

**SHORT TERM FLAT
TRADING TERMS AND CONDITIONS
FOR NATURAL GAS TRADING AT
THE IRISH BALANCING POINT (IBP)
2015**

Version May 2018

1. Definitions and Interpretation

1.1 The following words or phrases, where they appear in these terms and conditions or in a Confirmation, shall have the meanings respectively ascribed to them:

"Accurate IBP Nomination" shall mean in respect of a Day and a quantity of Natural Gas, an IBP Nomination (being in the case of the Seller an IBP Sell Nomination and in the case of the Buyer an IBP Buy Nomination) which complies with the Code of Operations and Clause 4.1.3 and is made by a Party before 0200 hours on the Day for the Daily Quantity identifying the other Party as the person making the corresponding IBP Nomination;

"Affiliate" shall mean any holding company or subsidiary company of a Party or any company which is a subsidiary company of the holding company of a Party and the expressions **"holding company"** and **"subsidiary"** shall have the meanings respectively ascribed to them by sections 7 and 8 of the Companies Act 2014;

"Banking Day" shall mean a day (other than a Saturday or a Sunday) on which the banks in Dublin are generally open for business;

"BGT Systems" shall have the meaning specified in the Code of Operations;

"Buyer" shall mean the Party required to make IBP Buy Nominations pursuant to the Transaction;

"Code Contingency" shall mean an event or circumstance which affects the ability of the Transporter or Shippers to use the BGT Systems as described in Section 8.8, Part I of the Code of Operations;

"Code of Operations" means the code of practice for operation of the Transportation System (as amended, modified or revised) which governs certain aspects of the relationship between the Transporter and the Shippers on the Transportation System;

"Confirmation" shall mean a document that incorporates these terms and conditions by reference and confirms the details of the Transaction. The Confirmation shall be substantially in the form attached to these terms and conditions;

"Contingency Procedures" shall mean the procedures directed by the Transporter in accordance with Part I, Section 8.8 of the Code of Operations;

"Contract Price" shall mean the sum agreed as such for the Transaction in sterling pence per therm, exclusive of VAT and other applicable taxes;

"Daily Imbalance Quantity" shall have the meaning specified in the Code of Operations;

"Daily Quantity" shall mean the daily quantity of Natural Gas agreed between the Parties as such for the Transaction;

"Day" shall have the meaning specified in the Code of Operations (which as at 1 October 2015 is the period beginning at 0500 hours on a day and ending at 0500 hours on the following day);

"Delivered Quantity" shall mean in respect of a Transaction, the quantity of Natural Gas delivered by the Seller and accepted by the Buyer pursuant to the Nomination and Allocation Arrangements at the Delivery Point;

"Delivery Point" shall mean in respect of a Transaction the delivery point agreed between the Parties;

"Euro Equivalent" when used in Clauses 4.2 and 4.3 shall mean the value of the Contract Price expressed in Euro cent/therm calculated using:

- (a) The Euro/Sterling "Foreign Exchange Reference Rate" published on the European Central Bank website on the Day the breach occurs, or

- (b) If the breach occurs on a Day when the Euro/Sterling “Foreign Exchange Reference Rate” is not published on the European Central Bank website, then the Euro/Sterling “Foreign Exchange Reference Rate” on the next Day it is published on the European Central Bank website shall be used;

"Force Majeure" shall mean any event or circumstance beyond the reasonable control of a Party which either: (a) totally prevents an IBP Nomination from being submitted by such Party to the Transporter or from being received and taken into account by the Transporter in determining such Party's Daily Imbalance Quantity; or (b) causes the Transporter to suspend or terminate processing of IBP Trades;

"Gas Flow Day" means in relation to the application of any provision of the Code of Operations, the Day in relation to deliveries, offtakes or flows of Natural Gas or other operations on which such provision is to apply;

"IBP" shall have the meaning specified in the Code of Operations;

"IBP Buy Nomination" shall have the meaning specified in the Code of Operations;

"IBP Nomination" shall have the meaning specified in the Code of Operations. The quantities subject to an IBP Buy Nomination and an IBP Sell Nomination (each an IBP Nomination) must be equal;

"IBP Renomination" shall have the meaning specified in the Code of Operations;

"IBP Sell Nomination" shall have the meaning specified in the Code of Operations;

"IBP Trade" shall mean, in respect of a quantity of Natural Gas, where:

- (a) in respect of any Day two Shippers make corresponding IBP Nominations in respect of that quantity of Natural Gas subject to and in accordance with Part D1 of the Code of Operations,
- (b) neither IBP Nomination is amended or withdrawn thereafter,

the deduction by the Transporter of that quantity of Natural Gas in determining for that Day the Daily Imbalance Quantity of the Shipper making the IBP Sell Nomination and the addition by the Transporter of that quantity of Natural Gas in determining for the same Day the Daily Imbalance Quantity of the Shipper making the IBP Buy Nomination;

"LIBOR" shall mean the daily Sterling one month mean interbank lending rate (expressed as a percentage per annum) as compiled by the Bank of England and quoted on its website on the due date;

"Loss" shall mean an amount that the non-defaulting Party reasonably determines in good faith to be its total losses and costs (or gains in which case expressed as a negative number) in connection with the termination of the Transaction, including (without limitation) any reasonable Natural Gas Transportation Costs incurred under the Code of Operations expressed as a Sterling Equivalent amount, any reasonable Natural Gas Transportation Costs incurred under the Uniform Network Code, any loss of bargain, costs of funding or, at the election of the non-defaulting Party but without duplication, loss or cost incurred as a result of it terminating, liquidating, obtaining or re-establishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made and not made on or before termination. The non-defaulting Party will determine its Loss as at the date of termination, or if that is not reasonably practicable, as of the earliest date after that is reasonably practicable;

"Month" shall mean a period beginning at the start of a Day on the first day of any calendar month and ending immediately prior to the start of a Day on the first day of the following calendar month;

"Monthly Statement" shall have the meaning specified in Clause 6.1;

"Natural Gas" shall have the meaning specified in the Code of Operations;

“Nomination and Allocation Arrangements” means the arrangements and procedures which are in effect at the Delivery Point for the purpose of determining the quantities of Natural Gas which flowed or are deemed to have flowed in one or both directions at such Delivery Point in any Supply Period and allocating such flow between shippers in gas pipeline systems either upstream or downstream of the Delivery Point, including any arrangements and procedures for receiving and matching nominations;

“Party” shall mean one or other of the parties to the Transaction;

“Payment Banking Day” shall mean a day (other than a Saturday or a Sunday) on which commercial banks are open for general business at the places where each Party has its registered office;

“Second Tier Imbalance Price” shall have the meaning specified in the Code of Operations;

“Seller” shall mean the Party required to make IBP Sell Nominations pursuant to the Transaction;

“Shipper” shall have the meaning specified in the Code of Operations;

“Sterling Equivalent” when used to calculate the Loss for the purposes of Clause 10.4 or in Appendix 1 to these terms shall mean the value of the Transportation Costs in Euro converted to Sterling using:

- (a) The Sterling/Euro “Foreign Exchange Reference Rate” published on the European Central Bank website on the Day the termination occurs, or
- (b) If the termination occurs on a Day when the Sterling/Euro “Foreign Exchange Reference Rate” is not published on the European Central Bank website, then the Sterling/Euro “Foreign Exchange Reference Rate” on the next Day it is published on the European Central Bank website shall be used;

“Supply Period” shall mean the period during which, pursuant to the Transaction, the Parties shall make IBP Trades, such period commencing and terminating on the Days agreed for the Transaction;

“Termination Amount” shall have the meaning specified in Clause 10.4;

“Therm” shall mean one hundred and five million five hundred and six thousand joules (105,506,000 J);

“Transaction” shall mean an oral or written agreement to undertake one or more IBP Trades such agreement to include these terms and conditions, details of the Supply Period, the Daily Quantity, and the Contract Price;

“Transportation Costs” shall mean any transportation tariffs or charges, balancing charges, scheduling charges and shrinkage charges associated with the transportation of natural gas;

“Transportation System” shall have the meaning specified in the Code of Operations;

“Transporter” shall have the meaning specified in the Code of Operations;

“Uniform Network Code” shall mean the Uniform Network Code, published from time to time by the Joint Office of Gas Transporters or any replacement or successor code;

“Week” shall mean a period of seven (7) Days beginning at the start of a Day on a Sunday and ending immediately prior to the start of a Day on the following Sunday.

- 1.2 Any reference in these terms and conditions to a Transaction includes any permitted assignment, novation, supplement or amendment thereto.
- 1.3 Any reference to a Clause or Clauses is a reference to a clause or clauses in these terms and conditions.
- 1.4 Words in the singular may be interpreted as including the plural, and vice versa.

- 1.5 Any reference in these terms and conditions to a statute or statutory instrument or order is a reference to that statute, statutory instrument or order as from time to time amended, re-enacted or supplemented.
- 1.6 In the event of conflict between the terms of a Confirmation and these terms and conditions, the terms of the Confirmation shall prevail.
- 1.7 Any reference in the Transaction to a quantity of Natural Gas shall mean a quantity expressed in Therms.
- 1.8 References in these terms and conditions to an IBP Nomination (and associated terms) shall include, where relevant, any IBP Renomination agreed by the Parties (and associated terms) subject to any applicable differences of treatment between IBP Nominations and IBP Renominations under the Code of Operations including as to the timing of making IBP Nominations and IBP Renominations.
- 1.9 Any reference in the Transaction or the Confirmation to time shall be to the time in Dublin.
- 1.10 Parties may enter into more than one Transaction governed by these terms and conditions.

2 . **Confirmation Procedure**

- 2.1 The Seller shall, within three (3) Banking Days of a Transaction being entered into, send by facsimile transmission to the Buyer a signed Confirmation recording the details of the Transaction.
- 2.2 If the Buyer is satisfied that the Confirmation accurately reflects the terms of the Transaction the Buyer shall sign and return the Confirmation by facsimile transmission to the Seller within three (3) Banking Days of receipt of the Confirmation.
- 2.3 If the Buyer is not so satisfied, the Buyer shall inform the Seller of any inaccuracies. The Seller shall, if it agrees that the Confirmation is inaccurate, issue a new Confirmation and the provisions of Clause 2.1 shall apply.
- 2.4 If the Buyer does not return the Confirmation, duly signed, in accordance with Clause 2.2, or notify the Seller of any inaccuracy in accordance with Clause 2.3, the Buyer shall be deemed to accept the Confirmation.
- 2.5 If the Buyer has not received a Confirmation from the Seller within three (3) Banking Days of a Transaction being entered into, the Buyer shall send the Seller a Confirmation, and Clauses 2.2, 2.3 and 2.4 shall apply mutatis mutandis in relation to such Confirmation by replacing in such clauses all references to "**Buyer**" with "**Seller**" and "**Seller**" with "**Buyer**".
- 2.6 Subject to Clause 2.4, on signature by both Parties, the Confirmation shall, save in the event of manifest error, prevail over any oral or written agreement in respect of the Transaction.
- 2.7 The Parties hereby consent to the recording of telephone conversations in respect of the Transaction. The Parties waive any further notice of such recording and acknowledge they have obtained all necessary consents of their respective officers and employees to such recording.
- 2.8 Failure or persistent failure by the Seller or the Buyer to send a Confirmation shall not be a material breach of the Transaction. The procedure set out in Clauses 2.1 to 2.5 may be superseded by any binding arrangements that the Parties have made or make to enter into Confirmations by means of an electronic matching process.

3. Representations and Warranties

3.1 Each Party represents and warrants to the other that it has obtained and will maintain at all times during the Supply Period all licences, authorisations, permits, consents and other approvals necessary to enable it to fulfil its obligations under the Transaction and that it is and will remain a party to the Code of Operations.

4. IBP Trades

4.1 **IBP Nominations**

- 4.1.1 Each Party shall in respect of a Day within the Supply Period for which the Daily Quantity is greater than zero make an Accurate IBP Nomination;
- 4.1.2 If, on any such Day, the BGT Systems are affected by a Code Contingency and which affects a Party, such Party shall submit its IBP Nomination by the means and in the manner provided for in the Contingency Procedures;
- 4.1.3 IBP Nominations shall be made in kilowatt hours, for which purpose the conversion from Therms shall be calculated in accordance with the following formula:
- $K = 29.3071 \times T$** rounded to the nearest kilowatt hour, an exact half being rounded upwards; where "K" is the quantity expressed in kilowatt hours and "T" is the quantity expressed in Therms;
- 4.1.4 Where in respect of a Day the IBP Nominations submitted by the Parties pursuant to the Transaction are rejected by the Transporter in accordance with Part D1 of the Code of Operations:
- (a) a breach by the Buyer shall be deemed to have occurred if the last Accurate IBP Nomination notified to the Transporter in respect of the Transaction was made by the Seller, and
- (b) a breach by the Seller shall be deemed to have occurred if the last Accurate IBP Nomination notified to the Transporter in respect of the Transaction was made by the Buyer;
- 4.1.5 Where the Transporter has accepted an Accurate IBP Nomination, neither Party shall, unless otherwise agreed by the Parties, amend or withdraw such Accurate IBP Nomination;
- 4.1.6 The Parties shall use their reasonable endeavours to make Accurate IBP Nominations by 1300 hours on the Day before the Gas Flow Day for IBP Nominations and by 0200 hours on the Gas Flow Day for IBP Renominations.

4.2 **IBP Trade: breach by the Seller**

Under Delivery: Save and except in respect of an event of Force Majeure, if for any Day the Seller is in breach of Clauses 4.1.1, 4.1.2 or 4.1.5, and the Daily Quantity exceeds the Delivered Quantity, the Seller shall pay to the Buyer the sum, where positive, of **(STIP-CP) x (DaQ-DeQ)** where "STIP" is the Second Tier Imbalance Price for that Day as determined under Part E, section 1.6.1 (d) (ii) of the Code of Operations, "CP" is the Euro Equivalent of the Contract Price and "DaQ" is the Daily Quantity and "DeQ" is the Delivered Quantity.

Over Delivery: Save and except in respect of an event of Force Majeure, if for any Day the Seller is in breach of Clauses 4.1.1, 4.1.2 or 4.1.5, and the Delivered Quantity exceeds the Daily Quantity, the Seller shall pay to the Buyer the sum, where positive, of **(CP-STIP) x (DeQ-DaQ)** where "STIP" is the Second Tier Imbalance Price for that Day as determined under Part E, section 1.6.1 (d) (i) of the Code of Operations, "CP" is the Euro Equivalent of the Contract Price and "DaQ" is the Daily Quantity and "DeQ" is the Delivered Quantity.

Payment in accordance with the provisions of this Clause 4.2 shall be in Euro and shall be in full and final satisfaction of the rights of the Buyer and the sole remedy available to the Buyer in respect of a breach by the Seller of Clause 4.1 howsoever caused and even where caused by the negligence or breach of duty of the Seller except for any other remedies expressly provided in the Transaction.

4.3 **IBP Trade: breach by the Buyer**

Under Acceptance: Save and except in respect of an event of Force Majeure, if for any Day the Buyer is in breach of Clauses 4.1.1, 4.1.2 or 4.1.5, and the Daily Quantity exceeds the Delivered Quantity, the Buyer shall pay to the Seller the sum, where positive, of $(CP-STIP) \times (DaQ-DeQ)$ where "STIP" is the Second Tier Imbalance Price for that Day as determined under Part E, section 1.6.1 (d) (i) of the Code of Operations, "CP" is the Euro Equivalent of the Contract Price, "DaQ" is the Daily Quantity and "DeQ" is the Delivered Quantity.

Over Acceptance: Save and except in respect of an event of Force Majeure, if for any Day the Buyer is in breach of Clauses 4.1.1, 4.1.2 or 4.1.5, and the Delivered Quantity exceeds the Daily Quantity, the Buyer shall pay to the Seller the sum, where positive, of $(CP-STIP) \times (DeQ-DaQ)$ where "STIP" is the Second Tier Imbalance Price for that Day as determined under Part E, section 1.6.1 (d) (ii) of the Code of Operations, "CP" is the Euro Equivalent of the Contract Price, "DaQ" is the Daily Quantity and "DeQ" is the Delivered Quantity.

Payment in accordance with the provisions of this Clause 4.3 shall be in Euro and shall be in full and final satisfaction of the rights of the Seller and the sole remedy available to the Seller in respect of a breach by the Buyer of Clause 4.1 howsoever caused and even where caused by the negligence or breach of duty of the Buyer except for any other remedies expressly provided in the Transaction.

4.4 **Payment of Compensation**

Any amount due under either Clauses 4.2 or 4.3 may, at the election of the non-breaching Party, be set-off against amounts due or becoming due under Clause 6.

5. **The Contract Price**

In respect of a Transaction:

- 5.1 the Buyer shall pay the Seller in arrears for each IBP Trade a sum calculated by multiplying the Contract Price by the Delivered Quantity;
- 5.2 if applicable, the Buyer shall pay any VAT in relation to each IBP Trade on receipt of appropriate tax invoices from the Seller and shall ensure that all royalties, taxes, duties and other sums legally payable by the Buyer arising as a result of each IBP Trade are paid;
- 5.3 the Seller shall ensure that all royalties, taxes, duties and other sums legally payable by the Seller arising as a result of each IBP Trade are paid;
- 5.4 if in accordance with applicable law, any supplies of Natural Gas under a Transaction are subject to a VAT reverse charge, then the Parties shall do all proper acts and things that are necessary to ensure that the VAT is accounted for to the applicable taxing authority by the Party legally obliged to do so.

6. **Billing and Payment**

- 6.1 On or before the tenth (10th) day of the Month following each Month which is wholly or partly in the Supply Period the Seller shall send to the Buyer a statement ("Monthly

Statement") which shall show for the preceding Month:

- 6.1.1 the quantity of Natural Gas in respect of which IBP Trades have been effected on each Day in that Month;
- 6.1.2 the quantity of Natural Gas in respect of which the Contract Price is payable and the resultant sum owing to the Seller;
- 6.1.3 the Contract Price;
- 6.1.4 any amount owing from one Party to the other or already paid or set-off under Clause 4.4 or 6.7;
- 6.1.5 the net amount payable from one Party to the other after taking into account all the matters set out above, and
- 6.1.6 any applicable VAT and other taxes.
- 6.2 On the twentieth (20th) day of the Month in which the Monthly Statement is received by the Buyer or the tenth (10th) day after receipt, whichever is the later ("the due date"), the Buyer or the Seller, as the case may be, shall pay to the other Party the net amount payable in accordance with the Monthly Statement.
- 6.3 Payment shall be made by the due date in Sterling and in Euro in respect of those payments due under Clause 4 by direct bank transfer or equivalent transfer of immediately available funds to the Party to whom it is due and to the credit of the account specified by that Party.
- 6.4 If the due date for payment is not a Payment Banking Day then payment shall be made on the immediately following Payment Banking Day.
- 6.5 If a Party disputes any sum shown in the Monthly Statement as being payable by that Party, it shall make payment of any undisputed amount on or before the due date for payment and shall give notice of the amount in dispute and the reasons therefor to the other Party. The Parties shall seek to settle the disputed amount as soon as possible.
- 6.6 If a Party fails to pay to the other Party by the due date for payment any amount due:
 - 6.6.1 interest shall be payable on any such Sterling amount at a rate equal to LIBOR plus three (3) percent compounded annually from the date when the payment is due until and including the date the payment is made;
 - 6.6.2 interest shall be payable on any such Euro amount at a rate equal to the 3 month Euribor base lending rate of the European Central Bank as applicable from time to time plus three (3) percent compounded annually from the date when the payment is due until and including the date payment is made;
 - 6.6.3 the Party to whom the amount is due may terminate the Transaction in accordance with Clause 10.2;
 - 6.6.4 the Party to whom the amount is due may, upon notice to the Party who has failed to pay, suspend the Transaction until such time as payment is received.
- 6.7 A Party shall be entitled to set off against any undisputed amounts which it is due to pay to the other Party in respect of any or all Transactions with such Party, any undisputed amounts that it is due to receive from such Party.

7. Force Majeure

- 7.1 If a Party is by reason of Force Majeure rendered unable wholly or in part to carry out its

obligations in accordance with Clause 4, then upon notice in writing of such Force Majeure from the Party affected to the other Party as soon as reasonably practicable after the occurrence of the event or circumstances relied on, the Party affected shall be relieved of liability to the extent that it is in breach by reason of Force Majeure and for the period during which such Force Majeure persists, provided that:

7.1.1 the Party seeking relief under this Clause 7 shall advise the other Party as soon as practicable of the event or circumstance constituting Force Majeure together with its estimate of the likely effect of such Force Majeure on its ability to perform its obligations hereunder and of the likely period of such Force Majeure; and

7.1.2 the Party affected shall use all reasonable endeavours to terminate or overcome the event or circumstance constituting Force Majeure.

7.2 Either Party may terminate a Transaction by giving three (3) Banking Days' notice to the other if Force Majeure in respect of that Transaction continues for seven (7) Days or more. This termination right is in addition to the termination rights set out in Clause 10 and applies in respect of each Transaction with no obligation on the Party to terminate all Transactions. No monies shall be due under Clause 10 or otherwise as a result of such termination and no liability shall remain in respect of the terminated Transaction, save that termination shall not affect any rights or obligations which may have accrued to either Party prior to such termination and any sums that have accrued but which are not yet due shall be deemed to be due on the date of termination.

8. Information and Confidentiality

The terms and conditions of the Transaction and all information provided thereunder shall be treated as confidential and shall not be disclosed without the prior written consent of the other Party, save that consent shall not be required for disclosure:

- 8.1 to directors, employees or Affiliates of either Party, provided that they in turn are required by that Party to treat the information disclosed as confidential;
- 8.2 to persons professionally engaged by, or agents of, either Party, provided that they in turn are required by that Party to treat the information disclosed as confidential;
- 8.3 to any government department or agency having jurisdiction over that Party;
- 8.4 to any bank or other financial institution in relation to the financing of either Party's business activities, provided that the bank or other financial institution, as the case may be, is required by that Party to treat the information disclosed as confidential;
- 8.5 to the extent required by any applicable laws, judicial process or the rules and regulations of any recognised stock or trading exchange;
- 8.6 to any permitted intending assignee of the rights and interests of either Party under the Transaction provided that such intending assignee in turn is required by that Party to treat the information disclosed as confidential;
- 8.7 to the Transporter for the performance of the Transaction;
- 8.8 to the extent that such information is in or lawfully comes into the public domain other than by breach of this Clause 8; or
- 8.9 to price reporting agencies in respect of Contract Price, Supply Period and Daily Quantity only.

9. Assignment

Neither Party shall assign to any person, including any Affiliate, any of its rights or obligations in respect of a Transaction without the written consent of the other Party, which consent shall not be unreasonably withheld.

10. Term and Termination

10.1 The non-defaulting Party may terminate all (but not some only) outstanding Transactions forthwith by giving written notice to the other Party:

10.1.1 in the event of the other Party becoming insolvent, ceasing to trade or having a receiver, liquidator, administrator, administrative receiver or the equivalent appointed over some or all of its assets or if proceedings are commenced for its dissolution or winding up or examinership (other than a voluntary winding up for the purposes of solvent amalgamation or reconstruction) and such proceedings are not withdrawn, stayed or discharged within fifteen (15) days of their commencement; or

10.1.2 in the event of the other Party being in breach of Clause 3; or

10.1.3 in the event of a material adverse change in the financial standing of the other Party when compared to such Party's financial standing as at the date of the Transaction which change affects its ability to perform its financial obligations in respect of the Transaction, and such Party fails to provide reasonable security for the performance of its financial obligations in respect of the Transaction within three (3) Banking Days of the other Party's request therefor.

10.2 The non-defaulting Party may terminate the Transaction by giving written notice to the other Party in the event that other Party:

10.2.1 is materially in breach of any of its obligations under the Transaction provided that the Party in breach has failed to remedy the breach before the expiry of a period of five (5) Banking Days from the date of receipt of notice of such breach from the non-defaulting Party;

10.2.2 fails to pay the amount specified in the Monthly Statement in accordance with Clause 6 provided that the Party in breach has failed to remedy the breach before the expiry of a period of two (2) Banking Days from the date of receipt of notice of such breach from the non-defaulting Party; or

10.2.3 in the event of the other Party failing to provide or maintain security for performance of its financial obligations as agreed from time to time in respect of the Transaction provided that the Party in breach has failed to remedy the breach before the expiry of a period of three (3) Banking Days from the date of receipt of notice of such breach from the non-defaulting Party.

For the purpose of this Clause 10.2 a persistent failure by one Party to make IBP Nominations in respect of a Transaction shall be deemed to constitute a material breach.

10.3 The termination of the Transaction, however occurring, shall not affect any rights or obligations that may have accrued to either Party prior to termination and any sums that have accrued but which are not yet due shall be deemed to be due on the date of termination.

10.4 Upon termination of all outstanding Transactions, the non-defaulting Party shall as soon as reasonably practicable calculate for every Transaction an amount, which may be positive or negative (each a "Termination Amount"). Each Termination Amount shall be an amount equal to the non-defaulting Party's Loss in respect of the terminated Transaction plus (without duplication) the non-defaulting Party's reasonable and documented out of pocket expenses incurred in terminating such Transaction and any broker fees, commission and other third party costs and expenses reasonably incurred by it in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements to replace the terminated Transaction.

- 10.5 Following termination of Transactions in accordance with Clauses 10.1 or 10.2, a Termination Amount in respect of each Transaction, together with all other amounts (if any) due and payable at the termination date between the Parties in respect of all Transactions, shall be netted to produce a single net amount in Sterling which is to be paid by the Party owing such net amount to the other and the Party owing such net amount shall pay such net amount within five (5) Banking Days of notification by the non-defaulting Party (the "due date"). If the aggregate net total of the Termination Amounts is a negative figure, it shall be paid by the non-defaulting Party and if it is a positive figure it shall be paid by the defaulting Party. Interest on any such payments shall accrue at a rate equal to LIBOR plus three (3) percent compounded annually from the date when payment was due until and including the date that payment is made.
- 10.6 The Parties agree that any Termination Amount calculated in accordance with Clause 10.4 is a genuine pre-estimate of the loss that the relevant Party would incur due to the termination of a Transaction.

11. Liabilities

Except as otherwise expressly provided herein, neither Party shall be liable to the other, whether in contract, tort or otherwise at law, for any loss of use, profits, contracts, production, revenue or for business interruption or for any consequential or indirect loss or damage of whatsoever nature and howsoever arising and even where caused by the negligence or breach of duty of either Party.

12. Waiver

A failure or delay by a Party to exercise any right or remedy provided under a Transaction or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under a Transaction or by law shall prevent or restrict the further exercise of that or any other right or remedy.

13. Variation

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

14. Entirety

On signature or electronic acceptance of the Confirmation by both Parties or deemed acceptance of the Confirmation in accordance with Clause 2.4, the Confirmation shall be the entire agreement between the Parties in relation to the Transaction and supersede and extinguish any representations previously given or made other than those included in these terms and conditions and the Confirmation provided that nothing in this Clause 14 shall limit or exclude any liability for fraud.

15. Severability

If any of the provisions of the Transaction are found by a court or authority of competent jurisdiction to be void or unenforceable, such provision shall be deemed to be deleted from the Transaction and the remaining provisions shall continue in full force and effect. The Parties shall in such event seek to agree upon a valid and enforceable provision to replace the provision found to be void or unenforceable.

16. **Notices**

- 16.1 Any notice or other communication to be given or made in respect of the Transaction by one Party to the other shall be given or made in writing to the other at that Party's registered office or such other address or contact number as that Party shall notify to the other from time to time and shall be deemed to have been received:
- 16.1.1 if delivered by hand or courier, on the Banking Day delivered or on the first Banking Day following the date of delivery if delivered on a day other than a Banking Day;
- 16.1.2 if sent by post, on the second Banking Day after the day of posting or, if sent from another country, on the fifth (5th) Banking Day following the day of posting;
- 16.1.3 in the case of a facsimile transmission, on the day of transmission if that day is a Banking Day or on the first Banking Day after transmission if that day is not a Banking Day 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 Clause 16.1.3), if so requested by the other Party, resend the notice as soon as reasonably practicable by facsimile.

- 16.2 Invoices may be transmitted in accordance with Clauses 16.1.1 to 16.1.3 or by email, and if transmitted by email shall be deemed to have been received on the day of transmission if transmitted before 1700 hours (recipient's time) on a Payment Banking Day or otherwise at 0900 hours (recipient's time) on the first Payment Banking Day after transmission.

17. **Applicable Law**

The Transaction shall be governed by and construed in accordance with Irish Law. Any disputes or claims arising out of or in respect of the Transaction (whether such disputes are contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation or otherwise) shall be governed by and construed in all respects by the laws of Ireland. Each Party shall submit to the exclusive jurisdiction of the Irish Courts for the purposes of any such disputes.

CONFIRMATION

INSTRUCTIONS FOR USE

- | | |
|---------------|--|
| SELLER | 1. Complete the Seller's details, name of the Buyer, Supply Period, Daily Quantity, Contract Price and any special conditions.
2. Sign the Confirmation.
3. Send the Confirmation to the Buyer by fax within 3 Banking Days of the transaction. |
| BUYER | 1. On receipt of a Confirmation, check the details. If correct, sign and return to the Seller by fax within 3 Banking Days of receipt of the Confirmation. Refer any inaccuracies to the Seller immediately.
2. IF YOU DO NOT SIGN AND RETURN THE CONFIRMATION WITHIN 3 BANKING DAYS OF RECEIPT, YOU WILL BE DEEMED TO ACCEPT ITS TERMS |

The **SELLER** and the **BUYER** named below hereby agree that this Confirmation confirms the details of an agreement to undertake IBP Trades in accordance with the Short Term Flat Trading Terms and Conditions for Natural Gas Trading at the Irish Balancing Point 2015 and the Code of Operations.

SELLER:.....

BUYER:.....

DELIVERY POINT:.....

SUPPLY PERIOD:.....

DAILY QUANTITY:

CONTRACT PRICE:.....

APPENDIX 1 TERMINATION PROVISIONS: By ticking this box the Parties agree that Clause 1 is supplemented by the definitions in Appendix 1 and that Clause 10 is deleted and replaced by the Clause 10 in Appendix 1.

SPECIAL CONDITIONS:

Date and time of Transaction:

Signed

Signed

.....

.....

Duly Authorised Representative of the Seller

Duly Authorised Representative of the Buyer

Appendix 1 to the Short Term Flat Trading Terms and Conditions for Natural Gas Trading at the Irish Balancing Point (IBP) 2015

1. Definitions and Interpretation

“Argus Gas Price” shall mean the bid price where the non-defaulting Party is the Buyer or the offer price where the non-defaulting Party is the Seller as published on a Day for the remainder of the Supply Period by Petroleum Argus Ltd in Petroleum Argus European Natural Gas;

“Early Termination Payment” shall be an amount payable on termination in accordance with Clauses 10.4, 10.5, 10.6 and 10.7;

“ESGM Gas Price” shall mean the bid price where the non-defaulting Party is the Buyer or the offer price where the non-defaulting Party is the Seller as published on a Day for the remainder of the Supply Period by ICIS in Heren European Spot Gas Markets;

“ICE” shall mean the Intercontinental Exchange;

“ICE Gas Price” shall mean the ICE settlement price as published by the ICE on that Day for the remainder of the Supply Period;

“National Balancing Point” has the meaning given to it in the Uniform Network Code;

“Pricing Indices” shall mean the Argus Gas Price and the ESGM Gas Price and the ICE Gas Price;

10. Term and Termination

10.1 The non-defaulting Party may terminate the Transaction forthwith by giving notice to the other Party:

10.1.1 in the event of the other Party becoming insolvent, ceasing to trade or having a receiver, liquidator, administrator or administrative receiver appointed over some or all of its assets or if proceedings are commenced for its dissolution or winding up or examinership (other than a voluntary winding up for the purposes of solvent amalgamation or reconstruction); or

10.1.2 in the event of the other Party being in breach of Clause 3; or

10.1.3 in the event of the other Party failing to provide or maintain security for performance of its financial obligations as agreed at the date of the Transaction; or

10.1.4 in the event of a material adverse change in the financial standing of the other Party when compared to such Party's financial standing as at the date of the Transaction which change affects its ability to perform its financial obligations in respect of the Transaction, and such Party fails to provide reasonable security for the performance of its financial obligations in respect of the Transaction within three (3) Banking Days of the other Party's request therefor.

10.2 The non-defaulting Party may terminate the Transaction by giving five (5) Banking Days' notice to the other Party in the event that other Party:

10.2.1 is materially in breach of any of its obligations under the Transaction;

10.2.2 fails to pay the amount specified in the Monthly Statement in accordance with Clause 6: provided that the Party in breach has failed to remedy the breach before expiry of the notice period. In the case of the breach being remedied, the notice is deemed not to have been given.

For the purpose of this Clause 10.2 a persistent failure by one Party to make IBP Nominations in respect of a Transaction shall be deemed to constitute a material breach.

- 10.3 The termination of the Transaction, however occurring, shall not affect any rights or obligations that may have accrued to either Party prior to termination.
- 10.4 Following termination in accordance with Clauses 10.1.1, 10.1.2 or 10.2, one Party shall pay to the other the Early Termination Payment within five (5) Banking Days of notification of the amount of the Early Termination Payment in accordance with Clauses 10.5, 10.6 and 10.7.
- 10.5 The Early Termination Payment shall be the amount (if any) calculated by the non-defaulting party as follows:

(MV - RV) - I where the non-defaulting party is the Buyer, or
(RV - MV) - I where the non-defaulting party is the Seller

where:

- (a) Subject to Clause 10.6, where the non-defaulting Party is the Buyer, MV is the market value of the Transaction calculated as follows:

sum of (D x DQ) X GRP + T

where:

“D” is the number of Days from the date of termination to the end of the Supply Period on which the Parties had agreed in accordance with the Transaction to enter into IBP Trades;

“DQ” is the Daily Quantity for each D;

“GRP” is the Gas Reference Price, which is the average of the Pricing Indices published on the date of termination for each D.

“T” is such Sterling Equivalent Transportation Costs as the Buyer reasonably incurs or would reasonably incur (using all reasonable endeavours to mitigate such costs) under the Code of Operations and Uniform Network Code if it replaced the Transaction from the date of termination to the end of the Supply Period with Natural Gas purchases equal to the DQ for each Day at the National Balancing Point in Great Britain which would have the effect of preserving for the non-defaulting Party the economic equivalent of the material terms of that Transaction which would have accrued to the non-defaulting Party under that Transaction had it not been terminated.

- (b) Subject to Clause 10.6, where the non-defaulting Party is the Seller, MV is the market value of the Transaction calculated as follows:

sum of (D x DQ) X GRP - T

where:

“D” is the number of Days from the date of termination to the end of the Supply Period on which the Parties had agreed in accordance with the Transaction to enter into IBP Trades;

“DQ” is the Daily Quantity for each D;

“GRP” is the Gas Reference Price, which is the average of the Pricing Indices published on the date of termination for each D.

“T” is such Sterling Equivalent Transportation Costs under the Code of Operations and Uniform Network Code as the Seller reasonably incurs or would reasonably incur (using all reasonable endeavours to mitigate such costs) if it replaced the Transaction from the date of termination to the end of the Supply Period with Natural Gas sales equal to the DQ for each Day at the National Balancing Point in Great Britain using the virtual reverse flow product in the Code of Operations which would have the effect of preserving for the non-defaulting Party the economic equivalent of the material terms of that Transaction which would have accrued to the non-defaulting Party under that Transaction had it not been terminated.

(c) “RV” is the remaining contract value calculated as follows:

$$(D \times DQ) \times CP$$

Where:

“D” is the number of Days from the date of termination to the end of the Supply Period on which the Parties had agreed in accordance with the Transaction to enter into IBP Trades;

“DQ” is the Daily Quantity for each D;

“CP” is the Contract Price:

(d) “I” is the amount by which the sum of MV-RV or RV-MV as applicable is discounted to reflect the present day value as at the termination date. The rate of interest for the purpose of this calculation shall be equal to LIBOR as quoted at the date of termination or the first Banking Day after the date of termination from the due date for payment of each future invoice and the deemed due date for payment of future invoices shall be the 20th of each month.

10.6 Where none or only one of the Pricing Indices is available to calculate the Early Termination Payment, then the Early Termination Payment shall be calculated by taking the average of three reasoned quotations such reasons to be reasonable, from three experts appointed by the non-defaulting Party.

10.7 Upon the Non-Defaulting Party calculating the Early Termination Payment, it shall promptly provide to the Defaulting Party a statement showing, in reasonable detail: (i) such calculations (including Pricing Indices and Transportation Costs under the Code of Operations and Uniform Network Code used in the calculation of the Early Termination Payment) and (ii) the amount due from each Party to the other.