

**PHOENIX SUPPLY LIMITED**

---

**LICENCE FOR THE  
SUPPLY OF GAS IN NORTHERN IRELAND**

---

**CONDITIONS FOR A LICENCE FOR THE**

**SUPPLY OF GAS IN NORTHERN IRELAND**

	<u>PAGE</u>
GRANT AND TERMS OF LICENCE	1
PART 1 - GENERAL CONDITIONS APPLICABLE TO THE LICENCE HOLDER	3
Condition 1.1: Interpretation and Construction	3
Condition 1.2: Separate Accounts	11
Condition 1.3: Provision of Information to the Authority	15
Condition 1.4: Consultation with the General Consumer Council	17
Condition 1.5: Powers of Entry	18
Condition 1.6: Authorisation of Persons	20
Condition 1.7: Exercise of Powers of Entry	22
Condition 1.8: Modifications	23
Condition 1.9: Assignment of Licences	24
Condition 1.10: Transfer of Business	25
Condition 1.11: Payment of Fees	26
Condition 1.12: Notices	30
PART 2	32
CONDITIONS APPLICABLE TO THE SUPPLY OF GAS BY THE LICENCE HOLDER	32
Condition 2.1: Not used	32
Condition 2.2: Security and Continuity of Supply	33
Condition 2.3: Use of the Network	35
Condition 2.4: Charges for Gas and Other Terms for the Supply of Gas	36
Condition 2.5: Undue Discrimination and Undue Preference	40
Condition 2.6: Supply to Business Premises	43
Condition 2.7: Supply and Inspection of Meters	44
Condition 2.8: Supply of Other Goods or Services	48
Condition 2.9: Social Obligations	49
Condition 2.10: Efficient Use of Gas	51
Condition 2.11: Services for Pensioners, Chronically Sick or Disabled Persons	52
Condition 2.12: Facilities for Blind and Deaf People	54
Condition 2.13: Pensioners Not to Have Supply of Gas Cut Off in Winter	55
Condition 2.14: Emergencies	56

Condition 2.15: Standards of Performance	58
Condition 2.16: Provision of Information Requested by Other Licence or Exemption Holders	60
Condition 2.17: Maintenance of Records	61
<b>PART 3A - GENERAL CONDITIONS FOR THE SUPPLY LICENCE OF GAS SUPPLIERS SHIPPING GAS ACROSS DESIGNATED NETWORKS</b>	<b>62</b>
Part 3A	62
Condition 3A.1 : Interpretation And Construction	62
Condition 3A.2: General Conditions Applicable To The Licence Holder In Relation To Postalisation Charges	66
Condition 3A.3: Credit Committee	68
<b>PART 4</b>	<b>69</b>
<b>SPECIAL CONDITIONS OF LICENCE</b>	<b>69</b>
Condition 4.1: Disposal of relevant assets	69
Condition 4.2: Restriction on Use of Certain Information	72
<b>SCHEDULE 1 Designated Area and Premises</b>	<b>75</b>
Schedule 1 – Annex 1	77
<b>SCHEDULE 2 Right of Authority to Revoke licence</b>	<b>78</b>

## GRANT AND TERMS OF LICENCE

### LICENCE FOR THE SUPPLY 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)(c) of the Gas (Northern Ireland) Order 1996 (the “**Order**”) and with the consent of the Department of Enterprise, Trade and Investment hereby grants to Phoenix Supply Ltd (registered number NI 032810) a body corporate established in Northern Ireland under the [Companies (Northern Ireland) Order 1986] and having its principal place of business at 197 Airport Road West, Belfast, BT3 9ED (the “**Licensee**”) a licence to supply gas:

- (a) to the premises 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.

#### 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 supply 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).

Granted on

Signature.....

For and on Behalf of 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.

### 1.13 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 a Network Operator's Network and any relevant period for balancing under that Network Operator's Network Code), taking such measures as may be available to the Network Operator, in particular, measures:

(i) for managing the relationship between deliveries of gas to and offtakes of gas from that Network during that period; and

(ii) to maintain pressures in that Network at levels;

which will, in the reasonable opinion of the Network Operator, ensure the safety and efficiency of the Network in that or any subsequent relevant period;

"bill" includes an invoice, account, statement or other instrument of like character;

"business premises" means premises used wholly or mainly for commercial purposes being supplied with gas at a rate reasonably expected to exceed 73,250 kilowatt



	hours a year;
"charges for the supply of gas"	includes in relation to the Licensee and a particular consumer, charges made by the Licensee in respect of the provision to that consumer of a gas meter and cognate expressions shall be construed accordingly;
"chronically sick person"	means any person who, by reason of chronic sickness has special needs in connection with gas supplied to him, its use or the use of gas appliances or other gas fittings;
"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;
"Department"	means the Department of Enterprise, Trade and Investment;
"disabled person"	means any person who, by reason of any disability, has special needs in connection with gas supplied to him, its use or the use of gas appliances or other gas fittings and includes any person who is in receipt of a social security benefit by reason of any disability;
"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;
"General Consumer Council"	means the General Consumer Council for Northern Ireland;
"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 Business"	means the activities connected with the supply of gas pursuant to the licence;
"Licensed Area"	has the meaning given to it in Schedule 1 of the licence;
"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 all gas plant owned, operated or utilised by a Network Operator through which a Network Operator

	is conveying gas for the Licensee;
"Network Code"	means that document so described and published by a Network Operator by virtue of the Network Operator's licence granted under Article 8 of the Order;
"Network Operator"	means a person licensed to convey gas under Article 8 of the Order who is conveying gas for the Licensee.
"Order"	means the Gas (Northern Ireland) Order 1996;
"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"	means each of the activities of the Licensee connected with: <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</li></ul>

Order; and

- (d) the supply of gas pursuant to a licence granted in accordance with Article 8(1)(c) of the Order;

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

"subsidiary"

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

“transmission pipe-line”

means any pipe-line having a design operating pressure exceeding 7 bar gauge.

#### 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**

### 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 31st December 2007 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 financial statements to be prepared for the Licensed Business and showing the financial affairs of the Licensed Business. In this regard the Licensee shall not be required to prepare such financial statements as if they were annual accounts 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, the Licensed 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 the Licensed 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; and
- (c) a cash flow statement for the period with a reconciliation to the financial statements specified in sub-paragraphs (a) and (b) above.

### 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, the Licensed 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;
- (c) 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 the Licensed Business for the financial year commencing on 1 January 2006, 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 the Licensed Business for any financial year subsequent to the financial year commencing on 1 January 2006 from the basis used in the financial statements in respect of the Licensed 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 Licensed Business.

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 (Northern Ireland) Order 1986.

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.

1.2.10 Construction of "costs or liabilities"

References in this Condition to costs or liabilities of, or reasonably attributable to, the Licensed Business shall be construed as excluding taxation, capital liabilities which do not relate principally to the Licensed 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 the Licensed Business that was undertaken with an associated undertaking and that has a value of over £500,000.

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.

DRAFT



### **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.

DRAFT

**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 supply 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: Powers of Entry**

### **1.5.1 Arrangements for powers of entry**

The Licensee shall, unless it has done so before being licensed, 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 1.6;
- (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 1.6, 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 1.6 are referred to as "the arrangements".

### **1.5.2 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 1.6 and shall make, subject to Condition 1.5.3, any necessary changes.

### **1.5.3 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.

### **1.5.4 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 or supplied in conformity with the arrangements.

DRAFT

**Condition 1.6: Authorisation of Persons**

1.6.1 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.

1.6.2 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 1.6.1(a), (b) and (c) have been complied with and it appears to the Licensee that he is such a fit and proper person.

1.6.3 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.

1.6.4 Information provided in invoice

It shall be a sufficient compliance with Condition 1.6.3 for the information to be given on or with an invoice or account which is rendered to a consumer in respect of the supply of gas within four months of the appointment of an agent being made or varied.

DRAFT

**Condition 1.7: Exercise of Powers of Entry**

1.7.1 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.

1.7.2 Construction of Condition

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.

DRAFT



**Condition 1.8: Modifications**

1.8.1 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.

DRAFT

**Condition 1.9: Assignment of Licences**

1.9.1 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 any specified persons or premises or to the whole or any part of the area within which the Licensee is authorised to supply gas.

1.9.2 Matters affecting an assignment

In deciding whether to give its consent under Condition 1.9.1 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.

1.9.3 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.

1.9.4 .

**Condition 1.10: Transfer of Business**

1.10.1 Subject to Condition 1.10.2, the Licensee shall not transfer to another person (the "transferee") all or part of its Licensed Business unless:

- (a) the Authority is satisfied that the transferee:
  - (i) is or will be licensed to carry out the relevant business from the proposed date of the transfer; and
  - (ii) will have the technical and financial capability to comply with the conditions of its licence (subject to any modifications pursuant to Condition 1.10.1 (b)) in respect of the relevant business; and
- (b) if the licence contains additional conditions which, in the opinion of the Authority, are for the purpose of protecting the interests of consumers, the transferee has given the Authority its consent (in order to give continued effect to those additional conditions) to the modification of the conditions of its licence by way of the insertion of like conditions or ones to the like effect, taking account of the purpose of such conditions, and the Licensee has consented to the modification of such additional conditions in order to give continued effect to the purpose of such conditions.

1.10.2 Exception to Condition 1.10.1

Nothing in Condition 1.10.1 shall prevent the Licensee from transferring all or the relevant part of its 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 1.9.

## **Condition 1.11: Payment of Fees**

### **1.11.1 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.

### **1.11.2 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 1.11.3 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.

### **1.11.3 Amount of annual fee**

In respect of the year beginning on 1st April 2007 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)(c) 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;

- (b) 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, 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);
- (c) 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)(c) of the Order; and
- (d) 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 1.11.5 below; and
  - (ii) the amount which that fee would have been in respect of that year:
    - (aa) had the amount comprised therein under Condition 1.11.3(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 1.11.3(b) (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 General Consumer Council in connection with the functions referred to in Condition 1.11.3(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 Conditions 1.11.3(a) and (b) shall not, in respect of any year commencing on 1<sup>st</sup> April, exceed £650,000 adjusted from the date of the Grant annually by reference to the retail price index.

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

In this Condition 1.11, the “Director” means the Director General of Gas for Northern Ireland.

#### 1.11.5 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 1.11.3(d)) 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 Condition 1.11.3(a) and the estimate of the General Consumer Council or the Authority (as appropriate) in accordance with Condition 1.11.3(b); and

- (b) the Authority's reasonable revised estimate of those costs (taking account of any revised estimate of the costs referred to in Condition 1.11.3(b) 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.

DRAFT

**Condition 1.12: Notices**

1.12.1 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:** Phoenix Supply Ltd  
127 Airport Road West  
Belfast  
BT3 9ED  
Northern Ireland  
  
Facsimile Telephone Number 0845 455555

**Authority:** Northern Ireland Authority for Energy Regulation,  
Queen's House,  
16-18 Queen Street,  
Belfast  
BT1 6ED  
Northern Ireland  
  
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

1.12.2 Receipt



Any notice given under the provisions of Condition 1.12.1 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.

DRAFT

**PART 2**

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

**Condition 2.1: Not used**

DRAFT

**Condition 2.2: Security and Continuity of Supply**

2.2.1 Licensee to maintain its financial affairs

The Licensee shall at all times maintain its financial affairs in such a way so as not to prejudice the conduct of its Licensed Business and shall at the request of the Authority provide the Authority with such information as the Authority may reasonably request to be satisfied of the above.

2.2.2 Licensee to maintain supply/demand match

The Licensee shall at all times act to maintain the balance of its supplies of gas and demands for gas such that it can maintain a continuous and reliable supply of gas to its existing consumers from time to time, and without prejudice to the generality of the foregoing can meet all such demands for gas in accordance with the security standard.

2.2.3 Security Standard

The security standard means:

- (a) the availability of a supply of gas which would at least equal the daily firm demand which, having regard to historical weather and other data demand from at least the previous 50 years, is likely to be exceeded (whether on one or more days) only in 1 year out of 20 years; and
- (b) the availability of supplies of gas over a year which would equal the aggregate amount of daily firm demand over a year which, having regard to such data as aforesaid, is likely to be exceeded only in 1 year out of 50 years.

2.2.4 Additional Definitions

In this Condition:

"daily firm demand"	means the peak aggregate daily demand for gas by the Licensee's consumers from time to time which might reasonably be expected after the Licensee had interrupted or reduced the supply of gas to each
---------------------	--

	consumer to the extent that (otherwise than in the circumstances mentioned in Condition 2.14.4) it was entitled to do so under its contract with that consumer;
"day"	means a period beginning at 6 am on one day and ending immediately before 6 am on the following day and "daily" shall be construed accordingly; and
"year"	means a period of 12 months beginning with 1st October.

DRAFT

**Condition 2.3: Use of the Network**

2.3.1 Compliance with the Network Code

The Licensee shall act in a reasonable and prudent manner in the use it makes of each Network Operator's Network for the purpose of the conveyance of gas.

2.3.2 Particular compliance obligations

Without prejudice to the generality of Condition 2.3.1, the Licensee shall enter into arrangements with each relevant Network Operator for the conveyance of the Licensee's supplies of gas in accordance with that Network Operator's Network Code and the Licensee shall not knowingly or recklessly pursue any course of conduct (either alone or with some other person) which is likely to prejudice:

- (a) the safe and efficient operation, from day to day, by a Network Operator of its Network; or
- (b) the efficient balancing by that Network Operator of its Network; or
- (c) the due functioning of the arrangements provided for in its Network Code.

2.3.3 Information not intentionally to mislead

The Licensee shall not knowingly or recklessly act in any manner likely to give a false impression to a Network Operator as to the amount of gas to be delivered by the Licensee on a particular day to that Network Operator's Network or as to the amount of gas to be comprised in its offtakes of gas therefrom on that day.

**Condition 2.4: Charges for Gas and Other Terms for the Supply of Gas**

**2.4.1 Control over Charges in the absence of competition**

If consumers of different cases or classes of cases or for different areas, whose consumption of gas at any premises is reasonably expected not to exceed 2,197,500 kilowatt hours in any period of twelve months:

- (a) do not have the opportunity of taking a supply of gas from another gas supplier (or if there is such an opportunity it does not safeguard the interests of consumers); and
- (b) the Authority determines that competition from fuels other than gas is not safeguarding the interests of those consumers;

then the Licensee shall take all reasonable steps to secure that in any period of 12 months the average price per therm of gas supplied to such consumers shall not exceed a maximum price to which the Authority has consented (and the Authority having consulted with the Licensee before deciding whether to give or withhold its consent), and (without prejudice to any other means of modifying the licence under Condition 1.8 and the Order and the Energy Order), failing consent then:

- (c) within 28 days of the date on which the Authority gives notice of its withholding consent, the Licensee may request the Authority by notice to the Authority (a "disapplication notice") not to apply this Condition 2.4.1 in which event it shall not apply;
- (d) unless within six months of the date of the disapplication notice the Authority makes a reference to the Competition Commission under Article 15 of the Order relating in whole or in part to the modification of this Condition 2.4.1, this Condition 2.4.1 will continue not to be applied after that period has passed in respect of those consumers; and
- (e) in the event of such a reference to the Competition Commission under paragraph (d) above, the Commission gives a report, then until the licence shall be modified in accordance with the Order in relation to that reference, the Licensee may

continue to charge for the supply of gas notwithstanding that the Authority has not consented to such charges;

and in relation to charges imposed by the Licensee with the consent of the Authority where this Condition 2.4.1 applies, then the Licensee shall continue to comply with charging arrangements to which the Authority has consented until the Authority otherwise agrees with the Licensee that such consent may be modified or the need for such consent is no longer relevant.

#### 2.4.2 Principles to be applied in consenting to Charging Basis

For the purposes of Condition 2.4.1, in giving consent, the Authority shall have regard to the need of the Licensee to be able to finance the carrying on of its activities and to make a return on capital equal to that which, in the reasonable opinion of the Authority, is appropriate.

#### 2.4.3 Statement of charges for the supply of gas

Where the Licensee is in a dominant position in the supply of gas to consumers of different cases or classes of cases or for different areas, then the Authority may direct the Licensee to provide it with a statement of the charges being made or proposed to be made to such consumers by the Licensee for the supply of gas, and:

- (a) any question as to whether the Licensee is in a dominant position shall be determined by the Authority, having regard to any representations made to it; and
- (b) in relation to charges which are proposed to be made the Authority may direct a minimum period before these charges may be introduced from its receipt of the statement.

#### 2.4.4 Publication of statement of charges for the supply of gas

The Licensee shall comply with any direction given by the Authority to publish in such manner as determined by the Authority the statement prepared by the Licensee under Condition 2.4.3 so as to give adequate publicity to the matters contained in that statement with respect to consumers whose demand for gas at any premises is not reasonably expected to exceed 732,500 kilowatt hours in any period of twelve months.

#### 2.4.5 Classes of consumers

In determining which consumers constitute different cases or classes of cases for the purposes of this Condition, due regard shall be had to all the circumstances of supply (including, in particular, volumes, pressure of supply, load factors, conditions of load management including interruptability, seasonality of supply, location of premises being supplied, date, duration and terms of agreement).

#### 2.4.6 Standard terms for the supply of gas to consumers of gas

Where the Licensee is in a dominant position in the supply of gas to consumers of different cases or classes of cases or for different areas, then the Authority may direct the Licensee to determine in so far as is reasonably practicable standard terms on which it would be prepared to enter into contracts to supply gas to such consumers, and:

- (a) any question as to whether the Licensee is in a dominant position shall be determined by the Authority, having regard to any representations made to it;
- (b) different standard terms may be determined for consumers of different cases or classes of cases, or for different areas;
- (c) where it is not reasonably practicable to prepare standard terms as above in respect of any consumer or for consumers of different cases or classes of cases or for different areas, the Licensee shall prepare a summary of the terms on which it would contract to supply gas; and
- (d) the Licensee shall give written notice of those terms and of any material variation therein (or if the Authority so requires, a revised notice of the terms) to the Authority and, with respect to contracts for the supply of gas where the supply is to individual premises and is not reasonably expected to exceed 732,500 kilowatt hours in any period of twelve months, the Licensee shall:
  - (i) on request by any other person, furnish that person with a copy of any such notice; and
  - (ii) shall publish the standard terms for such a supply and any variation thereto in such manner as in the reasonable opinion of the Licensee will



secure adequate publicity for them,

and, for the purposes of this Condition 2.4.6, "standard terms" means terms as to charges and all such other matters as concern the rights and obligations of the contracting parties.

DRAFT

## **Condition 2.5: Undue Discrimination and Undue Preference**

### **2.5.1 Dominant position**

If the Licensee, together with any of its affiliated or related undertakings operating in the same market, is in a dominant position in a market for the supply of gas to consumers whose demand for gas at any premises is not reasonably expected to exceed 2,197,500 kilowatt hours in any period of twelve months, then the Licensee, in the terms on which it supplies or offers to supply gas to consumers in that market:

- (a) shall not show undue preference to any consumer or class of consumer; and
- (b) shall not exercise any undue discrimination against any consumer or class of consumers;

and shall not set prices for the supply of gas to consumers at premises:

- (c) in any market or markets in which it has a dominant position which are unduly onerous; or
- (d) in any market or markets which are predatory.

### **2.5.2 Established competition**

Condition 2.5.1 shall not prevent the Licensee from supplying or offering to supply gas to all or any class of consumers on terms which are reasonably necessary to meet established competition in relation to such consumers, provided that the Licensee:

- (a) does not set terms in respect of the consumers in question which:
  - (i) are predatory; or
  - (ii) show undue preference or unduly discriminate as between any such consumers; and
- (b) does not set terms in respect of the supply of gas at premises to consumers of any other class in relation to whom the Licensee has a dominant position, which are unduly onerous.

### 2.5.3 Predatory/unduly onerous terms

For the purposes of Conditions 2.5.1 and 2.5.2,

- (a) terms shall be taken to be predatory if but only if:
  - (i) charges in accordance with those terms do not cover such avoidable costs as, in the opinion of the Authority, they ought reasonably to cover; and
  - (ii) the terms are made available for the purposes of, or are likely to have the effect of, unfairly excluding or limiting competition between the Licensee and one or more other gas suppliers;
- (b) terms in respect of particular consumers shall be taken to be unduly onerous if the revenue from supply on those terms:
  - (i) significantly exceeds costs in respect of those consumers; and
  - (ii) exceeds such costs by significantly more than in the case of the generality of consumers supplied with gas at premises by the Licensee save for those in any market which is by virtue of Condition 2.5.7 considered to be a separate market,

but, unless the converse is manifestly the case, terms shall not be taken to be unduly onerous if other gas suppliers to consumers at the premises in question are only willing to do so on more onerous terms, having regard to the costs of market entry they have incurred or would thereby incur.

### 2.5.4 Class of consumers

In distinguishing consumers and classes of consumer for the purposes of Conditions 2.5.1 and 2.5.2, due regard shall be had to all the circumstances of supply (including, in particular, volumes, pressure of supply, load factors, conditions of load management including interruptability, seasonality of supply, location of premises being supplied, date, duration and terms of agreement).

### 2.5.5 Determination by Authority

Any question arising under this Condition as to whether the Licensee or any other gas supplier (whether alone or together with any of its affiliated or related undertakings operating in the same markets) is in a dominant position in a market shall be determined by the Authority, having regard to any representations made to it.

#### 2.5.6 Additional Definitions

In this Condition:

"avoidable costs"	means those costs which would not be incurred by the Licensee if he did not supply the consumers in question, including (but with due regard to the timing thereof all relevant future outlays affected by the decision to supply; and
"terms"	means all the terms on which a supply of gas is provided or offered, whether as respects charges, methods of payment or otherwise.

#### 2.5.7 Separate market for domestic consumers

For the purpose of this Condition, any market for the supply of gas to domestic consumers shall be considered to be a separate market from any market for the supply of gas to non-domestic consumers.

**Condition 2.6: Supply to Business Premises**

2.6.1 Exemption from certain licence obligations

Conditions 2.9 - 2.13 and 2.15 shall not apply to any agreement entered into by the Licensee for the supply of gas to business premises.

DRAFT

**Condition 2.7: Supply and Inspection of Meters**

**2.7.1 Supply of meters**

The following provisions shall apply with respect to the supply of meters:

- (a) subject to Conditions 2.7.1(b) to (g), the Licensee shall make such arrangements with the relevant Network Operator for the provision and/or installation of a gas meter of an appropriate type by the Network Operator to any consumer to whom the Licensee supplies gas for registering the quantity of gas supplied by the Licensee to that consumer;
- (b) the Licensee shall, if so requested by one of its domestic consumers or a person who has agreed to become a domestic consumer of the Licensee, arrange for the provision to that consumer of a meter owned by it or the relevant Network Operator which is of an appropriate type for registering the quantity of gas supplied to him by:
  - (i) arranging with the relevant Network Operator for the meter owned by the Network Operator and installed in the premises to remain in place; or
  - (ii) arranging with the owner of the meter installed in the premises to purchase or otherwise acquire that meter and for it to remain in place; or
  - (iii) arranging for the installation of a meter where there is no meter in place, or the meter in place is inappropriate or cannot be purchased or acquired on reasonable terms; or
  - (iv) making such other arrangements for the provision of a meter as may be agreed between the Licensee and the consumer;
- (c) where the Licensee is obliged under Condition 2.7.1(b) to arrange for the provision of a meter to a consumer, it shall not require, as a condition of making such an arrangement as is mentioned in Conditions 2.7.1(b)(i), (ii) or (iii), that the consumer takes the meter otherwise than on hire or loan.
- (d) where a consumer of the Licensee transfers possession of a meter to the Licensee

and that meter is owned by the relevant Network Operator, the Licensee shall so inform that Network Operator, and hold the meter to the Network Operator's order for a period of one month in the condition in which it was received and with the index unaltered;

- (e) where a domestic consumer terminates a contract with the Licensee for the supply of gas, the Licensee shall not:
  - (i) exercise any right to recover any meter owned by the Licensee at, or by reason of, the termination of such contract, or
  - (ii) authorise any of its officers to enter the consumer's premises for the purpose of removing any such meter;

if another gas supplier undertakes prior to the date of such termination to make an arrangement with the Licensee of the type contemplated in Condition 2.7.1(b)(ii) above on terms that the Licensee receives such compensation (if any) as may be appropriate having regard to the value of the meter;

- (f) subject to Condition 2.7.1(g), the Licensee shall not be required to supply or continue to supply gas to a person, or to offer a new contract where that person takes his supply through a meter which belongs to him or if the meter is lent or hired to him otherwise than by the Licensee or by the relevant Network Operator, or if the meter is ordinarily to be read in accordance with arrangements made otherwise than by the Licensee, unless the meter is or the arrangements in question are acceptable to the Licensee; and
- (g) from such date no earlier than as may be designated in writing for the purposes of this Condition generally by the Authority following such trials and consultation as it considers appropriate (the "metering liberalisation date"), the Licensee shall not:
  - (i) refuse to accept a meter requested by the consumer the use of which does not contravene Article 22 of the Order and which is appropriate for registering the quantity of gas supplied, except on the ground that:
    - (aa) the Licensee requires the supply to be taken through a prepayment

meter and the meter is not one of that type; or

- (bb) the meter does not offer the facilities requisite for the purposes of the contract or having regard to its terms; or
- (ii) refuse to accept arrangements made by the consumer for the ordinary reading of the meter which comply with such requirements, designed to secure accurate reading of the meter and prompt transmission of data in an appropriate form as may be set out in such document (the "metering code") or variation thereof as may be designated in writing for the purposes hereof by the Authority following consultation with any relevant licence or exemption holders or such other persons as the Authority considers appropriate.

#### 2.7.2 Inspection of meters

The following provisions shall apply with respect of the inspection of meters:

- (a) the Licensee shall use all reasonable endeavours to ensure that the inspection of the meter and any associated appliance is undertaken in accordance with the relevant Network Operator's Network Code; and
- (b) an inspection under Condition 2.7.2(a) shall be carried out by a person possessing appropriate expertise and shall include the following tasks:
  - (i) arranging for any gas leakage identified in the vicinity of the meter to be reported;
  - (ii) inspecting the meter for any evidence of deterioration which might affect its function or safety; and
  - (iii) reading the meter;

and the Licensee shall ensure that the results of the inspection are reported promptly to the relevant Network Operator.

#### 2.7.3 Adjustment of Charges for erroneous meter readings



Where a consumer is supplied with gas through a meter at a rate not exceeding 2,197,500 kilowatt hours a year, this Condition shall apply if the meter is examined and found to register erroneously:

- (a) where the error found is one of over-registration, the charges made by the Licensee in respect of gas supplied through the meter before it was found to register erroneously shall be adjusted by reference to the extent to which the meter is deemed to have registered erroneously; and, accordingly, allowance shall be made to the consumer by the Licensee; and
- (b) where the error found is one of under-registration, the Licensee shall not surcharge the consumer in respect of gas supplied through the meter before it was found to register erroneously.

#### 2.7.4 Extent of erroneous meter readings

Where the meter is found, when examined by a meter examiner appointed under Article 22 of the Order to register erroneously to a degree exceeding the degree permitted by regulations under that Article, the meter shall be deemed to have registered erroneously to the degree so found since the relevant date, except in a case where it is proved to have begun to do so on some later date and in this Condition 2.7.4 "the relevant date" means:

- (a) the penultimate date on which, otherwise than in connection with the examination, the register of the meter was ascertained; or
- (b) if regulations so provide, such other date as may be determined by or under the regulations.

**Condition 2.8: Supply of Other Goods or Services**

2.8.1 Separate charges

Where, pursuant to a single contract, the Licensee supplies gas, together with other meters or meter - related services, including, in particular, the provision of a service pipe or the provision of energy efficiency goods or services the contract shall be prepared so as to identify separately the charges for the supply of gas and for the provisions of the linked goods or services.

DRAFT

## **Condition 2.9: Social Obligations**

### **2.9.1 Arrangements**

The Licensee shall within six months of the licence coming into force (unless it has done so before being so licensed in which case, on being so licensed):

- (a) submit to the Authority and the General Consumer Council a statement of its proposed arrangements for the purposes of Conditions 2.10 to 2.12;
- (b) if within 60 days of such submission or, if earlier, of the Licensee first being so licensed, the Authority notifies the Licensee that, in its opinion, the arrangements are not sufficient for these purposes, make such changes to the arrangements requisite to secure compliance with the conditions as are specified by the Authority;
- (c) if within 60 days of such submission or, if earlier, of the Licensee first being so licensed, the General Consumer Council expresses any opinion regarding the arrangements, consider and consult with the General Consumer Council in relation to those arrangements; and
- (d) make such arrangements;

and the arrangements so made in this Condition and in Conditions 2.10 to 2.12 are referred to as "the arrangements".

### **2.9.2 Extension of licence**

In the event of an extension of the licence, the Licensee shall ensure that the arrangements remain sufficient for the purposes of Conditions 2.10 to 2.12 and shall make, subject to Condition 2.9.3, any necessary changes.

### **2.9.3 Change of arrangements**

Except in the case of changes reasonably consequential upon a restriction of the licence which are made with effect from the effective date of the restriction, the Licensee shall not make any material change to the arrangements except following consultation with the General Consumer Council and with the consent of the Authority.

2.9.4 Notification of arrangements

The arrangements made in pursuance of Condition 2.9.1 shall be set out in one or more documents (together with any other arrangements which the Licensee considers it appropriate to set out therein) and the Licensee shall, in respect of each such document or revision thereof:

- (a) take such steps as reasonably appear to it appropriate to draw its existence and the matters which it covers to the attention of persons who appear to it to have a reasonable interest therein;
- (b) on the request of any person, make a copy available to him free of charge; and
- (c) send a copy to the Authority and the General Consumer Council.

2.9.5 Domestic consumers

The Licensee shall use its best endeavours to ensure, so far as is reasonably practicable, that it conducts itself towards its domestic consumers in conformity with the arrangements.

**Condition 2.10: Efficient Use of Gas**

2.10.1 Advice

The arrangements shall provide for the provision, at the request of any of the Licensee's domestic consumers, of advice on the efficient use of gas, given or prepared by a suitably qualified person and in particular, advice in respect of:

- (a) the restriction of heat losses from existing buildings;
- (b) the selection of gas heating (including the use of gas condensing boilers), systems or controls for such systems for use in either existing or new buildings;
- (c) the operation of gas heating systems in either existing or new buildings which is best calculated to make an efficient use of gas;
- (d) the efficient use of gas supplied to a domestic consumer but used for the purposes of trade or business;
- (e) organisations which may provide further advice, training or other services in connection with the efficient use of gas;
- (f) sources of possible financial assistance in meeting the cost of works calculated to improve the efficient use of gas in existing dwellings; and
- (g) generally, in respect of the financial costs and benefits of energy efficient appliances.

**Condition 2.11: Services for Pensioners, Chronically Sick or Disabled Persons**

**2.11.1 Arrangements**

The arrangements shall provide, in relation to any of the Licensee's domestic consumers who is of pensionable age ("a pensioner") or is chronically sick or registered disabled ("a disabled person"), on request and without charge:

- (a) except in the case of a consumer living with another person who is neither a pensioner nor chronically sick nor a disabled person nor a minor, for the examination by a person possessing appropriate expertise at intervals of not less than 12 months of the safety of gas appliances and other gas fittings on the consumer's side of the meter at his premises, other than an appliance for the annual inspection of which a landlord of the consumer is responsible in pursuant of regulations made under the Gas Safety (Installation and Use) Regulations (Northern Ireland) 2004 ;
- (b) so far as is reasonably practicable and appropriate:
  - (i) for the provision of special controls or adaptors, from a range of such controls or adaptors, for prepayment meters provided by the Licensee and for gas appliances;
  - (ii) for the repositioning to meet the needs of the consumer occasioned by his physical condition arising from his age, chronic sickness or disability of any gas meter owned by the Licensee or the Network Operator; and
  - (iii) for the transmission to any other relevant party licensed or authorised to convey gas under the Order of any request by the consumer for that party so to reposition any gas meter it owns;
- (c) for affording to the consumer special means by which he may confirm the identity or authority of any of the Licensee's officers authorised for the purposes of any provision of Schedule 5 to the Order;
- (d) for the provision of advice, given or prepared by a person possessing appropriate expertise, relating to the use of gas, gas appliances and other gas fittings;

- (e) for invoices or accounts in respect of the supply of gas to the consumer to be sent to a person who, for the time being, is nominated by him and is willing to be sent such invoices or accounts, without prejudice, however, to the right of the Licensee to send them to the consumer as well where that appears appropriate to the Licensee; and
- (f) where neither the consumer nor any person living with him is able to read the gas meter and it is ordinarily read in accordance with arrangements made by the Licensee, for the meter to be read once in each quarter and for the consumer to be told what those readings are.

#### 2.11.2 List of pensioners or disabled persons

The arrangements shall provide:

- (a) for the keeping by the Licensee of a list of its domestic consumers who are either pensioners or disabled or chronically sick persons and who request to be included in the list;
- (b) for the list to contain appropriate information provided by the consumer which facilitate the identification of his special needs;
- (c) for notifying its domestic consumers once each year that that list is kept and how those who are pensioners or disabled or chronically sick persons may apply for inclusion therein; and
- (d) for the Licensee to provide the information in the list to any relevant party licensed or authorised by exemption under the Order to convey gas in an appropriate form and at appropriate intervals.

**Condition 2.12: Facilities for Blind and Deaf People**

2.12.1 Adequate facilities

The arrangements shall provide for the provision, on request and free of charge, in relation to the Licensee's domestic consumers who, to the knowledge or reasonable belief of the Licensee:

- (a) are blind or partially sighted of:
  - (i) details of the meter readings and charges in respect of the supply of gas as set out in any bill; and
  - (ii) details of the arrangements for making enquiries or complaints about bills or the services provided by the Licensee;relating to them by telephone or other appropriate means; or
- (b) are deaf or partially hearing, of details of facilities to assist them (if they have the equipment enabling them to take advantage thereof) when making enquiries or complaints about bills or the services provided by the Licensee.



**Condition 2.13: Pensioners Not to Have Supply of Gas Cut Off in Winter**

2.13.1 Application

This Condition shall apply in the case of any of the Licensee's domestic consumers who -

- (a) is of pensionable age and lives alone or with other persons all of whom are also of pensionable age or minors;
- (b) is supplied with gas to premises not being business premises; and
- (c) is in default of his obligation to pay for gas through misfortune or inability to cope with credit terms for the supply of gas for domestic use.

2.13.2 Winter period

The Licensee shall not in those circumstances cut off the supply of gas to a pensioner's premises during any winter period, that is to say, a period beginning with 1 October in any year and ending with 31 March in the next following year except only in respect of and only for the duration of a Network emergency as provided in Condition 2.14.3.

**Condition 2.14: Emergencies**

2.14.1 Application to Network emergencies

Condition 2.14.2 shall apply:

- (a) in the case of an escape, or suspected escape, of gas; or
- (b) in the case of a Network emergency, that is to say, where the circumstances are such that, in the opinion of the relevant Network Operator:
  - (i) the safety of its Network or any part of its Network is significantly at risk;  
or
  - (ii) the safe conveyance of gas by its Network is significantly at risk; or
  - (iii) the gas conveyed by its Network is at such a pressure or of such a quality as to constitute, when supplied to premises, a danger to life or property;

and that opinion is not manifestly unreasonable.

2.14.2 Licensee to use best endeavours

Where this Condition applies, the Licensee shall use its best endeavours to comply with all requests made by any Network Operator (save those which are manifestly unreasonable) for the purpose of as may be appropriate:

- (a) averting or reducing danger to life or property; or
- (b) securing the safety of that Network Operator's Network or the safe conveyance of gas thereby or reducing the risk thereto.

2.14.3 Discontinuance of supply

Subject to Condition 2.14.4, the Licensee shall include in its contracts for the sale of gas to consumers, a term to the effect that, for the duration of a Network emergency, within the meaning of Condition 2.14.1(b):

- (a) the Licensee is entitled at the request of the relevant Network Operator to

discontinue the supply of gas to the premises; and

- (b) the consumer shall use its best endeavours to refrain from using gas immediately upon being notified by the Licensee that he must do so.

#### 2.14.4 Direction under the Energy Act

The Licensee shall include in its contracts for the supply of gas to consumers, whether or not domestic consumers, a term to the effect that, if it is given a direction under Section 2(1)(b) of the Energy Act 1976 prohibiting or restricting the supply of gas to specified persons, then, for so long as the direction is in force and so far as is necessary or expedient for the purposes of, or in connection with, the direction:

- (a) the Licensee is entitled to discontinue or restrict the supply of gas to the consumer; and
- (b) the consumer shall refrain from using, or restrict his use, of gas, on being told by the Licensee that he should do so.

#### 2.14.5 Escape of gas

The Licensee shall obtain from each Network Operator a telephone number continuously attended for reporting escapes of gas and shall inform each person to whom it supplies gas:

- (a) that it should be informed immediately if there is an escape, or suspected escape, of gas; and
- (b) of a telephone number which may be used for that purpose which shall be the telephone number advised by that Network Operator.

## **Condition 2.15: Standards of Performance**

### **2.15.1 Supply to domestic premises**

The Licensee shall establish, unless it has already done so before the coming into effect of this licence, and shall diligently take all reasonable steps for the achievement of standards of performance ("the established standards") relating to the supply of gas by the Licensee to domestic consumers.

### **2.15.2 Record of arrangements**

The Licensee shall keep a record of its general operation of the arrangements mentioned in Conditions 2.10-2.12 and compliance with Condition 2.13 and, if the Authority so directs in writing, of its operation of Condition 2.13 in particular cases specified, or of a description specified, by it. The Licensee shall also keep a statistical record of its performance in relation to the provision of gas supply services to domestic consumers including services related to:

- (a) the giving of, and the continuation of the giving of, supplies of gas;
- (b) the ascertainment of quantities of gas supplied and the recovery of gas charges;  
and
- (c) the making of visits to consumers' premises and the response made to enquiries.

### **2.15.3 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 Condition 2.15.2 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 2.15.3(a) and (b), the Licensee shall exclude from the report such information as appears to it to be necessary or expedient to ensure that, save where they consent, individual consumers referred to therein cannot readily be identified.

2.15.4 Standard format

The report shall be presented, so far as is reasonably practicable, in a standard format determined by the Authority.

DRAFT

**Condition 2.16: Provision of Information Requested by Other Licence or Exemption Holders**

2.16.1 Provision of information

The Licensee shall provide information reasonably requested by any relevant licence or exemption holder for the purpose of enabling it to fulfil its licence obligations to draw up plans for the safe operation, development or maintenance of any pipe-line system and as it may reasonably request for the purpose of preventing or detecting theft of gas.

2.16.2 Prejudicial to commercial interests of Licensee

The Licensee shall be entitled to refuse to provide information on the grounds that its disclosure would seriously and prejudicially affect the commercial interests of the Licensee or any other person unless and until the Authority, by notice in writing given to the Licensee, directs it to provide such information on the ground that the provision thereof is necessary for the purpose of Condition 2.16.1 above.

2.16.3 Civil proceedings

This Condition shall not require the Licensee to produce any documents or give any information which it could not be compelled to produce or to give in evidence in civil proceedings before the court.

2.16.4 Effective arrangements

Condition 2.16.1 shall not apply in respect of any person licensed or authorised by exemption to convey gas which has not established, whether in pursuance of a licence condition or otherwise, effective arrangements designed to secure that information provided in pursuance thereof, is not communicated, directly or indirectly, to another person licensed or authorised by exemption, to supply gas.

**Condition 2.17: Maintenance of Records**

2.17.1 Recorded information

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

- (a) every premises to which gas has been supplied by the Licensee during the relevant period;
- (b) insofar as the Licensee has been furnished with the information, the ownership of every meter installed at any premises referred to in Condition 2.17.1 (a) for ascertaining the quantity of gas supplied to the premises by means of that system during the relevant period;
- (c) 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
- (d) 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.

2.17.2 Additional definition

"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.

**PART 3A - GENERAL CONDITIONS FOR THE SUPPLY LICENCE OF GAS**  
**SUPPLIERS SHIPPING GAS ACROSS DESIGNATED NETWORKS**

**Part 3A**

**Condition 3A.1 : Interpretation And Construction**

**Definitions For Supplier Postalisation Licence Conditions**

**Interpretation and Construction**

**Definitions**

In Part 3A of this licence, except where expressly stated to the contrary and unless the context otherwise requires, the following terms shall have the meanings ascribed to them below:

- “Business Day” means a day, other than a Saturday or Sunday, on which banks are open for ordinary banking business in Belfast;
- “Credit Committee” means the committee which is convened and operates in accordance with the “Terms of Reference”;
- “Designated Network” means such parts of a Designated Pipe-line Operator’s Network as is or are designated from time to time pursuant to the Designation Order;
- “Designated Pipe-line Operator” means a person licensed to convey gas under Article 8(1)(a) of the Order for the Licensee through the Postalised System;
- “Designation Date” means the date specified in a Designation Order on which any part of a Designated Pipe-line Operator’s Network through which the Licensee is entitled to have gas conveyed shall be designated as postalised;
- “Designation Order” means an order made pursuant to Article 59 of the Energy (Northern Ireland) Order 2003 designating gas plant comprised within the Network as being subject to a common tariff;
- “Exit”, “Exiting” or forms thereof, refers to the offtaking of gas at an Exit Point;



- “Exit Point” means a point on the Designated Network at which gas is offtaken from the Designated Network by the Licensee, which is not a Transit Point and which constitutes an Exit Point under the Network Code;
- “Firm Capacity” means, at any relevant time in respect of a Gas Supplier, capacity (in KWh/day) held at such time by such Gas Supplier on a firm basis in respect of an Exit Point in accordance with the provisions of the Network Code and in respect of a Gas Year (or any part thereof); except that if any Minimum Capacity Value in respect of such period and such Gas Supplier is greater than such allocated capacity then the Firm Capacity deemed to be held by such Gas Supplier shall be that Minimum Capacity Value;
- “Forecast Supplier Quantity” means the quantity of gas which the Licensee forecasts it will Exit from a Designated Network in a given period, provided that, if in relation to the Licensee such quantity is less than any applicable Minimum Quantity Value, the Forecast Supplier Quantity in relation to the Licensee shall be such Minimum Quantity Value;
- “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) and who is entitled to Exit gas from the Designated Network or any person who is not so authorised, but with the Authority’s consent either: (i) holds Firm Capacity; or (ii) is entitled to Exit gas from the Designated Network as if it were a Gas Supplier;
- “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;
- “kWh” means 3,6000,000 joules as defined in ISO 1000-1981(E);
- “Minimum Quantity Value” means any minimum quantity of gas (in KWh) in respect of which the Licensee is obliged under contract to a Designated Pipe-line Operator

- to pay transmission charges in respect of a Gas Year or part thereof;
- “Network” means all gas plant owned, operated or utilised by a Designated Pipe-line Operator through which that Designated Pipe-line Operator is conveying gas for the Licensee;
- “Network Code” means that document so described and published by a Designated Pipe-line Operator by virtue of the licence granted to that Designated Pipe-line Operator under Article 8(1)(a) of the Order;
- “Order” means The Gas (Northern Ireland) Order 1996;
- “Postalised System” means the system comprising all gas pipe-lines designated as being subject to a common tariff pursuant to all orders made pursuant to Article 59 of the Energy (Northern Ireland) Order 2003 in force at such time;
- “Primary DPO” means a Designated Pipe-line Operator holding a licence to convey gas in respect of a part of the Postalised System on which the Licensee is entitled to Exit gas;
- “Primary DPO Network” means all gas plant owned, operated or utilised by a Primary DPO through which that Primary DPO is conveying gas for the Licensee and from which the Licensee is entitled to Exit gas;
- “PS Transmission Payments” means any amount which a Primary DPO is obliged or entitled to charge to the Licensee in respect of the provision of gas conveyance services on the Postalised System under such Primary DPO’s licence to convey gas;
- “Quarter” means each successive three calendar month period in a Gas Year, the first of which shall run from and including 06:00 hours 01 October until 06:00 hours 01 January in that Gas Year; and “Quarterly” shall be construed accordingly.

“Terms of Reference” means the terms of that name appended to the Network Code which govern the operation of the Credit Committee;

“Transit Point” means a point of interconnection between a Designated Network and another pipeline forming part of the Postalised System;

### **3A.1.1 Interpretation**

In Part 3A all capitalised terms shall have the meaning ascribed to them in such part, notwithstanding any other definition of any such term elsewhere in the licence. Capitalised terms within Part 3A which are not defined within such part shall have the meaning ascribed to them elsewhere in the licence.

### **3A.1.2 Provision of Information**

Nothing in Part 3A shall require the Licensee to produce any information or provide any document to any other party which the Licensee could not be compelled to produce or provide in civil proceedings in the High Court.

**Condition 3A.2: General Conditions Applicable To The Licence Holder In Relation To Postalisation Charges**

**3A.2 Conveyance Charges**

**3A.2.1 Application of provisions relating to common tariff**

In respect of the Gas Year commencing on or after the Designation Date and each Gas Year thereafter and to the extent that a Designation Order is and remains in force in respect of any Primary DPO Network, the Licensee shall be subject to the provisions of this Condition 3A.

**3A.2.2 Forecasts and information relating to following Gas Years**

**3A.2.2.1** The Licensee shall, each Gas Year, provide the following forecasts and information to each of its Primary DPO (in respect of each such Primary DPO Network only), in each case no later than the tenth Business Day in June in respect of the next Gas Year (GY) and each of the following four Gas Years (GY+1 to GY+4):

- (a) the Forecast Supplier Quantity together with:
  - (i) an explanation of the reasons why any Forecast Supplier Quantity in respect of any of the Gas Years GY+1 to GY+4 are expected to be greater or less than the Forecast Supplier Quantity in respect of GY;
  - (ii) a breakdown showing the proportions of the Forecast Supplier Quantity in respect of each Exit Point attributable to each Quarter of GY; and
- (b) the assumptions on which the figures provided pursuant to Condition 3A.2.1.1(a) are based. In respect of power stations this shall include but not be limited to load factors, generation output and efficiency. In respect of a Licensee supplying gas to distribution networks this shall include but not be limited to numbers of consumers and average forecast quantity per consumer.

**3A.2.2.2** The Licensee shall use its reasonable endeavours to ensure that all forecasts and information supplied in accordance with Condition 3A.2.2.1 are as accurate as possible having regard to the information and forecasts available to the Licensee and shall provide with such forecasts a full breakdown and reasoning as to how it has calculated

those forecasts.

**3A.2.2.3** The Licensee shall promptly submit to any Primary DPO any further information, explanation and access to relevant documents and records, in each case as such Primary DPO reasonably requires in respect of the figures provided pursuant to this Condition 3A.2.2.

**3A.2.3 Payment of PS Transmission Payments**

The Licensee shall pay all PS Transmission Payments in accordance with the provisions of the Network Code.

DRAFT

**Condition 3A.3: Credit Committee**

3A.3.1 The Licensee shall promptly and competently take all reasonable actions necessary to facilitate the efficient functioning of the Credit Committee, in accordance with the Terms of Reference. Excepted in certain circumstances as specified in the Terms of Reference such actions shall include:

- (A) attendance at any meeting of the Credit Committee convened,
- (B) full and due consideration of any matters (including all relevant information) in respect of which a Credit Committee is convened;
- (C) reasonable participation in the decision making process in relation to any matter with respect to which any Credit Committee has been convened with a view that appropriate decisions be made by such Credit Committee in a timely manner; and
- (D) reasonable participation in the passing of any decisions made by any Credit Committee.

3A.3.2 The licensee shall ensure that the Credit Committee acts in a non-discriminatory and transparent manner.

## **PART 4**

### **SPECIAL CONDITIONS OF LICENCE**

#### **Condition 4.1: Disposal of relevant assets**

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

The Licensee shall not dispose of or relinquish operational control over relevant assets, except:

- (a) in relation to an assignment permitted under Condition 1.9 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 1.10 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,

and 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. Any question arising under this Condition 4.4.1 as to whether such disposal or relinquishing of control is such as aforesaid shall be determined by the Authority.

##### **4.1.2 Notice to be given to Authority**

Save as provided in Condition 4.1.3 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.

4.1.3 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 £26,000 in January 2007 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 over 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 £260,000 in January 2007 prices (such sum to be adjusted annually by reference to the retail price index), in any period of twelve months.

4.1.4 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 relevant to the operation or management of the Licensed Business 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 4.1.2.



4.1.5 Consultation with other licence holders

Any consent of the Authority pursuant to Condition 4.1.4 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.

4.1.6 Additional Definition

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; and

“relevant asset” means any gas plant or other property owned by the Licensee or used by the Licensee in the course of the Licensed Business, together with any estate or interest in land or other property required by the Licensee in connection with the Licensed Business.

**Condition 4.2: Restriction on Use of Certain Information**

**4.2.1 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 4.5.1(a) shall be construed to exclude protected information received independently by any Separate Business not engaged in the supply of gas.

#### 4.2.2 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 4.2.1 in the conduct of its business to supply gas.

#### 4.2.3 Limitation of non disclosure obligations

Condition 4.5.1(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.

#### 4.2.4 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.

DRAFT

**SCHEDULE 1**  
**Designated Area and Premises**

1 The premises designated as a term of the licence in this Schedule 1 are all premises in the Licensed Area.

2 In this Schedule:

“Licensed Area”

means the area which incorporates:

- (a) the coloured areas, coloured for the purposes of identification only, shown on the map attached as Annex 1 to this Schedule 1 and as are more particularly described on the map approved by the Department for these purposes and deposited with the Authority or any copy of the approved map certified by the Authority as a true copy;
- (b) the areas within the boundaries of each of the Electoral Wards of Carncastle, Kilwaughter, Ballycarry, Glenarm, and Glynn (all as falling within the district of Larne);
- (c) the area within the boundary of the Electoral Ward of Millisle (as falling within the district of Ards); and
- (d) the following premises:
  - (i) 26 Site 1 Boghill Road, Newtownabbey, Co. Antrim, BT36 4QS;
  - (ii) Tarmac Northern Ltd, 40a Boghill Road,

- Newtownabbey, Co. Antrim, BT36 4QS;
- (iii) Ballyearl Sports Centre, Doagh Road,  
Newtownabbey, Co. Antrim;
  - (iv) Ashers Baking Co, 581 Doagh Road,  
Newtownabbey, Co. Antrim, BT36 5RZ;
  - (v) 583, Doagh Road, Newtownabbey, Co.  
Antrim, BT36 5RZ;
  - (vi) Miles Ash Ltd, 576 Doagh Raod,  
Newtownabbey, Co. Antrim, BT36 5BU;
  - (vii) Newtownabbey Council Depot, 570 Doagh  
Road, Newtownabbey, Co. Antrim, BT36  
5BU; and
  - (viii) 50 Carnmoney Road North, Newtownabbey, Co.  
Antrim.

**Schedule 1 – Annex 1**



## **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' (or 24 hours in the case of (f) below) notice to the Licensee:

- (a) if the Licensee agrees in writing with the Authority that the licence should be revoked; or
- (b) if any amount payable under Condition 1.11 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 such 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 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 3 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
  
- (g) if at any time 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 shareholdings 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 changes or reversion in ownership does not take place within that period; or
  
- (h) 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
- (i) 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 its Licensed Business within thirty-six (36) months of the date of the Grant or thereafter ceases for a period of 3 months to carry on its 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 Licensee's deemed ability to pay its debts

- (a) For the purposes of paragraph 1(f)(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(f)(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.

- (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(h) 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 sub-sections (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".