

## UNIFORM NETWORK CODE – OFFTAKE ARRANGEMENTS DOCUMENT

### SECTION N

#### GENERAL

#### 1 General

##### 1.1 Introduction

1.1.1 This Section N sets out provisions (applicable for the purposes of this Document, in addition to the General Terms) as to:

- (a) the interpretation of references to a Party in this Document;
- (b) the basis on which a person may become or cease to be a Party;
- (c) confidentiality as between Parties;
- (d) the liability of Parties;
- (e) dispute resolution; ~~and~~
- (f) other matters of a general nature.

1.1.2 In this Offtake Arrangements Document, references to:

- (a) this "Document" are to this Offtake Arrangements Document;
- (b) the date of this Document are to the UNC Implementation Date.

##### 1.2 Subsidiary Documents

1.2.1 In this Document, "Offtake Subsidiary Offtake Document" means each of the following documents:

- (a) the SCO Interface Procedures (referred to in Section C3);
- (b) the Offtake Communications Document (referred to in Section M);
- (c) the Validation Procedures (referred to in Section D3);
- (d) ~~the~~ Emergency Procedures E2 (referred to in Section C2.3);
- (e) ~~the~~ the document TD76 (referred to in Section H1.3.1);
- (f) any other document which may be specified or may be agreed by the Parties to be a Offtake Subsidiary-Offtake Document

1.2.2 The version of each the Offtake Subsidiary-Offtake Documents prevailing at the date of this Document is the version issued by Transco plc on or before the date of this Document.

1.2.3 The Offtake Committee shall keep each Offtake Subsidiary Document under review.

1.2.4 Any Party may propose a modification to an Offtake Subsidiary Document, ~~except that Transeo NTS may not propose a modification to an Offtake Subsidiary Document which (in accordance~~

~~with an express provision of this Document) is established by the Offtake Committee on behalf of DNOs}.~~

- 1.2.5 The Offtake Committee shall establish and implement the procedure to be adopted in relation to a proposal to modify an Offtake Subsidiary Document
- 1.2.6 A modification of an Offtake Subsidiary Document shall be made by the decision (in accordance with paragraph 8.5) of the Offtake Committee and not otherwise.
- 1.2.7 The Parties shall comply with the Offtake Subsidiary Documents.

## **2 Parties**

### **2.1 Parties**

- 2.1.1 In accordance with GT Section ~~4.5.2.2~~ 4.5.2.2(b), references in this Offtake Arrangements Document to a Party are to a Transporter.
- 2.1.2 A reference in this Document to a Party shall be construed as a reference:
  - (a) in the context of any Supplemental Agreement, to a Party which is party to that agreement;
  - (b) in the context of any Offtake, to a Party whose System is connected to another System at that Offtake; and
  - (c) in the context of an Offtake Site, to a Party whose System is connected to another System at an Offtake located at that Offtake Site.

### **2.2 Participation capacities**

- 2.2.1 In this paragraph ~~4.5.2.2~~, "participation capacity" means the capacity of a Party as ~~for a DNO or in relation to a particular Distribution Network, or as~~ Transco NTS, under this Document.
- 2.2.2 Where for the time being a person which is a Party has more than one participation capacity under this Document, such person shall:
  - (a) account for any payments to be made by it in each participation capacity (including payments to itself in another participation capacity);
  - (b) secure that accounting records are maintained sufficient to allow separate identification of the payments referred to in paragraph (a) and the calculation of the amounts of such payments;
  - (c) record, in relation to any Offtake in relation to which it is upstream Party in one participation capacity and downstream Party in another:
    - (i) the details (and changes in the details) from time to time required to be contained in a Supplemental Agreement; and
    - (ii) such other matters as may be or are required to be agreed between the Parties by any provision of this Document; and

- (d) ~~(e)~~ conduct operations under this Document separately (and in particular nominate separate personnel to give and receive Offtake Communications pursuant to Sections ~~[G, H, I, J and K]~~) in respect of each participation capacity.

~~2.2.3 [Further provisions?]~~

### **3 Supplemental Agreements**

#### **3.1 General**

- 3.1.1 For the purposes of this Document a "**Supplemental Agreement**" is an agreement between the Parties whose Systems are connected at an Offtake, setting out details of that Offtake (as required by this Document).
- 3.1.2 Each Supplemental Agreement shall be in the form in [the Part 1 \(for an NTS/LDZ Offtake\) or Part 2 \(for an LDZ/LDZ Offtake\) of](#) the Appendix to this Document or in such other form as the Parties may agree.
- 3.1.3 Subject as provided in this Section N, a Supplemental Agreement shall be treated as forming, as between the Parties to the Agreement, a part of the contractual relationship between the Parties existing pursuant to this Document and the Transporters Framework Agreement.
- 3.1.4 In any Supplemental Agreement (unless it otherwise provides) terms defined in or for the purposes of this Document and not otherwise defined in such Supplemental Agreement shall have the meanings given to such terms in or for the purposes of this Document.

#### **3.2 Amendment of Supplemental Agreements**

- 3.2.1 A Supplemental Agreement may be amended by agreement of the Parties and not otherwise; and accordingly, a Supplemental Agreement shall not be subject to modification pursuant to the Modification Rules (but without prejudice to any modification of any provisions of this Document which apply to or are incorporated into such Supplemental Agreement).
- 3.2.2 The Parties to a Supplemental Agreement are required (by certain provision of this Document) to amend the Supplemental Agreement to reflect and record changes in relation to the Offtake; and undertake to make such amendments promptly and in accordance with this Document.
- 3.2.3 Where any amendment of a Supplemental Agreement is required (pursuant to this Document) to be made with effect from any date, this Document shall take effect in relation to the relevant Offtake as if such amendment had been made notwithstanding any failure or delay in amending such Supplemental Agreement.

#### **3.3 Execution and Amendment of Supplemental Agreements**

- 3.3.1 Whenever any Parties are required pursuant to this Document to enter into a new Supplemental Agreement, or to amend an existing Supplemental Agreement, [unless the Parties otherwise agree](#):
- (a) the downstream Party shall promptly provide such information (relating to the Offtake) as the upstream Party may request for the purposes of preparing the draft Supplemental Agreement;
  - (b) the upstream Party shall, [within 10 Business Days after receiving the requested information from the downstream Party](#), prepare a draft of the Supplemental Agreement

or amendment thereof and submit the draft to the downstream Party for the downstream Party's approval;

- (c) the downstream Party shall reply, within 10 ~~business days~~Business Days after receiving the draft Supplemental Agreement, either approving the draft or specifying any proposed revision of the draft;
- (d) if the upstream Party does not approve any revisions proposed by the downstream Party, the Parties shall promptly meet with a view to resolving the matter (failing which the ~~matter shall be treated as a dispute for the purposes of [GT Section A]~~matter may be resolved by a determination of either Party with Condition A11(18) Approval.

3.3.2 Following approval by each Party of the draft or revised draft Supplemental Agreement (or resolution of any dispute relating thereto) the upstream Party shall prepare a final version which shall be executed by both Parties.

### 3.4 Modification of form of Supplemental Agreements

3.4.1 For the avoidance of doubt:

- (a) a Supplemental Agreement is not a part of the Code and may not be modified pursuant to a Code Modification; and
- (b) the forms (in the Appendix to this ~~Offtake Arrangements~~ Document) of the Supplemental Agreement may be modified (or further alternative such forms may be included) pursuant to a Code Modification, but such modification shall have no effect as respects any Supplemental Agreement entered into before such modification.

## 4 Admission

### 4.1 Conditions for admission

4.1.1 A person ("New DNO") may become a Party in the capacity of a DNO, if the conditions in paragraph 4.1.2 are satisfied in relation to such person, subject to and in accordance with paragraph 4.2.

4.1.2 The conditions are that, with effect from the date from which the New DNO is to become a Party:

- (a) the New DNO will be the operator of an LDZ;
- (b) the New DNO will be licensee under a Transporter's Licence;
- (c) the ~~Transporters~~New DNO will have prepared a Network Code of;
- (d) the New DNO's Network Code will be made binding between the New DNO and Users pursuant to a Shippers Framework Agreement (whether by assignment or novation or the entry into a new Shippers Framework Agreement); and
- (e) ~~(d)~~ such modifications (if any) of the Code as are necessary to reflect the participation of the New DNO as a Party have been made and taken effect.

### 4.2 Requirements for admission

4.2.1 In order to become a Party, the New DNO shall:

- (a) satisfy or secure the satisfaction of the requirements in paragraph 4.2.2; and
- (b) accede to the Transporters Framework Agreement by executing and delivering to Transco NTS an Accession Agreement and thereby agree to be bound by this Document.

4.2.2 The requirements referred to in paragraph 4.2.1(a) are as follows:

- (a) the New DNO shall have applied to Transco NTS, in such form as the Offtake Committee may from time to time prescribe, giving the following details:
  - (i) the name of the New DNO;
  - (ii) the legal nature of the New DNO and, where the New DNO is not a company incorporated under the Companies Act 1985 (as amended), such further information concerning the constitution of the New DNO as Transco NTS may reasonably require;
  - (iii) the address, telephone and facsimile numbers of the New DNO, and the individual for whose attention notice is to be marked, for the purposes of notice under ~~GT Section B7(Notices)~~5.2.3; and
  - (iv) where the New DNO is not a company incorporated under the Companies Act 1985 (as amended), an address for service in accordance with ~~GT Section A7B6.7.3~~;
- (b) the New DNO shall have obtained from the Offtake Committee one or more copies of the Subsidiary Documents and such other documents referred to in this Document or the Transporters Framework Agreement as the Committee shall from time to time prescribe for the purposes of this paragraph 4.2.2(b);
- (c) the New DNO has entered into or has had assigned or novated to it Supplemental Agreements with the relevant Party in respect of each Offtake relating to the LDZ of which it is operator as required by this Document; and
- (d) the New DNO has satisfied any requirements which may apply under the Offtake Communications Document.

### 4.3 Effectiveness of accession

- 4.3.1 Where any New DNO is to be admitted pursuant to this paragraph 4, each Party hereby irrevocably and unconditionally authorises Transco NTS to execute and deliver on behalf of such Party an Accession Agreement ~~(in the form in Annex N-1)~~set out in the Transporters Framework Agreement and to admit such New DNO as a Party.
- 4.3.2 The New DNO will become a Party with effect from the day which is ~~three Working Business Days~~ after the last of the requirements in paragraphs 4.2.1 and 4.2.2 above are satisfied.
- 4.3.3 Upon the New DNO becoming a Party to this Document pursuant to paragraph ~~4.3.14.3.2~~4.3.14.3.2 above, the Offtake Committee shall so notify:
  - (a) the New DNO, specifying the names of all existing Parties and their prevailing notice details in accordance with ~~GT Section B7(Notices)~~5.2.3; and

- (b) all other Parties, specifying the name of the New DNO, its notice details provided under paragraph 4.2.2(a)(iii) above and the effective date of its becoming a Party in accordance with paragraph ~~3.3.1.4.3.2.~~

## 5 ~~Default~~Cessation, withdrawal and termination

### 5.1 Withdrawal

5.1.1 A DNO ("withdrawing DNO") may cease to be a Party where the following conditions are, or will (with effect from its ceasing to be a Party) be, satisfied:

- (a) the withdrawing DNO has ceased to be the operator of any LDZ;
- (b) the withdrawing DNO is not bound to be a Party by the conditions of a Transporter's Licence;
- (c) the withdrawing DNO is not bound by the Code pursuant to any Shippers Framework Agreement;
- (d) all Supplemental Agreements to which the withdrawing DNO is party have been assigned or novated to another Party or have been terminated;
- (e) there are no financial or other liabilities or obligations (whether accrued, outstanding or contingent) of the withdrawing DNO to any other Party under this Document;

~~(f) [other?].~~

5.1.2 Where a DNO wishes to cease to be a Party:

- (a) it shall give notice to the Offtake Committee specifying the date with effect from which it wishes to cease to be Party;
- (b) with effect from the specified date, provided the conditions in paragraph 5.1.1 are satisfied, the withdrawing DNO shall cease to be a Party;
- (c) if the conditions in paragraph 5.1.1 are not satisfied at the specified date, the withdrawing DNO's notice under paragraph 5.1.2(a) shall lapse and be of no effect.

### 5.2 Termination

5.2.1 The Parties acknowledge that:

~~(a) — this Document currently contains no provision under which a Party may be required to cease to be a Party in any circumstances;~~

~~(b) — that a Code Modification might be made to introduce provision.~~

### ~~5.3 — Event of Default~~

~~[Consider provision for notification of event of default to the Authority.]~~

### 5.3 ~~5.4~~ Effect of ~~termination~~cessation

Any rights and obligations of any Party which are accrued and outstanding at the date of a Party's ceasing to be a Party (pursuant to any provision of this Document) shall survive and continue to be enforceable notwithstanding such cessation.

## **6 Information and Confidentiality**

### **6.1 Protected Information**

6.1.1 In this paragraph 6, **Protected Information** means:

- (a) any information relating to the affairs of a Party (the "**Protected Party**") which is obtained by another Party (the "**Receiving Party**") pursuant to or in course of the implementation or performance of this Document, the Transporters Framework Agreement or any Supplemental Agreement to which that Party is party; and
- (b) the terms of any Supplemental Agreement to which the Protected Party and the Receiving Party are party.

6.1.2 The terms of the Code and the Transporters Framework Agreement are not Protected Information.

6.1.3 For the avoidance of doubt, the provisions of this Document are without prejudice to the requirements of the Data Protection Act 1984.

### **6.2 Obligations**

6.2.1 The Receiving Party shall secure that Protected Information is not:

- (a) disclosed to any person other than:
  - (i) an officer or employee of the Receiving Party whose province it is to know the same; or
  - (ii) a professional adviser of or consultant to the Receiving Party; or
  - (iii) without prejudice to any requirement under the Receiving Party's Licence, any ~~10% Affiliate~~ (other than an Affiliate which is the holder of a gas shipper's licence or a gas supplier's licence) of the Receiving Party;

in any such case in accordance with the requirements of paragraph ~~6.46.3~~ below; or

- (b) used by the Receiving Party for any purpose other than carrying on the Permitted Activities.

6.2.2 In relation to the Receiving Party, "**Permitted Activities**" means the carrying on of transportation business (as defined in the Receiving Party's Transporter's Licence(s)), the operation, administration, maintenance and development of the Receiving Party's System, and the implementation and performance of the Code, any Framework Agreement and any Supplemental Agreement.

### **6.3 Terms of Permitted Disclosure**

6.3.1 Where Protected Information is disclosed by the Receiving Party as permitted under paragraph 6.2.1(a), the Receiving Party shall (without prejudice to its obligations under paragraph 6.2) take all reasonable steps to secure that the person to whom the information is disclosed:

- (a) is aware of the Receiving Party's obligations under this paragraph 6 in relation thereto; and
- (b) does not use or disclose the information other than as is permitted of such Party in accordance with paragraph ~~6.2.2~~6.2.1(b) and ~~6.5~~6.7.3.

#### **6.4 Exceptions**

6.4.1 Nothing in paragraph 6.2 or 6.3 shall apply:

- (a) to the disclosure or use by the Receiving Party of Protected Information to which the Protected Party has consented in writing;
- (b) to any Protected Information which:
  - (i) before it is obtained by the Receiving Party is in the public domain; or
  - (ii) after it is obtained by the Receiving Party enters the public domain;in either case otherwise than as a result of a breach by the Receiving Party of its obligations under paragraph 6.2 or 6.3;
- (c) to the disclosure of any Protected Information to any person if and to the extent that the Receiving Party is required to make such disclosure to such person:
  - (i) in compliance with the duties of the Receiving Party under the Act or any other requirement of a Competent Authority; or
  - (ii) in compliance with the conditions of the Transporter's Licence(s) held by the Receiving Party or any document referred to in such licence with which the Receiving Party is required by virtue of the Act or such licence to comply; or
  - (iii) in compliance with any other Legal Requirement; or
  - (iv) in response to a requirement of any stock exchange or regulatory authority or the Panel on Take-overs and Mergers; or
  - (v) pursuant to any provision of ~~GT Section A~~ or pursuant to any judicial or other arbitral process or tribunal having jurisdiction in relation to the Receiving Party; ~~or~~
- (d) to any Protected Information to the extent that the Receiving Party is expressly permitted or required to disclose that information under the terms of any agreement or arrangement made with the Protected Party or to which it is party (including this Document, the Transporters Framework Agreement and any Supplemental Agreement to which the Protected Party is a party);
- (e) to the disclosure of Protected Information to any lending or other financial institution proposing to provide or arrange the provision of finance to the Receiving Party, where and to the extent the disclosure of such information is reasonably required for the purposes of the provision or arrangement of such finance, and provided that the person to whom the information is disclosed undertakes in writing to and in terms reasonably satisfactory to the Protected Party to maintain the confidentiality of such information;
- (f) to the disclosure of any Protected Information to the Authority, where the Receiving Party considers in good faith that the Protected Party may be in breach of a condition of

the Protected Party's Licence, to the extent reasonably necessary to draw such possible breach to the attention of the Authority; ~~or~~

~~(g) to the disclosure of any Protected Information to an agent or contractor of the Receiving Party where the contractor has entered into a confidentiality agreement with the Receiving Party on terms no less onerous than those of paragraphs 6.1 to 6.6.~~

## 6.5 Survival

~~6.5.1~~ The provisions of this paragraph 6 above shall continue to bind a Party (and in relation to such Party, each other Party) for a period of ~~{three years}~~ after the Party ceases to be a Party pursuant to paragraph 5.

## 6.6 No Disclosure in Breach of Licence

~~6.6.1~~ Nothing in this Document, the Transporters Framework Agreement or any Supplemental Agreement shall be construed as requiring a Party to disclose or use any information in breach of any requirement of the Party's Transporter's Licence(s).

## ~~6.7~~ ~~References to Party~~

~~For the purposes of paragraphs 6.1 to 6.6, a person which operates more than one System and/or holds more than one Transporter's Licence shall be considered to be a single Party.~~

## ~~6.7~~ ~~6.8~~ Data ownership

~~6.8.1~~ ~~[In the event of any conflict between this paragraph 6.8 and any provision of the Agency Services Agreement or Joint Governance Agreement, the relevant provision of the Agency Services Agreement or Joint Governance Agreement shall prevail.]~~

~~6.7.1~~ ~~6.8.2~~ For the purposes of this paragraph ~~6.8~~ 6.7. "data":

- (a) ~~data~~ includes measured data, demand forecasts, OPNs, ~~and includes any data comprised in any {offtake communication};~~ Offtake Communication; and
- (b) ~~data~~ relates to a System where it relates to or is derived from that System, or Measurement Equipment or Connection Facilities installed by the Party which operates that System, or a User ~~as user~~ of that System.

~~6.7.2~~ ~~6.8.3~~ As between the Parties, data which:

- (a) relates to a System; ~~and~~
- (b) is provided pursuant to this Document by the Party which operates that System to another Party; ~~and~~

shall belong to the Party which operates that System.

~~6.7.3~~ ~~6.8.4~~ Where pursuant to this Document a Party (the "data Party") provides data to another Party (the "receiving Party"):

- (a) the data Party grants to the receiving Party a perpetual, non-exclusive, royalty-free licence (which shall survive the data Party ceasing to be a Party) in respect of such data and all intellectual property rights therein to use, copy, adapt and deal with such data for the purposes of the Permitted Activities ~~{but not otherwise};~~ and

- (b) data (including any compilation of data) which is derived by the receiving Party from the data provided by the data Party, pursuant to any process carried out by the receiving Party pursuant to the licence under paragraph (a)), shall belong to the receiving Party.

## 7 Liability

### 7.1 Responsibility for Loss and Liability

7.1.1 For the purposes of this paragraph 7, in relation to a Party, "**Loss and Liability**" means all and any of the following:

- (a) any loss or damage to:
  - (i) that Party's property (including any part of its System); or
  - (ii) the property of that Party's officers, employees, agents and Affiliates;  
  
(whether or not such loss or damage occurs when such property is located on or has been brought onto part of an Offtake Site or other land which is owned or occupied by another Party);
- (b) liability in connection with any injury to or death of any of that Party's officers, employees or agents (whether or not such injury or death occurs when such any such office, employee or agent is on part of an Offtake Site or other land which is owned or occupied by another Party);
- (c) subject to paragraphs (a)(ii) and (b), any liability to or claim by any third party:
  - (i) which arises from or in connection with (or with the operation of or failure to operate) that Party's System, including any Connection Facilities installed by that Party; or
  - (ii) which arises under any contract or pursuant to any other commitment made by that Party to a third party (including pursuant to the Transportation Principal Document);
- (d) all claims, damages, awards, costs, expenses and other liability in connection with any of the foregoing.

7.1.2 Subject to paragraph 7.2, each Party shall be responsible for its own Loss and Liability, irrespective of whether any such Loss and Liability results from:

- (a) the breach by any other Party of any provision of this Document; or
- (b) any act or omission (negligent or otherwise) by any other Party, or any officer, employee, agent or Affiliate of another Party, in the course of the performance of or otherwise in connection with the subject matter of this Document.

7.1.3 In accordance with paragraph 7.1.2 (but subject to paragraph 7.2), each Party (the "first" Party):

- (a) waives any rights and remedies against any other Party (or any officer, employee, agent or Affiliate of another Party), and releases each other Party (and its officers, employees, agents and Affiliates) from any duties or liabilities, in contract, tort (including negligence), misrepresentation or otherwise, in respect of the first Party's Loss and Liability; and

- (b) undertakes to indemnify and hold harmless each other Party (and its officers, employees, agents and Affiliates) from and against any Loss and Liability of the first Party, and all liability, loss, damages, claims, costs and expenses in connection with any Loss and Liability of the first Party.
- 7.1.4 Without prejudice to the generality of paragraph 7.1.2, but subject to paragraph 7.2, no Party shall in any circumstances be liable in respect of any breach of this Document, the Framework Agreement or any Supplemental Agreement to any other Party for:
- (a) any increased cost of working; or
- (b) any loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill;
- (c) any indirect or consequential loss; or
- (d) loss resulting from the liability in damages of the other Party to any other person howsoever and whensoever arising.
- 7.1.5 Each Party (the "first" Party) shall be responsible for determining whether to insure, and (if so) in respect of what risks and for what amounts to insure, its System and the risk of its Loss and Liability; provided that each Party shall obtain (from its insurers) an effective waiver of rights of subrogation against any other Party in respect of the first Party's Loss and Liability, and shall at all times provide such evidence as any other Party may require that such waiver of subrogation has been obtained and is in force.
- 7.1.6 In the event of any conflict between this paragraph ~~7.1.1~~ and any provision of the Agency Services Agreement, Joint Governance Arrangements Agreement or SOMSA, the relevant provision of the Agency Services Agreement, Joint Governance Agreement or SOMSA shall prevail.
- 7.1.7 In this paragraph 7.1:
- (a) references to a Party's agent do not include the Transporters' Agent;
- (b) "third party" means any person other than a Party, or any officer, employee or agent of a Party (and for the avoidance of doubt includes any User).
- 7.1.8 ~~Exclude disapplication of CRTPA for purposes of 7.1GT Section B6.5.1 shall not apply in relation to the terms in paragraph 7.1.3(a) which may accordingly be enforced by a Party's officers, employees, agents and Affiliates<sup>2</sup>, but without prejudice to GT Section B6.5.2.~~

## 7.2 Qualifications

- 7.2.1 ~~Nothing~~Without prejudice to the provisions of paragraphs 7.1.2 and 7.1.3, nothing in this Document or any Supplemental Agreement shall exclude or limit the liability of any Party to any person for death of or personal injury to that person resulting from the negligence of such Party.
- 7.2.2 Paragraph 7.1 is without prejudice to any provision of the Code which provides for any Party to make a payment to another Party (including a requirement to pay or reimburse another Party's costs), or which provides for an indemnity.
- 7.2.3 Nothing in this paragraph 7 shall prevent a Party from or restrict it in enforcing any obligation (including suing for a debt) owed to it under or pursuant to this Document, any Supplemental Agreement or the Framework Agreement.

- 7.2.4 Nothing in paragraph 7.1 shall constitute a waiver by any Party of any right or remedy it may have:
- (a) ~~{(other than pursuant to the Code, or any condition of a Transporter's Licence requiring compliance with the Code) in respect of a breach by another Party of any Legal Requirement;}~~or
  - (b) in respect of the fraud of another Party.

### **7.3 Further provisions**

- 7.3.1 Where this Document provides for any amount to be payable by a Party upon or in respect of that Party's breach of any provision of this Document:
- (a) each Party agrees and acknowledges that such provision has been the subject of discussion and negotiation, and that the amount provided to be payable represents no more than a genuine pre-estimate of the loss of the Party to which such amount is payable;
  - (b) ~~{without prejudice to the generality of paragraph 7.1, each Party agrees and acknowledges that the remedy conferred by such provision is exclusive of and in substitution for any remedy in damages in respect of such breach or the event or circumstance giving rise thereto.}~~
- 7.3.2 Each Party agrees that the provisions of this paragraph 7 have been the subject of discussion and negotiation and are appropriate, fair and reasonable having regard to the circumstances as at the date of this Document.

## **8 Offtake Committee**

### **8.1 Establishment**

- 8.1.1 There shall be and is hereby established a Sub-committee of the UNC Committee to be known as the Offtake Committee.
- 8.1.2 The Offtake Committee shall be composed of the members of the UNC Committee from time to time appointed by the Transporters, or their nominees in accordance with paragraph ~~{8.1.3}~~8.1.3 (and references in this paragraph 8.1.2 to members of the Offtake Committee shall be construed accordingly).
- 8.1.3 Each member appointed by a Transporter may from time to time designate a nominee to be a member of the Offtake Committee in his place.
- 8.1.4 It is expected that each member of the Offtake Committee shall represent, and inform the Offtake Committee of, the views of its appointing Party in relation to matters the subject of the Offtake Committee's functions.

### **8.2 Chairman**

- 8.2.1 ~~The member appointed by one of the Parties (chosen by rotation between the Parties, in the alphabetic order of their company names, upon expiry of the existing Chairman's term or when a vacancy arises) shall be chairman of the Offtake Committee. The Transporters shall appoint a person (who may but need not be a member appointed under paragraph 8.1.2) from time to time to be Chairman of the Committee.~~

~~8.2.2 The term of appointment of a person as Chairman shall be one (1) year, subject to paragraph 2.3.3.~~

~~8.2.3 The retirement (except in a case of casual vacancy) of one Chairman, and the appointment of a new Chairman, shall take effect from the start of the first meeting of the Committee following the expiry of the existing Chairman's term or (as the case may be) such vacancy occurring.~~

~~8.2.2~~ 8.2.4 The Chairman shall not have a second or casting vote at Offtake Committee meetings.

~~8.2.3~~ 8.2.5 The Chairman shall chair meetings of the Offtake Committee and shall have such other functions if any as the Offtake Committee shall decide.

### **8.3 Functions of the Offtake Committee**

8.3.1 The Offtake Committee shall have the powers, duties and functions assigned to it by or under this Document.

8.3.2 The functions of the Offtake Committee shall include:

- (a) decisions in relation to the admission of new Parties under paragraph 4 or the withdrawal of a Party under paragraph 5.1; and
- (b) the review and modification of the Offtake Subsidiary Documents in accordance with paragraph 1.2.

8.3.3 Except as otherwise provided in this Agreement, the Offtake Committee shall have no ability to determine any matter and no competence to discharge any function or to exercise any power.

8.3.4 The Offtake Committee shall not, and no member (by virtue only of being a member) of the Offtake Committee shall, have the power or authority to bind any Party, other than by virtue of the effect, for the purposes of this Document, of the Offtake Committee's decisions in relation to matters within the scope of its functions.

### **8.4 Proceedings of the Offtake Committee**

8.4.1 The Offtake Committee shall determine the rules and procedures which govern its proceedings and the convening and conduct of its meetings (including the frequency of its regular meetings).

8.4.2 Any meeting of the Offtake Committee may be attended by a representative of the Authority ~~[and others]~~, who for the avoidance of doubt shall not have a vote at such meeting.

8.4.3 In respect of any matter to be decided by the Offtake Committee at any meeting of the Offtake Committee, each member shall have one vote, subject to paragraph 8.4.4.

8.4.4 In respect of any matter which (pursuant to an express provision of this Document) is to be decided by the Offtake Committee on behalf of the DNOs, the member appointed by Transco NTS shall not have a vote.

### **8.5 Decisions of the Offtake Committee**

8.5.1 Decisions of the Offtake Committee shall be made by the affirmative vote of all members present at a validly called meeting of the Offtake Committee at which at least two (2) members are present, of whom at least one is a member appointed by a Party other than Transco (and references to the unanimous decision of the Offtake Committee shall be construed accordingly).

8.5.2 In respect of any matter in relation to which a unanimous decision is not reached by the Offtake Committee at a meeting at which such matter is considered, unless the Offtake Committee decides to defer further consideration of such matter to a later meeting:

- (a) any member may (by notice to each Party) require that the matter shall be referred to a ~~{director}~~ of each of the Parties for determination, in which case the Parties shall ensure that their nominated directors meet to consider the matter;
- (b) if the Parties do not reach a unanimous decision in relation to the matter within ~~{10}~~ Business Days after such notice, ~~{any Party may determine the matter with Condition {A11(18)} Approval}~~.

8.5.3 The Parties shall ensure that minutes of the Committee's meetings and records of its proceedings are kept and made available to each Representative and each Party.

## ~~9~~ Assignment

~~9.1~~ A Party shall not be entitled to assign or transfer its rights under this Document, except in accordance with the further provisions of this paragraph 9.

~~9.2~~ A Party shall be entitled to assign its rights under this Document pursuant to paragraph 9.3 below with the consent of each other Party ~~[such consent not to be unreasonably withheld or delayed]~~.

~~9.3~~ No assignment shall be made to a person unless:

- ~~(a)~~ where the assigning Party is ~~Transeo NTS~~, that person holds a ~~[relevant gas transporter's licence]~~ in relation to the ~~NTS~~; and
- ~~(b)~~ where the assigning Party is a ~~DNO~~, that person holds a ~~[relevant gas transporter's licence]~~ in relation to an ~~LDZ~~.

~~{Consider allowing novation to a person which has become a Party of rights and obligations in relation to a System}~~

## 8.6 Offtake Sub-committees

8.6.1 The Offtake Committee may establish sub-committees, and may set the terms of reference and procedural rules for and delegate any matter to such a sub-committee.