

*Version 1.1 dated 1 January 2010*

**TERMS AND CONDITIONS**

**for**

**TRANSPORTATION**

**of**

**GAS**

**in**

**DONG NATURGAS'**

**OFFSHORE PIPELINES**

**to**

**the Danish West Coast**

(These Terms and Conditions are only valid for third party access to the existing facilities)

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## 1 DEFINITIONS ETC.

### 1.1 Applicability

The objective of these Terms and Conditions is to regulate the rights and obligations of the Parties with regard to the provision and use of Transportation Services in the Transportation System.

The Terms and Conditions apply to and are an integral part of any Transportation Agreement entered into between a Shipper and the Operator for the provision of Transportation Services such as these are defined herein.

The Transportation Agreement and these Terms and Conditions (including the Appendices) constitute the entire contractual relationship between the Parties for the provision of Transportation Services.

### 1.2 Contractual Relationship

The Transportation Agreement is entered into between the Shipper and the Operator.

The Operator will conduct all operations in the Transportation System and, on behalf of DONG Naturgas, provide the Transportation Services and execute all DONG Naturgas' rights and obligations under the Transportation Agreement.

### 1.3 Definitions

In the Terms and Conditions and in the Appendices the following terms shall have the meaning ascribed to them below:

°C shall correspond to the difference between a temperature in Kelvin and 273.15 Kelvin defined in the latest edition at any time of DS/ISO.1000: "SI units and the use of their decimal multiples and certain other units" published by the Danish Standards Association.

**Act on Supply of Natural Gas** shall mean Act No. 449 of 31 May 2000 with subsequent changes and amendments.

**Administration of Justice Act** shall mean Act No. 777 of 16 September 2002 with subsequent changes and amendments.

**Affiliate** shall mean with respect to a Party, any entity controlled, directly or indirectly, by that Party, any entity that controls, directly or indirectly that Party or any entity directly or indirectly under the common control of a Party. For the purpose of this definition an entity means any physical or legal person.

**Allocation Agreement** shall have the meaning defined in Article 5.1.

**Ancillary Services** shall have the meaning defined in Article 4.

**Appendices** shall mean the appendices referred to in Article 1.4.

**Approved Nominations** shall have the meaning defined in Article 8.5.

**Available Capacity** shall mean spare capacity - expressed in million m<sup>3</sup> per Day - at specific Delivery Point(s) and at the Redelivery Point in the Transportation System available for third parties as published on the Operator's website at any time.

**Banking Day** shall be understood to mean any day on which banks in Denmark are open for normal banking transactions between 10:00 hours LET and 14:00 hours LET

**Bar** shall correspond to the "unit of pressure bar" defined in the latest edition at any time of DS/ISO.1000: "SI units and the use of their decimal multiples and certain other units" published by the Danish Standards Association.

**Booked Daily Capacity** shall have the meaning defined in Article 3.1.

**Booking Period** shall have the meaning defined in Article 3.4.

**Capacity Tariff Obligation** shall have the meaning defined in Article 7.1.

**CIBOR** is the Copenhagen InterBank Offered Rate for DKK and is published by Denmark's National Bank.

**Commercial Information** shall mean any information, which an undertaking would not normally share with its potential or actual competitors or other business partners.

**Contractor** shall mean any third party with whom one or more of the Parties have entered into a contractual relationship with.

**Correcting Invoice** shall mean an invoice, which corrects or supplements a Preliminary Monthly Invoice.

**Daily Flexibility** shall have the meaning defined in Article 3.3.

**Danish Network Code** shall mean the network code that lies down the rules on third party access to the Danish onshore transmission system in accordance with section 23 §1 of the Act No. 449 dated 31 May 2000, with subsequent amendments, on natural gas supply.

**Day** shall be understood to mean a period commencing at 06:00 hours LET on any day and ending at 06:00 hours LET on the following day. The Day is reduced to 23 hours at the transition to summer time and is increased to 25 hours at the transition to winter time, and all rights and obligations are reduced or increased accordingly on such Days.

**Default Interest** shall have the meaning defined in Article 13.6.

**Delivery Point** shall have the meaning defined in Article 2.2

**Delivery Point Harald** shall have the meaning defined in Article 2.2.

**Delivery Point South Arne** shall have the meaning defined in Article 2.2.

**Delivery Point Tyra East** shall have the meaning defined in Article 2.2

**DKK** means the currency Danish Kroner.

**DONG (as User)** shall mean DONG Naturgas in its capacity of having Gas transported in/using the Transportation System.

**DONG Group** shall mean any and all undertakings controlled by DONG Energy A/S.

**DONG Naturgas** is the legal owner of the Transportation System and a subsidiary of DONG Energy A/S with its registered address at Kraftværksvej 53, Skærbæk, DK-7000 Fredericia, Denmark and with registration number 27 21 05 38.

**Excess Gas** shall have the meaning defined in Article 9.3.

**Expert** shall have the meaning defined in Article 16.5.

**Findings** shall mean the findings of an Expert in accordance with Article 16.5.

**Force Majeure** shall have the meaning defined in Article 15.

**Gas** is a combustible gas that is:

- a) extracted directly from the subsoil;
- b) extracted indirectly from the subsoil as associated gas in connection with crude oil production; or
- c) produced by extraction or other form of concentration of a gas as mentioned in a) or b) that contains methane constituting at one Bar at least 75% by volume of the combustible gas components and any physical state into which the gas can be converted by compression or cooling.



**Gas Balance Account** shall have the meaning defined in Article 7.2.

**Gas Balance Purchase Price** shall have the meaning defined in Article 7.4.

**Gas Balance Selling Price** shall have the meaning defined in Article 7.4.

**Gas Price** shall be the average of the 'Day-ahead Bid' gas price and the 'Day-ahead Offer' gas price at the 'TTF Hub'.

The applicable gas prices are the prices published by Heren Energy in the publication 'European SpotGas Markets' in the table entitled 'Continental Price Assessments' published in Euro per MWh.

The gas prices shall be converted from Euro per MWh to DKK per kWh by applying the daily exchange rate applicable for the same Banking Day as the date of the Heren Energy publication (if this is not a Banking Day, then the Banking Day immediately prior hereto shall be applied) as published by Denmark's National Bank and applying an energy conversion factor of 1,000 (one thousand) kWh per MWh.

If at any time after the Transportation Agreement has been entered into, the prices at 'TTF Hub' are quoted in another unit than Euro per MWh such other unit shall be used.

The Operator may substitute the 'TTF Hub' price with an equivalent daily quoted hub gas price in Northern Europe without upsetting the economic balance unduly. If possible, the Operator shall notify such substitution before it takes effect.

In addition to the above defined prices, the Shipper shall pay all Tax, Other Tax and VAT - if any - arising upstream of the Redelivery Point

**Gas Specifications** shall have the meaning defined in Article 10.1 and Article 10.5.

**Gross Calorific Value** means the amount of heat developed by combustion of one (1) m<sup>3</sup> of Gas at constant pressure when the Gas and air for the combustion have a temperature of 25°C, the combustion products being brought to that temperature and the water formed by the combustion being present in liquid state.

**Gross Negligence** means reckless disregard by the executive management or board of directors of a Party of any of that Party's obligations under these Terms and Conditions or of good and prudent oil and gas industry practice.

**Hour** means any 60-minute period commencing at 06:00 hours LET on any Day and ending at 07:00 hours LET on the same Day or a corresponding 60-minute period commencing at any of the other Hours of the Day and ending one Hour later on the same Day.

**Hourly Transportation Commitment** shall have the meaning defined in Article 6.2.

**Joule** shall correspond to the "SI unit of quantity of heat J" defined in the latest edition at any time of DS/ISO.1000: "SI units and the use of their decimal multiples and certain other units" published by the Danish Standards Association.

**kWh** (Kilowatt-hour) is  $3.6 \times 10^6$  (three decimal six million) Joule.

**LET** (Local European Time) shall mean GMT + two (2) hours during the summer time period and GMT + one (1) hour during the rest of the year, and for these purposes "summer time" shall be as defined in the Eighth Directive (97/44/EC) and Directive 2000/84/EC and any succeeding EC legislation on summer time arrangements.

**Line Pack Gas** shall mean Gas used for filling of the Transportation System and building up of the necessary pressure difference between the Delivery and Redelivery Point to accommodate all Shippers Nominations.

**Lower Imbalance Level** shall have the meaning defined in Article 3.3.

**m<sup>3</sup>** (cubic metre) shall correspond to the volume of Gas which, at 0°C and an absolute pressure of 1.01325 Bar, and without water vapour, occupies the volume of one (1) cubic metre as defined in the latest edition at any time of DS/ISO.1000: "SI units and the use of their decimal multiples and certain other units" published by the Danish Standards Association.

**Maintenance Period** shall have the meaning defined in Article 6.4.

**Maximum Hourly Transportation Right** shall mean 1/24 (one twenty-fourth part) of the Booked Daily Capacity.

**Maximum Purchase Price** shall have the meaning defined in Article 9.3 and the numerical value shall be agreed in the Transportation Agreement.

**Minimum Selling Price** shall have the meaning defined in Article 9.2 and the numerical value shall be agreed in the Transportation Agreement.

**Monthly Invoice** shall have the meaning defined in Article 13.1.

**Nominal Capacity** shall mean the total transportation capacity - expressed in million m<sup>3</sup> per Day - at specific Delivery Point(s) and at the Redelivery Point in the Transportation System as published on the Operators website at any time.

**Nominations** shall have the meaning defined in Article 8.3

**Notice** shall have the meaning defined in Article 18.

**Off-spec Delivery Gas** shall mean any Gas, which does not fulfil the Gas Specifications in Article 10.1.

**Off-spec Gas Fee** shall have the meaning defined in Article 10.3 and the numerical value shall be agreed in the Transportation Agreement.

**Off-spec Redelivery Gas** shall mean any Gas which does not fulfil the Gas Specifications in Article 10.5.

**On-spec Delivery Gas** shall mean any Gas which fulfils the Gas Specifications in Article 10.1.

**On-spec Redelivery Gas** shall mean any Gas which fulfils the Gas Specifications in Article 10.5.

**Operations Manual** shall mean the operations manual attached as Appendix B.

**Operator** shall mean DONG Naturgas in its capacity as operator of the Transportation System and provider of Transportation Services.

**Other Default Interest** shall have the meaning defined in Article 13.7.

**Other Tax** means any energy Tax or excise duty but not including Taxes targeted at end users.

**Parties** shall mean any combination of the Operator or/and of Shippers.

**Party** shall mean the Operator or the Shipper.

**Planned Maintenance** shall have the meaning defined in Article 6.4.

**Preliminary Monthly Invoice** shall have the meaning defined in Article 13.1.

**Quality** shall be the measured value of all the parameters stated in the Gas Specifications.

**Quantity** shall mean volumes of Gas measured in terms of the heat content of the Gas based on the Gross Calorific Value (unit: kWh)

**Reasonable and Prudent Operator**, when used to describe the standard of care to be exercised by a Party in performing such Party's obligations hereunder, shall mean that degree of diligence, prudence and foresight reasonably and ordinarily exercised by experienced operators engaged in the same line of business under the same or similar circumstances and conditions, and having due consideration to the interests of the other Parties.

**Redelivery Point** shall have the meaning defined in Article 2.3.

**Reduced Capacity** shall have the meaning defined in Article 6.7.

**Renominations** shall have the meaning defined in Article 8.4.

**Shipper** is any natural person or legal entity that has Gas transported in the Transportation System except for DONG Naturgas. However, throughout Article 17 Shipper shall also include DONG (as User).

**Shipper's Relevant Proportion** shall mean Shipper's Booked Daily Capacity expressed in million m<sup>3</sup> divided by the difference between Nominal Capacity and Available Capacity:  
{ Booked Daily Capacity / (Nominal Capacity – Available Capacity) }.

**Shipper Code Pair** is an anonymous code identifying the Shipper in the Transportation System and paired with a similar code identifying a shipper in the Transmission System. The former code is granted by the Operator and the latter code is granted by the operator of the Transmission System.

**Shortfall Gas** shall have the meaning defined in Article 9.2.

**Tax** means any tax, levy, impost, duty, charge, assessment, royalty, tariff or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment, nomination and allocation on Gas or on the transportation of Gas. For the avoidance of doubt Tax shall exclude (i) any tax on net income or net wealth; (ii) any tax on income derived from the exploration or exploitation of Gas fields; (iii) a stamp, registration, documentation or similar tax, and (iv) VAT.

**Terms and Conditions** shall mean these "TERMS AND CONDITIONS for TRANSPORTATION of GAS in DONG NATURGAS' OFFSHORE PIPELINES to the Danish West Coast" with any subsequent amendments or changes.

**Transmission System** shall mean the Danish onshore transmission system as referred to in Act No. 449 dated 31 May 2000 with subsequent amendments, on natural gas supply.

**Transportation Agreement** shall consist of a transportation agreement including these Terms and Conditions and Appendices hereto.

**Transportation Commitment** shall have the meaning defined in Article 6.1.

**Transportation Services** shall have the meaning defined in Article 3.

**Transportation System** means the facilities encompassing the Delivery Points to the Redelivery Point.

**Unused Capacity on the Day** shall have the meaning defined in Article 3.5.

**Upper Imbalance Level** shall have the meaning defined in Article 3.3.

**VAT** means any value added tax or any analogous thereto but excluding any statutory late payment interest or penalties.

**Wilful Misconduct** means an intentional and conscious omission or act by the executive management or board of directors of a Party of any of that Party's obligations under these Terms and Conditions or of good and prudent oil and gas industry practice.

#### 1.4 Appendices

The following Appendices are attached to the Terms and Conditions:

Appendix A:	Handling Procedure for a Bona Fide Transportation Request
Appendix B:	Operations Manual
Appendix C:	Gas Specifications

#### 1.5 Hierarchy

In the event of any conflict between the provisions in the various parts of the Transportation Agreement, they shall be given priority in the following order:

- 1) The Transportation Agreement duly signed by the Parties
- 2) These Terms and Conditions
- 3) The Appendices

## 1.6 Agents

The Operator has elected to outsource the daily operational and technical running of the Transportation System to DONG Storage A/S.

## 2 TRANSPORTATION SYSTEM

### 2.1 Scope of Transportation System

These Terms and Conditions apply exclusively to the existing Transportation System as defined under Articles 2.2-2.3.

### 2.2 Delivery Points

The Transportation System consists of the existing three (3) Delivery Points - Delivery Point Tyra East, Delivery Point South Arne and Delivery Point Harald - collectively referred to as Delivery Point(s).

The Delivery Point Tyra East shall be the Tyra East E Riser Platform (situated in the Danish North Sea Sector) at the point where Gas first enters DONG Naturgas' facilities on such platform, as they may exist from time to time. Shipper's Gas delivered at the Delivery Point Tyra East shall be measured by the same measurement facilities used for measuring deliveries to DONG (as User). Consequently, Shipper's Gas and DONG (as User)'s Gas shall be deemed to be of the same Quality.

The Delivery Point South Arne shall be the point located ten (10) centimetres immediately upstream from the hyper baric welded connection between the export riser and the pipeline tie-in spool adjacent to the side of the base of the South Arne Platform (situated in the Danish North Sea Sector) at the point where Gas first enters DONG Naturgas' facilities on such platform. Shipper's Gas delivered at the Delivery Point South Arne shall be measured by the same measurement facilities used for measuring deliveries to DONG (as User). Consequently, Shipper's Gas and DONG (as User)'s Gas shall be deemed to be of the same Quality.

The Delivery Point Harald shall be the Harald A Riser Platform (situated in the Danish North Sea Sector) at the point where Gas first enters DONG Naturgas' facilities on such platform, as they may exist from time to time. Shipper's Gas delivered at the Delivery Point Harald shall be measured by fiscal measurement facilities immediately upstream the Delivery Point Harald.

### 2.3 Redelivery Point

The Transportation System has one (1) Redelivery Point.

The Redelivery Point is downstream the measurement and regulator station at the Nybro gas treatment plant (situated on the Danish West

Coast) immediately prior to the point, where DONG Naturgas' ownership of the pipelines ceases to exist.

### **3 TRANSPORTATION SERVICES**

#### **3.1 Booked Daily Capacity**

DONG Naturgas offers - subject to Appendix A to these Terms and Conditions - Shipper to reserve a right to have a daily Quantity of its On-spec Delivery Gas transported from a Delivery Point and redelivered as On-spec Redelivery Gas at the Redelivery Point

#### **3.2 Maximum Hourly Transportation Right**

Subject to the Shipper having delivered Gas at reasonably even hourly rates throughout a Day at the Delivery Point, the Shipper has the right - subject to these Terms and Conditions - each Hour during the same Day to have redelivered a Quantity of Gas at the Redelivery Point up to a maximum of 1/24 (one twenty-fourth part) of the Booked Daily Capacity.

#### **3.3 Daily Flexibility**

The Gas Balance Account shall by the end of every Day stay within plus two percent (+2%) of the Booked Daily Capacity (the "Upper Imbalance Level") and minus ten percent (-10%) of the Booked Daily Capacity (the "Lower Imbalance Level").

#### **3.4 Booking Period**

DONG Naturgas offers Transportation Agreements on a short and long-term basis as published on the Operator's website at any time.

#### **3.5 Unused Capacity on the Day**

DONG Naturgas has the right to dispose of or sell to third parties the Booked Daily Capacity of a Shipper, which has not been used by the Shipper on a particular Day.

#### **3.6 Pooling**

If a Shipper has entered into more than one Transportation Agreement with the same Delivery Point, the Shipper's Booked Daily Capacities, Maximum Hourly Transportation Rights and Daily Flexibilities of such Transportation Agreements will be pooled.

## **4 ANCILLARY SERVICES**

In addition to Transportation Services, DONG Naturgas will on request - if operationally and technically feasible - offer gas treatment services as a back-up facility to off-shore gas treatment.

The Ancillary Services cover hydrogen sulphide removal and NGL removal from the Gas taking due consideration of DONG Naturgas' existing contractual obligations.

The provision of Ancillary Services may require a supplement to be agreed upon to these Terms and Conditions.

## **5 ALLOCATION OF DELIVERY**

### **5.1 Allocation Agreement at the Delivery Point**

The Shipper has to sign up to an existing Allocation Agreement at the Delivery Point. In case no such Allocation Agreement exists, the Shipper has to negotiate an Allocation Agreement with relevant parties. Allocation of delivery at Delivery Point Tyra East and at Delivery Point South Arne shall be based on existing measurement facilities on the relevant platform immediately upstream of the Delivery Point. Allocation of delivery at Delivery Point Harald is currently not possible as measurement facilities on the Harald platform immediately upstream of the Delivery Point are not installed.

## **6 TRANSPORTATION COMMITMENT AND OPERATION**

### **6.1 Transportation Commitment**

The Operator undertakes - in accordance with these Terms and Conditions - to receive Quantities of Gas up to the Booked Daily Capacity from the Shipper at the agreed Delivery Point, transport and redeliver the same Quantities of Gas to the Shipper at the agreed Redelivery Point throughout the Booking Period.

### **6.2 Hourly Transportation Commitment**

The Operator's Hourly Transportation Commitment shall - subject to the Operations Manual and these Terms and Conditions - be to receive Quantities of On-Spec Delivery Gas at the Delivery Points at reasonably even hourly rates throughout the Day and to redeliver Quantities of On-Spec Redelivery Gas at the Redelivery Point corresponding to Nominations.



### 6.3 Operation

Throughout the Booking Period the Operator shall operate, maintain and repair the Transportation System as a Reasonable and Prudent Operator.

### 6.4 Planned Maintenance and Maintenance Period

Notwithstanding the Transportation Commitment, the Operator shall each year for reasons of Planned Maintenance of the Transportation System have the right to reduce the capacity or shutdown the Transportation System in the Maintenance Period.

The Maintenance Period shall be limited to one (1) week during the months of May to September.

The Operator shall in accordance with the Operations Manual notify the Shipper of the Maintenance Period. The Maintenance Period is decided by the Operator, who shall use reasonable efforts to minimise the duration of the Maintenance Period and to coordinate the Maintenance Period with the Shipper.

### 6.5 Safety, System Integrity and/or Environmental Protection

Notwithstanding the Transportation Commitment and Article 6.3, the Operator may for reasons of safety, system integrity and/or environmental protection curtail or shut-off the Shipper's delivery of Gas to the Transportation System to perform repairs and/or extraordinary maintenance of the Transportation System, provided that said actions cannot reasonably be deferred to a subsequent Maintenance Period.

The Operator acting as a Reasonable and Prudent Operator will determine the curtailment or shut-off period. The Operator shall promptly notify the Shipper of the reason for such action, the extent of curtailment or shut-off and the possible duration of such curtailment or shut-off. To the extent time is available, the Operator shall coordinate the curtailment or shut-off with the Shipper in order to minimise the effect of such curtailment or shut-off.

### 6.6 Installations, Connections, Modifications, Tie-in etc.

Notwithstanding the Transportation Commitment and Article 6.3, the Operator may curtail or shut-off the Shipper's delivery of Gas to the Transportation System if necessary for reasons of any operations, inter alia installations, connections, modifications, tie-in operations, disconnections and removals which cannot be reasonably deferred by the Operator acting as a Reasonable and Prudent Operator to a period of Planned Maintenance according to Article 6.4.

The Operator shall in the period where the above operations are conducted provide the Shipper with Quantities of Gas corresponding to a

maximum of Booked Daily Capacity to be delivered at Gas Transfer Facility (GTF) of the Transmission System. The Shipper shall pay the Operator for such Quantities of Gas a price equal to the Gas Price published on the calendar day immediately prior to the Day where the Quantities of Gas are delivered.

The Operator shall as soon as possible and not less than 90 (ninety) days prior to commencement notify the Shipper of the timing and extent of any such operations. In the planning and scheduling of the operations the Operator shall seek to minimise necessary shut-off periods and to cause least possible disruptions to the Transportation Services.

#### 6.7 Reduced Capacity

If physical or operational circumstances result in a temporarily Reduced Capacity in the Transportation System or the Transmission System or any other relevant downstream transportation system affecting the capacity in the Transportation System, the Operator shall promptly notify the Shipper of the reason, the extent of the reduction and the possible duration of such reduction.

The Operator shall use reasonable endeavours to reduce the extent of reduction and the duration hereof.

Reduced Capacity in the Transportation System does not constitute a breach of the Transportation Agreement.

#### 6.8 Priorities

In case of reduced capacity according to Articles 6.4 - 6.7 the Operator will reallocate capacity to the Shipper according to the priority rules set out in the Operations Manual.

### 7 TARIFFS, FEES AND GAS BALANCE ACCOUNTS

#### 7.1 Capacity Tariff Obligation

Throughout the Booking Period, the Shipper is obliged to pay the agreed Capacity Tariff Obligation for a Quantity of Gas corresponding to the Booked Daily Capacity, even if such Quantity is not transported.

The agreed Capacity Tariff Obligation is excluding any Tax, Other Tax and/or VAT.

The Shipper's Quantities paid for but not transported shall not be credited against subsequently transported Quantities.

The Capacity Tariff Obligation shall be suspended during any period and to the extent proportional to the reduction of Transportation Service limited to events in the Transportation System described in

- Articles 6.4-6.5
- Article 6.7, if the Reduced Capacity is caused by physical or operational circumstances in the Transportation System
- Force Majeure

Suspension (or partial suspension) of the Capacity Tariff Obligation shall constitute the sole remedy of the Shipper, unless the Operator by Wilful Misconduct was the cause of the above events.

## 7.2 Gas Balance Account

For every Transportation Agreement a Gas Balance Account is opened with an opening balance sheet of 0 (zero). Every Day throughout the Booking Period, the Gas Balance Account is updated by adding the allocated Quantity of Gas delivered by the Shipper at the Delivery Point during that Day and subtract the allocated Quantity of Gas redelivered by the Operator at the Redelivery Point during the same Day.

## 7.3 Pooling of Gas Balance Accounts

If Transportation Agreements according to Article 3.6 are pooled, the Gas Balance Accounts of such pooled Transportation Agreements shall be pooled.

## 7.4 Termination of Gas Balance Accounts

When a Transportation Agreement is terminated and replaced by a new Transportation Agreement with the same Delivery Point and with the same - or higher - Booked Daily Capacity and commencing the Hour after the Hour of termination of the former Transportation Agreement, the Gas Balance Account will be transferred to the new Transportation Agreement.

In all other cases the Gas Balance Account must be cleared by the Shipper purchasing the Quantity of Gas at a Gas Balance Purchase Price or selling the Quantity of Gas at a Gas Balance Selling Price, whichever is applicable.

The Gas Balance Purchase Price is set as 110% (one hundred and ten per cent) of the Gas Price published on the calendar day immediately prior to the day of termination of the Transportation Agreement.

The Gas Balance Selling Price is set as 90% (ninety per cent) of the Gas Price published on the calendar day immediately prior to the day of termination of the Transportation Agreement.

By clearance of a Gas Balance Account of a terminated Transportation Agreement which is pooled with other Transportation Agreements according to Article 7.3, a fraction of the pooled Gas Balance Account corresponding to the Booked Daily Capacity of the terminated Transportation Agreement in relation to all pooled Booked Daily Capacities must be cleared.

## **8 SHIPPER'S OPERATIONAL RIGHTS AND OBLIGATIONS**

### **8.1 Delivery and Redelivery**

The Shipper has, throughout the Booking Period, the right to deliver Quantities of On-spec Delivery Gas at a reasonably even flow rate throughout the Day at the Delivery Point necessary for keeping the Gas Balance Account within the Daily Flexibility. The Shipper has, throughout the Booking Period, the obligation to accept redelivery of On-Spec Redelivery Gas at the Redelivery Point corresponding to the Approved Nominations.

### **8.2 Forecasts**

The Shipper shall issue to the Operator forecasts of its deliveries of Gas at the Delivery Point. The forecasts shall be in accordance with the Operations Manual.

### **8.3 Nominations**

The Shipper shall every Day in accordance with the Operations Manual, for every Shipper Code Pair submit to the Operator Nominations of Quantities of Gas per Hour to be redelivered at the Redelivery Point.

The Nominations shall for the Redelivery Point not exceed the Shipper's Maximum Hourly Transportation Right.

The Shipper has the right to notify the Operator of any changes to the Shipper Code Pairs at any time during the Booking Period. Such change shall have effect with the same period of notice as stipulated in the current Danish Network Code.

### **8.4 Renominations**

Procedures for Renominations shall be in accordance with the Operations Manual and shall follow the same rules as described in Articles 8.3 and 8.5 and be coherent with the procedures for renominations to the Transmission System.

## 8.5 Approved Nominations

The Shipper is obliged to accept the Approved Nominations.

# 9 OPERATOR'S OPERATIONAL RIGHTS AND OBLIGATIONS

## 9.1 Line Pack Gas

Line Pack Gas is under normal operating conditions supplied by the Operator.

Under operating conditions, which are not normal conditions, the Operator has the right to make the acceptance of the Shipper's Nominations subject to prior delivery of a Quantity of Line Pack Gas determined solely by the Operator acting as a Reasonable and Prudent Operator.

The Operator shall as soon as operationally feasible redeliver in kind to the Shipper the Quantity of Line Pack Gas. Redelivery to the Shipper shall constitute the sole compensation for the Shipper.

## 9.2 Right to Sell Shortfall Gas

If the Gas Balance Account by the end of any Day falls under the Lower Imbalance Level, the Operator has the right to sell - and the Shipper the obligation to buy - the Quantity of Gas (the "Shortfall Gas") necessary to restore the Gas Balance Account up to the Lower Imbalance Level at a price which is the highest of the following prices:

- 150% (one hundred and fifty per cent) of the Gas Price published on the calendar day immediately prior to the Day where the Shortfall Gas should have been delivered, or;
- a price equal to the Minimum Selling Price

The Gas Balance Account shall subsequent hereto be adjusted for the Shortfall Gas sold by the Operator.

## 9.3 Right to Purchase Excess Gas

If the Gas Balance Account by the end of any Day exceeds the Upper Imbalance Level, the Operator has the right to buy - and the Shipper the obligation to sell - the Quantity of Gas (the "Excess Gas") necessary to restore the Gas Balance Account down to the Upper Imbalance Level at a price which is the lowest of the following prices:

- 50% (fifty per cent) of the Gas Price published on the calendar day immediately prior to the Day where the Excess Gas was delivered, or;
- a price equal to the Maximum Purchase Price

The Gas Balance Account shall subsequent hereto be adjusted for the Excess Gas bought by the Operator.

#### 9.4 Right to Suspend the Transportation

If the accumulated purchase of Excess Gas or accumulated sale of Shortfall Gas pertaining to the current calendar month exceed sixty per cent (60%) of the Booked Daily Capacity, the Operator has the right (not an obligation) to suspend its commitments, cf. Articles 6.1 and 6.2 for the remaining Days in the current calendar month by notification to the Shipper, cf. Article 9.7 and with effect from the immediate following Day. Such suspension shall not relieve the Shipper from its Capacity Tariff Obligation.

#### 9.5 Matching

The Operator shall in accordance with the Operations Manual evaluate the Nominations and the Renominations and have the Nominations and Renominations matched against (re)nominations received by the operator of the Transmission System according to the matching procedures in the Danish Network Code and by using Shipper Code Pairs.

The result of the matching constitutes the Approved Nominations and shall be submitted to the Shipper in accordance with the Operations Manual.

#### 9.6 Allocation of Gas

The Operator shall on a daily basis allocate the Quantity of Gas delivered during the previous Day at the Delivery Point and the Quantity of Gas redelivered per Hour at the Redelivery Point according to the Allocation Agreement and Operations Manual and inform the Shipper of the result hereof.

#### 9.7 Other Information to the Shipper

The Operator shall according to the Operations Manual on a daily basis inform the Shipper of the following:

- Status on the Gas Balance Account by end of the previous Day
- Purchase of Excess Gas and sale of Shortfall Gas pertaining to the previous Day
- The accumulated purchase of Excess Gas and accumulated sale of Shortfall Gas pertaining to the current calendar month
- Status on Line Pack Gas delivered or redelivered by end of previous Day, if any
- Notification of suspension of transportation, if any

## **10 QUALITY REQUIREMENTS**

### **10.1 Requirements at the Delivery Point**

The Shipper and DONG (as User) shall deliver Gas at the Delivery Point that meets the Gas Specifications stated in Appendix C.

Shipper's Gas and DONG (as User)' Gas shall be deemed to be of the same Quality at the same Delivery Point(s).

### **10.2 Right to Refuse Delivery**

The Operator may at all times refuse to accept the Shipper's Off-spec Delivery Gas. The Shipper shall in such case immediately stop any delivery of Gas.

### **10.3 Gas not Complying with Requirements at the Delivery Point**

The Shipper shall inform the Operator without delay if and when he expects the Gas to become Off-spec Delivery Gas or the Quality of the Gas is expected to deviate significantly from the forecasted Quality according to Article 8.2.

Notwithstanding Article 10.1 and Article 10.2, the Operator may but is not obliged to accept the Shipper's Off-spec Delivery Gas against payment of an Off-spec Gas Fee plus any cost and/or expense associated with the necessary processing of the commingled Gas stream to make all Gas at the Redelivery Point On-Spec Redelivery Gas provided that, in the opinion of the Operator, such Off-spec Delivery Gas would neither be detrimental to the operation of the Transportation System nor affect the Operator's ability to redeliver Gas to all Shippers and DONG (as User) in accordance with Article 10.5.

If the Operator accepts Off-spec Delivery Gas from

- more than one Shipper or
- one Shipper and DONG (as User) or
- more than one Shipper and DONG (as User),

the cost and/or expense associated with the necessary processing of the commingled Gas stream to make all Gas at the Redelivery Point On-Spec Redelivery Gas shall be split between the parties delivering Off-spec Delivery Gas proportionately to the accepted Off-spec Delivery Gas Quantities.

### **10.4 Right to Take Operational Actions**

If the Shipper has delivered Off-spec Delivery Gas without the Operator's prior acceptance according to Article 10.3, the Operator shall have the right to take necessary operational actions to dispose of or process

the commingled Quantity of Off-spec Redelivery Gas or, if possible and subject to the respective platform operator's prior approval, backflow the Gas.

#### 10.5 Requirements at the Redelivery Point

The Operator shall redeliver Gas at the Redelivery Point that meets the Gas Specifications stated in Appendix C.

#### 10.6 Right to Refuse Redelivery

The Shipper may refuse to accept redelivery of its Gas provided that the operator of the Transmission System based on the Quality provisions in that system refuses to take said Gas. The Shipper shall in such case immediately stop any delivery of Gas at the Delivery Point.

#### 10.7 Gas not Complying with Requirements at the Redelivery Point

The Operator shall inform the Shipper without delay when the operator of the Transmission System refuses to take Gas at the Redelivery Point according to Article 10.6.

In such case the Operator shall take any necessary operational action to dispose of or process such Gas in order to remedy the situation without any delay and keep the Shipper informed.

## 11 TERMINATION OF THE TRANSPORTATION AGREEMENT

### 11.1 Change in Shipper's Qualifications

It shall be deemed a serious breach of the Transportation Agreement if at any time within the Booking Period, the Shipper cannot any longer within 20 (twenty) Banking Days upon the Operator's written request, demonstrate that he still fulfils the required financial and insurance measures in Appendix A.

### 11.2 Termination due to Bankruptcy, Suspended Payments etc.

The Operator may terminate a Transportation Agreement with a Shipper if the Shipper (or its credit support provider):

- (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;



- (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation and is not withdrawn, dismissed, discharged, stayed or restrained within three (3) Banking Days, has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets;
- (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in Article 11.2(i) to Article 11.2(vii) (inclusive); or
- (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this Article 11.2.

### 11.3 Non-fulfilment of Transportation Agreement

A Party's non-fulfilment of any material obligation under the Transportation Agreement shall normally constitute a serious breach of said Transportation Agreement.

If a Party does not remedy a serious breach within 20 (twenty) Banking Days upon receipt of Notice from the other Party specifying the breach and requiring remedy thereof, the Party claiming the remedy shall have the right, but not the obligation to terminate the Transportation Agreement with immediate effect.

### 11.4 Survival of Termination

The Parties rights and obligations according to Articles 14.1, 14.2 and 17 shall remain for a period of three (3) years from the date of termination. However, this does not have any bearing on the question of limitation of claims that arose prior to the termination date.

## 12 AMENDMENTS

### 12.1 General Amendments

These Terms and Conditions, all Appendices listed in Article 1.4 and all Transportation Agreements entered into hereon are subject to changes

- To the Danish Network Code
- To the laws and secondary legislation on offshore pipelines and third party access, including but not limited to the Act on Supply of Natural Gas and any relevant EC legislation
- Affected by a decision of the Danish Energy Regulatory Authority, including a decision of the Energy Board of Appeal
- Affected by a decision of the Danish Energy Authority or relevant Danish Ministry
- due to other administrative or judicial decisions requiring DONG Naturgas to amend or otherwise change said provisions.

### 12.2 Specific Amendments

The principles of these Terms and Conditions rely on the existing Interconnection and Operational Balancing Agreement (the "IOBA") between the Operator and the operator of the Transmission System being in persistent force. Should this IOBA be amended/changed to direct the Operator to deliver physically every Hour Quantities of Gas to the Transmission System in accordance with the Nominations, the Operator reserves the right to amend/change these Terms and Conditions to reflect that the Shipper shall be obliged to deliver Quantities of Gas at the Delivery Point at the same hourly rate as it nominates Quantities of Gas for redelivery at the Redelivery Point and to impose a reasonable hourly balancing obligation on the Shipper.

### 12.3 Notification and Entry into Force

The Shipper shall be informed in writing as quickly as possible of amendments/changes stipulated under Articles 12.1 and 12.2.

The Operator shall endeavour to consult the Shipper before implementation of any amendments/changes to ensure that implementation takes account of both the Operator and Shipper's reasonable wishes pertaining to implementation.

The amendments/changes take effect from the date on which the amendments/changes of the Danish Network Code take effect, from the date on which the legislative amendments/changes take effect, from the date on which any company within the DONG Group is obliged to comply with a decision by any of the authorities mentioned under Article 12.1 above or from the date on which the amendments/changes to the IOBA take effect.

Amendments/changes brought about by a situation described in Articles 12.1 and 12.2 above are not grounds for renegotiation of the Transportation Agreement or parts thereof.

#### 12.4 Amendments to Operations Manual

Notwithstanding Articles 12.1 and 12.2 the Operator is entitled to amend the Operations Manual, as he deems appropriate. Before implementation, any proposed material amendment shall be submitted to the Shippers for consultation.

The Shipper shall submit its comments within 20 (twenty) Banking Days after receipt of such Notice from the Operator. The Operator shall take due consideration of the Shippers' comments, if any.

If the Operator, after having received and reviewed the Shippers' comments, decides to amend the Operations Manual, such changes shall be submitted to the Shippers in writing in reasonable time before entering into force.

Notwithstanding the preceding paragraphs, the Operator shall not have the right to amend the Operations Manual if the Shippers can demonstrate that the proposed amendments will require substantial investments to be made by the Shippers or will reduce the value of the Shippers' Gas significantly.

### 13 INVOICING AND PAYMENTS

#### 13.1 Monthly Invoice

Not later than the 18<sup>th</sup> (eighteenth) calendar day of each calendar month the Operator shall render to the Shipper a statement showing, inter alia, the following payments for the preceding calendar month to be paid:

- The Quantities of Gas delivered by the Shipper and redelivered by the Operator
- The Capacity Tariff Obligation
- Deductions, if any, in the Capacity Tariff Obligation according to Article 7.1
- Other payments, if any
- Taxes, Other Tax and VAT, if any

If all data is not available, the Operator may issue a Preliminary Monthly Invoice. As soon as reasonably possible, the Operator shall render to the Shipper a Correcting Invoice showing the appropriate adjustments to the Preliminary Monthly Invoice in the same manner as described in this

Article 13.1 and including Other Default Interest according to Article 13.7.

## 13.2 Payments

All payments must be made in DKK.

All payments from the Shipper to the Operator must be made by means of bank transfers to the Operator's account with the bank designated by the Operator.

All payments from the Operator to the Shipper must be made by means of bank transfers to the Shipper's account with the bank designated by the Shipper.

A Party may designate another bank at a notice of 30 (thirty) days before any payment is due.

Payments shall be considered timely if the amount due is paid and credited to the other Party's bank account by 11:00 hours LET on the due date. Any costs connected with transfer of amounts to a Party's bank are payable by the Party transferring the amounts.

## 13.3 Due Date

The due date for payment of Monthly Invoice or Preliminary Monthly Invoice pursuant to Article 13.1 is the 25<sup>th</sup> (twenty-fifth) calendar day of the calendar month when said invoice was received, but not earlier than five (5) Banking Days after said invoice was received.

The due date for payment of Correcting Invoice pursuant to Article 13.1 is five (5) Banking Days after the Correcting Invoice was received.

The due date for payment of interest invoices pursuant to Articles 13.6 and 13.7 is five (5) Banking Days after the interest invoice was received.

If the due date is not a Banking Day, payment must be effected on the Banking Day falling immediately following the due date.

## 13.4 Counterclaim

The Shipper is not entitled to withhold or set off, in full or in part, a payment pursuant to any statement according to Article 13, due to any counterclaim, regardless of its origin, which the Shipper may have or claim to have against DONG Naturgas.

### 13.5 Format of Statements

The Operator shall render statements - pursuant to Article 13 - to the Shipper between 08:00 hours LET and 17:00 hours LET on any Banking Day. If the Shipper receives any such statement later than 17:00 hours LET on any Banking Day it shall be deemed to have been received on the following Banking Day. The Operator may render any such statements to the Shipper by facsimile or electronic mail followed by a confirmation by letter.

### 13.6 Default Interest

If the Shipper fails to make payment of any amount according to Article 13.1 when said payment is due, the amount remaining unpaid shall from and including the due date bear interest at an annual rate corresponding to the arithmetic average of one (1) month's CIBOR for DKK + four (4) percentage points. Such Default Interest must be invoiced separately and as soon as possible.

### 13.7 Other Default Interest

In the event of any other form of interest payment, e.g. as a result of errors according to Article 14.2 or interest on Correcting Invoices, interest is payable as from and including the due date until and including the date when payment is received at an annual rate corresponding to the arithmetic average of one (1) month's CIBOR for DKK. Such Other Default Interest must be invoiced separately and as soon as possible.

## 14 AUDITS AND ERRORS

### 14.1 Audits

The Parties shall conserve all books, records and charts for a period of at least five (5) years. Data material subject to disagreement or subject to arbitration proceedings must be kept for one (1) year after such disagreement has been resolved.

A Party shall have the right at reasonable notice and at reasonable hours to audit the books, records and charts of the other Party to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to any of the provisions of this Transportation Agreement.

A Party's right to audit shall not include Commercial Information. If the audit of such Commercial Information is necessary, an independent auditor shall perform such part of the audit. The independent auditor shall only confirm whether the audited Party's calculations are correct and shall not reveal any Commercial Information to the auditing Party.

The auditing Party shall cover all cost and expenses associated with the audit.

#### 14.2 Errors

In the event that any inaccuracy or error is found in any statement, charge or computation made pursuant to any of the provisions of this Transportation Agreement the necessary adjustment in such statement, charge or computation shall be made promptly, provided that no adjustment for any statement, charge or computation shall be made after the lapse of 2 (two) years from the date of the statement, charge or computation in question.

### 15 FORCE MAJEURE

#### 15.1 Force Majeure

Force Majeure shall mean circumstances which occur after the entry into force of these Terms and Conditions or any Transportation Agreement entered into hereon and which were beyond the control of the Party concerned, exercising the standard of a Reasonable and Prudent Operator resulting in or causing failure by that Party in the fulfilment of any such Party's obligations under this Transportation Agreement, which failure could not reasonably be prevented or overcome by the exercise by such Party of the standards of a Reasonable and Prudent Operator.

Force Majeure, provided it complies with the above, shall also include failure/unavailability of transportation in the Transmission System or any other relevant downstream transportation system.

Lack of funds shall not be considered a circumstance of Force Majeure.

#### 15.2 Effect of Force Majeure

The obligations of each of the Parties hereunder, other than the obligations to make payments of money already due, shall be suspended during the period and to the extent that such Party is prevented or hindered in the whole or in part from complying therewith by Force Majeure as defined in Article 15.1 above. In such event, such Party shall give Notice of suspension as soon as reasonably possible to the other Party stating the date and extent of such suspension, expected duration and the cause thereof. Any of the Parties whose obligations have been suspended as aforesaid shall resume the performance of such obligations as soon as reasonably possible after the removal of the cause and the Party claiming Force Majeure shall so notify all other Parties.

Force Majeure does not constitute a breach of the Transportation Agreement

## **16 APPLICABLE LAW AND ARBITRATION**

### **16.1 Applicable Law**

These Terms and Conditions, any Transportation Agreement based hereon, arbitration according to Article 16.2 or an Expert procedure according to Article 16.5 shall be governed by and construed in accordance with the laws of the Kingdom of Denmark.

### **16.2 Arbitration**

In case any dispute between the Parties should arise out of these Terms and Conditions - or out of a Transportation Agreement concluded upon said Terms and Conditions - the Parties will first meet and try to solve such dispute through amicable negotiations.

A dispute shall be deemed to have arisen upon Notice to that effect from a Party to another Party.

If such amicable negotiations should not lead to any result accepted by both Parties to the dispute within 60 (sixty) days after the dispute has arisen, such dispute shall be settled according to the rules below on arbitration.

Any dispute or claim arising out of or in connection with these Terms and Conditions or any Transportation Agreement based hereon, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Rules of Procedure of the Danish Institute of Arbitration (Copenhagen Arbitration), unless otherwise expressly stated in these Terms and Conditions or in a Transportation Agreement concluded hereon, cf. Article 16.5.

The arbitration tribunal shall be composed of three (3) arbitrators.

Each Party appoints an arbitrator and the Danish Institute of Arbitration appoints the chairman of the arbitration tribunal. If a Party has not appointed an arbitrator not later than 30 (thirty) days of having respectively requested or received Notice of the arbitration such arbitrator is appointed by the Danish Institute of Arbitration.

All awards by the arbitration tribunal are final and are liable to execution, cf. Section 478 of the Administration of Justice Act ("Retsplejeloven").

Publication of any award may only take place upon having obtained the written consent of both Parties to the dispute.

16.3 Venue

The proceedings under Article 16.2 shall take place in Copenhagen.

16.4 Language

The proceedings shall take place in Danish, unless one of the Parties to the dispute is not a Danish undertaking, in which case the proceedings shall take place in English.

16.5 Expert

In case a dispute develops regarding or related to the Quality of Gas under Articles 10.1, 10.5 or 17.4 (second paragraph), which the Parties cannot settle amongst themselves within 30 (thirty) days, the Parties shall refer the matter to an Expert.

A dispute shall be deemed to have arisen upon Notice to that effect from a Party to another Party.

Such Expert shall be an independent person having expertise and the experience necessary for the determination of the matter in dispute in accordance with sound business practices and the customs of the natural gas industry.

If the Parties cannot agree within two (2) weeks after the invocation by a Party under this Article 16.5 on the person of the Expert, either Party shall have the right to request the President of the Maritime and Commercial Court in Copenhagen to appoint a neutral Expert.

Both Parties shall submit the dispute to and be bound by the Findings of the so appointed Expert. Said Expert shall normally submit its Findings to the Parties in writing within four (4) weeks and in any case not later than six (6) weeks after its appointment.

The Party against whom the Findings of the Expert is not in agreement with shall bear the reasonable costs and expenses of all lawyers, advisers and witnesses, retained by it and the other Party to the dispute, along with the costs and expenses for the Expert and any independent advisers retained by the Expert in connection with the Findings hereunder.

If no such Findings can be made or the Findings are inconclusive, each Party to the dispute shall bear its own costs and expenses and shall bear one-half of the costs and expenses of the Expert.

In case of no Findings or inconclusive Findings, the dispute shall be subject to arbitration in accordance with Article 16.2.



## **17 LIABILITY AND COMPENSATION**

### **17.1 Consequential Loss**

No Party shall be liable (whether in contract or in tort, including negligence or otherwise) to any other Party or that other Party's Affiliates or Contractors for consequential loss, except in circumstances in which the Party has been guilty of Wilful Misconduct.

### **17.2 Mutual Hold Harmless**

#### **17.2.1** Operator hereby acknowledges, undertakes and confirms that neither it nor any of its Affiliates or Contractors shall make any claim (whether in contract or in tort, including negligence, or otherwise) against the Shipper in respect of and shall indemnify and hold the Shipper harmless from:

(a) subject to Article 17.3 any loss, damage, liability, costs or expense (including legal fees) resulting from damage to or destruction or loss of any property of the Operator and/or its Affiliates, employees or Contractors arising out of or in connection with the performance or non-performance of this Transportation Agreement, except to the extent that such loss or damage arises as a result of the Gross Negligence or Wilful Misconduct of the Shipper;

(b) subject to Article 17.3 any loss, damage, liability, costs or expense (including legal fees) resulting from the injury, disease, ill health or death of any of its employees or the employees of any of its Affiliates or Contractors arising out of or in connection with the performance or non-performance of this Transportation Agreement, except to the extent that such injury, disease, ill health or death arises as a result of the Gross Negligence or Wilful Misconduct of the Shipper;  
or

(c) except as expressly provided in this Transportation Agreement any loss, damage, liability, costs or expense (including legal fees) suffered or incurred by the Operator and/or its Affiliates, employees or Contractors arising out of or in connection with the failure of the Shipper to comply with any of its obligations under this Transportation Agreement, except to the extent that such loss, damage, liability, costs or expense arises as a result of Gross Negligence or Wilful Misconduct of the Shipper.

#### **17.2.2** The Shipper hereby acknowledges, undertakes and confirms that neither it nor any of its Affiliates or Contractors shall make any claim (whether in contract or in tort, including negligence, or otherwise) against any other Shipper or the Operator in respect of and shall indemnify and hold any other Shipper and the Operator harmless from:

- (a) subject to Articles 17.2.3 and 17.3 any loss, damage, liability, costs or expense (including legal fees) resulting from damage to or destruction or loss of any property of the Shipper and/or its Affiliates, employees or Contractors arising out of or in connection with the performance or non-performance of this Transportation Agreement, except to the extent that such loss or damage arises as a result of Gross Negligence or Wilful Misconduct of any other Shipper or the Operator;
- (b) subject to Article 17.3 any loss, damage, liability, costs or expense (including legal fees) resulting from the injury, disease, ill health or death of any of its employees or the employees of any of its Affiliates or Contractors arising out of or in connection with the performance or non-performance of this Transportation Agreement, except to the extent that such injury, disease, ill health or death arises as a result of Gross Negligence or Wilful Misconduct of any other Shipper or the Operator; or
- (c) except as expressly provided in this Transportation Agreement any loss, damage, liability, costs or expense (including legal fees) suffered or incurred by the Shipper and/or its Affiliates, employees or Contractors arising out of or in connection with the failure of any other Shipper or the Operator to comply with any of its obligations under this Transportation Agreement, except to the extent that such loss, damage, liability, costs or expense arises as a result of Gross Negligence or Wilful Misconduct of any other Shipper or the Operator.

17.2.3 Subject to Article 17.3 the Operator shall compensate the Shipper for any loss of or damage to Shipper's Gas when transported in the Transportation System except to the extent such loss or damage is attributable to Gross Negligence or Wilful Misconduct by either the Operator on the one side or by the Shipper on the other side.  
The compensation is set as the Gas Price published on the calendar day immediately prior to the day of the incidence.  
This shall be the sole remedy of the Shipper.

### 17.3 Liability for Off-spec Delivery Gas

If the Operator unknowingly accepts Off-spec Delivery Gas into the Transportation System from a Shipper, said Shipper shall indemnify other Shippers and the Operator against any loss, damage, liability, costs or expense reasonably incurred by the latter as a result of or arising out of such acceptance (i.e. strict liability):

- (a) in clearing, cleaning, repairing and/or replacing all or part of the Transportation System;

- (b) in processing, flaring or venting Off-spec Redelivery Gas or in any measures taken by the Shipper or the owner or Operator of the facilities immediately downstream of the Redelivery Point to bring such Off-spec Redelivery Gas within Gas Specifications at the Redelivery Point, and
- (c) arising out of any claim against a Shipper who has delivered On-spec Delivery Gas by its Contractors or by any third party, and
- (d) arising out of any other claim against the Operator by a Shipper who has delivered On-spec Delivery Gas and/or any third party.

The Operator shall use reasonable endeavours to minimise and mitigate any such loss, damage, liability, costs and expenses.

#### 17.4 Cross Shipper Liability Agreement

If more than one Shipper delivers Off-spec Delivery Gas, these Shippers shall be jointly and severally liable vis-à-vis the Operator and other Shippers that have delivered On-spec Delivery Gas into the Transportation System. A Shipper is entitled to pro rata recourse against other Shippers that have delivered Off-spec Delivery Gas.

In case it is not possible to establish a priori if a Shipper or which Shipper delivered Off-spec Delivery Gas into the Transportation System, other measurements in the entire Transportation System shall be used to establish who actually delivered Off-spec Delivery Gas into the Transportation System. Such other measurements shall normally be deemed to be sufficient evidence of who delivered Off-spec Delivery Gas into the Transportation System.

In case all Shippers have delivered On-Spec Delivery Gas into the Transportation System and the Operator redelivers Off-spec Redelivery Gas, the Operator shall bear his own loss, damage, liability, costs or expense.

If more than one Shipper delivers Off-spec Delivery Gas into the Transportation System, said Shippers will inter partes bear their own loss, damage, liability, costs or expense except in case of Gross Negligence or Wilful Misconduct by another Shipper.

The Operator shall use reasonable endeavours to minimise and mitigate such loss, damage, liability, costs and expenses in accordance with its non-statutory, legal duty to mitigate losses under Danish law.

#### 17.5 Liability for Off-spec Redelivery Gas

If the Operator redelivers Off-spec Redelivery Gas to the Shipper or the operator of the Transmission System based on the Quality provisions in

that system refuses to accept said Gas - in a situation where all Shippers can prove to have delivered On-Spec Delivery Gas into the Transportation System - the Operator shall indemnify and hold the Shipper harmless, against any direct loss, damage, liability, costs or expense reasonably incurred by the latter as a result of or arising out of such redelivery or refusal (i.e. strict liability):

- (a) in clearing, cleaning, repairing and/or replacing all or part of the Transmission System and
- (b) arising out of any claim against a Shipper by its Contractors or by any third party.

Shipper shall use reasonable endeavours to minimise and mitigate any such loss, damage, liability, costs and expenses.

#### 17.6 Escape of Gas

Notwithstanding any other provision of this Transportation Agreement, any loss, damage, liability, costs and expenses which may be incurred by the Operator as a result of environmental pollution, explosion, fire or any other event arising out of the escape of Gas delivered by Shippers into the Transportation System shall be borne by the Shippers in the proportion determined by Shipper's Relevant Proportion.

The Shipper shall indemnify and hold the Operator harmless in respect of Shipper's Relevant Proportion of such loss, damage, liability, costs and expenses, save to the extent that such loss, damage, liability, costs and expenses are attributable to the Wilful Misconduct of the Operator.

### 18 NOTICES

#### 18.1 Method of Delivery

Except if otherwise expressly provided for in this Transportation Agreement all Notices (requests, invoices etc.) shall be in writing and deemed to have been properly delivered if personally delivered or delivered by mail, facsimile or electronic mail at the registered address of the Party for which the Notice is intended.

#### 18.2 Date of Receipt

All Notices shall be deemed to have been received at 09:00 hours LET two (2) Banking Days after the mailing hereof as witnessed by the post-age stamp.

As regards facsimile such Notices shall be deemed to have been delivered when the receiving Party's facsimile has confirmed receipt thereof between 08:00 hours LET and 17:00 hours LET on any Banking Day.

For electronic mail a date and time stamp of the receiving Party's electronic mail programme determine time of receipt.

### 18.3 Exceptions

Any Notice which has been received on a day which is not a Banking Day, shall be deemed to have been received the following Banking Day at 09:00 hours LET.

## 19 ASSIGNMENT

The Shipper is entitled to wholly assign its rights and obligations under the Transportation Agreement to a third party after having obtained prior written approval from the Operator. Such approval may not be unreasonably withheld.

DONG Naturgas will only be obliged to consider a request for assignment if the potential assignee satisfies the required financial and insurance measures in Appendix A.

The Operator may assign its rights and obligations under the Transportation Agreement to a third party.

## 20 TERM

### 20.1 Entry into Force

Subject to Article 12, these Terms & Conditions enter into force on 1<sup>st</sup> January 2010 and shall remain in force until such time as they are either

a) wholly or partly revoked and/or replaced by other Terms and Conditions, or

b) until and at the same time as an individual Transportation Agreement, where these Terms and Conditions form an integral part, expires, subject always to the provision that all rights and obligations already created or existing under such Transportation Agreement are fully performed by both Parties.