

**Bord Gais Eireann**

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**LICENCE FOR THE CONVEYANCE**

**OF GAS IN NORTHERN IRELAND**

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## GRANT AND TERMS OF LICENCE

### **LICENCE FOR THE CONVEYANCE OF GAS**

#### 1. Grant and Terms of Licence

The Northern Ireland Authority for Energy Regulation (the “**Authority**”), in exercise of the powers conferred by Article 8(1)(a) of the Gas (Northern Ireland) Order 1996 (the “**Order**”) and with the consent of the Department of Enterprise, Trade and Investment, hereby grants to Bord Gais Eireann (a body corporate established in Ireland under the Gas Acts, 1976 to 2002, and having its principal place of business at P.O. Box 51, Gasworks Road, Cork, Ireland) (the “**Licensee**”) a licence to participate in the conveyance of gas from one place to another:

- (a) in the area designated as a term of the licence in Schedule 1 hereto;
- (b) from the date of this grant, on which date the licence shall be deemed to come into force, until:
  - (i) the licence is determined by not less than 25 years’ notice in writing given by the Authority to the Licensee, which notice shall not be served earlier than the date which is ten years after the date of this grant; or
  - (ii) the date, if earlier, on which the licence is revoked in accordance with the provisions specified as a term of the licence in Schedule 2 hereto; and
- (c) by virtue of Article 9(1) of the Order, on an exclusive basis in accordance with the provisions specified as a term of the licence in Schedule 3 hereto.

#### 2. Conditions of Licence

The grant of the licence shall be deemed:

- (a) in accordance with Article 11(2) of the Order, to incorporate by this reference the standard conditions of licences for the conveyance of gas determined under Article 11(1) of the Order, subject to:
  - (i) those modifications to such standard conditions as are set out in the attachments hereto at the time of this grant as made in accordance with Article 11(3) of the Order (as such modifications may themselves subsequently be modified by virtue of Article 14(1)(a) of the Order, Article 17 of the Order, or such other lawful power of modification as may exist from time to time); and
  - (ii) any subsequent modification to such standard conditions as may be made in accordance with Article 14(1)(b) of the Order, Article 17 of the Order, or such other lawful power of modification as may exist from time to time; and
- (b) in accordance with Article 10(1) of the Order, to include the further conditions attached hereto at the time of this grant (as such conditions may subsequently be modified in accordance with Article 14(1)(a) of the Order, Article 17 of the Order, or such other lawful power of modification as may exist from time to time).

[DATE]

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Douglas McIldoon

Chairman  
The Northern Ireland Authority for Energy Regulation

PART 1 GENERAL CONDITIONS APPLICABLE TO THE LICENCE HOLDER

**Condition 1.1: Interpretation and Construction**

1.1.1 Interpretation Act (Northern Ireland) 1954 and Gas (Northern Ireland) Order 1996

Unless the contrary intention appears:

- (a) words and expressions used in this or any of the following Parts of the licence or in the Schedules hereto shall be construed as if they were in an enactment and the Interpretation Act (Northern Ireland) 1954 applied to them;
- (b) references to an enactment shall include subordinate legislation and in both cases any statutory modification or re-enactment thereof after the date when the licence comes into force; and
- (c) words and expressions defined in the Gas (Northern Ireland) Order 1996 or the Energy (Northern Ireland) Order 2003 shall have the same meaning when used in this or any of the following Parts of the licence or in the Schedules hereto.

1.1.2 General Rules of Construction

Unless otherwise specified:

- (a) any reference to a numbered Part or Schedule is a reference to the Part or Schedule bearing that number;
- (b) any reference to a numbered Condition is a reference to the Condition bearing that number in the Part in which the reference occurs and within any Condition a reference to “this Condition” shall be to the whole of the Condition under its heading;
- (c) any reference to “the Conditions” means the Conditions to which the licence is subject and references to “any Conditions” and to any cognate expression shall be construed accordingly;
- (d) any reference to a numbered paragraph is a reference to the paragraph bearing that number in the Part, Condition or Schedule in which the reference occurs; and

- (e) (without prejudice to any provision which restricts such variation, supplement or replacement) any reference to any agreement, licence (other than this licence), code or other instrument shall include a reference to such agreement, licence, code or other instrument as varied, supplemented or replaced from time to time.

### 1.1.3 Headings

The heading or title of any Part, Condition, Schedule or paragraph shall not affect the construction thereof.

### 1.1.4 Time Related Obligations

Where any obligation of the Licensee is expressed to require performance within a specified time limit that obligation shall continue to be binding and enforceable after that time limit if the Licensee fails to perform that obligation within that time limit (but without prejudice to all rights and remedies available against the Licensee by reason of the Licensee's failure to perform within the time limit).

### 1.1.5 Natural Persons

These Conditions shall have effect as if, in relation to a licence holder who is a natural person, for the words “it”, “its” and “which” there were substituted the words “he”, “his” or “whom” and cognate expressions shall be construed accordingly.

### 1.1.6 Definitions

Except where expressly stated to the contrary and unless the context otherwise requires, the following terms shall have the meanings ascribed to them below:

“affiliate” means, in relation to any person, any company which is a subsidiary of such person or a company of which such person is a subsidiary or a company which is another subsidiary of a company of which such person is a subsidiary;

“amount” means, in relation to gas, the energy content thereof expressed in therms or kilowatt hours; except with

	effect from 1st January 2000, it means the said content expressed in kilowatt hours;
“auditors”	means the Licensee's auditors for the time being holding office in accordance with the requirements of the Companies Act 1985;
“authorisation of persons”	means the power of the Licensee to authorise persons, pursuant to Schedule 5 of the Order;
“Authority”	means the Northern Ireland Authority for Energy Regulation;
“balancing”	means (in relation to the Network and any relevant period for balancing under the Network Code) taking such measures as may be available to the Licensee in order to maintain pressure in the Network at such levels as will, in the reasonable opinion of the Licensee, ensure the safety and efficiency of the Network in that or any subsequent relevant period, which measures shall include managing the relationship between deliveries of gas to and offtakes of gas from the Network during that period;
“company”	means a company within the meaning of Article 3 of the Companies (Northern Ireland) Order 1986 or any other body corporate;
“consumer”	means any person supplied with gas to premises;
“conveyance charges”	means the charges made by the Licensee for the conveyance of gas;
“conveyance services”	means all services provided by the Licensee of conveying gas to, through and within the Licensed Area;

“Department”	means the Department of Enterprise, Trade and Investment;
“distribution pipe-line”	means any pipe-line which is not a transmission pipe-line;
“domestic consumer”	means a person who is supplied with gas conveyed to premises at a rate which is reasonably expected not to exceed 73,250 kilowatt hours a year;
“Energy Order”	means the Energy (Northern Ireland) Order 2003;
“exemption holder”	means the holder of an exemption under Article 7 of the Order;
“exercise of powers of entry”	means the Licensee entering any premises, in accordance with the powers conferred by Schedule 5 of the Order;
“gas supplier”	means any person authorised by licence under Article 8 of the Order or by exemption under Article 7 of the Order to supply gas including the Licensee as so authorised or exempted;
“Grant”	means the commencing section of this licence by which the Authority grants the Licensee the licence;
“information”	includes documents, accounts, estimates, returns, reports or other information;
“licence”	means the Grant, together with those Conditions and Schedules referred to in paragraphs 1 and 2 thereof (as modified from time to time);
“Licensed Area”	means the area in which the Licensee is authorised to convey gas;

“Licensed Business”	means the activities connected with the conveyance of gas pursuant to the licence, including (without limitation) the development, construction, operation and maintenance of the Network, the connection of premises to the Network, and the provision and maintenance of gas meters (but not meter reading);
“Licensee”	means the person referred to as such in the Grant, and/or any person to whom the Licence is subsequently assigned in accordance with the Order, the Energy Order or the Licence;
“Network”	means the distribution pipe-lines within the Licensed Area that are owned and/or operated by the Licensee, terminating in each case immediately prior to the inlet of the gas meter at the consumer’s premises;
“Network Code”	means the document prepared by the Licensee under Condition 2.4.2;
“non standard gas credit meter”	means a gas credit meter owned by the Licensee which is not a standard gas credit meter;
“non standard gas meter”	means either a non standard gas credit or pre-payment meter;
“non standard gas pre-payment meter”	means a gas pre-payment meter owned by the Licensee which is not a standard gas pre-payment meter;
“Order”	means the Gas (Northern Ireland) Order 1996;
“Other Business”	means any business of the Licensee other than the Licensed Business;
“owned”	means in relation to any gas meter title in or control over a meter and includes meters leased to a person;



“person”	means any company, firm, partnership, association, body corporate or individual;
“related undertaking”	means any undertaking in which any person has a participating interest as defined by Article 268 of the Companies (Northern Ireland) Order 1986;
“separate accounts”	means the accounts which are to be prepared for each Separate Business;
“Separate Business”	<p>means the activities of the Licensee connected with:</p> <ul style="list-style-type: none"> <li>(a) the conveyance of gas by means of a transmission pipe-line pursuant to a licence granted in accordance with Article 8(1)(a) of the Order;</li> <li>(b) the conveyance of gas by means of a distribution pipe-line pursuant to a licence granted in accordance with Article 8(1)(a) of the Order;</li> <li>(c) the storage of gas pursuant to a licence granted in accordance with Article 8(1)(b) of the Order; and</li> <li>(d) the supply of gas pursuant to a licence granted in accordance with Article 8(1)(c) of the Order;</li> </ul> <p>each taken separately from one another and from any other business of the Licensee or any affiliate or related undertaking of the Licensee, but so that where all or any part of such business is carried on by an affiliate or related undertaking of the Licensee (save in respect of an affiliate or related undertaking which has a separate licence or exemption), such part of the business as is carried on by that affiliate or related undertaking shall be consolidated with any other such</p>

business of the Licensee (and of any other affiliate or related undertaking of the Licensee) so as to form a single Separate Business;

“standard gas credit meter” means a gas credit meter of a type so specified and owned by the Licensee;

“standard gas meter” means either a standard gas credit or pre-payment meter;

“standard gas pre-payment meter” means a gas pre-payment meter of a type so specified and owned by the Licensee;

“subsidiary” has the same meaning as given to it in Article 4 of the Companies (Northern Ireland) Order 1986;

“Supply Licensee” means the person from time to time authorised to supply gas under a licence originally granted, on the same date as the date of the Grant, to Bord Gais Eireann;

“transmission pipe-line” means any pipe-line having a design operating pressure exceeding 7 bar gauge; and

“transportation arrangements” means the arrangements which licence holders or exemption holders may have with the Licensee to have gas introduced into, conveyed by means of and taken out of the Network.

#### 1.1.7 References to energy

References to amounts of gas in therms shall, with effect from 1st January 2000, be converted to equivalent amounts of gas in kilowatt hours.

#### 1.1.8 Singular/plural

The terms defined under Condition 1.1.6 shall include the singular and the plural, as the context requires.

## **Condition 1.2: Separate Accounts for Separate Businesses**

### 1.2.1 Financial years

For the purposes of this Condition, the first financial year of the Licensee shall run from the date of the Grant to 31<sup>st</sup> December 2005 and thereafter each financial year of the Licensee shall run from 1<sup>st</sup> January to the following 31<sup>st</sup> December.

### 1.2.2 Separate Business Accounting

This Condition applies for the purposes of ensuring that the Licensee (and any affiliate or related undertaking of the Licensee) maintains internal accounting and reporting arrangements which enable separate financial statements to be prepared for each Separate Business and showing the financial affairs of each such Separate Business. In this regard the Licensee shall not be required to prepare such financial statements as if they were annual accounts (in relation to each Separate Business) prepared under Article 236 of the Companies (Northern Ireland) Order 1986, but shall be required to prepare such accounts in accordance with this Condition.

### 1.2.3 Separation of Internal Accounts

The Licensee shall keep proper books of account and records in such a form that the revenues and costs, assets and liabilities of, or reasonably attributable to, each Separate Business are separately identifiable in the books of the Licensee from those of any other business of the Licensee. Then the Licensee shall, so far as is reasonably practicable, prepare for each Separate Business on a consistent basis from its accounting records in respect of each financial year, financial statements comprising:

- (a) a profit and loss account;
- (b) a statement of net assets at the end of the period;
- (c) a cash flow statement for the period with a reconciliation to the financial statements specified in sub-paragraphs (a) and (b) above; and
- (d) a balance sheet.

#### 1.2.4 Apportionment

The financial statements prepared under Condition 1.2.3 shall set out and fairly present the costs (including depreciation), revenues, assets employed and liabilities of, or as may be reasonably attributable to, that Separate Business and showing separately and in appropriate detail the amounts of any revenue, cost, asset or liability which has been:

- (a) charged from or to any other business of the Licensee; and/or
- (b) determined by apportionment (in accordance with rules previously approved by the Authority in accordance with Condition 1.2.5), and any other business of the Licensee;

together with a description of the basis of the charge or apportionment.

#### 1.2.5 Bases of charge or apportionment

The Licensee shall, no later than three months after the date of the Grant, notify the Authority of the bases of charge or apportionment required to be shown separately under Condition 1.2.4 it proposes to use for the financial statements in respect of each Separate Business for the financial year commencing on 1<sup>st</sup> January 2005, and:

- (a) the bases of charge or apportionment in respect of those financial statements shall be the bases so proposed by the Licensee unless the Authority following consultation with the Licensee gives a direction requiring the use of any other basis; and
- (b) except in so far as the Authority consents to the Licensee doing so the Licensee shall not change any basis of charge or apportionment used in the financial statements in respect of any Separate Business for any financial year subsequent to the financial year commencing on 1<sup>st</sup> January 2005 from the basis used in the financial statements in respect of that Separate Business for that financial year.

#### 1.2.6 Auditor's Reports

The Licensee shall procure, in respect of each set of financial statements prepared in accordance with this Condition in respect of a financial year, a report by the auditors and addressed to the Authority stating whether in their opinion that set of financial statements have been properly prepared in accordance with this Condition and give a true and fair view of the revenues, costs, assets and liabilities of, or reasonably attributable to, the Separate Business to which they relate.

1.2.7 Copies of accounts and auditor's reports to be provided to the Authority

The Licensee shall provide the Authority with a copy of each set of financial statements and auditor's reports required under this Condition as soon as reasonably practicable and in any event not later than six months after the end of each financial year.

1.2.8 Form of financial statements

Financial statements prepared for the purposes of this Condition shall, so far as reasonably practicable and unless otherwise approved by the Authority having regard to the purposes of this Condition:

- (a) conform to UK generally accepted accounting principles and practices;
- (b) state the accounting policies adopted; and
- (c) be so prepared to a level of detail as may reasonably be required by the Authority and so that they may be reconciled with the published accounts of the Licensee under the Companies Act 1985.

1.2.9 Publication of Accounting Statements

The Authority may direct the Licensee to publish such accounting statements and reports (including but not limited to an auditor's report) as the Licensee is required to deliver to the Authority under this Condition 1.2 with the annual accounts of the Licensee. Provided however, that where the Licensee also holds a licence under Article 8(1)(b) or (c) of the Order, any part of such statements and reports which shows separately amounts charged, apportioned or allocated between Separate Businesses, and describes the basis of charge or apportionment or allocation shall, at

the request of the Licensee, be excluded from publication where the Authority is reasonably satisfied that publication would or might seriously and prejudicially affect the commercial interests of the Licensee in its business comprising the storage of gas carried out under the licence given under Article 8(1)(b) of the Order or the supply of gas carried out under the licence given under Article 8(1)(c) of the Order.

#### 1.2.10 Construction of “costs or liabilities”

References in this Condition to costs or liabilities of, or reasonably attributable to, any Separate Business shall be construed as excluding taxation, capital liabilities which do not relate principally to a particular Separate Business, and interest thereon; and references to any accounting statement shall be construed accordingly.

#### 1.2.11 Additional Definition

“UK generally accepted accounting principles and practices” means the principles and practices prevailing from time to time in the United Kingdom which are generally regarded as permissible or legitimate by the accountancy profession irrespective of the degree of use.

#### 1.2.12 Associated Undertakings

The Licensee shall set out, in notes to the published accounts referred to in Condition 1.2.8(c), any transaction relating to any Separate Business that was undertaken with an associated undertaking and that has a value of over £5,000.

For the purpose of this Condition 1.2.12, an “associated undertaking” is:

- (a) any company in respect of which the Licensee (or its parents and subsidiaries) holds 20% or more of the shares; or
- (b) any company in respect of which the Licensee (or its parents and subsidiaries) has the right to appoint or to remove a majority of the members of the board and is at the same time either a shareholder in that company or controls, pursuant to a shareholders’ agreement, a majority of voting rights in that undertaking.

### **Condition 1.3: Provision of Information to the Authority**

#### 1.3.1 Furnishing information

Subject to Conditions 1.3.2 and 1.3.3 below, the Licensee shall, furnish to the Authority, in such manner and at such times as the Authority may reasonably require, information as the Authority may reasonably require or as may be necessary for the purpose of performing:

- (a) the functions assigned to it by or under the Order or the Energy Order; and
- (b) any functions transferred to it under the Order or the Energy Order.

#### 1.3.2 Licensee to comment on accuracy of information

This Condition shall not apply in respect of any function of the Authority under Articles 14(1)(a) and 27 of the Order or under Article 7 of the Energy Order but the Licensee shall, if requested by the Authority, give reasoned comments on the accuracy (so far as it relates to its Licensed Business), of any information or advice which the Authority proposes to publish pursuant to Article 7 of the Energy Order.

#### 1.3.3 Condition 1.3 exclusive of other powers to require information

The power of the Authority to call for information under this Condition is in addition to the power of the Authority to call for information under or pursuant to any other Condition or any Schedule.

#### 1.3.4 Condition 1.3 and other powers to require information

Where the Licensee is or can be required to provide information to the Authority under any Condition other than this Condition, there shall be a presumption that the provision of that information in accordance with the Condition in question is sufficient for the purposes of that Condition, but that presumption shall be rebutted and shall not limit the right of the Authority to call for further information under Condition 1.3.1 if it states in writing that in its opinion such information is, or is likely to be, necessary to enable it to exercise functions under the Condition in question.

#### 1.3.5 Limitation on obligation to furnish information

This Condition shall not require the Licensee to furnish any information which the Licensee could not be compelled to produce or give in evidence in civil proceedings in the High Court.



**Condition 1.4: Consultation with the General Consumer Council**

1.4.1 Policy statements for General Consumer Council

The Licensee shall in due time consult with the General Consumer Council in the formulation of:

- (a) its policies for the conduct of its business activities relating to the conveyance of gas insofar as they may affect consumers; and
- (b) the general arrangements for their implementation;

and shall:

- (c) give the General Consumer Council reasonable notice of the publication, announcement or implementation (if no publication or announcement is made) of details of any significant change in any such policies and general arrangements; and
- (d) give to the General Consumer Council as the General Consumer Council may reasonably request an explanation of any such significant change and of the implementation of those policies.

## **Condition 1.5: Restriction on Use of Certain Information**

### 1.5.1 Use of protected information

Where the Licensee or any affiliate or related undertaking of the Licensee receives protected information, the Licensee shall (and shall procure that such affiliate or related undertaking shall) procure:

- (a) that the Licensee shall not obtain any unfair commercial advantage from its possession of protected information with respect to any Separate Business:
- (b) that protected information is not used by any other person for the purpose of obtaining for that person:
  - (i) any unfair commercial advantage from its possession of protected information;
  - (ii) any licence;
  - (iii) any exemption;
  - (iv) control of any body corporate which, directly or indirectly, has the benefit of any such licence or exemption; and
- (c) that protected information is not disclosed except with the prior consent in writing of the relevant person to whose affairs the protected information relates;

provided that the obligation on the Licensee:

- (d) to procure the above in relation to an affiliate or related undertaking which has control of the Licensee (control being defined by Section 416 of the Income and Corporation Taxes Act 1988), shall be to do so by using reasonable endeavours and obtaining an appropriate contractual undertaking from that affiliate or related undertaking in respect of such protected information; and
- (e) not to obtain any unfair commercial advantage from its possession of protected information under Condition 1.5.1(a) shall be construed to exclude protected information received by any Separate Business, if applicable, not engaged in the conveyance of gas independently of the Separate Business engaged in the conveyance of gas.

### 1.5.2 Compliance with directions

The Licensee shall implement such measures and procedures and take all such other steps as shall be specified in directions issued by the Department from time to time under Article 45 of the Order or otherwise for the purposes of this Condition as reasonably appear to the Department to be requisite or expedient for the purpose of securing compliance by the Licensee with its obligations under Condition 1.5.1 in the conduct of its business to convey gas.

### 1.5.3 Limitation of non disclosure obligations

Condition 1.5.1(c) shall not apply to any disclosure of information:

- (a) authorised by Article 63(3) or (4) of the Energy Order; or
- (b) made in compliance with the duties of the Licensee or any affiliate or related undertaking of the Licensee under the Order or the Energy Order or by any other requirement of a competent authority; or
- (c) made in compliance with the Conditions of the licence or any document referred to in the licence with which the Licensee or any affiliate or related undertaking of the Licensee is required by virtue of the Order or the Energy Order or the licence to comply; or
- (d) necessary in order to enable the person to whom such information is disclosed to enter into arrangements with the Licensee for the conveyance of gas, or in order to give effect to such arrangements; or
- (e) is necessary in order to enable any agent appointed by the Licensee to fulfil the Licensee's balancing obligations under the Licence.

### 1.5.5 Additional definition

In this Condition:

“protected information” means any commercially confidential information which relates to the affairs of a person who is not an affiliate or related undertaking of the Licensee holding a licence or exemption to convey, store or supply gas or any affiliate or related undertaking of that person which has been

furnished to or otherwise acquired by the Licensee under or pursuant to or in the course of any dealings with that person or any affiliate or related undertaking of his other than information which is in, or comes into, the public domain other than as a result of breach by the Licensee of this Condition or of any Conditions of the licence.

## **Condition 1.6: Powers of Entry**

### 1.6.1 Arrangements for powers of entry

The Licensee shall, unless it has done so before being licensed, no less than 15 days before gas is first introduced into the Network and in any event within six months of the licence coming into force:

- (a) submit to the Authority a statement of its proposed arrangements in respect of the matters mentioned in Condition 1.7;
- (b) if within 30 days of such submission the Authority notifies the Licensee that, in its opinion, the arrangements are not sufficient for the purposes of Condition 1.7, make changes to the arrangements requisite to secure compliance with such conditions as are specified by the Authority; and
- (c) make such arrangements;

and the arrangements so made in this Condition and in Condition 1.7 are referred to as “the arrangements”.

### 1.6.2 Changes in arrangements for extensions to licence

In the event of an extension of its licence, the Licensee shall ensure that the arrangements remain sufficient for the purposes of Condition 1.7 and shall make, subject to Condition 1.6.3, any necessary changes.

### 1.6.3 Consent of Authority to changes

The Licensee shall not make any material change to the arrangements except with the consent of the Authority, which consent shall not be unreasonably withheld and shall be deemed to have been given, unless refused in writing within 2 months of receipt by the Authority of the application to make a material change by the Licensee.

### 1.6.4 Conduct with domestic consumers

The Licensee shall use its best endeavours to ensure that, so far as is reasonably practicable, when exercising powers of entry under Schedule 5 to the Order, it conducts itself towards domestic consumers to whose premises the Licensee arranges for gas to be conveyed in conformity with the arrangements.

## **Condition 1.7: Authorisation of Persons**

### **1.7.1 Steps to be included in the arrangements**

The arrangements shall comprise all reasonable steps:

- (a) for securing that no person is authorised for the purpose of any provision of Schedule 5 to the Order unless in the reasonable opinion of the Licensee he is a fit and proper person to enjoy the rights conferred by that provision;
- (b) for securing that any person authorised for the purpose of any provision of Schedule 5 to the Order possesses appropriate expertise to perform the particular task that he will be required to undertake under the provision in question;
- (c) for securing that a member of the public may readily confirm the identity or authority of a person authorised for the purpose of any provision of Schedule 5 to the Order;
- (d) for securing that identity cards, uniforms, liveried vehicles and other things conveying evidence of authority or identity in relation to the Licensee are not misused; and
- (e) for securing that all persons authorised by the Licensee comply with the provisions for entry where any justices' warrant is issued under Schedule 5 paragraph 6 to the Order.

### **1.7.2 Licensee not to authorise a person to exercise any powers of entry unless steps described in the arrangements above are complied with**

The Licensee shall not authorise any person to exercise any powers of entry conferred by Schedule 5 to the Order unless the steps provided for in the arrangements described in Condition 1.7.1(a), (b) and (c) have been complied with and it appears to the Licensee that he is such a fit and proper person.

1.7.3 Licensee to take reasonable steps to keep relevant persons informed

Except in so far as the Authority otherwise consents, if in respect of any premises any person so authorised is an officer or employee of an agent of the Licensee, the Licensee shall take reasonable steps to inform and keep informed all persons to whom the information is relevant, including its domestic consumers and any other licence holders, naming the agent in question and shall give that information in a verifiable and authoritative manner.

## **Condition 1.8: Exercise of Powers of Entry**

### 1.8.1 Licensee to avoid undue disturbance

In exercising the powers of entry conferred on it by Schedule 5 to the Order, the Licensee shall avoid undue disturbance to owners or occupiers of premises as a result of visits being made to their premises by persons authorised by the Licensee.

### 1.8.2 Construction of Condition 1.8.1

In this Condition any reference to the conferring on the Licensee of powers of entry under Schedule 5 to the Order or to the exercise of such powers shall be construed as a reference to the conferring on a person authorised by the Licensee of such powers and the exercise by such an authorised person of those powers.



## **Condition 1.9: Modifications**

### 1.9.1 Modification of Licence Conditions

The Conditions of the licence are subject to modification in accordance with their terms or with Articles 9, 14, 17, 17A, or 18 of the Order or with any provision for the modification of the same in the Energy Order.

## **Condition 1.10: Assignment of Licences**

### 1.10.1 Licensee's ability to assign its licence

For the purposes of Article 12 of the Order, the Licensee with the prior consent of the Authority may assign the licence either generally, or so far as relating to the whole or any part of the Licensed Area.

### 1.10.2 Matters affecting an assignment

In deciding whether to give its consent under Condition 1.10.1 the Authority shall apply those criteria contained in Article 12(3) of the Order, and any consent shall be subject to compliance with the matters determined by the Authority under Article 12(4) of the Order.

### 1.10.3 Licensee may not otherwise assign its licence

Save as the Licensee is authorised to assign the licence under this Condition, the Licensee may not otherwise assign the licence without the consent of the Authority.

### 1.10.4 Immediate assignment following the Grant

The Licensee shall as soon as is reasonably practicable following the date of the Grant (and in any event within three months thereof) assign the Licence generally to [*Name of BGE subsidiary to be inserted prior to Grant*] (a company registered in England & Wales, with registered number [*Relevant Company Number to be inserted prior to Grant*]). For the purposes of this Condition and Article 12 of the Order, the Authority shall be deemed to have consented to such assignment.

## **Condition 1.11: Transfer of Business**

### 1.11.1 Restrictions on transfer of the Licensed Business

Subject to Condition 1.11.2, the Licensee shall not transfer to another person all or any part of the Licensed Business.

### 1.11.2 Exception to Conditions 1.11.1

Nothing in Condition 1.11.1 shall prevent the Licensee from transferring all or the relevant part of the Licensed Business to the assignee where the Authority has consented to the assignment of all or the relevant part of the licence under Article 12 of the Order or the Licensee has assigned all or the relevant part of the licence in accordance with Condition 1.10.

## **Condition 1.12: Disposal of Relevant Assets**

### **1.12.1 Licensee not to dispose of or relinquish operational control of relevant assets**

Except:

- (a) in relation to an assignment permitted under Condition 1.10 and the disposal or relinquishing of operational control of any relevant asset necessary for the assignment to have effect; or
- (b) in relation to a transfer of business permitted under Condition 1.11 and the disposal or relinquishing of operational control of any relevant asset necessary for the transfer to have effect; or
- (c) in so far as the Authority consents to the Licensee so doing; or
- (d) in relation to relevant assets which do not form an integral part of the Network, or are not otherwise required for continuous system control and data acquisition or the safe and continuous operation of the Network, which may be the subject of arms length asset and financing leasing arrangements;

the Licensee shall not dispose of or relinquish operational control over any relevant asset if the disposal or relinquishing of control would materially affect its ability to discharge its obligations under the Order or the Energy Order or the carrying on of activities authorised or required by the licence and any question arising under this Condition 1.12.1 as to whether such disposal or relinquishing of control is such as aforesaid shall be determined by the Authority.

### **1.12.2 Notice to be given to Authority**

Save as provided in Condition 1.12.3 or in so far as the Authority otherwise consents, the Licensee shall give to the Authority not less than two months prior written notice of its intention to dispose of or relinquish operational control over any relevant asset, together with such further information as the Authority may request relating to such asset or the circumstances of such intended disposal or relinquishment of control or to the intentions in regard thereto of the person proposing to acquire such asset or operational control over such asset.

### **1.12.3 Notice not required for minor disposals**

The Licensee shall not be required to give the Authority any notice of its intention to dispose of or relinquish operational control of any relevant asset having a value of less than £25,000 in January 2004 prices (such sum to be adjusted annually by reference to the retail price index), provided that:

- (a) the disposal of or relinquishing of operational control of such relevant asset would not materially affect the Licensee's ability to discharge its obligations under the Order or the Energy Order or the carrying on of activities required by the licence; and
- (b) the disposal or relinquishing of any such relevant assets does not exceed an aggregate value of £250,000 in January 2004 prices (such sum to be adjusted annually by reference to the retail price index), in any period of twelve months.

#### 1.12.4 Disposal allowed with consent of the Authority

The Licensee may dispose of or relinquish operational control over any relevant asset where:

- (a) the Authority confirms in writing that it consents to such disposal or relinquishment before such disposal or relinquishment occurs (which consent may be made subject to the acceptance by the Licensee or any third party in favour of whom the relevant asset is proposed to be disposed or operational control is proposed to be relinquished of such conditions as the Authority may specify); or
- (b) the Authority does not inform the Licensee in writing of any objection to such disposal or relinquishment of control within the notice period referred to in Condition 1.12.2.

#### 1.12.5 Consultation with other licence holders

Any consent of the Authority pursuant to Condition 1.12.4 shall be given after the Authority shall have consulted and taken into consideration any representations made in a timely manner by any other licence holder liable to be materially affected by the disposal in question.

#### 1.12.6 Additional Definitions

In this Condition:

“disposal”

includes any sale, assignment, gift, exchange, lease, licence, the grant of any right of possession, loan, security, mortgage, charge or the grant of any other encumbrance or the permitting of any encumbrance to subsist or any other disposition to a third party and “dispose” shall be construed accordingly.

“relevant asset”

means any part of the Network and any gas meter connected to the Network, together with any estate or interest in land required for the utilisation of the Network and any intangible assets (including patents, copyright, design rights and other similar rights) relating to or arising from Licensed Business.

## **Condition 1.13: Payment of Fees**

### 1.13.1 Licensee to pay annual fee

In respect of each year, beginning with the date of the Grant for the first year and 1st April for each subsequent year, during which the licence is in force, the Licensee shall pay to the Authority fees of the amounts specified in or determined under the following paragraphs of this Condition (“the annual fees”) except that where the licence is in force for part only of such a year, the fees in respect of that year shall be the proportionate part of the annual fees.

### 1.13.2 Initial Fee

Within thirty days of the Authority giving the Licensee notice of the sum due, the Licensee shall pay to the Authority a sum not exceeding £300,000 determined by the Authority in accordance with the principles set out in Condition 1.13.3 in respect of the fee payable for that part of the year commencing on the date of the Grant and ending on 31st March and for each subsequent year commencing on 1st April the fees payable by the Licensee under this Condition shall be payable by the Licensee within 30 days of the Authority giving the Licensee notice of the sum due.

### 1.13.3 Amount of annual fee

In respect of the year beginning on 1st April 2005 and in each subsequent year, within 30 days of the Authority giving the Licensee notice of the sums due, the Licensee shall pay to the Authority a fee which is the aggregate of the following amounts:

- (a) an amount equal to the proportion which the Authority shall determine in relation to the licence of the amount estimated by the Authority, according to a method which has previously been disclosed in writing to the Licensee, as likely to be its costs during the year in question (i) in the exercise of its functions under the Order and the Energy Order in relation to the holders of licences granted under Article 8(1)(a) of the Order and (ii) in connection with the establishment of the Authority and the transfer to the Authority of the functions, property, rights and liabilities of the Director;
- (aa) an amount equal to the proportion which the Authority shall determine in relation to the Licence of an amount notified to the Authority by the General Consumer

Council and approved by the Department as being the General Consumer Council's estimate of its likely costs during the year in question in the exercise of the functions relating to gas assigned to it by or under the Order and the Energy Order and any other such functions as it has been or may be required to exercise by the Authority in relation to gas, or, in the event that the Authority shall not have received such notification by 31 July in the year in question, an amount equal to the said proportion of an amount being the Authority's estimate of such likely costs (having regard to any estimate of such costs in any forward work programme published by the General Consumer Council in respect of the year in question);

- (b) an amount which is a proportion as determined by the Authority of the amount estimated by the Authority (in consultation with the Competition Commission) as having been incurred in the year immediately preceding the year in question by the Competition Commission in connection with references made to it under Article 15 of the Order with respect to the licence or any other licence granted under Article 8(1)(a) of the Order; and
- (c) the difference (being a positive or negative amount), if any, between:
  - (i) the amount of the fee paid by the Licensee in respect of the year immediately preceding the year in question in relation to the Licence less any refund paid to the Licensee in respect of that year under Condition 1.13.3A; and
  - (ii) the amount which that fee would have been in respect of that year:
    - (aa) had the amount comprised therein under Condition 1.13.3(a) (or, where that year commenced on 1st April 2004, had the amount comprised therein which was attributable to the matters referred to in that Condition, as determined by the Authority according to a method disclosed in writing to the Licensee) been calculated by reference to the total costs of the Authority in connection with its functions under the Order and its functions in relation to gas under the Energy Order, and the proportion thereof actually attributable to the Licence; and
    - (bb) had the amount comprised therein under Condition 1.13.3(aa) (or where that year commenced on 1<sup>st</sup> April 2004, had the amount



comprised therein which was attributable by the Authority according to a method disclosed in writing to the Licensee) been calculated by reference to the total costs of the General Consumer Council in connection with the functions referred to in Condition 1.13.3(b) and where appropriate, the proportion thereof actually attributable to that Licence;

such total costs being apportioned in each case as determined by the Authority according to a method previously disclosed in writing to the Licensee

provided that the total fees payable by the Licensee in respect of the amounts determined by the Authority under Condition 1.13.3(a) and (aa) shall not, in respect of any year commencing on 1<sup>st</sup> April exceed £600,000 adjusted from the date of the Grant annually by reference to the retail price index.

#### 1.13.3A Refunds

In respect of each year, the Authority may (where it is reasonable to do so taking into account the annual reconciliation provided for under Condition 1.13.3(c)) pay the Licensee an amount (“the refund”) calculated in accordance with the method previously disclosed in writing to the Licensee and by reference to the difference between:

- (a) the proportion of the licence fee for that year paid by the Licensee which is attributable to the Authority’s estimate in accordance with paragraph 1.13.3(a) and the estimate of the General Consumer Council or the Authority (as appropriate) in accordance with Condition 1.13.3(aa); and
- (b) the Authority’s reasonable revised estimate of those costs (taking account of any revised estimate of the costs referred to in Condition 1.13.3(aa) which is approved by the Department and notified to the Authority by the General Consumer Council;

provided that any such refund shall be paid to the Licensee on or before 31 March in the year to which the licence fee relates.

#### 1.13.4 Definition for the purposes of this Condition

In this Condition 1.13, the ‘Director’ means the Director General of Gas for Northern Ireland.

## **Condition 1.14: Notices**

### 1.14.1 Notices

All notices to be given under any Condition shall be in writing and shall be deemed to have been properly given if delivered in person or sent by registered mail or transmitted by facsimile to the relevant party at the address set out below or at such other address as that party may from time to time specify in writing to the others:

Licensee: Bord Gais Eireann  
PO Box 51,  
Gasworks Road,  
Cork,  
Ireland  
Facsimile Telephone Number (021) 453 4297

Authority: Northern Ireland Authority for Energy Regulation  
Brookmount Buildings,  
42 Fountain Street,  
Belfast, BT1 5EE  
Facsimile Telephone Number (02890) 311740

Department: Department of Enterprise, Trade and Investment ,  
Energy Division,  
Netherleigh House,  
Massey Avenue,  
Belfast, BT4 2JP  
Facsimile Telephone Number (02890) 529549

### 1.14.2 Receipt

Any notice given under the provisions of Condition 1.14.1 shall be deemed to have been duly delivered and received:

- (i) at the actual time of delivery, if delivered personally;

- (ii) three (3) working days subsequent to the date of posting, if sent by registered mail;  
and
- (iii) at the time of receipt, if transmitted by facsimile where there is confirmation of uninterrupted transmission by a transmission report and provided that the original of the notice is then delivered personally or sent by registered mail as soon as reasonably practicable.

**PART 2**

**CONDITIONS APPLICABLE TO THE CONVEYANCE OF GAS BY THE  
LICENCE HOLDER**

**Condition 2.2: Conveyance Charges, Other Terms for the Conveyance of Gas and the provision of Conveyance services**

2.2.1 Determination of conveyance charges by the Licensee

The Licensee shall establish the methods and principles on which conveyance charges shall be determined for gas suppliers wishing and entitled to use the Network and the Licensee shall publish the same in accordance with Condition 2.2.2.

2.2.2 Publication of conveyance charges and other terms for the conveyance of gas

Subject to Condition 2.2.2A and Condition 2.2.3:

(a) the Licensee shall 2 months prior to commencement of the forthcoming year (where, for the purposes of this Condition 2.2, a year means the period from 1<sup>st</sup> October to the 30<sup>th</sup> September next following) publish a statement of:

- (i) its conveyance charging methodology for the use of the Network by gas suppliers for the forthcoming year, by which any such gas supplier may reasonably be able to calculate applicable conveyance charges; and
- (ii) its other terms for the use by them of the Network (and in relation to the Network Code by reference to the Network Code);

in such manner as will secure adequate publicity for it; and

(b) the Licensee shall send a copy of any such statement to any person who asks for one;

and subject to Condition 2.2.4(b) such statement shall clearly distinguish cases and classes of cases of gas supplier for whom the conveyance charging methodology may result in differing conveyance charges.

2.2.2A No obligation until end of supply exclusivity

The Licensee shall have no obligation under Conditions 2.2.1, 2.2.2, 2.2.3, 2.2.4 or 2.2.6 at the date of the Grant, and shall only be obliged to comply with those Conditions, in respect of each Development Area (as defined in Condition 3.1) and each class of consumer, from the earlier of:

- (a) the beginning of the year in which the Supply Licensee is scheduled (in accordance with its licence) to cease to have exclusivity of supply in respect of that Development Area and that class of consumer; and
- (b) two months after the Supply Licensee ceases to have exclusivity of supply in respect of that Development Area and that class of consumer.

2.2.3 Authority to be consulted on published conveyance charges and other terms for the conveyance of gas

No later than 2 months before it intends to publish its statement under Condition 2.2.2 the Licensee shall notify the Authority of the contents of that statement, and:

- (a) provide the Authority with such information as will enable the Authority to be reasonably satisfied that the methodology and principles for the conveyance charges have been determined in accordance with the provisions of Part 4;
- (b) provide the Authority with an explanation of the other terms for conveyance set out in the statement; and
- (c) consult with the Authority on (and, prior to publication, obtain the Authority's consent to) the conveyance charges and other terms for the conveyance of gas to be included in the statement.

2.2.4 Charging for the conveyance of gas and prohibition on undue discrimination

The Licensee shall:

- (a) unless the Authority otherwise consents, not charge for the conveyance of gas in the Network during any year or apply other terms for the conveyance of gas on any basis other than contained in its statement of conveyance charges published under Condition 2.2.2 in respect of that year;
- (b) not show any undue preference towards or undue discrimination against any gas supplier or case or classes of cases of gas supplier in the conveyance charges made or other terms for the conveyance of gas applied in relation to the Network; and
- (c) within 28 days of receiving a request for the quotation of conveyance charges for specified conveyance services by a gas supplier, provide the gas supplier with a specific statement of the conveyance charges and other terms for the conveyance of

gas applicable to the conveyance services for which the gas supplier requested a quotation;

and for the purposes of Condition 2.2.4(c) and the Licensee's obligation to provide a specific statement of conveyance charges, a request for the quotation of conveyance charges for specified conveyance services shall be treated as such if it is in such form as the Licensee can reasonably be expected to provide a specific statement of conveyance charges in return.

2.2.5 Licensee's obligation to provide services for the conveyance of gas in accordance with the Network Code

The Licensee shall provide gas suppliers with conveyance services in accordance with the Network Code.

2.2.6 Determination by Authority of the right of gas suppliers to have gas conveyed in the Network

Provided that the Authority shall have first given the Licensee not less than two months in which to make representations with respect to any of the following matters, at any time thereafter the Licensee shall provide a gas supplier with conveyancing services:

- (a) if the Authority so determines in accordance with the conveyance charges and other terms for the conveyance of gas (including the Network Code), and where the gas supplier is willing to accept the same and the Licensee has refused to provide such conveyancing services; and
- (b) notwithstanding the provisions of Conditions 2.2.1 and 2.2.2, in accordance with a price determined by the Authority allowing the Licensee to obtain appropriate recompense in accordance with any then applicable charging regime of the Licensee approved by the Authority and then in force, and on such other terms as the Authority reasonably considers appropriate in all the circumstances, including terms as to the Network Code, or as may establish a Network Code, or modify or amend a Network Code, where the Licensee's conveyance charges and other terms for the conveyance of gas and/or the Network Code:
  - (i) are, in the Authority's reasonable opinion, unsuitable for the conveyance services sought by the gas supplier;

- (ii) the Licensee and gas supplier have been unable to reach agreement on appropriate terms; and
- (iii) the gas supplier is willing to accept the Authority's determination;

provided that for the purposes of this Condition 2.2.6 the Authority is satisfied that any determination would not prejudice the efficient and safe operation of the Network or the conveyance by the Network of:

- (c) the quantities of gas which the Licensee requires or may reasonably be expected to require to be conveyed by the Network to enable the Licensee to comply with the conditions of the licence and
- (d) the quantities of gas of any person who has a right to have gas conveyed by the Network is entitled to require to be so conveyed in exercise of that right.

#### 2.2.7 Additional duty to provide information

The Licensee shall advise the Authority by its report under Condition 3.2.6 in respect of each year whilst that Condition applies, and thereafter by a report provided to the Authority no later than 31<sup>st</sup> December of each year in respect of that year, of:

- (a) the number of separate arrangements with gas suppliers for gas conveyancing services provided; and
- (b) the volumes of gas offtaken from the Network by gas suppliers including its own Separate Business, if any, engaged in the supply of gas.



### **Condition 2.3: Connection Charges and Obligation to permit a Connection**

#### **2.3.1 Statement of connection charges and, terms for connection and meter connections and disconnections**

Subject to Conditions 2.3.2 and 2.3.3, the Licensee shall, at least 2 months before it introduces gas into the Network, give the Authority a statement showing for its approval the methods by which and the principles on which charges are to be determined by the Licensee, for:

- (a) connecting any premises to the Network, maintaining, repairing and renewing the connection and disconnecting the premises and removing gas fittings owned by it and comprised in the connection;
- (b) connecting and disconnecting non standard gas meters and gas meters not owned by the Licensee in any premises; and
- (c) connecting to the Network any pipe-line system to or from which gas will be conveyed by means of the Network and maintaining, repairing and renewing the connection;

and in any such case the Licensee shall when giving such a statement include in that statement the Licensee's other terms for the connection and an explanation of those terms.

#### **2.3.2 The statement and cases and classes of cases**

The statement given by the Licensee under Condition 2.3.1 shall:

- (a) subject to Condition 2.3.5(b), clearly distinguish cases and classes of cases of persons for whom the Licensee proposes different methods or principles for connection; and
- (b) in respect of any such case or class of cases show that element of connection costs the Licensee proposes to recover by way of conveyance charges to gas suppliers including any Separate Business of its own engaged in the supply of gas.

#### **2.3.3 The statement to give likely indication of costs and additional duty to provide information**

The statement given under Condition 2.3.1 shall also for the Authority's information where practicable indicate the costs likely to arise in respect of work done and materials used in

connecting any premises, non standard gas meters, gas meters not owned by the Licensee or pipe-line system and the Licensee shall:

- (a) prepare the statement in such a manner as will reasonably enable a person to estimate the Licensee's connection charges in those circumstances; and
- (b) enable a person requesting a connection in those circumstances to determine what works or other actions he would need to undertake for the Licensee to provide the connection.

2.3.4 Authority's consent required to stated connection charges and publication of statement

Subject to the Authority's prior consent to the contents of the statement given by the Licensee under Condition 2.3.1 as they relate to charges for connection, the Licensee shall:

- (a) publish that statement in such manner as will secure adequate publicity for it; and
- (b) send a copy of any such statement to any person who asks for one;

and in consenting to the basis for charging for connection the Authority shall have regard to the need of the Licensee to be able to finance the carrying on of its activities and a return equal to that which in the reasonable opinion of the Authority is appropriate.

2.3.5 Connection charges and terms for connection and prohibition on undue discrimination and connection of pipe-line systems

The Licensee shall:

- (a) not charge for a connection of premises, of any non standard gas meter, gas meter not owned by it or any pipe-line system to the Network on any basis or establish other terms for the connection on any basis other than contained in the statement published under Condition 2.3.4;
- (b) not show any undue preference towards or undue discrimination against any person or case or classes of cases of person (including any Other Business) seeking a connection of premises to the Network, or of any non standard gas meter, or gas meter not owned by the Licensee (or any affiliate or related undertaking of the Licensee) or any person who operates or proposes to operate a pipe-line system (including any Other Business), in relation to the connection of that system to the Network, and the Licensee shall not refuse a request for connection where the

person seeking the connection is willing to pay the Licensee's charges for connection and comply with the Licensee's other terms for connection, including any terms as to technical and safety matters; and

- (c) within 28 days of receiving a request for the quotation of connection charges covered by the published statement, provide the person requesting the quotation with a specific statement of the connection charges and other terms of connection applicable to the request for a quotation;

and for the purposes of Condition 2.3.5(c) and the Licensee's obligation to provide a specific statement of connection charges, a request for the quotation of connection charges shall be treated as such if it is in such form as the Licensee can reasonably be expected to provide a specific statement of connection charges in return.

#### 2.3.6 Revising connection charges

The Licensee shall not revise the basis of its charges for a connection of premises, of any non standard gas meter, gas meter not owned by it or any pipe-line system to the Network or the other terms for the connection without first giving the Authority a revised statement in the same terms as in Condition 2.3.1 and obtaining the consent of the Authority to such a revision in the same terms as Condition 2.3.4.

#### 2.3.7 Explanation of connection charging methodology for introducing gas to the Network

The Licensee shall comply with any direction given by the Authority to furnish it with a statement showing, so far as reasonably practicable, the methods by which and the principles on which charges are to be made by the Licensee for making a connection for the purposes of introducing gas into the Network and, in the context of making such a connection, for:

- (a) modifying apparatus and works associated with a pipe-line so as to increase the capacity of the pipe-line; or
- (b) supplying and installing any pipe-line or works;

including where practicable an indication of likely costs and the other terms for doing so.

2.3.8 Authority's consent required for charges and other terms for introducing gas to the Network and prohibition on undue discrimination and connections for introducing gas to the Network

The Licensee shall:

- (a) not charge for a connection to introduce gas to the Network on any basis or on any other terms without the consent of the Authority;
- (b) not show any undue preference towards or undue discrimination against any person (including any Other Business) seeking a connection to introduce gas to the Network and, in the case of a connection to introduce gas to the Network, the Licensee shall not refuse a request for connection where the person seeking the connection is willing to pay the Licensee's charges for connection and comply with the Licensee's other terms for connection, including any terms as to technical and safety matters.

2.3.9 Publication of connection charge statements

The Licensee shall:

- (a) publish a statement of the basis of its connection charges for introducing gas to the Network and its other terms for connection as the Authority has consented to under Condition 2.3.8 in such manner as will secure adequate publicity for it; and
- (b) send a copy of any such statement to any person who asks for one.

2.3.10 Interpretation and construction

References in this Condition to:

“prices to be charged” shall include references to means whereby such prices may be ascertained.

2.3.11 Obligation to permit a connection

Subject to a person who has a licence or exemption to convey gas within the Licensed Area satisfying any technical and safety criteria contained in the Network Code and paying to the Licensee a connection fee (determined by the Licensee except insofar as the Authority

otherwise directs), to connect a pipe- line between the Network and the premises, then the Licensee shall permit a connection to the Network by that person.

#### 2.3.12 Relief where Start Date not yet occurred

Notwithstanding the other provisions of this Condition 2.3, the Licensee shall be entitled to refuse a request for a connection to the Network of:

- (a) any premises;
- (b) any non standard gas meter; or
- (c) any gas meter not owned by the Licensee;

if the Start Date (as defined in Condition 3.1) for the Development Area (as defined in Condition 3.1) in which the premises or gas meter in question is located has not, at the time such request is made, occurred.

#### 2.3.13 General relief from obligation to offer a connection

Notwithstanding the other provisions of this Condition 2.3, the Licensee shall be entitled to refuse a request for a connection to the Network of:

- (a) any premises;
- (b) any non standard gas meter;
- (c) any gas meter not owned by the Licensee, or
- (d) any pipe-line system;

if making such a connection would be likely to cause the Licensee to be in breach of: (i) the relevant objective as defined in Condition 2.4.1; (ii) any regulations relating to safety or standards made under the Order or any other enactment, which are applicable to the Licensed Business; or (iii) any Conditions or the Network Code.

## **Condition 2.4: Network Code**

### 2.4.1 The relevant objective

The Licensee shall no later than 3 months (or, in the case of sub-paragraph (b) below, 9 months) after the date of the Grant submit to the Authority a statement of its proposed arrangements for the conveyance of gas, in addition to the matters covered by Conditions 2.2 and 2.3, which will facilitate the achievement of the “relevant objective”, that is to say:

- (a) the efficient and economic operation of the Network;
- (aa) the balancing of the Network pursuant to rules for that purpose which are objective, transparent and non-discriminatory (including the rules for the charging of system users for energy imbalance); and
- (b) subject thereto, compliance with the Licensee's other obligations under this Licence, and put such arrangements in place except as the Authority otherwise consents.

### 2.4.2 The Network Code

The Licensee shall:

- (a) prepare and provide the Authority with a “Network Code”, that is to say a document setting out the terms of the arrangements established under Condition 2.4.1 and, subject thereto, the arrangements to enable effective competition between gas suppliers using the Network, no later than 18 months after the date of the Grant on which it will enter into such arrangements with gas suppliers for the conveyance of gas;
- (b) put such Network Code in place except as the Authority otherwise consents; and
- (c) except in so far as the Authority consents to the Licensee doing so, not enter into any arrangements for the conveyance of gas (including with any Other Business) except in accordance with the provisions of the Network Code applicable from time to time to the circumstances of the case.

2.4.3 Where a term of the Network Code or of the modification rules referred to in Condition 2.4.5 is framed so that its proper implementation is to be determined by whether it facilitates the achievement of the relevant objective, either the Licensee or any gas supplier

who has entered into transportation arrangements to which that term applies, may, to the extent that the term so provides, refer to the Authority for determination any question as to whether a manner in which the Licensee proposes to implement the term would secure that objective.

#### 2.4.4 Modification of the Network Code

The Licensee shall establish and implement procedures for the modification of the Network Code by the Licensee, subject to the provisions of this Condition, so as to better facilitate the achievement of the relevant objective and which will enable:

- (a) the Network Code to be reviewed;
- (aa) the Network Code to be reviewed so as to enable gas suppliers to have gas conveyed in the Network to premises in the Licensed Area at such times as it can reasonably be anticipated that a gas supplier may supply such premises;
- (b) modifications to be proposed by the Authority, the Licensee or by any gas supplier;
- (c) adequate publicity to be given to any proposal by:
  - (i) drawing it to the attention of gas suppliers;
  - (ii) sending a copy of it to anyone who asks for one; and
  - (iii) making it otherwise available in an appropriate manner where it is necessary for establishing whether the proposal would better facilitate the achievement of the relevant objective;
- (d) the preliminary views of the Authority to be sought in relation to any matter arising on a proposal to modify the Network Code; and
- (e) the representations or objections, with respect to any proposal to modify the Network Code, made (and not withdrawn) by any gas supplier and by other persons who are likely to be materially affected by the proposal to be properly considered.

#### 2.4.5 Modification Rules

The Licensee shall:

- (a) prepare “the modification rules”, that is to say a document setting out the terms of the procedures established under Condition 2.4.4, and shall furnish the Authority with a copy of the modification rules;
- (b) not make any modification to the modification rules except:
  - (i) after consulting relevant gas suppliers;
  - (ii) after furnishing the Authority with a report on such consultation and consideration; and
  - (iii) with the consent of the Authority; and
- (c) furnish the Authority with a copy of any modification so made.

#### 2.4.6 Prohibition on irregular modification

The Licensee shall not make any modification to the Network Code except:

- (a) to comply with Condition 2.4.7(c); or
- (b) with the consent of the Authority;

and shall furnish the Authority with a copy of any modification made.

#### 2.4.7 Role of Authority in modifications

Where a proposal is made pursuant to the modification rules to modify the Network Code, the Licensee shall:

- (a) refer for determination by the Authority any question whether the representations or objections by any relevant gas supplier or other person with respect to the proposal have been properly considered in accordance with those rules;
- (b) as soon as reasonably practicable, give notice to the Authority:
  - (i) giving particulars of the proposal;



- (ii) where the proposal is made by a relevant gas supplier, giving particulars of any alternative proposal by the Licensee to modify the Network Code in respect of the same matter;
  - (iii) giving particulars of any representations or objections by a relevant gas supplier or other person with respect to those proposals;
  - (iv) stating whether, in its opinion, any proposed modification should or should not be made;
  - (v) stating the factors which, in its opinion, justify making or not making a proposed modification; and
  - (vi) giving such further information as may be prescribed by the modification rules; and
- (c) comply with any direction given by the Authority to make a modification to the Network Code in accordance with a proposal described in a notice given to the Authority under sub-paragraph (b) which, in the opinion of the Authority will, as compared to the existing provisions of the Network Code or any alternative proposal, better facilitate the achievement of the relevant objective.

#### 2.4.8 Publication of Network Code

The Licensee shall:

- (a) publish a summary of the Network Code and of the modification rules as modified from time to time in such form and manner as the Authority may from time to time direct; and
- (b) send a copy of the Network Code and modification rules as modified from time to time to any person who asks for one on payment of a charge in respect of the cost incurred by the Licensee in complying with this requirement which does not exceed such amount as the Authority may from time to time direct.

2.4.9 Authority to determine material affect on persons of transportation arrangements

Except in so far as the Authority otherwise consents, the Licensee shall refer for determination by the Authority any question as to whether a person is likely to be materially affected by transportation arrangements or by a proposal to modify the Network Code.

2.4.10 Reasons for refusal of access

The Network Code prepared in accordance with this Condition shall require the Licensee to give duly substantiated reasons for any refusal of access to the Network.

## **Condition 2.5: Provision and Return of Meters**

### **2.5.1 Provision of Standard Meters**

The Licensee shall:

- (a) at the request of any gas supplier wishing to supply gas to premises and at no additional charge to the conveyance charge provide the gas supplier and install at those premises a standard gas credit or pre-payment meter to register the quantity of gas supplied to those premises, provided that;
- (b) the provisions of Condition 2.5.1(a) shall not apply, and the Licensee shall be entitled to charge its full costs of providing installing and operating a replacement standard gas meter requested by the gas supplier in accordance with principles and methodologies approved by the Authority, if the gas suppliers' request is to replace an existing standard gas credit or prepayment meter at premises connected to the Network by means of a service pipe, with a like standard gas credit or prepayment meter, and the existing standard gas credit or prepayment meter may otherwise be utilised by the gas supplier and is operational within the limits of required accuracy;
- (c) the Licensee shall comply with the gas supplier's request prior to the commencement of the supply of gas to those premises by the gas supplier or at the request of the gas supplier at any time thereafter as soon as is reasonably practicable; and
- (d) where a gas supplier requests the installation of a standard gas pre-payment meter, and the number of standard gas pre-payment meters installed at premises supplied by him is greater than or equal to 33% (or such higher percentage as the Authority may from time to time direct) of the total number of standard gas meters installed at premises supplied by him, then the gas supplier's requirement shall be treated in accordance with the provisions of Condition 2.5.2 as if that request were for a non standard gas pre-payment meter.

### **2.5.2 Provision of Non Standard Credit Meters and Pre-payment meters**

The Licensee shall:

- (a) comply with any reasonable request by any gas supplier wishing to supply gas to premises to provide and install at those premises a gas meter owned by the Licensee

being a non-standard gas credit meter or a pre-payment meter (but being of an appropriate type), specified by the gas supplier, if a meter of that type is readily available to the Licensee, and:

- (i) if the Licensee's capital, installation and (if any) operational costs of the non standard gas credit or pre-payment meter are greater than those like costs of a corresponding standard gas credit or pre-payment meter, as the case may be, then the Licensee shall be entitled to receive from the gas supplier the difference in the costs in accordance with principles and methodologies which the Authority has approved; or
  - (ii) if the Licensee's capital, installation and (if any) operational costs of the non standard gas credit or pre-payment meter are less than those like costs of a corresponding standard gas credit or pre-payment meter, as the case may be, then the Licensee shall pay the gas supplier the difference in the costs in accordance with the principles and methodologies which the Authority has approved; provided that
  - (iii) if the gas supplier's request is to replace an existing gas meter at premises connected to the Network by means of a service pipe, and that meter may otherwise be utilised by the gas supplier and is operational within the limits of required accuracy, then the provisions of Condition 2.5.2(a)(i) and (ii) shall not apply and the Licensee shall be entitled to charge its full costs of providing, installing and operating the gas meter requested by the gas supplier in accordance with principles and methodologies approved by the Authority;
- (b) comply with a request under Condition 2.5(a) prior to the commencement of the supply of gas to those premises by the gas supplier or at the request of the gas supplier at any time thereafter as soon as is reasonably practicable.

#### 2.5.2A Overall pre-payment percentage for gas meters owned by the Licensee

In the case of a request by a gas supplier under Condition 2.5.2 for a non standard gas pre-payment meter, and where the number of pre-payment gas meters installed at premises supplied by him is greater than or equal to 33% (or such higher percentage as the Authority may from time to time direct) of the total number of gas meters installed at premises

supplied by him, then, for the purposes of Condition 2.5.2(a), the comparison of costs undertaken in respect of such non standard gas pre-payment meter shall be as against a standard gas credit meter.

### 2.5.3 Installation of Gas Suppliers Meter

The Licensee shall:

- (a) comply with any reasonable request by any gas supplier wishing to supply gas to premises to install at those premises a gas meter of an appropriate type owned by the gas supplier (or the owner or occupier of the premises) and
  - (i) if the Licensee's, installation and (if any) operational costs relating to such a gas meter are greater than the capital, installation and (if any) operational costs of a corresponding standard gas credit or pre-payment meter, as the case may be, then the Licensee shall be entitled to receive from the gas supplier the difference in accordance with principles and methodologies which the Authority has approved; or
  - (ii) if the Licensee's installation and (if any) operational costs relating to such a gas meter are less than the capital, installation and (if any) operational costs of a corresponding standard gas credit or pre-payment meter, as the case may be, then the Licensee shall pay the gas supplier the difference in accordance with the principles and methodologies which the Authority has approved; provided that
  - (iii) if the gas supplier's request is to replace an existing gas meter at premises connected to the Network by means of a service pipe, and that meter may otherwise be utilised by the gas supplier and is operational within the limits of required accuracy, then the provisions of Condition 2.5.3(a)(i) and (ii) shall not apply and the Licensee shall be entitled to charge its full costs of installation and operation of the gas meter requested by the gas supplier in accordance with principles and methodologies approved by the Authority;
- (b) comply with a request under Condition 2.5.3(a) prior to the commencement of the supply of gas to those premises by the gas supplier or at the request of the gas supplier at any time thereafter as soon as is reasonably practicable.

#### 2.5.3A Overall pre-payment percentage for gas meters owned by the gas supplier

In the case of a request by a gas supplier under Condition 2.5.3 for a pre-payment gas meter, and where the number of pre-payment gas meters installed at premises supplied by him is greater than or equal to 33% (or such higher percentage as the Authority may from time to time direct) of the total number of gas meters installed at premises supplied by him, then, for the purposes of Condition 2.5.3(a), the comparison of costs undertaken in respect of such pre-payment gas meter shall be as against a standard gas credit meter.

#### 2.5.4 Prohibition on undue discrimination

The Licensee shall not show any undue preference towards or undue discrimination against any gas supplier seeking the provision and/or installation of a gas meter under this Condition.

#### 2.5.5 Disconnection of Meters

Subject to Condition 2.5.5, where any gas meter owned by the Licensee is disconnected by or returned to the Licensee, it shall promptly make an appropriate record of the details displayed on the register of the meter at the time of disconnection or return and of such other information in its possession as shall subsequently enable the identity and time of disconnection or return of the meter and the premises from which it was disconnected to be ascertained and shall keep such a record for a period of not less than two years from the date of the later of such disconnection or return.

#### 2.5.6 Safe Custody of Meters

Where the Licensee has reasonable cause to believe that any gas meter owned by it and disconnected by or returned to it is the subject of:

- (a) any investigation in relation to proceedings or possible proceedings relating to the alleged theft of gas by any person; or
- (b) a dispute as to the accuracy of the meter;

the Licensee shall use all reasonable endeavours to keep the meter in safe custody in the condition in which it was disconnected or returned and with the register unaltered:

- (a) during the period of six months beginning with the date on which the meter was disconnected or returned, for so long as the Licensee continues to have reasonable cause to believe that the meter is or may be so relevant; and
- (b) thereafter for as long as, to the Licensee's knowledge, the meter is so relevant.

#### 2.5.7 Provision of Information

Where the Licensee is notified, pursuant to any regulations made under Article 22 of the Order, of the connection or disconnection of any meter at any premises for the purposes of that Article, it shall promptly give to the gas suppliers in respect of those premises the information so notified and furnish any further information as such gas suppliers may reasonably request relating to the meter and which the Licensee either has or may readily obtain.

## **Condition 2.6: Conduct of Transportation Business**

### 2.6.1 Conduct of business activities

The Licensee shall conduct its business activities relating to the conveyance of gas (including any activities related to the making of arrangements with other network operators for the conveyance of gas through their networks for the purposes of Condition 2.12) in the manner best calculated to secure that neither:

- (a) the Licensee or any affiliate or related undertaking of it or any company of which the Licensee is an affiliate or related undertaking; nor
- (b) any other licence holder or exemption holder;

obtains any unfair commercial advantage in any business in the storage, supply or conveyance of gas including, in particular, any such advantage from a preferential or discriminatory arrangement.

### 2.6.2 Disclosure of information

Without prejudice to Condition 1.5, the Licensee shall use its best endeavours to secure that no information relating to or derived from its business activities relating to the conveyance of gas (including any activities related to the making of arrangements with other network operators for the conveyance of gas through their networks for the purposes of Condition 2.12) is disclosed for the benefit or used for the purposes of a trading business of the Licensee or any affiliate or (so far as the Licensee can require it) related undertaking of the Licensee or company of which the Licensee is an affiliate or related undertaking.

### 2.6.3 Exempt information

Without prejudice to Condition 1.5, Condition 2.6.2 shall not extend to:

- (a) information specified in any consent to non-compliance with that Condition given by the Authority to the Licensee; or
- (b) information relating to a particular licence or exemption holder which that party has consented in writing to being used or disclosed in accordance with the terms of that consent; or



- (c) information which it is necessary for the trading business to use or disclose in order to enter into and comply with arrangements for the conveyance of gas; or
- (d) information which is in the public domain (other than as a result of contravention by the Licensee of any Condition of the licence) or
- (e) information which is required to be disclosed pursuant to a Condition of the licence.

#### 2.6.4 Additional definition

In this Condition “trading business” means activities connected with the acquisition and disposal of gas in Northern Ireland other than for the efficient operation of the Network operated by the Licensee or for replacing gas lost from the Network.

## **Condition 2.7: Emergency Services and Obligations**

### **2.7.1 Emergency telephone service**

The Licensee shall arrange with other licence or exemption holders for:

- (a) the maintenance by the Licensee (jointly with such other persons as the Authority may from time to time direct) of a single continuously attended telephone service (including reasonable facilities to communicate with deaf or partially hearing persons) for the receipt of reports of escapes of gas in respect of which the Licensee or such other licence or exemption holders may have obligations under Article 60 of the Order or under any regulations made by the Department under Schedule 5 paragraph 2 of the Order and for the Licensee to be informed of any escapes of gas in respect of which it may have such obligations;
- (b) the securing of adequate publicity for the service and its telephone number, having regard, in particular, to the special needs of blind or partially sighted persons.

### **2.7.2 Prevention of gas escapes**

Where any gas escapes from the Network the Licensee shall, as soon as reasonably practicable of being informed of the escape, attend the place where gas is escaping and the Licensee shall take all necessary steps to prevent an escape of gas from any part of the Network or otherwise in any premises within 12 hours of receiving a report of such an escape (or of (if earlier) becoming aware of the escape); and subject to Condition 2.7.3, the Licensee shall make arrangements whereby, in preventing an escape of gas in any premises to which it conveys gas:

- (a) the prevention is effected, so far as it is reasonably practicable and safe to do so:
  - (i) in such a way as to maintain the supply of gas to those premises and to appliances designed for use by domestic consumers for heating or cooking;
  - (ii) by carrying out any appropriate minor appliance repairs; and
  - (iii) by a person adequately trained in recognising the signs of leakage of carbon monoxide and instructed to report any such signs to the owner or occupier of the premises; and

- (b) if further repair work is required, information is given to the owner or occupier of the premises or, in their absence, left at the premises as to persons in the locality who are permitted pursuant to regulations under the Health and Safety at Work (Northern Ireland) Order 1978 to perform repairs on gas fittings.

### 2.7.3 Carrying out of work

Nothing in Condition 2.7.2 shall oblige the Licensee to carry out any work which cannot be completed within 30 minutes of entering the premises for the purpose of preventing the escape or would use materials costing more than £5.00 adjusted annually in line with the retail price index from the month of the date of the Grant.

### 2.7.4 Special arrangements for pensioners, etc

Unless it has already done so, the Licensee shall make arrangements whereby, so far as is reasonably practicable, the occupier of any premises to which gas is conveyed by the Licensee who:

- (a) is a domestic consumer;
- (b) is chronically sick, disabled or of pensionable age;
- (c) does not share the occupancy of the premises with any person who is not chronically sick, disabled or of pensionable age or a minor; and
- (d) is included in the list of domestic consumers which has been provided to the Licensee by any gas supplier under the conditions of that party's licence or exemption;

is not deprived of adequate heating and cooking facilities where the conveyance of gas to those premises has been disconnected for the purpose of averting danger to life or property.

### 2.7.5 Modification of arrangements

The Licensee shall maintain the arrangements made by it in relation to the matters referred to in Condition 2.7.4, with such modifications to which the Authority consents.

### 2.7.6 Application of Condition 2.7.7

Condition 2.7.7 shall apply in relation to:

- (a) non-domestic consumers who are supplied with gas on terms on which the supply of gas may only be interrupted or reduced in pursuance of such a term of that consumer's contract for the supply of gas or in pursuance of directions given under section 2(1)(b) of the Energy Act 1976; and
- (b) the premises of such non-domestic consumers.

#### 2.7.7 Priority for maintenance of supply

Where the Licensee considers that, for reasons of safety (unrelated to particular premises or a particular locality), the supply of gas to any non-domestic consumer to whom this Condition applies or the conveyance of gas to their premises needs to be interrupted, reduced or restricted, it shall, so far as is reasonably practicable in the circumstances having regard to the over-riding importance of safety:

- (a) when telling a non-domestic consumer that he should use his best endeavours to refrain from using gas, in pursuance of such a term of that consumer's contract for the supply of gas or
- (b) when interrupting or restricting the conveyance of gas,

give priority to the maintenance of the supply of gas to consumers on the priority list required by Condition 2.7.9 and the conveyance of gas to their premises.

#### 2.7.8 Consultation with the Department

Where the reasons of safety referred to in Condition 2.7.7 relate to the whole or a substantial part of Northern Ireland or there is a significant shortage of gas affecting the whole or a substantial part of Northern Ireland, the Licensee shall consult with the Department on the taking of any such steps as are mentioned in Condition 2.7.7 (a) or (b) and, so far as is reasonably practicable in the circumstances having regard to the over-riding importance of safety, shall do so before taking any such steps.

#### 2.7.9 Priority List

The Licensee shall:

- (a) unless it has done so before being licensed, establish a list of non-domestic consumers who should be given priority as respects the maintenance of a supply of gas and the maintenance of the conveyance of gas to their premises; and

(b) review, and so far as appears appropriate, amend the list from time to time, after consultation with relevant gas suppliers, and, without prejudice as aforesaid, shall conduct such a review and make any such amendments on being directed so to do by the Department;

and, if the Department has designated criteria to be taken into account when such a list is established or revised, the Licensee shall so take account of those criteria.

#### 2.7.10 Determination by the Department

Any question arising under this Condition as to whether a particular non-domestic consumer satisfies the designated criteria shall be determined by the Department.

## **Condition 2.8: Standards of Performance**

### 2.8.1 Licensee to take steps for the achievement of performance standards

The Licensee shall establish, unless it has done so before the coming into effect of the licence, and shall diligently take all reasonable steps for the achievement of standards of performance (“the established standards”) relating to:

- (a) the connection of the premises of domestic consumers to be supplied with gas to the Network and the maintenance of such connections;
- (b) the arrangements made under Condition 2.7.4;
- (c) the prevention of escapes of gas in or into the premises of domestic consumers,

which established standards shall be subject to approval by the Authority.

### 2.8.2 Visits to premises, etc

The established standards shall, in particular:

- (a) govern the making of visits to premises and the response to complaints and enquiries made in person, by telephone, in writing or otherwise in respect of the matters specified in Condition 2.8.1; and
- (b) take into account the interests of those who are chronically sick, disabled or of pensionable age (having reference, where relevant, to those persons listed as such in the list referred to in Condition 2.7.4(b)).

### 2.8.3 Report to Authority and General Consumer Council

As soon as is reasonably practicable after the end of each year ending on 31 December, the Licensee shall submit to the Authority and General Consumer Council a report dealing with the matters mentioned in Conditions 2.8.1 and 2.8.2 which shall include a comparison of the Licensee's performance against the established standards in relation to that year and shall:

- (a) make public the report so submitted in such manner as will in the reasonable opinion of the Licensee secure adequate publicity for it; and
- (b) send a copy of it free of charge to any person requesting one

except that, in performing the obligations under Conditions 2.8.3(a) and (b), the Licensee shall ensure that individual consumers cannot readily be identified except where they have consented.

## **Condition 2.9: Maintenance of Records**

### 2.9.1 Recorded information

The Licensee shall hold in an appropriate form recorded information, insofar as the Licensee is reasonably able to acquire it, as to:

- (a) every premises and pipe-line system to which gas has been conveyed by means of the Network during the relevant period;
- (b) every third party who has arranged with the Licensee for gas to be conveyed by means of the Network at any place referred to in Condition 2.9.1(a) during the relevant period;
- (c) insofar as the Licensee has been furnished with the information, in respect of each premises referred to in Condition 2.9.1(a) every gas supplier who has supplied during the relevant period gas which has been conveyed to those premises by means of the Network;
- (d) insofar as the Licensee has been furnished with the information, the ownership of every meter first installed after the outlet of the final control valve of the service pipe at any premises referred to in Condition 2.9.1(a) for ascertaining the quantity of gas conveyed to the premises by means of that system during the relevant period;
- (e) any information contained in a notice given to the Licensee under any regulations made by the Authority under Article 22 of the Order during the relevant period; and
- (f) any information which has been provided to the Licensee by any other licence or exemption holder whether directly or indirectly pursuant to the conditions of his licence or exemption.

### 2.9.2 Additional definition

In this Condition, “the relevant period” means the preceding five years or such shorter period to which the Authority may consent in respect of any of the above requirements.



**Condition 2.10: Powers of Licensee under Article 13 of the Order**

2.10.1 The provisions of:

- (a) Schedule 2; and
- (b) Schedule 3;

of the Order shall apply to the Licensee.

## **Condition 2.11: Network Forecasts**

### **2.11.1 Network Forecasts**

The Licensee shall comply with a direction given by the Authority to prepare a statement in such form as may be specified in the direction giving, for the year commencing with the twelfth anniversary of the licence coming into force and each year thereafter, with respect to each of the 10 succeeding years, such information as to forecasts of:

- (a) the use to the best of the Licensee's knowledge and belief, likely to be made of the Network or any part of the Network by persons authorised to convey, store or supply gas under Article 8 of the Order (including the Licensee and any affiliate or related undertaking of the Licensee); and
- (b) the likely developments to the Network which the Licensee expects from time to time to be taken into account in determining the charges for making connections to that system and for entering into arrangements for the conveyance of gas;

as will assist a person seeking to connect a pipe-line of his to the Network or enter into arrangements for the conveyance of gas in identifying and evaluating the opportunities for so doing.

### **2.11.2 Revised Network forecasts**

Except in so far as the Authority consents to the Licensee not doing so, the Licensee shall, on an annual basis, prepare a revision of any statement prepared under Condition 2.11.1 so as to ensure that, so far as reasonably practicable, the information in the revised statement is up to date.

### **2.11.3 Provision and publication of forecasts**

The Licensee shall, subject to any requirement to comply as is appropriate with the listing rules (within the meaning of Part IV of the Financial Services Act 1986) of the Stock Exchange and with Condition 2.11.4:

- (a) furnish the Authority with a copy of the statement prepared under Condition 2.11.1 and of each revision of the statement prepared under Condition 2.11.2;
- (b) in such form and manner as the Authority may direct, publish a description of the statement and of each revision; and

- (c) send a copy of the statement and of each revision to any person who asks for one on payment of a charge in respect of the cost incurred by the Licensee in complying with this requirement which does not exceed such amount as the Authority may from time to time direct.

#### 2.11.4 Particular interests

In complying with the requirements of Condition 2.11.3 (b) and (c), the Licensee shall have regard to the need for excluding, so far as practicable:

- (a) any matter which relates to the affairs of an individual, where the publication of that matter would or might seriously and prejudicially affect the interests of that individual; and
- (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporated where publication of that matter would or might seriously and prejudicially affect the interests of that body.

#### 2.11.5 Determination by Authority of particular interests

Except in so far as the Authority consents to the Licensee not doing so, the Licensee shall refer for determination by the Authority any question as to whether any matter seriously and prejudicially affects the interests of an individual or a body of persons.

## **Condition 2.12: Capacity Booking**

### **2.12.1 Licensee to maintain conveyance arrangements**

Unless the Authority otherwise directs, the Licensee shall, in respect of each Gas Year, hold rights, in respect of use by the Licensee of capacity in the pipeline system of Other Network Operators, where such rights are available to the Licensee pursuant to and in accordance with the arrangements made by the Network Operators for such purposes, that are at least equal to the Forecast Network Capacity Requirement.

### **2.12.2 Forecast Network Capacity Requirement Definition**

Forecast Network Capacity Requirement means the amount of capacity required to ensure that sufficient gas can be conveyed to meet daily firm demand from Network Consumers, which having regard to historical weather and other data derived from at least the previous 50 years and to representations made by gas suppliers in accordance with the procedures set out at Condition 2.12.3, is likely to be exceeded only in 1 year out of 20 years.

### **2.12.3 Annual Consultation**

Unless the Authority otherwise directs:

- (a) no later than 21<sup>st</sup> February each year, the Licensee shall publish a draft statement of its best estimate of Forecast Network Capacity Requirement in the following Gas Year which, having regard to historical weather and other data from at least the previous 50 years, is likely to be exceeded only in 1 year out of 20 years in such form and manner as the Authority may direct and send a copy of the statement to any person who asks for one on payment of a charge in respect of the cost incurred by the Licensee in complying with this requirement which does not exceed such amount as the Authority may from time to time direct; and
- (b) no later than 21<sup>st</sup> March each year, the Licensee shall publish a final statement of the matters referred to in Condition 2.12.3(a)(i) above, having regard, in addition to the considerations referred to in that Condition, to any representations received by it within 21 days of the publication of the draft statement.

### **2.12.4 Additional Definitions**

In this Condition:

- “daily firm demand” means the peak aggregate daily demand for gas by Network Consumers from time to time which might reasonably be expected after the supply of gas to each such consumer had been interrupted or reduced to the extent that is permitted under any contract between that consumer and its gas supplier;
- “day” means a period beginning at 6am on one day and ending immediately before 6am on the following day and “daily” shall be construed accordingly; and
- “Network Consumers” means all those persons located within the Licensed Area who are supplied with gas from the Network; and
- “Other Network Operators” means a person licensed to convey gas under Article 8(1)(a) of the Order or exempted from the requirement to be licensed to convey gas under Article 7(1) of the Order, other than the Licensee;
- “Gas Year” means the period of time beginning at 06:00 hours on 01 October in any calendar year and ending at 06:00 hours on 01 October in the next succeeding calendar year;



## **PART 3: DEVELOPMENT PLAN**

### **3.1. Definitions**

3.1.1 Except where expressly stated to the contrary, and unless the context otherwise requires, expressions used in this Part 3 shall have the meanings ascribed to them below.

“Additional Development Area” means an area within the Remaining Licensed Area that is the subject of an Additional Development Plan;

“Additional Development Plan” means a development plan in respect of an Additional Development Area prepared by the Licensee and approved by the Authority, defining the Additional Development Area to which the Additional Development Plan relates (by reference to the boundaries of the Electoral Wards comprised in such area, or in any event in such detail so as to allow any person consulting such Additional Development Plan to determine whether any particular premises fall within that Additional Development Area), and setting out Annual Targets to apply to such Additional Development Area;

“Annual Target” means, in relation to any Development Area and a particular Gas Year, the number of premises set out in respect of that Development Area and that Gas Year in the Towns Development Plan (in the case of a Town), or in the relevant Additional Development Plan (in the case of an Additional Development Area);

“Applicable Law” means all applicable provisions of all (i) constitutions, treaties, statutes, laws, (including common laws), rules, regulations, ordinances or

codes of any Governmental Authority, and (ii) orders, decisions, injunctions, judgements, awards and decrees of any Governmental Authority;

“Cumulative Target”

means, in respect of any Gas Year, the aggregate of all the Annual Targets for all the Development Areas for that Gas Year;

“Development Area”

means a Town or Additional Development Area;

“Electoral Ward”

means the spatial unit used to elect local government councillors into district council areas, as at the date of the Grant (in the case of each of the Towns), or as at the date on which the relevant Additional Development Plan was approved by the Authority (in the case of any Additional Development Area). Any dispute as to the boundaries of such spatial unit shall be determined by the Authority by reference to the map of such spatial unit held at the Northern Ireland Statistics and Research Agency;

“Gas Year”

means a period of time commencing at 00.00 on 1 October in any calendar year and ending at 24.00 on 30 September the following calendar year;

“Governmental Authority”

means any federation, nation, state, sovereign or government, any federal, supranational, regional state or local political subdivision, any governmental or administrative body, department or agency, or any court, commission or other similar dispute resolving body, and any other entity exercising executive, legislative, judicial, or regulatory functions;



“readily connected”	means, in relation to any premises, that the curtilage of that premises is within 50 metres of a distribution pipe-line forming part of the Network, which pipe-line is either in operation or readily capable of being brought into operation;
“Remaining Licensed Area”	means those parts of the Licensed Area which do not fall within a Town;
“Start Date”	means, in relation to any Town, the first day of the first Gas Year in which the Towns Development Plan indicates an Annual Target other than zero in respect of that Town, and, in relation to any Additional Development Area, the first day of the first Gas Year in which the relevant Additional Development Plan indicates an Annual Target other than zero;
“Town”	means one of the ten towns in the Licensed Area named in annex 1 to this Part 3, and, in each case, more particularly described therein by reference to the boundaries of the Electoral Wards comprised in such town; and
“Towns Development Plan”	means the development plan in respect of the Towns set out in annex 2 to this Part 3.

## **Condition 3.2            Development Plan**

### 3.2.1    Development of the Network

Subject to Conditions 3.2.3 and 3.2.5, the Licensee shall:

- (a) subject to Condition 3.2.2, install and bring into operation (or make readily capable of being brought into operation) distribution pipe-lines such that, in respect of any Development Area and each Gas Year, the number of premises that are readily connected by the end of that Gas Year is equal to or greater than 50% of the Annual Target for that Development Area and that Gas Year; and
- (b) subject to Condition 3.2.2, install and bring into operation (or make readily capable of being brought into operation) distribution pipe-lines such that, in respect of each Gas Year, the aggregate number of premises in all the Development Areas that are readily connected by the end of that Gas Year is equal to or greater than 90% of the Cumulative Target for that Gas Year.

### 3.2.2    Housing Executive & Regional Development Strategy

The Annual Target for any Development Area and any Gas Year shall be reduced by a number equal to the number of:

- (a) premises in that Development Area which are owned by the Northern Ireland Housing Executive or any housing association in Northern Ireland and which have not during that Gas Year been adapted for the consumption of gas; and
- (b) premises that are forecast to be constructed in that Development Area and that Gas Year in the timetable outlined in the Department for Regional Development Regional Development Strategy Document for Northern Ireland 2025 “Shaping Our Future” (published on 20 September 2001) and which have not during that Gas Year been so constructed;

and (in each case) the relevant Annual Targets for each Gas Year thereafter shall be adjusted accordingly, provided that:

- (c) the Licensee is able to demonstrate to the Authority's satisfaction that this shortfall in the number of premises so adapted and/or so constructed prevented the Licensee from meeting its obligations under Conditions 3.2.1; and
- (d) in the event that any such premises are subsequently so adapted and/or so constructed, the Licensee shall inform the Authority as soon as reasonably practicable after becoming aware of the same, and the Authority may (having first consulted the Licensee), by notice in writing to the Licensee, add to the Annual Target for that Development Area and any subsequent Gas Year(s) a number of premises not exceeding that previously excluded pursuant to this Condition 3.2.2 which appears to the Authority to be appropriate in the circumstances.

### 3.2.3 Revising the Licensee's Obligations to Develop the Network

- (a) At the request of the Licensee, any Annual Target for any Development Area shall be revised as reasonably appropriate in all the circumstances:
  - (i) if the Authority is reasonably satisfied that exceptional circumstances (excluding lack of funds) which could not have been reasonably foreseen by the Licensee have prevented, or could reasonably be expected to prevent, the Licensee from complying with its obligations under Condition 3.2.1; or
  - (ii) if the Licensee and Authority so agree; or
  - (iii) if the Authority is reasonably satisfied that, due to any process required to be followed by an Applicable Law, which could not reasonably have been further expedited or avoided by the Licensee, the Licensee has been delayed in complying with its obligations under Condition 3.2.1.
- (b) Without prejudice to Condition 3.2.3(a), the Authority may, where the Licensee consents, by notice to the Licensee:
  - (i) increase the Annual Target for any Development Area and any Gas Year to such number as is agreed; and/or

- (ii) modify the Towns Development Plan and/or any Additional Development Plan as is agreed.
- (c) Without prejudice to Article 14 of the Order, where by virtue of the provisions of Condition 3.2.2 or this Condition 3.2.3, any Annual Target is revised, the revised Annual Target shall be applied for the purposes of this Licence and the revision shall (to the extent applicable) modify the relevant Conditions (including annex 2 to this Part 3).

#### 3.2.4 General Development Plan

Without prejudice to the generality of any other provisions of this Licence, the Licensee shall in good faith pursue the general objectives of the General Development Plan set out in annex 3 to this Part 3.

#### 3.2.5 Loss of Exclusivity

Notwithstanding Condition 1.1.4, where the Licensee ceases, in respect of any Development Area, to be entitled to exclusively convey gas by means of distribution pipe-lines (in accordance with Schedule 3), the obligations set out in Conditions 3.2.1 and 3.2.4 shall cease to apply to such Development Area with effect from the date on which such exclusivity is lost.

#### 3.2.6 Annual Development Plan Report

The Licensee shall, by no later than 31 December of each year, provide to the Authority a report of its progress in (i) the development of the Network (having regard to its obligations under Conditions 3.2.1 and 3.2.4) and (ii) the development of the market for gas supplies (having regard to its obligations under Conditions 3.2.4 and 3.2.10) for (in each case) the Gas Year that ended on 30 September of that year. The Licensee shall also set out in that report, for the three Gas Years following that Gas Year, its plans for developing the Network (having regard to its obligations under Conditions 3.2.1 and 3.2.4). The obligation to provide such a report shall cease generally in respect of the Gas Year commencing 1 October 2018 and each Gas Year thereafter; and shall cease in particular with regard to the development of the market for gas supplies in respect to those markets for gas in which the Supply Licensee is subject to competition from other gas suppliers.

### 3.2.7 Publication of Report

The Licensee shall, subject to any requirement to comply with Condition 3.2.8:

- (a) publish the report provided under Condition 3.2.6 in such form and manner as the Authority, having regard, so far as practicable, to the need to exclude publication of a matter that would or might seriously and prejudicially affect the commercial interests of the Supply Licensee, may direct; and
- (b) send a copy of that report to any person who asks for one on payment of a charge in respect of the cost incurred by the Licensee in complying with this requirement which shall not exceed such amount as the Authority may from time to time direct.

### 3.2.8 Particular interests

In complying with the requirements of Condition 3.2.7, the Licensee shall have regard to the need for excluding, so far as practicable:

- (a) any matter which relates to the affairs of an individual, where the publication of that matter would or might seriously and prejudicially affect the interests of that individual; and
- (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporated where publication of that matter would or might seriously and prejudicially affect the interests of that body.

### 3.2.9 Determination by Authority of particular interests

Except in so far as the Authority consents to the Licensee not doing so, the Licensee shall refer for determination by the Authority any question as to whether any matter seriously and prejudicially affects the interests of an individual or a body of persons or of the Licensee.

### 3.2.10 Development of the Market

The Licensee shall act to encourage the development of the market for gas supplies throughout all Development Areas, and shall, with respect to the premises in the

Development Areas to which the Supply Licensee is entitled to supply gas exclusively (and for the periods during which the Supply Licensee may supply those premises exclusively), act so as to enable the Supply Licensee to compete effectively, in so far as is reasonably practicable, with alternative fuel supplies for those premises.

### 3.2.11 Conveyance in the Remaining Licensed Area

Notwithstanding the extent of the area designated in Schedule 1, the Licensee shall not convey gas by means of distribution pipe-lines to any premises in the Remaining Licensed Area unless and until those premises fall within an Additional Development Area.

### 3.2.12 Publication

- (a) The Licensee shall publish each of the following documents on its website and, in addition, using such other methods as the Authority may from time to time reasonably require:-
  - (i) the Towns Development Plan and any revisions thereto; and
  - (ii) all Additional Development Plans and any revisions thereto.
- (b) Publication as required by Condition 3.2.12(a) shall be effected by the Licensee as soon as reasonably practicable, and in any event not more than:
  - (i) 6 months after the date of the Grant of the Licence in the case of the Towns Development Plan;
  - (ii) 1 month after the date of approval thereof by the Authority in the case of any Additional Development Plan; and
  - (iii) 1 month after the date of the making thereof in the case of any revisions.
- (c) The Licensee shall, in addition, provide a copy of any document referred to in Condition 3.2.12(a) to any person requesting one on payment of a charge in respect of the cost incurred by the Licensee in complying with this requirement which shall not exceed such amount as the Authority may from time to time direct.

### **Condition 3.3      Distribution System Operator**

In accordance with Article 11 of Directive 2003/55/EC, the Licensee is designated as the distribution system operator in respect of the Network.

### **Condition 3.4 Provision of Information Concerning Market Development**

#### 3.4.1 Additional duty to provide information

The Licensee shall, in respect of each Gas Year, advise the Authority, by its report given under Condition 3.2.6 whilst that Condition applies, and thereafter by a report provided to the Authority no later than 31 December each year, of:

- (a) the number of requests made by gas suppliers and owners or occupiers of premises to connect premises to the Network in that Gas Year (distinguishing between domestic consumers and non domestic consumers);
- (b) the number of connections to the Network made or agreed to be made by the Licensee in that Gas Year;
- (c) the length and route of pipe-lines comprising the Network installed by the Licensee in that Gas Year and each Development Area (and whether or not it was at operational pressure in any period); and
- (d) capital expenditure in that Gas Year on pipe-lines, gas plant, and other apparatus utilised in the Licensed Business, in aggregate for the Licensed Area and individually in respect of each Development Area.



## **Condition 3.5 Provision of Information**

### 3.5.1 Provision of information

The Licensee shall, on request, promptly provide any other person holding a licence or exemption to convey or store gas with such information as that person may reasonably require in order to ensure that the conveyance or storage of gas by such person may be conducted in a manner compatible with the secure and efficient operation of the System.

### 3.5.2 Definition of “System”

For the purposes of this Condition 3.5, “System” means:

- (a) any transmission pipe-lines;
- (b) any distribution pipe-lines; and/or
- (c) facilities for the storage of gas;

which are directly or indirectly connected to the Network; together with any other ancillary services or facilities necessary for providing access to the conveyance of gas through the Network.

## **Condition 3.6 Notification of opening of supply market**

### **3.6.1 Notification**

Within 6 months after any time at which the Supply Licensee ceases to have a right which it previously had to supply gas exclusively to any premises (“new eligible premises”) within the Licensed Area, the Licensee shall deliver (or arrange to be delivered) to those premises which it reasonably believes to be new eligible premises a written notification in a form approved or modified by the Authority in accordance with Condition 3.6.2 informing the occupiers of such premises that, according to the Licensee’s records, they are free to purchase gas from the supplier of their choice and how they can obtain details of all the gas suppliers who are authorised to supply such premises.

### **3.6.2 Form of notification**

Before delivering (or arranging to be delivered) to any premises a notification referred to in Condition 3.6.1, the Licensee shall provide to the Authority a draft of such notification and shall not deliver (or arrange the delivery of) such notification until the form thereof has been approved or modified by the Authority in accordance with this Condition 3.6.2. In the event that the Authority shall within 28 days of receipt by the Authority of the draft notification, notify to the Licensee any modifications which, in the reasonable opinion of the Authority, should be made to the draft notification, the notification given by the Licensee pursuant to Condition 3.6.1 shall be in the form of the draft as so modified. In the event that the Authority shall not within the said period of 28 days either notify the Licensee of its approval of the draft or notify any modifications thereof to the Licensee, the Authority shall be deemed to have approved the draft at the end of such period.

**Condition 3.7 Prohibition on conveyance by means of transmission pipe-lines**

3.7.1 The Licensee shall not participate in the conveyance of gas by means of transmission pipe-lines.

3.7.2 Condition 3.7.1 is included in accordance with Article 8A(3) of the Order.

### **Condition 3.8 – Undertaking from holding company**

3.8.1 The Licensee shall procure, from each person (if any) which is at any time an ultimate controller of the Licensee, a legally enforceable undertaking:

- (a) in favour of the Licensee;
- (b) in such form as is approved by the Authority;
- (c) within 7 days of the person in question becoming an ultimate controller of the Licensee;
- (d) that will remain in force until a further undertaking expressly stated to replace that undertaking is provided in accordance with this Condition 3.8; and
- (e) that the person in question will secure that the Licensee has available to it all such resources (including, without limitation, management and financial resources, personnel, fixed and moveable assets, rights, consents and facilities), on such terms, and with all such rights, as shall ensure that the Licensee is at all times able properly and efficiently to carry on the Licensed Business in compliance with the Order, the Energy Order and the Licence.

3.8.2 The Licensee shall:

- (a) deliver to the Authority evidence (including a copy of each such undertaking) that the Licensee has complied with its obligations to procure undertakings pursuant to Condition 3.8.1;
- (b) on becoming aware that any such undertaking is not in full force and effect or is not legally enforceable or has been breached, inform the Authority immediately in writing; and
- (c) comply with any direction from the Authority to enforce any such undertaking.

3.8.3 The Licensee shall not, save with the consent in writing of the Authority, enter

(directly or indirectly) into any agreement or arrangement with any ultimate controller of the Licensee or with any subsidiary of any such ultimate controller at a time when,

- (a) an undertaking complying with Condition 1.1 is not in place in relation to that ultimate controller; or
- (b) there is an unremedied breach of such undertaking; or
- (c) the Licensee is in breach of the terms of any direction issued by the Authority under Condition 1.2(c).

3.8.4 In this Condition 3.8, the following expressions shall have the following meanings:

“ultimate controller” means, in respect of the Licensee:

- (a) any holding company of the Licensee, which is not itself a subsidiary of another company; and/or
- (b) any person who (whether alone or with a person or persons connected with him) is in a position to control, or to exercise significant influence over, the policy of the Licensee, or any holding company of the Licensee, by virtue of:
  - (i) rights under contractual arrangements to which he is a party or of which he is a beneficiary;
  - (ii) rights of ownership (including rights attached to or deriving from securities or rights under a trust) which are held by him or of which he is a beneficiary,

but shall exclude any director or employee of a corporate body in his capacity as such and any

minister, ministry, department, agency, authority, official or statutory person of the government of the Republic of Ireland. A person shall be considered to be connected with another person if they are party to any arrangement regarding the exercise of any such rights as are described in (i) and/or (ii) above.

“holding company” has the same meaning as given to it under Article 4 of the Companies (Northern Ireland) Order 1986;

### **Annex 1 to Part 3**

#### **AREA COVERED BY THE TOWNS DEVELOPMENT PLAN**

The Towns Development Plan relates to the following Electoral Wards comprised in the following ten towns:

<b>Ballymena</b>
95DD01 Academy 95DD03 Ardeevin 95DD04 Ballee 95DD05 Ballykeel 95DD06 Ballyloughan 95DD08 Castle Demesne 95DD11 Dunclug 95DD13 Fair Green 95DD14 Galgorm 95DD16 Glenwhirry 95DD18 Harryville 95DD20 Moat 95DD21 Park 95DD24 Summerfield 95DD02 Ahoghill 95DD07 Broughshane 95DD09 Craigwarren
<b>Ballymoney</b>
95EE03 Carnany 95EE07 Fairhill 95EE08 Glebe 95EE12 Newhill 95EE13 Route 95EE14 Seacon
<b>Coleraine</b>
95JJ03 Ballysally 95JJ05 Central 95JJ06 Churchland 95JJ07 Cross Glebe 95JJ08 Dundooan 95JJ13 Knocklynn 95JJ15 Mount Sandel 95JJ20 The Cuts 95JJ21 University 95JJ22 Waterside 95JJ14 Macosquin
<b>L'Derry</b>
95MM01 Altnagelvin 95MM02 Ballynashallog

95MM04 Beechwood  
95MM05 Brandywell  
95MM06 Carn Hill  
95MM07 Caw  
95MM08 Clondermot  
95MM10 Creggan Central  
95MM11 Creggan South  
95MM12 Crevagh  
95MM13 Culmore  
95MM14 Ebrington  
95MM15 Eglinton  
95MM16 Enagh  
95MM17 Foyle Springs  
95MM19 Kilfennan  
95MM20 Lisnagelvin  
95MM22 Pennyburn  
95MM23 Rosemount  
95MM24 Shantallow East  
95MM25 Shantallow West  
95MM26 Springtown  
95MM27 Strand  
95MM28 The Diamond  
95MM29 Victoria  
95MM30 Westland  
95MM21 New Buildings  
95MM18 Holly Mount

**Limavady**

95RR01 Aghanloo  
95RR03 Coolessan  
95RR05 Enagh  
95RR10 Greystone  
95RR12 Rathbrady  
95RR13 Roeside

**Antrim**

95AA01 Aldergrove  
95AA02 Balloo  
95AA08 Farranshane  
95AA09 Fountain Hill  
95AA10 Greystone  
95AA11 Massereene  
95AA15 Springfarm  
95AA16 Steeple  
95AA17 Stiles  
95AA18 Templepatrick  
95AA03 Ballycraigy

**Armagh**



95CC01 Abbey Park 95CC03 Callan Bridge 95CC06 Demesne 95CC08 Downs 95CC18 Observatory 95CC22 The Mall
95CC21 Tandragee
<b>Banbridge</b>
95FF01 Ballydown 95FF03 Banbridge West 95FF07 Edenderry 95FF08 Fort 95FF09 Gilford
95FF12 Lawrencetown 95FF16 Seapatrick 95FF17 The Cut
<b>Craigavon</b>
95LL02 Annagh 95LL03 Ballybay 95LL04 Ballyoran 95LL06 Brownstown 95LL07 Church 95LL08 Corcrain 95LL09 Court 95LL10 Derrytrasna 95LL12 Drumgask 95LL13 Drumgor 95LL14 Drumnarnock 95LL15 Edenderry 95LL16 Kernan 95LL17 Killycomain 95LL18 Knocknashane 95LL19 Magheralin 95LL20 Mourneview 95LL21 Parklake 95LL22 Taghnevan 95LL23 Tavanagh 95LL25 Waringstown 95LL26 Woodville 95SS21 Maghaberry 95SS24 Moira
95LL05 Bleary
<b>Newry</b>
95VV02 Ballybot 95VV10 Daisy Hill 95VV12 Derrymore 95VV14 Drumalane

95VV15 Drumgullion  
95VV27 St Mary's  
95VV28 St Patrick's  
95VV30 Windsor Hill

**Annex 2 to Part 3**

**TOWNS DEVELOPMENT PLAN**

	<b>Towns Annual Target / Gas Year</b>												
<b><u>Town</u></b>	2005/6	2006/7	2007/8	2008/9	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
Ballymena	645	1,357	1,990	2,544	3,058	3,572	4,046	4,520	4,994	5,468	5,741	5,946	6,151
Ballymoney	0	229	488	716	912	1,092	1,272	1,436	1,600	1,764	1,928	2,015	2,071
Coleraine	609	1,295	1,906	2,442	2,941	3,440	3,902	4,364	4,826	5,288	5,537	5,709	5,881
L'Derry	857	3,656	6,330	8,450	10,508	12,466	14,361	15,209	16,057	16,905	17,753	18,478	19,203
Limavady	0	267	555	809	1,028	1,229	1,430	1,614	1,798	1,982	2,166	2,262	2,337
Antrim	0	322	1,168	1,967	2,559	3,127	3,695	4,240	4,785	5,330	5,875	6,122	6,327
Armagh	0	0	379	794	1,163	1,487	1,788	2,089	2,367	2,645	2,923	3,201	3,309
Banbridge	0	0	320	687	1,016	1,307	1,580	1,853	2,107	2,361	2,615	2,869	2,995
Craigavon	0	621	2,277	3,827	4,961	6,041	7,121	8,148	8,602	9,056	9,510	9,964	10,317
Newry	0	630	1,310	1,922	2,465	2,974	3,483	3,958	4,433	4,908	5,383	5,608	5,783
<b><u>Cumulative Target</u></b> (for Towns only)	2,111	8,377	16,723	24,158	30,611	36,735	42,678	47,431	51,569	55,707	59,431	62,174	64,374

<b>Gas Year</b>	2018/19	2019/20	2020/1	2021/2	2022/3	2023/4	2024/5	2025/6	2026/7	2027/8
<b>Cumulative Target*</b> (for Towns only)	66,737	69,100	71,463	73,826	76,189	78,552	80,915	83,278	85,641	88,004

\* No Annual Targets currently apply to the Towns for the Gas Year 2018/19 and thereafter.

### **Annex 3 to Part 3**

#### **GENERAL DEVELOPMENT PLAN**

*[Subject to review by Ofreg]*

The Licensee has prepared this development plan for a natural gas industry in Northern Ireland outside of the Greater Belfast Area. It has been constructed based on the strengths of BGE:

- Benchmark standards of health, safety and care for the environment in all aspects of the gas conveyance, storage and supply (including utilisation) business.
- First class engineering skills in the design, construction, planning, operation, control and maintenance of gas transmission and distribution systems.
- Fuel marketing expertise in highly competitive markets including appliance retailing and customer service operations and standards.
- Financial strength.
- Understanding and working with the implications of long term investments and returns.
- International professional project management skills in capital-intensive schemes.
- Gas purchase and supply/demand matching and contracting.
- Modern metering and billing techniques.
- Technical know how in all types of gas utilisation including CHP ensuring highest thermal efficiencies and safety.
- Employment and training of local employees.
- Experience in comprehensive customer care charters and working with consumer organisations.

- Commitment to ensuring equal opportunities for all.

The Licensee will develop an efficient and economic gas industry in accordance with this plan. It will spread the major benefits of natural gas to the Licensed Areas including environmental improvements, local employment, energy efficiency and fuel choice provision.

It will enable gas dependent industries, i.e. both those providing a service to a gas industry and those industries which can only operate with gas, to be established and it will attract industries from abroad which have experiences of using natural gas and for whose processes natural gas is the preferred fuel.

### 1. **Introduction**

This development plan has been produced by the Licensee. The Licensee has all the skills needed to ensure an ongoing safe and economic scheme, which will bring the advantages of choice, increased energy competition, convenience and environmental improvements to Northern Ireland energy consumers. The plan concentrates on the provision of natural gas in and around the ten towns/cities of Armagh, Antrim, Ballymena, Ballymoney, Banbridge, Coleraine, Craigavon, L'Derry, Limavady and Newry.

### 2. **Company Structure**

In order to implement this development plan the person to whom the Licence is to be assigned has been incorporated by BGE as a private limited company in the UK. It is intended that where possible local resources will be employed to produce and implement the long-term development plan for the Licensee and for the industry.

The Licensee will employ local people where possible and appropriate, while complying with Northern Ireland employment legislation. The Licensee and its contractors will provide training to ensure that all required standards are properly met.

### 3. **Market and Infrastructure Development**

The development of the natural gas market is based on on-going market research and on experience of market development in similar situations in Ireland and Great Britain, when offering natural gas as an alternative fuel in areas outside the existing gas supply area. The rate of expansion of the pipelines is designed so as to provide system integrity and safety while meeting market needs in an optimal economic manner. The rate is capable of rapid adjustment to meet changing market needs.

#### 4. **Organisation**

##### **General**

The Licensee will use best available technology and innovative arrangements with contractors and suppliers to make best use of existing and local resources to achieve the construction of a complex distribution system along with the installation of gas equipment and related services.

##### **Engineering Work**

Wherever possible the low-pressure mains and services work will be carried out by local personnel, trained to the required level of competence.

##### **Control and Emergency Services**

The safe operation and maintenance of the system will be first priority of the Licensee. The system will be constantly monitored by electronic sensors at district pressure reduction sites and other key locations on the system, and the information will be relayed to a central “grid control” and emergency service site. The centre will have the responsibility of dealing with gas escapes and other emergency procedures.

Whilst the majority of this work will be carried out by fully approved contractors, a small core team of specialists will be retained to maintain essential pressure control equipment and provide support to the emergency service. Professionally qualified and experienced engineering staff will be employed to coordinate non-routine operations involving “live gas” remedial works and to provide a call out service when required.

## **Metering**

Advanced metering systems such as Quantum system and Automatic Meter Reading (AMR) are now in widespread use in Britain and Ireland and the Licensee wishes to adopt this technology where appropriate. Quantum is a smart card system providing for payment through local Post Offices, shops, etc in advance of gas consumption. This system allows consumers to budget for their gas supplies and can minimise the occurrence of debt and reduce the need for reading visits into houses.

AMR systems are available based on the new ultrasonic meter which is much smaller than the traditional design. For these meters there will be limited need for meter reading visits although visits will still be required to respond to “flags” indicating meter tampering and other warning such as those indicating the need to change batteries.

All systems require some specialist skills which will be provided by the Licensee for the initial installation and subsequent training of personnel for maintenance and operation.

## **Domestic Customer Service**

Installation work in customers’ premises is a specialist area. The registration scheme for gas installers (Confederation of Registered Gas Installers CORGI) in Northern Ireland is welcomed by the Licensee to facilitate the development of a pool of contractors qualified to work on natural gas which will be used as a resource for the industry.

Accreditation through CORGI in Northern Ireland, ongoing work between the Licensee and local training agencies and the establishment of an Approved Installers List (AIL) will minimise the risk to the public from incompetent installers.

## **Industrial and Commercial Services**

Specialist skills will be required in the industrial and commercial sectors both for installation and conversion work. Links with existing burner suppliers and equipment

manufacturers will be built upon to ensure a quality service to customers which will include:

- (a) assistance in the design and installation of new plant to take advantage of the latest fuel management and gas engineering utilisation techniques;
- (b) survey of existing plant, with detailed reports and recommendations on conversion requirements and costs, likely efficiency and performance improvements and reduced maintenance and service costs;
- (c) design of plan and controls to meet the regulations and Codes of Practice applicable at the time; and
- (d) the introduction of advanced technology, and the redesign or modification of plant to improve efficiency and increase productivity.

## 5. **Training**

To build a successful gas industry in Northern Ireland will require a highly skilled and competent work force. The Licensee will encourage the employment of local people and ensure that the necessary training and assessment is available. The company is in liaison with the Department of Education and Learning and using local training providers of Colleges of Further Education to provide the necessary skills training.

Construction of the distribution system will be undertaken by established gas contractors. An approved training scheme based on National Vocational Qualification Levels II/III will be employed (Gas Network Operations (GNO)) in order to ensure the highest standards of workmanship. All operatives will undergo a pre start assessment of competence and induction training. Safety training is regarded as an integral part of the project and this will be reflected throughout the life of the project.

For engineering, established contractors will provide for assessment of personnel. All teams will undergo an assessment of competence by the Licensee's management in the three main areas of gas safety, polyethylene pipe fusion and reinstatement.



Installers will be required to be CORGI or equivalent registered. In addition those installers who wish to join the Approved Installers List (AIL) will be required to be proven competent in additional ACOP modules including energy efficiency, system controls, gas fire, and gas fire with back boiler installation. All installers will be assessed by the training provider, e.g. DEL for competence including initial CORGI registration as well as the additional modules required to join the AIL. Depending on the results on the results of this assessment further training and assessment will be undertaken.

Joint training for emergencies involving management, service and engineering personnel will be undertaken prior to gas being supplied.

## **PART 4 THE PRICE CONTROL CONDITIONS**

### **Condition 4.1 Charging methodology for the conveyance of gas**

- 4.1.1 The price control set out in this Part 4 allows the Licensee to recover Expenditure reasonably expected to be incurred and the designated rate of return,  $r_t$ , over the duration of the relevant recovery period.
- 4.1.2 The Licensee shall use all reasonable endeavours to set the Controlled Charges so as to ensure that, in respect of each Formula Year, they satisfy:
- (a) the constraint set out in Condition 4.2 (the “Primary Constraint”); and
  - (b) the constraint set out in Condition 4.3 (the “Supplemental Constraint”).
- 4.1.2 The values attributable to the Primary Constraint and Supplemental Constraint shall from time to time be established following a process of Review in accordance with:
- (a) Condition 4.4 (Periodic Reviews); or
  - (b) Condition 4.7 (Special Reviews).
- 4.1.3 At the beginning of each Review, the Licensee shall submit to the Authority, in accordance with Conditions 4.5 and 4.6, its best estimate of the values that the Licensee believes the Authority should designate, at the conclusion of the Review, for the purposes of the Primary Constraint and the Supplemental Constraint.
- 4.1.4 The designated values applying from time to time, for the purposes of the Primary Constraint and the Supplemental Constraint, will be those set out in Condition 4.9.
- 4.1.5 Following each Formula Year, the Licensee shall provide information to the Authority in accordance with Condition 4.8, showing whether or not the Controlled Charges for that Formula Year did satisfy the Primary and Supplemental Constraints.

4.1.6 Words, phrases and terms of formulae used in this Part 4 shall, where not defined in Condition 1.1 of this Licence, bear the meanings ascribed to them in Condition 4.10.

## **Condition 4.2 The Primary Constraint**

4.2.1 This Condition 4.2 establishes the Primary Constraint.

### **Purpose and Effect of the Primary Constraint**

4.2.2 The principal purpose of the Primary Constraint is to provide that the regulated revenue recovered by the Licensee in any year in respect of each category of customer does not exceed the sum (with reference to the allowed prices established at the completion of the last price control review) that it is allowed to recover in that year in respect of that category of customer.

4.2.3 However, the Primary Constraint allows for the recovery of revenue in excess of the sum allowed in respect of any category of customer in any year (an over-recovery) to the extent that the revenue in respect of the other categories of customer in that year together with revenues in respect of earlier years are less than the sums allowed (an accumulated under-recovery).

4.2.4 The Primary Constraint contains mechanisms which may restrict the extent to which any over-recovery for one category of customer is capable of being set-off against an under-recovery for the other categories of customer

4.2.5 The Primary Constraint also provides that:

- (a) the value of any aggregate under-recovery in respect of earlier years that may be used to offset an over-recovery is calculated after making allowance for a compounding rate of return (subject to a mechanism by which the compounding rate of return may be limited); and
- (b) the value of any aggregate over-recovery in respect of earlier years that must be offset by an under-recovery is calculated after making allowance for a compounding rate of return (subject to a mechanism by which the compounding rate of return may be raised).

## The Primary Constraint

4.2.6 The Primary Constraint, in respect of each Formula Year  $t$ , is represented by the formula:

$$\sum_{all\_i} \max( (1 - \delta_{E,t}) \cdot Z_{F,i,t}, Z_{F,i,t} ) + Z_{U,t} \leq 0$$

4.2.7 In Condition 4.2.6:

$\sum_{all\_i}$  means the summation of the values for each Conveyance Category  $i$ ;

$Z_{F,i,t}$  has the meaning given in Conditions 4.2.8 and 4.2.9, and is calculated in accordance with Condition 4.2.10;

$Z_{U,t}$  has the meaning given in Conditions 4.2.25 and 4.2.26 and is calculated in accordance with Condition 4.2.27; and

$\delta_{E,t}$  is the Designated Parameter of that name in respect of Formula Year  $t$ , which is established for the purposes set out at Condition 4.2.20 and 4.2.21.

## The $Z_{F,i,t}$ Term

4.2.8 The principal purpose of the term  $Z_{F,i,t}$  is, in respect of Conveyance Category  $i$  for Formula Year  $t$ , to:

- (a) establish the value of any:
  - (i) under-recovery of revenue (being the extent to which Actual Revenue is less than Allowed Revenue); or
  - (ii) over-recovery of revenue (being the extent to which Actual Revenue exceeds Allowed Revenue); and

(b) adjust that value by reference to any under-recovery or over-recovery in respect of that Conveyance Category  $i$  accumulated in years prior to Formula Year  $t$ .

4.2.9 The effect of the term  $Z_{F,i,t}$  is to establish a value for the accumulated under-recovery or over-recovery of revenue in respect of Conveyance Category  $i$  up to and including Formula Year  $t$ .

**Calculating  $Z_{F,i,t}$**

4.2.10  $Z_{F,i,t}$  shall be calculated in accordance with the following formula (where a positive value denotes an over-recovery and a negative value denotes an under-recovery):

$$Z_{F,i,t} = \left( \begin{array}{l} (P_{F,i,t} - P_{E,i,t} \frac{RPI_{iy_t}}{RPI_E}) \cdot V_{F,i,t} \cdot \Gamma_{F,t} \\ + \hat{Z}_{F,i,t-1} \cdot (1 + \bar{r}_{t-1}) \frac{RPI_{iy_t}}{RPI_{iy_{t-1}}} \end{array} \right)$$

4.2.11 For the purposes of Condition 4.2.10:

$P_{F,i,t}$  is the Actual Revenue Per Unit in respect of Conveyance Category  $i$  for Formula Year  $t$  (which amount cannot, for the avoidance of doubt, be negative);

$P_{E,i,t}$  is the Allowed Revenue Per Unit in respect of Conveyance Category  $i$  for Formula Year  $t$ ;

$RPI_{iy_t}$  is the sum of the values of the Retail Prices Index for each month in Formula Year  $t$  divided by twelve (in order to establish a mean value for RPI during that Formula Year);

$RPI_E$  is the Designated Parameter of that name established at the most recent Review (as the base reference point for the Retail Prices Index);

- $V_{F,i,t}$  is the Actual Volume in respect of Conveyance Category  $i$  for Formula Year  $t$ ;
- $\Gamma_{F,t}$  has the meaning given in Conditions 4.2.12 and 4.2.13 and is calculated in accordance with Conditions 4.2.14 and 4.2.15; and
- $\bar{r}_{t-1}$  has the meaning given in Condition 4.2.16 and 4.2.17 and is calculated in accordance with Condition 4.2.18 and 4.2.19.
- $\hat{Z}_{F,i,t-1}$  has the meaning given in Conditions 4.2.22 and 4.2.23 and is calculated in accordance with Condition 4.2.24

### **The $\Gamma_{F,t}$ Term**

- 4.2.12 The principal purpose of the term  $\Gamma_{F,t}$  is, where the volumes of gas conveyed by the Licensee in Formula Year  $t$  are higher than those determined at the time of the last Review, to restrict the extent to which the value of any under-recovery of revenue in respect of that year may be counted for the purposes of the Primary Constraint.
- 4.2.13 The effect of the term  $\Gamma_{F,t}$  is, in the circumstances in which it applies, to limit the value of the under-recovery that may be carried forward in proportion to the extent to which the Actual Volume in respect of Formula Year  $t$  exceeds the Determined Volume in respect of that year.

### ***Calculating $\Gamma_{F,t}$***

- 4.2.14 The value of  $\Gamma_{F,t}$  shall be deemed to be equal to 1 (one), except where: both of the following apply:
- (a) the Actual Volume in Formula Year  $t$  is greater than the Determined Volume in respect of that year, namely:

$$\sum_{all\_i} V_{F,i,t} > \sum_{all\_i} V_{E,i,t} ; \text{ and}$$

- (b) the Actual Revenue per unit in respect of the same Conveyance Category  $i$  for the same Formula Year  $t$  is less than the Allowed Revenue per unit in respect of that category and that year when multiplied by  $\frac{RPI_{iy_t}}{RPI_E}$  (in order to adjust the Allowed Revenue for the effect of inflation) and weighted in accordance with Actual Volumes, namely:

$$\sum_{all\_i} \left( \left( P_{F,i,t} - P_{E,i,t} \frac{RPI_{iy_t}}{RPI_E} \right) \cdot V_{F,i,t} \right) < 0$$

4.2.15 Where both paragraphs (a) and (b) of Condition 4.2.14 apply, the value of  $\Gamma_{F,t}$  shall be calculated in accordance with the following formula:

$$\Gamma_{F,t} = \frac{\sum_{all\_i} V_{E,i,t}}{\sum_{all\_i} V_{F,i,t}} \text{ for the purposes of which:}$$

$V_{F,i,t}$  is the Actual Volume in respect of Conveyance Category  $i$  and Formula Year  $t$ ; and

$V_{E,i,t}$  is the Determined Volume in respect of Conveyance Category  $i$  and Formula Year  $t$ .

### **The $\bar{r}_{t-1}$ Term**

4.2.16 The principal purpose of the term  $\bar{r}_{t-1}$  is to adjust the value of any accumulated under-recovery or over-recovery in relation to Formula Year  $t-1$  (when such accumulated under-recovery or over-recovery is being carried forward for the purposes of the Primary Constraint) by reference to the rate of return applying in respect of that year.

4.2.17 The secondary purpose of the term  $\bar{r}_{t-1}$  is to provide a mechanism by which the rate of return applying for the purpose described in Condition 4.2.16 may be adjusted so as:



- (a) to either increase or decrease the value of any accumulated under-recovery or over-recovery of revenue that is carried forward; and
- (b) thereby to provide an incentive or disincentive (as the case may be) in respect of the accumulation of such under-recovery or over-recovery of revenue.

4.2.18 The value of  $\bar{r}_{t-1}$  shall be calculated in accordance with the following formulae:

(a) where 
$$\sum_{all\_i} Z_{F,i,t-1} + Z_{U,t-1} > 0$$

then 
$$\bar{r}_{t-1} = r_{E,t-1} + x_{O,t-1}$$

(b) where 
$$\sum_{all\_i} Z_{F,i,t-1} + Z_{U,t-1} < 0$$

then 
$$\bar{r}_{t-1} = r_{E,t-1} - x_{U,t-1}$$

4.2.19 For the purposes of Condition 4.2.18:

$\sum_{all\_i}$  means the summation of the values for each Conveyance Category  $i$ ;

$r_{E,t-1}$  is the Determined rate of return in respect of Formula Year  $t-1$ ;

$x_{O,t-1}$  is a Designated Parameter that applies in respect of Formula Year  $t-1$ , being the mechanism by which the increase referred to in Condition 4.2.17 may be achieved in respect of the value of any accumulated over-recovery of revenue to be carried forward from that year; and

$x_{U,t-1}$  is a Designated Parameter that applies in respect of Formula Year  $t-1$ , being the mechanism by which the decrease referred to in Condition 4.2.17 may be achieved in respect of the value of any accumulated under-recovery of revenue to be carried forward from that year.

### The $\delta_{E,t}$ Term

4.2.20 The purpose of the term  $\delta_{E,t}$  is to provide a mechanism by which:

- (a) the value of any under-recovery of revenue in respect of Conveyance Category  $i$  and Formula Year  $t$  may, for the purpose of the Primary Constraint, be subject to reduction; and
- (b) in consequence of that reduction, there is a limitation on the extent to which the value of any over-recovery in respect of a different Conveyance Category  $i$  for the same Formula Year  $t$  may be set-off under the Primary Constraint.

4.2.21 The effect of the term  $\delta_{E,t}$ , if it is determined as a value greater than zero, is to reduce the extent to which under the Primary Constraint an over-recovery of revenue in one Conveyance Category may be set-off against an under-recovery of revenue in any other Conveyance Category.

### **The $\hat{Z}_{F,i,t-1}$ Term**

4.2.22 The principal purpose of the term  $\hat{Z}_{F,i,t-1}$  is, in respect of Conveyance Category  $i$  for Formula Year  $t-1$ , to secure that the Licensee is not retrospectively disadvantaged in the event that  $\delta_{E,t}$  is designated (e.g. at a Periodic Review) to be greater than  $\delta_{E,t-1}$ . Such a disadvantage would otherwise arise since the increase in  $\delta_{E,t}$  would, other things being equal, have the effect of increasing the calculated value of the term in Condition 4.2.6 (the Primary Constraint) and thus may require the Licensee to take remedial action that would otherwise not be necessary.

4.2.23 The effect of the term  $\hat{Z}_{F,i,t-1}$  is to establish an adjusted value of any accumulated under-recovery or over-recovery of revenue up to and including Formula Year  $t-1$  attributed to Conveyance category  $i$  in the event that  $\delta_{E,t}$  is designated to be greater than  $\delta_{E,t-1}$ . The residual value of such adjustments are separately accumulated in the

unallocated term  $Z_{U,t}$  described in Condition 4.2.25 and 4.2.26 and calculated in accordance with 4.2.27.

**Calculating  $\hat{Z}_{F,i,t-1}$**

4.2.24  $\hat{Z}_{F,i,t-1}$  shall be calculated in accordance with the following formula (where a positive value denotes an over-recovery and a negative value denotes an under-recovery):

If  $\delta_{E,t}$  is designated to be greater than  $\delta_{E,t-1}$ :

$$\hat{Z}_{F,i,t-1} = Z_{F,i,t-1} \cdot \frac{\delta_{E,t-1}}{\delta_{E,t}}$$

Otherwise:

$$\hat{Z}_{F,i,t-1} = Z_{F,i,t-1}$$

**The  $Z_{U,t}$  Term**

4.2.25 The principal purpose of the term  $Z_{U,t}$  is to accumulate the net value of adjustments in respect of all Conveyance Categories  $i$  calculated in accordance with Condition 4.2.24 so that the calculated value of the term in Condition 4.2.6 (the Primary Constraint) is not retrospectively affected in the event that  $\delta_{E,t}$  is designated to be greater than  $\delta_{E,t-1}$ .

4.2.26 The effect of the term  $Z_{U,t}$  is to establish a value for the accumulated under-recovery or over-recovery of revenue that is not attributed to any Conveyance Category  $i$  in Formula Year  $t$  on account of adjustments made in accordance with Condition 4.2.24, taking into account:

- (a) the value of  $Z_{U,t-1}$  accumulated up to Formula Year  $t-1$ , i.e. before taking into account adjustments in the calculation of  $\hat{Z}_{F,i,t-1}$  in accordance with Condition 4.2.24 on account of the designated value of  $\delta_{E,t}$ ;
- (b) the residual value of adjustments in the calculation of  $\hat{Z}_{F,i,t-1}$  in accordance with Condition 4.2.24; and
- (c) the effects of indexation and the rate of return on the value carried forward to Formula Year  $t$ .

**Calculating  $Z_{U,t}$**

4.2.27  $Z_{U,t}$  shall be calculated in accordance with the following formula (where a positive value denotes an over-recovery and a negative value denotes an under-recovery):

$$Z_{U,t} = \left( \begin{array}{l} \sum_{\text{all } i} (Z_{F,i,t-1} - \hat{Z}_{F,i,t-1}) \\ + Z_{U,t-1} \end{array} \right) \cdot (1 + \bar{r}_{t-1}) \frac{RPIiy_t}{RPIiy_{t-1}}$$

**Further adjustments to  $Z_{F,i,t}$  and  $Z_{U,t}$**

4.2.28 In respect of any Formula Year  $t$ , the Licensee may propose and the Authority may, at its discretion, accept further adjustments to  $Z_{F,i,t}$  such that the effect of those adjustments is neutral in respect of the operation of the Primary Constraint. In the event of such adjustments being proposed and accepted in respect of Formula Year  $t$ , the values of  $Z_{F,i,t}$  and  $Z_{U,t}$  in all subsequent years' calculations shall be deemed to be the values after adjustments under this Condition. The operation of the Primary Constraint is not dependent on any such adjustments being made. Appropriate adjustments may include the reallocation of the value of  $Z_{U,t}$  (which would generally

be negative and have the effect of offsetting a positive  $Z_{F,i,t}$  in the calculation of the Primary Constraint) to any  $Z_{F,i,t}$  which are expected to remain positive.

### **Condition 4.3 Supplemental Constraint**

4.3.1 This Condition 4.3 establishes the Supplemental Constraint

#### **Purpose and Effect of the Supplemental Constraint**

4.3.2 The purpose of the Supplemental Constraint is to provide that the total regulated revenue recovered by the Licensee in any year does not exceed the sum that it is allowed to recover in that year (as established at the completion of the last price control review) by more than a fixed margin set at that review.

4.3.3 The effect of the Supplemental Constraint is to limit the ability of the Licensee to set its charges so as to give rise to an aggregate over-recovery of revenue, notwithstanding that it may have accumulated an under-recovery in previous years against which that over-recovery may be set-off for the purposes of the Primary Constraint.

#### **The Supplemental Constraint**

4.3.4 The Supplemental Constraint, in respect of each Formula Year  $t$ , is represented by the formula:

$$\sum_{all\_i} (P_{F,i,t} \cdot V_{F,i,t}) \leq (1 + \alpha_{E,t}) \cdot \sum_{all\_i} (P_{E,i,t} \cdot V_{F,i,t}) \frac{RPI_{i,t}}{RPI_E}$$

4.3.5 For the purposes of Condition 4.3.4:

$\sum_{all\_i}$  means the summation of the values for each Conveyance Category  $i$ ;

$P_{F,i,t}$  is the Actual Revenue Per Unit in respect of Conveyance Category  $i$  for Formula Year  $t$ ;

$V_{F,i,t}$  is the Actual Volume in respect of Conveyance Category  $i$  for Formula Year  $t$ ;

- $P_{E,i,t}$  is the Allowed Revenue Per Unit in respect of Conveyance Category  $i$  for Formula Year  $t$ ;
- $RPI_{iy,t}$  is the sum of the values of the Retail Prices Index for each month in Formula Year  $t$  divided by twelve (in order to establish a mean value for RPI during that Formula Year);
- $RPI_E$  is the Designated Parameter of that name established at the most recent Review (as the base reference point for the Retail Prices Index);
- $\alpha_{E,t}$  is the Designated Parameter of that name in respect of Formula Year  $t$ , which is established for the purpose set out at Condition 4.3.6.

#### **The $\alpha_{E,t}$ Term**

- 4.3.6 The purpose of the term  $\alpha_{E,t}$  is to establish the maximum permitted extent by which the sum of the Actual Revenues in respect of each Conveyance Category  $i$  and Formula Year  $t$  may exceed the sum of the Allowed Revenues in respect of each such category and that year (the over-recovery).
- 4.3.7 The effect of  $\alpha_{E,t}$ , where it is set at a value above zero, is to permit an aggregate over-recovery of revenue in any Formula Year but to limit it to a level determined by the value attributed to  $\alpha_{E,t}$ .

#### **Interaction of the Primary and Supplemental Constraints**

- 4.3.8 The Primary Constraint may allow the Licensee to accumulate under-recoveries in revenue and because the Primary Constraint cannot constrain the speed with which the Licensee makes corresponding over-recoveries in revenue, the Supplemental Constraint may be set to limit the extent to which the Licensee can make an over-recovery in revenue in any one Formula Year.

#### **Condition 4.4 Review Process & Disapplication Notices**

4.4.1 This Condition 4.4 sets out the process by which the core terms of the price control will be established by the Authority from time to time.

#### **The Review**

4.4.2 The Designated Parameters and the Determination Values applying in respect of each Formula Year  $t$  will be established in accordance with the process set out below (a “Review”).

4.4.3 A Review will take place:

- (a) at scheduled intervals by reference to the end of Formula Year  $t=n$  (a “Periodic Review”); and
- (b) from time to time in accordance with Condition 4.7 (a “Special Review”).

#### **Terms Relevant to Reviews**

4.4.4 In respect of each Review (the “current Review”):

$n$  is a Designated Parameter established (subject to Condition 4.7.2) by virtue of the Review immediately preceding the current Review. It denotes the Formula Year immediately preceding the first Formula Year in which the Determination Values and the Designated Parameters that are being established as part of the current Review will apply. In the case of the first Periodic Review only it shall be determined in accordance with Condition 4.4.5;

$q$  is a Designated Parameter established as part of the current Review. It denotes the projected longstop Formula Year up to which Best Available Values must be submitted in accordance with Condition 4.5 and 4.6;

$m$  denotes the Formula Year immediately preceding the first Formula Year in which the Determination Values and the Designated Parameters which were established as part of the Review immediately preceding the current Review



applied. Accordingly,  $t = n$  for any Review is the same year as  $t = m$  for the following Review; and

- a* denotes the then most recent Formula Year for which the Licensee has submitted Actual Values in accordance with Condition 4.8.

### **The First Periodic Review**

4.4.5 Notwithstanding the other provisions of this Condition 4.4, the following provisions shall apply to the first Periodic Review alone:

- (a) for the purposes of the first Periodic Review, the Designated Parameter  $n$  shall be the year ending on 30 September 2005;
- (b) unless and until Condition 4.9 is modified, the Designated Parameters set out in Condition 4.9 (as at the time of Grant) will be deemed to have been established as such at the first Periodic Review;
- (c) the Licensee shall provide to the Authority the Best Available Values for the first Periodic Review (calculated in accordance with Conditions 4.5 and 4.6) based on the Designated Parameters set out in Condition 4.9 (as at the time of Grant) within 6 weeks of the date of the Grant;
- (d) the value of  $DAV_n$  used for the purposes of the first Periodic Review shall reflect that Capital Expenditure and Operating Expenditure incurred in the period up to 1 October 2005 (adjusted for cost of capital at the rate of [RATE TO BE AGREED] %);
- (e) the Authority will, as part of the first Periodic Review and having considered any Best Available Values submitted by the Licensee, determine the Determination Values to apply in those Formula Years  $t$  occurring during the period  $t = l$  to  $t = q$  (inclusive) for the first Periodic Review by notice to the Licensee prior to 1 October 2005 and such determination shall have effect from the date such notice as a modification of Condition 4.9;

- (f) the Licensee may, in respect of the first Periodic Review, serve a written “disapplication notice” on the Authority at any time prior to December 2005. Such disapplication notice shall have effect from 1 October 2006 (the “disapplication date”). Following service of a disapplication notice, and with effect from the disapplication date, Conditions 4.2 and 4.3 shall cease to have effect, unless by the disapplication date, the Authority has either referred Condition 4.9 to the Competition Commission or modified Condition 4.9 in accordance with Article 14 of the Order.

### **Periodic Reviews Generally**

- 4.4.6 The Authority will, at each Review, determine the Determination Values and the Designated Parameters that apply in those Formula Years  $t$  occurring during the period  $t = n+1$  to  $t = q$  (inclusive) for that Review.
- 4.4.7 The Licensee shall provide to the Authority the Best Available Values (calculated in accordance with Conditions 4.5 and 4.6) in respect of each Periodic Review, together with the Licensee’s proposed Designated Parameters for that Review, by the earlier in time of:
- (a) the date occurring 12 months prior to the end of each Formula Year  $t = n$ ;  
and
  - (b) the date occurring two months after the date on which the Authority has provided to the Licensee its proposed values for the Designated Parameters for that Review.
- 4.4.8 For each Special Review and in accordance with the timetable established by the Authority in accordance with Condition 4.7.6, the Licensee shall (to the extent directed to do so by the Authority in accordance with Condition 4.7.6) provide to the Authority Best Available Values for that Special Review (calculated in accordance with Conditions 4.5 and 4.6) and the Licensee’s proposed Designated Parameters for that Special Review.

- 4.4.9 At the same time as it submits Best Available Values to the Authority in accordance with Condition 4.4.5(c), 4.4.7 or 4.4.8 (as applicable), the Licensee shall also provide such further accompanying information, evidence and other data with regard to the values submitted and the assumptions underlying the relevant estimates and forecasts as will be reasonably sufficient to enable the Authority to be satisfied that the Best Available Values have been provided on a proper and consistent basis. The Licensee shall thereafter provide the Authority with any further such information, evidence or other data requested by the Authority.
- 4.4.10 The Licensee acknowledges that the Authority may wish to carry out consultations with regard to the Reviews and, subject to having first been consulted by the Authority, the Licensee shall consent to the publication of information relevant to such consultations except to the extent that the Authority is reasonably of the opinion that the publication of any such information would seriously and prejudicially affect the interests of the Licensee or any other person. Where the Authority makes a “minded to” determination of the Determination Values and the Designated Parameters for a Review, the Licensee shall, within 4 weeks of such “minded to” determination, respond to the Authority indicating whether or not such values would be acceptable if formally established as such.
- 4.4.11 The Authority will, at the conclusion of each Review and having considered any Best Available Values and proposed Designated Parameters submitted by the Licensee, determine the Determination Values and establish the Designated Parameters by notice in writing to the Licensee. Such Determination Values and Designated Parameters shall be established having regard to any information provided to the Authority and any representations made to the Authority, including those previously made by the Licensee, and in particular those made by the Licensee in respect of the:
- (a) Licensee’s aim of recovering accumulated under recoveries of revenue (as referred to in Condition 4.2.8) in good time and in any event by no later than the Formula Year 2034/5;

- (b) Licensee's aim of recovering the costs it has incurred by way of Capital Expenditure during the period up to the end of Formula Year q by the end of that Formula Year, together with a rate of return on those costs; and
- (c) Licensee's aim of recovering the costs it has incurred by way of Operating Expenditure during the period up to the end of Formula Year q by the end of that Formula Year.

4.4.12 Without prejudice to Article 14 of the Order, a notice given by the Authority under Condition 4.4.11 shall have effect as a modification of Condition 4.9 in which the Determination Values and Designated Parameters contained in the notice shall be substituted for the equivalent values previously established in that Condition.

### **Disapplication**

4.4.13 The Licensee may serve a written "disapplication notice" on the Authority at any time after 1 January 2006. The Licensee shall state in such disapplication notice the date from which the disapplication notice is to have effect (the "disapplication date"), provided that the disapplication date shall not be a date prior to the later of:

- (a) the date 6 months after the end of the Formula Year denoted by the Designated Parameter n applying at the date the disapplication notice was served; and
- (b) the date 18 months after the disapplication notice was served.

4.4.14 Following service of a disapplication notice under Condition 4.4.13, and unless the Licensee withdraws the disapplication notice, Conditions 4.2 and 4.3 shall, with effect from the relevant disapplication date, cease to have effect, unless by the disapplication date the Authority has either:

- (a) referred Condition 4.9 to the Competition Commission; or
- (b) modified Condition 4.9 in accordance with Article 14 of the Order.

4.4.15 Where, in accordance with Condition 4.4.5(f) or Condition 4.4.14, Conditions 4.2 and 4.3 cease to have effect, the Licensee shall, in setting its Controlled Charges, no longer be restricted by this Part 4.

**Closing Regulatory Value**

4.4.16 If  $DAV_{E,t=q} > 0$ , this value shall be returned to the Licensee in those Formula Years following  $t = q$ , in accordance with the principles determined by the Authority at that time, such principles to provide (inter alia) for an allowed rate of return.

**Condition 4.5 Establishing the Basic Best Available Values**

4.5.1 The Licensee shall submit basic Best Available Values to the Authority at each Review in accordance with Condition 4.4 for each past current and future Formula Year  $t$  up to and including  $t = q$  for that Review. The Licensee shall submit Actual Values in respect of the basic Best Available Values for the Formula Years up to  $t=a$ , and shall use all reasonable endeavours to make its best estimate or forecast of the basic Best Available Values submitted in respect of the Formula Years from  $t=a+1$  to  $t=q$  (inclusive).

4.5.2 The basic Best Available Values are:

- $V_{B,i,t}$  Best Available Volume in Formula Year  $t$  for Conveyance Category  $i$ ;
- $C_{B,t}$  Best Available Capital Expenditure in Formula Year  $t$ ;
- $C_{B,i,t}$  in Formula Year  $t$  and for Conveyance Category  $i$ , that proportion of Best Available Capital Expenditure in that Formula Year attributable to that Conveyance Category, using a methodology or methodologies approved by the Authority;
- $O_{B,t}$  Best Available Operating Expenditure in Formula Year  $t$ ;
- $O_{B,i,t}$  in Formula Year  $t$  and for Conveyance Category  $i$ , that proportion of Best Available Operating Expenditure in that Formula Year attributable to that Conveyance Category, using a methodology or methodologies approved by the Authority;
- $D_{B,t}$  Best Available Annual Depreciation in Formula Year  $t$ ;
- $RPIye_{B,t}$  the Best Available value of the Retail Prices Index for the last month of that Formula Year; and

$RPI_{y_{B,t}}$  the sum of the Best Available values of the Retail Prices Index for each month in that Formula Year, divided by 12 (which gives a Best Available average value across that Formula Year).

4.5.3 To the extent the Best Available Values comprise monetary amounts, the Licensee shall express each such value in constant price terms (calculated in accordance with this Condition 4.5.3). For each of the Best Available Values submitted in respect of Formula Years  $t=a+1$  to  $t=q$  (inclusive), constant price terms shall mean that such forecasted values are all stated in the same money of the day terms as at the time they are all forecasted. For each of the Best Available Values submitted in respect of Formula Years up to  $t=a$ , constant price terms shall mean that such Actual Values are all converted to the same money of the day terms, by multiplying them by:

$$\frac{RPI_B}{RPI_{y_{B,t}}}$$

Where  $RPI_B$  is the Licensee's proposed value for that Designated Parameter, to apply to each of the Formula Years that are the subject of the current Review. It is the base reference point for the Retail Prices Index and will reflect the money of the day terms in which those Best Available Values that are forecasts were forecasted.

#### **Condition 4.6 Establishing Best Available Revenue Per Unit**

- 4.6.1 In addition to the basic Best Available Values referred to in Condition 4.5.2, the Licensee shall also (again in accordance with Condition 4.4) submit Best Available Revenue Per Unit values for each Review for each Formula Year  $t$  that is to occur during the period  $t = n+1$  to  $t = q$  (inclusive) for that Review. The Licensee shall use all reasonable endeavours to make its best estimate of the Best Available Revenue Per Unit for each Conveyance Category and for each such Formula Year ( $P_{B,i,t}$ ).
- 4.6.2 This Condition 4.6 sets out the Best Available Value categories and the underlying calculations upon which the Licensee should base its values of  $P_{B,i,t}$ . In compliance with its obligation under Condition 4.4, the Licensee shall submit full workings of the calculations and figures upon which its values of  $P_{B,i,t}$  are based.
- 4.6.3 The Licensee shall estimate values for the Best Available Revenue Per Unit ( $P_{B,i,t}$ ) so that:
- (a) such values comply with the requirements set out in Condition 4.6.4;
  - (b) such values reasonably reflect the differences in the respective costs of conveying gas for each of the Conveyance Categories, with reference to, without limitation,  $C_{B,i,t}$  and  $O_{B,i,t}$ ;
  - (c) the values (being, by virtue of Condition 4.5.3, values stated in constant price terms) for each Conveyance Category  $i$  will not, unless otherwise agreed with the Authority, differ between Formula Years  $t$ .
- 4.6.4 Each value of  $P_{B,i,t}$  shall be set so that the cash flow (adjusted to reflect the allowed rate of return) over the Formula Years in question is equal to the difference between the regulatory value at the end of Formula Year  $n$  of those assets acquired through Capital Expenditure and their depreciated value at the end of Formula Year  $q$ . This will be shown to be the case where the values of  $P_{B,i,t}$  secure the following net present value result:



$$\sum_{t=n+1}^q \left( F_{B,t} \left( \frac{1 + r_{B,t} \cdot f_{B,t}}{(1 + r_B)^{t-n}} \right) \right) - TRV_{B,n} + \frac{DAV_{B,q}}{(1 + r_B)^{q-n}} = 0$$

4.6.5 For the purposes of Condition 4.6.4, the following terms shall have the following meanings:

$n, q$  are Formula Years as defined in Condition 4.4.2 for the Review that  $P_{B,i,t}$  is being forecast as part of. As the value of the Designated Parameter  $q$  for that Review is also being established as part of that Review, it will necessarily be the Licensee's proposed value of that Designated Parameter;

$\sum_{t=n+1}^q$  is the summation of data in respect of all Formula Years  $t$  from  $t = n+1$  to  $t = q$  inclusive;

$F_{B,t}$  is the Best Available Cash Flow for Formula Year  $t$ , (being a sum calculated in accordance with Condition 4.6.6);

$r_{B,t}, r_B$  is the Licensee's proposed value of the Designated Parameter for rate of return to apply to each of the Formula Years within the relevant period. Provided that, where the Licensee does not propose the same value for each of the relevant Formula Years,  $(1 + r_B)^{t-n}$  shall be replaced with  $(1 + r_{B,t+1}) \cdot (1 + r_{B,t+2}) \dots (1 + r_{B,n})$  and  $(1 + r_B)^{q-n}$  shall be treated accordingly;

$f_{B,t}$  is the Licensee's proposed value of the Designated Parameter  $f$  to apply to Formula Year  $t$ , where  $f$  is an averaging factor (of between zero and one) to be applied to the rate of return, in recognition of the fact that the rate of return is being applied to an end of Formula Year value, but will in practice be recovered over the course of a Formula Year;

$DAV_{B,t}$  is the Best Available Depreciated Asset Value for Formula Year  $t$  (being a sum calculated in accordance with Condition 4.6.7); and

$TRV_{B,n}$  is, the Best Available Total Regulatory Value at the end of Formula Year  $t = n$  for that Review (being a sum calculated in accordance with Condition 4.6.8).

***Calculating  $F_{B,t}$  (Cash Flow)***

4.6.6  $F_{B,t}$  is an amount equal to the sum of the Best Available Conveyance Revenues for all of the Conveyance Categories and the relevant Formula Year, less the Best Available Capital Expenditure for that Formula Year, less the Best Available Operating Expenditure for that Formula Year, which shall be calculated as follows:

$$F_{B,t} = \sum_{all\_i} (P_{B,i,t} \cdot V_{B,i,t}) - C_{B,t} - O_{B,t}$$

***Calculating  $DAV_{B,t}$  (Depreciated Asset Value)***

4.6.7  $DAV_{B,t}$  is an amount equal to the indexed, depreciated, rolled forward value of Capital Expenditure to date, measured at the end of each Formula Year. In respect of Formula Year  $t$  therefore, it shall be the value of such amount applying to Formula Year  $t-1$ , plus the Best Available Capital Expenditure in Formula Year  $t$ , less the Best Available Annual Depreciation in Formula Year  $t$ , which shall be calculated as follows:

$$DAV_{B,t} = DAV_{B,t-1} + C_{B,t} - D_{B,t}$$

provided that the Licensee shall, in forecasting  $DAV_{B,t-1}$  and  $DAV_{B,t}$  for any previous Formula Years, ensure that its forecasts are consistent with the Authority's most recent determinations of the Determined Depreciated Asset Value, so that:

$$DAV_{B,a} = DAV_{E,a} \frac{RPI_B}{RPI_E}$$

Where a denotes a Formula Year as defined in Condition 4.4.2.

***Calculating  $TRV_{B,n}$  (Total Regulatory Value)***

4.6.8  $TRV_{B,n}$  is the Best Available Total Regulatory Value at the end of Formula Year  $t = n$  for the Review in question. It is the sum of the Best Available Depreciated Asset Value for Formula Year  $t = n$  (or in other words the opening position at the beginning of Formula Year  $t = n+1$ ), plus any rolling incentive adjustments, which shall be calculated as follows:

$$TRV_{B,n} = DAV_{B,n} + PA_B + ORI_B + CRI_B$$

Where:

$PA_B$  is the Profile Adjustment (being an adjustment calculated in accordance with Condition 4.6.9);

$ORI_B$  is the Operating Rolling Incentive (being an incentive calculated in accordance with Condition 4.6.10); and

$CRI_B$  is the Capital Rolling Incentive (being an incentive calculated in accordance with Condition 4.6.11).

***Calculating the Profile Adjustment***

4.6.9 The Profile Adjustment is an adjustment to reflect the long-term nature of the price control set out in this Condition 4. The Determined Revenue Per Unit values are established at each Review by reference to the period to Formula Year  $t=q$  and not by reference to the period to Formula Year  $t=n$ . At each Review therefore, it is necessary to recognise the financial impact of having set a deferred recovery profile at the previous Reviews, by carrying forward the deferred value. The Best Available Profile Adjustment for each Review shall be calculated as follows:

$$PA_B = - \left( \begin{array}{l} \sum_{t=m+1}^n F_{E,t} (1 + r_{E,t} \cdot f_{E,t}) \cdot (1 + r_E)^{n-t} \\ - TRV_{E,m} \cdot (1 + r_E)^{n-m} \\ + DAV_{E,n} \end{array} \right) \cdot \frac{RPI_B}{RPI_E}$$

Where:

m, n are Formula Years as defined in Condition 4.4.4 for the Review in question;

$\sum_{t=m+1}^n$  is the summation of data in respect of all Formula Years from m+1 to n (inclusive);

$F_{E,t}$ ,  $r_{E,t}$ ,  $f_{E,t}$ ,  $TRV_{E,m}$ , and  $DAV_{E,n}$  are Determination Values and Designated Parameters established by the Authority at the previous Review in respect of Formula Years t, m or n (respectively);

$r_E$  is the Designated Parameter for rate of return that applies to each of the Formula Years within the relevant period. Provided that, where the Authority did not establish the same value for each of the relevant Formula Years,  $(1 + r_E)^{n-t}$  shall be replaced with  $(1 + r_{E,t+1}) \cdot (1 + r_{E,t+2}) \dots (1 + r_{E,n})$  and  $(1 + r_E)^{n-m}$  shall be treated accordingly.

### ***Calculating the Operating Rolling Incentive***

4.6.10 The Operating Rolling Incentive is an incentive that guarantees the Licensee a specific number of Formula Years (w) of benefit in respect of any savings in Controllable Operating Expenditure regardless of when the saving is made. Where Formula Year n+1 occurs before the Licensee has had w Formula Years of benefit from any saving in Controllable Operating Expenditure, the Operating Rolling Incentive therefore adds

to the total regulatory value an amount equal to that saving in Controllable Operating Expenditure that would have been made in the remaining Formula Years of period w. Where Formula Year n+1 occurs after the Licensee has had w Formula Years of benefit from any saving in Controllable Operating Expenditure, the Operating Rolling Incentive therefore subtracts from the total regulatory value an amount equal to that saving in Controllable Operating Expenditure that was made in the Formula Years after completion of period w. The Operating Rolling Incentive for each Review shall be calculated as follows:

$$ORI_B = g \cdot \sum_{t=0}^n \left( \begin{array}{l} \sum_{y=n+1}^{t+w-1} O_{I,t} \frac{1 + r_{B,y} \cdot f_{B,y}}{(1 + r_B)^{y-n}} \\ - \sum_{y=t+w}^n O_{I,t} \cdot (1 + r_{E,y} \cdot f_{E,y}) \cdot (1 + r_E)^{n-y} \end{array} \right)$$

where:

*g* is the Designated Parameter established at the preceding Review;

*n* is a Formula Year as defined in Condition 4.4.2 for the Review in question;

*w* is the Designated Parameter established at the preceding Review, and being the number of Formula Years for which the Licensee is entitled to retain an Incremental Saving;

$\sum_{t=0}^n$  is the summation of the results of the calculation within the large brackets in respect of each Formula Year *t* that occurs up until Formula Year *t=n*;

$\sum_{y=n+1}^{t+w-1}$  is, in respect of each Formula Year *t*, the summation of data in respect of the Incremental Saving (if any) first made in Formula Year *t*, for all the Formula Years (if any) *y* from *y=n+1* to *y=t + w - 1* (inclusive);

$\sum_{y=t+w}^n$  is, in respect of each Formula Year  $t$ , the summation of data in respect of the Incremental Saving (if any) first made in Formula Year  $t$ , for all the Formula Years (if any)  $y$  from  $y=t + w$  to  $y=n$  (inclusive);

$O_{I,t}$  is the Incremental Saving (if any) first made in Formula Year  $t$ . An Incremental Saving is said to have occurred in any Formula Year  $t$  in which the value of an Operating Saving in one Formula Year is greater than the value of the Operating Saving (if any) in the preceding Formula Year. The Operating Saving in each Formula Year is calculated (after the end of Formula Year  $t$ , and in respect only of those Formula Years to  $t=a$ ) in accordance with the following calculation (and must be positive to be an Operating Saving):

$$O_{S,t} = O_{E,t} \frac{RPI_B}{RPI_E} - O_{B,t}$$

where  $O_{E,t}$  is the Determined Controllable Operating Expenditure for Formula Year  $t$ ; and  $O_{B,t}$  is the Best Available (at the date the calculation is made) Controllable Operating Expenditure for Formula Year  $t$ ; and

$r_y, r$  is either the Licensee's proposed value of the Designated Parameter (highlighted by use of the B subscript), or the established Designated Parameter (highlighted by use of the E subscript) for the rate of return to apply to each of the Formula Years within the relevant period. Provided that, where the Licensee does not propose the same value for each of the relevant Formula Years,  $(1 + r_B)^{y-n}$  shall be replaced with  $(1 + r_{B,n+2}) \cdot (1 + r_{B,n+3}) \dots (1 + r_{B,t+w-1})$  and  $(1 + r_E)^{n-y}$  shall be treated accordingly.

### ***Calculating Capital Rolling Incentive***

4.6.11 The Capital Rolling Incentive is an incentive that guarantees the Licensee a specific number of Formula Years ( $w$ ) of benefit in respect of any savings in Capital

Expenditure regardless of when the saving is made. Where Formula Year  $n+1$  occurs before the Licensee has had  $w$  Formula Years of benefit from any saving in Capital Expenditure, the Capital Rolling Incentive therefore adds to the total regulatory value an amount equal to that saving in Capital Expenditure that would have been made in the remaining Formula Years of period  $w$ . Where Formula Year  $n+1$  occurs after the Licensee has had  $w$  Formula Years of benefit from any saving in Capital Expenditure, the Capital Rolling Incentive therefore subtracts from the total regulatory value an amount equal to that saving in Capital Expenditure that was made in the Formula Years after completion of period  $w$ . The Capital Rolling Incentive for each Review shall be calculated as follows:

$$CRI_B = h \cdot \left( \begin{aligned} & \sum_{t=0}^n \left( \sum_{y=n+1}^{t+w-1} C_{S,t} \frac{r_{B,y}}{(1+r_B)^{y-n}} - \sum_{y=t+w+1}^n C_{S,t} \cdot r_{E,y} \cdot (1+r_E)^{n-y} \right) \\ & + \sum_{t=0}^n \left( D_{B,t} - D_{E,t} \frac{RPI_B}{RPI_E} \right) \\ & + \sum_{t=n-w+1}^n C_{S,t} \frac{r_{B,t} \cdot f_{B,t}}{(1+r)^{t+w-n}} \\ & - \sum_{t=0}^{n-w} C_{S,t} \cdot r_{E,t} \cdot f_{E,t} \cdot (1+r_E)^{n-(t+w)} + DI_B \end{aligned} \right)$$

Where:

$h$  is the Designated Parameter established at the preceding Review;

$\sum$  is the summation for Formula Years  $t$  or  $y$  (as the case may be) from the number below the summation sign to the number above the summation sign (inclusive);

$C_{S,t}$  is the Capital Saving (if any) made in Formula Year  $t$ . A Capital Saving is calculated (after the end of Formula Year  $t$ , and in respect only of those

Formula Years to t=a) in accordance with the following calculation (and must be positive to be a Capital Saving):

$$C_{S,t} = C_{E,t} \frac{RPI_B}{RPI_E} - C_{B,t}$$

where  $C_{E,t}$  and  $C_{B,t}$  are the Determined Capital Expenditure and the Best Available (at the date the calculation is made) Capital Expenditure (respectively) for Formula Year t;

$D_{E,t}$  is the Determined Annual Depreciation for that Formula Year; and

$DI_B$  is the Best Available depreciation component modifying the incentive adjustment calculated according to the following formula:

$$DI_B = d \cdot \left( \sum_{t=0}^{n-w} C_{S,t} \frac{w}{l} \cdot (1 + r_{E,t} \cdot f_{E,t}) \cdot (1 + r_E)^{n-(t+w)} + \sum_{t=n-w+1}^n C_{S,t} \frac{w}{l} \cdot \frac{1 + r_{B,t} * f_{B,t}}{(1 + r_B)^{t+w-n}} \right)$$

where  $d$  and  $l$  are the Designated Parameter established at the preceding Review.



#### **Condition 4.7 Special Reviews and Informal Reviews**

- 4.7.1 The Determination Values and Designated Parameters established at a Review will remain unchanged until the Authority modifies Condition 4.9 in accordance with Condition 4.4.12.
- 4.7.2 Notwithstanding Condition 4.7.1, the Authority may (after consultation with the Licensee) determine a new value for the Designated Parameter  $n$  (thereby triggering a Special Review) following the occurrence of any one or more of the events referred to in Condition 4.7.4.
- 4.7.3 The Licensee may, by written notice to the Authority, require the Authority to determine a new value for the Designated Parameter  $n$  in accordance with Condition 4.7.2 where the Licensee can demonstrate to the Authority's reasonable satisfaction that any one or more of the events referred to in Condition 4.7.4 have occurred.
- 4.7.4 The events referred to in Conditions 4.7.2 and 4.7.3 are that, at the time the Authority chooses to make a determination (in the case of Condition 4.7.2), or at the time the Licensee serves the relevant written notice (in the case of Condition 4.7.3):
- (a) the Best Available Capital Expenditure for the then current Formula Year (or any future Formula Year up to and including  $n$ ) is likely to be in excess of the applicable Determined Capital Expenditure;
  - (b) the Actual Volume in the ten current, the preceding or any future Formula Year up to and including  $n$  has differed or is likely to differ by a factor of 15% (or more) from the Determined Volume, adjusted to take account of weather conditions (including temperature variability) in accordance with such rules as are approved by the Authority from time to time; and
  - (c) the Licensee's obligations under Condition 3.2.1 have not been, or can reasonably be expected not to be, complied with.
- 4.7.5 Where, and at the time that, the Authority determines a new value for the Designated Parameter  $n$  in accordance with Condition 4.7.2:

- (a) if the sixth month of the then current Formula Year has not yet ended, the Formula Year determined as  $n$  by the Authority shall be the then current Formula Year; or
- (b) if the sixth month of the then current Formula Year has already ended, the Formula Year determined as  $n$  by the Authority shall be the Formula Year immediately following the then current Formula Year.

4.7.6 A Special Review will (like a Periodic Review) establish revised Determination Values and Designated Parameters. However, (unlike a Periodic Review) a Special Review shall be undertaken to establish new values for (and the Licensee shall provide Best Available Values and proposed Designation Parameters for) only those Determination Values and Designated Parameters as the Authority and the Licensee agree (or, in the absence of such agreement, as the Authority directs), and the values of the other Determination Values and Designated Values established at the last Review shall remain unchanged. The Licensee shall provide the required information in accordance with such timetable as the Authority may direct.

#### **Informal Review for Increased Capital Expenditure**

4.7.7 The Licensee shall give to the Authority an annual statement, at a time, in such form and accompanied by such supporting information as the Authority may direct, setting out in respect of all Formula Years for which Determination Values have been established, details of any Best Available Capital Expenditure which is likely to be in excess of the applicable Determined Capital Expenditure. In its statement to the Authority the Licensee shall provide such further accompanying information, evidence and other data with regard to the excess of expenditure as will be sufficient to enable the Authority to be reasonably satisfied that the proposed expenditure will be Capital Expenditure. To the extent that the Authority determines that such expenditure will be Capital Expenditure, such Capital Expenditure shall be included as Determined Capital Expenditure at the next Review (adjusted for the applicable rate of return over the period since it was incurred).

### **Informal Review for Increase in Non-Controllable Operating Expenditure**

- 4.7.8 Where the Licensee can demonstrate to the Authority's reasonable satisfaction that the event referred to in Condition 4.7.9 has occurred, and to the extent that the Authority determines that the additional expenditure referred to in Condition 4.7.9 is Operating Expenditure, such Operating Expenditure shall be included as Determined Operating Expenditure at the next Review (adjusted for the applicable rate of return over the period since it was incurred).
- 4.7.9 The event referred to in Condition 4.7.8 is that the Best Available Operating Expenditure in the Formula Year in which the Licensee is seeking the determination referred to in Condition 4.7.8, or in any future Formula Year up to and including *n*, is greater than the Determined Operating Expenditure for the Formula Year in question by a factor of 15% (or more), and that such increase is attributable to Unanticipated Operating Expenditure in respect of that Formula Year.

## **Condition 4.8 Reporting Requirements**

### **Statements & Other Information**

4.8.1 Following each Formula Year  $t$ , the Licensee shall give to the Authority a statement, at a time, in such form and accompanied by such supporting information (including an appropriate statement from its auditors in the form specified in Condition 1.2.6) as the Authority may direct, setting out the Actual Values for each of the factors for which Determined Values were previously established and in respect of those Formula Years during which the price control set out in this Part 4 has applied up to and including Formula Year  $t$ .

### **Pricing Information**

4.8.2 In advance of setting the Controlled Charges in respect of Formula Year  $t$ , the Licensee shall give to the Authority a statement, at a time, in such form and accompanied by such supporting information as the Authority may direct, setting out:

- (a) the Licensee's detailed charging proposals for Formula Year  $t$ ;
- (b) the Formula Year  $t$  values used by the Licensee for each of the parameters referred to in the calculations that underpin the Primary Constraint and the Supplemental Constraint;
- (c) a demonstration of how the Primary Constraint and the Supplemental Constraint applying to Formula Year  $t$  would be satisfied by the adoption of the Licensee's charging proposals; and
- (d) an explanation for any significant variation from zero in the value of  $Z_{F,i,t-1}$  and an outline of the Licensee's proposals for reversing any positive value (accumulated over-recovery) or sustaining any negative value (accumulated under-recovery) in  $Z_{F,i,t}$ .

### **Further Information**

- 4.8.3 Without prejudice and in addition to any other information required to be provided under this Part 4, the Licensee shall, prior to the start of each Formula Year, provide to the Authority, in respect of that Formula Year and each Conveyance Category, Best Available Values in respect of selling prices, Volumes, gas commodity costs, cost of competing fuels, cost of swing, transmission charges, distribution costs, supply costs and revenue available to distribution.
- 4.8.4 Without prejudice and in addition to any other information required to be provided under this Part 4, the Licensee shall, following the end of each Formula Year (within such reasonable period of time as is directed by the Authority), provide to the Authority, in respect of that Formula Year and each Conveyance Category, Actual Values in respect of selling prices, Volumes, gas commodity costs, cost of competing fuels, cost of swing, transmission charges, distribution costs, supply costs and revenue available to distribution.

**Condition 4.9 Current Determination Values and Designated Parameters**

**Allowed Revenue Per Unit**

4.9.1 The values to apply to the first Formula Year and in each subsequent Formula Year up to and including Formula Year *n* will be determined by the Authority in accordance with Condition 4.4.3.

	Formula Years		
Conveyance Categories	2005/2006	2006/2007	2007/2008

**Designated Parameters**

4.9.2 The Designated Parameters to apply to the first Formula Year and in each subsequent Formula Year up to and including Formula Year *n* shall be:

Designated Parameter	Value
$r_t$	0.075
n	2007/8
$f_t$	0.7

$q$	2034/5
$RPI$	
$w$	3
$g$	0
$h$	0
$d$	0
$l$	0
$\delta_t$	0
$x_{O,t}$	0
$x_{U,t}$	0
$a_t$	0.1

#### **Condition 4.10 Definitions and Interpretation**

4.10.1 In this Part 4, unless the context otherwise requires, the following terms and expressions shall have the meanings attributed to them below:

- “Actual” used as an adjective in relation to another defined word or phrase, means the Actual Value to be attributed to it;
- “Actual Value” means, in relation to any quantifiable term and in respect of any Formula Year  $t$ , a value that is established as the accurate value to be attributed to that term at the end of that year by reference to verifiable data in the possession of the Licensee. The key Actual Values are set out in Condition 4.10.3. An Actual Value is denoted in the terms of formulae in this Part 4 by the use of an  $F$  subscript;
- “Allowed Revenue” means, in respect of Conveyance Category  $i$  in Formula Year  $t$ , the Allowed Revenue Per Unit multiplied by the Actual Volume in respect of that Conveyance Category in that year;
- “Annual Depreciation” means the annual depreciation of those assets, the purchase of which was initially recognised as Capital Expenditure, allocated on a systematic basis over the useful lives of such assets, using policies and asset life assumptions approved by the Authority;
- “Best Available” used as an adjective in relation to another defined word or phrase, means the Best Available Value to be attributed to it;
- “Best Available Value” means, in relation to any quantifiable term and at the time that quantifiable term is being assessed, a value



which, in respect of past Formula Years and to the extent possible, is based on Actual Values, and otherwise is a forecast best estimate. A Best Available Value is denoted in the terms of formulae in this Part 4 by the use of a *B* subscript;

“Capital Expenditure” means Expenditure that relates to property, plant or equipment that would be recognised as an asset under International Accounting Standard 16 ‘Property, Plant and Equipment’ (excluding any attributable interest costs), or any alternative accounting treatment specified by the Authority in any regulatory accounting guidelines issued from time to time;

“Controllable Operating Expenditure” means, in respect of any Formula Year, the monetary amounts attributable to those categories of Operating Expenditure that are deemed by the Authority to be within the reasonable control or influence of the Licensee and that are designated by the Authority as being Controllable Operating Expenditure in respect of that Formula Year at the last Review before that Formula Year;

“Controlled Charges” means all the charges levied by the Licensee in the course of the Licensed Business;

“Controlled Revenue” means the total revenue (measured on an accruals basis) derived by the Licensee from the Licensed Business, after deduction of value added tax (if any) and any other taxes based directly on such revenue, other than revenue derived under Conditions 2.5.2(a)(i) or 2.5.3(a)(i);

“Conveyance Category” means one of the following four classes of consumer:

- (i) domestic - firm gas demand of less than 2,500 therms per annum which is connected to the Network;
- (ii) small and medium industrial and commercial - firm gas demand of 2,500 - 25,000 therms per annum which is connected to the Network;
- (iii) large industrial and commercial - firm gas demand of over 25,000 therms per annum which is connected to the Network;
- (iv) interruptible - gas demand which can be interrupted under the terms of the supply contract and which is connected to the Network;

“Conveyance Revenue” means, in respect of each Conveyance Category *i* and any Formula Year *t*, the Controlled Revenue for that Formula Year and that Conveyance Category;

“Designated Parameters” means those parameters set out in Condition 4.10.4; and, in respect of the Primary Constraint, the Supplemental Constraint and Determination Values, those parameters that have been established (subject to any restrictions imposed under Condition 4.10.4) as such by the Authority in accordance with Condition 4.4 (highlighted by use of the E subscript); and, in respect of Best Available Values, the Licensee’s proposed values for those parameters (highlighted by use of the B subscript). The Designated Parameters set at one Review will (subject to Condition 4.7.2) apply unless and until revised at the next Review. Unless a Designated Parameter has a *t* subscript, the value set at a Review must be the same

	for each Formula Year in the period $t=n+1$ to $t=q$ ;
“Determined”	used as an adjective in relation to another defined word or phrase, means the Determination Value to be attributed to it;
“Determination Value”	mean, in respect of each Formula Year $t$ , a value that has been determined by the Authority to apply in respect of that year in accordance with Condition 4.4. The key Determination Values are set out in Condition 4.10.3. A Determination Value is denoted in the terms of formulae in this Part 4 by the use of an <i>E</i> subscript;
“Expenditure”	means the expenditure that the Authority deems necessary or appropriate for the carrying out by the Licensee of the Licensed Business in an economically efficient and safe manner, having regard in particular to the forecast statements provided to the Authority and to any procurement procedures and expenditure control procedures agreed between the Licensee and the Authority, but excluding: <ul style="list-style-type: none"> <li>(i) expenditure relating to tax, financing and other returns to investors;</li> <li>(ii) expenditure incurred in the construction of any Excluded Pipe-line,</li> <li>(iii) expenditure that is recoverable under Conditions 2.5.2(a)(i) or 2.5.3(a)(i); and</li> <li>(iv) an amount equal to the sum of: (A) the value of any grants received by the Licensee that are attributable to the Licensed Business; and (B) the arm’s-length</li> </ul>

value of any disposals made by the Licensee of assets previously used in carrying out the Licensed Business;

“Excluded Pipe-line”

means, in respect of any pipe-line forming a part of the Network that runs directly from the Transmission System to one or more Supply Locations, that part of such pipe-line which commences at the point of connection with the Transmission System and ends at the first Five km Point to be reached by that pipe-line,

and, for these purposes,

“Five km Point” means, in respect of a Supply Location, any point lying on a radius of 5 kilometres drawn around the Load Centre for that Supply Location,

“Load Centre” means, in respect of a Supply Location, the location determined as such by the Authority (following consultation with the Licensee),

“Supply Location” means each Town (as defined in Condition 3.1), and any other premises or group of premises that is designated as such by the Authority on notice to the Licensee from time to time, and

“Transmission System” means the system of transmission pipe-lines owned and/or operated by the person licensed from time to time under the conveyance licence granted to Bord Gais Eireann on 12 February 2002;

“Formula Year”

means a period of twelve calendar months commencing on 1 October in one year and ending on 30 September in the year immediately following, and for the purposes of

	<p>this Licence the first such period shall be deemed to commence on 1 October 2005;</p>
<p>“Non-Controllable Operating Expenditure”</p>	<p>means any Operating Expenditure other than Controllable Operating Expenditure;</p>
<p>“Operating Expenditure”</p>	<p>means all Expenditure other than Capital Expenditure;</p>
<p>“Retail Prices Index” or “RPI”</p>	<p>means the Index of that name published by the Office of National Statistics each month in respect of all items, or:</p> <ul style="list-style-type: none"> <li>(i) if that Index for the specified month in any year shall not have been published on or before the last day of the sixth month after the specified month, such alternative index for such month as the Authority may after consultation with the Licensee determine as appropriate in the circumstances; or</li> <li>(ii) if there is a material change in the basis of the Index, such alternative index as the Authority may after consultation with the Licensee determine as appropriate in the circumstances;</li> </ul>
<p>“Revenue Per Unit”</p>	<p>means, in respect of each Conveyance Category <i>I</i> and any Formula Year <i>t</i>, the Conveyance Revenue for that Conveyance Category and that Formula Year divided by the Volume for that Conveyance Category and that Formula Year;</p>
<p>“Review”</p>	<p>has the meaning attributed to it in Condition 4.4.2. A Review can be either a Periodic Review (as defined in that Condition) or a Special Review (as defined in that</p>

Condition);

“Unanticipated Operating Expenditure” means, in respect of any Formula Year, and at the time it is assessed in that Formula Year:

- (i) the amount (if any) by which the value of the Best Available Non-Controllable Operating Expenditure for that Formula Year is greater than the Determined Non-Controllable Operating Expenditure for that Formula Year; and/or
- (ii) to the extent such costs are outside the reasonable control of the Licensee, the value attributable to any categories of Operating Expenditure included within the Best Available Non-Controllable Operating Expenditure for that Formula Year, for which categories no allowance was made in the Determined Operating Expenditure for that Formula Year; and

“Volume” means, in respect of each Conveyance Category *i* and any Formula Year *t*, the aggregate quantity of gas, in therms or kWhs (as directed by the Authority), taken off the Network as a result of arrangements with gas suppliers in that Formula Year and for that Conveyance Category.

4.10.2 In this Part 4, “revenue”, “expenditure” and “accruals” are the amounts that are confirmed by the Licensee’s auditors as such and have (to the extent that such financial statements have been produced) been included under appropriate headings in the financial statements of the Licensee’s Separate Business of conveying gas for each period in question.

#### 4.10.3 Best Available Values, Determination Values and Actual Values

<b>Description</b> (for Conveyance Categories <i>i</i> and Formula Years <i>t</i> )	<b>Best Available Values</b>	<b>Determination Values</b>	<b>Actual Values</b>
Volume	$V_{B,i,t}$	$V_{E,i,t}$	$V_{F,i,t}$
Capital Expenditure	$C_{B,t}$	$C_{E,t}$	
Operating Expenditure	$O_{B,t}$	$O_{E,t}$	
Annual Depreciation	$D_{B,t}$	$D_{E,t}$	
Cash Flow (calculated in accordance with Condition 4.6.6)	$F_{B,t}$	$F_{E,t}$	
Revenue Per Unit	$P_{B,i,t}$	$P_{E,i,t}$	$P_{F,i,t}$
Depreciated Asset Value (calculated in accordance with Condition 4.6.7)	$DAV_{B,t}$	$DAV_{E,t}$	
Total Regulatory Value (calculated in accordance with Condition 4.6.8)*	$TRV_{B,n}$	$TRV_{E,m}$	

\* at end of Formula Year n (for the Review in which Best Available Values are being submitted) or at the end of Formula Year m (on and following determination of Determination Values for that Review).

#### 4.10.4 Designated Parameters

<b>Description</b>	<b>Designated Parameters</b>	<b>Limitation to the application of re- designated values</b>
<b>Rate of return</b>	$r_t$	<b>Shall be 0.075 until the Formula Year 2015/6, after which time it may be any number between 0 and 1</b>
Trigger for Reviews (as defined in Condition 4.4.2)	n	A Formula Year
Averaging factor to reflect in year accruals (as defined in Condition 4.6.5)	$f_t$	A number between 0 and 1

The forecasting horizon for review calculations (as defined in Condition 4.4.2)	$q$	Shall be the Formula Year 2034/5 until 2027/8, after which time it may be the Formula Year 2034/5 or any Formula Year after 2034/5
The indexation base *	$RPI$	None
Incentive period (as defined in Condition 4.6.10)	$w$	A number of Formula Years
A switch for the Operating Rolling Incentive	$g$	Either 0 or 1
A switch for the Capital Rolling Incentive	$h$	Either 0 or 1
A switch for the depreciation component	$d$	Either 0 or 1
Deemed asset life	$l$	None
A weighting factor to be used in the Primary Constraint	$\delta_t$	Between 0 and 1
A rate of return adjustment which may be used to encourage or discourage accumulated over-recoveries (as defined in Condition 4.2.6)	$x_{o,t}$	None
A rate of return adjustment which may be used to encourage or discourage accumulated under-recoveries (as defined in Condition 4.2.6)	$x_{u,t}$	Shall be zero until Formula Year 2033/4, when it shall be $(r_{t=2032/3} + 1)$
A weighting factor used in the Supplemental Constraint	$\alpha_t$	Greater than or equal to 0

\* which will, in respect of the Determination Values determined at the Review in question, reflect the prices in which those Determination Values are expressed. It can therefore be used, in conjunction with  $RPIIy_t$ , to adjust the Determined Revenue Per Unit value to allow for changes in the Retail Prices Index in the period since the value of the Determined Revenue Per Unit was determined.

#### 4.10.5 Key to other formula parameters:

**a** subscript to denote a Formula Year as defined in Condition 4.4.4;



$B$	subscript to denote Best Available Values;
$C_{i,t}$	Capital Expenditure in Formula Year $t$ allocated between Conveyance Categories $i$ ;
$CRI$	Capital Rolling Incentive (calculated in accordance with Condition 4.6.11);
$DI$	a depreciation component of the Capital Rolling Incentive (as defined in Condition 4.6.11);
$E$	subscript to denote Determination Values;
$F$	subscript to denote Actual Values;
$i$	subscript to denote a Conveyance Category;
$m$	subscript to denote a Formula Year as defined in Condition 4.4.2;
$O_{i,t}$	Operating Expenditure in Formula Year $t$ allocated between Conveyance Categories $i$ ;
$ORI$	Operating Rolling Incentive (calculated in accordance with Condition 4.6.10);
$PA$	Profile Adjustment (calculated in accordance with Condition 4.6.9);
$\bar{r}$	a compounding factor (dependent on values of $r$ and $x$ ) as defined in Condition 4.2.6;
$RPI_E, RPI_B$	Retail Prices Index base reference points (as defined in Conditions 4.2.4 and 4.5.3);
$RPI_{iy_t}, RPI_{ye_t}$	in year average and year-end Retail Prices Index values;
$t$	subscript to denote any Formula Year;

- $y$  subscript to denote any Formula Year (used for summations when it is necessary to differentiate from  $t$ );
- $Z_{F,i,t}$  the Actual Value for accumulated under or over-recoveries for Formula Year  $t$  and Conveyance Category  $i$  (calculated in accordance with Condition 4.2.10); and
- $\Gamma_{F,t}$  a weighting factor calculated in accordance with Conditions 4.2.14 and 4.2.15.

**SCHEDULE 1**  
**LICENSED AREA**

The area designated by this Schedule shall comprise all areas within the boundaries of the following Electoral Wards (being the spatial unit used to elect local government councillors into district council areas, as at the date of the grant of this Licence. Any dispute as to the boundaries of such spatial unit shall be determined by the Authority by reference to the map of such spatial unit held at the Northern Ireland Statistics and Research Agency):

<b>Part 1</b>	<b>Part 3</b>
95DD01 Academy 95DD03 Ardeevin 95DD04 Ballee 95DD05 Ballykeel 95DD06 Ballyloughan 95DD08 Castle Demesne 95DD11 Dunclug 95DD13 Fair Green 95DD14 Galgorm 95DD16 Glenwhirry 95DD18 Harryville 95DD20 Moat 95DD21 Park 95DD24 Summerfield	95DD10 Cullybackey 95DD12 Dunminning 95DD15 Glenravel 95DD17 Grange 95DD19 Kells 95DD22 Portglenone 95DD23 Slemish
95DD02 Ahoghill	
95DD07 Broughshane	
95DD09 Craigwarren	
95EE03 Carnany 95EE07 Fairhill 95EE08 Glebe 95EE12 Newhill 95EE13 Route 95EE14 Seacon	95EE01 Ballyhoe and Corkey 95EE02 Benvardin 95EE04 Clogh Mills 95EE05 Dervock 95EE06 Dunloy 95EE09 Killoquin Lower 95EE10 Killoquin Upper 95EE11 Knockaholet 95EE15 Stranocum 95EE16 The Vow
95JJ03 Ballysally 95JJ05 Central 95JJ06 Churchland	95JJ01 Agivey 95JJ02 Atlantic 95JJ04 Castlerock

<p>95JJ07 Cross Glebe  95JJ08 Dundooan  95JJ13 Knocklynn  95JJ15 Mount Sandel  95JJ20 The Cuts  95JJ21 University  95JJ22 Waterside  95JJ14 Macosquin</p>	<p>95JJ09 Dunluce  95JJ10 Garvagh  95JJ11 Hopefield  95JJ12 Kilrea    95JJ16 Portstewart  95JJ17 Ringsend  95JJ18 Royal Portrush  95JJ19 Strand</p>
<p>95MM01 Altnagelvin  95MM02 Ballynashallog  95MM04 Beechwood  95MM05 Brandywell  95MM06 Carn Hill  95MM18 Holly Mount  95MM21 New Buildings</p>	<p>95MM03 Banagher  95MM09 Claudy</p>
<p><b>Part 1 (continued)</b></p>	<p><b>Part 3 (continued)</b></p>
<p>95MM07 Caw  95MM08 Clondermot  95MM10 Creggan Central  95MM11 Creggan South  95MM12 Crevagh  95MM13 Culmore  95MM14 Ebrington  95MM15 Eglinton  95MM16 Enagh  95MM17 Foyle Springs  95MM19 Kilfennan  95MM20 Lisnagelvin  95MM22 Pennyburn  95MM23 Rosemount  95MM24 Shantallow East  95MM25 Shantallow West  95MM26 Springtown  95MM27 Strand  95MM28 The Diamond  95MM29 Victoria  95MM30 Westland</p>	
<p>95RR01 Aghanloo  95RR03 Coolessan  95RR05 Enagh  95RR10 Greystone  95RR12 Rathbrady  95RR13 Roeside</p>	<p>95RR02 Ballykelly  95RR04 Dungiven  95RR06 Feeny  95RR07 Forest  95RR08 Glack  95RR09 Gresteel  95RR11 Magilligan</p>

	95RR14 The Highlands 95RR15 Upper Glenshane
<b>Part 2</b>	<b>Part 4</b>
95AA01 Aldergrove 95AA02 Balloo 95AA08 Farranshane 95AA09 Fountain Hill 95AA10 Greystone 95AA11 Massereene 95AA15 Springfarm 95AA16 Steeple 95AA17 Stiles 95AA18 Templepatrick 95AA03 Ballycraigy	95AA04 Clady 95AA05 Cranfield 95AA06 Crumlin 95AA07 Drumanaway 95AA12 Parkgate 95AA13 Randalstown 95AA14 Shilvodan 95AA19 Toome 95WW02 Ballyclare North 95WW03 Ballyclare South 95WW07 Ballyrobert 95WW13 Doagh
95CC01 Abbey Park 95CC03 Callan Bridge 95CC06 Demesne 95CC08 Downs 95CC18 Observatory 95CC22 The Mall 95CC21 Tandragee	95CC04 Carrigatuke 95CC05 Charlemont 95CC07 Derrynoose 95CC02 Ballymartrim 95CC09 Hamiltonsbawn 95CC10 Hockley
<b>Part 2 (continued)</b>	<b>Part 4 (continued)</b>
	95CC11 Keady 95CC12 Killeen 95CC13 Killylea 95CC14 Laurelvale 95CC15 Loughgall 95CC16 Markethill 95CC17 Milford 95CC19 Poyntz Pass 95CC20 Rich Hill
95FF01 Ballydown 95FF03 Banbridge West 95FF07 Edenderry 95FF08 Fort 95FF09 Gilford 95FF12 Lawrencetown 95FF16 Seapatrick 95FF17 The Cut	95FF02 Ballyward 95FF04 Bannside 95FF05 Dromore North 95FF06 Dromore South 95FF10 Gransha 95FF11 Katesbridge 95FF13 Loughbrickland 95FF14 Quilly 95FF15 Rathfriland

<p>95LL02 Annagh  95LL03 Ballybay  95LL04 Ballyoran  95LL06 Brownstown  95LL07 Church  95LL08 Corcrain  95LL09 Court  95LL10 Derrytrasna  95LL12 Drumgask  95LL13 Drumgor  95LL14 Drumnamoe  95LL15 Edenderry  95LL16 Kernan  95LL17 Killycomain  95LL18 Knocknashane  95LL19 Magheralin  95LL20 Mourneview  95LL21 Parklake  95LL22 Taghnevan  95LL23 Tavanagh  95LL25 Waringstown  95LL26 Woodville  95SS21 Maghaberry  95SS24 Moira  95SS03 Ballymacbrennan  95SS08 Dromara  95SS15 Hillsborough  95SS23 Maze</p>	<p>95LL01 Aghagallon   95LL11 Donaghcloney  95LL24 The Birches</p>
<p>95LL05 Bleary   95VV02 Ballybot  95VV10 Daisy Hill  95VV12 Derrymore  95VV14 Drumalane  95VV15 Drumgullion  95VV27 St Mary's  95VV28 St Patrick's</p>	
<p><b>Part 2 (continued)</b></p>	<p><b>Part 4 (continued)</b></p>
<p>95VV30 Windsor Hill</p>	<p>95VV01 Annalong  95VV03 Bessbrook  95VV04 Binnian  95VV05 Burren and Kilbroney  95VV06 Camlough  95VV07 Clonallan  95VV08 Creggan  95VV09 Crossmaglen  95VV11 Derryleckagh</p>

	95VV13 Donaghmore
	95VV16 Fathom
	95VV17 Forkhill
	95VV18 Kilkeel Central
	95VV19 Kilkeel South
	95VV20 Lisnacree
	95VV21 Mayobridge
	95VV22 Newtownhamilton
	95VV23 Rostrevor
	95VV24 Seaview
	95VV25 Silver Bridge
	95VV26 Spelga
	95VV29 Tullyhappy

## SCHEDULE 2

### **Right of Authority to Revoke Licence**

#### 1. Circumstances allowing revocation

The Authority may at any time revoke the Licence by not less than 30 days' notice (or 24 hours notice in the case of (g) below) to the Licensee:

- (a) if the Licensee agrees in writing with the Authority that such Licence should be revoked; or
- (b) if any amount payable under Condition 1.13 is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Authority has given the Licensee notice that the payment is overdue provided that no such notice shall be given earlier than the sixteenth day after which the amount payable becomes due; or
- (c) if the Licensee fails to comply with a Final Order (within the meaning of Article 42 of the Energy Order) or with a Provisional Order (within the meaning of Article 42 of the Energy Order) which has been confirmed under Article 42 of the Energy Order and which (in either case) has been made in respect of a contravention or apprehended contravention of a condition to which the Licence is subject or of a “relevant requirement” as defined in Article 41(2)(b) of the Energy Order and such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 44 of the Energy Order could be made questioning the validity of the Final or Provisional Order or before the proceedings relating to any such application are finally determined; or
- (d) if the Licensee fails to pay any financial penalty (within the meaning of Article 45 of the Energy Order) imposed in respect of a contravention or apprehended contravention of a condition to which the Licence is subject or of a “relevant



requirement” as defined in Article 41(2)(b) of the Energy Order by the due date for such payment and the payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 49 of the Energy Order could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined; or

- (e) if the Licensee fails to comply with an order made by a court under section 34 of the Competition Act 1998; or fails to comply with an order made under section 72, 75, 76, 81, 83, 84, 158, 160 or 161 of, or under paragraph 2, 5, 6, 10 or 11 of schedule 7 to, the Enterprise Act 2002; or is found guilty of an offence under section 188, 193 or 194 of the Enterprise Act 2002; or
- (f) if the supply licence of the Supply Licensee that was granted on the same date as the date of the Grant is revoked and immediately prior to that time the Supply Licensee had a right to supply gas exclusively to any premises within the Licensed Area pursuant to such licence; or
- (g) if the Licensee:
  - (i) is unable to pay its debts (within the meaning of section 123(1) or 123(2) of the Insolvency Act 1986), but subject to paragraph 4 of this Schedule 2), or has any voluntary arrangement proposed in relation to it under section 1 of that Act, or enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority); or
  - (ii) has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed; or

- (iii) has an administration order under section 8 of the Insolvency Act 1986 made in relation to it; or
  - (iv) passes any resolution for winding up other than a resolution previously approved in writing by the Authority; or
  - (v) becomes subject to an order for winding up by a court of competent jurisdiction; or
- (h) if the Licensee fails to notify the Authority of any change in ownership of the equity capital of the Licensee as soon as practicable after such change has occurred; or there has been a change in ownership of equity capital notified by the Licensee, and:
- (i) the Authority is satisfied that the new shareholder (together with the other companies in its group) does not have adequate technical, financial or managerial strength taking into account the size of its shareholding in the Licensee;
  - (ii) the Authority serves notice on the Licensee stating that it proposes to revoke the Licence in pursuance of this paragraph unless such further change in the ownership of the Licensee as is specified in the notice takes place (or ownership reverts to the person or those persons owning the equity capital of the Licensee prior to the change) within the period of three months beginning with the date of service of the notice; and
  - (iii) that further change or reversion in control does not take place within that period; or
- (i) if at any time the Licensee fails to notify the Authority of a change in control as soon as practicable after such change in control has occurred; or there has been a change in control notified by the Licensee, and:
- (i) the Authority serves notice on the Licensee stating that the Authority proposes to revoke the Licence in pursuance of this paragraph unless

such further change in control of the Licensee as is specified in the notice takes place (or control reverts to the person(s) controlling the Licensee prior to the change) within the period of three months beginning with the date of service of the notice; and

- (ii) that further change or reversion in control does not take place within that period; or
- (j) if the Licensee is convicted of having committed an offence under Article 46 of the Order or under Article 63 of the Electricity (Northern Ireland) Order 1992.

2. Revocation if Licensee ceases to carry on the licensed business

The Authority may at any time by not less than 30 days notice to the Licensee revoke the Licence if the Licensee has not commenced carrying on the Licensed Business within nine months of the date of the Grant or thereafter ceases for a period of 3 months to carry on the Licensed Business and in relation to any date or period given in this paragraph 2 the Authority shall substitute a later date or a longer period where reasonably satisfied that exceptional circumstances which could not have been reasonably foreseen by the Licensee had prevented, or could reasonably be expected to prevent, the carrying on of the relevant business.

3. Revocation of Licence if Licensee does not have title in assets of business

- (a) The Licensee shall acquire ownership of the relevant assets (as the same are defined in Condition 1.12.6) required for the conduct of its Licensed Business and save as is permitted under Conditions 1.11 and 1.12, if the Licensee does not have ownership of the relevant assets required for the conduct of its Licensed Business under the Licence, then the Authority may at any time by not less than 30 days' notice to the Licensee revoke the Licence for such Licensed Business.

- (b) For the purposes of this paragraph 3 of this Schedule 2 the Licensee shall own a relevant asset if it could not otherwise be treated as having been disposed of (as disposal is defined in Condition 1.12.6).

4. Licensee's deemed ability to pay its debts

- (a) For the purposes of paragraph 1(g)(i) of this Schedule 2, section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there was substituted “£250,000” or such higher figure as the Authority may from time to time determine by notice in writing to the Licensee.
- (b) The Licensee shall not be deemed to be unable to pay its debts for the purposes of paragraph 1(g)(i) of this Schedule 2 if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by the Licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 1 of this Schedule 2.

5. Definition

- (a) Except where expressly stated to the contrary, and unless the context otherwise requires, the expressions used in this Schedule 2 shall have the meanings ascribed to them in the Conditions at the date of the Grant, and shall be construed in accordance with the rules of construction and interpretation set out in the Conditions at the date of the Grant.
- (b) For the purposes of paragraph 1(i) of this Schedule 2, there is a change in the control of the Licensee whenever a person obtains control of the Licensee who did not have control of the Licensee when this Licence was granted; and subsections (2) and (4) to (6) of Section 416 of the Income and Corporation Taxes Act 1988 shall apply for the purpose of determining whether for the purposes of this paragraph a person has or had control of the Licensee, but at any time should no person have control then for the words “the greater part” wherever

they occur in the said sub-section (2) there shall be substituted the words “one-third or more”.

## SCHEDULE 3

### Exclusivity

#### 1. Definitions

- 1.1 Except where expressly stated to the contrary, and unless the context otherwise requires, the expressions used in this Schedule 3 shall have the meanings ascribed to them in the Conditions at the date of the Grant, and shall be construed in accordance with the rules of construction and interpretation set out in the Conditions at the date of the Grant.
- 1.2 When used in this Schedule 3, the expression “**Exclusive Area**” shall mean the area that constitutes the Licensed Area, but excluding the land in on or over which pipe-lines are situated for the purpose of conveying gas to the premises set out in the annex to this Schedule 3.

#### 2 Exclusivity

##### 2.1 Exclusivity

- (a) The Licensee shall be entitled exclusively to participate in the conveyance of gas from one place to another in the Exclusive Area by means of distribution pipe-lines (such conveyance within such area being a “designated activity” for the purposes of Article 9 of the Order) for the period (subject to paragraph 2.1(b) below) from the date of the Grant of this Licence until the date which is the tenth anniversary of the date of the Grant. The Authority may, after the date of the Grant and in accordance with Article 9 of the Order, modify the terms of the exclusivity conferred under this Schedule 3 (including so as to extend the period of such exclusivity under Article 9(7) of the Order).
- (b) The period of exclusivity referred to in paragraph 2.1(a) above shall, in respect of that part of the Exclusive Area falling within the Remaining Licensed Area, cease on the fifth anniversary of the date of the Grant, unless and to the extent such area has become an Additional Development Area or such period of

exclusivity has been modified by the Authority in accordance with Article 9 of the Order.

## 2.2 Relevant Conditions for the purposes of Article 9

The following Conditions shall be relevant conditions for the purposes of Article 9(6) of the Order: Condition 1.2.3, Condition 1.2.4, Condition 1.10, Condition 1.11, Condition 1.12, Condition 2.2.4 (but excluding Condition 2.2.4(c)), Condition 2.2.5, Condition 2.2.6, Condition 2.3.5 (but excluding Condition 2.3.5(c)), Condition 2.3.8, Condition 2.3.11, Condition 2.5.1, Condition 2.5.2, Condition 2.5.3, Condition 2.5.4 and Condition 3.2.1.

**Annex to Schedule 3**

**PREMISES EXCLUDED FROM EXCLUSIVITY**

*[Addresses of excluded premises to be listed here.]*

[Tarmac Northern Ltd, 40a Boghill Road, Newtownabbey, Co. Antrim, BT36 4QS]

[26 Site 1 Boghill Road, Newtownabbey, Co. Antrim, BT36 4QS]

[Ballyearl Sports Centre (not yet connected)]