

BORD GÁIS ÉIREANN

PROPOSED LICENCE FOR THE CONVEYANCE OF GAS IN NORTHERN IRELAND

12th DECEMBER 2001

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LICENCE FOR THE CONVEYANCE OF GAS IN NORTHERN IRELAND

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GRANT AND TERM OF LICENCE

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The Grant

1. **Grant of Licence**

The Director General, in exercise of the powers conferred by Article 8(1) of the Gas (Northern Ireland) Order 1996 (the "Order") grants to Bord Gáis Éireann (the "Licensee") a Licence to convey gas in the area designated in Schedule 1 during the period specified in paragraph 3 below, subject to the Conditions set out in Parts 1 and 2 and the Schedules annexed hereto.

2. **Modification and Revocation of Conditions**

The Conditions referred to above are subject to modification or amendment in accordance with their terms and/or with Articles 14, 17, and 18 of the Order. The Licence is further subject to the terms as to revocation specified in Schedule 2 annexed hereto.

3. **Term of Licence**

The Licence shall come into force on [date to be inserted] and, unless revoked in accordance with the terms specified in Schedule 2, shall continue in force until determined by not less than 25 years' notice in writing given by the Director General to the Licensee, such notice not to be served earlier than 10 years from the date of grant of the Licence.

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PART 1

GENERAL CONDITIONS APPLICABLE TO THE LICENCE HOLDER

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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 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.

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1.1.3 Headings

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

1.1.4 Time Related Obligations

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

1.1.5 Natural Persons

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

1.1.6 Definitions

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

"affiliate"	means, in relation to any person, any company which is a subsidiary of such person or a company of which such person is a subsidiary or a company which is another subsidiary of a company of which such person is a subsidiary;
"amount"	means, in relation to gas, the energy content thereof expressed in kilowatt hours;
"auditors"	means the Licensee's auditors for the time being holding office in accordance with the requirements of the Companies (Northern Ireland) Order 1986;

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"authorisation of persons"	means the power of the Licensee to authorise persons, pursuant to Schedule 5 of the Order;
"company"	means a company within the meaning of Article 3 of the Companies (Northern Ireland) Order 1986 or any other body corporate;
"consumer"	means any person supplied with gas to premises;
"conveyance charges"	means the charges made by the Licensee for the conveyance of gas;
"conveyance services"	means all services provided by the Licensee of conveying gas to, through and within the Licensed Area;
"Director General"	means the Director General of Gas for Northern Ireland or his successor from time to time;
"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;
"distribution pipe-line"	means any pipe-line which is not a transmission pipe-line;
"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;
"first operational commencement date"	means the earlier of the date when gas first flows on a commercial basis through the North West pipe-line and the date the

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	Director General deems the North West pipeline to be operational;
"Formula Year"	means successive periods of twelve months, the first such period commencing on the first operational commencement date and the last such period commencing on the 24 th anniversary of the first operational commencement date;
"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;
"Grant"	means the commencing section of this Licence by which the Director General grants the Licensee the Licence;
"information"	includes documents, accounts, estimates, returns, reports or other information;
"Licence"	means the Grant together with Parts 1 and 2 and Schedules 1 and 2;
"Licensed Area"	means the area in which the Licensee is authorised to convey gas as set out in Schedule 1;
"Licensed Business"	means the activities connected with the conveyance of gas pursuant to the Licence;
"Licensee"	means Bord Gáis Éireann or, in the event of a general assignment of the Licence in accordance with Condition 1.10, the assignee of the Licence;
"Network"	means all gas pipe-lines and gas plant owned and/or operated and/or utilised by the Licensee in Northern Ireland;

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"the Network Code"	means the document prepared by the Licensee under Condition 2.4.2;
"non-domestic consumer"	means a consumer other than a domestic consumer;
"North West pipe-line"	means that section of the Licensee's transmission pipe-line running between the connection point on the Ballylumford to Torytown transmission pipe-line and the off-take at Coolkeeragh and inclusive of all gas plant;
"operational"	means in relation to any pipe-line that the pipe-line is in all respects complete and ready for gas to flow and that in so far as it lies within the Licensee's control all necessary commissioning tests in respect of the pipe-line (as distinct from facilities to which such pipe-line is connected); have been successfully completed.
"Order"	means the Gas (Northern Ireland) Order 1996;
"owned"	means in relation to any gas meter title in or control over a meter and includes meters leased to a person;
"person"	means any company, firm, partnership, association, body corporate or individual;
"postalisation"	means the application of a system of uniform common tariffs for the transmission of gas through those transmission pipe-lines designated by the Department, irrespective of the proportion of those pipe-lines used;
"related undertaking"	means any undertaking in which any person has a participating interest as defined by

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Article 268 of the Companies (Northern Ireland) Order 1986;

- "second operational commencement date" means the earlier of the date when gas first flows on a commercial basis through the South North pipe-line and the date when Director General deems the South North pipe-line to be operational;
- "South North pipe-line" means that section of the Licensee's transmission pipe-line running between the connection point on the North West pipe-line and the connection point on the Bord Gáis Éireann Transmission pipe-line system in the Republic of Ireland and inclusive of all gas plant;
- "spur" means a pipe-line connecting (directly or indirectly) to the Licensee's North West pipe-line or South North pipe-line which runs to a point designated by the Director General under Condition 1.15.3(b)(ii) and which is constructed or to be constructed for the purpose of facilitating the taking of gas to a town, customer, or group of customers;
- "subsidiary" has the same meaning as given to it in Article 4 of the Companies (Northern Ireland) Order 1986;
- "transmission pipe-lines" means any pipe-line having a design operating pressure exceeding 7 bar gauge;
- "transportation arrangements" means the arrangements which Licence holders or exemption holders may have with the Licensee to have gas introduced into, conveyed by means of and taken out of the Network.

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1.1.7 Singular/plural

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

1.1.8 Application

The Conditions shall only apply to the activities of the Licensee carried out in Northern Ireland except where otherwise expressly specified.

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Condition 1.2: Separate Accounts for Licensed Business

1.2.1 Financial years

For the purposes of this Condition the first financial year of the Licensee shall run from the date of Grant to end of the accounting year and thereafter each financial year of the Licensee shall run from 1st January to the following 31st December.

1.2.2 Separate Business Accounting

This Condition applies for the purposes of ensuring that the Licensee (and any affiliate or related undertaking of the Licensee) maintains internal accounting and reporting arrangements which enable separate financial statements to be prepared for 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 accounts and records in such a form so 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 of:

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

1.2.4 Apportionment

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

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- (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 Director General in accordance with Condition 1.2.6), and any other business of the Licensee,

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

1.2.5 Bases of charge or apportionment

The Licensee shall, before the financial year commencing on 1st January 2003, notify the Director General 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 that financial year, 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 Director General following consultation with the Licensee gives a direction requiring the use of any other basis; and
- (b) except in so far as the Director General 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 1st January 2003 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 Director General 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 Director General

The Licensee shall provide the Director General 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.

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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 Director General 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 Director General 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 Director General 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 Director General 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 Notes of transactions with related undertakings

The Licensee shall set out in notes to its published annual accounts any transactions relating to the Licensed Business over £5000 with related undertakings.

For the purpose of this Condition, a "related undertaking" is:

- (a) any company in respect of which the Licensee (or its parents or subsidiaries) holds 20% or more of the shares;
- (b) any company in respect of which the Licensee (or its parents or 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 the voting rights in that undertaking.

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1.2.12 Additional Definition

In this Condition, the following term shall have the meaning ascribed to it below:

"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.

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Condition 1.3: Provision of Information to the Director General

1.3.1 Furnishing information

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

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

1.3.2 Licensee to comment on accuracy of information

This Condition shall not apply in respect of any function of the Director General under Articles 14(1)(a), 27 and 28 of the Order but the Licensee shall, if requested by the Director General, give reasoned comments on the accuracy (so far as it relates to its Licensed Business), of any information or advice which the Director General proposes to publish pursuant to Article 28 of the Order.

1.3.3 Condition 1.3 exclusive of other powers to require information

The power of the Director General to call for information under this Condition is in addition to the power of the Director General to call for information under or pursuant to any other Condition or 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 Director General 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 Director General to call for further information under Condition 1.3.1 if he states in writing that in his opinion such information is, or is likely to be, necessary to enable him 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 under Article 30 of the Order.

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Condition 1.4: Consultation with and Provision of Information to the General Consumer Council

1.4.1 Policy statements for General Consumer Council

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

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

and shall:

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

1.4.2 Furnishing information to the General Consumer Council

The Licensee shall furnish to the General Consumer Council in such manner and at such times as the General Consumer Council may reasonably require, such information as the Council may reasonably request for the purposes of performing the functions assigned to it under Article 33 of the Order. The power of the General Consumer Council to call for information under this Condition 1.4.2 is in addition to the power of the General Consumer Council to call for information under or pursuant to any other Condition or Schedule.

1.4.3 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 under Article 30 of the Order.

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Condition 1.5: Restriction on Use of Certain Information

1.5.1 Use of protected information

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

- (a) that the Licensee shall not obtain any unfair commercial advantage from its possession of protected information;
- (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 whose affairs the protected information relates to;

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.

1.5.2 Compliance with directions

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

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compliance by the Licensee with its obligations under Condition 1.5.1 in the conduct of its business to convey gas.

1.5.3 Limitation of non disclosure obligations

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

- (a) authorised by Article 44(2) or (3) of the 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 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 Licence to comply.

1.5.4 Additional definition

In this Condition the following term shall have the meaning ascribed to it below:

"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.

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Condition 1.6: Powers of Entry

1.6.1 Arrangements for powers of entry

The Licensee shall not less than three months prior to the first operational commencement date:

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

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

1.6.2 Changes in arrangements for extensions to Licence

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

1.6.3 Consent of Director General to changes

The Licensee shall not make any material change to the arrangements except with the consent of the Director General, whose 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 Director General of the application to make a material change by the Licensee.

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Condition 1.7: Authorisation of Persons

1.7.1 Steps to be included in the arrangements

The arrangements shall comprise all reasonable steps:

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

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

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

1.7.3 Licensee to take reasonable steps to keep relevant persons informed

Except in so far as the Director General 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 domestic consumers and any other Licence holders, naming the agent in question and shall give that information in a verifiable and authoritative manner.

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Condition 1.8: Exercise of Powers of Entry

1.8.1 Licensee to avoid undue disturbance

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

1.8.2 Construction of Condition 1.8.1

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

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Condition 1.9: Modifications

1.9.1 Director General able to modify Licence conditions

The Director General may at any time modify the Conditions of the Licence by notice to the Licensee:

- (a) in accordance with Article 14 of the Order; or
- (b) following a report of the Competition Commission in accordance with Article 17 of the Order.

1.9.2 Introduction of postalisation

The Director General may in addition if so required by the Department, after consultation with the Licensee, by notice to the Licensee modify the Conditions of the Licence (but not, for the avoidance of doubt, the Schedules) for the purpose of making any changes necessary or expedient for the purpose of postalisation which satisfy the requirements of Condition 1.9.3.

1.9.3 Scope of postalisation modifications

A modification made under Condition 1.9.2 shall not have the effect of:

- (a) amending the principles set out in Condition 2.2.1.2 or any Formula determined in accordance with Condition 2.2.1.3.; or
- (b) amending the scope of the Licensed Area set out in Condition 2.1; or
- (c) affecting for better or worse the economic return or the time over which such return is achieved by the Licensee in respect of its operations under the Licence except where the Licensee agrees to such change.

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Condition 1.10: Assignment of Licences

1.10.1 Licensee's ability to assign its Licence

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

1.10.2 Matters affecting an assignment

In deciding whether to give his consent under Condition 1.10.1 the Director General 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 Director General under Article 12(4) of the Order.

1.10.3 Licensee may not otherwise assign its Licence

Save as the Licensee is authorised to assign the Licence under this Condition 1.10, the Licensee may not otherwise assign the Licence without the consent of the Director General.

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Condition 1.11: Transfer of Business

1.11.1 Restrictions on transfer of business in conveying gas

Subject to Condition 1.11.2, the Licensee shall not transfer to another person (the "transferee") all or part of any of its business comprising the conveyance of gas carried out under the Licence.

1.11.2 Exception to Conditions 1.11.1

Nothing in Condition 1.11.1 shall prevent the Licensee from transferring all or the relevant part of its business to the assignee where the Director General has consented to the assignment of all or the relevant part of the Licence under Article 12 of the Order or the Licensee has assigned all or the relevant part of the Licence in accordance with Condition 1.10.

1.11.3 Bringing forward of proposals for assignment of the Licence

The Licensee shall use all reasonable endeavours to bring forward a proposal within 24 months of the date of Grant which is satisfactory to the Director General and the Department for the formation of a special purpose vehicle to carry on the Licensed Business and to which the Licensed Business may be transferred subject to the consent of the Director General to the assignment of the Licence under Article 12 of the Order.

1.11.4 Meaning of special purpose vehicle

For the purpose of Condition 1.11 only a "special purpose vehicle" means a company whose sole activity is the carrying on of the Licensed Business.

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Condition 1.12: Disposal of Relevant Assets

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

Except:

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

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

1.12.2 Notice to be given to Director General

Save as provided in Condition 1.12.3 or in so far as the Director General otherwise consents, the Licensee shall give to the Director General 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 Director General may request relating to such asset or the circumstances of such intended disposal or relinquishment of control or to the intentions in regard thereto of the person proposing to acquire such asset or operational control over such asset.

1.12.3 Notice not required for minor disposals

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The Licensee shall not be required to give the Director General any notice of its intention to dispose of or relinquish operational control of any relevant asset having a value of less than £25,000 in [December 2001] prices (such sum to be adjusted annually by reference to the retail price index), provided that:

- (a) such relevant asset would not materially affect the Licensee's ability to discharge its obligations under the Order or the carrying on of activities required by the Licence; and
- (b) the disposal or relinquishing of any such relevant assets does not exceed an aggregate value of £250,000 in [December 2001] prices (such sum to be adjusted annually by reference to the retail price index), in any period of twelve months.

1.12.4 Disposal allowed with consent of the Director General

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

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

1.12.5 Consultation with other Licence holders

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

1.12.6 Additional requirements in respect of disposals

In addition to the requirements of Conditions 1.12.1 to Condition 1.12.5, the Licensee shall not without the prior written consent of the Director General (following the disclosure by the Licensee of all material facts) in respect of the Licensed Business:

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- (a) create or continue to permit to remain in effect any mortgage, charge, pledge, lien or other form of security or encumbrance whatsoever, undertake any indebtedness to any other person or enter into any guarantee or any obligation otherwise than:
 - (i) on an arm's length basis;
 - (ii) on normal commercial terms;
- (b) transfer, lease, license or lend any sum or sums, asset, right or benefit to any affiliate or related undertaking of the Licensee otherwise than by way of:
 - (i) a dividend or other distribution out of distributable reserves;
 - (ii) repayment of capital;
 - (iii) payment properly due for any goods, services or assets provided on an arm's length basis and on normal commercial terms;
 - (iv) a transfer, lease, licence or loan of any sum or sums, asset, right or benefit on an arm's length basis, on normal commercial terms and made in compliance with the payment condition;
 - (v) repayment of or payment of interest on a loan not prohibited by subparagraph (a);
 - (vi) payments for group corporation tax relief calculated on a basis not exceeding the value of the benefit received; or
 - (vii) an acquisition of shares or other investments made on an arm's length basis and on normal commercial terms;
- (c) enter into an agreement or incur a commitment incorporating a cross-default obligation which has or could reasonably be expected to have a material effect on the Licensee's ability to carry on the Licensed Business; or
- (d) continue or permit to remain in effect any agreement or commitment incorporating a cross-default obligation subsisting at the date this Condition 1.12.6 takes effect which has or could be reasonably expected to have a material effect on the Licensee's ability to carry on the Licensed Business, save that the Licensee may permit any cross-default obligation in existence at that date to remain in effect for a period not exceeding twelve months from that date, provided that the cross-default obligation is solely referable to an instrument relating to the provision of a loan or

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other financial facilities granted prior to that date and the terms on which those facilities have been made available as subsisting on that date are not varied or otherwise made more onerous.

- (e) the provisions of sub-paragraph (c) and (d) of this paragraph shall not prevent the Licensee from giving any guarantee permitted by and compliant with the requirements of sub-paragraph (a).
- (f) The payment condition referred to in sub-paragraph (b)(iv) is that the consideration due in respect of the transaction in question is paid in full when the transaction is entered into unless either:-
 - (i) the counter-party to the transaction has and maintains until payment is made in full an investment grade issuer credit rating; or
 - (ii) the obligations of the counter-party to the transaction are fully and unconditionally guaranteed throughout the period during which any part of the consideration remains outstanding by a guarantor which has and maintains an investment grade issuer credit rating.

1.12.7 Additional Definitions

In this Condition, the following terms shall have the meanings given to them below:

"cross-default obligation" means a term of any agreement or arrangement whereby the Licensee's liability to pay or repay any debt or other sum arises or is increased or accelerated or could reasonably be expected to be capable of arising, increasing or of acceleration by reason of a default (howsoever such default may be described or defined) by any person other than the Licensee, unless:

- (i) that liability can arise only as a result of a default by a subsidiary of the Licensee; and
- (ii) the Licensee holds a majority of the voting rights in that subsidiary and has the right to appoint or remove a majority of its board of directors.

"disposal" includes any sale, assignment, gift, exchange, lease, licence, the grant of any right of possession, loan, security ,

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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.

"indebtedness"

means all liabilities now or hereafter due, owing or incurred, whether actual or contingent, whether solely or jointly with any other person and whether as principal or surety, together with any interest accruing thereon and all costs, charges, penalties and expenses incurred in connection therewith.

"relevant asset"

means any part of the Network operated from time to time by the Licensee or any gas plant used by the Licensee for purposes connected with the conveyance of gas, and any estate or interest in land required for the utilisation of the Network, gas storage facility or gas plant and shall include intangible assets including patents, copyright, design rights and other similar rights relating to or arising from construction or exploitation of the Network by the Licensee.

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Condition 1.13: Payment of Fees

1.13.1 Licensee to pay annual fee

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

1.13.2 Initial Fee

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

1.13.3 Amount of annual fee

In respect of the year beginning on 1st April 2002 and in each subsequent year, within 30 days of the Director General giving the Licensee notice of the sums due, the Licensee shall pay to the Director General a fee which is the aggregate of the following amounts:

- (a) an amount equal to the proportion which the Director General shall determine in relation to the Licence of the amount estimated by the Director General, according to a method which has previously been disclosed in writing to the Licensee, as likely to be his costs during the coming year in the exercise of his general functions under the Order in relation to the holders of Licences granted under Article 8(1)(a) of the Order;
- (b) an amount which is a proportion as determined by the Director General of the amount estimated by the Director General (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

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it under Article 15 of the Order with respect to the Licence or any other Licence granted under Article 8(1)(a) of the Order; and

- (c) the difference (being a positive or negative amount), if any, between:
- (i) the amount of the fee paid by the Licensee in respect of the year immediately preceding the year in question in relation to the Licence; and
 - (ii) The amount which that fee would have been in respect of that year had the amount comprised therein under Condition 1.13.3(a) (or, where that year commenced on 1st April had the amount comprised therein which was attributable to the matters referred to in that Condition, as determined by the Director General according to a method disclosed in writing to the Licensee) been calculated by reference to the total costs of the Director General, and the proportion thereof actually attributable to the Licence; such total costs being apportioned in each case as determined by the Director General 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 Director General under Conditions 1.13.3(a) shall not in respect of the year ending on 31st March 2002 exceed £300,000 and, in respect of any subsequent year commencing on 1st April 2002 exceed £600,000 adjusted from 1st April 2002 annually by reference to the retail price index.

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Condition 1.14: Notices

1.14.1 Notices

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

Licensee: Bord Gáis Éireann
 Gasworks Road
 Cork
 Republic of Ireland
 Facsimile Telephone Number +353 21 453 4387

Director General: Director General of Gas for Northern Ireland,
 Brookmount Buildings,
 42 Fountain Street,
 Belfast, BT1 5EE
 Facsimile Telephone Number (02890) 311740

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

1.14.2 Receipt

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

- (a) at the actual time of delivery, if delivered personally;
- (b) three (3) working days subsequent to the date of posting, if sent by registered mail;
and

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- (c) 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.

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Condition 1.15: Development Duties

1.15.1 Duty to co-operate with District Councils for Northern Ireland and others

The Licensee shall co-operate with District Councils for Northern Ireland, actual or potential operators of gas distribution pipe-lines and spurs and actual or potential gas suppliers with a view to developing gas supply from the Licensee's transmission pipe-lines. Such co-operation shall include providing District Councils for Northern Ireland, actual or potential operators of gas distribution pipe-line and actual or potential gas suppliers with such information as is at the Licensee's disposal, (other than confidential information the provision of which would or might, in the opinion of the Director General, seriously and prejudicially affect the interests of the Licensee) which would facilitate the development of infrastructure necessary for gas supply along the route of the Licensee's transmission pipe-lines.

1.15.2 Duty to facilitate construction of spurs

The Licensee shall ensure that its transmission pipe-lines are constructed in a manner which facilitates the construction and connection of spurs.

1.15.3 Duty to provide proposals for construction of spurs

- (a) The Licensee shall, within 60 days (or such other time as may be agreed between the Licensee and Director General) of receipt of a request in writing from the Director General, or receipt of any other request in writing submitted with the approval of the Director General, or may at any time on its own initiative, provide proposals for the construction of a spur to any town, customer or group of customers.
- (b) Unless otherwise agreed or specified by the Director General a proposal provided under 1.15.3(a) shall contain the following information:
 - (i) an estimate of the capital cost of the spur;
 - (ii) the proposed route of the spur and termination point which, unless the Director General otherwise directs shall be not more than 5km from a point in the town as designated by the Director General, or of the area comprising the premises occupied by the customer or customers, which are the subject of the proposal;
 - (iii) the proposed length, diameter and capacity of the spur; and

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- (iv) the proposed timescale for construction and anticipated completion.
- (c) Any proposal submitted by the Licensee shall reflect the cost and timing of the construction of a spur in an economic and efficient manner and in accordance with established gas pipe-line engineering and cost control principles.

1.15.4 Right to require re-submission of a proposal

If the Director General by notice to the Licensee rejects a proposal on the grounds that it does not satisfy any of the requirements of Condition 1.15.3(c) or does not contain any of the information required under Condition 1.15.3(b) the Licensee shall, within such period as the Director General may specify in the notice, submit a revised proposal which satisfies in all respects the requirements of Condition 1.15.3.

1.15.5 Right to require construction of spur

- (a) Subject to paragraph (b), at the direction of the Director General or where a third party to whom a proposal has been provided so requests with the approval of the Director General, the Licensee shall proceed to construct a spur in accordance with a proposal submitted under Condition 1.15.3(a) or a revised proposal submitted under Condition 1.15.4 in each case, in accordance with the timetable for construction and completion set out in the proposal;
- (b) The Licensee shall not be required to construct a spur if the cost of construction either separately or in association with the cost of other spurs would prejudice its ability to finance the Licensed Business or would have a material adverse effect on the Licensed Business or would in the Director General's opinion cause the postalised transmission tariff to rise to an extent which would have a material adverse effect on existing gas consumers.

PROPOSED LICENCE

PART 2

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

PROPOSED LICENCE

Condition 2.1: Territorial Scope and the Securing of conveyance of gas within the Licensed Area

2.1.1 Territorial Scope

The Licensee is authorised to convey gas from one place to another in the Licensed Area.

2.1.2 Securing of Conveyance of Gas within the Licensed Area

The Licensee shall use all reasonable endeavours to procure that the North West pipe-line is operational as early as possible in the year 2004 and, subject to the Director General having served notice that postalisation has been achieved within the meaning of Schedule 1, Paragraph 1.2, that the South North pipe-line is operational as early as possible in the year 2006.

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Condition 2.2: Conveyance Charges, Other Terms for the Conveyance of Gas and the Provision of Conveyance Services

2.2.1 Charges to be subject to Revenue Determination Formula

2.2.1.1 The Licensee shall use reasonable endeavours to ensure that in each Formula Year the total conveyance revenue shall not exceed the total allowed conveyance revenue calculated in accordance with the Formula or, at any time when the Formula is not in place, in accordance with the principles set out in Condition 2.2.1.2.

2.2.1.2 The total allowed conveyance revenue for the duration of the revenue recovery period shall reflect the following principles:-

(a) total allowed conveyance revenue shall be calculated to deliver in respect of Allowed Capital Expenditure over the revenue recovery period:

(i) a nominal post tax return on the equity share of funding equal to 15% provided that-

- the debt/equity ratio of financing for the project has been approved by the Director General;

- the equity share of total financing does not exceed 30% of total financing; and

(ii) -the cost of the debt share of funding, provided that:

- the Director General is satisfied that the terms of the debt funding including the interest rate reflect prevailing market rates.

(b) except as otherwise agreed between the Licensee and the Director General the revenue recovery period shall be 25 years from the first operational commencement date;

(c) the total allowed conveyance revenue over the revenue recovery period shall permit the recovery of Allowed Capital Expenditure and Allowed Operating Expenditure determined in accordance with Condition 2.2.2 and Condition 2.2.3;

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- (d) the value of any financial contribution to the cost of development and construction of the North West pipe-line, the South North pipe-line or any spur constructed in accordance with Condition 1.15 whether from public or private resources received by the Licensee shall operate to reduce the total allowed conveyance revenue so that the full value of such financial contribution shall be fully passed through to consumers;
- (e) the Licensee shall be required to notify the Director General of any Supplemental Income and such Supplemental Income shall be taken into account as a deduction from total allowed conveyance revenue.
- (f) entitlement to recovery of Allowed Capital Expenditure and Allowed Operating Expenditure in respect of the North West pipe-line shall only arise from the first operational commencement date and entitlement to recovery of Allowed Capital Expenditure (other than Permitted Development Costs) and Allowed Operating Expenditure in respect of the South North pipe-line shall only arise in the event that the Director General has served notice that postalisation has been achieved and with effect from the second operational commencement date.
- (g) Allowed Capital Expenditure will reflect an adjustment to verified forecast capital expenditure to take account of any difference between actual final capital expenditure and verified forecast capital expenditure, such adjustment to be applied separately to the verified forecast capital expenditure in respect of each of the North West pipe-line and the South North Pipe-line.

2.2.1.3

- (a) The Licensee shall co-operate with the Director General in the development of a revenue determination formula for the calculation of total allowed conveyance revenue, reflecting the principles set out in Condition 2.2.1.2. Subject to the following paragraphs of this Condition 2.2.1.3 the Director General may, following consultation with the Licensee and any other persons likely to be affected by the modification and having considered any representations or objections duly made and not withdrawn, by notice in writing to the Licensee (a "Formula Notice") within 12 months of the date of Grant modify this Condition 2.2 for the purpose of introducing the Formula;
- (b) A modification made under paragraph (a) shall not take effect until the earlier of the expiry of 4 months from the date of service of the Formula

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Notice and the Licensee confirming by notice in writing its acceptance of the Formula Notice.

- (c) The Licensee may before the expiry of 2 months from the date of service of the Formula Notice request the Director General by notice (a “disapplication request”) not to apply the Formula;
- (d) Unless within two months of the date of a disapplication request served in accordance with paragraph (d) the Director General has made a reference to the Competition Commission under Article 15 of the Order relating to the introduction of a revenue determination formula into this Condition 2.2 the modification shall not take effect and the principles set out in Condition 2.2.1.2 shall govern the calculation of total allowed conveyance revenue;
- (e) In the event of a reference to the Competition Commission as specified in paragraph (e) above the modification shall not take effect and unless and until the Competition Commission makes a report including a conclusion that the continuation of Condition 2.2 without modification operates or may be expected to operate against the public interest and the Licence is modified in accordance with the Order pursuant to such report, the principles set out in Condition 2.2.1.2 alone shall apply to determine total allowed revenue; and
- (f) For any period or date specified in this Condition 2.2.1.3 a longer period or later date may be substituted by the Director General with the consent of the Licensee.

2.2.2 Allowed Capital Expenditure

- (a) Allowed Capital Expenditure shall be the sum of:-
 - (i) verified forecast capital expenditure in respect of each or either of the North West pipe-line and the South North pipe-line established in accordance with paragraphs (b) and (c) and subject to adjustment in accordance with paragraphs (d) and (e); and
 - (ii) the agreed forecast cost (subject to any variation agreed with the Director General) of any spurs constructed in accordance with Condition 1.15; and

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- (iii) an appropriate sum in respect of capitalised interest on actual expenditure between date of grant of Licence and first operational commencement date;

less

- (iv) the amount of any financial contribution from public or private resources.

(b) The Licensee may at any time and shall no later than:-

- (i) 18 months after the date of grant of the Licence in respect of the cost of development and construction of the North West pipe-line; and
- (ii) the later of (aa) the date on which the Director General serves notice that postalisation has been achieved and (bb) the date 24 months after the date specified in (i), in respect of the cost of development and construction of the South North pipe-line;

or in each case such later date as the Director General agrees (taking account in particular of exceptional circumstances which could not reasonably have been foreseen by the Licensee), submit a final forecast of the amount and timing of capital expenditure together with any relevant supporting documentation. The Licensee shall provide such further information or explanation as the Director General reasonably requires for the purpose of verifying such final capital expenditure forecast.

(c) The Director General may, following verification, by notice to the Licensee in respect of each such final capital expenditure forecast:

- (i) approve the Licensee's final capital expenditure forecast as the verified forecast capital expenditure; or
- (ii) determine as the verified forecast capital expenditure such amended figure as he considers appropriate;

provided that before making any amendments to the Licensee's final capital expenditure forecast the Director General shall provide details of the amendments and the reasons for them (such reasons to be based on established gas transmission pipe-line engineering and cost control

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principles) and give the Licensee an appropriate period (being not less than 28 days) to comment on them.

- (d) If in respect of either or both the North West pipe-line and the South North pipe-line actual final capital expenditure is greater than verified forecast capital expenditure, the following adjustments will apply:-
- (i) For any difference that is less than or equal to 10% of verified forecast capital expenditure, 75% of such difference will be added to verified forecast capital expenditure.
 - (ii) For any difference that is more than 10% but less than or equal to 20% of verified forecast capital expenditure, 75% of the 10%, and 50% of the remaining element of the difference will be added to verified forecast capital expenditure.
 - (iii) For any difference that is more than 20% but less than or equal to 30% of verified forecast capital expenditure, 75% of the 10%, and 50% of the 10-20%, and 25% of the remaining element of the difference will be added to verified forecast capital expenditure.
 - (iv) For any difference greater than 30% of verified forecast capital expenditure shall be calculated in accordance with (iii) and no additional adjustment in respect of any difference in excess of 30% shall apply.
- (e) If in respect of either or both the North West pipe-line and the South North pipe-line actual final capital expenditure is less than verified forecast capital expenditure, the following adjustments will apply:-
- (i) For any difference that is less than or equal to 10% of verified forecast capital expenditure, 75% of such difference will be deducted from the verified forecast capital expenditure.
 - (ii) For any difference that is more than 10% but less than or equal to 20% of verified forecast capital expenditure, 75% of the 10%, and 50% of the remaining element of the difference will be deducted from verified forecast capital expenditure.
 - (iii) For any difference that is more than 20% of verified forecast capital expenditure, 75% of the 10%, and 50% of the 10-20%, and 25% of

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the remaining element of the difference will be deducted from verified forecast capital expenditure.

- (f) (i) Not later than 3 months after the end of each 12 month period from the date of grant of the Licence up to the first operational commencement date; and
- (ii) not later than 3 months after the end of each Formula Year with effect from the first operational commencement date;

the Licensee shall provide the Director General with its current forecasts of the amount and timing of capital expenditure for the design, development and construction of the North West pipe-line and the South North pipe-line together with details of the timing and amount of total actual capital expenditure in respect of each of the North West pipe-line and the South North pipe-line in the twelve month period or Formula Year in question and confirmation of the cumulative total actual capital expenditure.

- (g) (i) As soon as reasonably possible after completion of the North West pipe-line the Licensee shall submit details of the cumulative total actual capital expenditure in respect of design development and construction of the North West pipe-line and such cumulative total actual capital expenditure shall, subject to verification by the Director General, be the actual final capital expenditure for the North West pipe-line.
- (ii) As soon as reasonably possible after completion of the South North pipe-line the Licensee shall submit details of the cumulative total actual capital expenditure in respect of design, development and construction of the South North pipe-line and such cumulative total actual capital expenditure shall, subject to verification by the Director General, be the actual final capital expenditure for the South North pipe-line.

2.2.3 Allowed Operating Expenditure

- (a) Allowed Operating Expenditure for the purpose of this Condition and the determination of total allowed conveyance revenue in accordance with the

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principles or the Formula shall be the operating expenditure which the Director General deems necessary or appropriate for the development, construction, maintenance and operation of the North West pipe-line and the South North pipe-line to provide transmission services in an economically efficient and safe manner and in accordance with established gas transmission pipe-line engineering and cost control principles given forecast development and throughput, established in accordance with the remaining paragraphs of this Condition 2.2.3.

- (b) The Licensee shall, not later than 12 months before the first operational commencement date, submit a forecast of annual operating expenditure for each Formula year of the revenue recovery period for each of the North West and South North pipe-lines.
- (c) If the Director General following verification approves the forecast of annual operating expenditure submitted under paragraph (b) that forecast shall, subject to subsequent adjustment in accordance with paragraphs (e) and (f), be the Allowed Operating Expenditure.
- (d) If the Director General following verification and consideration of such further information as may be submitted by the Licensee considers that the Licensee's forecast should be approved subject to modification the amended sums notified to the Licensee by the Director General shall, subject to subsequent adjustment in accordance with paragraphs (e) and (f), be the Allowed Operating Expenditure.
- (e) The Licensee shall submit in respect of the remaining term of the revenue recovery period commencing on the fifth anniversary of the first operational commencement date, and at five yearly intervals thereafter, its current forecast of annual operating expenditure for the remainder of the term of the Licence. Such forecast shall be submitted to the Director General by no later than 15 months before the start of the first Formula Year to which the forecasts apply. The Director General may amend the Allowed Operating Expenditure for the remaining term of the revenue recovery period to take account of such current forecast.
- (f) A Special Operating Expenditure Forecast Review may be requested at any time by either the Licensee or the Director General if the actual operating expenditure in any Formula Year differs from the most recently agreed

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forecast by more than 15% and the Director General may, following such a review, substitute an amended figure as the Allowed Operating Expenditure for the remaining term of the revenue recovery period.

2.2.4 Forecast Volumes

The Licensee shall submit a five-year forecast of annual volumes of gas to be conveyed at least 12 months before the date upon which gas first flows through the North West pipe-line and every five years thereafter.

2.2.5 Requirements relating to Estimates

The Licensee shall in submitting any forecasts or estimates required to be submitted under Condition 2.2 use all reasonable endeavours to ensure that it provides the best forecasts or estimates based on the most comprehensive, current information obtainable at the time of submission.

2.2.6 Allowed revenue after expiry of Revenue Recovery Period

The Licensee shall in setting its charges for the conveyance of gas in the Network for each Year commencing after the expiry of the revenue recovery period do so in accordance with such arrangements agreed by the Director General having regard to the principle that the Licensee shall be entitled to receive by way of conveyance charges:

- (a) the costs incurred by the Licensee deemed necessary or appropriate by the Director General in administering, maintaining and operating the Network for each conveyance service; and
- (b) an appropriate return as agreed between the Director General and the Licensee to meet the need from time to time to expand, reinforce and renew the system with respect to the provision of conveyance services.

2.2.7 Determination of conveyance charges by the Licensee

The Licensee shall establish the methods and principles upon which conveyance charges shall be determined for gas suppliers wishing and entitled to use the Network and, provided the Director General's approval has been obtained in accordance with Condition 2.2.8, the Licensee shall publish the same in accordance with Condition 2.2.9.

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The determination of charges will recognise any obligations the Licence may enter into with end customers (e.g. volume to be supplied, capacity booked).

2.2.8 Director General's approval required for conveyance charges and other terms for the conveyance of gas

The Director General's approval is required for conveyance charges and other terms for the conveyance of gas.

No later than 28 days before it intends to publish its statement under Condition 2.2.9 the Licensee shall notify the Director General of the contents of that statement, and seek the approval of the Director General on the conveyance charges and other terms for the conveyance of gas to be included in the statement. The Licensee shall:

- (a) provide the Director General with such information as will enable the Director General to be reasonably satisfied that the methodology, principles and effect of the conveyance charges are consistent with the terms of Conditions 2.2.1; 2.2.2 and 2.2.3.
- (b) provide the Director General with an explanation of the other terms for conveyance set out in the statement.

The Director General may require such changes to the charges and other terms for conveyance as he thinks desirable or necessary before giving his approval. The Director General shall notify the Licensee of his approval of the conveyance charges and other terms in writing.

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

Subject to Condition 2.2.10:

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

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

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

and subject to Condition 2.2.10(b) such statement shall clearly distinguish cases and classes of cases of gas supplier for whom the conveyance charging methodology may result in differing conveyance charges.

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

The Licensee shall:

- (a) unless the Director General otherwise consents, not charge for the conveyance of gas in the Network during any year or apply other terms for the conveyance of gas on any basis other than contained in its statement of conveyance charges published under Condition 2.2.9 in respect of that year;
- (b) not show any undue preference towards or undue discrimination against any gas supplier or case or classes of cases of gas supplier in the conveyance charges made or other terms for the conveyance of gas applied in relation to the Network; and
- (c) within 28 days of receiving a request for the quotation of conveyance charges for specified conveyance services by a gas supplier, provide the gas supplier with a specific statement of the conveyance charges and other terms for the conveyance of gas applicable to the conveyance services for which the gas supplier requested a quotation;

and for the purposes of Condition 2.2.10(c) and the Licensee's obligation to provide a specific statement of conveyance charges, a request for the quotation of conveyance charges for specified conveyance services shall be treated as such if it is in such form as the Licensee can reasonably be expected to provide a specific statement of conveyance charges in return.

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

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

2.2.12 Determination by Director General of the right of gas suppliers to have gas conveyed in the Network

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

- (a) if the Director General so determines in accordance with the conveyance charges and other terms for the conveyance of gas (including the Network Code), and where applicable the Licensee's connection charges, where the gas supplier is willing to accept the same and the Licensee has refused to provide such conveyancing services; and
- (b) notwithstanding the provisions of Condition 2.2, in accordance with a price determined by the Director General allowing the Licensee to obtain appropriate recompense in accordance with any then applicable charging regime of the Licensee approved by the Director General and then in force and, where applicable, the Licensee's connection charges, and on such other terms as the Director General reasonably considers appropriate in all the circumstances, including terms as to the Network Code, or as may establish a Network Code, or modify or amend a Network Code, where the Licensee's conveyance charges and other terms for the conveyance of gas and/or the Network Code:
 - (i) are insufficient to the reasonable satisfaction of the Director General for the conveyance services sought by the gas supplier;
 - (ii) the Licensee and gas supplier have been unable to reach agreement on appropriate terms; and
 - (iii) the gas supplier is willing to accept the Director General's determination;

provided that for the purposes of this Condition 2.2.12 the Director General is satisfied that any determination would not prejudice the efficient and safe operation of the Network or the conveyance by the Network of:

- (c) the quantities of gas which the Licensee requires or may reasonably be expected to require to be conveyed by the Network to enable the Licensee to comply with the conditions of the Licence; and

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- (d) the quantities of gas of any person who has a right to have gas conveyed by the Network is entitled to require to be so conveyed in exercise of that right.

2.2.13 Additional duty to provide information

The Licensee shall advise the Director General by a report provided to the Director General of:

- (a) the number of separate arrangements with gas suppliers for gas conveyancing services provided; and
- (b) the volumes of gas taken from the Network by gas suppliers.

2.2.14 Additional Definitions and interpretation

For the purpose of this Condition:-

(a):

“actual final capital expenditure”	means the cumulative total actual capital expenditure in respect of each or either as the case may be of the North West pipe-line and South North pipe-line established in accordance with 2.2.2(g);
“Allowed Capital Expenditure”	means the amount calculated as set out in Condition 2.2.2(a);
“Allowed Operating Expenditure”	means the forecast operating expenditure approved or determined by the Director General in accordance with Condition 2.2.3;
“Formula”	means a formula for the determination of total allowed conveyance revenue reflecting the principles set out in Condition 2.2.1.2 which the Director General introduces into the Licence in accordance with Condition 2.2.1.3;
“revenue recovery period”	means the period of twenty five years commencing on the first operational commencement date;
“Supplemental Income”	means all revenue arising in the hands of the Licensee from the exploitation of the North West pipe-line, the South North pipe-line, and spurs other than charges arising directly from the provision of conveyance services and

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shall include income from the conveyance of gas through the South North pipe-line outside Northern Ireland and any other revenue arising from the exploitation by the Licensee of the Network assets;

“total allowed conveyance revenue”

means the maximum amount which the Licensee is permitted to recover in any Formula Year through conveyance charges under the Formula, or at any time when the Formula is not in place, in accordance with the principles set out in Condition 2.2.1.2;

“total conveyance revenue”

means the total conveyance charge revenue received by the Licensee in any Formula Year;

“verified forecast capital expenditure”

means the capital expenditure determined by the Director General to be required for the economically efficient design development and construction of the North West pipe-line and South North pipe-line and subject to any conditions imposed under Article 35 of the Order established in accordance with Condition 2.2.2;

“Permitted Development Costs”

means such efficiently incurred costs of designing and developing the South North pipe-line as the Director General determines should be recoverable if post-alisation has not been achieved by 31st December 2006.

- (b) Allowed Capital Expenditure, Allowed Operating Expenditure, Permitted Development Costs, Supplemental Income and associated expressions may, where appropriate, include actual or forecast expenditure or revenue incurred or earned outside Northern Ireland.

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Condition 2.3: Connection Charges and Obligation to permit a Connection

2.3.1 Statement of connection charges and terms for connection

Subject to Conditions 2.3.2 and 2.3.3, the Licensee shall not less than three months before the first operational commencement date give the Director General a statement for his approval showing the methods by which and the principles on which charges are to be determined by the Licensee, for:

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

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

2.3.2 The statement and cases and classes of cases

The statement given by the Licensee under Condition 2.3.1 shall:

- (a) subject to Condition 2.3.6, clearly distinguish cases and classes of cases of persons for whom the Licensee proposes different methods or principles for connection; and
- (b) in respect of any such case or class of case, show that element of connection costs the Licensee proposes to recover by way of conveyance charges to gas suppliers.

2.3.3 The statement to give likely indication of costs

The statement given under Condition 2.3.1 shall where practicable indicate for the Director General's information the costs likely to arise in respect of work done and materials used in connecting any premises or pipe-line system or meters not owned by it and the Licensee shall:

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

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

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

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

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

2.3.5 Connection charges and terms for connection

The Licensee shall:

- (a) Not charge for a connection of premises or any pipe-line system to the Network on any basis or establish other terms for the connection on any basis other than that contained in the statement published under Condition 2.3.1.
- (b) Within 28 days of receiving a request for a quotation of connection charges covered by the statement published under Condition 2.3.1 provide the person requesting the quotation with a specific statement of the connection charges and other terms of connection applicable to the request for a quotation.

And for the purposes of Condition 2.2.3(b) and the Licensee's obligation to provide a specific statement of connection charges, a request for the quotation of connection charges shall be treated as such if it is in such form as the Licensee can reasonably be expected to provide specific statement of connection charges in return.

2.3.6 Prohibition on undue discrimination

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The Licensee shall not show any undue preference towards or undue discrimination against any person or cases or classes of cases of person seeking a connection of premises to the Network or any person who operates or proposes to operate a pipe-line system in relation to the connection of that system to the Network.

2.3.7 Revising connection charges

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

2.3.8 Explanation of connection charging methodology for introducing gas to the Network

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

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

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

2.3.9 Director's consent required for charges and other terms for introducing gas to Network and the prohibition on undue discrimination

The Licensee shall:

- (a) not charge for a connection to introduce gas to the Network on any basis or on any other terms without the consent of the Director General;
- (b) not show any undue preference towards or undue discrimination against any persons seeking a connection to introduce gas to the Network.

2.3.10 Publication of connection charge statements

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The Licensee shall:

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

2.3.11 Interpretation and construction

References in this Condition to:

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

2.3.12 Obligation to make a connection

- (a) The Licensee shall not refuse a request for connection to the Network where the person seeking the connection is willing to pay the Licensee's charges for connection and comply with the Licensee's other terms for connection, including in relation to compliance with any technical and safety criteria contained in the Network Code.
- (b) Where the Licensee refuses a request for connection to the Network he shall provide duly substantiated reasons for doing so.

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Condition 2.4: Network Code

2.4.1 The relevant objective

The Licensee shall no later than six months before the first operational commencement date submit to the Director General a statement of its proposed arrangements for the conveyance of gas, in addition to the matters covered by Conditions 2.2 and 2.3, which will facilitate the achievement of the "relevant objective", that is to say:

- (a) the efficient and economic operation of the Network; and
- (b) subject thereto:
 - (i) compliance with the Licensee's other obligations under this Licence Document; and
 - (ii) subject to Condition 2.4.1(b)(i) effective competition between gas suppliers using the Network;

and put such arrangements in place except as the Director General otherwise consents.

2.4.2 The Network Code

The Licensee shall:

- (a) prepare and provide the Director General with a "Network Code", that is to say a document setting out the terms (except to the extent governed by Conditions 2.2 and 2.3) of the arrangements established under Condition 2.4.1 no later than three months prior to the first operational commencement date on which it will enter into such arrangements with gas suppliers for the conveyance of gas;
- (b) put such Network Code in place except as the Director General otherwise consents; and
- (c) except in so far as the Director General consents to the Licensee doing so, not enter into any arrangements for the conveyance of gas except in accordance with the provisions of the Network Code applicable from time to time to the circumstances of the case.

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

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may, to the extent that the term so provides, refer to the Director General for determination any question as to whether a manner in which the Licensee proposes to implement the term would secure that objective.

2.4.4 Modification of the Network Code

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

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

2.4.5 Modification Rules

The Licensee shall:

- (a) prepare "the modification rules", that is to say a document setting out the terms of the procedures established under Condition 2.4.4, and shall furnish the Director General with a copy of the modification rules;
- (b) not make any modification to the modification rules except:

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- (i) after consulting relevant gas suppliers;
 - (ii) after furnishing the Director General with a report on such consultation and consideration; and
 - (iii) with the consent of the Director General; and
- (c) furnish the Director General with a copy of any modification so made.

2.4.6 Prohibition on irregular modification

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

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

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

2.4.7 Role of Director General in modifications

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

- (a) refer for determination by the Director General any question as to whether the representations or objections by any relevant gas supplier or other person with respect to the proposal have been properly considered in accordance with those rules;
- (b) as soon as reasonably practicable, give notice to the Director General:
 - (i) giving particulars of the proposal;
 - (ii) where the proposal is made by a relevant gas supplier, giving particulars of any alternative proposal by the Licensee to modify the Network Code in respect of the same matter;
 - (iii) giving particulars of any representations or objections by a relevant gas supplier or other person with respect to those proposals;
 - (iv) stating whether, in its opinion, any proposed modification should or should not be made;

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- (v) stating the factors which, in its opinion, justify making or not making a proposed modification; and
- (vi) giving such further information as may be prescribed by the modification rules; and
- (c) comply with any direction given by the Director General to make a modification to the Network Code in accordance with a proposal described in a notice given to the Director General under sub-paragraph (b) which, in the opinion of the Director General will, as compared to the existing provisions of the Network Code or any alternative proposal, better facilitate the achievement of the relevant objective.

2.4.8 Publication of Network Code

The Licensee shall:

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

2.4.9 Director General to determine material affect on persons of transportation arrangements

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

2.4.10 Reasons for refusal of access

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

PROPOSED LICENCE

Condition 2.5: Provision and Return of Meters

2.5.1 Provision of Meters

The Licensee shall comply with any reasonable request by any gas supplier wishing to supply gas to premises directly connected to the Network to provide and install at those premises a gas meter belonging to the Licensee being of an appropriate type, specified by the gas supplier, if a meter of that type is readily available to the Licensee and the gas supplier agrees to pay the Licensee's charges in respect of the provision and installation of the meter, such charges to have been determined using such principles and methodology as shall have been agreed with the Director.

2.5.2 Installation of Gas Suppliers' Meter

The Licensee shall comply with any reasonable request by any gas supplier wishing to supply gas to premises to install at those premises a gas meter of an appropriate type belonging to the gas supplier (or the owner or occupier of the premises) if the gas supplier agrees to pay the Licensee's charges in respect of the installation of that meter and any subsequent disconnection.

2.5.3 Prohibition of undue discrimination

The Licensee shall not show any undue preference towards or undue discrimination against any gas supplier seeking the provision and/or installation of a gas meter under this Condition 2.5.

2.5.4 Disconnection of Meters

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

PROPOSED LICENCE

2.5.5 Safe Custody of Meters

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

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

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

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

2.5.6 Provision of Information

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

PROPOSED LICENCE

Condition 2.6: Conduct of Transportation Business

2.6.1 Conduct of business activities

The Licensee shall conduct its business activities relating to the conveyance of gas in the manner best calculated to secure that neither:

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

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

2.6.2 Disclosure of information

The Licensee shall use its best endeavours to secure that no information relating to or derived from its business activities relating to the conveyance of gas is disclosed for the benefit or used for the purposes of a trading business of the Licensee or any affiliate or (so far as the Licensee can require it) related undertaking of the Licensee or company of which the Licensee is an affiliate or related undertaking.

2.6.3 Exempt information

Condition 2.6.2 shall not extend to:

- (a) information specified in any consent to non-compliance with that Condition given by the Director General to the Licensee; or
- (b) information relating to a particular Licence or exemption holder which that party has consented in writing to being used or disclosed in accordance with the terms of that consent; or
- (c) information which it is necessary for the trading business to use or disclose in order to enter into and comply with arrangements for the conveyance of gas; or
- (d) information which is in the public domain (other than as a result of contravention by the Licensee of any Condition of the Licence); or

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- (e) information which is required to be disclosed pursuant to a Condition of the Licence.

2.6.4 Additional definition

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

PROPOSED LICENCE

Condition 2.7: Emergency Services and Obligations

2.7.1 Emergency telephone service

The Licensee shall arrange for:

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

2.7.2 Prevention of gas escapes

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

- (a) the prevention is effected, so far as it is reasonably practicable and safe to do so:
 - (i) by carrying out any appropriate minor appliance repairs; and
 - (ii) by a person adequately trained in recognising the signs of leakage of carbon monoxide and instructed to report any such signs to the owner or occupier of the premises; and

2.7.3 Application of Condition 2.7.4

Condition 2.7.4 shall apply in relation to:-

- (a) non-domestic consumers who are supplied with gas on terms on which the supply of gas may be interrupted or reduced in pursuance of directions given under section 2(1)(b) of the Energy Act 1976, and

PROPOSED LICENCE

- (b) the premises of such non-domestic consumers.

2.7.4 Priority for maintenance of supply

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

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

give priority to the maintenance of the supply of gas to consumers on the priority list required by Condition 2.7.6 and the conveyance of gas to their premises.

2.7.5 Consultation with the Director General

Where the reasons of safety referred to in Condition 2.7.4 relate to the whole or a substantial part of Northern Ireland or there is a significant shortage of gas affecting the whole or a substantial part of Northern Ireland, the Licensee shall consult with the Director General on the taking of any such steps as are mentioned in Condition 2.7.6(a) or (b) and, so far as is reasonably practicable in the circumstances having regard to the over-riding importance of safety, shall do so before taking any such steps.

2.7.6 Priority List

The Licensee shall:-

- (a) unless it has done so before being licensed, establish a list of non-domestic consumers who should be given priority as respect the maintenance of a supply of gas and the maintenance of the conveyance of gas to their premises, and
- (b) review, and so far as appears appropriate, amend the list from time to time, after consultation with relevant gas suppliers, and, without prejudice as aforesaid, shall conduct such a review and make any such amendments on being directed so to do by the Director General.

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And, if the Director General has designed criteria to be taken into account when such a list is established or revised, the Licensee shall so take account of those criteria.

2.7.7 Determination by the Director General

Any questions arising under this Condition as to whether a particular non-domestic consumer satisfies the designed criteria shall be determined by the Director General.

PROPOSED LICENCE

Condition 2.8: Maintenance of Records

2.8.1 Recorded information

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

- (a) every premises and pipe-line system to which gas has been conveyed by means of the Network during the relevant period;
- (b) every third party who has arranged with the Licensee for gas to be conveyed by means of the Network at any place referred to in Condition 2.8.1(a) during the relevant period;
- (c) insofar as the Licensee has been furnished with the information, in respect of each premises referred to in Condition 2.8.1(a) every gas supplier who has supplied during the relevant period gas which has been conveyed to those premises by means of the Network;
- (d) insofar as the Licensee has been furnished with the information, the ownership of every meter first installed after the outlet of the final control valve of the service pipe at any premises referred to in Condition 2.8.1(a) for ascertaining the quantity of gas conveyed to the premises by means of that system during the relevant period;
- (e) any information contained in a notice given to the Licensee under any regulations made by the Director General under Article 22 of the Order during the relevant period; and
- (f) any information which has been provided to the Licensee by any other Licensee or exemption holder whether directly or indirectly pursuant to the conditions of his Licence or exemption.

2.8.2 Additional definition

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

PROPOSED LICENCE

Condition 2.9: Powers of Licensee under Article 13 of the Order

2.9.1 The provisions of:

(a) Schedule 2; and

(b) Schedule 3;

of the Order shall apply to the Licensee.

PROPOSED LICENCE

Condition 2.10: Network Forecasts

2.10.1 Network Forecasts

The Licensee shall comply with a direction given by the Director General to prepare a statement in such form as may be specified in the direction giving, for the year commencing with the first operational commencement date and each year thereafter, with respect to each of the succeeding years for the remaining term of this Licence such information as to forecasts of:

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

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

2.10.2 Revised Network forecasts

Except in so far as the Director General consents to the Licensee not doing so, the Licensee shall, on an annual basis, prepare a revision of any statement prepared under Condition 2.10.1 so as to ensure that, so far as reasonably practicable, the information in the revised statement is up to date.

2.10.3 Provision and Publication of forecasts

The Licensee shall, subject to any requirement to comply as is appropriate with the listing rules (within the meaning of Part IV of the Financial Services Act 1986) of the Stock Exchange and with Condition 2.10.4:

- (a) furnish the Director General with a copy of the statement prepared under Condition 2.10.1 and of each revision of the statement prepared under Condition 2.10.2;
- (b) in such form and manner as the Director General may direct, publish a description of the statement and of each revision; and

PROPOSED LICENCE

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

2.10.4 Particular interests

In complying with the requirements of Condition 2.10.3(b) and (c), the Licensee shall have regard to the need for excluding, so far as practicable:

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

2.10.5 Determination by Director General of Particular interests

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

PROPOSED LICENCE

SCHEDULE 1

Licensed Area for the conveyance of gas

1.1 Subject to Paragraphs 1.2 and 1.3 and 1.4 the Licensed Area from time to time shall comprise the land at and within the border of Northern Ireland in, on or over which:

- (a) the North West pipe-line and South North pipe-line are situated or are to be situated; and
- (b) any spurs which:
 - (i) the Director General has directed the Licensee to construct under Condition 1.15.5(a); and
 - (ii) the Licensee will own and or operateare situated or are to be situated.

1.2 If the South North pipe-line is not operational by a date 24 months after the later of:

- (a) the Director General (or the Department) serving notice on the Licensee that postalisation has been achieved;
- (b) the Department serving notice on the Licensee that all conditions associated with the provision of financial assistance to the Licensee by the Department have been fulfilled; and
- (c) the first operational commencement date,

the Director General may at any time thereafter by not less than 30 days' notice to the Licensee modify the Licensed Area specified in Paragraph 1.1 so as to exclude the route of the South North pipe-line provided that the Director General may at any time substitute a longer period or agree a later date than that specified above where reasonably satisfied that exceptional circumstances which could not have been reasonably foreseen by the Licensee have prevented, or could reasonably be expected to prevent, the South North pipe-line from becoming operational within the time scale specified.

For the purpose of this paragraph 1.2 postalisation shall be considered to be achieved at the commencement of the first tariff period in respect of which a common tariff for the conveyance of gas through transmission pipe-lines in Northern Ireland has been determined.

PROPOSED LICENCE

1.3 If the South North pipe-line is not operational by 31st December 2008 the Director General may at any time thereafter by not less than 30 days' notice modify the Licensed Area specified in Paragraph 1.1 so as to exclude the route of the South North pipe-line.

1.4 If the Director General refuses consent under Article 35 of the Order for the execution of works for the construction of the South North pipe-line he may at any time thereafter by not less than 30 days' notice to the Licensee modify the Licensed Area specified in Paragraph 1.1 so as to exclude the route of the South North pipe-line.

PROPOSED LICENCE

SCHEDULE 2

Right of Director General to Revoke Licence

1. Circumstances allowing revocation

1.1 The Director General may at any time revoke the Licence by not less than 30 days' notice to the Licensee:

- (a) if the Licensee agrees in writing with the Director General that such Licence should be revoked; or
- (b) if any amount payable under Condition 1.13 is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Director General 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 19 of the Order) or with a Provisional Order (within the meaning of Article 19 of the Order) which has been confirmed under Article 19 of the 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 and such failure is not rectified to the satisfaction of the Director General within three months after the Director General has given notice of such failure to the Licensee, provided that no such notice shall be given by the Director General before the expiration of the period within which an application under Article 21 of the 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 comply with any order made by the Secretary of State under Sections 56 or 73 of the Fair Trading Act 1973; or
- (e) if the Licensee:
 - (i) is unable to pay its debts (within the meaning of Article 103(1) or (2) of the Insolvency (Northern Ireland) Order 1989, but subject to Paragraph 4 of this Schedule 2) or if any voluntary arrangement is proposed in relation to it under Article 14 of that Order or if it enters into any scheme of arrangement (other

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than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Director General); or

- (ii) has a receiver (which expression shall include an administrative receiver within the meaning of Article 5(1) of the Insolvency (Northern Ireland) Order 1989) of the whole or any material part of its assets or undertaking appointed; or
 - (iii) has an administration order under Article 21 of the Insolvency (Northern Ireland) Order 1989 made in relation to it; or
 - (iv) passes any resolution for winding up other than a resolution previously approved in writing by the Director General; or
 - (v) becomes subject to an order for winding up by a court of competent jurisdiction; or
- (f) if at any time the Licensee intentionally or recklessly fails to notify the Director General of a change in control as soon as practicable after such change in control should have occurred; or there has been a change in control notified by the Licensee and in either case:
- (i) the Director General serves notice on the Licensee stating that the Director General 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
- (g) if the Licensee is convicted of having committed an offence under Article 46 of the Order; or
- (h) if the Director General refuses consent under Article 35 of the Order for the execution of works for the construction of the North West pipe-line.

2. **Revocation if the Licensee fails to provide satisfactory evidence that it has secured**

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an adequate contract for the underwriting of the costs of North West pipe-line

2.1. If within nine months of the grant of the Licence, or such longer period as the Director General may agree with the Licensee, the Licensee fails to provide the Director General and the Department with satisfactory evidence that it has secured an adequate contract for the underwriting of the costs of the North West pipe-line the Director General may serve a notice on the Licensee setting out the reasons for his view that the Licensee has failed to fulfil this obligation and requiring the Licensee to provide such further evidence as he deems necessary within such period (being not less than 30 days) as he deems appropriate. In assessing whether the contract is adequate the Director General and the Department will take into account:

- (a) the financial strength of the undertaking which has agreed to underwrite the costs of the North West pipe-line; and
- (b) the proposed level of guaranteed revenue resulting from the contract.

2.2 Where the Licensee fails to comply with the requirements of a notice issued under Condition: 2.1 within the time specified in the notice the Director General may at any time thereafter revoke the Licence by not less than 30 days' notice to the Licensee.

3. **Revocation if the North West pipe-line is not operational by a specified date or the Licensee ceases to carry on the licensed business**

3.1 The Director General may at any time by not less than 30 days' notice to the Licensee revoke the Licence if:

- (a) the North West pipe-line is not operational by 31st December 2004; or
- (b) the Licensee has not commenced carrying on its business in the conveyance of gas within 3 months of the date specified in (a) or thereafter ceases for a period of 3 months to carry on its business in the conveyance of gas; provided that the Director General may at any time substitute a later date or a longer period for any date or period specified in this paragraph where reasonably satisfied that exceptional circumstances which could not have been reasonably foreseen by the Licensee have prevented, or could reasonably be expected to prevent, the carrying on of the relevant business.

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

4.1 The Licensee shall acquire ownership of the relevant assets (as the same are defined in Condition 1.12.6) required for the conduct of its Licensed Business and save as is

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permitted under Conditions 1.11 and 1.12, if the Licensee does not have ownership of the relevant assets required for the conduct of its Licensed Business under the Licence, then the Director may at any time by not less than 30 days' notice to the Licensee revoke the Licence for such Licensed Business.

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

5. **Licensee's deemed ability to pay its debts**

- 5.1 For the purposes of paragraph 1(e)(i) of this Schedule 2, Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 shall have effect as if for "750" there was substituted "250,000" or such higher figure as the Director General may from time to time determine by notice in writing to the Licensee.

- 5.2 The Licensee shall not be deemed to be unable to pay its debts for the purposes of paragraph 1(e)(i) of this Schedule 2 if any such demand as is mentioned in Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 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 Director General under paragraph 1 of this Schedule 2.

6. **Additional definition**

For the purposes of paragraph 1(f) 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".