

**General Terms and  
Conditions Forward Flow  
2008-2**

**between**

**BBL Company**

**and**

**Shipper**

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Exhibit A: Operating Manual

Exhibit B: Credit Control Protocol

**Article 1 DEFINITIONS**

For the purposes of these *Conditions*, except where it expressly provides otherwise, the following expressions shall have the meanings ascribed to them in this Article 1 and shall include the plural as well as the singular:

- 1.1 "*Affiliated Company*" shall mean a company
  - (a) of which fifty percent (50%) or more of the outstanding voting stock or rights is directly or indirectly owned by a *Party*, or
  - (b) which directly or indirectly owns fifty percent (50%) or more of the outstanding voting stock or rights of a *Party*, or
  - (c) of which fifty percent (50%) or more of the outstanding voting stock or rights is directly or indirectly owned by one and the same company which also directly or indirectly owns fifty percent (50%) or more of the outstanding voting stock of a *Party*.
- 1.2 "*Agreement*" shall mean the transmission agreement between *BBL Company* and *Shipper*, specifying the rights and obligations of *Parties*.
- 1.3 "*Allocation Rules*" shall mean the allocation rules as provided for in Article 6.2.
- 1.4 "*BBL Company*" shall mean the BBL Company V.O.F., registered at the 'Kamer van Koophandel' number 02085020, owning and operating the *BBL-Facilities*.
- 1.5 "*BBL-Facilities*" shall mean the pipelines and other equipment which are used to fulfil *BBL Company's* obligations under the *Agreement*.
- 1.6 "*BBL-Shipper*" shall have the meaning ascribed to it in Article 3.
- 1.7 "*Business Day*" shall mean a day, not being a Saturday, a Sunday or a day on which Dutch banks are closed for business, and refers for communication purposes to the time frame between 8.30 hours *LET* and 17.00 hours *LET*.
- 1.8 "*Competent Authority*" shall mean any local, national or supra-national agency, authority, department, inspectorate, minister, official, court, tribunal or public or statutory person (whether autonomous or not) of the United Kingdom or the Netherlands (or the governments thereof) or the European Communities which has jurisdiction over either *Party* or the subject matter of the *Agreement*.
- 1.9 "*Conditions*" shall mean this document, including the exhibits thereto and any amendments thereof.
- 1.10 "*Confirmation*" shall mean the message from *BBL Company* to *Shipper* as described in the *Operating Manual* containing among other things the *Hourly Quantities of Entry Gas* to be made available by *Shipper* to *BBL Company* at the *Entry Point* based on *Shipper's (Re)Nomination* and the *Hourly Quantities of Exit Gas* to be made available by *BBL Company* to *Shipper* at the *Exit Point* based on *Shipper's (Re)Nomination*.
- 1.11 "*Contract Period*" shall mean the period of time commencing at the *Start Date* at 06.00 hours *LET* and expiring at the *End Date* at 06.00 hours *LET*.
- 1.12 "*Credit Control Protocol*" shall mean Exhibit B of the *Conditions*.

- 1.13 "End Date"  
shall mean the date designated as such in the *Agreement*.
- 1.14 "Entry Gas"  
shall mean *Gas* made available or deemed to be made available by *Shipper* to *BBL Company* at the *Entry Point* under the *Agreement*.
- 1.15 "Entry Point"  
shall mean the point where the flanges of the *BBL-Facilities* are connected to the flanges of *Gas Transport Services'* facilities near Julianadorp and where *Gas* leaves the *GTS* facilities and enters the *BBL-Facilities*.
- 1.16 "EURIBOR"  
shall mean the one-month Euro Interbank Offered Rates as set by the European Central Bank and as published in *Het Financieele Dagblad* on the second *Business Day* of each calendar month and published on Bloomberg (EUR001M <index>).
- 1.17 "Euro (€)"  
shall mean the European currency Euro (€).
- 1.18 "Exit Gas"  
shall mean *Gas* made available or deemed to be made available by *BBL Company* to *Shipper* at the *Exit Point* under the *Agreement*.
- 1.19 "Exit Point"  
shall mean the point where the flanges of the *BBL-Facilities* are connected to the flanges of the *National Grid Transco* facilities near Bacton and where *Gas* leaves the *BBL-Facilities* and enters the *National Grid Transco* system.
- 1.20 "Expert"  
means a person appointed as such under, and subject to, Article 19.
- 1.21 "Firm"  
shall mean, if used in expressions referring to *Transmission Capacity*, capacity which use can not be interrupted by *BBL Company* by issuing an *Interruption Notice*.
- 1.22 "Force Majeure"  
shall mean any event or circumstance or combination of events and/or circumstances, which is beyond the control of *Shipper* or beyond the control of *BBL Company*, acting and having acted as a *Reasonable and Prudent* operator, including events and/or circumstances affecting the *BBL-Facilities* and/or the use thereof, including without limitation, acts of God and the public enemy, state of war, revolution, the elements, explosions, fire, accidents, breakdowns, breakage or accident to the *BBL-Facilities*, inability to obtain permits necessary to fulfil any material obligation under the *Agreement* or impossibility to obtain materials, supplies or labour (necessary to fulfil any material obligation under the *Agreement*), strikes and any other industrial, civil, or public disturbance, and any law, order, rule, regulation, act, or restraint of any governmental body or authority, civil or military, and which prevents or restricts a *Party* from performing (or procuring the performance of) any obligation under that *Agreement*.
- 1.23 "Gas"  
shall mean natural gas (any hydrocarbons or mixture of hydrocarbons and non-combustible gases, consisting primarily of methane, which, when extracted from the subsoil of the earth in its natural state, separately or together with liquid hydrocarbons, is in the gaseous state) to be delivered, transported and made available in accordance with these *Conditions*.
- 1.24 "Gas Balance"  
shall mean the difference between the allocated *Quantity of Entry Gas* and the allocated *Quantity of Exit Gas*.

- 1.25 "Gas Day"  
shall mean a period (or a reference to a period) commencing at 06.00 hours *LET* on any calendar day and ending at 06.00 hours *LET* on the following calendar day, and the date of any *Gas Day* shall be the date of its beginning as herein defined.
- 1.26 "Gas Transport Services" or "GTS"  
shall mean Gas Transport Services B.V., domiciled in Groningen, the Netherlands.
- 1.27 "Grid Connection Agreement" or "GCA"  
shall mean an agreement between *BBL Company* and an *NNO* regarding several aspects of a connection between the *BBL-Facilities* and the neighbouring network concerned, which may include measurement, allocation, operational balancing, conditions to operation, arrangements with regard to installations and/or operational safety.
- 1.28 "Hour" or "Hourly"  
shall mean a period of time commencing at a whole hour and expiring at the next whole hour.
- 1.29 "Interrupted Quantity of Gas"  
shall mean the difference between the *Transmission Capacity* and the capacity available to *Shipper* for each *Hour* of the duration of a reduction.
- 1.30 "Interruptible"  
shall mean, if used in expressions referring to *Transmission Capacity*, capacity which use can be interrupted by *BBL Company* by issuing an *Interruption Notice*.
- 1.31 "Interruption Notice"  
shall mean the notice from *BBL Company* to *Shipper*, informing *Shipper* of the interruption of *Interruptible Transmission Capacity*. An *Interruption Notice* can be incorporated in a *Confirmation*.
- 1.32 "kWh"  
shall mean three decimal six (3.6) million Joules.
- 1.33 "Local European Time" or "LET"  
shall mean Local European Time, including daylight saving, being equal to UTC + 1 outside the daylight saving period and equal to UTC + 2 during the daylight saving period. For the avoidance of doubt, the daylight saving period starts at UTC 01:00 hours on the last Sunday in March and ends at UTC 01:00 hours on the last Sunday in October, and UTC is Coordinated Universal Time, according to ISO 8601: 1988 (E).
- 1.34 " $m^3(n)$ "  
shall mean a volume of *Gas* which under normal conditions (as specified in the definition of *Wobbe-index*) occupies a volume of one (1)  $m^3$ .
- 1.35 "Month" or "Monthly"  
shall mean a period commencing at 06:00 hours *LET* on the first day of a calendar month and ending at 06:00 hours *LET* on the first day of the following calendar month.
- 1.36 "National Grid"  
shall mean National Grid Gas plc, domiciled in Warwick, the United Kingdom or its legal successor.
- 1.37 "Neighbouring Network Operator" or "NNO"  
shall mean the operator of the gas transmission pipeline(s) connected to the *BBL-Facilities*, being *Gas Transport Services* in the Netherlands and *National Grid* in the United Kingdom.
- 1.38 "Nomination" or "Renomination"  
shall mean a message from *Shipper* to *BBL Company* (specifically *BBL Company's* dispatching centre) stating, among other things, the *Hourly Quantities of Entry Gas* to be made available by *Shipper* to *BBL Company* at the *Entry Point* and *Hourly Quantities of Exit Gas* to be made available by *BBL Company* to *Shipper* at the *Exit Point*.

- 1.39 "Non Usus"  
shall have the meaning ascribed to it in Article 4.1.2.
- 1.40 "Operating Manual"  
shall mean Exhibit A of the *Conditions*.
- 1.41 "Operational Balancing Agreement" or "OBA"  
shall mean the contractual arrangements between *BBL Company* and a *NNO* relating to the particular *Entry Point* or *Exit Point*, in which they agree that, subject to certain conditions and within certain limits, the quantities *Properly Nominated* will be allocated to the respective *Shipper* and differences between the sum of all confirmations and the measured volumes which are attributable to operational constraints on the network operators, may be allocated to a balancing account of the network operators.
- 1.42 "Pa", "J", "K" and "m"  
shall be the units of pressure (Pascal), energy (Joule), thermodynamic temperature (Kelvin) and length (metre) respectively and shall have the meanings ascribed to them in the publication International Standard ISO 1000-1992-11 00 (E), SI units and recommendations for the use of their multiples and certain other units. The prefix "G" shall be equal to one billion (1,000,000,000), "M" shall be equal to one million (1,000,000) and the prefix "k" shall be equal to one thousand (1,000). A "bar" shall be equal to one hundred thousand (100,000) Pa. A "°C" means degree Celsius, and  $x\text{ }^{\circ}\text{C} = x + 273.15\text{ K}$ .
- 1.43 "Party"  
shall mean *Shipper* or *BBL Company* individually. "Parties" shall mean both *Shipper* and *BBL Company*.
- 1.44 "Properly Nominated"  
shall mean a *Nomination* or *Renomination* by *Shipper* or by a third party on behalf of *Shipper*, for delivery of a *Quantity of Entry Gas* or the taking of a *Quantity of Exit Gas*, which is in accordance with *Shipper's* rights under the *Agreement* and is made in the manner and within the time limits as set out in the *Conditions*.
- 1.45 "Quantity of Gas"  
shall mean a quantity of *Gas*, expressed in *kWh*.
- 1.46 "Reasonable and Prudent"  
shall mean *Parties* fulfilling their obligations under the *Agreement* with that degree of diligence, skill, prudence and foresight as reasonably and ordinarily exercised by parties engaged in the same line of business under the same or similar circumstances and conditions and in accordance with good practice.
- 1.47 "Reduced Delivery Day"  
shall mean a *Gas Day* during which the capacity available for transmission for *Shipper* is less than the *Transmission Capacity* with a minimum of zero (0).
- 1.48 "Shipper"  
refers to the party to which services are rendered by *BBL Company* under the *Agreement*.
- 1.49 "Shipper Code"  
shall mean the unique code, assigned to *Shipper* by *BBL Company*, used for the identification of *(Re)Nominations* and *Confirmations*.
- 1.50 "Start Date"  
shall mean the date designated as such in the *Agreement*.
- 1.51 "Tax"  
shall mean all present and future taxes, duties, levies, assessments, charges, fees, deductions and withholdings in all relevant jurisdictions imposed by a *Competent Authority* on the contracted services performed by *BBL Company* under the *Agreement*.

- 1.52 "Transmission Capacity"  
shall mean the maximum possible *Hourly* flow rate of *Gas* under the *Agreement*, expressed in *kWh* per *Hour*.
- 1.53 "Web Site"  
shall mean the official web site of *BBL Company* ([www.bblcompany.com](http://www.bblcompany.com)).
- 1.54 "Wobbe-index"  
shall mean the superior calorific value divided by the square root of the relative density under normal conditions, in which
- (i) "superior calorific value" means the amount of energy, expressed in *kWh*, released by the complete combustion in air of one (1)  $m^3(n)$  of *Gas* in such a way that the pressure of 101.325 *kPa* (1.01325 *bar*) at which the reaction takes place remains constant and all the products of combustion are returned to the same temperature of 298.15 *K* as the temperature of the reactants, all of these products being in the gaseous state except for water formed by combustion which is condensed to the liquid state at a temperature of 298.15 *K*, and
  - (ii) "relative density" means the density of *Gas* divided by the density of dry air (meaning air composed according to ISO 6976 annex B), and
  - (iii) "normal conditions" are the conditions determined by a temperature of 273.15 *K* (0 °C) and an absolute pressure of 101.325 *kPa* (1.01325 *bar*).
- 1.55 "Year"  
shall mean a period (or a reference to a period) commencing at 06:00 hours *LET* on January 1<sup>st</sup> and ending at 06:00 hours *LET* on the following January 1<sup>st</sup>.

**Article 2 WARRANTIES AND RISK**2.1 Warranties

- 2.1.1 *BBL Company* warrants to *Shipper* that it shall use its reasonable endeavours to have in place at the *Start Date* and to maintain throughout the *Contract Period* in full force and effect all such agreements, licenses, permissions, consents and authorisations as are necessary so as to enable it to observe and perform its obligations under the *Agreement*.
- 2.1.2 *Shipper* warrants to *BBL Company* that it (or in the case of *Transmission Capacity* transfer as provided for in Article 4.3, its transferee) shall have good and unencumbered title to all *Gas* which it (or in the case of *Transmission Capacity* transfer as provided for in Article 4.3, its transferee) delivers or makes available, or which it (or, in the case of *Transmission Capacity* transfer as provided for in Article 4.3, its transferee) causes to be delivered or made available at the *Entry Point*, and that it shall not grant third parties any rights, including ownership, nor create any lien, encumbrance or similar right with regard to any *Entry Gas*, if such right will or could hamper and/or obstruct the exercise of rights and performance of obligations. In the event of any conflict between the *Agreement* and the rights of third parties with regard to *Shipper's Entry Gas*, *BBL Company* shall not be liable for any damage and/or claims resulting there from and *Shipper* shall indemnify and hold *BBL Company* harmless from any damage and claims in respect thereof.

2.2 Risk

The risk to the *Entry Gas* made available by *Shipper* to *BBL Company* in accordance with the *Agreement* shall pass from *Shipper* to *BBL Company* at the *Entry Point*. The risk attached to the *Exit Gas* made available by *BBL Company* to *Shipper* in accordance with the *Agreement* shall pass from *BBL Company* to *Shipper* at the *Exit Point*.

**Article 3 BBL-SHIPPER**

- 3.1 A *BBL-Shipper* is any party that:
- (a) has accepted these *Conditions* in writing, and
  - (b) has received one or more *Shipper Codes* after having passed a communication test as described in the *Operating Manual*, and
  - (c) shall prove to the satisfaction of *BBL Company* to be sufficiently creditworthy or shall provide satisfying surety, to cover the exposure resulting from the *Agreement* with *BBL Company*, all according to the principles stated in the *Credit Control Protocol*, and
  - (d) shall pay a monthly service fee as consideration for access and use of *BBL Company* services equal to two hundred (200) *Euro* (€), and
  - (e) will otherwise in every respect perform as a *Reasonable and Prudent BBL-Shipper* with due regard to the integrity of the *BBL-Facilities* and the interests of other *BBL-Shippers*.
- 3.2 *BBL Company* may waive in writing the applicability of one or more of the elements, in part or in whole, of Article 3.1 (a), Article 3.1 (b) and Article 3.1 (c) for a specified period of time. *BBL Company* may accept a third party authorised by *Shipper* that has passed the communication test as described in the *Operating Manual* to perform on behalf of *Shipper* all operational communications.
- 3.3 *BBL Company* is entitled to terminate the *Agreement* by giving notice of termination by registered letter to *Shipper*, without any liability towards *Shipper*, stating that *Shipper* with effect from any specific *Gas Day*, appointed in said letter, no longer qualifies as a *BBL-Shipper*, if one or more of the following situations occurs:
- (a) *Shipper* is declared bankrupt (Dutch: in staat van faillissement verklaard) or is granted (provisional) suspension of payment (Dutch: surseance van betaling) or is declared in a similar legal status affecting the rights of creditors generally, from the moment foresaid bankruptcy, suspension or similar status is legally effective, or
  - (b) *Shipper* no longer meets one or more of the conditions stated in Article 3.1, or
  - (c) *Shipper* fails to fulfil any other material obligation under these *Conditions*.
- 3.4 *Shipper* is entitled to terminate *Shipper's* status as a *BBL-Shipper* by giving notice of termination six (6) *Months* in advance by registered letter to *BBL Company*. For avoidance of doubt in case the *Agreement* has an *End Date* later than six (6) *Months* from the date of giving said notice, the termination of *Shipper's* status will take effect after that specific *End Date*.
- 3.5 From the moment at which the loss by *Shipper* of the status of *BBL-Shipper* takes affect, *BBL Company* is under no obligation whatsoever to perform any services to *Shipper*. All amounts that would have been payable during the *Contract Period* under the *Agreement* in place at the *Gas Day* as referred to in Article 3.3 will be immediately recoverable from *Shipper* and bear interest as provided for in Article 12.2 from the day immediately following the date of the notice of *BBL Company* by which the *Agreement* with *Shipper* is terminated, until but excluding the actual date of payment.

## Article 4 SERVICES

### 4.1 Firm Transmission Capacity

- 4.1.1 With respect to *Firm Transmission Capacity* the following will apply. During each *Hour* BBL Company shall (i) take *Quantities of Entry Gas* provided that they are *Properly Nominated* and made available by *Shipper* at the *Entry Point* and (ii) make available to *Shipper* at the *Exit Point* the same *Quantities of Exit Gas* provided that they are *Properly Nominated* and taken by *Shipper* at the *Exit Point*. *Shipper* is responsible for taking the *Exit Gas* at the *Exit Point*.
- 4.1.2 In order to prevent or remedy artificial scarcity in the *BBL-Facilities*, *Shipper* may lose all rights concerning or related to part or all of *Shipper's Firm Transmission Capacity*, to be determined by *BBL Company*, for a period of at the most one (1) year and *BBL Company* can retrieve *Shipper's Firm Transmission Capacity* or part thereof in the situation that *Shipper* does not use *Shipper's Firm Transmission Capacity*, which situation is referred to as "*Non Usus*", if and in so far as the following conditions are fulfilled:
- (a) in case of a *Contract Period* of three hundred and sixty five (365) *Days* or less the *Non Usus* has lasted at least three (3) consecutive *Months*, or in case of a *Contract Period* of more than three hundred and sixty five (365) *Days* the *Non Usus* has lasted at least twelve (12) consecutive *Months*, and
  - (b) the *Non Usus* concerns during all *Hours* all or virtually all of *Shipper's Firm Transmission Capacity*, and
  - (c) *BBL Company* has not been able to grant at least one (1) request of any party for any quantity of *Firm Transmission Capacity* for at least a part of the period of *Non Usus* as mentioned under (a), and
  - (d) *Shipper* has not made available, via the bulletin board of *BBL Company*, the unused *Firm Transmission Capacity* to the market.

except where such *Non Usus* is a result of

- a) *Force Majeure*, or
- b) *Gas Transport Services'* inability to supply *Entry Gas*, or
- c) *National Grid 's* inability to off take *Exit Gas*.

*BBL Company* shall notify *Shipper* in writing one (1) month in advance of its intention to retrieve *Firm Transmission Capacity*. *Shipper* shall be considered to have used its transmission capacity if *Shipper* has transferred such capacity through the transfer arrangements as provided for in Article 4.3.

If *BBL Company* wishes to retrieve *Firm Transmission Capacity* on the grounds of *Non Usus*, it shall inform *Shipper* of the occurrence of *Non Usus* by registered letter, stating why *BBL Company* considers that the conditions of the *Non Usus* have been fulfilled. In this letter *BBL Company* shall notify the date from which *BBL Company* wishes to retrieve *Firm Transmission Capacity*, the quantity of *Firm Transmission Capacity* (which shall be a fixed figure for the whole period during which all or part of the *Firm Transmission Capacity* will be retrieved) to be retrieved and the period during which the *Firm Transmission Capacity* will be retrieved. *Shipper* has the right to contest these statements of *BBL Company* in a duly motivated registered letter which shall be sent to *BBL Company* within five (5) *Business Days* after receipt of the aforementioned letter of *BBL Company*. Any available proof supporting *Shipper's* contestation must be submitted to *BBL Company* within the same time frame. If *Shipper* does not motivate its contestation, does not submit the necessary proof or does not contest the statements of *BBL Company* in time or by registered letter or at all, *Shipper* loses all rights concerning or related to the *Firm Transmission Capacity* to be retrieved by *BBL Company* as from the date notified by *BBL Company*.

If *BBL Company*, notwithstanding the contestation of *Shipper* made in accordance with above, wishes to retrieve the *Firm Transmission Capacity* concerned, *BBL Company* may submit its case to an *Expert* in accordance with Article 19. The decision of the *Expert*, if and to what extent *Shipper* will lose its rights concerning or related to any *Firm Transmission Capacity*, will be established on the basis of the *Agreement*.

*BBL Company's* retrieval and release of *Firm Transmission Capacity* due to *Non Usus* shall not affect any amount payable by *Shipper* relating to services under the *Agreement* and shall not affect the rights and obligations of any *Party* under the *Agreement* in any other respect. Specifically, *BBL Company* exercising any *Non Usus* right will not be considered to have failed to fulfill a material obligation for the purpose of Article 13.2 (c).

From the moment *Shipper* loses any right with respect to *Firm Transmission Capacity* pursuant to *Non Usus*, *BBL Company* has the right to sell the retrieved *Firm Transmission Capacity* directly to any other *BBL-Shipper*. *BBL Company* will first offer the retrieved *Firm Transmission Capacity* on a first come, first served basis to the *BBL-Shipper* or *BBL-Shippers* that have been denied *Firm Transmission Capacity* not more than two (2) *Months* prior to the date of the start of the procedure by *BBL Company* to retrieve *Firm Transmission Capacity* pursuant to *Non Usus*. In case of retrieval of transmission capacity pursuant to *Non Usus*, as from the moment of retrieval by *BBL Company*, *Shipper* shall not be liable for the retrieved part of the *Firm Transmission Capacity* or the use of that transmission capacity.

#### 4.2 *Interruptible Transmission Capacity*

4.2.1 With respect to *Interruptible Transmission Capacity* the following will apply. During each *Hour* *BBL Company* shall (i) take *Quantities of Entry Gas* provided that they are *Properly Nominated* and made available by *Shipper* at the *Entry Point* and (ii) make available to *Shipper* at the *Exit Point* the same *Quantities of Exit Gas* provided that they are *Properly Nominated* and taken by *Shipper* at the *Exit Point* to the extent the *Transmission Capacity* will not be interrupted according to an *Interruption Notice*. *Shipper* is responsible for taking the *Exit Gas* at the *Exit Point*.

4.2.2 In case of an interruption of *Interruptible Transmission Capacity*, *Shipper* will be notified by means of an *Interruption Notice*. When sending an *Interruption Notice*, *BBL Company* will apply the priority principles as described in the *Operating Manual*.

#### 4.3 *Transfer of Transmission Capacity and registration of transferred capacity*

4.3.1 *Shipper* may request *BBL Company* to register transfers concerning part or all of its *Transmission Capacity* to a *BBL-Shipper*. *BBL Company* will charge a handling fee for such a registration. This handling fee will be equal to one hundred and fifty (150) *Euro* (€).

4.3.2 After transferral of part or all of the *Transmission Capacity*, other than transfers back to the original owner of the *Transmission Capacity*, any further transfers as referred to in Article 4.3.1 concerning that part of the *Transmission Capacity* will not be registered by *BBL Company*.

4.3.3 The capacity transfer period taken into account by *BBL Company* will be one (1) or more entire *Gas Day(s)*, whereby the capacity transfer period shall not start before the moment of confirmation of the registration pursuant to Article 4.3.4.

4.3.4 The registration of capacity transfers will take place as provided for in the *Operating Manual*. After registration of a capacity transfer the fee for *Transmission Capacity*, as stipulated in the *Agreement*, will continue to be invoiced to the transferor.

In case *Shipper* has transferred part or all of its *Transmission Capacity* to another *BBL-Shipper*, all liabilities, with reference to Article 9, related to that *Transmission Capacity* and/or the use of that *Transmission Capacity* by *Shipper* and/or other party, will remain with *Shipper*.

4.3.5 In the event of a transfer, after termination of the transfer period the *Gas Balance* of the transferee will be settled with the transferor according to the procedure stipulated in Article 7.2.5.

## Article 5 QUALITY AND PRESSURE

### 5.1 Entry point

- 5.1.1 The *Entry Gas* shall comply with the quality specifications as provided for in the *Operating Manual*.
- 5.1.2 The *Entry Gas* shall comply with the pressure specifications as provided for in the *Operating Manual*.
- 5.1.3 It is understood between *Parties* that *Gas* taken under agreements with other *BBL-Shippers* or transmission contracts between *BBL Company* and other parties and the *Entry Gas* may be measured and delivered at the *Entry Point* in common.
- 5.1.4 If the quality and pressure of the *Entry Gas* at the *Entry Point* complies with the quality specifications and the pressure specifications as provided for in the *Operating Manual*, the *Entry Gas* shall be accepted by *BBL Company* for delivery.

If the pressure of the *Entry Gas* at the *Entry Point* does not comply with the pressure specifications as provided for in the *Operating Manual*, *BBL Company* has the right to decide that all or part of the *Entry Gas* shall not be accepted for delivery.

If the quality of the *Entry Gas* at the *Entry Point* fails to conform to the quality specifications as provided for in the *Operating Manual*, *BBL Company* shall by giving notice to *Shipper* not later than one (1) *Hour* after

(a) *Shipper's* notice (or the notice of a third party on behalf of *Shipper*) to *BBL Company* of any such failure in quality, or

(b) *BBL Company's* notice to *Shipper* of any such failure in quality,

whichever occurs the first, either

(i) refuse to accept delivery of all or any part of the *Entry Gas* until the deficiency of the quality of the *Entry Gas* has been remedied, or

(ii) accept delivery of all or any part of the *Entry Gas* notwithstanding the deficiency in quality of the *Entry Gas* until *BBL Company* informs *Shipper* otherwise.

*BBL Company* shall give notice, observing a one (1) *Hour* notice period, to *Shipper* of *BBL Company's* decision to cease accepting *Entry Gas* which fails to conform to the quality specifications as provided for in the *Operating Manual*.

Each *Party* shall, as soon as possible after it has detected any such failure in quality and/or pressure, notify the other *Party* of the same. Each *Party* will with all possible diligence and speed investigate the cause(s) of the deficiency and shall as soon as possible thereafter notify the other *Party* of the nature of the failure and take those actions within *Party's* control to expeditiously remedy the cause and resulting situation.

- 5.1.5 Provided *Shipper* has complied with its obligations under Article 5.1.4 and except with respect to such quality deficient *Entry Gas* which may have been delivered to *BBL Company* prior to the notice under Article 5.1.4 of such failure in quality, *BBL Company* shall have no rights or remedies with respect to quality deficient *Entry Gas* except to refuse or accept it in accordance with Article 5.1.4. *Shipper's* liability shall be limited as set out in Article 9.
- 5.1.6 If *BBL Company* refuses to accept the *Entry Gas* whole or in part in accordance with Article 5.1.4 then such *Entry Gas* not taken shall be deemed to have not been made available by *Shipper* in accordance with Article 4.1.1 or Article 4.2.1.. The *Quantity of Entry Gas Properly Nominated* by *Shipper* will then be deemed to be equal to the *Quantity of Entry Gas* that is accepted by *BBL Company*.

5.2 Exit point

- 5.2.1 *BBL Company* shall make available *Exit Gas* complying with the quality specifications as provided for in the *Operating Manual*, provided the *Entry Gas* delivered at the *Entry Point* complies with the quality specifications as provided for in the *Operating Manual*.
- 5.2.2 The *Exit Gas* shall comply with the pressure specifications as provided for in the *Operating Manual*.
- 5.2.3 It is understood between *Parties* that *Gas* delivered under agreements with other *BBL-Shippers* or transmission contracts between *BBL Company* and other parties and the *Exit Gas* may be measured and delivered at the *Exit Point* in common.
- 5.2.4 If the quality and pressure of the *Exit Gas* complies with the quality specifications and the pressure specifications as provided for in the *Operating Manual*, the *Exit Gas* shall be accepted for delivery by *Shipper*.

If the pressure of the *Exit Gas* does not comply with the pressure specifications as provided for in the *Operating Manual*, *Shipper* has the right to decide that all or part of the *Exit Gas* shall not be accepted for delivery.

If the quality of the *Exit Gas* fails to conform to the quality specifications as provided for in the *Operating Manual*, *Shipper* shall by giving notice to *BBL Company* not later than one (1) *Hour* after

(a) *BBL Company's* notice (or the notice of a third party on behalf of *BBL Company*) informing *Shipper* of any such failure in quality, or

(b) *Shipper's* notice informing *BBL Company* of any such failure in quality,

whichever occurs the first, either

(i) refuse to accept delivery of all or any part of the *Exit Gas* until the deficiency of the quality of the *Exit Gas* has been remedied, or

(ii) accept delivery of all or any part of the *Exit Gas* notwithstanding the deficiency in quality of the *Exit Gas* until *Shipper* informs *BBL Company* otherwise,

provided further that *Shipper* shall not be permitted to refuse acceptance of the *Exit Gas* if the *NNO* concerned and *Shipper's* counter party at the *Exit Point* unconditionally accept the *Exit Gas* for delivery.

*Shipper* shall give notice, observing a one (1) *Hour* notice period, to *BBL Company* of *Shipper's* decision to cease accepting *Exit Gas* which fails to conform to the quality specifications as provided for in the *Operating Manual*.

Each *Party* shall as soon as possible after it has detected such failure in quality and/or pressure of the *Exit Gas* notify the other *Party* of same. Each *Party* will with all possible diligence and speed investigate the cause(s) of the deficiency and shall as soon as possible thereafter notify the other *Party* of the nature of the failure and take those actions within *Party's* control to expeditiously remedy the cause and resulting situation.

In case the *Exit Gas* does not comply with the quality specifications as provided for in the *Operating Manual*, *BBL Company* shall to the extent required as *Reasonable and Prudent* operator perform such control and/or carry out such remedial work as may be practicable and reasonable under the circumstances to bring the *Exit Gas* within said specifications.

- 5.2.5 Provided *BBL Company* has complied with its obligations under Article 5.2.4 and except with respect to such quality deficient *Exit Gas* which may have been delivered to *Shipper* prior to the notice under Article 5.2.4 of such failure in quality, *Shipper* shall have no rights or remedies in connection with quality deficient *Exit Gas* except to refuse or to accept it in accordance with Article 5.2.4. *BBL Company's* liability shall be limited as set out in Article 9.

- 5.2.6 If *Shipper* refuses to accept the *Exit Gas* in whole or in part in accordance with Article 5.2.4 then such *Exit Gas* not taken shall be deemed not to have been made available by *BBL Company* in accordance with Article 4.1.1 or Article 4.2.1.. If *Shipper* refuses acceptance of the *Exit Gas* in whole or in part in accordance with Article 5.2.4 and if the quality deficiency of the *Exit Gas* was not a direct consequence of quality deficiency of the *Entry Gas* provided by *Shipper* or if the quality deficient *Entry Gas* was accepted by *BBL Company*, *BBL Company* and *Shipper* shall settle such *Quantities of Gas* via the *Gas Balance* in accordance with Article 7.2.

## Article 6 MEASUREMENT AND ALLOCATION

### 6.1 Measuring station and measurement manual

- 6.1.1 *BBL Company* shall take accurate measurements of *Entry Gas* and *Exit Gas* respectively consistent with industry standards and in accordance with the relevant regulations and as provided for in the *Operating Manual* and taking into account that the total uncertainty of the amount of energy on an *Hourly* basis shall not exceed zero decimal seven five (0.75) percent.
- 6.1.2 Due to measurement uncertainty *Shipper* shall pay for each *Month* an amount of money corresponding to 0.2% of the *Monthly Quantity of Entry Gas*, based on a price equal to TTF + 1 (*Euros/MWh*) index as published by Heren Energy Ltd. in its issue European Spot Gas Markets for the first *Day* of the *Month* in question.  
Amounts chargeable related to this Article 6.1.2 will be invoiced in accordance with Article 12.
- 6.1.3 Any disputes regarding measurement will be settled by an *Expert* as provided for in Article 19.

### 6.2 Allocation

- 6.2.1 For the *Entry Point* *BBL Company* has concluded an *OBA* and the allocated *Quantities of Gas* shall be deemed to be equal to the *Quantities of Gas* according to the confirmations, unless this is not feasible under the *OBA* assuming *BBL Company* and the *NNO* concerned are maintaining the standard of *Reasonable and Prudent operator*, in which case the allocation shall then be made on a pro rata basis.

For the *Exit Point*, the *Quantities of Gas* will be allocated proportionally on the basis of the *Quantities of Gas* according to the confirmations. Any differences between the measured volume and the sum of the confirmations of the *BBL-Shippers* will be allocated to *Shipper* in proportion to the *Confirmations* of *Shipper* and the confirmations of other *BBL-Shippers*.

The allocation may, with the consent of *BBL Company* and with observance of the *Allocation Rules* set out in this Article 6.2, be performed by a *NNO* or other third party.

- 6.2.2 *BBL Company* will provide or cause to be provided to *Shipper* by electronic transmission all allocation data, relevant to *Shipper*, used for invoicing.

*BBL Company* shall with regard to allocations keep auditable record of all underlying data on an *Hourly* basis per meter run which are used for the determination of the invoices and allocations for the period legally required. *Parties* acknowledge the confidential nature of the underlying data in a situation of commingled stream and the restrictions this imposes on *Shipper's* access to such underlying data.

- 6.2.3 Any dispute regarding allocations shall be resolved by an *Expert* as provided for in Article 19.

### 6.3 Incorrect operation of measuring equipment

In the event that incorrect operation of the measuring equipment is ascertained at the *Entry Point* or the *Exit Point*, *Shipper* shall not be required to accept any retroactive allocation with regard to an *Entry Point* or *Exit Point* where an *OBA* exists. In case no *OBA* exists, the period of the retroactive allocation will be no longer than the period referred to in the *Operating Manual* with regard to this allocation procedure. Readjustment of delivered *Quantities of Gas* will be settled via the *Gas Balance*.

**Article 7 BALANCING**7.1 Principles of hourly balancing and matching.

7.1.1 *Shipper* shall nominate for any *Hour* equal *Quantities of Gas* as *Entry Gas* and *Exit Gas* and will use its best endeavours to make available *Entry Gas* and take *Exit Gas* at a uniform rate within any *Hour* in conformity with the *Confirmations* for that *Hour*.

*BBL Company* shall apply a matching procedure to ensure that the *Properly Nominated Quantity of Entry Gas* and the *Properly Nominated Quantity of Exit Gas* are the same.

7.1.2 *Nominations* at the *Entry Point* and the *Exit Point* will be checked by *BBL Company* against the contracted *Transmission Capacity*.

7.1.3 If possible after consultation with *Shipper*, *BBL Company* has the right to make available the *Hourly Quantities of Exit Gas* in such a way that the sum of the *Hourly Confirmations* during the relevant *Gas Day* is met, provided the *NNO* concerned agrees and *Shipper* meets its volume entry requirements with the *NNO* concerned.

7.2 The Gas Balance

7.2.1 For any *Hour* during a *Gas Day* the difference between the allocated *Quantity of Entry Gas* and the allocated *Quantity of Exit Gas* will be allocated to the *Gas Balance* for that *Gas Day*. The *Gas Balance* is negative if the allocated *Quantity of Exit Gas* is higher than the allocated *Quantity of Entry Gas*. The *Gas Balance* is positive if the allocated *Quantity of Exit Gas* is lower than the allocated *Quantity of Entry Gas*. *BBL Company* shall endeavour to minimise the *Gas Balance* at the end of the *Gas Day*.

7.2.2 The maximum positive and negative *Gas Balance* shall be laid down in the *Operating Manual*.

7.2.3 *BBL Company* and *Shipper* will settle *Quantities of Gas* in the *Gas Balance* in kind by means of the appropriate *Nominations* and *Confirmations* for the *Quantities of Gas* to be settled at the *Entry Point* and/or the *Exit Point*. During such settlement the matching procedure and the checking against the contracted *Transmission Capacity* regarding the *Nominations* at the *Entry Point* and the *Exit Point* will take into account any such settlement of the *Gas Balance*.

7.2.4 Timing of a settlement of *Quantities of Gas* in the *Gas Balance* will be at any convenient moment to be decided by *BBL Company*, taking into account a notice period to be provided for in the *Operating Manual*, operational issues with regard to *Shipper's* position and the position of *Shipper* with regard to transmission agreements with the relevant *NNO's*.

7.2.5 At the termination of the *Agreement*, the *Gas Balance* will be settled as follows.

The price used for settlement of the *Gas Balance* will be the TTF + 1 (*Euros/MWh*) index or the NBP + 1 (p/th) index as published by Heren Energy Ltd. in its issue European Spot Gas Markets for the first day of the month following the date of termination on which the indexes are published.

The NBP + 1 index will be converted to *Euro/MWh* by applying the arithmetic average for the corresponding day of the mean between the buying and selling rate between *Euro* and British Pound (GBP) as established daily at the currency exchange of Amsterdam and as published by the ABN-Amro Bank.

In case of a negative *Gas Balance* the highest price will apply, in case of a positive *Gas Balance* the lowest price will apply.

Amounts chargeable related to the settlement of the *Gas Balance* will be invoiced in accordance with Article 12.

### 7.3 Imbalances

#### 7.3.1 It is recognised between *Parties* that

- (a) the inability of *BBL Company* to take *Quantities of Entry Gas*, and
- (b) the inability of *BBL Company* to make available *Quantities of Exit Gas*, and
- (c) the refusal of *BBL Company* to take *Entry Gas* as a consequence of Article 5.1.4, and
- (d) the refusal of *Shipper* to take *Exit Gas* as a consequence of Article 5.2.4

and the consequent cessation of taking *Quantities of Exit Gas* and the consequent cessation of delivering equivalent *Quantities of Entry Gas* by *Shipper* take time to be implemented operationally and are likely to lead to the occurrence of imbalances.

#### 7.3.2 *Parties* will use reasonable endeavours to restore any such imbalance as soon as reasonably practicable.

After the occurrence of any of the events described in Article 7.3.1 *Parties* shall inform each other if possible at least two (2) *Hours* before normal operations are to be resumed. Any differences between the *Quantities of Entry Gas* delivered by *Shipper* and *Quantities of Exit Gas* taken by *Shipper* during such periods will be settled via the *Gas Balance*.

## Article 8 OPERATION

### 8.1 Operating Manual

*Parties* shall apply the *Operating Manual*. It is understood between *Parties* that the *Operating Manual* takes into account the possibility of transmission agreements between *BBL Company* and *BBL-shippers* concerning interruptible gas transmission from the UK to the Netherlands.

It is understood between *Parties* that negotiations are foreseen between *BBL-Company* and launching shippers with respect to the terms and conditions of the operating manual applicable under the original BBL transmission service agreements. To the extent these negotiations result in terms and conditions for *Shipper* better than laid down in the *Operating Manual* *BBL Company* is entitled to amend the content of the *Operating Manual* accordingly.

*BBL Company* has the right to reject a *Nomination* or a *Renomination* if this (Re)*Nomination* is not given according to the *Operating Manual*.

### 8.2 Capacity restrictions

8.2.1 Notwithstanding the provisions of Article 8.3, *BBL Company* shall inform *Shipper* as soon as reasonably possible whenever a reduction of the *Transmission Capacity* occurs, provided such reduction is not related to the possible interruption of *Interruptible Transmission Capacity* due to the use of firm transmission capacities. Such information shall contain the amount of the capacity reduction, the expected duration and reasons for such reduction. If it is necessary to reduce or part or all of the services, *BBL Company* shall be authorised to reduce for operational purposes the relevant *Transmission Capacity*, thereby given priority according to the priority principles as described in the *Operating Manual* to a reduction of interruptible transmission capacities. For the avoidance of doubt, *Shipper's* rights and remedies shall remain unaffected.

8.2.2 When reducing the *Firm Transmission Capacity* under these *Conditions* and the firm transmission capacity contracted by other *BBL-Shippers*, the firm transmission capacity remaining for the *Shipper* shall be calculated by *BBL Company* by multiplying the remaining firm transmission capacity for all *BBL-Shippers* with the ratio of the *Firm Transmission Capacity* and the sum of all firm transmission capacities.

8.2.3 Notwithstanding the above, if *BBL Company* establishes that the cause of the interruption or reduction of *Transmission Capacity* in the *BBL-Facilities* can be related to any particular agreement(s) between *BBL Company* and one or more *BBL-Shippers* (including *Shipper*), then *BBL Company* shall – within the limits of its technical possibilities and contractual obligations – reduce or interrupt the transmission capacity booked under such agreement(s) before reducing *Transmission Capacity* on a pro rata basis as provided for in this Article 8.2.

### 8.3 Planned maintenance

For the purpose of maintenance of, or any other activities affecting the *BBL-Facilities*, *BBL Company* shall have the right to have up to fifteen (15) *Reduced Delivery Days* in each *Year*. All such *Reduced Delivery Days* shall be between April 1 and October 1 in any *Year* and shall be determined by *BBL Company* as follows:

- (1) During the month of September prior to the commencement of a *Year* *BBL Company* shall, besides announcement on its *Web Site*, notify *Shipper* of a period of thirty (30) consecutive *Gas Days* during the period between April 1, 06.00 Hours *LET* and October 1, 06.00 Hours *LET* in the following *Year* within which period *BBL Company* will nominate the fifteen (15) *Reduced Delivery Days* it is entitled to take in that *Year* in accordance with this Article 8, and
- (2) during the month of November prior to the *Year* it concerns *BBL Company* shall, besides announcement on its *Web Site*, notify *Shipper* of a single period of up to fifteen (15) consecutive *Gas Days* falling within the period nominated by *BBL*

*Company* under Article 8.3 (1) during which *BBL Company* will carry out the proposed planned maintenance.

*BBL Company* shall use reasonable endeavours to minimise the disruption caused to *Shipper* as a result of maintenance and use reasonable endeavours to coordinate maintenance with the *NNO's*.

*BBL Company* shall give an indication to *BBL-Shippers* of the available *Transmission Capacity* on a *Reduced Delivery Day* as soon as reasonable possible.

*Shipper* shall not be entitled to any reduction in the fixed capacity fee (component T1), nor shall *Shipper* have any other entitlement(s) against *BBL Company*, in respect of any reduction in *Transmission Capacity* related to this Article 8.3.

**Article 9      LIABILITY**9.1      Liability of Shipper

- 9.1.1 *Shipper* shall not be liable to *BBL Company* under any circumstances, for any direct, indirect or consequential loss or damage incurred by *BBL Company* arising out of or in connection with the *Agreement*, including, without limitation, loss of profits, loss of business expectations or opportunities, loss of contract or any damage to third parties, except
- (i) with regard to direct loss or damage to *BBL-Facilities* including the reasonable costs of cleaning as defined in Article 9.1.2, and
  - (ii) with regard to all loss or damage caused by *Shipper's* wilful misconduct or gross negligence as defined in Article 9.3, and
  - (iii) with respect to breach by *Shipper* of any warranty under the *Agreement*.
- 9.1.2 *Shipper* shall be liable to *BBL Company* for direct loss or damage to the *BBL-Facilities*, including the reasonable costs of cleaning, to the extent such loss or damage is caused by and is a consequence of an identified deviation in quality from the quality specifications mentioned in Article 5.1.1 and/or an identified deviation in pressure from the pressure specification mentioned in Article 5.1.2 of the *Entry Gas* delivered to *BBL Company*
- (i) during the period before *BBL Company* has given notice to *Shipper* that *BBL Company* either refuses or accepts the delivery of said pressure deficient or quality deficient *Entry Gas*, as provided for in Article 5.1.4, and
  - (ii) during a period of one (1) *Hour* from *BBL Company's* receipt of the notice of *Shipper* or of a third party on behalf of *Shipper* as specified in Article 5.1.4 has lapsed, whichever notice occurs first.

In the event *Shipper* is not liable to *BBL Company* for damage to the *BBL-Facilities* pursuant to this Article 9.1.2, *BBL Company* shall hold harmless and indemnify *Shipper* from and against all claims by third parties concerning loss or damage to the *BBL-Facilities*.

9.2      Liability of BBL Company

- 9.2.1 *BBL Company* shall not be liable to *Shipper* under any circumstances, for any direct, indirect or consequential loss or damage incurred by *Shipper* and arising out of it or in connection with the *Agreement*, including, without limitation, loss of profits, loss of business expectations or opportunities, loss of contract or any damage to third parties, except
- (i) with regard to direct loss or damage to facilities at or near the *Exit Point* including the reasonable costs of cleaning such facilities as defined in Article 9.2.2, and
  - (ii) all loss or damages caused by *BBL Company's* wilful misconduct or gross negligence as defined in Article 9.3, and
  - (iii) with respect to breach by *BBL Company* of any warranty under the *Agreement*.
- 9.2.2 *BBL Company* shall be liable to *Shipper* for direct loss or damage to the facilities at or near the *Exit Point* (which the *Shipper* is liable for towards third parties), including the reasonable costs of cleaning, to the extent such loss or damage is caused by and is a consequence of an identified deviation in quality from the quality specifications mentioned in Article 5.2.1 and/or an identified deviation in pressure from the pressure specification mentioned in Article 5.2.2 of the *Exit Gas* delivered to *Shipper*
- (i) during the period before *Shipper* has given notice to *BBL Company* that *Shipper* either refuses or accepts the delivery of said pressure deficient or quality deficient *Exit Gas*, as provided for in Article 5.2.4, and
  - (ii) during a period of one (1) *Hour* from *Shipper's* receipt of the notice of *BBL Company* or of a third party on behalf of *BBL Company* as specified in Article 5.2.4 has lapsed, whichever notice occurs first.

In the event *BBL Company* is not liable to *Shipper* for damage to the facilities pursuant to this Article 9.2.2, *Shipper* shall hold harmless and indemnify *BBL Company* from and against all claims by third parties concerning loss or damage to these facilities.

9.3 Wilful misconduct or gross negligence

For the purpose of these *Conditions* "wilful misconduct or gross negligence" means an intentional and conscious or reckless disregard by a *Party* or any of its *Affiliated Companies* (acting for and on behalf of a *Party*) and/or its (or such *Affiliated Company's*) officers, directors or employees of managerial or supervisory status of any provisions of the *Agreement* or, generally, of the obligations of a *Reasonable and Prudent* party.

9.4 Limitation of liability

In the event a *Party* is liable under the provisions of the *Agreement*, all liability to the other *Party* for whatever kind of damage will per event be limited to the amount of two million and five hundred thousand (2,500,000) *Euro* (€) or, if higher, to the fee for the *Transmission Capacity*, with a maximum of the fee for one (1) *Year* except in case of wilful misconduct.

**Article 10 FORCE MAJEURE**

- 10.1 If a *Party* is unable, wholly or in part, to fulfil any obligation under the *Agreement* due to *Force Majeure*, such *Party* will, by giving written notice and reasonably full particulars to the other *Party* promptly after the occurrence of such *Force Majeure*, be relieved of its obligations under the *Agreement* to the extent that the fulfilment of these obligations is rendered impossible by such *Force Majeure*.  
The *Party* claiming *Force Majeure* shall, when giving the particulars of such *Force Majeure*, also notify the other *Party* if possible of the period of time which said *Party* estimates it will require to remedy the *Force Majeure* situation and shall keep the other *Party* regularly informed as to the progress of such remedy. However, there shall be no obligation of the *Party* claiming *Force Majeure* (i) to settle any labour dispute, except in such a manner as it shall deem fit in its own judgement, and (ii) to negotiate, arrange or agree alternative transportation for *Gas*.

The *Party* claiming *Force Majeure* shall use reasonable endeavours to mitigate the effects of such *Force Majeure* and to rectify the circumstances causing the failure.

- 10.2 Any failure to timely pay amounts which are owed under the *Agreement* shall not be excused by *Force Majeure*, unless the payment procedure itself is affected by *Force Majeure*, the payment concerned is obstructed by law or is forbidden by any governmental authority.
- 10.3 If any *Party* claims *Force Majeure* under the *Agreement*, no *Party* shall be entitled to terminate the *Agreement* or to terminate the obligation to perform services under the *Agreement* on the grounds of such *Force Majeure* provided however, that if,
- (a) in case of a *Contract Period* of three hundred and sixty five (365) *Days* or less, a *Force Majeure* situation lasts for a period of more than twenty five (25) percent of the *Contract period*, the *Party* who did not claim *Force Majeure* shall be entitled to terminate the *Agreement*, provided that the *Force Majeure* situation still exists at the time of the termination; and
  - (b) in case of a *Contract Period* of more than three hundred and sixty five (365) *Days*, a *Force Majeure* situation (i) lasts for a period of more than three hundred and sixty five (365) *Days*, or (ii) *Force Majeure* has occurred on three hundred and sixty five (365) *Days* in a period of one thousand four hundred and sixty (1460) consecutive *Days*, the *Party* who did not claim *Force Majeure* shall be entitled to terminate this *Agreement*, provided that in the event of (i) the *Force Majeure* situation still exists at the time of the termination.

Such a termination shall be made by registered letter.

- 10.4 Amounts that are due and payable by *Shipper* can not be withheld on the grounds of *Force Majeure* affecting *BBL Company* to the extent those amounts are chargeable for services that were performed by *BBL Company* prior to the occurrence of the event qualifying as *Force Majeure* or for services that are unaffected by such *Force Majeure* event.

**Article 11 FEES AND TAXES**

- 11.1 The consideration for the services to be paid by *Shipper* shall exist of three components, the service fee, the component T1 and the component T2.

The service fee is the fee as mentioned in Article 3.1 (d) as consideration for *Shipper* having the status of *BBL-Shipper*.

The component T1 is the fixed capacity fee as mentioned in the *Agreement*.

The component T2 is a variable fee related to the costs of electricity for *Gas* compression at the *Entry Point*, taking into account higher costs of electricity for *Gas* compression for gas transmission related to *Transmission Capacity* made available by the expansion of the BBL pipeline (hereinafter referred to "*Expansion Capacity*"), and shall be determined as follows:

- (1) The annual capacity charge, if any, will be passed on on the basis of the share of *Shipper's Firm Transmission Capacity* in the total contracted firm transmission capacity from the Netherlands to the United Kingdom and taking into account the principle that the annual capacity charge relating to *Shipper's Firm Transmission Capacity* is determined as if no sale of *Expansion Capacity* had taken place.
- (2) The commodity charge will be passed on via a *Monthly* payment based on the actual *Quantities of Gas* allocated to *Shipper* at the *Entry Point*. To the extent the actual *Quantities of Gas* are related to *Expansion Capacity* the commodity charge to be passed to *Shipper* shall be based on the principle that the commodity charge for the compression of the actual *Quantities of Gas* not related to *Expansion Capacity* to be passed to *BBL-Shippers* is determined as if no compression of actual *Quantities of Gas* related to *Expansion Capacity* had taken place.
- (3) The annual reconciliation of the electricity costs actually incurred will be calculated and charged to *Shipper* in the *Year* following the *Year* for which the reconciliation was done, taking into account
  - (a) the difference in commodity charge between the estimated and the realised amounts because of e.g. load factor differences, and
  - (b) any imbalance charges for electricity, and
  - (c) the principle as stated under this Article sub (2).

*BBL Company* shall use its best endeavours to keep the costs under the electricity contracts concluded and imbalance charges as low as possible.

- 11.2 If at any time during the term of the *Agreement* the reference calendar year or the basis of computation of an index is discontinued or changed, *Parties* shall adapt the definition of or agree on a substitute for such index in such a way that as much as possible the same effect is achieved as if such index had remained unchanged.
- 11.3 Whenever any of the indices or components of the indices to be used in a tariff calculation have
- (1) not been published and are unlikely to be published for a period of twelve (12) months or any shorter period to be agreed upon between *Parties*, or
  - (2) in the opinion of one *Party* been wrongly computed or published, or
  - (3) in the opinion of one *Party* changed the basis of the calculation so that its validity for the purpose of calculating the tariffs will be materially affected over a period of at least twelve (12) months,

then either *Party* may notify the other *Party* within three (3) months after the occurrence of such circumstances and *Parties* shall endeavour to agree upon an appropriate amendment to or a replacement of such indices. If, however, within six (6) months from the date of

said notice no such agreement has been reached, then the matter shall forthwith be referred to an *Expert* for such amendment or replacement, in accordance with the provisions of Article 19.

11.4 Reduction of amounts chargeable

The amount chargeable with respect to the fixed capacity fee (component T1) shall be reduced pro rata according to the *Interruption Notice(s)* and reduction as specified in Article 8.2.1, provided such reduction shall not apply for reductions due to a reduced *Transmission Capacity* according to Article 8.3.

The reduction will be based upon one hundred percent (100%) of the amount chargeable for the fixed service fee (component T1) for the month in question under the *Agreement*.

- 11.5 All calculations made with respect to tariffs shall be made to four (4) decimal places. A figure of five (5) or more in the fifth (5th) decimal place shall cause a rounding up of the fourth (4th) decimal place. The amounts payable so determined shall be rounded to two (2) decimal places for application.
- 11.6 All amounts due by *Shipper* under the *Agreement* are exclusive of any *Tax*. *BBL Company* is entitled to add to such amounts due by *Shipper* all *Tax* lawfully imposed on *BBL Company* by any *Competent Authority* with respect to the services performed by *BBL Company* under the *Agreement* to the extent that *BBL Company* is actually economically affected by such *Tax* and subject to *Shipper's* right to verify, at its expense, by means of a certified auditor's statement that such *Tax* has been duly paid or will have to be paid. For the avoidance of doubt, the *Tax* referred to in this Article 11.6 does not include *BBL Company* corporate income tax and the like.
- 11.7 *Shipper* will be responsible for making such declarations as are required by the Dutch and/or the United Kingdom authorities in respect of Intrastat declarations or customs declarations covering the *Gas* entering the United Kingdom as goods acquired or imported by *Shipper* and leaving the Netherlands as goods disposed of or exported by *Shipper*.

**Article 12 INVOICING, PAYMENT AND CREDITWORTHINESS**

12.1 Within ten (10) *Business Days* after the first day of a calendar month *BBL Company* shall submit to *Shipper* a fixed invoice. This fixed invoice shall show, if and in so far as applicable,

- the amounts chargeable in accordance with component T1 for said *Month* for *Transmission Capacity* contracted before the start of such calendar month, and
- the amounts chargeable in accordance with component T1 for the previous *Month* for *Transmission Capacity* contracted after the start of such calendar month, and
- the reduction of the amounts chargeable in accordance with component T1 for the previous *Month* for *Transmission Capacity*.

As soon as possible after the first day of a calendar month *BBL Company* shall submit to *Shipper* a variable invoice. This variable invoice shall show, if and in so far as applicable,

- the *Quantities of Gas* allocated to *Shipper* at the *Entry Point* for the applicable *Month*, and
- the amounts chargeable in accordance with component T2 for the applicable *Month* for variable costs, and
- the amounts chargeable in accordance with Article 6.1.2 for the applicable *Month*, and
- in case of termination of the *Agreement* the amounts chargeable as a result of that termination, e.g. settlement of the *Gas Balance*.

Amounts chargeable can be provisional, for example in case of the lack of timely availability of the required metering data and/or final allocation figures, and will in that case be labelled as such.

12.2 Settlement of amounts undercharged or overcharged because of a provisional calculation or as a result of recalculation in case of early termination of services or settlement of a dispute or measurement errors will be made with interest. The basis for the calculation of interest will be the difference on a *Monthly* basis between the *Monthly* amounts provisionally charged and the final *Monthly* amounts calculated. The interest period with respect to said difference will commence on the ultimate date of payment (determined according to Article 12.3) of the original *Monthly* invoice to which the adjustment relates if the difference results in an additional payment from *Shipper* to *BBL Company* and will commence at the date of payment of the original invoice if the difference results in a refund from *BBL Company* to *Shipper*. The interest rate to be applied shall be the arithmetic mean of *EURIBOR* for the calendar months to which the calculation of interest relates plus two percent (2%) per annum and rounded to two (2) decimal places.

12.3 An invoice shall be paid by the debtor in such a manner that the creditor will have the money at its free disposal at an account specified by the creditor within fourteen (14) days of the invoice date.

If a *Party* disputes the correctness of an invoice this shall not affect the obligation to pay within the specified period, except in the case of an obvious error. Such issues must be raised as soon as possible, but in any event within a period of two (2) years after the invoice date. After the end of this period an invoice can no longer be disputed. In case of an obvious error, the undisputed part of the invoice should be paid anyhow within the specified period.

If all or any part of an invoice is not paid by the due date, interest shall be payable at a rate that shall be the arithmetic mean of *EURIBOR* for the calendar months to which the calculation of interest relates plus four percent (4%) per annum and rounded to two (2) decimal places.

- 12.4 If in respect of any *Month* amounts of money are due by *BBL Company* to *Shipper* as well as by *Shipper* to *BBL Company*, the net amount due for such *Month* shall be payable by *Shipper* to *BBL Company* or by *BBL Company* to *Shipper* as the case may be.
- 12.5 Notwithstanding the credit control provisions in the *Credit Control Protocol*, if during the term of the *Agreement* there is, in the reasonable opinion of *BBL Company*, a material deterioration in the financial resources, creditworthiness or a material adverse change in the financial standing of *Shipper*, its guarantor and/or an *Affiliated Company* of *Shipper*, including but not limited to a downgrading of the public credit rating by Moody's and/or Standard & Poor's, when compared to its financial standing as at the date of the *Agreement*, which change in *BBL Company's* reasonable opinion may adversely affect *Shipper's* ability to perform its financial obligations under the *Agreement*, *BBL Company* may request *Shipper* in a duly motivated written notice to provide to *BBL Company* reasonable security for the performance of its financial obligations under the *Agreement* within five (5) *Business Days* of the request therefore. For this purpose *BBL Company* may inter alia require advance payment or the deposition of a security or the provision of a parent company guarantee, a bank guarantee or a Letter of Credit in a form reasonably acceptable by *BBL Company*.  
If *Shipper* has provided security and it is later established between *Parties* that *BBL Company* had no reasonable grounds for requesting such security, *BBL Company* shall reimburse *Shipper* the reasonable costs of providing the security, provided that prior to providing the security, *Shipper* has given *BBL Company* duly substantiated written notice stating that the reasonable grounds were lacking.
- 12.6 The invoices and statements referred to in Article 12.1 may be rendered during the normal office hours of *BBL Company* by any secure (electronic) data communication system agreed between *Parties*, in which event the receipt by *Shipper* of such invoice or statement shall be confirmed by *Shipper* as soon as possible by letter or by fax.  
Each such statement shall be accompanied by such documents as may be reasonably necessary for verifying the same. Said documents shall be deemed to be part of such statement.
- 12.7 Annually *BBL Company* shall provide a reconciliation statement showing the real electricity costs as provided for in the *Agreement*.

**Article 13 TERM, SUSPENSION AND TERMINATION OF THE AGREEMENT**

13.1 The obligation of *BBL Company* to perform any service under the *Agreement* shall enter into force and become effective after the *Agreement* has been signed by the *Parties* and shall remain in force up to the *End Date*.

13.2 Without prejudice to Article 3 of these *Conditions* and the right to claim damages each *Party* shall be entitled without judicial intervention to terminate the *Agreement* and/or to suspend fulfilling any obligations under the *Agreement* if the other *Party*

(a) is declared bankrupt (Dutch: 'in staat van faillissement verklaard') or is granted a (provisional) suspension of payment (Dutch: 'surséance van betaling') or is declared in a similar legal status affecting the rights of creditors generally, or

(b) fails to fulfil its payment obligations, or

(c) fails to fulfil any other material obligation under the *Agreement*, or

(d) does not in time furnish the security mentioned in Article 12.5, or

(e) claims *Force Majeure* as provided for in the *Agreement*, or

with regard to *Shipper*,

(f) *Shipper* no longer meets one or more of the criteria stated in Article 3.1,

all without prejudice to that other *Party's* obligation to pay judicial and extra judicial costs as prescribed by law, damages within the framework of Article 9 and interest.

With regard to Article 13.2 (b), (c), (d) and (f) a termination of the *Agreement* can only take place after the expiry of fifteen (15) days after sending the notice of termination.

For the avoidance of doubt, Article 13.2 (b) does not apply in case the payment obligation concerned is the subject of a bona fide dispute between the *Parties*.

13.3 Without prejudice to Article 12.5, in the case referred to under Article 13.2 (a) a *Party* shall be entitled to immediately suspend the performance of services under the *Agreement* or to terminate the *Agreement*. In the cases mentioned in Article 13.2 (b), Article 13.2 (c) and Article 13.2 (d) a *Party* shall only exercise these rights after it has summoned the other *Party* in writing to remedy its default within a reasonable period and that other *Party* has not so remedied its default, unless it is apparent that such summons will be of no avail. In the case referred to under Article 13.2 (d) the defaulting *Party* will have a period of five (5) *Business Days* to remedy the default. Where payment obligations are concerned the defaulting *Party* will have a period of ten (10) *Business Days* to remedy the default.

13.4 A *Party* shall notify the other *Party* by registered letter if that *Party* exercises its right to terminate the *Agreement*. All amounts which may be owed by a *Party* to the other *Party* shall be immediately due and payable from the day of receipt of the notification. For the avoidance of doubt, Article 15 will remain in full force after termination of the *Agreement*.

**Article 14      ASSIGNMENT**

- 14.1 Unless stated otherwise a *Party* may assign the whole of its rights and obligations under the *Agreement*, with the prior written consent from the other *Party*, which consent shall not be unreasonably withheld or delayed. Consent shall be deemed to be reasonably withheld if in the case of any proposed assignment of obligations the *Party* making the assignment is unable to demonstrate to the reasonable satisfaction of the other *Party* that the proposed assignee has the ability to perform the obligations assigned to it, and, with respect to a proposed assignment by *Shipper*, if the assignee does not qualify as *BBL-Shipper* in accordance with Article 3.
- 14.2 No assignment pursuant to Article 14.1 shall be effective unless and until assignor has ensured that the proposed assignee provides to the other *Party* a direct covenant in favour of and in a form reasonably satisfactory to the other *Party* that the assignee will observe and perform the obligations to be assigned to it.

**Article 15 CONFIDENTIALITY**

15.1 *Parties* agree that the content of the *Agreement*, credit control related documents and all information obtained under these *Conditions* by a *Party* from the other, including all engineering and operational data, shall be held strictly confidential by the receiving *Party* during the term of the *Agreement* and for a period of three (3) years from the *End Date* or the date of early termination. *Parties* declare that neither they nor their legal successors shall make or have made public any information with regard to the contents of the aforementioned documents under these *Conditions* without prior written consent of the other *Party*.

However, a *Party* may make available said contents or information without such prior written consent to

- (a) its employees or employees of *Affiliated Companies* or shareholders or members of corporate bodies of an *Affiliated Company* to the extent reasonably necessary for the approval and performance of the *Agreement*, provided that such employees, shareholders and members shall be bound to preserve the secrecy of such information, or
- (b) any governmental authority or recognised security exchange, where such disclosure is required by law, order or regulation; in such case the disclosing *Party* shall inform the other *Party* in advance of such disclosure and of its extent, or
- (c) banking and financial institutions and their consultants, where such disclosure is necessary in connection with financing arrangements, provided that such *Party* shall first obtain a written undertaking of confidentiality from such banking and financial institutions and their consultants, that is similar to the undertaking of confidentiality that is set forth in this Article 15, or
- (d) independent consultants or contractors nominated by a *Party* for the purpose or in connection with the *Agreement*, provided that such *Party* shall first obtain a written undertaking of confidentiality from each consultant or contractor, that is similar to the undertaking of confidentiality that is set forth in this Article 15, or
- (e) any person or legal entity to which pursuant to Article 14 any right or obligation under the *Agreement* has been or will be assigned or any legal successor of a *Party*, provided that the *Party* assigning or to be legally succeeded shall first obtain a written undertaking of confidentiality from such assignee or legal successor, that is similar to the undertaking of confidentiality that is set forth in this Article 15, or
- (f) the *NNO*, where the disclosure of *Nominations*, *Confirmations*, metering data and/or allocations, on a confidential basis, is necessary in connection with gas flow procedures at the *Entry Point* respectively the *Exit Point*.

15.2 Notwithstanding the provisions of Article 15.1, the *Party* receiving information may disclose such information without the other *Party's* prior written consent if and to the extent that such information

- (a) is already lawfully known to the *Party* receiving the information, or
- (b) is already in or enters the public domain other than through the act or omission of the *Party* receiving the information, or
- (c) is acquired independently from a third party that is entitled to disseminate such information at the time it is acquired by the *Party* receiving the information.

15.3 *BBL Company* is entitled to publish on its *Web Site* data to provide third parties insight in the quantity of transmission capacity available for booking and in aggregate form the level of the past usage of *Transmission Capacity* insofar this aggregate information can be published without jeopardising confidentiality, and does not harm the commercial position of *Shipper*.

**Article 16 INTERPRETATION, MODIFICATION AND SUPPLEMENTS, SUNDRIES**

- 16.1 The failure at any time of either *Party* to require performance by the other *Party* of any provision under the *Agreement*, shall in no way affect the right of a *Party* to require any performance which may be due thereafter pursuant to such provision, nor shall the waiver by either *Party* of any breach of any provision under the *Agreement* be held to be a waiver of any subsequent breach of such provision.
- 16.2 Any and all modifications and supplements to these *Conditions* shall not be valid unless drawn up in writing, labelled as subsequent amendment and signed by *Parties* or their assigns or successors. In case of any conflict between the provisions of a *Grid Connection Agreement* and/or an *Operational Balancing Agreement* and these *Conditions*, these *Conditions* will prevail unless explicitly agreed otherwise. Also in case of any conflict between the provisions of Exhibit A and/or Exhibit B of these *Conditions* and the main text of these *Conditions*, the main text of these *Conditions* will prevail unless explicitly agreed otherwise.
- 16.3 If one or more of the provisions of these *Conditions* should be totally or partially void or ineffective, this shall not affect the legal status of the other provisions. *Parties* undertake to cooperate in agreeing as soon as possible on an effective new provision, which approaches the economic purpose and any other effect of the ineffective or void provision as closely as possible. Until such new provision has been agreed upon, in case legal proceedings are pending in which the ineffective provision(s) are of any significance, each *Party* may request the Court for the application of article 3:42 of the Dutch Civil code, if such application is legally possible.
- 16.4 *Parties* will at all times give to each other all such information as each may have available and as may be necessary or useful to enable *Parties* to carry out their obligations under the *Agreement* (to the extent that each *Party* is entitled to disclose such information to the other). Either *Party* shall have the right, at its own cost and by notice to the other *Party*, to nominate independent public accountants, who may be assisted by a technical specialist, that are acceptable to the other *Party*, such acceptance not to be unreasonably withheld or delayed, which accountants shall have the right at reasonable hours to examine the books, records and charts of the other *Party* only to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to any of the provisions under the *Agreement* and to the extent that the auditing *Party* cannot verify such accuracy through the prudent exercise of its own internal controls. Such books, records and charts shall be preserved for a period of at least two (2) years from the *End Date* or the date of early termination of the *Agreement*, provided that if such books, records or charts are related to any facts which are disputed between *Parties* within the aforementioned period, then such books, records or charts shall be preserved until such dispute is settled.
- In case the public accountant discovers errors or mistakes in the books, records, statements charges or computations of the other *Party* made pursuant to any of the provisions under the *Agreement* the other *Party* shall bear the relevant costs of the public accountant.
- 16.5 *BBL Company* is entitled to amend the content of these *Conditions* including its Exhibits if and when in the reasonable opinion of *BBL Company* such amendment is necessary due to changes in applicable law or, due to changes in the operational scope or, to improve the operation of the *BBL-facilities*, to improve the operation of the *Agreement* or to ensure the compatibility of the *Agreement* with the conditions of the *NNO's* for transmission of *Gas* and related services.
- 16.6 *BBL Company* will inform *Shipper* expeditiously of any material change pursuant to Article 16.5.
- 16.7 It is acknowledged by *Parties* that changes to the terms and conditions for transport of gas in the networks of the *NNO's* may necessarily require consequential amendments to be made to these *Conditions* (in particular, but without limitation, those changes relating to the making of and the timing of *Nominations* and changes to balancing periods) and in these circumstances either *Party* may give notice to the other whereupon the *Parties* shall negotiate, in good faith, and seek to agree such consequential amendments in such a

manner and on such basis as will restore the purpose and intended effect of these *Conditions* as at the date of the *Agreement*.

- 16.8 All written or oral understandings between *Parties* prior of the date of the *Agreement* concerning the matters treated therein are superseded by the contents of the *Agreement*.

**Article 17      COMMUNICATION, ADMINISTRATION AND COOPERATION**

- 17.1 For the communication of data SI-units shall be used whenever possible. All notices shall be given in the English language.
- 17.2 Unless otherwise stipulated in these *Conditions* any notice to be given herein shall be in writing and shall be deemed given and effective
- (a) upon receipt by the *Party* addressed, or
  - (b) if posted in the Netherlands, postage prepaid, to an address in the Netherlands on the next *Business Day* subsequent to posting, or
  - (c) if posted outside the Netherlands or to an address outside the Netherlands, via airmail and postage prepaid, on the fifth (5th) *Business Day* subsequent to posting, or
  - (d) if given by telex, telefax or (encrypted) electronic mail on the next *Business Day* after the dispatch thereof, with charges prepaid, unless in the case of telex the time of receipt is acknowledged on the telex, in which case the telex shall be deemed given and effective at that time and unless in case of a telefax in which case the telefax shall be deemed to have been received upon confirmation of receipt by the recipient and unless in case of (encrypted) electronic mail in which case the notice shall be deemed to have been received upon confirmation of receipt by the recipient.
- 17.3 *Parties* undertake to co-operate in good faith with any third parties, in so far as involvement of those parties is directly or indirectly necessary for the fulfilment by *BBL Company* or *Shipper* of any obligation under the *Agreement*.

**Article 18 APPLICABLE LAW AND DISPUTE RESOLUTION**

- 18.1 The *Agreement* shall be governed by and interpreted and applied in accordance with the laws of the Netherlands. The application of the Convention on the International Purchase of Goods and the Conclusion of International Purchase Contracts is explicitly excluded.
- 18.2 Any disputes arising out of or in connection with the *Agreement*, which is not to be referred to an *Expert* pursuant to these *Conditions* or a subsequent agreement between *Parties* resulting thereof, shall be finally settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute ("Nederlands Arbitrage Instituut").

The arbitral tribunal shall be composed of three arbitrators. Unless otherwise agreed each *Party* shall appoint one (1) arbitrator and the third arbitrator will be selected by the first two arbitrators within thirty (30) days after the appointment of the second arbitrator. Article 14 ("List Procedure") of the Rules of the Netherlands Arbitration Institute shall only apply for the appointment of the second arbitrator, if not in time nominated by the *Party*, or the appointment of the third arbitrator, if not selected by the first two arbitrators within thirty (30) days. The third arbitrator shall act as chairman of the board of arbitration and shall be fully educated and trained as a lawyer.

The place of arbitration shall be Amsterdam. The arbitral procedure shall be conducted in the English language. The arbitral tribunal shall decide in accordance with the rules of law ("regelen des rechts").

**Article 19 EXPERT PROCEDURE**

19.1 Whenever, in these *Conditions*, any person is to be appointed as an *Expert* or any matter is to be referred to an *Expert* or whenever, during the term of the *Agreement*, the *Parties* agree that a dispute between them shall be resolved by an *Expert*, the provisions of Article 19 shall apply.

19.2 Expert

The language of the Expert procedure shall be English. Any matter to be referred to an *Expert* shall be resolved by applying the following procedure.

19.3 Appointment

The *Party* wishing the appointment to be made, shall give notice in writing to that effect to the other *Party* and with such notice shall give details of the matter which is proposed to be resolved by the *Expert*.

*Parties* shall meet in an endeavour to agree upon a single *Expert* to whom the matter in dispute shall be referred for determination.

If within twenty-one (21) days from the service of the said notice *Parties* have either failed to meet or failed to agree upon an *Expert*, then the matter may forthwith be referred by the *Party* wishing the appointment to be made to the President of the 'International Chamber of Commerce' in Paris which shall be requested to make the appointment of the said *Expert* within thirty (30) days and in so doing may take such independent advice as it thinks fit.

Upon an *Expert* being agreed or selected under the foregoing provisions of this Article 19 *Parties* shall forthwith notify such *Expert* of his selection and shall request him within fourteen (14) days to intimate whether or not he is willing and able to accept the appointment.

If such *Expert* shall be either unwilling or unable to accept such appointment or shall not have intimated his willingness and ability to accept such appointment within the said period of fourteen (14) days, then (unless *Parties* are able to agree upon the appointment of another *Expert*) the matter shall again be referred (by either *Party*) in the aforesaid manner to the President of the 'International Chamber of Commerce' in Paris which shall be requested to make a further appointment and the process shall be repeated until an *Expert* is found who accepts appointment.

19.4 Qualification

No person shall be appointed to act as the *Expert* under this Article 19 unless he shall be qualified by education, experience and training to determine the matter in dispute.

Any person appointed as the *Expert* shall be entitled to act as such *Expert*, provided he shall before accepting such appointment fully disclose to *Parties* any interest or duty and any conflict of interest or potential conflict of interest, including all particulars thereof. If such disclosure has been made, any *Party* may require within five (5) *Business Days* from such disclosure removal of the *Expert*, stating the reasons for such removal and such *Expert* shall be replaced in accordance with this Article 19.

If at any time prior to the *Expert* rendering a decision on any matter, a conflict or potential conflict of interest arises, then the *Expert* will fully disclose the particulars of such fact to *Parties*. In that event any *Party* may within five (5) *Business Days* from such disclosure require the removal of the *Expert* and a new *Expert* shall be appointed in accordance with the terms of this Article 19. No person shall be appointed as an *Expert* who at the time of appointment is an employee of either *Party* or of any *Affiliated Company*.

19.5 Decision

The *Expert* appointed shall make his decision based on data, information and submissions supplied and made to him by *Parties* not later than thirty (30) days after his acceptance of appointment and he shall ignore data, information and submissions supplied and made after such thirty (30) days unless the same are furnished in response to a specific request from him.

If within a reasonable period (which shall not exceed ninety (90) days after the acceptance by the *Expert* of his appointment) such *Expert* shall not have rendered a decision then (at the request of either *Party*) a new *Expert* shall be appointed under the provisions of this Article 19 and upon the acceptance by such new *Expert* of his appointment the appointment of the previous *Expert* shall cease.

However, if the previous *Expert* shall have rendered a decision prior to the date upon which the new *Expert* accepts his appointment, such decision shall be binding upon *Parties* and the instructions to the new *Expert* shall be withdrawn.

The *Expert* shall be deemed not to be an arbitrator, but shall render his decision as an *Expert* and the law or legislation relating to arbitrations shall not apply to such *Expert* or his determinations or the procedure by which he reaches his determination.

The determination of the *Expert* shall be final and binding upon *Parties*, save in the event of fraud, manifest material error or failure by the *Expert* to disclose any relevant interest or duty in accordance with Article 19.4 under 'Qualification'.

Each *Party* shall bear the cost and expenses of all counsel, witnesses and employees retained by it in connection with the *Expert* procedure, but the cost and expenses of the *Expert* shall be apportioned equally between *BBL Company* and *Shipper*.