned or sub-leased by BGE’s subsidiary BGE(UK) and do not fall within the scope of the definition of the BGE Transportation System in the Regulations. Those parts of the BGE Interconnector System are contiguous, and are operated seamlessly as a single network, with the BGE Transportation System. The parties believe that such seamless operation can best be achieved into the future by the appointment of Gaslink as the operator of those parts of the BGE Interconnector System owned or sub-leased by BGE(UK) and any additions to them (the “Relevant BGE(UK) Assets”) in accordance with this Agreement and by extending this Agreement to the Relevant BGE(UK) Assets.

(G) For the reasons set out in Recital (F) BGE(UK) and Gaslink have entered into an agreement of even date with this Agreement (the “Gaslink Appointment Agreement”) pursuant to which:

(a) subject to the satisfaction of certain conditions precedent, BGE(UK) will appoint Gaslink as the operator of the Relevant BGE(UK) Assets on terms that Gaslink shall be responsible for the operation, maintenance and development of the Relevant BGE(UK) Assets in accordance with and subject to the terms of this Agreement and the TSO Licence; and

(b) in the transitional period between the date of this Agreement and the effective date of such appointment as provided for in the Gaslink Appointment Agreement (the “BGE(UK) Transitional Period”) Gaslink shall provide to BGE(UK) services in respect of the operation, development and maintenance of the BGE(UK) Relevant Assets which shall be provided in accordance with this Agreement.

(H) In order to facilitate the smooth operation of the Operating Agreement in respect of both the BGE Transportation System and the Relevant BGE(UK) Assets BGE(UK) and BGE have agreed that BGE be appointed as BGE(UK)’s agent to interact with Gaslink, regulatory authorities and other third parties in respect of the exercise of BGE(UK) of its rights and the fulfilment by BGE(UK) of its obligations as owner/sub-lessee of the Relevant BGE(UK) Assets including undertaking the works and providing the services described in Part 3 of the Operating Agreement in respect of the Relevant BGE(UK) Assets. They have also agreed that BGE will provide services to BGE(UK) to assist it in the exercise and fulfilment of those rights and obligations. BGE(UK) and BGE have entered into an agency agreement of even date with this Agreement (the “BGE Agency and Services Agreement”) for these purposes.

(I) Accordingly this Agreement is entered into as between BGE and Gaslink on foot of their negotiations pursuant to Regulation 8 in respect of the BGE Transportation System and as between BGE as BGE(UK)’s agent under the BGE
Agency and Services Agreement and Gaslink on foot of the Gaslink Appointment Agreement in respect of the Relevant BGE(UK) Assets. BGE(UK) has joined in this Agreement for the purposes set out in clause 1.5.

(J) The Commission has, by letter dated 3 July 2008, approved this Agreement.

(K) Part 2 of this Agreement provides for the terms and conditions on which BGE (acting on its own behalf and as agent for BGE(UK) in respect of the Relevant BGE(UK) Assets) shall grant to Gaslink access to the BGE Group Transportation System in connection with the fulfilment by Gaslink of its responsibilities, duties and functions in respect of that system. It also provides for the processes by which BGE will exercise certain of the Regulations Rights and the rights of BGE(UK) as owner/sub-lessee of the Relevant BGE(UK) Assets within the context of, and with reference to, certain of the arrangements which are set out in Part 3 of this Agreement for the fulfilment by BGE of its functions with respect to the BGE Group Transportation System.

(L) Part 3 of this Agreement provides for the terms and conditions on which each of BGE, through BGN, (acting on its own behalf and as agent for BGE(UK) in respect of the Relevant BGE(UK) Assets) and Gaslink will fulfil their respective roles and functions with respect to the BGE Group Transportation System including the BGE Transportation System.

(M) Each of Gaslink and BGE is charged with its own statutory and legal obligations and its own licence obligations under System Operator Licences or the System Owner Licences, as the case may be, which can be best be discharged through a relationship which is mutually supportive within the context of this Agreement as required by the Regulations.

(N) This Agreement has been developed on the assumption of a co-operative, enduring and successful relationship but it is necessary also to provide sufficient protection to each Party in respect of its ability to carry out its functions, duties and obligations, protect its rights in the event of disputes and to preserve the independence of Gaslink as required by law. Accordingly, this Agreement also provides for a reasonable dispute resolution mechanism and, where necessary, step-in rights to address possible disputes.

NOW IT IS AGREED AS FOLLOWS:

PART 1 – INTRODUCTORY PROVISIONS

1. PURPOSE OF THE AGREEMENT

1.1 Purpose of this Agreement

Each of the Parties acknowledges that the purpose of this Agreement shall be to give effect to the Regulations including, for the avoidance of doubt, Regulations 8 and 11 of the Regulations and to ensure that the Relevant BGE(UK) Assets are operated, maintained and developed together with the BGE Transportation System as a single natural gas system.

1.2 Implementation

(a) Each of the Parties shall implement the terms of this Agreement and co-operate with the other Party to ensure that the Parties can fulfil their functions in respect of the BGE Group Transportation System in
accordance with the principles acknowledged in the Recitals and the requirements of Clause 1.3.

(b) The Transportation Services are to be performed through BGE’s business division BGN. For the avoidance of doubt any obligation expressed by this Agreement to be an obligation of BGN or any other division of BGE shall comprise an obligation of BGE for which BGE is liable and which BGE must procure is performed through BGN or the relevant division as appropriate.

1.3 Reasonable and Prudent Operator

Each Party shall comply with this Agreement and the Schedules and shall procure the performance of its obligations to the standard of a Reasonable and Prudent Operator, unless an alternative specific standard of performance is imposed by this Agreement in which case such specific standard shall be complied with.

1.4 No Interest in BGE Group Transportation System

Nothing in this Agreement shall give, or have effect as if it gave, to Gaslink any right or title to or any interest in the BGE Group Transportation System.

1.5 BGE(UK)

BGE(UK) has been joined as a party to this Agreement for the purposes of confirming that BGE acts as its agent to interact with Gaslink, regulatory authorities and other third parties in respect of the exercise by BGE(UK) of its rights and the performance by BGE(UK) of its obligations and as owner/sub-lessee of the Relevant BGE(UK) Assets pursuant to and for the purposes, inter alia, of this Agreement. BGE, BGE(UK) and Gaslink agree that (save as expressly provided in the Gaslink Appointment Agreement) Gaslink shall deal solely with BGE in relation to all such matters.

2. EFFECTIVE DATE AND TRANSITIONAL ARRANGEMENTS

2.1 Effective Date

This Agreement shall come into effect on the Transfer Date.

2.2 Transitional Arrangements

During the Transition Period, the Parties shall perform this Agreement as modified by the Transitional Arrangements.

PART 2 – SYSTEM ACCESS AND OWNER RIGHTS

3. BGE GROUP TRANSPORTATION SYSTEM

3.1 Transportation Asset Register

BGN shall at all times maintain a register of the assets which constitute the BGE Group Transportation System in the form agreed between the Parties from time to time (the “Transportation Asset Register”). BGN will update the Transportation Asset Register on a quarterly basis. BGN will provide Gaslink with ready access to the Transportation Asset Register at all times. Any requests for further information arising from the Transportation Asset Register shall be dealt within accordance with Clauses 13.1 or 13.2 as the case may be.
4. TRANSPORTATION ASSETS

4.1 Access

(a) The Parties agree that BGE:

(i) shall permit Gaslink to have access to the Transportation Assets in accordance with the Access Protocol for the purposes of exercising its rights under this Agreement, including for the avoidance of doubt, its inspection rights under this Agreement and any rights under a Step-in Direction made pursuant to this Agreement; and

(ii) BGE shall not exercise, and shall procure that no member of the BGE Group (excluding Gaslink) shall exercise, any of its or their property rights in respect of the Transportation Assets in a manner which would interfere with Gaslink’s ability to carry out its System Functions in accordance with this Agreement.

(b) Each Party shall comply, and shall ensure that its directors, officers, employees, agents and contractors comply, with the Access Protocol.

4.2 Interests of System Owner

(a) Gaslink acknowledges the interest of BGE as the owner or agent of the owner/sub-lessee of the BGE Group Transportation System in the development, maintenance and operation by Gaslink of the BGE Group Transportation System in accordance with the standards of a Reasonable and Prudent Operator.

(b) Without prejudice to the generality of the foregoing, Gaslink shall comply with the requirements of paragraph 4 of Schedule 6.

(c) Gaslink shall not purport to dispose of any Transportation Assets. Gaslink shall not contract for connection to and/or use of any Transportation Assets or represent or hold itself out as having the power to do so except pursuant to its Licences and in accordance with the provisions of this Agreement.

4.3 Non-Energy Use

BGE shall be entitled to use the Transportation Assets (including the Relevant BGE(UK) Assets as agent of BGE(UK)) for purposes other than the transportation of natural gas provided that:

(a) in the case of such non-energy use of the Transportation Assets occurring prior to the Transfer Date ("Prior Non-Energy Rights"), BGE shall notify Gaslink of such Prior Non-Energy Rights at least one month prior to the Transfer Date; and

(b) in the case of new non-energy use of the Transportation Assets occurring on or after the Transfer Date, BGE shall comply with the requirements of the System Owner Licences and any directions made under those licences to notify the Commission and Gaslink of such proposed non-energy use and such non-energy use shall not adversely interfere with Gaslink’s System Functions. BGN shall notify Gaslink in advance of any such proposed non-energy use provided for the avoidance of doubt that such proposed non-energy use shall not be subject to approval by Gaslink.
4.4 Independent Representation

(a) Each of BGE, in its capacity as the holder of the System Owner Licences, and Gaslink, in its capacity as holder of the System Operator Licences, shall be entitled, independently of each other and at such time or times as it sees fit, to meet or otherwise communicate with the Commission, to participate in any industry fora, to propose Code modifications, to submit comments regarding Code modifications and any other industry consultations and to express opinions on market developments and matters. The Parties acknowledge that each Party’s proposals, comments, opinions, views and positions may not accord with those of the other Party in respect of such matters.

(b) BGE may undertake all or any part of the foregoing functions or any of its System Functions, and may exercise the Owner Rights, through BGN. BGE shall ensure that it is not represented at any industry forum as the holder of the System Owner Licences by the person(s) providing service or support to Gaslink pursuant to Part 3 of this Agreement save where otherwise agreed between the parties. The persons representing BGE at such fora shall be notified by BGE to Gaslink from time to time.

5. INTERACTION OF CERTAIN OWNER RIGHTS WITH THE PERFORMANCE OF BGN FUNCTIONS

5.1 Regulations/Owner Rights in connection with BGN Functions

In order to ensure the protection, and facilitate the exercise by BGE, of certain of the Regulations Rights and the rights of BGE(UK) as owner/sub-lessee of the BGE(UK) Relevant Assets (together the “Owner Rights”) in connection with certain of the arrangements provided for in Part 3:

(a) BGE shall prepare and make submissions to the Commission, and negotiate and interact directly with the Commission, in respect of the BGE Allowed Revenues, all changes to the BGE Allowed Revenues, any proposed BGE Financial Impact, and, in so far as it relates to the BGE Allowed Revenues, each Allowance Review Process. Any such submissions and negotiations by BGE shall have due regard to the scope of the investment programme contained within Gaslink’s submission for the corresponding Price Control Work Plan, or as the case may be any submission by Gaslink to change that plan, to seek to ensure that they are compatible;

(b) the process set out in paragraph 1 of Schedule 5 shall be followed in respect of determining the BGE Allowed Revenues and in respect of any proposed changes to the BGE Allowed Revenues;

(c) the process set out in paragraph 1(g) of Schedule 5 shall be followed in the event that in performing any System Functions it is proposed to take or instruct or direct the taking of any approach or action which would or might give rise to a BGE Financial Impact;

(d) the Gaslink Annual Financial Plan and any proposed change to that plan shall be subject to the approval of BGE in accordance with paragraph 2 of Schedule 5;

(e) Gaslink shall not incur any Financial Indebtedness in excess of such global limits on Financial Indebtedness as are imposed by BGE on Gaslink by the
Facility Agreement or otherwise than pursuant to the Facility Agreement or as Gaslink and BGE may agree from time to time and shall not dispose of or permit the creation of any encumbrance over its assets without complying with such procedures as the Parties may agree having regard to the Owner Rights and Gaslink’s System Functions;

(f) for the avoidance of doubt, if, in the course of carrying out functions pursuant to this Agreement, an officer, employee, agent or contractor of BGN or BGE becomes aware of any event or circumstance relating to Gaslink that may cause a BGE Financial Impact, such officer, employee, agent or contractor shall not be prohibited from disclosing such information to other officers or employees of BGE (subject to the provisions of Clauses 11.14 and 16.2);

(g) BGN shall notify Gaslink if it becomes aware that in performing any System Functions it is proposed to take or instruct or direct the taking of any approach or action which would or might give rise to a BGE Financial Impact;

(h) Gaslink shall not:

(i) without the prior written agreement of BGN in relation to the financial terms thereof, offer, agree or modify any Non Standard Terms or modify the Commercial Agreements; or

(ii) purport to modify any rights or liabilities under the Commercial Agreements to the extent that they arise from or in connection with or relate to the ownership of the BGE Group Transportation System which rights and liabilities which remain vested in BGE.

In the event that it is proposed to offer or agree or modify Non Standard Terms or modify the Commercial Agreements or to implement any provisions of Non Standard Terms or the Commercial Agreements which implementation would cause BGN to incur costs ("Cost Provisions"):

(A) Gaslink shall provide BGN with such information as BGN may reasonably require to enable it to assess the financial cost and develop a financial analysis of such proposals;

(B) BGN shall provide Gaslink with its financial analysis of such proposals including its financial terms in respect of such proposals for information only. In the case of the implementation of Costs Provisions such analysis and terms shall be in accordance with the Cost Provisions. Such analysis shall not be subject to review by or approval of Gaslink; and

(C) BGN shall be entitled to participate with Gaslink in all negotiations with counterparties in respect of financial terms (including the implementation of financial terms) in respect of such proposals provided that BGN entitlements shall be without prejudice to Gaslink’s rights to negotiate and meet with parties in respect of all Non Standard Terms and provisions of the Commercial Agreements other than the financial terms;
the Parties acknowledge and agree that in consideration of providing the Transportation Services pursuant to its System Functions and in accordance with this Agreement, BGE is entitled (on its own behalf and as agent of BGE(UK) in respect of the Relevant BGE(UK) Assets) to all revenues arising from the System Services (save to the extent that they represent Gaslink’s Allowed Revenues);

revenue flows arising from System Services shall be as follows:

(i) BGN shall invoice users of the BGE Group Transportation System and any other relevant person in the name of Gaslink for charges in respect of the System Services save in the case of:

(A) NDM customers whom BGN shall invoice in its own name but as Gaslink’s disclosed agent, such disclosure to be made in a manner and form approved by Gaslink; and

(B) BLACKED OUT

(ii) all revenues arising from such charges (including any such revenues arising from an exercise of rights under the Financial Security Policy) shall be received into a Relevant Account;

(iii) BGE shall receive such revenues on behalf of Gaslink, pay them to Gaslink in accordance with paragraph (iv) to the extent only that they represent the Gaslink Allowed Revenues and retain the balance on its own behalf and as agent of BGE(UK) in respect of the Relevant BGE(UK) Assets in consideration of the provision of Transportation Services;

(iv) BGE shall pay the Gaslink Allowed Revenues in respect of a Gas Year to Gaslink in the following manner or as otherwise agreed between the parties:

(A) at the beginning of each quarter of that Gas Year BGE will pay to a bank account in the name of Gaslink and operated by BGE on its behalf such amount as represents three twelfths of the Gaslink Allowed Revenues for the relevant Gas Year;

(B) in the event that the CER approves an increase in the Gaslink Allowed Revenues in the course of a Gas Year, BGE shall pay the amount of the increase in equal instalments at the beginning of each remaining quarter in that Gas Year; and

(C) at the end of the Gas Year, BGE shall carry out a reconciliation and pay to Gaslink any amount by which the Gaslink Allowed Revenues for that Gas Year (including any increase in those revenues approved by CER) exceeds the aggregate amount already paid by BGE to Gaslink pursuant to this paragraph in respect of that Gas Year.

(v) BGN shall operate the Financial Security Policy as agent for and on behalf of Gaslink and all deposits made by persons pursuant to that policy shall be received into a Relevant Account; and
(vi) the processes for revenue receipts, financial security and other treasury functions are set out in the Agreed Processes Document.

PART 3 – FUNCTIONS OF PARTIES IN RESPECT OF BGE GROUP TRANSPORTATION SYSTEM

6. STANDARDS AND COMPLIANCE FUNCTIONS

6.1 Functions of the Parties

(a) Pursuant to its System Functions:

(i) Gaslink has responsibility for the Standards and shall require BGN to provide the services in respect of the Standards described in this Clause 6 and Schedule 6; and

(ii) BGN shall provide such services in respect of the Standards in accordance with Gaslink’s instructions and within such reasonable timeframes as Gaslink may require,

in each case in accordance with this Clause 6 and Schedule 6 without prejudice to any other applicable provision of this Agreement. The Parties shall interact with each other in respect of the Standards in the manner set out in this Clause 6 and Schedule 6 without prejudice to any other applicable provision of this Agreement.

(b) For the avoidance of doubt, Gaslink shall have the final right of approval over any work, including any draft Standards or revisions of the Standards, submitted to Gaslink by BGN in accordance with this Clause 6 and Schedule 6 and shall be under no obligation to adopt recommendations in any report from BGN.

6.2 Review of Standards

(a) Gaslink shall require BGN to undertake all reviews and reports to Gaslink on the Standards at such times as Gaslink requests and in accordance with Gaslink’s instructions which may include reviewing and reporting on whether the Standards or any of them:

(i) are adequate for their purposes;

(ii) where relevant, are in line with international best practice; and

(iii) meet any applicable requirements imposed by or under any Legal Requirements and the System Operator Licences.

(b) BGN shall carry out each such review in accordance with Gaslink’s instructions and shall make such report to Gaslink within such reasonable timeframe as Gaslink shall require.

(c) For the avoidance of doubt, Gaslink shall have the final right of approval over any review of the Standards and shall be under no obligation to adopt recommendations in any report from BGN.

(d) The provisions of Schedule 6 shall apply in the event that Gaslink considers that a new Standard should be introduced or any of the existing Standards should be updated, amended or replaced.
6.3 **Compliance Functions**

BGN shall provide to Gaslink all such Information as Gaslink may reasonably require to enable Gaslink to prepare reports to the Commission in respect of compliance by Gaslink with the System Operator Licences.

6.4 **KPIs**

BGN shall carry out its functions pursuant to this Clause 6 and Schedule 6 in accordance with any applicable KPIs.

6.5 **Disputes**

In the event that there is a Dispute between the Parties regarding the operation of this Clause 6 or Schedule 6 it shall be resolved in accordance with the Dispute Resolution Mechanism.

7. **PLANNING FUNCTIONS**

7.1 **Functions of the Parties**

(a) Pursuant to its System Functions:

(i) Gaslink has responsibility for the Plans and shall require BGN to provide the services in respect of the Plans described in this Clause 7 and where applicable Schedule 8;

(ii) BGN shall provide such services in respect of the Plans in accordance with Gaslink’s instructions and in accordance with any timeframes applicable to such services set out in the Agreed Processes Document,

in each case in accordance with this Clause 7 and where applicable Schedule 8 without prejudice to any other applicable provision of this Agreement. The Parties shall interact with each other in respect of the Plans in the manner set out in this Clause 7 and where applicable Schedule 8 without prejudice to any other applicable provision of this Agreement.

(b) For the avoidance of doubt, Gaslink shall have the final right of approval over any work, including any draft Plans or revisions of the Plans, submitted to Gaslink by BGN in accordance with this Clause 7 and Schedule 8 and shall be under no obligation to adopt recommendations in any report from BGN.

7.2 **Long Term Development Statements**

(a) Prior to the start of each Gas Year Gaslink is required, pursuant to its Licences to prepare, or, as the case may be, update the Long Term Development Statements.

(b) Gaslink shall require BGN to carry out the following work in respect of system and capacity planning to assist Gaslink to prepare, or, as the case may be, update, the Long Term Development Statements and BGN shall carry out such work within such reasonable timeframe as Gaslink shall require and in accordance with Gaslink’s instructions:
(i) an overview of the manner in which it is expected that the BGE Group Transportation System will need to be developed over the period to which the Long Term Development Statements will relate;

(ii) a review of supply point parameters;

(iii) the development of future supply/demand scenarios;

(iv) the development of capacity and commodity forecasts;

(v) an examination of security of supply considerations;

(vi) an analysis of external factors impacting gas transportation in Ireland; and

(vii) an analysis of simulations of specific scenarios.

7.3 Price Control Work Plan

(a) Before a Price Control Period Gaslink shall require BGN to prepare in accordance with Gaslink’s instructions a draft submission to Gaslink in respect of a work plan which complies with Part A of Schedule 7 (the “Price Control Work Plan”).

(b) Paragraph 2 of Schedule 8 shall apply to the preparation of the Price Control Work Plan and paragraph 3 of Schedule 8 shall apply to any changes to the Price Control Work Plan.

7.4 Annual Work Plans

(a) Before the start of a Gas Year Gaslink shall require BGN to prepare:

(i) a draft of an update of the Price Control Work Plan (the “Updated Price Work Control Plan”) which incorporates any change to any constituent part of the relevant Price Control Work Plan which has been approved in accordance with the process set out in paragraph 3 of Schedule 8; and

(ii) a draft of a work plan for that Gas Year which complies with Part B of Schedule 7 (the “Annual Work Plan”);

(together the “Annual Work Plans”), in each case in accordance with Gaslink’s instructions.

(b) Paragraph 4 of Schedule 8 shall apply to the preparation and update of the Annual Work Plans.

7.5 Performance of Planning Functions

The following provisions shall apply to the performance by BGN of its functions in respect of any Plan pursuant to this Clause 7 and where applicable Schedule 8 to the Agreements:

(a) Gaslink shall give BGN instructions in respect of, and BGN shall perform, such functions in accordance with the timeframes applicable to such functions in the Agreed Processes Document.
(b) When Gaslink directs BGN to prepare one or more draft Plans or, in the case of the Long Term Development Statements, materials for a draft Plan:

(i) Gaslink will specify the parameters and principles in accordance with which the draft Plan(s) or materials are to be prepared;

(ii) BGN will specify the BGN team or personnel which will undertake the provision of relevant planning functions and Gaslink will specify the team or personnel which will direct the performance of those functions, and

(iii) the Parties will agree a programme of activity for the performance of relevant planning functions which is in accordance with the timetable set by Gaslink acting reasonably and in accordance with any applicable timeframes in the Agreed Processes Document.

(c) Gaslink may direct BGN to examine and consider and report to Gaslink on any issues or options in connection with the draft Plan or materials for a draft Plan that Gaslink sees fit.

(d) The BGN team will work with the Gaslink team to ensure that Gaslink is satisfied with the approach adopted in preparing the contents of and the level of detail in any Plan or any materials for a Plan and will comply with all parameters and principles specified by Gaslink pursuant to paragraph (b).

(e) Where a number of approaches to an item of work or a project to be provided for in a draft Plan are possible, BGN will discuss with Gaslink the different estimated cost and time parameters of each approach.

(f) Gaslink shall provide such directions and feedback to BGN as it sees fit in relation to any draft Plan or materials for a draft Plan and may request BGN to provide such additional Information and/or to make adjustments or revisions to any such documents as it sees fit.

(g) Gaslink shall approve, or decline to approve, a draft Plan or materials for a draft Plan submitted by BGN on the basis that the draft Plan or materials for a draft Plan will enable or, as the case may be, will not enable, Gaslink to fulfil its System Functions.

(h) Gaslink shall notify BGN in writing if it declines to approve a draft Plan or materials for a draft Plan provided to it by BGN and such notification shall set out a detailed statement of Gaslink’s objections to the draft Plan or materials for a draft Plan and the reasons for those objections.

(i) Any Dispute between Gaslink and BGN regarding any draft Plan or materials for a draft Plan provided by BGN to Gaslink or any feedback provided or request made by Gaslink pursuant to sub-paragraph (f) of this Clause 7.5 or otherwise in respect of the performance by BGN of its functions pursuant to this Clause 7 and/or Schedule 8 to this Agreement shall be dealt with by way of the Dispute Resolution Mechanism.

(j) When such a Dispute in respect of any draft Plan or materials for a draft Plan is resolved in accordance with the Dispute Resolution Mechanism, the draft Plan or materials for a draft Plan incorporating any changes required
by the Dispute Resolution Terms shall be deemed to be approved by Gaslink and BGN.

(k) The planning process is set out in the Agreed Processes Document.

7.6 **Performance of Planning Functions**

Paragraph 4 of Schedule 8 shall apply to the performance by BGN of its functions in respect of any Plan pursuant to this Clause 7.

7.7 **KPIs**

BGN shall carry out its functions pursuant to this Clause 7 in accordance with any applicable KPIs.

7.8 **Disputes**

In the event that there is a Dispute between the Parties regarding the operation of this Clause 7 and Schedule 8 it shall be resolved in accordance with the Dispute Resolution Mechanism.

8. **DEVELOPMENT FUNCTIONS**

8.1 **Functions of the Parties**

Pursuant to its System Functions:

(a) Gaslink has responsibility for the development of the BGE Group Transportation System and shall require BGN to provide the services in respect of such development described in this Clause 8 and Schedule 9; and

(b) BGN shall provide such services in respect of such development;

in each case in accordance with this Clause 8 and Schedule 9 without prejudice to any other applicable provision of this Agreement. The Parties shall interact in respect of such development in the manner set out in this Clause 8 and Schedule 9 without prejudice to any other applicable provision of this Agreement.

8.2 **Development Functions**

(a) BGN shall carry out all work set out in the development programme in the Annual Work Plan in accordance with that Annual Work Plan using a combination of its own resources and those of its contractors.

(b) BGN shall carry out all work and provide all services in respect of the development of the BGE Group Transportation System and the BGN IT Systems in the manner which it considers the most efficient, practical and effective provided that it complies with the requirements and any applicable provisions (including in respect of timeframes) of any Project Agreement, the development programme in the Annual Work Plan, Schedule 9, the Standards, the Code of Operations, any Connected System Agreement, the relevant Safety Case and any Legal Requirements (whether expressed to be imposed on Gaslink or BGN) and meets the applicable KPIs (the “Development Requirements”).
(c) BGN shall manage all contacts with its subcontractors. Gaslink may not communicate or attend meetings with BGN contractors without the prior agreement of BGN.

(d) BGN shall appoint a project representative(s) to manage and oversee each project (which may comprise a single task or a group of related or similar tasks) to be undertaken by it in performing its functions pursuant to this Clause 8.

(e) BGN and Gaslink shall enter into a project agreement in respect of any connection which is the subject of a Connected Systems Agreement and any large connection (a "Project Agreement").

8.3 Reporting and Review

(a) BGN will submit to Gaslink the reports that have been agreed between BGN and Gaslink in relation to the performance by BGN of its functions pursuant to this Clause 8 and Schedule 9 and such other information including in relation to progress against any Project Agreement as Gaslink may reasonably request from time to time.

(b) BGN shall undertake an audit programme agreed with Gaslink (both Parties acting reasonably) to verify that the performance by BGN of such of its functions pursuant to this Clause 8 of this Agreement and Schedule 9 as BGN and Gaslink may agree meets the Development Requirements and shall notify Gaslink of any failure or anticipated failure by BGN to comply with the Development Requirements of which BGN becomes aware and on request by Gaslink shall provide Gaslink a copy of all or any part of the audit reports.

(c) Gaslink may conduct all reasonable inspections, audits and reviews to ensure that work undertaken complies with the Development Requirements. Such inspections must be conducted at a reasonable time and on reasonable notice to BGN and in accordance with the Access Protocol.

(d) If arising from the results of an audit programme, an inspection or otherwise Gaslink considers that the Development Requirements are not being complied with in any respect, it may notify BGN of such non-compliance giving reasons for its view.

(e) Save in the event of a Dispute as to whether there has been such non-compliance, which shall be dealt with in accordance with the Dispute Resolution Mechanism, BGN shall remedy any such non-compliance to the satisfaction of Gaslink within such timeframe as Gaslink may reasonably specify.

(f) The performance by BGN of its functions pursuant to this Clause 8 and Schedule 9 shall be reviewed against the Development Requirements by Gaslink and BGN at the Monthly Meetings. In advance of those meetings BGN will provide Gaslink with a report comprising:

(i) a high level activity report containing a detailed report of progress in respect of major projects and a summary of progress in respect of minor projects;

(ii) a revised projects schedule; and
(iii) a management report outlining key development activities in the previous month and a report on the audit programme undertaken pursuant to Clause 8.3(b).

(g) BGN shall comply with and discharge any liabilities that may be incurred under any Customer Charter in place from time to time that is applicable to its functions as set out above.

8.4 KPIs

BGN shall carry out its functions pursuant to this Clause 8 and Schedule 9 in accordance with any applicable KPIs.

8.5 Disputes

In the event that there is a Dispute between the Parties regarding the operation of this Clause 8 or Schedule 9 it shall be resolved in accordance with the Dispute Resolution Mechanism.

9. OPERATIONS AND MAINTENANCE FUNCTIONS

9.1 Functions of the Parties

Pursuant to its System Functions:

(a) Gaslink has responsibility for the operation and maintenance of the BGE Group Transportation System and shall require BGN to provide the services in respect of such operation and maintenance described in this Clause 9 and Schedule 10;

(b) BGN shall provide such services in respect of such operation and maintenance;

in each case in accordance with this Clause 9 and Schedule 10 without prejudice to any other applicable provision of this Agreement. The Parties shall interact with each other in respect of such operation and maintenance in the manner set out in this Clause 9 and Schedule 10 without prejudice to any other applicable provision of this Agreement.

9.2 Operations and Maintenance Functions

(a) BGN shall carry out all work set out in the operations and maintenance programme in the Annual Work Plan in accordance with that Annual Work Plan using a combination of its own resources and those of its contractors.

(b) BGN shall carry out all work and provide all services in respect of the operation and maintenance of the BGE Group Transportation System and the BGN IT Systems in the manner which it considers the most efficient, practical and effective provided that it complies with any applicable provisions (including in respect of timeframe) of the operations and maintenance programme in the Annual Work Plan, Schedule 10, the Standards, the Code of Operations, any Connected System Agreement, the relevant Safety Case and any Legal Requirements (whether expressed to be imposed on Gaslink or BGN) and meets the applicable KPIs (the “Operations and Maintenance Requirements”).
(c) BGN shall manage all contacts with its contractors. Gaslink may not communicate or attend meetings with BGN contractors without the prior agreement of BGN.

9.3 Reporting and Reviews

(a) BGN will submit to Gaslink the reports that have been agreed between BGN and Gaslink in relation to the performance by BGN of its functions pursuant to this Clause 9 and Schedule 10 and such other information on progress against the operations and maintenance programme in the Annual Work Plan as Gaslink may reasonably request from time to time.

(b) BGN shall undertake an audit programme agreed in advance with Gaslink (both Parties acting reasonably) to verify that the performance by BGN of such of its functions pursuant to this Clause 9 and Schedule 10 as BGN and Gaslink may agree meet the Operations and Maintenance Requirements. BGN shall notify Gaslink of any failure or anticipated failure by BGN to comply with Development Requirements of which BGN becomes aware and on request by Gaslink shall provide to Gaslink a copy of all or any part of the audit reports.

(c) Gaslink may conduct all reasonable inspections, audits and reviews to ensure that work undertaken complies with the Operations and Maintenance Requirements. Such inspections must be conducted at a reasonable time and on reasonable notice to BGN and in accordance with the Access Protocol.

(d) If arising from the results of the audit programme, an inspection or otherwise Gaslink considers that the Operations and Maintenance Requirements are not being complied with in any respect, it may notify BGN of such non-compliance giving reasons for its view.

(e) Save in the event of a Dispute as to whether there has been such non-compliance, which shall be dealt with in accordance with the Dispute Resolution Mechanism, BGN shall remedy any such non-compliance to the satisfaction of Gaslink within such timeframe as Gaslink may reasonably specify.

(f) The performance by BGN of its functions pursuant to this Clause 9 and Schedule 10 shall be reviewed against the Operations and Maintenance Requirements by Gaslink and BGN at the Monthly Meetings. In advance of those meetings BGN will provide Gaslink with a report comprising:

(i) a high level operations and maintenance activity report;

(ii) a schedule in respect of new operations and maintenance activities (if applicable); and

(iii) a management report outlining key operations and maintenance activities in the previous month and a report of the audit programme undertaken pursuant to Clause 9.3(b).

(g) BGN shall comply with and discharge any liability that may be incurred under any Customer Charter which may be in place from time to time that is applicable to its functions as set out above.
9.4 **KPIs**

BGN shall carry out its functions pursuant to this Clause 9 and Schedule 10 in accordance with any applicable KPIs.

9.5 **Disputes**

In the event that there is a Dispute between the Parties regarding the operation of this Clause 9 or Schedule 10 it shall be resolved in accordance with the Dispute Resolution Mechanism.

10. **MARKET ARRANGEMENTS**

10.1 **Functions of the Parties**

Pursuant to its System Functions:

(a) Gaslink has responsibility for the Market Arrangements; and

(b) BGN shall provide such analysis, assistance and support to Gaslink in respect of the Market Arrangements as Gaslink may require.

The Parties shall interact with each other in respect of the Market Arrangements in the manner set out in this Clause 10 and Schedule 11.

10.2 **Market Arrangement Functions**

(a) BGN shall provide all analysis, assistance and support as Gaslink may reasonably require in respect of activities in relation to the Market Arrangements.

(b) BGN shall operate, maintain and develop the Market Facing Systems so that they meet the Access Requirements. BGN may modify or replace the Market Facing Systems or any part thereof from time to time provided that they continue to meet the Access Requirements. Without prejudice to the generality of the foregoing BGN shall make such changes to the Market Facing Systems as may be necessary to deliver such change to the functionality of those systems as Gaslink may reasonably require from time to time for the purposes of carrying out its System Functions and/or to meet the Access Requirements. BGN shall make available to Gaslink on reasonable notice a copy of such parts of the function and design specification in respect of the Market Facing Systems or changes to those systems as may be relevant to any electronic contract between Gaslink and the Shippers, the Code or any queries that Gaslink may raise but for the avoidance of doubt such specification shall not be subject to approval by Gaslink.

(c) As part of the licence hereby granted by the terms of Schedule 12 BGN shall licence Gaslink to grant access to the Market Facing Systems to Shippers pursuant to and for the purposes of the Code and to counterparties pursuant to and for the purposes of Connected System Agreements, and such other parties as provided for in paragraph 17 of Schedule 12 or in each case their agents.

(d) BGN shall provide training to sub-licensees of Gaslink in respect of the Market Facing Systems in accordance with Schedule 12.
10.3 KPIs

BGN shall carry out its functions pursuant to this Clause 10 in accordance with any applicable KPIs.

10.4 Disputes

In the event that there is a Dispute between the Parties regarding the operation of this Clause 10 it shall be resolved in accordance with the Dispute Resolution Mechanism.

PART 4 – GENERAL PROVISIONS

11. INTERACTION REGARDING SYSTEM FUNCTIONS

11.1 Communications

Gaslink, BGE and BGN will communicate and meet with each other as necessary in order for them to carry out their respective System Functions.

11.2 Gaslink/BGN Meetings

(a) Each month Gaslink and BGN shall hold one or more meetings (including ad hoc meetings) to review progress in respect of the performance by BGN of its functions against the relevant Function Requirements, any new projects not provided for in the Annual Work Plan, any complaints received by Gaslink in respect of the performance by BGN of its System Functions and their potential impact on the Annual Work Plan and any other issues brought forward by either Party (each a “Monthly Meeting”).

(b) Gaslink and BGN shall meet each quarter. At that meeting BGN’s overall performance in the provision of services pursuant to the Agreement will be reviewed by the Parties including against the applicable KPIs.

(c) If Gaslink believes that, in order for it to understand reports or explanations which BGN has made or given to Gaslink in respect of the provision by BGN to Gaslink of services pursuant to Part 3 (the “Relevant Services”), it is necessary for Gaslink to be able to discuss those reports or explanations with the consultants or advisors of BGN who provided advice or services to BGN in connection with the provision by BGN to Gaslink of such Relevant Services, Gaslink may request BGN to arrange that such consultants or advisors would attend at the next Monthly Meeting (or at a special meeting between Gaslink and BGN at a time agreed between the Parties) for the purposes of assisting BGN to clarify such reports or explanations and BGN shall not unreasonably refuse such a request. This Clause 11.2(c) shall not apply in respect of any contractor who provides services to BGN in respect of the physical construction, physical operation and physical maintenance of the BGE Group Transportation System (excluding incident and safety reports). For the avoidance of doubt Gaslink shall not be entitled to contact directly, or give directions or instructions to, any contractor, consultant or advisor of BGN.

11.3 Gaslink/BGE Meetings

Gaslink and BGE shall have such periodic and ad hoc meetings (each a “Gaslink/BGE meeting”) as either of them may reasonably request in connection with:
(a) the exercise by BGE of the Owner Rights referred to in Clause 5 and having regard to BGE’s functions and interests as owner or agent of owner/sub-lessee of the BGE Group Transportation System; and/or

(b) any Dispute arising between BGE and Gaslink.

11.4 Meetings with Commission

The Parties shall seek to arrange a joint periodic meeting with the Commission at which representatives of Gaslink and BGE shall attend to discuss matters arising in connection with this Agreement. This is without prejudice to each Party’s right to seek and attend at a meeting with the Commission on its own at any time. If at any time the Commission requests a joint meeting with representatives of Gaslink and BGE each Party shall use all reasonable endeavours to facilitate such a meeting.

11.5 Gaslink Advisers and Rights of Inspection

(a) Gaslink shall be free at all times (acting reasonably) to procure third party advice or assistance to enable it to evaluate and monitor BGN’s services and work product provided pursuant to Clauses 6-9 (inclusive) (the “Required BGN Services”), and to enable it to instruct BGN in respect of its services in respect of the Standards and the Plans, but shall not purport or seek to replace BGN as providers of such services and work product with such third party advice or assistance. For the avoidance of doubt Gaslink shall be under no such restriction in relation to activities other than the Required BGN Services.

(b) Gaslink may exercise its rights of inspection, audit and review pursuant to this Agreement by engaging a third party to carry out such inspection, review or audit on its behalf.

11.6 Information

Without prejudice to Clause 13 BGN shall provide to Gaslink all such information as Gaslink may reasonably require to enable Gaslink to monitor BGN’s performance of its obligations under the Agreement.

11.7 BGN Meetings with Third Parties

Gaslink shall have the right to attend and participate in any meeting organised by BGN with shippers, producers, customers, industry bodies, regulatory authorities or any public group in the course of performing its functions pursuant to the Agreement. BGN shall give Gaslink reasonable advance notice of any such meeting(s).

11.8 Authorities

Gaslink shall provide BGN, its officers, employees, and, subject always to Clause 21.4 (d), its contractors and agents with all such authorities as BGN shall need to carry out the Annual Work Plan from time to time including, without prejudice to the generality of the foregoing, authorities to execute any document which BGN or any such person is required to enter into on behalf of Gaslink pursuant to the Annual Work Plan from time to time provided, for the avoidance of doubt:

(a) if such agreement is of a type in respect of which Gaslink has approved a standard form, BGN shall use that standard form;
(b) BGN shall provide Gaslink with a report at the Monthly Meeting on any such agreements that are not in standard form and such agreements shall be made available to Gaslink on request; and

(c) that BGN is not authorised to undertake any of the functions to be undertaken by Gaslink pursuant to this Agreement including entry into Large System Agreements.

11.9 Review of Operating Agreement

The Parties shall together review the extent to which their activities which are governed by this Agreement are being carried out in accordance with its terms. The first such review shall take place 18 months after the date of this Agreement and thereafter reviews shall take place annually or at such other intervals as the Parties may agree.

11.10 Non-Group Transportation System

Subject to Schedule 5 in the event that Gaslink proposes to seek or accept an appointment, designation or licence to act as operator of a transmission system or a distribution system which is not owned by a member of the BGE Group (a “Non-Group Transportation System”) Gaslink shall consult with BGE and the Commission.

11.11 Instructions

Where, pursuant to Part 3 of this Agreement, Gaslink gives instructions to BGN in respect of any services to be provided by BGN to Gaslink under that Part, BGN shall inform Gaslink if it has any dissenting views, and the basis of such views, in respect of the instructions in relation to, or the work product in respect of, those services.

11.12 Service Standard

BGN shall seek to ensure that, in so far as is possible within the scope of its instructions (where relevant), the services provided:

(a) are adequate for their purposes;

(b) where relevant (and save as otherwise notified by BGN to Gaslink in advance), are in line with international best practice; and

(c) meet any applicable requirements imposed by or under the Legal Requirements and the System Operator Licences.

11.13 Safety Case

In discharging its System Functions, BGN shall at all times adhere to the terms of the relevant Safety Case and shall co-operate fully with Gaslink in any review or report to the Commission on compliance with the Safety Cases.

11.14 Confidential Information Protocol

BGE shall at all times use its best endeavours to procure compliance by the BGE Group, its officers, employees, contractors and agents with the Confidential Information Protocol, and shall inform Gaslink promptly if it becomes aware of a breach of the Confidential Information Protocol.
11.15 Disaster Recovery Programme

BGN shall maintain a disaster recovery programme and contingency plan for the purposes of performing its System Functions.

11.16 Agreed Processes Document

To the extent that the Agreed Processes Document is not complete as at the Transfer Date the Parties shall endeavour to agree amendments or additions to complete the Agreed Processes Document as soon as practicable thereafter.

12. DISPUTE RESOLUTION

12.1 Amicable Resolution

(a) Any Dispute between Gaslink and BGN shall be referred by the Party raising the Dispute in the first instance to the next Monthly Meeting which is at least ten (10) Business Days following such referral. A referral issued pursuant to this clause shall be in writing and shall include a summary of the Dispute and the other Party shall respond in writing within five (5) Business Days of receipt of such referral. The Parties shall discuss the matter at the Monthly Meeting and negotiate in good faith using all reasonable endeavours to resolve the Dispute amicably.

(b) Any Dispute between Gaslink and BGE (other than a Dispute between Gaslink and BGN) shall be referred by the Party raising the Dispute in the first instance to the next following Gaslink/BGE meeting which is at least 10 Business Days following such referral. A referral issued pursuant to this clause shall be in writing and include a summary of the Dispute and the other Party shall respond in writing within five (5) Business Days of receipt of the summary if requested to do so. The Parties shall discuss the matter at the Gaslink/BGE meeting and negotiate in good faith using all reasonable endeavours to resolve the Dispute amicably.

(c) If the Monthly Meeting or Gaslink/BGE meeting as the case may be is unable to resolve the Dispute, it shall be referred to a forum comprising a senior manager of each of the Parties involved in the Dispute (the "Forum"). The Forum shall meet within five (5) Business Days of the Monthly Meeting or Gaslink/BGE meeting as the case may be (or sooner if any of the Parties involved notifies to the other(s) that the matter is urgent or of high importance). At that meeting the Forum shall discuss the matter and negotiate in good faith using all reasonable endeavours to resolve the Dispute amicably.

12.2 Determination by the Commission

(a) If the Forum is unable to resolve the Dispute within fifteen (15) Business Days of its being referred to the Forum then, either Party to the Dispute (the "referring Party") may by notice in writing to the other Party to the Dispute and, where the Dispute is being referred to the Commission, to the Commission (the "Dispute Notice"), refer the Dispute:

(i) for determination by the Commission pursuant to Regulation 19 provided that if the Commission notifies the Parties in writing that it is neither necessary nor appropriate for the Commission to determine such Dispute, the Dispute shall be deemed to be referred for resolution pursuant to Clause 12.4; or
(ii) for resolution pursuant to Clause 12.4 provided that the other Party may within five (5) Business Days of receipt of such notice notify the referring Party and the Commission that it wishes to have the Dispute determined by the Commission in which case the Dispute shall be deemed to have been referred to the Commission subject always to the right of the Commission pursuant to Clause 12.2 (a) (i) to determine that it is neither necessary nor appropriate for the Commission to determine such Dispute.

(b) Subject to Clause 12.3 where a Dispute is referred or deemed to have been referred for determination to the Commission, the procedures to be followed shall be determined by the Commission subject to the Regulations and the Commission shall determine the allocation of costs in respect of the Dispute. The Parties shall use their reasonable endeavours to ensure that the Commission makes its determination within forty (40) Business Days of the reference (unless the Parties and the Commission agree otherwise) and that the Commission, in giving its determination, gives its reasons in full in writing.

(c) In making such a determination the Commission acts in its capacity as regulator under the Acts and as the arbiter of Disputes pursuant to Regulation 19. The decision of the Commission shall be binding upon the Parties in accordance with the Regulations.

12.3 Step-in Direction

(a) Where the referring Party in respect of a Dispute is Gaslink and the Dispute concerns Gaslink’s belief that BGN is in material delay or default of its obligations under this Agreement and the Dispute is referred to the Commission, the Dispute Notice may request a direction from the Commission to Gaslink to step-in to perform the relevant obligations provided that:

(i) for the avoidance of doubt a Dispute may properly be raised by Gaslink arising from a material delay or default of BGN obligations under the Agreement whether as a result of Force Majeure or otherwise;

(ii) Gaslink shall give no less than five (5) Business Days’ prior notice to BGN of the Dispute Notice, with a copy to the Commission, stating its concerns, indicating that in its opinion there is such a material delay or default and providing all such information as may be required to substantiate its claim;

(iii) BGN must respond to the notice given pursuant to clause 12.3(a)(ii) within ten (10) days after it is given. This response shall be addressed to both Gaslink and the Commission and:

(A) if BGN accepts that there is a material delay or default, should explain in detail the steps BGN proposes to take in order to reduce, minimise, alleviate or remedy the delay or default; or

(B) if BGN does not accept that there is a material delay or default, should explain in detail its reasons (together with supporting evidence); and
(iv) the Commission shall make a determination as to:

(A) whether there is a material delay or default by BGN having considered Gaslink’s notification pursuant to clause 12.3(a)(ii) and BGN response pursuant to clause 12.3(a)(iii); and

(B) the appropriate response to the notice and response

and the Parties shall abide by the Commission’s determination in that regard, including, but not limited to, any conditions of that determination, whether that is to:

(1) require implementation of the proposals put forward by BGN at BGN’s cost and expense (referred to in clause 12.3(a)(iii)(A));

(2) instruct that additional or alternative steps be taken by BGN at BGN’s cost and expense to reduce, minimise, alleviate or remedy any delay or default;

(3) give a direction (a “Step-in Direction”) to Gaslink to step in at BGN’s cost and expense (subject as provided in Clause 12.3(d)(iv)) to undertake any obligations in respect of which the Commission has found BGN to be in material default or delay and which are specified in the direction including, where appropriate, to access or use the BGN IT Systems as required for the purposes of performing such obligations (the “Step-in Activities”);

(4) accept BGN’s response under clause 12.3(a)(iii)(B) and determine that BGN is not in material delay or default.

(b) If the Commission gives a Step-in Direction:

(i) Gaslink shall give notice (“Step-in Notice”) to BGN of the time from which it intends to step-in pursuant to and subject to the terms of the Step-in Direction. Subject to the terms of the Step-in Direction, Gaslink shall be entitled to elect to perform the Step-in Activities:

(A) itself;

(B) by engaging a contractor; or

(C) by stepping into the existing contractual arrangements that BGN has with a contractor as described in clause 12.3(b)(iv);

(ii) BGN shall take all reasonable steps to comply with, and to cooperate with Gaslink to enable Gaslink fully and effectively to comply with, the Step-in Direction;

(iii) Gaslink shall undertake the Step-in Activities to the standard of a Reasonable and Prudent Operator;
(iv) if requested by Gaslink, BGN shall execute Notices of Appointment of Agent in favour of Gaslink (as contemplated by the provision to be inserted in agreements for construction works, maintenance works or the procurement of materials in relation to the BGE Group Transportation System ("Relevant Contracts") pursuant to clause 12.3(c)) as necessary to give effect to the Step-in Direction. Where Gaslink steps-in to contractual arrangements with a BGN contractor in this manner it shall:

(A) in respect of acts or omissions occurring during (but not before or after) the Step-in Period, assume joint and several liability with BGN to such contractor;

(B) during the Step-In Period benefit from the rights under the Relevant Contract;

(C) during the Step-In Period to the exclusion of BGN, be entitled to deal with such BGN contractor in respect of the contractor’s performance of the Relevant Contract as if it were the counterparty to the contract in place of BGN;

(v) the materials and other items constructed or maintained by Gaslink during the Step-in Period remain, or will be, the property of BGN in respect of which BGN will be required, after the end of the Step-in Period, to discharge its System Functions. In exercising rights under Relevant Contracts or entering into any new contract for the purposes of complying with a Step-in Direction ("Gaslink Relevant Contracts"), Gaslink shall have regard to the position of BGE having regard to its System Functions by ensuring, for example, that:

(A) it is clear that BGE owns materials and other items procured;

(B) BGE has the benefit of express and implied warranties and obligations to repair defective materials or workmanship and similar obligations of any contractor. BGE shall co-operate with Gaslink to enable it to come to a suitable arrangement by, for example, executing agreements as reasonably requested by Gaslink in order to enable it to take over these obligations at the end of the Step-in Period;

(vi) step-in does not relieve either Party from its general obligations under this Agreement other than, in the case of BGE (through BGN), the obligations the subject of the Step-in Direction; and

(vii) Gaslink shall give reasonable notice ("Step-out Notice") of the date from which it will cease to exercise its powers under a Step-in Direction.

(c) Unless otherwise agreed in writing by Gaslink there shall be included in every Relevant Contract BGE enters into after the date of this Agreement a right to assign the Relevant Contract to Gaslink and an acknowledgement by the counterparty to the contract substantially in following form:
“On receipt of a Notice of Appointment of Agent substantially in the form specified in this Agreement, duly executed by or on behalf of BGE and Gaslink, the Contractor acknowledges and agrees that Gaslink shall be entitled to exercise the rights of BGE under this Agreement in all respects as if it were BGE until such time as a notice of revocation of the appointment is given by BGE in compliance with any Step-in Direction from the CER. This clause is without prejudice to the other rights and liabilities of the parties under this Agreement and shall not in any way relieve a party from its obligations under this agreement, which shall continue in accordance with its terms following the appointment of Gaslink as agent for BGE and revocation of that appointment.”

(d)

(i) BGN may engage an independent, suitably qualified person to undertake a review of the matters in respect of which Gaslink has been given a Step-in Direction, both at the commencement and at the end of the Step-in Period but not on a continuous basis throughout the Step-in Period. For this purpose, Gaslink agrees to allow the person undertaking the review reasonable access to the works the subject of the Step-in Notice as necessary to enable the report to be completed in a professional, efficient and timely manner;

(ii) BGE shall pay the costs and expenses of Gaslink in connection with compliance with a Step-in Direction, subject to this clause 12.3(d);

(iii) Gaslink shall notify BGE of amounts to be paid arising from activities undertaken in compliance with the Step-in Direction and BGE shall discharge all such payments as notified. Gaslink shall report regularly to BGE and the Commission in relation to the costs and expenses for which it seeks payment under this clause. Gaslink shall separately identify costs and expenses directly associated with the performance of the activities in accordance with the Step-in Direction and other ancillary costs and expenses such as legal and advisory costs and expenses;

(iv) Gaslink shall regularly update BGE about amounts to be paid to contractors under Relevant Contracts and Gaslink Relevant Contracts;

(v) BGE shall not be liable to pay costs and expenses that were not properly incurred by Gaslink. The costs and expenses will be taken not to have been properly incurred to the extent that they were incurred due to breach of this Agreement or any Relevant Contract or any Gaslink Relevant Contract caused by any act or omission of Gaslink (other than where such breach was expressly authorised in advance by the Commission or approved in writing by BGN) or the negligence or other unlawful conduct of Gaslink or its officers, employees, agents or contractors; and

(vi) Gaslink shall not compromise or settle any claim made by either party to a Relevant Contract or any Gaslink Relevant Contract or any dispute under such a contract nor make any admission prejudicial to BGN in relation to such a claim or dispute.
(e) Without prejudice to this clause 12.3 Gaslink will use its reasonable endeavours to give BGN as much warning as possible if it reasonably considers that grounds for seeking a Step-in Direction have or may arise thereby giving BGN an opportunity to take steps to address concerns of Gaslink about delay or default at an early stage.

12.4 Alternative Dispute Resolution

(a) Waiver

Where a Dispute is referred or deemed to have been referred for resolution pursuant to this Clause 12.4 in accordance with Clause 12.2 both Parties shall be deemed to have waived their respective rights to submit the Dispute for determination by the Commission pursuant to Regulation 19 and the provisions of this Clause 12.4 shall apply to any such dispute.

(b) Mediation

(i) Where a Dispute is referred to or deemed to have been referred to alternative dispute resolution pursuant to Clause 12.2, it shall be first referred to a single accredited mediator (the “Mediator”) to be agreed between the Parties or, failing such agreement within 3 Business Days, to be appointed at the request of either Party by the Chairman for the time being of the CIA (IB) within 7 Business Days of the request having been made of him.

(ii) The Mediator shall, as a pre-requisite to the Mediator’s appointment, enter into a confidentiality undertaking with the Parties in the terms equivalent to those of Clause 16.1 (Confidentiality) mutatis mutandis.

(iii) The mediation shall be carried out within twenty (20) Business Days of the date of the Dispute Notice and the Parties shall use reasonable endeavours to resolve the Dispute within this time period.

(iv) Any mediation shall be carried out on a without prejudice basis.

(v) The Parties shall, unless they agree otherwise, bear their own costs and expenses arising from such mediation, and the Parties shall bear the fees and expenses of the Mediator and all administrative costs arising from such mediation equally.

(c) Expert Determination

(i) A Dispute relating exclusively to Technical Issues which is not resolved by mediation within twenty (20) Business Days of the date of the Dispute Notice may be referred by either Party by notice in writing to the other Party to determination by an Expert in accordance with this Clause 12.4(c) (“Expert Referral Notice”).

(ii) If a Party considers that the Dispute does not relate exclusively to Technical Issues then it may, within five (5) Business Days after the date of the Expert Referral Notice, serve a notice of objection (“Notice of Objection”) on the other Party and the Commission.
(iii) If a Notice of Objection is served pursuant to Clause 12.4(c)(ii), the Commission shall determine whether the Dispute relates exclusively to Technical Issues.

(iv) If a Notice of Objection is served pursuant to Section 12.4(c)(ii) and the Commission decides that the Dispute relates exclusively to Technical Issues or if no Notice of Objection is served within the timeframe referred to in Clause 12.4(c)(ii), the Dispute shall be determined in accordance with this Clause 12.4(c).

(v) If a Notice of Objection is served pursuant to Section 12.4(c)(ii) and the Commission decides that the Dispute does not relate exclusively to Technical Issues, this Clause 12.4(c) shall not apply and the Dispute shall be deemed to be referred to arbitration pursuant to Clause 12.4(d) on the date of notice from the Commission.

(vi) 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 by the later of five (5) Business Days after the date of the Expert Referral Notice and ten (10) Business Days after the decision of the Commission pursuant to Clause 12.4(c)(iv), the Parties have been unable to agree on the choice of an Expert, any Party may inform the President for the time being of the IEI of the nature and complexity of the Dispute and request him or his nominee to appoint an Expert within ten Business Days of being requested to do so for the determination of the Dispute;

(C) upon the Expert being agreed on or appointed in accordance with this Clause 12.4(c)(vi), the Parties shall immediately notify the Expert of his appointment and shall request him to confirm within five (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 subject to Clause 12.4(c)(xi);

(D) the Expert shall be a person suitably qualified by education, experience and/or training to determine the Dispute;

(E) the Expert shall be entitled to:

(1) seek such independent professional (including legal) and/or technical advice; and

(2) obtain such secretarial assistance, as he may deem reasonably necessary; and

(F) 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 terms equivalent to those of Clause 16.1 (Confidentiality) mutatis mutandis.
(vii) 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. No meeting between the Expert and either of the Parties shall take place unless both the Parties have been given a reasonable opportunity to attend.

(viii) The terms of reference of the Expert shall include the following:

(A) 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 Ireland) at which he shall clarify, and, if necessary, define the Dispute and give directions as to the future conduct of the Dispute;

(B) the Expert may, from time to time, give such directions as he sees fit;

(C) the Parties shall be entitled to supply data and information and make submissions to the Expert and the Expert shall make his determination as soon as reasonably practicable and in any event shall furnish the Parties with a draft of his proposed determination, together with full written reasons, within twenty (20) Business Days of his appointment or such other time as agreed in writing by the Parties;

(D) the Expert shall give full written reasons for his determination;

(E) the Parties shall be entitled to make representations to the Expert within ten (10) Business Days after the receipt of the draft of the Expert’s proposed determination, and

(F) the Expert shall issue his final determination within ten (10) Business Days or as soon as is reasonably practicable after the expiry of the time period referred to in Clause 12.4(c)(viii)(E).

(ix) If an Expert declines appointment or after appointment dies or is removed by order of a competent court or is incapable of acting and the Parties do not by agreement fill the vacancy, then another Expert shall be appointed by the President for the time being of the IEI or his nominee, as the case may be, in accordance with the procedures set out in Clause 12.4(c)(vi).

(x) If, within a reasonable period, but in any event not later than sixty (60) Business Days after the acceptance of his appointment, the Expert has not made his determination, then, at the request of either of the Parties, another Expert shall be appointed in accordance with this Clause 12.4(c), 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.
(xi) The Expert shall be entitled to act as an expert notwithstanding that, at the time of the appointment or at any time before he gives determination, he has or may have some interest or duty which conflicts or may conflict with his function under such appointment, provided that he has disclosed any such interest or duty of which he is aware before accepting such appointment (or promptly upon any such interest or duty arising subsequent to such appointment) and the Parties have, within five (5) Business Days after such disclosure or such longer period agreed between the Parties, confirmed their agreement to his appointment.

(xii) 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 agreement between the Parties, or by the Commission or IEI) shall be borne equally by the Parties and each Party shall bear its own costs.

(xiii) An Expert appointed under this Agreement shall act as an expert and not as an arbitrator and the provisions of the Arbitration Acts 1954 to 1998 shall not apply to his determination.

(xiv) The determination of the Expert shall be final and binding upon the Parties.

(d) **Arbitration**

(i) A Dispute other than a Dispute relating exclusively to Technical Issues which is not resolved by mediation within twenty (20) Business Days of the date of the Dispute Notice may be referred by any Party to arbitration pursuant to this Clause 12.4(d).

(ii) The procedure for the appointment of an arbitrator shall be as follows:

(A) the arbitrator shall be a person agreed between the Parties, or, if the Parties cannot agree within five (5) Business Days after the referral to arbitration, either Party may inform the Chairman for the time being of the CIA(IB) of the nature and complexity of the Dispute and request him or his nominee to appoint within 10 Business Days of being requested to do so a single arbitrator for the determination of the Dispute;

(B) if the arbitrator declines appointment or after appointment dies or is removed by order of a competent court or is incapable of acting and the Parties do not by agreement fill the vacancy, then another single arbitrator shall be appointed by the Chairman for the time being of the CIA(IB) or his nominee for the determination of the Dispute.

(iii) The arbitrator’s award shall be final and binding on the Parties. The arbitration shall take place in Ireland and the language of the arbitration shall be English.

(iv) Unless otherwise agreed by the Parties, any reference to arbitration shall be conducted in accordance with the Institution of Engineers of Ireland Arbitration Procedure (2000) or any amendment or
modification thereof being in force at the time of appointment of the arbitrator.

(v) Any such reference to arbitration shall be deemed to be a submission to arbitration within the meaning of the Arbitration Acts 1954 to 1998.

12.5 Continuing Performance

Subject to any contrary determination made by the Commission pursuant to Clause 12.2, until such time as a Dispute is resolved or determined in accordance with the procedures set out in this Clause 12, neither Gaslink or, as the case may be, BGN or BGE shall take any action the taking of which is the subject matter of the Dispute or which would or would be likely to have a material adverse effect on the outcome of the Dispute or would achieve by alternative means a result which is itself the subject matter of the Dispute. Nothing in this clause 12 shall preclude the rights of either Party to seek injunctive or interim relief in the Courts at any time.

13. INFORMATION AND ACCESS TO MARKET FACING SYSTEMS

13.1 Historical Records

(a) BGE shall keep and maintain the Historical Records in an accessible and orderly manner either itself or through a third party engaged by it for that purpose.

(b) Each Party shall co-operate to ensure that Gaslink is given access to the Historical Records on reasonable notice to the extent required by Gaslink to enable it to perform its System Functions. BGE shall on request by Gaslink on reasonable notice provide copies of those Historical Records to Gaslink for the purposes of discharging its System Functions.

13.2 Other Information

(a) In the case of Information other than Historical Records, subject to Gaslink complying with the procedures in Clause 13.3, BGE shall at the request of Gaslink provide to Gaslink any Information held or obtained by BGE including Information obtained from its officers, employees, agents and contractors in the discharge of its System Functions, where and to the extent that such Information is required by Gaslink to discharge Gaslink's System Functions. Use of such Information shall be in accordance with Clause 13.2(c).

(b) Subject to BGE complying with the procedures in Clause 13.3, Gaslink shall at the request of BGE provide to BGE, any Information held or obtained by Gaslink including Information obtained from its officers, employees, agents and contractors relating to the condition of the Transportation Assets, where and to the extent required by BGE to protect its legitimate interests as owner or agent of the owner or sub-lessee of the BGE Group Transportation System or to discharge its System Functions. Use of such Information shall be in accordance with Clause 13.2(c).

(c) Each Party ("Grantor") hereby grants to the other Party a non-exclusive, royalty free licence and permission to:

(i) itself copy and use; and
(ii) permit its employees, officers, contractors and agents to copy and use,

the Information provided to the other Party by the Grantor under or in connection with this Agreement, but only to the extent necessary to enable the other Party to perform its System Functions.

(d) In circumstances where the performance by BGE of its System Functions involves the processing of personal data by BGE on behalf of Gaslink, BGE agrees to:

(i) process the Information solely in accordance with the instructions of Gaslink and the terms of this Agreement; and

(ii) adopt and maintain appropriate technical and organisational security measures in dealing with personal data controlled by Gaslink in order to protect against unauthorised or accidental access, loss, alteration, disclosure or destruction of such data, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

13.3 General

(a) A Party making a request for access to or copies of Information under this Agreement shall:

(i) make the request at a reasonable time before the Information is required, having regard to the nature and extent of the Information the subject of the request; and

(ii) make the request in writing and specify in reasonable detail the nature and scope of the Information the subject of the request.

(b) Without prejudice to other provisions in this Agreement that require Information to be provided in a specific format, nothing in this Clause requires a Party to provide Information:

(i) that it does not have or could not reasonably obtain;

(ii) in a form or medium in which it does not already exist or could not reasonably be converted to the required form or medium;

(iii) where such disclosure would be in breach of a confidentiality obligation owed in relation to the information or restriction on disclosure applicable to the Information under its System Owner Licences or System Operator Licences (as the case may be); or

(iv) about its internal business affairs, including terms of employment provided that this Clause 13.3(b)(iv) shall not prevent either Party from disclosing Information to the other Party which that other Party requires in order to comply with this Agreement and in the case of Gaslink which it requires in order to comply with Schedule 2 to the Regulations or its obligations in respect of its employees.

(c) The Parties shall comply with the DPA in respect of the Information.
(d) References in this Clause 13 to BGE shall include a reference to BGN where relevant.

13.4 **BGN IT Systems Reports**

BGE shall provide to Gaslink such reports generated by the BGN IT Systems, or at BGE’s option the ability to generate such reports from the BGN IT Systems, as may reasonably be requested by Gaslink from time to time including but not limited to reports relating to the:

(a) Capacity Register;
(b) Gas Point Register;
(c) Change of Shipper Information;
(d) Throughput and allocation data;
(e) System Shrinkage and Balancing;
(f) Siteworks Information;
(g) Metering and Access Information; and
(h) Gas Quality.

13.5 **Licence to use Market Facing Systems**

The Parties acknowledge that in order for Gaslink to carry out its System Functions, Gaslink may be required to access and use the Market Facing Systems. Such access and use shall be governed by the licence terms set out in Schedule 12 of this Agreement as may be amended or extended by a Step-in Direction.¹

14. **PUBLICITY**

Each Party is responsible for publicity in relation to its System Functions. The Parties shall co-operate as appropriate in relation to matters of common concern.

15. **PERSONNEL AND HEALTH AND SAFETY**

15.1 BGN shall ensure that the personnel and contractors carrying out its System Functions are suitably qualified and experienced.

15.2 Each Party shall comply with all applicable provisions of the Health and Safety Acts.

15.3 Both Parties shall ensure that all their respective contractors who are employed or hired to carry out any operations, construction and/or maintenance works on the BGE Group Transportation System shall be competent to undertake the works which they are employed or hired to perform.

15.4 Insofar as the Safety Health and Welfare at Work (Construction) Regulations 2006 ("**Construction Regulations**") apply to any activity arising from the obligations of either Party pursuant to this Agreement, Gaslink and BGN hereby agree, pursuant to Regulation 6(7) of the Construction Regulations, that BGN

¹ May be superseded by sub-licence.
shall be treated as the client for the purposes of the Construction Regulations in respect of that activity save to the extent that Gaslink undertakes such activity in compliance with a Step-in Direction in which event Gaslink shall be treated as the client for the purposes of the Construction Regulations in respect of the activity undertaken by it.

16. CONFIDENTIALITY

16.1 Obligation of confidentiality

(a) Each Party agrees that, in respect of Confidential Information in relation to which it is the recipient (the "Recipient"), and subject to the exceptions in Clause 16.1(b), it will:

(i) maintain the confidentiality of all such Confidential Information;

(ii) use such Confidential Information exclusively for the purpose for which it is provided (which, unless the Party can demonstrate otherwise, will be for the purposes of fulfilling its System Functions);

(iii) not disclose such Confidential Information to any person; and

(iv) not use or disclose such Confidential Information in any manner which would cause the Disclosing Party to be in breach of its Licences or any other Legal Requirement.

(b) The exceptions referred to Clause 16.1(a) above are:

(i) subject to Clause 16.2, where the Recipient needs to disclose the Confidential Information to its officers, employees, agents and contractors who need to have such Confidential Information for the purpose for which it was provided;

(ii) subject to Clause 16.2, where BGE is the Recipient, where the Confidential Information is disclosed to officers, employees, agents and contractors of BGE solely for the purposes of enabling BGE to exercise the Owner Rights or to BGE(UK) solely for the purposes of enabling BGE to fulfil its obligations under the BGE Agency and Services Agreement;

(iii) where the Confidential Information is required to be disclosed pursuant to a statutory or other legal obligation, pursuant to any judicial or arbitral process or tribunal of competent jurisdiction or by order of a competent regulatory body; or

(iv) where the Confidential Information is expressly permitted or required to be disclosed under the terms of any agreement or arrangement (including the Standards) with the person to whose affairs such Confidential Information relates.

(c) In any case where a Party is required to disclose Confidential Information as described in clause 16.1(b)(iii) it shall to the extent that it is practicable and permissible notify the other party in advance of making such disclosure.

16.2 Disclosure to employees etc
(a) Disclosure to officers, employees, consultants, agents and contractors is subject to the further requirements in this Clause 16.2.

(b) The Recipient shall inform such officers, employees, consultants, agents and contractors of the confidential nature of such Confidential Information.

(c) The Recipient shall comply with any obligations under its System Owner Licences or its System Operator Licences (as the case may be) to procure that each such person to whom disclosure is made agrees to maintain the confidentiality of the Confidential Information and to use the Confidential Information exclusively for the purpose for which it is provided. The Recipient shall furnish, within 3 days of a request by the other Party, a list of each of the persons who has executed such an agreement and who is still an officer, employee, agent or contractor of the Recipient.

(d) In the case where BGE is the Recipient, then Confidential Information shall be disclosed only in accordance with the agreed form Confidential Information Protocol.

(e) BGE shall use its best endeavours to procure that all personnel and, where relevant, consultants, agents and contractors of BGE and BGN comply with any applicable provisions of the Confidential Information Protocol in the course of carrying out functions subject to this Agreement.

16.3 Redelivery

Save to the extent that it is prevented from doing do by law or regulatory authority or to the extent that it requires such Confidential Information to carry out its functions or enforce its rights pursuant to this Agreement:

(a) the Recipient of Confidential Information shall re-deliver to the Party who disclosed (the “Disclosing Party”) the Disclosing Party on demand by the Disclosing Party, any Confidential Information of the Disclosing Party in its possession and shall not retain any copies, extracts or other reproductions in whole or in part of such Confidential Information; and

(b) all documents, memoranda, notes and other writings whatsoever prepared by the Recipient or its officers, agents employees or contractors based on or arising from or in connection with the Confidential Information or any of it shall be destroyed except for any such document, memorandum, note or other writing that must be retained as a requirement of good corporate governance or as a requirement of law.

17. LIMITATION OF LIABILITIES AND INDEMNITIES

17.1 Third Party Issues

(a) The Parties acknowledge that:

(i) each of them will have a potential exposure to third party liabilities arising out of or in connection with their respective System Functions, related contracts with third parties, and more generally through the operation of statute or common law; and

(ii) each of them will rely on the reasonable endeavours of the other Party to limit this liability, to the extent permitted by the Commission in the case of the agreements which the Commission
regulates between Gaslink, BGE or BGN on the one part and third parties on the other part and as generally permitted by law.

(b) Each Party shall use its reasonable endeavours to minimise the risks referred to in Clause 17.1(a) and to mitigate any liability of the other Party referred to in Clause 17.1(a) and assist in the management and containment of such liability if it should arise.

(c) Without prejudice to the generality of Clause 17.1(b) in the event that a Party reasonably considers that the other Party is or might reasonably be expected in the future to be exposed to such third party liabilities or that such a liability has arisen, it shall:

(i) promptly notify the other Party;

(ii) co-operate with the other Party by providing all relevant information and assistance in order to assess the best course of action;

(iii) not make any admission or take any step that is or might be prejudicial to the other Party without the prior consent of the other Party provided that Clause 17.3(b) and not this Clause 17.1(c)(iii) shall apply in the circumstances set out in that Clause 17.3(b); and

(iv) comply with the third party claims procedure in respect of Claims set out in Clause 17.3.

(d) Without prejudice to Clauses 5.1(h) and 17.1(a) - (c), in negotiating offering to enter into, entering into, modifying and exercising its rights under any contract with a third party:

(i) Gaslink shall use all reasonable endeavours having regard to Regulation 12 to protect the legitimate interests of BGE as owner or as the case may be agent of the owner or sub-lessee of the BGE Group Transportation System;

(ii) Gaslink shall liaise with BGN in respect of the provisions or proposed provisions of such contract regarding indemnities, liabilities and limitations on liabilities and negotiations in respect of those provisions and shall not enter into such a contract until BGN is satisfied (acting reasonably) that those provisions limit to a reasonable extent the potential financial and other exposure of any member of the BGE Group (including Gaslink) (whether directly to customers or other third parties) and shall not seek or agree to increase those liabilities or limitations without the prior written approval of BGN which approval shall not be unreasonably withheld or delayed;

(iii) in offering terms to, and entering into an agreement, for connection to the BGE Group Transportation System with a third party of a type in respect of which a standard form of connection agreement shall have been approved by the Commission, Gaslink shall use such standard form. In any other such case Clause 17.1(d)(ii) shall apply; and

(iv) any System Agreement shall include as a term of such agreement an undertaking from the counterparty or counterparties ("the
Interface Undertaking”) enforceable by Gaslink that affords to BGE (including BGN and as agent for BGE(UK)) and its officers, agents, employees and contractors in carrying out its System Functions protections from and exclusions of liability, indemnities and undertakings in relation to insurance on the same terms as such protections, exclusions, indemnities and undertakings are afforded to Gaslink under that System Agreement. Gaslink shall give BGE a copy of every Interface Undertaking and shall take all reasonable steps to enforce the terms of such undertaking in the event of any breach by the Third Party. Where BGE suffers any loss, damage, claim, liability, cost or expense arising from an act or omission of a Third Party in respect of which, if BGE had been the direct recipient of the Interface Undertaking, the Third Party would have been liable to BGE, Gaslink shall forward to BGE such amount as, having used reasonable efforts to recover from the Third Party the amount in respect of which the Third Party would have been liable to BGE, it has been able to recover pursuant to the Interface Undertaking. For the avoidance of doubt, Gaslink shall have no obligation or liability to forward amounts which it has not been able to recover from the Third Party pursuant to the Interface Undertaking having used reasonable efforts or prior to any such recovery.

(e) During the Transitional Period the parties shall endeavour to agree, and obtain all necessary approvals for, standard form agreements in respect of the provision of System Services where practicable.

(f) Without prejudice to any obligations of Gaslink under the Standards, Gaslink shall give BGN such mandates and authorities as the Parties agree to enable BGN on behalf of Gaslink, and shall itself take any steps as are required to be taken, to exercise and enforce the rights of Gaslink under all contracts or instruments with and/or in relation to third parties for connection to or use of the BGE Group Transportation System and any ancillary guarantee or security arrangements to ensure that all monies (including interest) payable to Gaslink under those contracts or instruments are paid when due. Where security for payment of such monies is held by BGN in its role as agent in respect of the Financial Security Policy, BGN shall give Gaslink as much notice as is reasonably practicable of any enforcement of such security and of any circumstances of which BGN is aware which BGN considers are likely to give rise to the need to enforce such security.

17.2 Indemnities against Third Party Claims

(a) BGE (including as agent for BGE(UK)) shall indemnify and keep indemnified on demand Gaslink, its officers, employees, contractors and agents against all such losses, damage, liabilities, awards, settlements, costs and expenses as Gaslink or any such person incurs by reason of a claim made by a third party whether in tort contract or otherwise (including for the avoidance of doubt, the imposition of a fine by any Competent Authority) to the extent that such claim arises from any act, omission, error, breach, default or negligence of BGE (including BGN and BGE(UK)) their officers, employees, contractors or agents in carrying out its System Functions provided that the indemnity shall not extend to any loss, damage, liabilities, awards, settlements, costs or expenses to the extent that such arises because of a failure by Gaslink to comply with its obligations under Clause 17.1.
(b) Gaslink shall indemnify and keep indemnified on demand BGE (including BGN and BGE(UK)), their officers, employees, contractors and agents against all such losses, damage, liabilities, costs, awards, settlements and expenses as BGE (including BGN and BGE(UK)) or any such person incurs by reason of a claim made by a third party whether in tort contract or otherwise (including for the avoidance of doubt, the imposition of a fine by any Competent Authority) to the extent that such claim arises from any act, omission, error, breach, default or negligence of Gaslink, its officers, employees, contractors or agents in carrying out its System Functions provided that the indemnity shall not extend to any loss, damage, liabilities, awards, settlements, costs or expenses to the extent that such arises because of a failure by BGE (including BGN and BGE(UK)) to comply with its obligations under Clause 17.1.

(c) BGE shall indemnify and keep indemnified on demand Gaslink in respect of any losses, damages, liabilities, settlements, awards, tax penalties, interest, fines, costs and expenses incurred by or awarded against Gaslink as a result of the inclusion of Gaslink in the BGE VAT group and further which Gaslink may incur in the event that Gaslink is deemed by the Revenue Commissioners not to form part of the BGE Group VAT group for any reason notwithstanding that it has been treated as such by BGE.

(d) BLACKED OUT

17.3 Taking Over of Claims

(a) In the event of any claim (a “Claim”) being made against a Party (the “Indemnified Party”) in respect of which it is indemnified by the other Party pursuant to Clause 17.2 (the “Indemnifying Party”), the Indemnifying Party shall be promptly notified of the Claim and may, at its own expense, conduct all negotiations for the settlement of the same, and any litigation that may arise from the Claim.

(b) The Indemnified Party shall not make any admission which might be prejudicial to the Claim, unless and until the Indemnifying Party has failed within twenty (20) Business Days of receiving notice from the Indemnified Party requesting it to do so, to unconditionally agree in writing to take over the conduct of the negotiations or litigation in respect of the Claim.

(c) The Indemnified Party shall, at the request of the Indemnifying Party, afford all reasonable assistance for the purpose of contesting the Claim, and shall be paid by the Indemnifying Party (within ten (10) Business days of the date of its invoice therefore) all reasonable costs and expenses incurred in so doing.
17.4 Liabilities other than third Party Claims

(a) In the event that whether in contract, warranty, tort (including negligence), breach of duty, statute, strict liability, or any other legal or equitable principle a Party (the “Defaulting Party”) causes the other Party (the “Non-Defaulting Party”) to incur any loss, damage, liability, cost and expense (“Direct Losses”) in respect of any:

(i) breach of this Agreement;

(ii) failure to comply with any procedure, rule, instruction or direction given under or referred to in this Agreement or the Regulations;

(iii) physical damage caused directly to the BGE Group Transportation System or any other property of BGE or BGE (UK) or Gaslink (as the case may be) in connection with matters pertaining to this Agreement;

(iv) in the case of BGE, breach by BGE of a statutory or other legal duty owed to Gaslink under the Regulations or otherwise in connection with this Agreement;

(v) in the case of Gaslink, breach by Gaslink of a statutory or other legal duty owed to BGE under the Regulations or otherwise in connection with this Agreement;

(vi) any other matter relating to this Agreement,

excluding losses, damage, liabilities, costs, awards, settlements and expenses subject to indemnity pursuant to Clause 17.2, the Defaulting Party shall use its best endeavours to recover the full amount of the Direct Losses under any applicable insurance policy or from any other potential source available to it in order to be able to reimburse to the Non-Defaulting Party the Direct Losses to the extent of any such amount recovered. The total liability of a Defaulting Party to a Non-Defaulting Party for Direct Losses shall not exceed, in respect of the aggregate of all liability of the Defaulting Party to the Non-Defaulting Party for all occurrences during any calendar year, the Liability Cap.

(b) Without prejudice to Clause 17.2, neither Party nor any of its officers, directors, employees, contractors or agents shall in any circumstances whatsoever be liable to the other Party for:

(i) any loss of profit, loss of revenue, loss of use, loss of contract (other than this Agreement), loss of sales arrangements or loss of goodwill; or

(ii) any indirect or consequential loss, incidental or special damages or punitive damages; or

(iii) any loss resulting from the liability of the other Party to any other person howsoever and whenever arising

regardless of whether suffered by the other Party or not and regardless of whether the claim is based on contract, warranty, tort (including negligence), breach of duty, strict liability, or any other legal or equitable principle.
17.5 Force Majeure

Neither Party shall be liable for any breach of this Agreement directly or indirectly caused by Force Majeure.

17.6 Severability

Each of the provisions of this Clause 17 and each of its sub-clauses shall:

(a) be construed as a separate and severable contract term, and if one or more of such provisions is held to be invalid, unlawful or otherwise unenforceable the other or others of such provisions shall remain in full force and effect and shall continue to bind the Parties; and

(b) survive termination of this Agreement.

17.7 Ancillary Matters

(a) The rights and remedies provided by this Agreement to the Parties are exclusive and they exclude and are in place of all substantive (but not procedural) rights and remedies express or implied and provided by common law or statute in respect of the subject matter of this Agreement including without limitation any rights either Party may possess in tort (“other Rights and Remedies”) and each of the Parties waives to fullest extent possible and undertakes not to enforce all other Rights and Remedies.

(b) Nothing in this Clause 17 shall prevent or restrict either Party enforcing any obligation owed to it under or pursuant to this Agreement.

(c) Each of the Parties agree that the other Party holds the benefit of this Clause 17 for itself and as trustee and agent for its officers, employees, contractors and agents.

(d) Each Party agrees:

(i) to co-operate fully with the other in the management and containment of any liability as and when it arises; and

(ii) that the provisions of this Clause 17 are fair and reasonable.

17.8 Insurance

(a) The Parties agree that sufficient provision is made for their respective potential liabilities under this Agreement under the terms of insurance procured by BGE for the BGE Group from time to time and, in the case of Gaslink, an additional public liability policy procured by Gaslink in the amount of €2.6 million under forms of policy acceptable to BGE acting reasonably.

(b) Each Party shall furnish to the other Party on request copies of the relevant insurance policies procured by it as referred to in Clause 17.8(a) and proof that all relevant premia have been paid and that relevant policies remain in place.
(c) If at any time a Party considers that any such insurances can only be obtained at unreasonable commercial rates of premium, it may, by notice in writing to the other Party, request that the Parties should meet in order to discuss alternative risk financing options.

18. DURATION

18.1 This Agreement shall continue in force until terminated in accordance with this Clause 18.

18.2 Either Party may by notice in writing to the other terminate this Agreement if, as a result of repeal, amendment or replacement of the Regulations, the Parties are no longer obliged by the terms of the Regulations to enter into an agreement as described in Regulation 8.

18.3 Each of the following shall constitute a Termination Event in respect of a Party (the “Defaulting Party”):

(a) the Defaulting Party has its System Operator Licences or its System Owner Licences (as the case may be) revoked or withdrawn or surrenders such licences;

(b) if an order of the High Court is made or an effective resolution passed for its insolvent winding up or dissolution;

(c) if a receiver (which expression shall include an examiner within the meaning of Section 1 of the Companies Amendment Act 1990) of the whole or any material part of its assets or undertakings is appointed to the Defaulting Party; or

(d) if it enters into any scheme of arrangement (other than for the purposes of a solvent reconstruction or amalgamation); or

(e) if it is unable to pay its debts within the meaning of Section 214 of the Companies Act 1963 (and the Party shall not be deemed to be unable to pay its debts if any demand for payment is being contested in good faith by the Party with recourse to all appropriate measures and procedures) and for the purposes of this sub-clause Section 214 of the Companies Act 1963 shall have effect as if for “£1,000” there was substituted €1,000,000.

18.4 If a Termination Event has occurred and is still continuing and the Commission has given its prior written express consent in respect of the particular Termination Event to termination under this Clause, the Party that is not the Defaulting Party may, by notice to the Defaulting Party, terminate this Agreement.

19. FORCE MAJEURE

19.1 Notice of Force Majeure

(a) If a Party is or will be prevented from performing any of its obligations under this Agreement by Force Majeure affecting it or any of its contractors or agents, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and its expected duration and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within seven (7) days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.
(b) A Party claiming Force Majeure relief shall give the other Party regular reports during the period of Force Majeure and shall give notice to the other Party when it ceases to be affected by the Force Majeure.

(c) Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of this Agreement as a result of Force Majeure.

19.2 Consequences of Force Majeure

(a) If a Party is prevented from performing any of its obligations under this Agreement by Force Majeure, of which notice has been given under Clause 19.1, that Party shall be excused performance of such obligations for so long as and to the extent such Force Majeure prevents it from performing them, subject where that Party is BGE to the provisions of Clause 12.3.

(b) If any contractor hired by BGN for the purposes of performing its functions under this Agreement is entitled under any contract to relief from force majeure additional to or broader than those specified in this Clause 19, such additional or broader Force Majeure events or circumstances shall not excuse either Party’s non-performance or entitle it to relief for the purposes of this Clause 19.

20. COSTS

Except where this Agreement expressly provides otherwise or the Parties otherwise agree, each Party shall pay its own costs relating to the negotiation, preparation, execution and implementation by it of this Agreement and of each document referred to in it.

21. GENERAL

21.1 Waivers

(a) No delay, omission or forbearance by any Party to this Agreement in exercising any right, power or remedy provided under this Agreement shall:

(i) affect or impair that right, power or remedy; or

(ii) operate as a waiver of it.

(b) The single or partial exercise of any right, power or remedy provided under this Agreement shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy provided under this Agreement.

21.2 Change in Law

(a) If a Change in Law occurs that affects this Agreement or the activities of the Parties under this Agreement and a Party believes that the Change in Law affects adversely the ability of any Party to comply with, or otherwise necessitates an amendment to, this Agreement that Party may by written notice to the other Party require the other Party to enter into negotiations in good faith to vary this Agreement (including to the extent necessary in relation to costs) so that it is:
(i) consistent with the applicable Legal Requirements following the Change in Law; and

(ii) in so far as is possible, having regard to the need to achieve such consistency, it continues to reflect the original intention of the Parties as expressed by this Agreement,

and the provisions of Clause 21.6 shall apply to any such notice.

(b) If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair:

(i) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or

(ii) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

21.3 No partnership

Nothing in this Agreement and no action taken by the Parties under this Agreement shall constitute a partnership, association, joint venture or other co-operative entity between the Parties.

21.4 Assignment and transfer

(a) Neither Party may at any time, without the prior written consent of the other Party and the Commission, assign all or any part of the benefit of, or its rights or benefits under, this Agreement.

(b) If at any time:

(i) another person is licensed as the Transmission System Operator and/or the Distribution System Operator in place of Gaslink; or

(ii) another person is licensed as the Transmission System Owner and/or the Distribution System Owner in place of BGE

in either case (the “New Licensee”) the Parties:

(A) shall, subject to paragraph (B) below and at the request of the remaining Party whose Licences are not affected, each co-operate and use their reasonable endeavours to transfer the relevant rights and obligations under this Agreement of the Party which has ceased to hold a licence as aforesaid (save for any rights and obligations that have accrued at that time) to the New Licensee;

(B) comply with any directions of the Commission with regard to such transfer.

(c) Except where this Agreement expressly provides otherwise, neither Party shall make a declaration of trust in respect of or enter into any arrangement whereby it agrees to hold in trust for any other person all or any part of the benefit of, or its rights or benefits under, this Agreement.
BGN shall be entitled to contract or sub-contract all or any part of the performance of its System Functions to any third party or agent ("contractor" which for the purposes of this Agreement shall include any sub-contractor). Subject to the limits and exclusions set out in Clause 17, BGN shall at all times be responsible to Gaslink for the performance by its contractors of the functions sub-contracted by BGN to them as though it had performed those functions itself. For the avoidance of doubt BGN shall not contract with such contractors on behalf of Gaslink.

21.5 BGE to perform the Required BGN Services

Gaslink shall not be entitled to procure that any person (other than BGE) would perform the Required BGN Services to be performed by BGE including through BGN save where Gaslink performs or procures the performance of such Required BGN Services pursuant to a Step-in Direction.

21.6 Variations

(a) No amendment, variation or supplement to or replacement for this Agreement ("variation") shall be effective unless it has been approved by the Commission in writing and signed by a duly authorised representative of each Party.

(b) If either Party wishes to propose a modification to this Agreement, it shall notify the other Party in writing setting out reasonable details of the proposed variation, the reasons for it and a reasonable timeframe for agreement of the variation. The other Party shall respond promptly to the proposal and shall enter into negotiations in good faith with a view to reaching agreement with regard to the proposed variation.

(c) Following agreement of a variation in reasonable detail under Clause 21.6(b), unless otherwise agreed by the Parties, the Party proposing the variation shall draft the amendments to implement the variation. Those variations shall be subject to agreement by both Parties and to the approval of the Commission. Each Party shall bear its own costs, including legal costs, of this procedure and the procedure under Clause 21.6(b).

(d) In the event that the Parties cannot agree on a variation or the drafting of a variation within the timeframe set out in the variation proposal (or such longer period agreed by the Parties), either Party may refer the matter as a Dispute for resolution in accordance with the Dispute Resolution Mechanism.

(e) The Parties shall promptly execute any document necessary to implement any variation to this Agreement once the detailed drafting is agreed.

(f) The other provisions of this Clause 21.6 shall also apply to any proposed amendment, variation, supplement to or replacement for the Agreed Processes Document except that the Commission’s approval shall not be required for such amendment, variation, supplement or replacement.

21.7 Rights of third parties

(a) This Agreement is intended solely for the benefit of the Parties to it. Except as specifically otherwise provided in this Agreement, nothing in this Agreement shall be construed as creating any duty to, or standard of care with reference to, or any liability to, any person who is not a Party.
21.8 Entire Agreement

(a) The terms and conditions of this Agreement together with the Ancillary Documents shall comprise the entire agreement between the Parties with respect to its subject matter and expressly exclude any warranty, condition or undertaking implied at law or by custom and supersedes all previous agreements or understandings between the Parties with respect to its subject matter. Each Party acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or undertaking by the other Party that is not fully reflected in this Agreement.

(b) Nothing in this Clause 21.8 shall exclude the liability of either Party for fraud or other criminal acts.

21.9 Counterparts

(a) This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart.

(b) Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

22. NOTICES

22.1 Form

(a) Any notice given under this Agreement shall only be effective if it is in writing. A facsimile message shall be treated as being in writing and is permitted; Electronic mail messages shall be treated as being in writing for all purposes other than for the purposes of Clause 12, Clause 17-19, Clause 21 and any legal action or proceedings arising out of or in connection with this Agreement.

(b) Each notice, submission, demand, consent, request or other communication given by one Party to the other under this Agreement shall be in the English language.

(c) Notices under this Agreement shall be sent to a Party at its address or number and for the attention of the individual set out below:

To Gaslink: Gasworks Road, Cork

For the attention of Aidan O’Sullivan, General Manager

Fax: 021 5006101

Email: aosullivan@gaslink.ie
To BGE (including as agent for BGE(UK)): Gasworks Road, Cork

For the attention of Liam O’Riordan, Company Secretary

Fax: 021 453 4001

Email: lioriordan@bge.ie

To BGE (acting through BGN): Gasworks Road, Cork

For the attention of John Barry, Networks Managing Director

Fax: 021 4534001

Email: jbarry@bge.ie

provided that either Party may change its notice details on giving notice to the other Party of the change in accordance with this Clause.

22.2 **Time notice is given**

22.3 Any notice given under this Agreement shall, in the absence of earlier actual receipt, be deemed to have been duly given as follows:-

(a) if delivered personally, on delivery;

(b) if sent by post, 2 clear Business Days after the date of posting;

(c) if sent by facsimile, on receipt of an answerback message indicating that the message has been relayed in full without error;

(d) if sent by email (where permitted), when it is sent provided that no answerback message is received indicating that the message has not been relayed.

Save that any notice delivered after 17.00 hours (Dublin time) on a Business Day shall be deemed to have been received at 09.00 hours on the next Business Day.

23. **GOVERNING LAW AND JURISDICTION**

23.1 This Agreement shall be governed by and construed in accordance with the law of Ireland.

23.2 Save as otherwise expressly provided in this Agreement and subject to any provision herein about the resolution of Disputes, the Courts in Ireland are to have exclusive jurisdiction to settle any matter that falls to be determined arising out of or in connection with this Agreement and that accordingly any legal action or proceedings arising out of or in connection with this Agreement may be brought in those courts and each Party irrevocably submits to the jurisdiction of those courts.
IN WITNESS WHEREOF this Agreement has been executed on the date first written above.

SIGNED by )
AIDAN O’SULLIVAN )
a duly authorised )
representative of/for and )
on behalf of )
GASLINK INDEPENDENT )
system operator limited: )____________________
in the presence of: )

Witness: ____________________
Address: ____________________
Occupation: ____________________

SIGNED by )
MICHAEL G. O’SULLIVAN )
a duly authorised )
representative of/for and )
on behalf of )
BORD GÁIS ÉIREANN )____________________
in the presence of: )

Witness: ____________________
Address: ____________________
Occupation: ____________________

SIGNED by )
JOHN MULLINS )
a duly authorised )
representative of/for and )
on behalf of )
BGE (UK) LIMITED )
in the presence of: )

Witness: ____________________
Address: ____________________
Occupation: ____________________
SCHEDULE 1

INTERPRETATION & DEFINITIONS

In this Agreement (including the Recitals) unless the context otherwise requires:

“2002 Act” means the Gas (Interim) (Regulation) Act 2002;

“Access Protocol” means a protocol agreed between the Parties, setting out how each Party will co-operate to ensure safe and efficient access to the BGE Group Transportation System by Gaslink and its officers, employees, agents and contractors, in the form set out in Schedule 3 to this Agreement subject to such amendments to that form as the Parties may agree in writing from time to time;

“Access Requirements” means the conditions and requirements in respect of the grant of access to the Market Facing Systems of the Code, any Connected System Agreement or such other agreements pursuant to which Gaslink grants access to the Market Facing Systems for the purposes of fulfilling its System Functions;

“Acts” means the Gas Act 1976 to 2002;

“Agreed Processes Document” means a document agreed between the parties which sets out, in flowchart form, the processes through which Gaslink and BGE shall carry out certain of their respective key functions in respect of the BGE Group Transportation System as that document may be amended by agreement between the Parties from time to time;

“Allowance Review Process” means the process carried out in each year of a Price Control Period whereby the Commission reviews, amongst other things, actual or forecast demand, capacity booking, revenues and pass-through costs for the current, preceding and forthcoming year(s) of the Price Control Period, and approves pass-through costs and other variable elements of the relevant Revenue Control Formula for the purposes of calculating the BGE Allowed Revenues and the Gaslink Allowed Revenues in respect of the forthcoming year in accordance with the relevant Revenue Control Formula for that Price Control Period;

“Ancillary Document” means the Agreed Processes Document;

“Annual Work Plan” shall have the meaning given to that term in Clause 7.4(a)(ii);

“Annual Work Plans” shall have the meaning given to that term in Clause 7.4(a);

“Authorised User” shall mean those persons (including agents or contractors of Gaslink) authorised by Gaslink and notified by Gaslink in writing to BGE pursuant to paragraph 4.2(a) of the licence terms set out in Schedule 12 of this Agreement as being authorised to have access to and use the Market Facing Systems on behalf of Gaslink for the purposes envisaged by those licence terms;

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“BGE Agency and Services Agreement” means the agreement between BGE(UK) and BGE described in Recital (H);
“BGE Allowed Revenues” means the revenues allowed by the Commission to the Transmission System Owner and Distribution System Owner including in respect of asset base, capital and operating expenditure requirements, depreciation and rate of return in respect of a Price Control Period or a Gas Year as the case may be;

“BGE Financial Impact” means:

(a) BGE incurring any BGE Unapproved Cost in respect of a Price Control Period or a Gas Year; or

(b) a reduction in the amount of the revenues received by BGE pursuant to Clause 5.1(i) in any Gas Year below the expected amount of BGE Allowed Revenues for that Gas Year or an adverse impact on BGE’s cashflows.

“BGE Financial Information” in paragraphs 1(a) of Schedule 5 shall have the meaning given to that term in paragraph 2(b) of Schedule 8 and in paragraph 1(g) of Schedule 5 shall have the meaning given to that term in paragraph 3(e) of Schedule 8;

“BGE Group” means BGE and its subsidiaries from time to time (including Gaslink unless otherwise stated);

“BGE Group Transportation System” means the BGE Transportation System and the Relevant BGE(UK) Assets including and subject to such changes and developments thereto as may be made from time to time in accordance with this Agreement, the Licences and the Acts;

“BGE Interconnector System” means the transmission pipeline from Transco’s grid network at Moffat in Scotland to BGE’s transmission system at Loughshinny, Co. Dublin and the transmission pipeline from Beattock, Scotland to Gormanstown, Co. Meath (excluding for the avoidance of doubt the spur pipeline from that transmission pipeline to the Isle of Man and associated equipment and/or facilities);

“BGE Transportation System” means such parts of the transmission system and the distribution system owned by BGE as are designated in the Transfer Plan;

“BGE(UK) Transitional Period” shall have the meaning given to that term in Recital (G);

“BGE Unapproved Cost” means any cost or expenditure (including capital expenditure, operating expenditure, cost of capital or any other cost or expenditure directly or indirectly incurred) for which provision has not been made in the BGE Allowed Revenues;

“BGN” means the division of BGE appointed for the purpose of its networks division designated both pursuant to Condition 17 of the TAO Licence and Condition 17 of the DAO Licence and any successor of that division from time to time;

“BGN IT Systems” means GTMS and the systems known as IUS and GasMaP and any replacement of all or any part thereof, or any new systems or parts of systems owned by or licensed to BGE and used by BGN in the performance of System Functions for or on behalf of Gaslink together with such ancillary hardware and/or software owned by or licensed to BGE and which includes, for the avoidance of doubt, the Market Facing Systems;
“Business Day” means a day other than a Saturday or Sunday on which banks generally are open for business in Ireland;

“Change in Law” means any change after the Transfer Date in the Legal Requirements applicable to this Agreement and the Parties as at the Transfer Date including for the avoidance of doubt any such change made by legislation or act of a Competent Authority or a direction or decision of a Competent Authority made pursuant to existing law;

“CIA(IB)” means the Chartered Institute of Arbitrators (Irish Branch);

“Code of Operations” or “Code” means the code of operations in respect of the BGE Group Transportation System approved by the Commission pursuant to Section 13 of the 2002 Act from time to time;

“Commercial Agreements” means:

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“Commission” means the Commission for Energy Regulation;

“Competent Authority” means the Irish Government, the Department for Communications, Energy and Natural Resources, the Commission, and any national or supra-national authority, department, minister, court, tribunal or public or statutory body with the power and competence to make binding decisions, awards, rulings, judgments, or decisions;

“Confidential Information” means, in relation to a Party (“Recipient”), information regarding the business and/or activities of the other Party (“Disclosing Party”) as may from time to time be disclosed by the Disclosing Party or by agents acting on behalf of the Disclosing Party to the Recipient or to which the Recipient may be provided access by the Disclosing Party (whether
voluntarily or inadvertently) and in whatever form, whether in writing, orally or by demonstration, but shall not include information:

(a) in respect of which there is a prior written agreement between the Parties expressly stating that the Information specified therein is not Confidential Information;

(b) which is trivial;

(c) which is in a public domain otherwise than as a result of a breach of this Agreement or any other applicable equitable or contractual obligation of the Recipient;

(d) obtained by the Recipient other than pursuant to this Agreement free from restriction from a source permitted to disclose the same; or

(e) developed by an officer, employee, agent or contractor of the Recipient independently of and without reference to Confidential Information of the Disclosing Party.

For the avoidance of doubt, information shall not be deemed to be in the public domain merely because it is known to a limited number of third parties. In addition, any combination of elements of information shall not be deemed to be within the foregoing exceptions merely because individual elements of the information are in the public domain but only if the combination is in the public domain;

“Confidential Information Protocol” means the protocol set out in Schedule 13;

“Connected System Construction Agreement” means any agreement in respect of the construction, maintenance or tie-in of a connection between the BGE Group Transportation System and a Connected System;

“Connected System Agreement” shall have the meaning given to that term in the Code;

“Connections Policy” means the connections policy applicable to the BGE Group Transportation System as approved by the Commission from time to time;

“contractor” shall have the meaning given to that term in Clause 21.4(d) and sub-contractor shall be construed accordingly;

“Customer Charter” means a customer charter developed and maintained pursuant to any of the Licences;

“DAO Licence” means the licence issued by the Commission pursuant to Section 16(1)(f) of the 2002 Act in respect of the BGE Group Transportation System;

“data controller” shall have the meaning given in the DPA;

“Development Requirements” shall have the meaning given to that term in Clause 8.2(b);

“Dispute” means any dispute or difference of whatever nature howsoever arising under, out of or in connection with the operation of this Agreement including any question regarding the existence, validity, interpretation, breach or termination of the Agreement;

“Dispute Notice” shall have the meaning given to that term in Clause 12.2(a);

“Dispute Resolution Mechanism” means the mechanism for resolving disputes provided for in Clause 12;

“Dispute Resolution Terms” means the terms on which a Dispute is resolved pursuant to the Dispute Resolution Mechanism;

“Distribution System Operator” means the person that is the holder of the DSO Licence from time to time;

“Distribution System Owner” means the person that is the holder of the DAO Licence from time to time;

“Distribution System Standards” shall have the meaning given to that term in the DSO Licence;

“DPA” means the Data Protection Acts 1988 and 2003;

“DSO Licence” means the licence issued by the Commission pursuant to Section 16(1)(d) of the 2002 Act (as inserted by Regulation 24) in respect of the BGE Group Transportation System;

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“Expert” means a person appointed pursuant to Clause 12.4(c);

“Facility Agreement” means the stand-by loan agreement of even date with this Agreement made between BGE and Gaslink;

“Financial Indebtedness” shall have the meaning given to that term in the Facility Agreement;

“Financial Security Policy” comprises the Financial Security Policy as defined in the Code and financial security arrangements provided for in the Connections Policy, the Commercial Agreements and any Non-Standard Terms and all security provided under that policy;

“Financial Year” means the period in respect of which the Gaslink Annual Financial Plan is prepared;
“Force Majeure” means in respect of a Party, any event or circumstance or combination of events or circumstances:

(a) which is beyond its reasonable control acting as a Reasonable and Prudent Operator; and

(b) which prevents the Party from, or causes delay or impediment to the Party in, fulfilling all or any of its obligations under this Agreement.

Without prejudice to the generality of the foregoing, Force Majeure may include, but is not limited to, events or circumstances of the kind listed below so long as conditions (a) and (b) above are satisfied:

(i) any act or event which arises out of, or is attributable to, an act of God;

(ii) war, hostilities (whether or not war has been declared), terrorist action, sabotage, acts of vandalism, revolution, acts of any civil or military authority, riot or civil commotion;

(iii) disaster, fire, flood, epidemic or explosion;

(iv) any requirement of any applicable law or decision, direction or restriction of any Competent Authority, the laws, regulations, orders, direction or restriction of the European Union or the suspension or withdrawal of any consent, approval or licence provided that the suspension and/or withdrawal of a consent, approval or licence shall not constitute Force Majeure where such consent, approval or licence is withdrawn as a result of any act or omission by the holder of such consent, approval or licence as a result of a breach of the relevant consent, approval or licence or negligence by such holder or failure by it to act as an RPO;

(v) the decision, direction or order of any Competent Authority in any of the jurisdictions through which the BGE Group Transportation System passes, or the order of any governmental authority materially affecting industry generally in any of the jurisdictions through which the BGE Group Transportation System passes;

(vi) shortage or unavailability of property, goods, labour or services;

(vii) breakage of, or accidental damage to, machinery, equipment or pipes;

(viii) strike, lock-out or other industrial trade dispute;

(ix) archaeological and historical investigations and/or discoveries; and

(x) structural shift or subsidence affecting generally a part or parts of the BGE Group Transportation System or any area or areas of the route of any pipeline or facilities forming part of the BGE Group Transportation System.

“the Forum” shall have the meaning given to that term in Clause 12.1(c);

“Function Requirements” means in the case of development functions carried out pursuant to Clause 8, the Development Requirements and in the case of
operations and maintenance functions carried out pursuant to Clause 9, the Operations and Maintenance Requirements;

“Gaslink Allowed Revenues” means Gaslink’s revenues as Transmission System Operator and Distribution System Operator including in respect of capital equipment and operating expenditure requirements, depreciation and (to the extent relevant) rate of return which are allowed by the Commission in respect of a Price Control Period or a Gas Year as the case may be;

“Gaslink Annual Financial Plan” means the annual financial plan of Gaslink prepared in accordance with paragraph 2 of Schedule 5;

“Gaslink Appointment Agreement” means the agreement between BGE(UK) and Gaslink described in Recital(G);

“Gaslink Unapproved Cost” means any cost or expenditure (including capital expenditure, operating expenditure, cost of capital or any other cost or expenditure directly or indirectly incurred) for which provision has not been made in the Gaslink Allowed Revenues;

“Gas Year” shall have the meaning set out in the Code of Operations;

“GTMS System” shall mean the IT system identified as the Gas Transportation Management System from time to time;


“Historical Records” means Information in existence on the Transfer Date relating to the BGE Group Transportation System owned by or in the possession of BGE and BGE(UK) and required by Gaslink to perform its System Functions;

“IEI” means Engineers Ireland (the Institution of Engineers of Ireland);

“Information” means information, in whatever form, relating to the BGE Group Transportation System or the operation, maintenance or development of that system including: books, records, reports, correspondence, invoices and associated back-up information, formulae, designs, specifications, drawings, data, documents, manuals, instructions, plans and forecasts, estimates (including underlying assumptions and supporting documentation), processes, procedures and issue logs in respect of the interface between BGN and End Users and/or Shippers but not including computer software or Know How provided that this shall not affect any right of access by Gaslink expressly conferred by this Agreement to software owned by or licensed to BGE;

“Know How” means trade secrets and confidential business information including pricing policies, actual costs, unpatented technical or other information, including inventions, discoveries, processes and procedures (other than processes and procedures in respect of the interface between BGN and End Users and/or Shippers), ideas, concepts, formulae, procedures for experiments and tests and the results of experiments and tests;

“KPIs” means in respect of a Price Control Period or, a Gas Year, the key performance indicators in respect of the performance by BGN of functions pursuant to Part 3 of this Agreement which shall be set out and approved by Gaslink (acting reasonably) in the Price Control Work Plan in respect of that Price
Control Period or, as the case may be, in the Annual Work Plan in respect of that Gas Year;

“Large Connection” means a connection to the BGE Group Transportation System at which natural gas consumption shall be greater than 260GWh and having a connection pressure of 16 barg or above;

“Large Connection Agreement” means an agreement in respect of a Large Connection;

“Large System Agreements” means Large Connection Agreements, Connected System Construction Agreements and Connected System Agreements;

“Legal Requirements” means any binding requirements imposed by any applicable law including under any applicable legislation, common law or any order, direction, licence, decision, instruction or rule given or granted by a Competent Authority;

“Liability Cap” means BLACKED OUT

“Licences” means the System Operator Licences and the System Owner Licences and “its Licences” in the case of Gaslink means the System Operator Licences and in the case of BGE means the System Owner Licences;

“Long Term Development Statements” means the long term development statement which the Transmission System Operator is obliged to prepare under the TSO Licence and the long term development statement which the Distribution System Operator is obliged to prepare under the DSO Licence;

“Market Arrangements” means the market arrangements for the operation of the BGE Group Transportation System more particularly described in Schedule 11;

“Market Facing Systems” shall have the meaning given to the term “BGT Systems” in the Code of Operations or any replacement of that term from time to time;

“Monthly Meeting” shall have the meaning given to that term by Clause 11.2(a);

“NDM Users” means customers at NDM Supply Points;

“Notices of Appointment of Agent” shall have the meaning given to that term in Clause 12.3;

“Non Standard Terms” means any terms in relation or supplemental to connection to or use of the BGE Group Transportation System (including for the financing of such connection) which are outside the scope of terms for regulated third party access approved by the Commission;

“Operating Security Standards” shall have the meaning set out in the TSO Licence;

“Operations and Maintenance Requirements” shall have the meaning given to that term in Clause 9.2(b);
"Owner Rights" shall have the meaning given to that term in clause 5.1;

"Party" means one or other of BGE (where relevant acting as BGE(UK)'s agent) or Gaslink and the term “Parties” shall be construed accordingly;

"Performance Review" means the performance review carried out by the Commission in respect of the financial performances of Gaslink or BGE as the case may be in respect of a Price Control Period in the context of the Price Work Control Plan and the Gaslink Allowed Revenues or the BGE Allowed Revenues as the case may be for that Price Control Period in the course of negotiations regarding the next following Price Control Period;

"personal data" shall have the meaning given to that term in the DPA;

"Plans" means the Long Term Development Statements, the Price Control Work Plan, the Annual Work Plan, the Updated Price Control Work Plan and any update of any such document and “Plan” means any such document or update as the context may require;

"Price Control Decision" means a decision or direction of the Commission imposing price controls in respect of tariffs for use of the BGE Group Transportation System during the term of a Price Control Period;

"Price Control Period" means a five year price control period set by the Commission in respect of tariffs for use of the BGE Group Transportation System or such other price control period in respect of such tariffs as may be set by the Commission from time to time;

"Price Control Work Plan" shall have the meaning given to that term in Clause 7.3(a);

"Prior Non-Energy Rights" shall have the meaning given to that term in Clause 4.3(a);

"Project Agreement" shall have the meaning given to that term in Clause 8.2(e);

"quarter" means a three calendar month period end on 31 December, 31 March, 30 June or 30 September as the case may be;

"Reasonable and Prudent Operator" or “RPO” means a person seeking in good faith to perform its functions and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected of 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, and the expression “the standard of a Reasonable and Prudent Operator” shall be construed accordingly;

“Regulations” means the European Communities (Internal Market in Natural Gas) (BGE) Regulations 2005, S.I. No 760 of 2005 as amended by the European Communities (Internal Market in Natural Gas) (BGE) (Amendment) Regulations 2007, S.I. no 377 of 2007 and references to a Regulation shall be to the relevant Regulation of the foregoing statutory instrument as so amended;

“Regulations Rights” shall have the meaning given to that term by Recital (E);

“Relevant Account” means an account opened by BGE in its name and operated in accordance with clause 5.1(j);

“Relevant BGE(UK) Assets” shall have the meaning given to that term in Recital F;

“Relevant Contracts” shall have the meaning set out in Clause 12.3(b)(v);

“Required BGN Services” shall have the meaning given to that term in Clause 11.5;

“Revenue Control Formula” means the formula or formulae set or approved by the Commission for the calculation of BGE Allowed Revenues or Gaslink Allowed Revenues as the case may be;

“Safety Case” means the safety case required to be produced and maintained pursuant to the TSO Licence or the DSO Licence as the case may be and “Safety Cases” means both such safety cases;

“Standards” means the System Standards, the Connections Policy, the Meter Replacement Policy and any other codes, standards, policies or customer charter in connection with the BGE Group Transportation System that are required to be developed or complied with pursuant to the terms of the System Operator Licences or the Legal Requirements and in respect of any activity means such of the foregoing documents, standards or policies, as are applicable to that activity from time to time but in each case excluding the Code of Operations;

“Step-in Activities” shall have the meaning given to that term in Clause 12.3(a)(iv)(3);

“Step-in Direction” shall have the meaning given to that term in Clause 12.3(a)(iv)(3);

“Step-in Notice” shall have the meaning given to that term in Clause 12.3(b)(i);

“Step-in Period” means the period commencing on the date on which Gaslink steps-in pursuant to a Step-in Notice and ending on the date on which Gaslink steps out pursuant to a Step-out Notice;

“Step-out Notice” shall have the meaning given to that term in Clause 12.3(b)(vii);

“System Agreement” means any agreement in respect of System Services including without prejudice to the generality of the foregoing Large System Agreements;
“System Functions” means

(a) in the case of Gaslink, its functions, obligations, duties and rights in respect of or in connection with the BGE Group Transportation System as provided for in the Acts, the Regulations, the Gaslink Appointment Agreement, this Agreement and the System Operator Licences; and

(b) in the case of BGE or BGN as the case may be, its functions, obligations, duties and rights in respect of or in connection with the BGE Group Transportation System as provided for in the Acts, the Regulations, the BGE Agency and Services Agreement, this Agreement and the System Owner Licences;

“System Operator Licences” means the TSO Licence and DSO Licence;

“System Owner Licences” means the TAO Licence and the DAO Licence;

“System Services” means gas transportation services, connections for the purposes of such services and all services and works provided to any person in respect of the BGE Group Transportation System;

“System Standards” means the Transmission System Standards, the Operating Security Standards and the Distribution System Standards to the extent that such standards are required to be developed under the System Operator Licences as approved by the Commission from time to time;

“TAO Licence” means the licence issued by the Commission pursuant to Section 16(1)(e) of the 2002 Act (as inserted by Regulation 24) in respect of the BGE Group Transportation System;

“Technical Issues” means issues relating to technical aspects of the operation, maintenance and development of the BGE Group Transportation System;

“Termination Event” shall have the meaning given to that term in Clause 18.3;

“Transfer Date” shall have the meaning given to that term in the Regulations;

“Transfer Plan” means the transfer plan prepared in accordance with Regulation 9(3)(b) and approved by the Minister pursuant to Regulation 9;

“Transitional Arrangements” means the arrangements set out in Schedule 2;

“Transition Period” means the period starting on the Transfer Date and ending on the date specified in Schedule 2;

“Transmission System Operator” means the person that is the holder of the TSO Licence from time to time;

“Transmission System Owner” means the person that is the holder of the TAO Licence from time to time;

“Transmission System Standards” shall have the meaning given to that term in the TSO Licence;

“Transportation Asset Register” shall have the meaning given to that term in Clause 3.1;
“Transportation Assets” means the assets comprising the BGE Group Transportation System and includes those assets listed in the Transportation Asset Register from time to time;

“Transportation Services” means the works and services to be undertaken and made available by BGE (including BGN and as agent for BGE(UK)) pursuant to this Agreement;

“TSO Licence” means the licence issued by the Commission pursuant to Section 16(1)(c) of the 2002 Act (as inserted by Regulation 24) in respect of the BGE Group Transportation System;

“Updated Price Control Work Plan” shall have the meaning given to that term in Clause 7.4(a)(i); and

“Wilful Misconduct” means a wilful or deliberate disregard by Gaslink of its obligations under the Acts, the Gaslink Appointment Agreement, this Agreement or the System Operator Licences which intends to create a breach of the Barclays Arrangements.

In this Agreement, unless the context requires otherwise:

(a) unless specifically defined in this Agreement words and expressions contained in this Agreement shall have the same meanings as in the Regulations with the exception that the term “operate” shall have its ordinary meaning and, where not defined in the Regulations, as in the Code of Operations;

(b) a reference to a “subsidiary” or “holding company” is to be construed in accordance with section 155 of the Companies Act, 1963. A reference to a “group company” shall mean a member of the group consisting of the company concerned, its ultimate parent undertaking and any subsidiary undertaking of its ultimate parent undertaking, and “parent undertaking” and “subsidiary undertaking” shall have the meaning set out in section 155 of the Companies Act, 1963 and “group” shall be construed accordingly;

(c) a reference to a document in the “agreed form” is a reference to a document in a form approved and for the purposes of identification initialled or signed by or on behalf of each Party;

(d) a reference to a person (including a party to this Agreement) includes a reference to that person's legal personal representatives, successors and permitted assigns;

(e) a reference to a document is a reference to that document as from time to time amended, novated, supplemented, varied or replaced;

(f) any reference in this Agreement and/or in the Schedules to any statute or statutory provision shall be deemed to include any statute or statutory provision which amends, extends, consolidates, re-enacts or replaces same, or which has been amended, extended, consolidated, re-enacted or replaced (whether before or after the date of this Agreement) by same and shall include any orders, regulations, statutory instruments or other subordinate legislation made under the relevant statute;

(g) words importing the singular shall include the plural number and vice versa and words importing a gender shall include each gender;
(h) any reference to any Clause, sub-Clause, paragraph, or Schedule shall be a reference to the Clause, sub-Clause, paragraph, or Schedule of this Agreement in which the reference occurs unless it is indicated that reference to some other provision is intended;

(i) the provisions of the Schedules to this Agreement shall form an integral part of this Agreement and shall have as full effect as if they were incorporated in the body of this Agreement and the expressions "this Agreement" and "the Agreement" shall be deemed to include the Schedules to this Agreement;

(j) any reference to a "person" shall be construed as a reference to any individual, firm, company, corporation, undertaking, government, state or agency of a state, or any association or partnership (whether or not having separate legal personality);

(k) the headings contained in this Agreement and the Schedules are inserted for convenience of reference only and shall not in any way form part of nor affect nor be taken into account in the construction or interpretation of any provisions of this Agreement or the said Schedules;

(l) all references in this Agreement to costs, charges and expenses include any value added tax or similar tax charged or chargeable in respect thereof;

(m) references in this Agreement to a "company" shall be construed so as to include any company, corporation or body corporate, whenever and however established or incorporated;

(n) the rule known as the ejusdem generis rule shall not apply to the interpretation of this Agreement and accordingly general words, including those introduced by "other" shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by general words;

(o) any reference to an Irish legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than Ireland, be deemed to include a reference to what most nearly approximates in that jurisdiction to the Irish legal terms; and

(p) in the event of any inconsistency between the main provisions of this Agreement, the provisions of the Schedules and/or any Ancillary Documents, the following order of priority shall apply:

(i) main provisions of the Agreement;

(ii) Schedules;

(iii) Ancillary Document.
SCHEDULE 2

TRANSITIONAL ARRANGEMENTS

From the date at which this Agreement comes into effect until, in the case of each paragraph below, the occurrence of the event specified in that paragraph or, if no such event is specified for a period of 12 months or such other period as the Parties may agree ("Transitional Period"), certain transitional arrangements shall be in place to facilitate efficient operations. These arrangements include the following:

1. Any process applicable to BGN’s market facing or Gaslink facing functions under this Agreement shall be those applicable to its performance of those functions prior to the Transfer Date until any new replacement process is agreed between the Parties.

2. Until Gaslink has the opportunity to review and approve the Standards, all Standards that were in place prior to this Agreement coming into effect will be applied.

3. The terms and conditions of contracts with customers and Shippers will remain in place, subject to the Transfer Plan, until they are updated to the extent necessary to reflect the role of Gaslink.

4. All projects that have been approved prior to the Transfer Date will not be required to go through the approval process again.

5. The system to operate the billing process will continue in place until 1 September 2008.
SCHEDULE 3
ACCESS PROTOCOL

1. Gaslink, or any nominated representative(s) of Gaslink, shall have the right, from time to time, of reasonable and safe access to any part of the BGE Group Transportation System for the purpose of fulfilling its System Functions, and in particular to:

(a) witness meter proving, calibration, measurement, sampling and analysis; and/or

(b) inspect facilities relative to the design, construction and operation and maintenance of the BGE Group Transportation System; and

(c) conduct inspections and audits pursuant to this Agreement by nominated personnel or by a suitably qualified third party acting reasonably to carry out such inspection, or audit on its behalf.

2. Except in the case of emergency for the purposes of PD45 or any document replacing it, Gaslink shall give BGE reasonable prior notice in advance of Gaslink’s proposed access to any part of the BGE Group Transportation System, during which time the Parties shall consult on mutually acceptable arrangements.

3. Gaslink shall ensure that any third party appointed by it to conduct inspections and audits is suitably qualified.

4. In the event that Gaslink accesses any part of the BGE Group Transportation System, then Gaslink shall be obliged to comply with any and all access and safety procedures relating to the BGE Group Transportation System in place at that time and as they may be amended from time to time.
SCHEDULE 4

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SCHEDULE 5

BGE OWNER RIGHTS IN CONNECTION WITH PLAN PROCESSES

1. BGE Allowed Revenues

(a) Before the start of a Price Control Period BGN shall submit to BGE the BGE Financial Information for approval by BGE and to enable BGE to prepare its submission to the Commission in respect of the BGE Allowed Revenues for that Price Control Period.

(b) When BGE has prepared its submission to the Commission in respect of the BGE Allowed Revenues it shall provide a copy to Gaslink for information only. Such submission shall not be subject to review by or approval of Gaslink.

(c) To the extent that either BGE or Gaslink changes its submission to the Commission in respect of the BGE Allowed Revenues or the Price Control Work Plan after it has provided a copy to the other for information purposes, it shall provide a further copy of the amended submission to the other for information purposes in sufficient time before submitting it to the Commission to enable the other Party to take account of these changes in its submissions to the Commission.

(d) Gaslink and BGE shall, insofar as practicable having regard to their legal obligations, co-operate with each other in making their respective submissions to the Commission comprising, in the case of Gaslink, its submission in respect of a Price Control Work Plan and its submission in respect of Gaslink Allowed Revenues and, in the case of BGE, its submission in respect of BGE Allowed Revenues and, in either case, whether taking the form of responses to queries raised by the Commission or otherwise. In particular but without prejudice to the generality of the foregoing, each Party (the “First Party”) shall keep the other Party informed as soon as practicable of any matters that arise in the course of making and negotiating with the Commission regarding the First Party’s submission that the First Party believes would or might have implications for the other Party’s submission to and negotiations with the Commission (including the inclusion in any agenda for communications with the Commission of any such matter).

(e) the Parties shall negotiate with the Commission regarding their submissions as follows:

   (i) Gaslink shall negotiate and agree with the Commission the Price Control Work Plan with the assistance of BGN as required and Gaslink Allowed Revenues and shall participate in its Performance Review by the Commission;

   (ii) BGE shall negotiate and agree with the Commission the BGE Allowed Revenues and shall participate in its Performance Review by the Commission;

   (iii) in negotiations between BGE, Gaslink and the Commission regarding tariffs and tariff frameworks for use of the BGE Group Transportation System, Gaslink shall address the issues set out at
paragraph 1(e)(i) of this Schedule 5 and BGE shall address the
issues set out at paragraph 1(e)(ii) of this Schedule 5;

(f) When the Commission issues a Price Control Decision in respect of the
Price Control Period, Gaslink shall revise and/or develop its Price Control
Work Plan, with the assistance of BGN if required by Gaslink, Gaslink shall
revise and/or develop its submission in respect of the Gaslink Allowed
Revenues and BGE shall revise and/or develop its submission in respect of
BGE Allowed Revenues, in each case in accordance with the Price Control
Decision.

(g) Where in performing any System Functions it is proposed to take or
instruct or direct the taking of any approach or action which may give rise
to a BGE Financial Impact the following provisions of paragraph 1(g) shall
apply:

(i) BGN shall submit to BGE the BGE Financial Information for approval
by BGE and, where BGE considers in its discretion that it is
appropriate to make a submission to the Commission seeking as
the case may be an increase in the BGE Allowed Revenues for the
relevant period to provide for the BGE Financial Impact, to enable
BGE to prepare such submission;

(ii) Gaslink shall provide or shall arrange for the provision by BGN to
BGE as soon as practicable after any request from BGE, such
explanations regarding the background to the relevant proposed
approach or action and the proposal to take the approach or action
which may give rise to the BGE Financial Impact as BGE may
reasonably request having regard to the Owner Rights and to the
functions of each of Gaslink and BGE in respect of the BGE Group
Transportation System;

(iii) If BGE decides to make a submission to the Commission as
aforesaid:

(A) when it has prepared such submission it shall provide a copy
to Gaslink for information only. Such submission shall not
be subject to review by or approval of Gaslink; and

(B) Gaslink and BGE shall co-operate with each other insofar as
is practicable having regard to their legal obligations to
enable BGE to make such submission and to enable Gaslink
to make any related submission to the Commission in
respect of any proposed change to the Price Control Work
Plan or other approach or acts which may give rise to a BGE
Financial Impact and/or, where applicable, any proposed
increase in the Gaslink Allowed Revenues to provide for any
Gaslink Unapproved Cost also arising from such proposed
change and in either case whether taking the form of
responses to queries raised by the Commission or otherwise
and, in particular but without prejudice to the generality of
the foregoing, each Party (the “First Party”) shall keep the
other Party informed as soon as practicable of any matters
that arise in the course of making and negotiating with the
Commission regarding the First Party’s submission that the
First Party believes would or might have implications for the
other Party’s submission to and negotiations with the
(iv) for the purposes of these submission(s) to the Commission (as appropriate):

(A) Gaslink shall negotiate and agree with the Commission any proposed change to the Price Control Work Plan or other approach or action which may give rise to a BGE Financial Impact with the assistance of BGN where required and/or any proposed increase in the Gaslink Allowed Revenues;

(B) BGE shall negotiate and agree with the Commission the proposed increase to the BGE Allowed Revenues;

(C) in negotiations between BGE, Gaslink and the Commission regarding tariffs and tariff frameworks for use of the BGE Group Transportation System, Gaslink shall address the issues set out at paragraph 1(g)(iv)(A) of this Schedule 5 and BGE shall address the issues set out at paragraph 1(g)(iv)(B) of this Schedule 5;

(D) when the Commission issues a decision in respect of such submission(s), each of BGE and Gaslink shall, as appropriate, revise and/or develop its submission to reflect the decision in the case of Gaslink, if relevant, for the purposes of incorporation into the next Updated Price Work Control Plan and the Gaslink Annual Financial Plan.

(v) the foregoing provisions of this paragraph 1(g) shall be complied with before any approach or action is taken or instructed or directed to be taken which may give rise to a BGE Financial Impact provided that, in the event that, due to unforeseen and exceptional circumstances outside of Gaslink's control, it is not possible for Gaslink to comply with the foregoing provisions before such action or approach must be taken, or instruction or direction must be given, to enable Gaslink to fulfil its System Functions and no change to the Price Control Work Plan is required, the foregoing provisions shall be complied with as soon as possible after such action or approach is taken or instruction or direction given and Gaslink shall take all reasonable measures to seek to minimise the effect on BGE of such BGE Financial Impact that BGE may suffer as a result.

(h) BGE shall undertake the Allowance Review Process in so far as it relates to the BGE Allowed Revenues including making submissions to, and undertaking all negotiations with, the Commission.

(i) Without prejudice to the provisions of paragraph 1(g), if BGE considers from time to time in its discretion that in order to carry out its System Functions or to discharge its obligations under Clause 12.3(d)(ii) an increase in the BGE Allowed Revenues will be required, whether due to its suffering a BGE Financial Impact or otherwise howsoever:

(i) BGE shall make a submission to the Commission regarding the proposed change and shall negotiate and agree the proposed change with the Commission;
(ii) BGE shall provide a copy of its submission to Gaslink for information only provided that such submission shall not be subject to review by or approval of Gaslink;

(iii) Gaslink shall co-operate with BGE in making its submission to the extent that BGE may reasonably request; and

(iv) BGE shall notify to Gaslink any increase in the BGE Allowed Revenues approved with the Commission on foot of its submissions.

(j) The processes for approval of the BGE Allowed Revenues (including the timeframe for that process) and any increase in the BGE Allowed Revenues consequent on a proposal by Gaslink to take an approach or action which would or might cause BGE to incur any BGE Unapproved Cost are set out in the Agreed Processes Document.

2. Gaslink Annual Financial Plan

(a) As set out in paragraph 1 above, before the start of each Gas Year, Gaslink will prepare and negotiate with the Commission its approval of the Gaslink Allowed Revenues in respect of that Gas Year.

(b) The Gaslink Allowed Revenues for the relevant portion(s) of the Gas Year(s) falling with the scope of a Financial Year will form the basis of the Gaslink Annual Financial Plan for that Financial Year which will be submitted to BGE prior to the start of that Financial Year. BGE will approve the Gaslink Annual Financial Plan provided that all costs and expenditure (including capital expenditure, operating expenditure, cost of capital or any other cost or expenditure directly or indirectly incurred) provided for in the Gaslink Annual Financial Plan for a Financial Year shall be no greater than the Gaslink Allowed Revenues for the relevant portion(s) of the Gas Year(s) falling within the scope of that Financial Year.

(c) If in the course of a Financial Year Gaslink considers that in order to fulfil its System Functions it is necessary to take any approach or action which would or might fall outside the scope of the Gaslink Annual Financial Plan necessitating a variation of that plan Gaslink will prepare and negotiate with the Commission its approval of the increase of the Gaslink Allowed Revenues for the relevant Gas Year(s) necessary to enable such variation to fall within the scope of Gaslink Allowed Revenues. Any such variation to the Gaslink Annual Financial Plan made on foot of an increase in the Gaslink Allowed Revenues will be submitted to BGE before it is implemented. BGE will approve such variation provided that all costs and expenditure (including capital expenditure, operating expenditure, cost of capital or any other cost or expenditure directly or indirectly incurred) provided for in the Gaslink Annual Financial Plan as varied for that Financial Year shall be no greater than the Gaslink Allowed Revenues (increased as aforesaid) for the relevant portion(s) of the Gas Year(s) falling within the scope of that Financial Year.

(d) In the event that due to unforeseen and exceptional circumstances outside of Gaslink’s control, it is not possible to comply with the approval process outlined at paragraph 2(c) above before Gaslink must take an action or approach as described in that paragraph 2(c) in order to fulfil its System Functions and no change to the Price Control Work Plan is required:
(i) Gaslink shall notify BGE promptly of such action or approach and the circumstances described above in advance of taking such action or approach;

(ii) the approval process shall be complied with as soon as possible; and

(iii) Gaslink shall take all reasonable measures to seek to minimise the extent to which it acts outside the scope of the Gaslink Annual Financial Plan as approved by BGE.

(e) Gaslink shall not pursuant to paragraph 2(a) or (b) submit for approval by BGN a Gaslink Annual Financial Plan or a variation to a Gaslink Annual Financial Plan which provides that the costs and expenditure (including capital expenditure, operating expenditure, cost of capital or any other cost or expenditure directly or indirectly incurred) provided for in the Gaslink Annual Financial Plan or as the case may be variation of that plan is greater than the Gaslink Allowed Revenues for the relevant portion(s) of the Gas Year(s) falling within the scope of that Financial Year.

(f) Any Dispute in respect of this paragraph 2 shall be resolved in accordance with the Dispute Resolution Mechanism.

(g) The processes for submission of the Gaslink Annual Financial Plan (including the timeframe for that process) and the approval of any change to the Gaslink Annual Financial Plan are set out in the Agreed Processes Document.
SCHEDULE 6
NEW STANDARDS AND CHANGES TO STANDARDS

1. Gaslink has responsibility for the Standards and BGN shall provide Gaslink with the services set out in this Schedule 6 in the event that Gaslink considers that a new Standard should be introduced or any of the existing Standards should be updated, amended or replaced.

2. In the event that, on foot of a report pursuant to Clause 6.2 of this Agreement or otherwise, Gaslink considers that a new Standard should be introduced or any of the existing Standards be updated, amended or replaced, it shall direct BGN to undertake the work required in order for Gaslink to make a submission to the Commission in respect of the proposed new Standard or updated, amended or replacement Standard including a review from a technical perspective and of whether the relevant Standard may involve or give rise to a BGE Financial Impact. BGN shall prepare the draft submission in accordance with Gaslink’s instructions and submit it to Gaslink for its approval within such reasonable timeframe as Gaslink may specify in its direction.

3. In the event that on foot of a submission made pursuant to paragraph 2 of this Schedule 6 or otherwise, the Commission requests Gaslink to consider a new Standard or an updated, amended or replacement Standard, Gaslink shall direct BGN to prepare for consideration by Gaslink a review of the new Standard or updated, amended or replacement Standard including (to the extent that such a review has not been carried out pursuant to paragraph 2 of this Schedule 6) a review from a technical perspective and of whether the relevant Standard would or might involve or give rise to a BGE Financial Impact. BGN shall prepare the draft review in accordance with Gaslink’s instructions and submit it to Gaslink for its approval within such reasonable timeframe as Gaslink may specify in its direction.

4. Gaslink shall provide to BGE for consideration by it any review prepared by BGN pursuant to paragraph 2 or 3 of this Schedule 6 and shall consult with and have regard to (but shall not for the avoidance of doubt be obliged to adopt) the views of BGE as owner (or as the case may be agent of the owner and/or sub-lessee) of the BGE Group Transportation System regarding any such review, and shall comply with paragraph 1(g) of Schedule 5 regarding any BGE Financial Impact which might arise as a result of the adoption of new Standard or updated, amended or replacement Standard.

5. If, in accordance with the foregoing provisions, Gaslink and the Commission agree a new Standard or an updated, amended or replacement Standard and, where applicable, the provisions of paragraph 1(g) of Schedule 5 have been complied with, BGN shall implement the relevant Standard when carrying out any work to which it applies pursuant to the Agreement.

6. The process for reviewing and reporting on and updating, amending and replacing Standards is set out in the Agreed Processes Document.
SCHEDULE 7
PRICE CONTROL WORK PLAN AND ANNUAL WORK PLAN

PART A: PRICE CONTROL WORK PLAN

The Price Control Work Plan will outline the programme of work that will be carried out in respect of the BGE Group Transportation System during the relevant Price Control Period. It will take account of the Long Term Development Statements and, where available, the outputs from the Performance Review for the previous Price Control Period. It will assume that work will be carried out in accordance with the Standards. It may include the following areas and any other areas specified by Gaslink:

General

- Background
  - Network development
  - Scheduled maintenance programmes
  - Economic environment
  - Gas market deregulation
  - Customer service
- Review of previous years’ activities and outcomes
  - Overview of work and project activity
- Key challenges for the period ahead
- Supply and demand projections
  - Forecast demand
  - Forecast capacity bookings
- Investment plan
  - Network investment
  - Non network investment
  - Commission approved allowances
- Network operating plan
- Customer service strategy
- Regulatory issues
- Financial projections
- Key performance indicators for the performance by BGN of the functions provided for in Part 3 of this Agreement

Development Scope of Work

Work activity in the following areas will be covered in the document:

- Transmission related Projects
  - New developments
  - New connections
  - Reinforcement
  - Operational/refurbishment
  - Metering
  - Security of supply
  - Third party projects

- Distribution related Projects
  - Operational tasks (relays, renewals, meters, reinforcement, relocation)
  - Development tasks (residential, commercial, new housing, spine, meters)
  - Non-pipe tasks
Note: Due to the nature of the Distribution business, it will not be possible to give details of all projects as they may not be known in advance. Reporting on such projects shall be as agreed between the Parties.

Operations and Maintenance Scope of Work

Work activities and new initiatives in the following areas will be covered in the document:

Transmission Operations

- Onshore
  - Pipelines
  - AGIs
  - Grid control\SCADA
  - Cathodic protection
  - Planning and design
  - Safety and quality
- Inch
  - Pipeline
  - AGI
  - Compressor station
- Interconnector
  - Onshore pipes
  - Sub Sea pipes
  - Compressor station
  - AGI
  - Grid Control\SCADA
  - Isle of Man, isolation valve and umbilical

Distribution Operations

- Maintenance activities
- Leak survey and repairs
- Systems operation
- Siteworks
- Response activities
- Upgrade gas supply
- Support activities (odorisation, radio room, stores, facilities etc)
- Construction management
- Sales and services support
- Market development
- Safety and quality
- Business regulation and planning

Transportation Functions

- Commercial operations
- Shipper services development
- Shipper services operations
- System and capacity planning
- Networks Metering
- Allocation methodology
- GPRO
- IT Systems
**Shared Services**

- Finance
- Secretariat
- IT
- HR
- Allocation methodology

**KPIs**

**PART B: ANNUAL WORK PLAN**

1. The Annual Work Plan for a Gas Year will comprise an update of the programme of work for that Gas Year in the Price Control Work Plan, including all scheduled work referred to in clauses 6-10 and Schedules 6 and 8-11, to be carried out by BGN. It will assume the work will be carried out in accordance with the applicable Standards.

2. The Annual Work Plan for a Gas Year will contain a list of the key metrics and performance indicators which Gaslink will use to assess the performance of the BGE Group Transportation System and identify areas which may require improvement.

3. For major projects included in the Annual Work Plan, the Annual Work Plan will specify the following (subject to the necessary information being available):
   
   (a) a high level indication of major elements of the project including associated milestones;

   (b) an indicative completion date;

   (c) notification of the status and output of any planning or statutory approval procedures to relevant authorities.
SCHEDULE 8

PLANNING PROCESSES

1. Functions of the Parties

Gaslink has responsibility for the Plans and BGN shall carry out the work set out in this Schedule 8 in respect of the Plans referred to in this Schedule 8 in accordance with Gaslink’s instructions (save where otherwise expressly stated).

2. Preparation of Price Control Work Plan

(a) BGN shall submit to Gaslink a draft submission for the Price Control Work Plan for approval by Gaslink in accordance with the applicable timeframe set out in the Agreed Processes Document. BGN shall also provide to Gaslink an estimate of the costs of the work set out in the draft submission (excluding any costs to be incurred directly by Gaslink). The estimated costs provided by BGN to Gaslink:

(i) are prepared by BGN for, and are subject to the approval of, BGE and are provided to Gaslink for information only; and

(ii) shall not be subject to review by or approval of Gaslink although Gaslink may take those costings into account in determining the scope of the work to be provided for in the draft submission for a Price Control Work Plan or, where there are a number of approaches to a category of work or project, in determining which such approach should be taken.

(b) When the draft submission for a Price Control Work Plan is considered and approved by Gaslink, BGN shall in accordance with paragraph 1 of Schedule 5 submit to BGE the estimate of the costs of the work set out in the submission (excluding any costs to be incurred directly by Gaslink) (the "BGE Financial Information") for approval and to enable BGE to prepare its submission to the Commission in respect of the BGE Allowed Revenues.

(c) Gaslink shall prepare its submission to the Commission in respect of the Gaslink Allowed Revenues.

(d) When its submission(s) have been prepared, each of Gaslink and BGE shall make its submission(s) to the Commission in accordance with Clause 5.1 of this Agreement and paragraph 1 of Schedule 5.

(e) When the Commission issues a Price Control Decision in respect of the Price Control Period:

(i) Gaslink shall revise and/or develop the submission for a Price Control Work Plan with the assistance of BGN in accordance with the Price Control Decision (the "Price Control Work Plan");

(ii) Gaslink shall revise and/or develop its submission in respect of the Gaslink Allowed Revenues to the extent necessary to reflect the Price Control Decision (the "Gaslink Price Control Financial Plan"), and
(iii) BGE shall revise and/or develop its submission in respect of the BGE Allowed Revenues in accordance with paragraph 1(f) of Schedule 5 (the "BGN Price Control Financial Plan").

3. Changes to Price Control Work Plan/BGE Financial Impact

(a) If from time to time BGN considers that a direction or instruction received by it from Gaslink would require BGN to take any approach or action outside the scope of the Price Control Work Plan or the BGN Price Control Financial Plan and/or that may give rise to a BGE Financial Impact, BGN shall notify Gaslink of the same.

(b) Where in performing System Functions it is necessary to take or direct or instruct the taking of any approach or action outside the scope of the Price Control Work Plan or the BGN Price Control Financial Plan and/or which may cause a BGE Financial Impact the following provisions of this paragraph 3 shall apply as appropriate.

(c) Gaslink shall request BGN to prepare on its behalf a draft submission and provide it to Gaslink for its submission to the Commission in respect of any proposed change to the Price Control Work Plan or, if no such change is involved, a review and evaluation of the proposed approach or action in question.

(d) BGN shall use all reasonable endeavours to submit to Gaslink within such reasonable timeframe as Gaslink may require the draft submission for the proposed change to the Price Control Work Plan, or, as the case may be, the review and evaluation, for approval by Gaslink. Where the proposed approach or action may cause a BGE Financial Impact, BGN shall also provide to Gaslink an estimate of the costs to or impact on BGN of the actions set out in the draft submission or review and evaluation. The estimated costs or other such information provided by BGN to Gaslink:

(i) are prepared by BGN for, and are subject to the approval of, BGE and are provided to Gaslink for information only; and

(ii) shall not be subject to review by or approval of Gaslink, although Gaslink may take those costings or information into account in determining the scope of the work or project to be provided for in the draft submission or evaluation or, where there are a number of approaches to a category of work or project, in determining which such approach should be taken.

(e) When the draft submission for a change to the Price Control Work Plan or evaluation is approved by Gaslink if the proposed approach may give rise to a BGE Financial Impact, BGN shall in accordance with paragraph 1(g) of Schedule 5 submit to BGE the estimate of the costs or impact on to BGN of the work set out in the submission or review and evaluation (the "BGE Financial Information") for approval and, if BGE considers in its discretion that it is appropriate to make a submission to the Commission seeking an increase in the BGE Allowed Revenues to provide for the BGE Financial Impact, to enable BGE to prepare such submission;

(f) Gaslink shall prepare any submission to the Commission in respect of any proposed increase in the Gaslink Allowed Revenues.
(g) When its submission(s) have been prepared, BGE and/or Gaslink as the case may be shall make its submission(s) to the Commission in accordance with paragraph 1(g)(iv) of Schedule 5.

(h) When the Commission issues a decision on foot of such submissions, where relevant:

(i) Gaslink shall, with the assistance of BGN where requested by Gaslink, revise and/or develop the submission for a change to the Price Control Work Plan to the extent necessary to reflect that decision in the form of a draft amendment to the Price Control Work Plan;

(ii) Gaslink shall revise and/or develop its submission in respect of an increase in the Gaslink Allowed Revenues to the extent necessary to reflect that decision; and/or

(iii) BGE shall revise and/or develop its submission in respect of an increase in the BGE Allowed Revenues to the extent necessary to reflect that decision.

(i) Any revised and/or developed submission for a change to the Price Control Work Plan (as approved by Gaslink) shall be incorporated into the next Updated Price Control Work Plan or for an increase in the Gaslink Allowed Revenues shall be incorporated into the next Gaslink Annual Financial Plan as the case may be.

4. Annual Work Plan and Updates

(a) BGN shall submit to Gaslink a draft of the Annual Work Plans for approval of their contents in accordance with the applicable timeframe set out in the Agreed Processes Document.

(b) Subject to consideration and approval by Gaslink the revised draft Annual Work Plans shall be the Annual Work Plans for the relevant Gas Year.
SCHEDULE 9
DEVELOPMENT FUNCTIONS

1. Functions of the Parties

Gaslink has responsibility for the development of the BGE Group Transportation System and BGN shall carry out the work set out in this Schedule 9 in respect of such development.

2. Processing of Connections Requests

(a) Gaslink shall arrange for BGN to process all new connections requests (except requests for Large Connections and connections with Connected Systems) in accordance with the Connections Policy and pursuant to this Agreement (including handling requests, issuing estimates and agreeing and signing agreements).

(b) Subject to Clause 5.1(j) of this Agreement in the case of any request for a Large Connection or a connection with a Connected System:

(i) Gaslink shall process the request directly;

(ii) any such request for a Large Connection shall be processed in accordance with the Connections Policy (including handling the request, issuing estimates and agreeing and signing agreements);

(iii) if BGN is approached by a person requiring a Large Connection or connection with a Connected System, it shall direct that person to Gaslink and promptly inform Gaslink of the approach;

(iv) BGN shall provide to Gaslink all such support and information regarding timeframes, costs, planning, wayleaves and project management as Gaslink may reasonably require to enable it to process such a request;

(v) Gaslink shall comply with Clause 5.1(h) in respect of a Connected System Construction Agreement or an Enhanced Pressure Service Agreement;

(vi) BGN shall carry out all construction activities in relation to all Large Connections and Connected System Construction Agreements; and

(vii) a request for a Large Connection or a Connected System Construction Agreement shall be processed in accordance with the Agreed Processes Document.

(c) Gaslink may elect to agree and sign all agreements relating to the Code of Operations with all shippers and Large Connection users as appropriate. BGN shall provide all system services required under such agreements.

(d) A request to use the BGE Group Transportation System shall be processed in accordance with any applicable provisions of any Agreed Processes Document.
3. **Network Development**

BGN shall undertake the following activities in accordance with the Development Requirements:

(i) network analysis;

(ii) system design;

(iii) management of regulatory and statutory approvals;

(iv) project management;

(v) construction;

(vi) procurement of plant and materials including stock gas;

(vii) project sign-off and commissioning; and

(viii) projects as a result of customer queries (e.g. diversions) or ensuring safety on the network.
SCHEDULE 10

OPERATIONS AND MAINTENANCE FUNCTIONS

1. Functions of the Parties

Gaslink has responsibility for the operation and maintenance of the BGE Group Transportation System and BGN shall carry out the work set out in this Schedule 10 in respect of such operation and maintenance. BGN shall carry out all work set out in this Schedule 10 in the name of Gaslink save in case of NDM connections to and siteworks in respect of such connections ("NDM Work") in respect of which it shall act in its own name as disclosed agent for Gaslink.

2. Commercial Operations

BGN will carry out the activities outlined below in accordance with the Annual Work Plan (approved by Gaslink in accordance with Schedule 8) in the name of Gaslink (save as provided above in relation to the NDM Work):

(a) Implementing and operating the Connections Policy, anticipating new connections activity levels for the various sectors i.e. Large Daily Metered, Daily Metered and Non-Daily Metered and, in conjunction with Gaslink, developing proposals to improve take up of connections to the system. Gaslink has the right to review and approve all such proposals to the extent that they are not detailed in the Annual Work Plan.

(b) Developing appraisal models and undertaking appraisals for new developments in conjunction with and subject to the approval of Gaslink.

(c) Liaising with, attending meetings and information sessions, and making presentations to local authorities, town councils and various public groups and industry bodies. When requested by Gaslink, BGN shall provide Gaslink with its programme of activity relating to new markets and expansion of the grid. Gaslink may require sight of materials to be used at meetings for the purposes of that programme and may request changes to those materials acting reasonably. Gaslink may also choose to attend such meetings as it sees fit.

(d) Negotiating new commercial contracts where required with the prior approval of Gaslink as to form and content of the materials to be used.

(e) (i) Gaslink is responsible for the development of any new transportation products and obtaining the Commission’s approval for such. When developing new transportation products Gaslink will liaise with BGN and BGN (Commercial Operations) will develop the pricing for such products.

(ii) BGN will liaise with Gaslink in relation to the development of its pricing proposals.

(iii) The submission made by Gaslink to the Commission in respect of the new product will incorporate BGN’s pricing proposals.

(iv) Gaslink will be free to make comments to the Commission in relation to BGN’s proposed pricing of the new product.
3. Distribution Operations Functions

(a) BGN shall carry out the activities specified in this paragraph 3 in the name of Gaslink (save as provided above in relation to the NDM Work).

(b) BGN will, on behalf of Gaslink, connect and disconnect all customers to and from the BGE Group Transportation System. These activities will be conducted in line with the Connections Policy and the Disconnection Code of Conduct.

(c) Technical guidance will be provided via the internet and published material by BGN to developers and industrial/commercial customers regarding the implications of relevant gas standards for their installations. Gaslink will have the right to review this material and direct changes where it deems necessary. Such material shall not be published without Gaslink’s prior written approval.

(d) Site-works services will be delivered by BGN in compliance with Irish standards for gas installations. Gaslink may review key performance metrics in respect of such services, meet with customers and may run focus groups to determine the satisfaction with the service provided.

(e) Call Centre – This will handle inbound and outbound calls relating to queries, requests and complaints from gas customers. Gaslink will monitor key performance metrics from this relating to customer service and satisfaction.

(f) Quotations – BGN will issue all formal connections quotations and administer associated connection contributions on behalf of Gaslink excluding those in respect of Large Connection and Connected System Construction Agreements.

(g) Complaints Management – BGN will handle, and progress to resolution, all formal customer complaints. BGN will report on complaints handling on a monthly basis as part of the Monthly Meetings and from time to time as reasonably required by Gaslink in respect of an emergency or regulatory enquiry. BGN shall include in any such report such information in respect of complaints received by Gaslink as Gaslink shall supply to it. Gaslink will review the efficiency of the process and identify areas for improvement.

(h) BGN will on behalf of Gaslink manage the quality, accuracy, completeness and timeliness of all data relating to operation e.g. meter, job and project related - direct or contractor sourced.

(i) BGN shall, as requested by Gaslink, prepare reports for the Commission on site works, charges and performance levels. BGN shall be involved in any discussion with the Commission on sitework charges.

4. Transmission Operations Safety and Quality

(a) BGN shall carry out the activities specified in this paragraph 4 in the name of Gaslink.

(b) BGN will perform the following functions:

(i) Investigation and reporting of incidents.
(ii) Management of the quality management system.

(iii) Audit programmes: Internal, Technical & Third Party.

(iv) Develop and manage the Transmission Safety Case in compliance with TSO Licence conditions, and managing the assessment and compliance of the transmission system in accordance with the requirements of the Transmission Safety Case.

(v) Establish and control library of Standards.

(vi) Carry out MOP review of pipelines to schedule and in accordance with IS 328.

(c) Carry out pipeline uprating studies as required.

(d) Carry out programme of regular safety audits covering all transmission installations, construction activities, offices and other establishments.

(e) Monitor the physical and chemical properties of natural gas.

(f) Compliance with protocols and processes in respect of emergencies and safety in relation to Connected Systems.

5. **Transmission Communications and Instrumentation**

BGN will perform the following functions in the name of Gaslink:

(a) Maintain Communications and Instrumentation ("C&I") equipment throughout the transmission network.

(b) Provide specialist C&I support in design and construction activities.

(c) Operate cathodic protection system on transmission pipelines.

(d) Maintain and calibrate gas measurement equipment.

(e) Inspect C&I equipment as per the Annual Work Plan.

(f) Provide information on availability and communications system performance as part of monthly reports.

6. **Shipper Operations Functions**

BGN will perform the following functions in the name of Gaslink (save for the NDM Work):

(a) Developing, operating and maintaining a customer service plan for managing the relationships with both Shippers and LDM and DM customers which will include the following:

   (i) responding to queries for information and advice;

   (ii) logging, tracking and resolving issues;

   (iii) scheduling meetings and organising industry workshops;
(iv) conducting key account manager meetings with Shippers;
(v) operating the relationship with LDM and DM customers;
(vi) issuing invoices and certain communications to Shippers on Gaslink headed paper; and
(vii) operating the balancing and shrinkage account on behalf of Gaslink and will issue disbursements to shippers on Gaslink headed paper.

Gaslink will be informed of all issues that have a material impact on customer relations and will be provided with reports against the KPIs on a quarterly basis. BGN shall inform Gaslink of any material issue in respect of customer relations as soon as reasonably practicable. Gaslink may attend meetings with shippers, LDM or DM customers or industry group in relation to any of the above if it sees fit. BGE shall give Gaslink reasonable advance notice of such meetings.

(b) Acting as Gas Point Register Operator (GPRO).

(c) Managing the Capacity Register to reflect all capacity bookings requested by Shippers.

(d) Operating, enforcing and reporting updates on the Financial Security Policy.

(e) Operating the Trading & Settlements function on behalf of Gaslink in accordance with the Agreed Processes Document including the production of Shipper invoices on Gaslink headed paper. BGN will advise Gaslink of any significant invoicing issues and how they are being resolved. Key statistics and trends in this area will be provided to Gaslink for analysis at the Monthly Meetings.

(f) Gaslink will instruct BGN to initiate the Shrinkage and Balancing Gas Tenders giving BGN sufficient notice to enable it to comply with all legal requirements and to operate the tender process in an orderly fashion. Gaslink will provide policy and objectives at initiation stage. BGN will develop the tender documents in consultation in Gaslink, co-ordinate the tendering process and carry out analysis on all tenders received with such input as Gaslink may provide. BGN will recommend and Gaslink will approve the successful tenders.

(g) For the purposes of carrying out its System Functions BGN will take title to gas within the BGE Group Transportation System at the appropriate time. As and from the Transfer Date Gaslink will deliver to BGN title to gas received by it pursuant to the Code of Operations, Balancing Gas contracts and Shrinkage contracts for this purpose and BGN will redeliver title to gas to Gaslink to facilitate delivery of title by Gaslink to Shippers under the Code of Operations. Gaslink will have the unencumbered right to utilise gas in the BGE Group Transportation System for the purposes of fulfilling its System Functions.

7. Metering Operations

BGN will perform the following functions in the name of Gaslink (save for the NDM Work):
(a) Management and operation of Meter Reading Services for NDM Domestic (inc. Pre-Payment Metering), NDM I/C, DM and LDM customers. Reports providing statistics and performance metrics will be prepared for Gaslink on a monthly basis.

(b) Management and operation of FAR (Forecasting, Allocation, Reconciliation) processes.

(c) Management and coordination of measurement accuracy, meter read query resolution and revenue protection compliance.

(d) Implementation and operational management of the meter replacement policy.

(e) Research, development and testing of new metering policies, systems and services.

(f) Meter asset management coordination.

(g) Supply chain management coordination for metering assets and metering services.

(h) Metering technical data quality and data management services.

(i) The following metering functions will also be performed:

   (i) The provision of a daily metering service to all DM and LDM industrial and commercial customers.

   (ii) A meter verification, exchange and replacement service for all customers.

   (iii) BGN will provide Information on metering availability and communications performance data to Gaslink as part of monthly reporting.

8. Distribution Maintenance Functions

(a) BGN will perform the functions set out in this paragraph 8 in the name of Gaslink (save for the NDM Work).

(b) BGN will provide an Emergency Response service. This 24 hour, 365 day a year service will involve:

   (i) Managing the call centre in the Gas Control room;

   (ii) Handling public reports of gas escapes (PREs);

   (iii) Providing appropriate safety advice and responding to and “making safe” all natural gas escapes.

   (iv) Providing a 24 hour on call First Response capability to deal with PREs and Emergencies.

   (v) Providing an on call Response Service to respond to Network “No Gas” calls.
(c) BGN will inform Gaslink in accordance with the Agreed Processes Document in the event of a significant distribution outage or emergency. BGN will provide all necessary Information and updates as issues are being resolved.

(d) BGN will provide a leak management and repair service which will conform to procedures accredited under ISO 9001-2000 requirements.

(e) Live monitoring of network pressures will be undertaken by BGN in the Gas Control room via the Distribution SCADA system to ensure adequate network pressures are maintained in the distribution system.

(f) BGN will advise and assist Gaslink in developing, maintaining, reviewing and enforcing safety and will also promote public awareness of gas safety issues.

(g) BGN maintain and update all approved documented procedures and Work Instructions for the operation of the distribution system in accordance with agreed procedures.

9. Transmission Maintenance Functions

(a) BGN will perform the functions set out in this paragraph 9 in the name of Gaslink.

(b) BGN will implement a planned preventative maintenance and inspection regime in compliance with the relevant statutory and regulatory requirements including the requirements of TSO Licence.

(c) BGN will ensure continued safe operation and integrity management through:

(i) routine maintenance of pipelines, AGIs and compressor stations;

(ii) 24 hour availability for maintenance and emergency incident response;

(iii) inspection / condition monitoring of pipeline systems including maintenance and surveillance programmes for the onshore and subsea pipeline systems;

(iv) inspection / overhaul of specialised equipment;

(v) maintenance and updating of all communications/SCADA and metering equipment, facilities and data in accordance with approved procedures.

(d) BGN will maintain and update all approved documented quality procedures and work instructions in accordance with the registered ISO 9001 Quality Management System to cater for proper and efficient management of the transmission system.

(e) Maintain the physical and commercial operation of the transmission system utilizing a grid control centre on a 24/7 basis. This includes:
(i) safe and effective system monitoring and operation using the SCADA System;

(ii) ensuring gas supply and demand balancing and associated daily commercial processes in transporting gas from entry to exit points using the GTMS data management system;

(iii) quality assurance of all metered data required for the billing process;

(iv) response to shipper / end user queries and assist in development of new processes within the gas transportation framework;

(v) management of system gas usage (shrinkage) and balancing actions including the daily transaction arrangements pursuant to the Code of Operations.

(f) BGN will inform Gaslink as soon as reasonably possible in the event of a significant transmission outage or emergency in accordance with the Agreed Processes Document. BGN will provide all necessary Information and updates as issues are being resolved.

(g) If Gaslink is designated as the National Gas Emergency Manager ("NGEM"):  

(i) BGN shall prepare the Natural Gas Emergency Plan provided that such plan shall be subject to the approval of Gaslink; and

(ii) in the event of a natural gas emergency, BGN will undertake the functions of the NGEM on behalf of Gaslink in accordance with the Natural Gas Emergency Plan. In taking measures to deal with a Natural Gas Emergency BGN will act:

(A) as a RPO, and

(B) in accordance with the Natural Gas Emergency Plan and any directions or instructions of the NGEM.

10. Distribution Safety and Quality

(a) BGN will perform the functions set out in this paragraph 10 in the name of Gaslink (save for the NDM Work).

(b) BGN will perform the following safety activities:

(i) oversee and review the delivery of BGE safety policy PD/76 within BGN;

(ii) implement and review the BGE Safety Statement within BGN;

(iii) manage the revision, content and use of the BGN Safety Management System;

(iv) report and investigate work related accidents and near misses as required to meet internal and legislative requirements and to notify Gaslink of any reportable events; and
(v) develop, review and maintain the Distribution Safety Case and to notify Gaslink of any risk register revisions to communicate to the Commission. To amend and implement any Safety Case revisions as identified as ‘material’ by Gaslink.

(c) Report and investigate reportable gas related incidents as required under Commission requirements.

(d) Develop, manage and maintain the Distribution Quality Management System.

(e) Carry out a planned audit programme supplemented by ad hoc audits when business needs predict.

(f) carry out safety audits of distribution assets, activities, offices, service providers and third parties.

(g) Develop and maintain document control protocols and to provide technical policy, procedure or process when required.

(h) Provide a Register of Gas Installers as so long as required under the DSO Licence, and to manage the quality of registered installers through a programme of communication, inspection, instruction and discipline as necessary and agreed with the Commission through the actions of the Commission Gas Safety Committee.

(i) Provide technical training and assessment of employees and contractors as appropriate.

(j) Facilitate gas safety advertising activities as required and agreed with the Commission Gas Safety Committee.

(k) Facilitate safety projects and initiatives as required and agreed with the Commission Gas Safety Committee.
SCHEDULE 11

MARKET ARRANGEMENTS FOR OPERATION OF BGE GROUP TRANSPORTATION SYSTEM

1. Definition

Market Arrangements consist of the commercial and legal framework governing access to, operation and development of the gas market including TPA (Third Party Access), other transportation services, Connection Policy and Financial Security Policy.

Market Arrangements will encompass, inter alia, the following:

(a) the management of Gaslink’s relationship with industry and relevant regulatory bodies through the various fora in place or expected to be in place including the Code Forum and Gas Market Arrangements Retail Group (GMARG);

(b) the management of the process to facilitate retail and wholesale sector general development;

(c) the management of the process to facilitate future market arrangements as dictated by the needs of industry, the Commission, DCENR and relevant legislation;

(d) the management of the process to deliver a more efficient service to industry through greater utilisation of existing assets;

(e) the management of the development process in respect of the contractual framework for access to the BGE Group Transportation System and related services, including the following:
   (i) developing contractual arrangements for gas transportation;
   (ii) managing system operator licence amendments, framework agreements, codes of operation, agreements for Shippers in relation to ancillary services;
   (iii) developing new products to meet Shipper requirements as well as legislative and regulatory requirements in accordance with paragraph 2(e) of Schedule 10; and
   (iv) managing the administration of the industry fora including Code modification fora;

(f) the development of the retail market including ongoing developments with industry, the Commission, and new entrants via appropriate fora;

(g) proposing and responding to requests for changes to the Code of Operations and associated procedures policies and agreements;

(h) preparing analysis and position papers as necessary and managing the administrative elements of maintaining the Code of Operations;

(i) maintaining an awareness of wider national and international developments regarding gas quality, interoperability, standards, legislation and regulation;

(j) meeting with customer focus groups;
(k) liaising with European bodies regarding the transportation framework, including the European Commission, the European Regulator’s Group for Electricity and Gas (ERGEG), the European Association for Streamlining of Energy Exchange - Gas (EASEE-Gas) and Gas Infrastructure Europe (GIE); and

(l) developing of position papers, analysis of industry issues and regulatory proposals, preparation of legal drafts, impact analysis, timeframe estimation, responding to questionnaires or any other aspects of market arrangements.

2. **BGN input to Gaslink - Requirements**

In carrying out its responsibilities required for Market Arrangements, input will be required upon Gaslink request, from BGN departments/groups including the following:

- Transmission Operations;
- Distribution Operations;
- Grid Control;
- Shipper Services Operations;
- Gas Point Registration Office (GPRO);
- Commercial Operations
- Accounting/Finance;
- Insurance;
- Network Metering;
- Business Planning;
- System Analysis planning;
- IT Projects;
- BGT Systems Group:
  - GTMS;
  - IUS;
  - GasMap;

Where requested BGE representatives from the above departments shall participate in project groups relating to development of market arrangements.

Areas where Gaslink may request assistance from BGN include the development, operation and maintenance of, inter alia, the following:

a) **Entry Point and Connected System Arrangements:**

Including:

- Operational Procedures;
• Measurement and Validation;
• Information flows e.g. DFN, OPN;
• Gas quality specification and procedures;
• Pressure specifications; &
• Contracts and agreements;

b) Wholesale and Retail Market Arrangements

Including
• Industry fora;
• Principles business rules and legal drafting;
• Procedures and policies;
• Market process definitions;
• Provision of information for example: available capacities;

c) General

Including
• Common business rule development for example on foot of European initiatives: EDIg@S, GTE Transparency Server, etc;
• Gas industry and regulatory questionnaire management.
SCHEDULE 12
MARKET FACING SYSTEMS LICENCE TERMS

1. Purpose

1.1 The Market Facing Systems are owned by BGE or, as the case may be, its third party licensors.

1.2 Gaslink requires access to the Market Facing Systems for the purpose of carrying out its System Functions pursuant to this Agreement.

1.3 This Schedule contains the terms and conditions under which Gaslink is authorised to access the Market Facing Systems for the purposes referred to above (the “Licence Terms”).

2. Definitions

2.1 In these Licence Terms, capitalised terms shall have the meaning given to them in the main body of the Agreement.

3. Licence

3.1 Subject to the terms and conditions of these Licence Terms, and solely for the use permitted under paragraph 6.1 of these Licence Terms, BGE hereby licenses Gaslink:

(a) through its Authorised Users to have access to and use of the Market Facing Systems;

(b) through its Authorised Users to make use of any manual or other materials provided by BGE in respect of the Market Facing Systems; and

(c) to grant access to and use of the Market Facing Systems in accordance with paragraph 17 of these Licence Terms.

3.2 The licence granted in this paragraph 3 to Gaslink is royalty free, non-exclusive, and non-transferable. Gaslink shall be liable for all costs and charges incurred arising out of or in conjunction with its use of and access to Market Facing Systems, save where otherwise agreed between the parties.

3.3 Gaslink acknowledges that certain constituent elements of the Market Facing Systems may be licensed to BGE by third parties. Gaslink agrees to comply with such third party licence restrictions on use of the Market Facing Systems as may be specifically drawn to the attention of Gaslink by BGE from time to time provided that, if such restrictions materially adversely affect Gaslink’s rights of access, or Gaslink’s right to grant access to Authorised Third Party Users, pursuant to this Agreement and these Licence Terms, BGE shall use all reasonable endeavours to negotiate a removal of such restrictions. BGE shall not seek or (where its agreement is required) agree to a change to such third party licence terms and conditions without having consulted with Gaslink regarding such proposed change, provided that Gaslink’s approval shall not be required for such a change.

3.4 Gaslink shall inform its Authorised Users of and procure their compliance with the terms and conditions governing use of and access to the Market Facing Systems as set out in these Licence Terms (including any third party licence terms and
conditions notified to BGE in accordance with paragraph 3.3 above) provided
however that Gaslink shall remain primarily liable for all acts or omissions by its
Authorised Users in connection with the Market Facing Systems.

3.5 Subject to Gaslink complying with such reasonable access requirements as may
be specified by BGE, BGE shall use all reasonable endeavours to procure that
Gaslink shall have such access to the Market Facing Systems which shall be
equivalent to BGE’s own quality of access.

4. **Usernames and Passwords**

4.1 BGE:

(a) subject to paragraphs 4.2(a) and 7.1 of these Licence Terms, shall provide
Gaslink with all usernames and passwords as required for its Authorised
Users which will enable its Authorised Users to access and use the Market
Facing Systems in accordance with the notification made under paragraph
4.2(a) for the purposes set out in this Licence;

(b) may change usernames and passwords and/or require Gaslink to change
passwords and shall give reasonable prior notice to Gaslink of such
change. BGE shall not be required to provide prior notice where such
change is required urgently to protect the security of the Market Facing
Systems. Where no prior notice is provided to Gaslink, BGE shall advise
Gaslink as soon as practicable thereafter;

(c) shall not share the Gaslink’s usernames and passwords with anyone other
than Gaslink;

(d) shall conclusively assume (in the absence of manifest error on the part of
Gaslink) that any person (other than BGE) accessing the Market Facing
Systems using usernames and passwords issued to Gaslink is acting with
the consent and on the authority of Gaslink; and

(e) shall as soon as practicable discontinue access to the Market Facing
Systems by Gaslink and/or all or any of its Authorised Users where it has
been notified in writing by Gaslink in accordance with paragraph 4.2(f) or
paragraph 4.2(g) of these Licence Terms.

4.2 Gaslink:

(a) shall notify BGE in writing of the identity and relevant details of each of its
Authorised Users and in respect of each Authorised User the electronic
information systems comprised within the Market Facing Systems in
respect of which access is sought;

(b) agrees that certain passwords may expire on a periodic basis (as may be
advised by BGE from time to time) requiring Gaslink to input a new
password;

(c) shall be solely responsible for notifying changes to usernames and
passwords to each of its Authorised Users. BGE shall have no responsibility
in this regard;

(d) shall not share each username and password with anyone other than the
Authorised User in respect of which such username and password have
been issued. Use of each username and password shall be confined to the
Authorised Users in respect of which such username and password have been issued;

(e) will use all reasonable endeavours to prevent access to the Market Facing Systems using each of the usernames and passwords issued to each of its Authorised Users by persons other than each of the Authorised Users in respect of which each such username and password has been issued;

(f) shall notify BGE immediately in writing where it reasonably believes that any of the usernames or passwords issued to Gaslink have been compromised;

(g) shall inform BGE in writing whenever it desires to terminate access to the Market Facing Systems that has been granted to any Authorised User of Gaslink. Gaslink shall be solely responsible for any and all unauthorised or otherwise improper use of usernames and passwords by any of its Authorised Users, including those whom are no longer employed or controlled by Gaslink, save to the extent that BGE has failed to comply with its obligations pursuant to paragraph 4.1(e) of these Licence Terms; and

(h) shall notify BGE immediately if it ceases to require access to the Market Facing Systems for the purpose of exercising its rights and performing its obligations pursuant to Clause 13 of this Operating Agreement.

5. Security

5.1 Gaslink hereby acknowledges:

(a) BGE shall be entitled to take all steps necessary to protect the security of the Market Facing Systems at any time, including, but not limited to, immediately discontinuing access by Gaslink and its Authorised Users to the Market Facing Systems where BGE suspects, acting bona fide, that the security of the Market Facing Systems has been or is likely to be compromised. BGE shall not be required to give prior notice where it requires to take steps to urgently protect the security of the Market Facing Systems but shall notify Gaslink as soon as practicable of such discontinuance. Any such discontinuation of access shall be for the minimum time reasonably necessary to enable BGE to investigate and put in place any such measures to address any such security concerns.

(b) BGE shall be entitled to take all reasonable steps to modify, optimise or improve the security of the Market Facing Systems at any time and shall give reasonable prior notice thereof to Gaslink; and

(c) BGE shall be entitled to contact or cooperate with any law enforcement, regulatory or other competent authority in connection with Gaslink's access to the Market Facing Systems. Such contact and cooperation may include disclosure of the identity of, and the information transmitted or received by, any person accessing the Market Facing Systems. In any such case BGE shall to the extent that it is practicable and permissible under applicable law notify Gaslink in advance of such contact or cooperation.

5.2 Gaslink shall comply with all other systems access and security rules and procedures governing access to Market Facing Systems (as amended from time to time) as BGE may adopt acting reasonably provided that Gaslink has been given reasonable prior notice of such rules and procedures.
5.3 Each party shall:

(a) maintain security procedures to ensure that its premises (from which the Market Facing Systems are accessed), its computer network, and its computer systems are sufficiently secure to prevent unauthorised access to the Market Facing Systems;

(b) not transmit any unlawful, threatening, libellous, defamatory, obscene, scandalous, inflammatory, pornographic or profane material to or through the Market Facing Systems;

(c) use reasonable endeavours to ensure that no unauthorised access to or use of the Market Facing Systems occurs from its premises (from which the Market Facing Systems are accessed), or through its computer network, or through its computer systems by means of, but not limited to:

(i) **Hacking** (i.e., unauthorised access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures).

(ii) **Interception** (i.e., unauthorised monitoring of data or traffic on any network or system).

(iii) **Intentional Interference** (i.e. unauthorised interference with service to any user, host or network including, without limitation, denial-of-service attacks, other flooding techniques, deliberate attempts to overload a system and broadcast attacks).

(iv) **Falsification of Origin** (i.e., forging of any TCP-IP packet header, e-mail header or any part of a message header).

(v) **Avoiding System Restrictions** (i.e., unauthorised use of manual or electronic means to avoid any use limitations placed on the users).

(d) implement and maintain policies and procedures consistent with standard industry practice to protect against harmful code, viruses or programming instructions from being transmitted or received to the other party by reason of the performance of their obligations under these Licence Terms and each party shall notify the other party if it has reason to believe that any such code, virus or programming instruction has been so transmitted or received.

5.4 Gaslink shall procure that each of its Authorised User’s premises, computer networks and computer systems complies with the requirements of paragraphs 5.3(a) and (c) of these Licence Terms above.

6. **Permitted Use**

6.1 Gaslink may only access and use the Market Facing Systems for the purpose of carrying out its System Functions.

7. **Training and Provision of Support and Information**

7.1 BGE shall not be obliged to furnish a username and password to Gaslink for use by an Authorised User until such time as each such Authorised User has to the
satisfaction of BGE completed a course of training provided by or on behalf of BGE with respect to the Market Facing Systems. BGE may waive this requirement in respect of any Authorised User.

7.2 BGE agrees to make available to Gaslink within such reasonable timeframe as Gaslink may request such training, information, manuals and other materials as may be reasonably required in connection with access to and use of the Market Facing Systems in accordance with this Licence.

7.3 In the event that Gaslink encounters difficulties with accessing the Market Facing Systems, BGE shall endeavour to meet all reasonable requests by Gaslink for support and information in addressing such difficulties.

8. **Intellectual Property**

8.1 BGE warrants that the Market Facing Systems and intellectual property rights therein are and shall at all times for the duration of this Agreement remain the property of BGE and, where applicable, its third party licensors.

8.2 Gaslink’s sole rights of access to and use of the Market Facing Systems shall be those conferred under these Licence Terms.

8.3 Gaslink shall (and Gaslink shall procure that each of its Authorised Users shall) not do or omit to do anything which prejudices the proprietary rights of BGE or its third party licensors in the Market Facing Systems or any information, manuals or materials provided by BGE to Gaslink, including, but not limited to:

(a) copying any aspect of the Market Facing Systems and any manuals or other materials provided by BGE in respect of the Market Facing Systems (save to the extent permitted by law or where Gaslink has obtained the prior written consent of BGE);

(b) using the Market Facing Systems to prepare a derivative work or attempting to reverse-engineer or reverse-engineering the Market Facing Systems (save to the extent permitted by law or where Gaslink has obtained the prior written consent of BGE).

(c) save as provided in paragraph 17 of these Licence Terms sub-licensing the use of the Market Facing Systems and any manual or other materials provided by BGE in respect of the Market Facing Systems;

(d) de-compiling, disassembling or modifying the whole or any part of the Market Facing Systems (save to the extent permitted by law or where Gaslink has obtained the prior written consent of BGE).

9. **Availability of Market Facing Systems**

9.1 BGE shall use reasonable endeavours to maintain availability of the Market Facing Systems (subject to BGE carrying out scheduled and non-scheduled work on the Market Facing Systems intended to ensure proper functioning and maintenance of the Market Facing Systems which may result in temporary unavailability of the Market Facing Systems) and to correct any errors in the Market Facing Systems. BGE shall use its best endeavour to notify Gaslink of any planned unavailability at least 5 days in advance and shall notify Gaslink of any planned unavailability at least 2 days in advance. All unplanned unavailability shall be reported on a monthly basis with the exception of material outages which shall be notified immediately on becoming aware of such outage.
10. **Confidentiality**

10.1 The rights and obligations of the parties with respect to issues of confidentiality shall be as provided for in Clause 16 of this Operating Agreement.

11. **Data Ownership and Data Protection**

11.1 The rights and obligations of the parties with respect to data ownership and data protection shall be as provided for in Clause 13 of this Operating Agreement.

12. **Termination**

12.1 Without prejudice to the terms of Clause 18 of this Operating Agreement, upon termination of this Agreement in accordance with Clause 18:

   (a) BGE shall immediately revoke access and use of the Market Facing Systems by Gaslink and its Authorised Users;

   (b) where requested by BGE, Gaslink shall return all information, training manuals and materials in its possession or under its control to BGE; and

   (c) without prejudice to paragraph 10 of these Licence Terms, Gaslink shall cease to use all Confidential Information obtained as a result of accessing the Market Facing Systems and using the information, training manuals and materials and, in such event:

      (i) Gaslink will return to BGE, or shall destroy (as BGE may direct), such of the original versions of any such information and copies thereof that are in its possession; and

      (ii) Gaslink shall destroy all documents, memoranda, notes and other writings whatsoever prepared by it or in its possession which incorporate any such information.

12.2 In the event of termination of this Operating Agreement BGE and Gaslink shall co-operate to seek to ensure in so far as reasonably practicable that Authorised Third Party Users (as defined in paragraph 17 of these Licence Terms) continue to have access to the Market Facing Systems in accordance with the Access Terms or the Existing Access Terms (as defined in paragraph 17 of these Licence Terms).

13. **Liabilities and Indemnities**

13.1 Neither party shall have any liability to the other party except as provided for in Clause 17 of this Operating Agreement.

14. **Warranties and Disclaimer**

14.1 BGE warrants that it will make the Market Facing Systems available in accordance with these Licence Terms and to the standards expected of a Reasonable and Prudent Operator. Subject to the foregoing, BGE:

   (a) disclaims all warranties, express or implied, including, without limitation, the implied warranties of merchantability, title, and fitness for a particular purpose;
(b) does not warrant that access to, or use of the Market Facing Systems will be uninterrupted or error-free, or that the Market Facing Systems will meet any particular criteria of performance or quality; and

(c) has not made any express or implied representations, assurances and/or warranties regarding the use or availability of the Market Facing Systems.

15. **Disputes**

15.1 Disputes arising out of or in connection with these Licence Terms shall be resolved in accordance with the provisions of Clause 12 of this Operating Agreement.

15.2 BGE will use reasonable endeavours to keep a chronological record of communications transmitted through the Market Facing Systems. Such record shall be in such form and for such period as may be required by law. In the event of a dispute regarding a communication transmitted through the Market Facing Systems, BGE will make available its records as directed by the Commission.

16. **Access for Inspection purposes**

16.1 Where Gaslink needs to have access to the Market Facing Systems in order to exercise its rights of audit and inspection pursuant to this Agreement, including audit by a third party pursuant to Clause 11.5(b) of this Operating Agreement, Gaslink shall save in the case of emergency give BGE not less than 7 days’ advance written notice and BGE shall procure such access.

17. **Grant of Access**

17.1 In this paragraph 17, the following words shall have the following meanings:

(a) “Access Procedure” means the BGT Systems Access Procedure published pursuant to the Code of Operations as may be amended in accordance with the Code of Operations from time to time or, where the relevant user is not a party to the Code, appropriate training having regard to that person’s proposed use of and access to the Market Facing Systems;

(b) “Access Terms” means the terms of access to the BGT Systems set out in the Code of Operations from time to time.

(c) “Authorised Third Party User” means a third party who is either (i) a party to the Code of Operations, or (ii) any other person to whom Gaslink requires to provide access to the Market Facing Systems in the course of performing its System Functions, and in each case, who has successfully completed the Access Procedure, or (iii) an Existing User.

(d) “Existing User” means any third party who is a counterparty to Existing Access Terms;

(e) “Existing Access Terms” means any contract in existence on the date of this Agreement between BGE and a third party granting access to a third party to the Market Facing Systems which transfers to Gaslink pursuant to the Transfer Plan.

17.2 BGE hereby licences Gaslink to grant access to Authorised Third Party Users:

(a) to have access to and use of the Market Facing Systems; and
(b) to make use of any manual or other materials provided by BGE in respect of the Market Facing Systems.

17.3 Gaslink shall only grant access to the Market Facing Systems to Authorised Third Party Users on the Access Terms set out in the Code of Operations from time to time and, in the case of Existing Users, the Existing Access Terms.

17.4 With the exception of Existing Users, where Gaslink grants access to the Market Facing Systems to third party who is not a party to the Code of Operations, Gaslink shall require that third party to accept and agree in writing to adhere to the Access Terms.

17.5 Gaslink shall procure that its Authorised Third Party Users shall comply with the Access Terms or Existing Access Terms as appropriate and Gaslink shall remain primarily liable for all acts or omissions by its Authorised Third Party Users in connection with the Market Facing Systems.

17.6 Gaslink shall notify BGE in writing of the identity and relevant details of each of its Authorised Third Party Users and in respect of each Authorised Third Party User the electronic information systems comprised within the Market Facing Systems in respect of which access is sought.

17.7 BGE shall provide access to Authorised Third Party Users on behalf of Gaslink in accordance with the Access Terms or the Existing Access Terms as the case may be, and shall perform all obligations for and on behalf of Gaslink as sub-licensor of the Market Facing Systems pursuant to the Access Terms and the Existing Access Terms as appropriate.

17.8 In processing any data of Authorised Third Party Users, BGE shall comply with the provisions of Clause 13 of this Operating Agreement and any data ownership and confidentiality requirements in the Code and any reasonable data ownership and confidentiality requirements in Gaslink’s agreements with Authorised Third Party Users as notified by Gaslink to BGE.

17.9 Notwithstanding paragraph 7 of these Licence Terms, BGE shall provide such training and assistance to third parties as may be required by Gaslink for the purposes of compliance by such parties with the Access Procedure.
SCHEDULE 13

CONFIDENTIAL INFORMATION PROTOCOL

Since the introduction of regulatory requirements relating to the non-disclosure of commercially sensitive information, Bord Gais Networks has consistently applied stringent ring-fencing protocols to ensure full compliance. BGN has an unblemished record of maintaining the confidentiality of sensitive information and its integrity in rigorously enforcing such protocols has never been compromised. Further details on each of the measures which BGN currently applies are outlined below together with details of any enhancements which BGN shall implement in order to reflect the nature of its relationship with Gaslink.

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<th>Measure</th>
<th>Description</th>
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| Employment Contracts – Confidentiality Clauses | **Response 2000:**

Under the terms of Response 2000, all employees agreed that all current and future contracts of employment would be amended to contain the following clause:

**Confidential Information:** If you, in the course of your employment, become aware of confidential information relating to the affairs of Bord Gais, or the affairs of its customers or other associated organisations, you must not reveal such information other than in the course of your duties. Any improper disclosure of confidential information will be considered a serious breach of this contract.

*This clause will be amended to reflect any changes in legislation as they arise.*

| Employment Contracts |

From 1st January 2005, all new contracts of employment with BGE contain confidentiality provisions which include specific reference to Confidential Information within Bord Gais. Under these contracts, employees are obliged to comply with confidentiality provisions in respect of any Confidential Information of Bord Gais or any of its associated companies or businesses. Where directed, each employee is obliged to comply with confidentiality provisions in respect of any contact or communications they may have with any business unit, division, or other section (including all relevant personnel) of Bord Gais or any of its associated companies or businesses, in accordance with directions given.

Employment contracts for positions at Manager level or above contain additional Post Termination Obligations.
## Codes of Conduct

The **Regulatory Code of Conduct** document covers Regulatory Compliance as well as Ringfencing and Business Separation. The Code is submitted to the Commission in order to demonstrate compliance with certain conditions in BGE's licence.

This Code is currently being updated to provide further specific detail on what information must be retained within BGN. Gaslink shall be consulted in the drafting of this revision.

All BGN staff currently receive a copy of this Code. Furthermore, all BGN staff in roles with access to Confidential Information shall be requested to confirm their understanding and acceptance of this Code within the Transition Period (and on an annual basis thereafter).

All staff up to Band 4 are requested to confirm each year that they have read and understand the **Code of Business Conduct for Bord Gais Employees**. This code contains a specific section on Information and Confidentiality.

Annually, all staff of Band 3 and above sign a **Code of Business Conduct** for (1) Bord Gais Eireann Board Members (2) Bord Gais Eireann Senior Management (3) Directors of Bord Gais Eireann Subsidiary Companies and Joint Ventures. This code contains a specific section on Information and Confidentiality.

The **Competition Code of Conduct** is submitted to the Commission in order to demonstrate compliance with certain conditions in BGE’s licence. A section of this Code covers restrictions in relation to “Passing on Information” and incorporates specific requirements for Information Ring-Fencing. This Code also outlines restrictions on access to premises and information. This Code shall be circulated to all BGN staff within the Transition Period.

## Training

**Induction training** for new employees verbally covers the requirements of business separation.

**Compliance Training** in relation to the regulatory Code of Conduct and Third party Access has been periodically provided to relevant staff within BGN. This training material shall be kept updated to incorporate all new requirements in relation to Gaslink and shall include detailed directions to staff on how to treat various categories of Confidential Information. The training shall be rolled out to all existing Networks staff during the Transition Period and all new staff within 4 weeks of joining or transferring to BGN.
| **Other relevant measures** | BGN Line Managers are responsible for maintaining the confidentiality of sensitive information. These managers shall ensure that all relevant staff are issued with the appropriate protocol documents and that such staff confirm their understanding and acceptance of the terms and obligations therein.  
BGN Line Managers are also responsible for ensuring that all new staff receive Compliance Training within 4 weeks of joining or transferring to BGN.  
BGE has a nominated representative who holds overall responsibility for Regulatory Compliance (including the ring-fencing of Confidential Information). BGN shall also appoint its own nominated representative who shall ensure that all Confidential Information protocols are enforced within BGN and who shall report on compliance issues to senior BGN management.  
On a case by case basis, BGN ensures that information of a particularly sensitive nature shall be restricted to a nominated group of individuals for the duration of the project. (these cases shall be jointly determined with Gaslink) |