

**MOD 0297 – Extending Rights to Protected Information Provisions for meter asset  
Managers/ Registered Metering Applicants**

**LEGAL TEXT – v1 (5 July 2010)**  
**(prepared by Scotia Gas Networks Limited)**

**Proposed Amendments to Transportation Principal Document Section V**

**UNIFORM NETWORK CODE – TRANSPORTATION PRINCIPAL DOCUMENT**

**SECTION V - GENERAL**

**5 INFORMATION AND CONFIDENTIALITY**

**5.1 Transporter obligations**

5.1.1 The Transporter shall secure that Protected Information is not:

(a) disclosed to any person other than:

(i) an officer or employee of the Transporter whose province it is to know the same; or

(ii) a professional adviser of or consultant to the Transporter; or

(iii) without prejudice to any requirement under the Transporter's Licence, any 10% Affiliate (other than an Affiliate which is the holder of a Shipper's Licence or a gas supplier's licence) of the Transporter

in any such case in accordance with the requirements of paragraph 5.4; or

(b) used by the Transporter for any purpose other than carrying on the Transporter Activities.

5.1.2 "**Transporter Activities**" means the carrying on of transportation business (as defined in the Transporter's Licence), the operation, administration, maintenance and development of a relevant System and, the National Grid LNG Storage Facilities (in the case only of National Grid NTS), facilitation of connections to a relevant System, and the implementation and performances of the Code, the Framework Agreement, any Ancillary Agreement and any Siteworks Contract.

5.1.3 In this paragraph 5 references to Users include DNO Users.

**5.2 User obligations**

5.2.1 Each User shall secure that Protected Information is not:

(a) disclosed to any person other than:

(i) an officer or employee of the User whose province it is to know the same; or

(ii) a professional adviser of or consultant to that User or a User Agent appointed by that User; or

(iii) a 10% Affiliate (other than an Affiliate which is the holder of a Gas Transporter's Licence) of that User; or

(iv) subject to paragraph 5.2.3, a consumer or a supplier

in any such case in accordance with the requirements of paragraph 5.4; or

(b) used by such User for any purpose other than one expressly contemplated by the Code or any Ancillary Agreement or Siteworks Contract to which such User

is party.

5.2.2 GT Section B2.4.1 shall not apply in respect of this paragraph 5.

5.2.3 For the purposes of paragraph 5.2.1(a)(iv) Protected Information relating to a Supply Point may be disclosed to the supplier or consumer to the extent reasonably necessary to enable the conclusion and implementation of a contract of sale to the supplier (where relevant) and a contract of supply to the consumer.

### **5.3 Protected Information**

5.3.1 In this Section "**Protected Information**" means:

(a) for the purposes of the Transporter's obligations under paragraph 5.1:

(i) any information relating to the affairs of a User which is obtained by the Transporter pursuant to or in the course of the negotiation, implementation or performance of the Code, the Framework Agreement or any Ancillary Agreement to which that User is party;

(ii) the terms of any Ancillary Agreement;

(b) for the purposes of a User's obligations under paragraph 5.2:

(i) any information relating to the affairs of the Transporter or of another User which is obtained by the User pursuant to or in the course of the negotiation, implementation or performance of the Code, the Framework Agreement or any Ancillary Agreement to which the User and (in relation to another User) that other User are party;

(ii) the terms of any Ancillary Agreement to which that User is party.

5.3.2 For the purposes of paragraph 5.3.1:

(a) information obtained by a Party in the course of the negotiation of the Code or a Framework Agreement shall be Protected Information only insofar as such information was obtained in writing;

(b) the following information shall (without prejudice to the generality of paragraph 5.3.1(a)(i)) be treated as information relating to the affairs of a User:

(i) the identity, address and any other details of a supplier or consumer, or any representative thereof, insofar as disclosed by the User to the Transporter pursuant to or for the purposes of the Code;

(ii) (without prejudice to paragraph 5.5.2(d)) information provided by the User to the Transporter pursuant to Sections L and O and details of the User's Code Credit Limit and record of payment of charges under the Code;

(c) the following information shall (without prejudice to the generality of paragraph 5.3.1(b)(i)) be treated as relating to the affairs of the Transporter: details of Demand Models, End User Categories and other information provided by that Transporter to Users pursuant to Section H; the UK Link Manual; information (other than information referred to in paragraph (b)) which is maintained or recorded in the UK Link System.

5.3.3 The terms of the Code and a Framework Agreement are not Protected Information.

5.3.4 For the avoidance of doubt, the provisions of the Code are without prejudice to the requirements of the Data Protection Act 1998.

### **5.4 Terms of permitted disclosure**

Where Protected Information is disclosed by the Transporter as permitted under paragraph 5.1.1(a) or by a User as permitted under paragraph 5.2.1(a), the Disclosing Party shall (without prejudice to its obligations under paragraph 5.1.1 or 5.2.1) take all reasonable steps to secure that the person to whom the information is disclosed:

- (a) is aware of the Disclosing Party's obligations under paragraph 5.1.1 or 5.2.1 in relation thereto; and
- (b) does not use or disclose the information other than as is permitted of such Party in accordance with paragraph 5.1.1 or 5.2.1.

## 5.5 Exceptions

5.5.1 For the purposes of this paragraph 5.5, "**Disclosing Party**" and "**Protected Party**" shall be construed as follows:

- (a) for the purposes of the Transporter's obligations under paragraph 5.1, the Disclosing Party is the Transporter and the Protected Party is the User to whose affairs any Protected Information relates;
- (b) for the purposes of a User's obligations under paragraph 5.2, the Disclosing Party is such User and the Protected Party is the Party (either the Transporter or another User) to whose affairs any Protected Information relates.

5.5.2 Nothing in paragraph 5.1 or 5.2 shall apply:

- (a) to the disclosure or use by the Disclosing 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 Disclosing Party is in the public domain; or
  - (ii) after it is obtained by the Disclosing Party enters the public domain
  - (iii) in either case otherwise than as a result of a breach by the Disclosing Party of its obligations under paragraph 5.1 or 5.2;
- (c) to the disclosure of any Protected Information to any person if and to the extent that the Disclosing Party is required to make such disclosure to such person:
  - (i) in compliance with the duties of the Disclosing Party under the Act or any other requirement of a Competent Authority; or
  - (ii) in compliance with the conditions of the Transporter's Licence or (as the case may be) Shipper's Licence held by the Disclosing Party or any document referred to in such licence with which the Disclosing 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 Disclosing Party;
- (d) to any Protected Information to the extent that the Disclosing 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 the Code, the relevant Framework Agreement and any Ancillary Agreement to which the Protected Party is party or bound);
- (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 Disclosing Party, where and to the extent that 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 Disclosing Party considers in good faith that the Protected Party may be in breach of a condition of the Transporter's Licence or (as the case may be) the Shipper's Licence, to the extent reasonably necessary to draw such possible breach to the attention of the Authority;

(g) to the disclosure of any Protected Information to any person proposing to make a connection directly or indirectly to a System, where and to the extent that the disclosure of such information is reasonably required for the purposes of supporting the Transporter's charges or requirement to allow such proposed connection to a System to be made and provided that the person to whom the information is to be disclosed is informed in writing of the confidentiality of such information and that prior to disclosure, such person has entered into a confidentiality agreement with the Transporter which prohibits use or disclosure of such Protected Information in terms no less onerous than those contained in this paragraph 5;

(h) to the disclosure of Protected Information to the Transporter Agency to the extent such disclosure is necessary for the purposes of the undertaking by the Transporter Agency of the Transporter Agency Activities.

5.5.3 Nothing in paragraph 5.1 shall apply to the disclosure by the Transporter of Protected Information:

(a) to any person to the extent such disclosure is required pursuant to the Modification Rules;

(b) to any UK Link User where such information is contained in a User Trade Communication transmitted to such UK Link User in accordance with the requirements of Section U5 or is accessible by such UK Link User by or from UK Link in accordance with any function or facility of UK Link described in the UK Link Manual;

(c) to any User Agent where the disclosure by the Transporter of such Protected Information to the appointing User would not have infringed paragraph 5.1;

(d) referred to in paragraph 5.3.2(b)(i) where the supplier or consumer concerned has consented to such disclosure pursuant to a Siteworks Contract, Network Exit Provisions or other document contemplated by the Act, the Transporter's Licence or the Code as being entered into by the Transporter and the consumer;

(e) to the Authority where such information is accessible by the Authority by or from the UK Link System to the extent of the access and in accordance with any function or facility thereof described in the UK Link Manual;

(f) to the Trading System Operator to the extent required pursuant to the provisions of Section D or to any person to the extent required pursuant to the Trading System Arrangements;

(g) to a consumer or an appropriate person to the extent designated by the authority within Standard Special Condition 31 of the Transporter's Licence and a supplier shall be an appropriate person pursuant to Standard Special Condition 31((2)(d)(ii) where its application is for the receipt of data for change of supplier purposes;

(h) to another Transporter to the extent such disclosure is required for the purposes of the Code or the Transporter's Licence;

(i) to a contractor or agent of the Transporter where the contractor or agent has entered into a confidentiality agreement with the Transporter on terms no less onerous than those of this paragraph 5; or

(j) to any person pursuant to an application made in accordance with paragraph 7.3 ('Other User Access') of Schedule 23, version dated 7 November 2008, contained in the Supply Point Administration Agreement ('SPAA') 11<sup>th</sup> June

2004 made between the parties listed in Schedule 1 of the SPAA.

5.5.4 Where:

(a) the Disclosing Party has complied with the requirements of Section U1.8; and  
(b) notwithstanding such compliance a person obtains any Protected Information by unauthorised access to any element of UK Link for the security of which the Disclosing Party is (in accordance with Section U) responsible  
the Disclosing Party shall not be in breach of paragraph 5.1 or 5.2 by virtue of such person having so obtained such Protected Information.

## **5.6 Survival**

The provisions of paragraphs 5.1 to 5.5 shall continue, for a period of 3 years after the User Discontinuance Date, to bind a Discontinuing User and (as respects the Discontinuing User) the Transporter and each other User, notwithstanding that the Discontinuing User has ceased to be a User and irrespective of the reason for such cessation.

## **5.7 Transporter's Licence**

Nothing in the Code, a Framework Agreement or any Ancillary Agreement shall be construed as requiring the Transporter to disclose or use any information in breach of any requirement of the Transporter's Licence.

## **5.8 Data ownership**

5.8.1 Subject to paragraph 5.8.2(a), the data, including metering data, which is processed by or recorded or maintained on the UK Link System (including all intellectual property rights in such data) shall belong for the purposes of the Code to the Transporter which owns or operates the System to which such data relates; and subject to paragraph 5.8.2(b) the Transporter may, but without prejudice to paragraph 5.1 or any other requirement of the Code, use and deal with such data as it thinks fit.

5.8.2 Where pursuant to the Code a User provides or arranges for the provision of data to a Transporter:

(a) such data (as provided to the Transporter by the User) shall belong to the User;  
(b) the User hereby grants to the Transporter (its successors, assigns, agents and contractors) a perpetual, non-exclusive, royalty-free licence (which shall survive the User Discontinuance Date) in respect of such data and all intellectual rights therein to use, copy, adapt and deal with such data for the purposes of performance and implementation of the Code and for other purposes contemplated by the Code, but not otherwise;  
(c) paragraph 5.8.1 shall apply in respect of data derived (pursuant to any process) by the Transporter from such data and in all compilations created by or on behalf of the Transporter of such data.

5.8.3 Where pursuant to the Code the Transporter provides data to a User or data which is recorded or maintained on the UK Link System is available to a User, the User shall (but without prejudice to paragraph 5.2) be entitled without charge to use such data for the purposes of performance and implementation of the Code, and for other purposes contemplated by the Code, but not otherwise.

## 5.9 Operational and Market Data

5.9.1 Subject to the provisions of paragraph 5.9.2 and the other provisions of the Code, National Grid NTS shall arrange for the data referred to in Annex V-1, ("**Operational and Market Data**") to be published or made available in the manner specified in Annex V-1.

5.9.2 National Grid NTS shall not be obliged to publish or make available operational and market data pursuant to paragraph 5.9.1 where that data is not available to National Grid NTS.

5.9.3 National Grid NTS shall issue (by means of publication on its website) an alert (a "**Gas Balancing Alert**") where, after forecasting demand for a Gas Flow Day in accordance with Section H 5.2.3 and Section H5.2.4 on the Preceding Day, the Forecast Total System Demand for the Gas Flow Day in question is greater than or equal to the Forecast Total System Supply for such Gas Flow Day.

5.9.4 National Grid NTS may issue (by means of publication on its website) a Gas Balancing Alert where during a Gas Flow Day, an incident is notified to National Grid NTS that would (in the reasonable opinion of National Grid NTS) reduce the Forecast Total System Supply for that Gas Flow Day by at least twenty five (25) MCM per Day and the remaining Forecast Total System Supply for that Gas Flow Day is less than or equal to the Forecast Total System Demand.

5.9.5 Where a Gas Balancing Alert is issued, it shall remain in force until the end of the Gas Flow Day to which it applies.

5.9.6 For the purposes of the Code:

(a) "**Forecast Total System Supply**" means the anticipated maximum daily supply to the Total System for the Gas Flow Day in question incorporating only the sum of the quantity of gas that could be withdrawn in aggregate from relevant Storage Facilities and delivered to the Total System on such Gas Flow Day without breaching the Two Day Ahead Minimum Storage Deliverability Amount; and

(b) "**Two Day Ahead Minimum Storage Deliverability Amount**" means, a quantity of gas from the Safety Monitor for all Storage Facility Types that could be withdrawn from all relevant Storage Facility Types in two (2) Days at their respective maximum withdrawal rates.

For the purposes of this paragraph a Storage Facility will be a "**relevant**" Storage Facility if (i) it is a Storage Facility whose deliverability and/or storage space National Grid NTS has used in the calculation of the Safety Monitor and (ii) the quantity of gas stored in that Storage Facility and available for withdrawal is greater than or equal to the quantity of gas that could be withdrawn from that Storage Facility in two (2) Days at its maximum withdrawal rate.

## 5.10 System Operator Commodity Charge Information

5.10.1 National Grid NTS shall arrange for the information referred to in Annex V-2 ("**SO Commodity Charge Information**") to be published in the manner and frequency specified in Annex V-2.

5.10.2 Where National Grid NTS is not reasonably able to publish SO Commodity Charge Information in the manner and frequency set out in Annex V-2, the requirements of

paragraph V5.10.1 shall not apply, and National Grid NTS shall publish the SO Commodity Charge Information as soon as is reasonably practicable.

## **5.11 Disclosure of Supply Meter Point Information ~~ier Identity~~(Annex V-5)**

5.11.1 Where in respect of any Supply Point the Transporter is requested by a Registered Metering Applicant to disclose to such Registered Metering Applicant the information detailed in Annex V-5 (“**Supply Meter Point Information**”) ~~identity of a supplier~~ then the Registered User of such Supply Point agrees that any such request will be regarded as made on behalf of such Registered User and accordingly the Transporter is authorised by such Registered User to disclose such Supply Meter Point Information ~~supplier identity~~ to the Registered Metering Applicant in accordance with such request.

5.11.2 For the purposes of paragraph 5.11.1, "**Registered Metering Applicant**" is any person who ~~has been~~ registered to request and receive Supply Meter Point Information ~~supplier identity~~ from the Transporter or any person who is not currently registered to request and receive Supply Meter Point Information but such request relates to a period when they were previously registered to request and receive Supply Meter Point Information pursuant to an appropriate registration scheme administered by the Transporter.

## **5.12 Transportation Revenue Information**

In each calendar month the NTS Operator shall (subject to any confidentiality obligations to which it may from time to time be subject) arrange for the relevant information referred to in Annex V-3 (for the purposes of this paragraph 5.12 and Annex V-3, "**transportation revenue information**") to be published on such website as may be notified by the NTS Operator to Users from time to time, within 15 Business Days following the end of the immediately preceding calendar month (for the purposes of this paragraph 5.12 and Annex V-3, the "**immediately preceding month**").

## **5.13 DN Operator Cost Information**

5.13.1 For the purposes of this paragraph 5.13 and Annex V4.

(a) "**Quarter**" shall mean a three month period ending on November, February, May and August (inclusive) in any year;

(b) "**Forecast Collected Revenue**" shall mean the DN Operator's reasonable estimate of the revenue to be recovered in respect of the relevant Formula Year referred to using such criteria as the DN Operator shall consider reasonably appropriate and having regard to the provisions of the DN Operator's Transportation Statement and any revenue or price control restrictions to which it may be subject from time to time (it being acknowledged that such estimate may be subject to revision from time to time);

(c) "**Final Allowed Revenue**" shall mean an amount reasonably determined by the DN Operator on an accruals basis (based on such information as is reasonably available to it at the relevant time) of revenue recovered or to be recovered in respect of a relevant Formula Year (it being acknowledged that such amount may be subject to a re-determination from time to time);

(d) The terms "**Z, F and K**" shall have the meanings attributed to them in the relevant DN Operator's Gas Transporters' Licence in respect of the relevant Formula Year;

- (e) references to incentives, payments and adjustments are to be construed in aggregate in the context of a Distribution Network;
- (f) **“Cost Information”** shall mean the information in respect of the relevant Formula Year set out in Annex V4 in the format prescribed from time to time, including any commentary as appropriate;
- (g) **“Required Date”** shall mean the 10<sup>th</sup> Business Day of the second calendar month following the end of the Quarter for which the information prescribed in Annex V4 is being provided.

5.13.2 A DN Operator shall arrange for the publication each Quarter of the Cost Information by the Required Date on the website of the Joint Office of Gas Transporters.

5.13.3 Cost Information beyond the expiry of the DN Operator price control period ending 31 March 2013 will be based on assumptions to be subject to further agreement between the DN Operators and Shippers.

#### **5.14 Incident Communications**

5.14.1 The Transporter shall, as soon as reasonably practicable after the occurrence of any of the incidents referred to in paragraph 5.14.2 below (subject always to any obligations of confidentiality and to any obligations (whether pursuant to any Legal Requirement or otherwise) which the Transporter may reasonably determine have a higher priority in the event of an incident) provide to relevant Users such information regarding the incident as is set out in the document entitled ‘Schedule for Shipper Communications in Incidents of CO Poisoning, Gas Fire/ Explosions and Local Gas Supply Emergency’ as such document may from time to time be amended by the Transporters upon notice to Users (the **“Shipper Incident Communication Procedure”**).

5.14.2 The incidents referred to in paragraph 5.14.1 above are:

- (a) explosions or fires due to an escape of gas;
  - (b) incidents involving death or major injury due to carbon monoxide poisoning from gas; and
  - (c) incidents resulting in a failure to supply more than 250 System Exit Points at any one time,
- in each case as more particularly described and defined in the Shipper Incident Communication Procedure.

5.14.3 The Shipper Incident Communication Procedure shall contain the methods by which a User may obtain the information set out therein.