

VERSION 2.0

INTERCONNECTOR CAPACITY TRANSFER TERMS AND CONDITIONS

These Terms and Conditions shall apply to transfers of Capacity Rights from one Interconnector Shipper to another Interconnector Shipper ("Capacity Transfers") pursuant to Articles 18(A), (C), (D) and (E)

1. DEFINITIONS AND INTERPRETATION

1.1 The words and expressions defined (expressly or by reference) in the ISTA shall have the same meaning when used in these Terms and Conditions (unless the word or expression is expressly defined in these Terms and Conditions). Where in any applicable ISTA definition there is a reference to "this Agreement", those words shall be deemed to be replaced by the words "these Terms and Conditions".

1.2 Except where the context otherwise requires, the following words and expressions, where they appear in these Terms and Conditions or a Confirmation (where applicable) shall have the meanings respectively ascribed to them:

"Capacity Charge" shall mean the sum (in pence per Nm³ or such other currency as the Parties may agree) agreed to be payable for Forward Flow Capacity Rights and/or Reverse Flow Capacity Rights (as applicable) in accordance with a Transaction for Transferred Capacity.

"Capacity Transferee" shall mean the Party to whom the Capacity Transferor is sub-letting its Capacity Rights (in whole or in part) pursuant to the terms of a Transaction.

"Capacity Transfer Period" shall mean the duration of a Capacity Transfer agreed pursuant to a Transaction as such period may be adjusted by termination in accordance with these Terms and Conditions or pursuant to the provisions of Article 18(C)(d)(iii) or (iv).

"Capacity Transferor" shall mean the Party sub-letting its Capacity Rights (in whole or in part) to the Capacity Transferee pursuant to the terms of a Transaction.

"Combined Standard Transportation Agreements" shall mean the ISTA, the Override Agreement, the Standard Direct Access Agreement and the standard form of agreement dated 30th September 1998 between Interconnector and the Capacity Transferor setting out the terms and conditions for access to ISIS by the Capacity Transferor as each such agreement may be supplemented, amended and restated from time to time provided that where some, or all, of its provisions are not yet in force or have ceased to be in force, a reference to any such agreement shall be to such provisions as are, at the relevant time, in force.

"Confirmation" shall mean a document incorporating these Terms and Conditions by reference and confirming the details of a Transaction which shall be substantially in the form set out in the Schedule.

"Defaulting Party" shall have the meaning given to it is Clause 12.1.

"Due Date" shall have the meaning ascribed to it in Clause 6.2.

"Early Termination Payment" shall have the meaning ascribed to it in Clause 12.6.

"Index" shall mean the index published by Petroleum Argus Limited in Petroleum Argus European Natural Gas or, where such index ceases to be available for the purposes of calculating the Pipeline Inventory Price, the index published by The McGraw Hill Companies in Platts European Natural Gas Report or such other index as the Parties may agree in respect of a Transaction.

"ISTA" shall mean the standard form of transportation agreement entered into by Interconnector and each I(UK) Shipper for the transportation of Natural Gas in the Transportation System as amended, supplemented and restated from time to time.

"I(UK) Shipper Rebate" shall mean:

- (i) a Lost Capacity Reduction in accordance with Articles 3.5(1) and (2);
- (ii) a rebate in accordance with Article 11.5 to which the Capacity Transferee is entitled in accordance with Articles 18(A).9(c) and (d);
- (iii) a reduction in accordance with Article 7.2(3) to which the Capacity Transferee is otherwise entitled.

“Monthly Capacity Transfer Charge” shall mean the charge payable in respect of the Transferred Capacity calculated in accordance with Clause 5.1(a) and/or (b).

“Monthly Invoice Amount” shall have the meaning ascribed to it in Clause 6.1.

“Monthly Statement” shall have the meaning ascribed to it in Clause 6.1.

“NBP Price” shall mean the mid-point between the NBP bid price and the NBP offer price published in the Index on the last day of the Capacity Transfer Period in respect of the next Business Day.

“Non-Defaulting Party” shall have the meaning given to it in Clause 12.1.

“Office Hours” shall mean between 09:00 hours and 17:00 hours (UK time) on any Business Day.

“Party” shall mean either the Capacity Transferor or the Capacity Transferee and **“Parties”** shall be construed accordingly.

“Pipeline Inventory Price” shall mean the arithmetic average of the NBP Price and the Zeebrugge Hub Price.

“Terms and Conditions” means the terms and conditions set out herein together with the Schedules, as the same may be amended from time to time.

“Transaction” shall mean an oral or written agreement for a Capacity Transfer which agreement incorporates these Terms and Conditions by reference and includes, inter alia, details of the Parties, the Capacity Transfer Period, the Transferred Capacity (expressed in Nm³/h) and the Capacity Charge.

“Transaction Charge” shall mean the charge (if any) agreed to be payable by the Capacity Transferee to the Capacity Transferor in respect of a Transaction, such sum to be paid in one instalment in accordance with Clause 6.

“Transferred Capacity” shall mean the amount of Forward Flow Capacity Rights and/or Reverse Flow Capacity Rights (as applicable) (expressed in Nm³/h) which the Capacity Transferor agrees to sub-let to the Capacity Transferee under a Transaction.

“Transferred Capacity Charge” shall have the meaning ascribed to it in Clause 6.1.1;

“Wilful Default” shall mean, in relation to a Party, a wilful, intentional and conscious act or omission by an officer, director or employee, acting in a management or supervisory capacity, of a Party which constitutes (and which the relevant officer, director or employee knows it constitutes) a breach of any material obligation of that Party under a Transaction but shall exclude a breach or disregard of any obligation resulting from an error of judgement or mistake or omission arising in good faith or from negligence.

“Zeebrugge Hub Price” shall mean the mid-point between the Zeebrugge bid price and the Zeebrugge offer price published in the Index on the last day of the Capacity Transfer Period in respect of the next Business Day.

- 1.3 Unless the context otherwise requires and to the extent applicable, the rules of interpretation set out in Articles 1.4 and 1.5 shall apply to these Terms and Conditions.
- 1.4 References to Clauses and to Schedules are to be construed as references to the Clauses of, and Schedules to, these Terms and Conditions and references to Articles and to Appendices are to the Articles of and Appendices to the ISTA.
- 1.5 In the event of any conflict between these Terms and Conditions and the terms of the Combined Standard Transportation Agreements, then the terms of the Combined Standard Transportation Agreements shall prevail.

2. TRANSACTION

By entering into a Transaction the Capacity Transferor agrees to sub-let to the Capacity Transferee and the Capacity Transferee agrees to sub-let from the Capacity Transferor the Transferred Capacity during the Capacity Transfer Period in consideration for the payment of the Capacity Charge and (if applicable) the Transaction Charge by the Capacity Transferee to the Capacity Transferor, all subject to and in accordance with these Terms and Conditions, the terms of the Confirmation (where applicable) and the provisions of Article 18(A), (C), (D) and (E).

3. CONFIRMATION PROCEDURE

- 3.1 The Capacity Transferor shall, as soon as reasonably practicable but in any event within three (3) Business Days of a Transaction being entered into, send by facsimile transmission to the Capacity Transferee a signed Confirmation recording the details of such Transaction.
- 3.2 If the Confirmation accurately reflects the terms of the applicable Transaction, the Capacity Transferee shall sign and return the Confirmation by facsimile transmission to the Capacity Transferor as soon as reasonably practicable but in any event no later than three (3) Business Days after receipt of the signed Confirmation.
- 3.3 If the Confirmation does not accurately reflect the terms of the applicable Transaction, the Capacity Transferee shall inform the Capacity Transferor of any inaccuracies as soon as reasonably practicable but in any event no later than three (3) Business Days after receipt of the signed Confirmation. The Capacity Transferor shall, if it agrees that the Confirmation is inaccurate, issue a new Confirmation and the provisions of Clauses 3.1 and 3.2 shall apply.
- 3.4 If the Capacity Transferee does not return the Confirmation, duly signed, in accordance with Clause 3.2, or does not notify the Capacity Transferor of any inaccuracy in accordance with Clause 3.3, the Capacity Transferee shall be deemed to accept the Confirmation.
- 3.5 If the Capacity Transferee has not received a Confirmation from the Capacity Transferor within three (3) Business Days of a Transaction being entered into, the Capacity Transferee shall send the Capacity Transferor a Confirmation, and Clauses 3.2, 3.3 and 3.4 shall apply mutatis mutandis in relation to such Confirmation by replacing in such Clauses all references to "Capacity Transferee" with "Capacity Transferor" and "Capacity Transferor" with "Capacity Transferee".
- 3.6 Failure by either Party to send or return a Confirmation shall not:
- (a) affect the validity or enforceability of any Transaction; or
 - (b) be a material breach of a Transaction under Clause 12.2.1.

However, notwithstanding the foregoing, the Parties agree that in respect of each Transaction they shall use their reasonable endeavours to agree and execute Confirmations by no later than two (2) hours before the latest time for submitting Capacity Transfer Notices to Interconnector in respect of a Transaction as specified in Article 18(A).2.

- 3.7 The Parties consent to the recording of all telephone conversations between the Parties in respect of each Transaction. Each Party agrees to notify its relevant employees of that consent and obtain their consent to that recording if required by law.
- 3.8 Subject to Clause 3.4, on signature of both Parties, the Confirmation shall, save in the event of manifest error, prevail over any oral or written agreement in respect of the Transaction. .

4. CAPACITY TRANSFER NOTICE

- 4.1 In respect of each Transaction, the Parties shall each (or if the Parties elect, jointly) submit a Capacity Transfer Notice to Interconnector in accordance with Article 18(A).2 which shall be in the form set out in Schedule 2.
- 4.2 Where Interconnector advises that the proposed Capacity Transfer does not comply with Article 18(A).3 and/or that the Capacity Transfer Notices submitted by the Parties have not been matched as provided in Article 18(A).4 and accordingly are invalid and shall not be given effect to, but nevertheless there remains sufficient time for each Party to submit another Capacity Transfer Notice in accordance with the time limit specified in Article 18(A).2, then each Party shall use its reasonable endeavours to submit new Capacity Transfer Notices to Interconnector in accordance with Article 18(A).2.
- 4.3 Subject to Clause 4.4 and the provisions of Clause 9, failure by a Party to submit a Capacity Transfer Notice (which accurately records the terms of the relevant Transaction in accordance with Clause 4.1) within the time period specified in Article 18(A).2 (excluding such failure which is subsequently remedied by the submission of new Capacity Transfer Notices pursuant to Clause 4.2) shall constitute a material breach of the Transaction by the Defaulting Party who shall, subject to Clause 12.8, be liable to pay the Early Termination Payment (where positive) to the Non-Defaulting Party.
- 4.4 In the event that both Parties fail to submit accurate Capacity Transfer Notices within the time period specified in Article 18(A).2, neither Party shall be liable to pay to the other the Early Termination Payment or any other sum or damages in respect of its breach of this Clause 4.
- 4.5 A Capacity Transfer Notice once submitted by a Party (or jointly by the Parties) pursuant to Clause 4.1 may not be revoked or varied by either Party except in accordance with the provisions of Article 18(A).6.

5. CAPACITY CHARGE AND REALLOCATION OF I(UK) SHIPPER REBATE

- 5.1 Subject to Clause 5.2, the Capacity Transferee shall, whether or not the Transferred Capacity is utilised or capable of being utilised (whether utilisation is affected by maintenance, constraint, capping of nominations by Interconnector or otherwise), pay to the Capacity Transferor in respect of each Transaction:
- (a) a charge in respect of the Transferred Capacity which is Forward Flow Capacity Rights for each Month which is wholly or partly in the Capacity Transfer Period calculated as follows:

$$FFMC = (TCff \times CCff) \times H$$

where:

- FFMC = the charge for Forward Flow Capacity Rights in respect of each Month;
- TCff = the Transferred Capacity which is Forward Flow Capacity Rights ;
- CCff = the Capacity Charge for the Forward Flow Capacity Rights;
- H = the number of hours in the Month forming part of the Capacity Transfer Period; and/or

- (b) a charge in respect of the Transferred Capacity which is Reverse Flow Capacity Rights for each Month which is wholly or partly in the Capacity Transfer Period calculated as follows:

$$RFMC = (TCrf \times CCrf) \times H$$

where:

- RFMC = the charge for Reverse Flow Capacity Rights in respect of each Month;
 TCrf = the Transferred Capacity which is Reverse Flow Capacity Rights;
 CCrf = the Capacity Charge for the Reverse Flow Capacity Rights;
 H = the number of hours in the Month forming part of the Capacity Transfer Period; and

- (c) any Transaction Charge.

- 5.2 If the Capacity Transferor has sub-let Forward Flow Capacity Rights to the Capacity Transferee and the Capacity Transferee receives an I(UK) Shipper Rebate which relates to a period which is wholly or partly in the Capacity Transfer Period, the Capacity Transferee shall pay a proportion of such I(UK) Shipper Rebate to the Capacity Transferor which it shall calculate as follows:

$$PCT = 1 - \left(\frac{ISR}{ECC} \right) \times \left(\frac{TCff \times CCff \times H}{100} \right)$$

where:

- PCT = the proportion of the I(UK) Shipper Rebate payable to the Capacity Transferor which shall only be payable if it is a positive number;
 TCff = the Transferred Capacity which is Forward Flow Capacity Rights;
 CCff = the Capacity Charge for the Forward Flow Capacity Rights;
 H = the number of hours in the period to which the I(UK) Shipper Rebate relates;
 ISR = the I(UK) Shipper Rebate received by the Capacity Transferee;
 ECC = that part of the Monthly Capacity Charge (Basic Capacity), F_{IBC} that would have been payable for the aggregate of all the Forward Flow Capacity Rights to which the Capacity Transferee is entitled in respect of the period to which the I(UK) Shipper Rebate relates.

6. PAYMENT

- 6.1 On or before the tenth (10th) day of the Month following each Month which is wholly or partly in the Capacity Transfer Period, the Capacity Transferor shall send to the Capacity Transferee in respect of each Transaction a statement (the "Monthly Statement") setting out:

- 6.1.1 the Monthly Capacity Transfer Charge;
 6.1.2 any Transaction Charge payable in accordance with Clause 5.1 (c);
 6.1.3 any amounts of an I(UK) Shipper Rebate payable to the Capacity Transferor pursuant to Clause 5.2;

- 6.1.4 in respect of the last Monthly Statement for a Transaction, any sums due (if any) pursuant to Clause 7;
- 6.1.5 the net amount payable from one Party to the other taking into account all matters set out in sub-clauses 6.1.1 to 6.1.4 above; and
- 6.1.6 all applicable taxes, including VAT, payable in respect of the preceding Month under these Terms and Conditions

(the "Monthly Invoice Amount").

- 6.2 On or before the twentieth (20th) day of the Month in which a Monthly Statement is received by the Capacity Transferee or on or before the tenth (10th) day after receipt, whichever is the later (the "Due Date"), the Capacity Transferee or the Capacity Transferor (as the case may be) shall pay to the other Party to whom it is due the Monthly Invoice Amount set out in the Monthly Statement.
- 6.3 All payments shall be made in pounds sterling (or such other currency as may be agreed between the Parties) and shall be credited in full by the Due Date to the bank account specified by the Capacity Transferee or the Capacity Transferor (as the case may be). If the Due Date is not a Business Day, then payment shall be made no later than the Business Day prior to the Due Date.
- 6.4 If a Party, acting in a bona fide manner, disputes a Monthly Invoice Amount, it shall make payment of any undisputed parts of such Monthly Invoice Amount and give notice of the amount in dispute and the reasons therefor to the other Party on or before the Due Date. The Parties shall seek to resolve any dispute as to such amount as soon as possible. Any amount which is subsequently determined to be due and owing shall bear interest for the period starting from and including the Due Date to but excluding the date of payment (whether before or after judgement), at a rate equal to LIBOR (3 months) plus two per cent (2%) compounded quarterly.
- 6.5 Except where any sum is the subject of a bona fide dispute pursuant to Clause 6.4 and/or subject to Clause 6.8, if a Party fails to pay the other Party the Monthly Invoice Amount or any part thereof by the Due Date:
 - 6.5.1 interest shall accrue and shall be paid on the unpaid amount for the period starting from and including the Due Date and ending on but excluding the actual date of payment, at a rate of interest equal to the aggregate of LIBOR (1 month) plus three per cent (3%) compounded monthly; and
 - 6.5.2 the Non-Defaulting Party may terminate the Transaction subject to and in accordance with Clause 12.1.2.
- 6.6 Any Monthly Invoice Amount not disputed within twelve (12) Months after the Due Date shall be considered as final between the Parties.
- 6.7 The charges under the Terms and Conditions are exclusive of any VAT or taxes, duties or levies of a similar nature. The Capacity Transferor shall be entitled to add to the amount due from the Capacity Transferee VAT and other applicable taxes, duties or levies of a similar nature imposed upon the Capacity Transferor in respect of the charges under these Terms and Conditions by any competent authority (but excluding taxes on income and profit).
- 6.8 An amount equal to VAT payable shall not be required to be paid before the Capacity Transferor provides the Capacity Transferee with an appropriate VAT invoice in relation to that amount.

7. PIPELINE INVENTORY

If, at the cessation of a Capacity Transfer Period, there is an imbalance between the amount of Pipeline Inventory transferred from:

- (a) the Capacity Transferor's Inventory Account to the Capacity Transferee's Inventory Account at the commencement of the applicable Capacity Transfer Period pursuant to Articles 18(D).1; and
- (b) the Capacity Transferee's Inventory Account back to the Capacity Transferor's Inventory Account at the cessation of the applicable Capacity Transfer Period pursuant to Articles 18(D).2, and 18(D).3, then:
 - (i) where (a) is greater than (b), the Capacity Transferee; and
 - (ii) where (b) is greater than (a), the Capacity Transferor

shall pay to the other Party an amount equal to the difference between (a) and (b) (converted into terms by multiplying by 29.3071) multiplied by the Pipeline Inventory Price.

8. REPRESENTATIONS AND WARRANTIES

- 8.1 The Capacity Transferor warrants to the Capacity Transferee that in respect of a Transaction it has and will continue to have for each Day during the Capacity Transfer Period the right to sub-let the Transferred Capacity in accordance with the terms of the Combined Standard Transportation Agreements, subject to its rights pursuant to Article 18.
- 8.2 Each Party warrants that it is and will continue to be a party to the Combined Standard Transportation Agreements for the duration of each Transaction, subject to its rights pursuant to Article 18.
- 8.3 Each Party represents and warrants to the other that in respect of a Transaction it has obtained and will maintain at all times during the Capacity Transfer Period all licences, authorisations, permits, consents and other approvals necessary, if any, to enable it to fulfil its obligations under each Transaction.
- 8.4 Each Party represents and warrants to the other that it is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and has the legal right and full power and authority to execute and deliver, and to exercise its rights and perform its obligations under, each Transaction.
- 8.5 Each Party represents and warrants to the other that all corporate action required by it to authorise the execution and delivery of, and to execute its rights and perform its obligations under, each Transaction has been or will be duly taken.

9. FORCE MAJEURE

- 9.1 The expression "Force Majeure" shall mean any event or circumstance beyond the reasonable control of a Party, acting and having acted as a Reasonable and Prudent Operator which, in respect of a Transaction, prevents:
 - 9.1.1 a Capacity Transfer Notice from being submitted to Interconnector; or
 - 9.1.2 a Capacity Transfer Notice from being received by Interconnector.
- 9.2 Subject to Clause 9.3, if in respect of a Transaction, a Party is rendered unable wholly or in part to carry out its obligations pursuant to Clause 4 by reason of Force Majeure, then that Party shall:
 - 9.2.1 be relieved of its obligations under Clause 4 to the extent that it is prevented by Force Majeure from complying with them; and
 - 9.2.2 not be obliged to pay any amounts to the other Party (including under Clause 12.6) in respect of that failure to perform.

- 9.3 The Party claiming Force Majeure shall as soon as reasonably practicable advise the other Party in writing of:
- 9.3.1 the event or circumstance constituting Force Majeure, including all available information on the cause of the event; and
 - 9.3.2 its estimate of the likely period of that Force Majeure event; and
 - 9.3.3 take all reasonably practicable steps to rectify or overcome the event or circumstance constituting Force Majeure and resumes full performance of its obligations.

10. CONFIDENTIALITY

The provisions regarding exchange of information and confidentiality in Article 13 shall be incorporated mutatis mutandis into these Terms and Conditions and shall apply to all Transactions entered into by the Parties and to all and any information acquired or received by either of the Parties from the other under or pursuant to a Transaction.

11. ASSIGNMENT

- 11.1 The Capacity Transferee shall comply with Article 18(A).3.
- 11.2 If the Capacity Transferee is assigning all of its rights and obligations under its ISTA in accordance with Article 18 and Article 18(A).3 the Capacity Transferee shall, simultaneously with such assignment, novate to its assignee the Capacity Transferee's rights and obligations in respect of all capacity transferred by the Capacity Transferor to the Capacity Transferee in accordance with these Terms and Conditions. The Capacity Transferor hereby consents to any such novation.
- 11.3 The Capacity Transferor may assign any of its Capacity Rights in accordance with Article 18. If as a result of any such assignment the Capacity Transferor shall retain Capacity Rights which are less than those comprised in the aggregate of all capacity transferred by the Capacity Transferor to the Capacity Transferee, the Capacity Transferor shall:
- 11.3.1 prior to such assignment, procure that the assignee:
 - (i) gives written confirmation to Interconnector that the Capacity Transfer which is the subject of such novation is to remain in force; and
 - (ii) requests that Interconnector continues to accept estimates, forecasts and nominations from and to make allocations to and accept and give effect to Inventory Transfer Notices from the Capacity Transferee as though the Capacity Transfer Notice had been given by the assignee pursuant to Article 18(A); and
 - 11.3.2 simultaneously with such assignment, novate to its assignee the Capacity Transferor's rights and obligations in respect of all capacity transferred by the Capacity Transferor to the Capacity Transferee in accordance with these Terms and Conditions.
- 11.4 The Capacity Transferee hereby consents to any novation which complies with Clause 11.3.

12. TERMINATION

- 12.1 A non-defaulting Party (the "Non-Defaulting Party") may terminate a Transaction forthwith by giving written notice to the other Party in the event that the other Party (the "Defaulting Party"):
- 12.1.1 if the Defaulting Party is in material breach of any of its obligations under a Transaction and such default is not remedied to the satisfaction of the Non-Defaulting Party within 20 Business Days after notice of the default is given to the Defaulting Party; or

- 12.1.2 if the Defaulting Party fails to pay any Monthly Invoice Amount by the relevant Due Date (except where any sum is the subject of a bona fide dispute pursuant to Clause 6.4) and such default is not remedied to the satisfaction of the Non-Defaulting Party within 5 Business Days after notice of the default is given to the Defaulting Party.
- 12.2 A Non-Defaulting Party may terminate a Transaction by giving written notice to the Defaulting Party if any of the following occurs in relation to the Defaulting Party:
- 12.2.1 it makes a general assignment or arrangement for the benefit of its creditors;
- 12.2.2 it becomes insolvent (however evidenced) or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts when they become due;
- 12.2.3 it files a petition or otherwise commences, authorises or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it and such petition is not withdrawn, dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation of that proceeding or petition;
- 12.2.4 it has a receiver, liquidator, administrator or administrative receiver appointed over all or substantially all of its assets;
- 12.2.5 it has a resolution passed for its dissolution or winding up (other than a voluntary winding up for the purposes of solvent amalgamation or reconstruction);
- 12.2.6 it is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- 12.2.7 it causes or is subject to the occurrence of any similar or equivalent event with respect to it which, under the applicable laws of any jurisdiction has an analogous effect to any of the events specified in Clauses 12.1.1 to 12.1.6; or
- 12.2.8 it is in breach of any of the warranties contained in Clause 8 and the breach has a material adverse effect on the Non-Defaulting Party.
- 12.3 Termination of a Transaction (whether under this clause 12 or by virtue of expiration of the Capacity Transfer Period or otherwise), shall be without prejudice to any rights or obligations which may have accrued to either of the Parties prior to the date of such termination and all provisions of these Terms and Conditions necessary for the full enjoyment of such accrued rights and obligations shall survive such termination for the period so necessary.
- 12.4 The Capacity Transferor shall promptly notify Interconnector in writing of any early termination of a Transaction pursuant to this Clause 12. If a Transaction shall terminate the Capacity Transferee shall immediately cease to utilise the Transferred Capacity and access ISIS for the purposes of the Transferred Capacity.
- 12.5 Following termination of a Transaction the Defaulting Party shall pay to the Non-Defaulting Party the Early Termination Payment within five (5) Business Days of notification by the Non-Defaulting Party of the amount of the Early Termination Payment calculated in accordance with Clause 12.6.
- 12.6 The Early Termination Payment for a Transaction shall be an amount calculated as follows:
- 12.6.1 where the Defaulting Party is the Capacity Transferee:
- $$TP = (((TC_{ff} \times CC_{ff}) + (TC_{rf} \times CC_{rf})) \times DP) - MV_{sor} + RC$$
- 13.6.2 where the Defaulting Party is Capacity Transferor:

$$TP = MV_{see} + RC - (((TC_{ff} \times CC_{ff}) + (TC_{rf} \times CC_{rf})) \times DP)$$

where:

- TP = the Early Termination Payment [provided that this may only be a positive number];
- TC_{ff} = the Capacity which is Forward Flow Capacity Rights;
- CC_{ff} = the Capacity Charge for the Forward Flow Capacity Rights;
- TC_{rf} = the Capacity which is Reverse Flow Capacity Rights;
- CC_{rf} = the Capacity Charge for the Reverse Flow Capacity Rights;
- DP = the number of hours from and including the date and time of termination to the date which would have been the last day of the Capacity Transfer Period if the Transaction had not terminated;
- RC = the reasonable legal costs which the Non-Defaulting Party has incurred in connection with the termination;
- MV_{see} = the Sub-Lessee's bona fide determination, having made reasonable enquiries of at least three independent third parties, of what are the best terms reasonably obtainable for a sub-let of quantity of capacity equal to or similar to the Transferred Capacity and for a period of time equal to or similar to what would have been the remainder of the Capacity Transfer Period had the Transaction not terminated.
- MV_{sor} = the Capacity Transferor's bona fide determination, having made reasonable enquiries of at least three independent third parties, of what are the best terms reasonably obtainable for a sub-let of a quantity of capacity equal to or similar to the Transferred Capacity and for a period of time equal to or similar to what would have been the remainder of the Capacity Transfer Period had the Transaction not terminated;

provided that:

- (a) the Early Termination Payment shall be adjusted to take account of:
- (i) any sums due pursuant to Clause 7;
- (ii) any part of a Monthly Capacity Transfer Charge that has accrued but is unpaid, or has been pre-paid at the date and time of termination which shall be calculated by dividing the Monthly Capacity Transfer Charge by the number of hours in the relevant Month,
- (b) nothing shall oblige the Non-Defaulting Party to enter into a replacement Capacity Transfer.
- 12.7 If the Defaulting Party fails to pay the Early Termination Payment to the Non-Defaulting Party in accordance with Clause 12.5, then interest will accrue at the rate specified in Clause 6.5.1 from and including the due date of payment until but excluding the actual date of payment.
- 12.8 Save and except in the event of Wilful Default by the Defaulting Party, payment by the Defaulting Party of the Early Termination Payment in accordance with the provisions of this Clause 12 shall be in full and final satisfaction of all or any rights of the Non-Defaulting Party and the sole remedy available to the Non-Defaulting Party in respect of an early termination of the Transaction howsoever caused and even where caused by the negligence or breach of duty of the Defaulting Party. Each Party acknowledges that the Early Termination Payment is reasonable in light of the anticipated harm and the difficulty of estimating or calculating actual damages. Each Party waives the right to contest the Early Termination Payment as an unreasonable penalty or otherwise.

13. LIABILITIES

Save to the extent included in any Early Termination Payment, neither Party shall be liable to the other Party for any Consequential Losses howsoever arising (whether in contract or in tort, including negligence or otherwise) out of a Transaction.

14. WAIVER

No waiver by either Party of any breach by the other in respect of a Transaction shall operate unless expressly made in writing and any such waiver shall not be construed as a waiver of any other breach.

15. VARIATION

No variation to the provisions of a Transaction shall be valid unless it is in writing and signed by an authorised representative of the Parties.

16. ENTIRE AGREEMENT

These Terms and Conditions, together with the relevant Confirmation (where applicable), contain the whole agreement of the Parties in respect of a Transaction and supersede and replace any prior written or oral agreements, representations or understandings between them in respect of such Transaction. The Capacity Transferee confirms that it has not been induced to enter into a Transaction on the basis of any representation, warranty or undertaking that is not expressly incorporated into these Terms and Conditions and the relevant Confirmation. Without limiting the generality of the foregoing and to the extent permitted by law, each Party agrees that its only remedy in relation to any representation, warranty or undertaking made or given in connection with the Transaction shall be for breach of contract, provided that nothing in this Clause 16 shall limit or exclude any liability for any fraudulent statement or act.

17. SEVERABILITY

If any provision or part of a provision of a Transaction is found by a court or authority of competent jurisdiction to be void or unenforceable, that provision or part of a provision shall be deemed to be deleted from the Transaction and the remaining provisions shall continue in full force and effect.

18. NOTICES

18.1 Any notice or other communication to be given or made in respect of a Transaction by one Party to the other shall be given or made in writing to the other at the registered address, or such other address as that Party shall notify in writing to the other from time to time. The facsimile number for each Party in respect of a Transaction for the purposes of facsimile transmission shall be as stated in the Confirmation (where applicable), unless otherwise notified by that Party.

18.2 Notice shall be deemed to have been received:

18.2.1 if delivered by hand, at the time of delivery on a Business Day or at 9:00 hours on the first Business Day following the date of delivery if delivered on a day other than a Business Day or outside Office Hours;

18.2.2 if sent by registered post, at 9:00 hours on the third Business Day after the day of posting;

18.2.3 in the case of a facsimile transmission, at the time of transmission if that day is a Business Day or at 9:00 hours on the first Business Day after transmission if that day is not a Business Day or if transmission took place outside Office Hours and provided that a valid transmission report confirming good receipt is generated. Where a notice is sent by facsimile, the Party giving the notice shall (but without prejudice to this Clause 18.2.3), if so requested by the other Party, resend the notice as soon as reasonably practicable by post.

18.3 All notices and other communications which are required to be given or made by either Party to Interconnector shall be given or made electronically on ISIS or by such alternative means specified by Interconnector.

18.4 The Parties may also agree upon using other forms of communications than those specified above.

19. THIRD PARTY RIGHTS

A person who is not a party to a Transaction shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Transaction notwithstanding that any such term may be construed as conferring a benefit on such person.

20. DELEGATION OF OBLIGATIONS

Each Party shall be entitled to discharge any of its obligations in respect of a Transaction by procuring that such obligations are performed on its behalf by a third party but such Party shall remain responsible to the other for the due performance of such obligations and for any failure or non-performance of such third party as if such Party itself had failed to fulfil the relevant obligations.

21. APPLICABLE LAW

Each Transaction shall be governed by and construed in accordance with English law and the Parties shall submit to the exclusive jurisdiction of the English courts for the purposes of any dispute under or in connection with a Transaction.

**SCHEDULE 1
CONFIRMATION**

INSTRUCTIONS FOR USE

**CAPACITY
TRANSFEROR**

1. Complete all relevant details below as appropriate .
2. Sign the Confirmation.
3. Send the Confirmation to the Capacity Transferee by fax within 3 Business Days of the Transaction being entered into.

**CAPACITY
TRANSFEREE**

1. On receipt of a Confirmation, check the details. If correct sign and return to the Capacity Transferor by fax within 3 Business Days of receipt of the Confirmation. Refer any inaccuracies to the Capacity Transferor immediately.
2. If you do not sign and return the Confirmation within 3 Business Days of receipt of the Confirmation, you will be deemed to accept its terms.
3. If you do not receive a Confirmation within 3 Business Days of the Transaction, complete the details and send the Capacity Transferor the Confirmation.

* Delete as appropriate

The **CAPACITY TRANSFEROR** and the **CAPACITY TRANSFEREE** named below hereby agree that this Confirmation confirms the details of an agreement to sub-let Capacity in the UK-Continent Interconnector in accordance with the Interconnector Capacity Transfer Terms and Conditions version 2.0.

CAPACITY TRANSFEROR :	
PHONE:	FAX:
CAPACITY TRANSFEREE:	
PHONE:	FAX:
CAPACITY TRANSFER PERIOD:	
Start Date	End Date
(and time if not 06:00 hours):	(and time if not 06:00 hours):
TRANSFERRED CAPACITY:	
Forward Flow: Nm ³ /h	Reverse Flow: Nm ³ /h
	(Associated Reverse Flow Capacity Nm ³ /h)
	(Enhanced Reverse Flow Capacity Nm ³ /h)
CAPACITY CHARGE:	
Forward Flow: p/Nm ³ /h	Reverse Flow: p/Nm ³ /h
SPECIAL CONDITIONS:	
Date	
and time of Transaction:	

Signed:
.....
Duly Authorised Representative of the Capacity Transferor

Signed:
.....
Duly Authorised Representative of the Capacity Transferee

SCHEDULE 2

FORM OF NOTICE OF CAPACITY TRANSFER

NOTICE OF CAPACITY TRANSFER given by the **Capacity Transferor** and **Capacity Transferee** to **Interconnector (UK) Limited** in accordance with Version 2.0 of the Interconnector Capacity Transfer Terms and Conditions. Terms defined in [] shall have the same meaning when used herein.

Capacity Transferor: [Company Name] Principal office address: Fax:			
Commercial Contact [name]		Phone	Email
Operations Contact [Out of Hours Contact]		Phone	Email
Capacity Transferee: [Company Name] Principal office address: Fax:			
Commercial Contact [name]		Phone	Email
Operations Contact [Out of Hours Contact]		Phone	Email
START Date: Date/Month/Year		END Date: Date/Month/Year	
Time: [UKT/CET?]		Time: [UKT/CET?]	
FORWARD Flow Capacity	Nm ³ /hr	REVERSE Flow Capacity (Associated Reverse Flow Capacity) (Enhanced Reverse Flow Capacity)	Nm ³ /hr
<p>1) In relation to the Transferred Capacity, the Capacity Transferor and the Capacity Transferee request Interconnector in the terms of Article 18(A).1(a)-(d) of Interconnector’s Standard Transportation Agreement (“STA”).</p> <p>2) The Capacity Transferor and Capacity Transferee each acknowledge that the Transferred Capacity carries with it an appropriate share (as determined in accordance with paragraph 4 of Appendix I of the STA) of any available Interruptible Capacity, which the Capacity Transferee will be entitled to utilise accordingly.</p>			

Signed: _____
As Duly Authorised Representative for [Capacity Transferor]

Date: _____

Signed: _____
As Duly Authorised Representative for [Capacity Transferee]

Date: _____