

## **Acquisition of Phoenix Transmission by Northern Ireland Energy Holdings**

### **Outcome Paper**

**April 2008**

#### **1.0 Summary**

- 1.1 The recent completion of the acquisition of the regulated gas transmission utility, Phoenix Natural Gas Limited (“PNG”) by Northern Ireland Energy Holdings (“NIEH”) will deliver financial benefits to the Northern Ireland gas customers in the region of £25 million over 40 years<sup>1</sup> - approx £23 million due to the company being 100% debt financed (as opposed to equity financed) and approx £2 million as a result of reduced operating costs.
- 1.2 These benefits have been facilitated by the Utility Regulator’s decision to grant Phoenix Natural Gas Limited a new licence which was granted on 31<sup>st</sup> March 2008. This licence is attached in Annex 1.

#### **2.0 Background**

- 2.1 The Utility Regulator issued a consultation paper<sup>2</sup> on 27<sup>th</sup> June 2007 seeking responses on issues raised by the proposed acquisition of the regulated gas transmission utility, Phoenix Natural Gas Limited (“PNG”) by a subsidiary of a not-for-dividend 100% debt financed company, Northern Ireland Energy Holdings Limited (“NIEH”). A decision paper<sup>3</sup> was then issued on 5<sup>th</sup> October 2007 setting out the responses received to the consultation and the Utility Regulator’s decision on the issues raised.
- 2.2 These papers were in addition to the consultation paper<sup>4</sup> in January 2007 and position paper<sup>5</sup> in April 2007 which dealt with the licencing options and the most suitable option going forward.
- 2.3 Following the recent completion of the acquisition this paper sets out the Utility Regulator’s final analysis of the deal from the perspective of the Northern Ireland gas consumer including our approval of the licencing arrangements necessary for the acquisition, our financial analysis on the benefits of the acquisition and how we plan to monitor the risks of the movement from an equity financed model to a mutualised model.
- 2.4 The existing Phoenix distribution and supply businesses intend to retain the ‘Phoenix’ brand-name, and therefore, Phoenix Transmission has been renamed

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<sup>1</sup> Net Present Value calculation based on a 3.5% discount rate

<sup>2</sup> Sale of Phoenix Natural Gas Limited - Proposed Acquisition by Northern Ireland Energy Holdings Limited

<sup>3</sup> Proposed Acquisition of Phoenix Transmission by Northern Ireland Energy Holdings - Utility Regulator Decision Paper

<sup>4</sup> Sale of Phoenix Transmission Business

<sup>5</sup> Phoenix Transmission Licence - Utility Regulator Position Paper

“Belfast Gas Transmission Limited”. For clarity, in the remainder of this paper we refer to Belfast Gas Transmission Limited (“BGTL”) as being the new licence holder.

- 2.5 The Utility Regulator has assessed the transfer of ownership against its legal duties as outlined in the Energy (Northern Ireland) Order 2003. In relation to its gas functions, the Utility Regulator’s principal objective is to promote the development and maintenance of an efficient, economic and coordinated gas industry in Northern Ireland. A critical question therefore faced by the Utility Regulator throughout the process has been, whether the interests of consumers are prejudiced by moving from the equity financed model of ownership to a new Company Limited by Guarantee ownership structure. In analysing any potential risks to consumers, the Utility Regulator has had regard to the extent of the compensating benefits for consumers. It should be noted that the Utility Regulator has previously analysed these issues in 2005 for PTL<sup>6</sup> and concluded that in those circumstances, the benefits to customers outweighed the risks.

### **3.0 Acquisition Structure**

- 3.1 The acquisition by NIEH was completed on 31<sup>st</sup> March 2008 under the following financial structure:

- i. Index Linked Wrapped Bond
- ii. 40 Year Tenor
- iii. 2% Increasing Profile

In our October decision paper we set out why we were in support of each of these decisions.

- 3.2 The total amount of debt raised by NIEH in order to complete the acquisition was £109 million which included reserves of £4.5m.
- 3.3 The final rate achieved from the bond markets was 2.207%. In addition to this it was decided to pay the monoline<sup>7</sup> fee over the 40 year period as opposed to a one off fee. This fee amounts to 0.18% therefore the final rate of return for BGTL is 2.387%.

### **4.0 Licencing Arrangements and Associated Regulatory Documents**

- 4.1 To enable the acquisition to be completed the Utility Regulator approved the grant of a new licence to BGTL. This licence can be viewed in Annex 1.
- 4.2 As outlined in our January consultation paper and April position paper, due to the fact that the PTL licence has performed well since it was granted in 2005,

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<sup>6</sup> The Proposed Company Structure of Northern Ireland Energy Holdings Limited – Consultation and Outcome Papers

<sup>7</sup> Monoline insurers will guarantee the repayment of the bond if the issuer defaults.

delivering significant benefits for NI gas consumers we decided to use this licence as a template for the new BGTL conveyance licence with some minor amendments.

- 4.3 As well as the grant of the licence, the Utility Regulator has approved the BGTL Direction, Authority Comfort Letter and Security Consent Letter.

## **5.0 Benefits of Acquisition**

- 5.1 As illustrated in the decision paper, due to the BGTL required revenue being lower than the Phoenix Transmission required revenue, the immediate benefit of the acquisition has been a reduction in the forecast Postalised Tariff for 2007/08 from £9.6m to £4.9m. This has had the effect of reducing the forecast capacity and commodity charge for 2007/08 by circa 12%.

- 5.2 In addition to the one-off benefits, now that we know the rate of return we are in a position to calculate the long term benefits of moving to a mutualised model by comparing the opening asset value of approx £98 million financed at 7.26%<sup>8</sup> until 30<sup>th</sup> September 2024 compared to £109 million financed at 2.387% over 40 years. The NPV of this equates to a benefit in the region of £23 million over 40 years.

- 5.3 As well as the capital savings that result from the lower rate of return, we estimate operating cost savings to be in the region of £300,000 per annum which equates to NPV savings to gas transmission consumers of approximately £6 million. The reduced size of the Phoenix group as a result of the sale of the transmission asset may partially offset some of this gain through reduced economies of scale feeding through to higher unit prices in the distribution business. However we feel that this will be significantly less than £300,000 per annum, and any such increase is offset by the inclusion of Phoenix 7 bar pipelines in the transmission Regulatory Asset Base.

- 5.4 On the basis of this we estimate the net operating expenditure savings to all gas customers to be circa £100,000 per year which equates to NPV savings in the region of £2 million over the 40 years. We see these net operating expenditure benefits being as a result of efficiencies arising from there being one maintenance contract for SNIP and the Belfast Gas Transmission Pipeline as opposed to two, fewer postalisation administration costs and there being one management team governing the PTL and BGTL network codes and licences rather than two which will also result in fewer consultancy costs.

- 5.5 The total NPV savings to gas customers is therefore approximately £25 million.

## **6.0 Risks of Acquisition**

- 6.1 In our June 2007 consultation paper we set out where we saw the risks of moving from an equity financed model to a mutualised model. The Utility Regulator's view regarding this risk has not changed in that we are strongly of the belief that

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<sup>8</sup> This figure is an estimate of the average rate of return under the current licence which is set at 7.5% until 2016 and at 5.83% post 2016 (using the Ofgem rate).

the resulting transfer of risk onto consumers, through potential inefficient costs, can be limited through corporate governance licence conditions, similar to those in place for PTL. The performance of PTL to date also provides us with the reassurance that the mutualisation model can operate efficiently.

- 6.2 The Utility Regulator will continue to monitor the performance of the mutualised companies in a transparent fashion to ensure public confidence in the arrangements. We are committed to providing regulatory oversight of the NIEH group of companies to ensure that all aspects of the structure are performing satisfactorily.
- 6.3 The Utility Regulator is currently in the process of carrying out a review of NIEH's corporate governance arrangements to ensure that the model is delivering consumer benefits, that its governance remains at best-practice level, and that the appropriate regulatory control is in place. The review itself will involve an independent benchmarking of NIEH's governance arrangements, a legal review of the licences and a review of the customer benefits. The review's findings will be published in June.
- 6.4 An important indicator of the performance of BGTL will be in the form of the provision which allows an ex-ante review of Controllable Operational Expenditure. Similar to the PTL Licence, this review will be on the same basis as a Price Control for other gas conveyance licences and so will provide a good indication of BGTL's performance under the new regime.

**Annex 1**

**PHOENIX NATURAL GAS LIMITED**

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

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## GRANT AND TERM OF LICENCE

### Licence granted under Article 8 of the Gas (Northern Ireland) Order 1996 for the conveyance of gas

#### **The Grant**

##### 1 Grant of Licence

The Northern Ireland Authority for Utility Regulation (the “**Authority**”), in exercise of the powers conferred by Article 8(1) of the Gas (Northern Ireland) Order 1996 (the “**Order**”), and with the consent of the Department of Enterprise, Trade and Investment, grants to Phoenix Natural Gas Limited (registered number NI26420) (the “**Licensee**”) a licence to convey gas from one place to another in the area designated in Schedule 1 during the period specified in paragraph 3 below, subject to:

(a) the standard conditions of licences for the conveyance of gas (the “**Standard Conditions**”) which are in accordance with Article 11(2) of the Order incorporated by reference in this Licence, subject to any modifications made to the Standard Conditions in accordance with any provision for the modification of the Standard Conditions in the Order or the Energy (Northern Ireland) Order 2003 (the “**Energy Order**”) or the Conditions;

(b) the conditions included in the Licence in accordance with Article 10 of the Order

(together the ‘**Conditions**’); and

(c) the Schedules 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, 17A and 18 of the Order and/or with any provision for the modification of the same in the Energy 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 full force and effect at the end of the day on which the beneficial ownership of the entire issued share capital of Phoenix Natural Gas Limited is transferred to a new owner, provided such transfer and the identity of the new owner has been approved in writing by the Authority 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 Authority to the Licensee, such notice not to be served earlier than 31 December 2026.

Dated this    day of

Name                    .....

Signed                  .....

For and on behalf of the Northern Ireland Authority for Utility Regulation

**GENERAL CONDITIONS APPLICABLE TO THE LICENCE HOLDER**

**Condition 1.1: Interpretation and Construction**

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

Unless the contrary intention appears:

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

**1.1.2 General Rules of Construction**

Unless otherwise specified:

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

- (d) any reference to a numbered paragraph is a reference to the paragraph bearing that number in the Part, Condition or Schedule in which the reference occurs; and
- (e) (without prejudice to any provision which restricts such variation, supplement or replacement) any reference to any agreement, licence (other than this Licence), code or other instrument shall include a reference to such agreement, licence, code or other instrument as varied, supplemented or replaced from time to time.

1.1.3 Headings

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

1.1.4 Time Related Obligations

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

1.1.5 Natural Persons

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

1.1.6 Definitions

Except where expressly stated to the contrary and unless the context otherwise requires, the following terms (including where they are used in the Schedules) shall have the meanings ascribed to them below:

"affiliate" means, in relation to any person, any company which is a subsidiary of such person or a company of which such person is a subsidiary or a company which is

	another subsidiary of a company of which such person is a subsidiary;
"amount"	means, in relation to gas, the energy content thereof expressed in therms or kilowatt hours; except with effect from 1st January 2000 it means the said content expressed in kilowatt hours;
"auditors"	means the Licensee's auditors for the time being holding office in accordance with the requirements of the Companies (Northern Ireland) Order 1986;
"authorisation of persons"	means the power of the Licensee to authorise persons, pursuant to Schedule 5 of the Order;
“Authority”	means the Northern Ireland Authority for Utility Regulation;
“balancing”	means (in relation to the Network and relevant period for balancing under the Network Code) taking such measures as may be available to the Licensee, in particular measures: <ul style="list-style-type: none"> <li>(i) for managing the relationship between deliveries of gas to and offtakes from the Network during that period; and</li> <li>(ii) to maintain pressures in the Network at all levels;</li> </ul> which will in the reasonable opinion of the Licensee, ensure the safety and efficiency of the Network in that or any subsequent relevant period;
"company"	means a company within the meaning of Article 3 of the Companies (Northern Ireland) Order 1986 or any other body corporate;

"consumer"	means any person supplied with gas to premises;
"conveyance charges"	means the charges made by the Licensee for the conveyance of gas;
"conveyance services"	means all services provided by the Licensee of conveying gas to, through and within the Licensed Area;
"Department"	means the Department of Enterprise, Trade and Investment;
"distribution pipe-line"	means any pipe-line which is not a transmission pipe-line;
"domestic consumer"	means a person who is supplied with gas conveyed to premises at a rate which is reasonably expected not to exceed 2,500 therms a year;
"Electoral Ward"	means the spatial unit used to elect local government councillors into district council areas, as at 15 March 2006. Any dispute as to the boundaries of such spatial unit shall be determined by the Authority by reference to the map of such spatial unit held at the Northern Ireland Statistics and Research Agency;
"Energy Order"	means the Energy (Northern Ireland) Order 2003;
"exemption holder"	means the holder of an exemption under Article 7 of the Order;
"exercise of powers of entry"	means the Licensee entering any premises, in accordance with the powers conferred by Schedule 5 of the Order;
"gas supplier"	means any person authorised by licence under Article 8 of the Order or by exemption under Article 7 of the

Order to supply gas including the Licensee as so authorised or exempted;

"Grant" means the commencing section of this Licence by which the Authority grants the Licensee the Licence;

"information" includes documents, accounts, estimates, returns, reports or other information;

"Licence" means this licence authorising the Licensee to convey gas in the Licensed Area, as granted to the Licensee under Article 8(1)(a) of the Order;

"Licensed Area" means the area in which the Licensee is authorised to convey gas as described in Schedule 1;

"Licensed Business" means the activities connected with the conveyance of gas pursuant to the Licence, including (without limitation) the construction, development, operation, maintenance and/or administration of the Network, the connection of premises to the Network and the provision and maintenance of gas meters; "Licensee" means the company named in the Grant;

"Network" means all the pipe-lines (as defined by the Order and shall also include any plant, equipment or apparatus used for, or for any purposes connected with, the conveyance of gas) within the Licensed Area that are owned and/or operated by the Licensee, which pipe-lines shall, in the case of conveyance to consumer's premises and for the purposes of this definition, be deemed to terminate immediately prior to the inlet of the first gas meter at such premises;

"Network Code" means the document prepared by the Licensee under Condition 2.4.2;

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

affiliate or related undertaking of the Licensee (save in respect of an affiliate or related undertaking which has a separate licence or exemption), such part of the business as is carried on by that affiliate or related undertaking shall be consolidated with any other such business of the Licensee (and of any other affiliate or related undertaking of the Licensee) so as to form a single Separate Business;

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

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

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

#### 1.1.7 References to energy

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

#### 1.1.8 Singular/plural

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

#### 1.1.9 Application

The Conditions shall only apply to the activities of the Licensee carried out in Northern Ireland.

#### 1.1.10 Network



Notwithstanding the definitions of "Network" and "Licensed Business" set out in Condition 1.1.6 above, (a) the expression "Network" shall, wherever it is used in Conditions 3.1.8.2, 3.1.10, 3.2.6, 3.3.1 and 3.3.2, be taken to include all gas plant (as defined in the Order) situated outside Northern Ireland in Belfast Lough or Larne Lough and which is owned and/operated and/or utilised by or for the Licensee and (b) the expression "Licensed Business", wherever it is used in Condition 1.2, shall be construed as if the reference to Network in the definition of Licensed Business in Condition 1.1.6 were a reference to the expanded Network described in (a) above.

## **Condition 1.2: Separate Accounts for the Licensed Business**

### **1.2.1 Financial years**

For the purposes of this Condition the first financial year of the Licensee shall run from 1 January 2007 to 31 March 2008 and thereafter each financial year of the Licensee shall run from 1 April to the following 31 March. The Licensee will also submit to the Authority its financial statements prepared in accordance with this Condition 1.2 for the financial year from 1 January 2006 to 31 December 2006.

### **1.2.2 Separate Business Accounting**

This Condition applies for the purposes of ensuring that the Licensee (in conjunction with any affiliate or related undertaking of the Licensee) maintains internal accounting and reporting arrangements which:

- (a) enable financial statements to be prepared for the Licensed Business and showing the financial affairs of the Licensed Business ; and
- (b) facilitate the avoidance of discrimination, cross-subsidisation or distortion of competition between the Licensed Business and any other business of the Licensee.

In this regard the Licensee shall not be required to prepare such financial statements as if they were annual accounts prepared under Article 236 of the Companies (Northern Ireland) Order 1986, but shall be required to prepare such accounts in accordance with this Condition.

### **1.2.3 Separation of Internal Accounts**

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

- (a) a profit and loss account;

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

#### 1.2.4 Apportionment

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

- (a) charged from or to any other business of the Licensee (or of any affiliate or related undertaking of the Licensee); and/or
- (b) apportioned between the Licensed Business and any other business (such apportionment to be undertaken in accordance with the basis of apportionment approved by the Authority in accordance with Condition 1.2.5) Licensed Business ,

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

#### 1.2.5 Bases of apportionment

The Licensee shall, unless it has already done so prior to the date that the Licence comes into full force and effect, notify the Authority as soon as practicable and in any event prior to the end of the first financial year of the Licensee referred to in Condition 1.2.1 of the basis of apportionment that it proposes to use for the financial statements in respect of the Licensed Business for that financial year, and:

- (a) the basis of apportionment in respect of those financial statements shall be the basis so proposed by the Licensee unless the Authority following consultation with the Licensee gives a direction requiring the use of any other basis; and

- (b) except in so far as the Authority consents to the Licensee doing so the Licensee shall not change any basis of apportionment used in the financial statements in respect of the Licensed Business for any financial year subsequent to the financial year commencing on 1 January 2005 from the basis used in the financial statements in respect of the Licensed Business for that financial year.

#### 1.2.6 Auditor's Reports

In respect of each set of financial statements prepared in accordance with this Condition in respect of a financial year, the Licensee shall:

- (a) procure a report by the auditors and addressed to the Authority stating whether in their opinion that set of financial statements have been properly prepared in accordance with this Condition and give a true and fair view of the revenues, costs, assets and liabilities of, or reasonably attributable to, the Licensed Business ; and
- (b) use its reasonable endeavours to procure a report by the auditors and addressed to the Authority verifying that the internal accounting and financial reporting arrangements of the Licensee are implemented in such a way as to ensure that there is no discrimination, cross-subsidisation or distortion of competition between the Licensed Business and any other business of the Licensee.

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

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

#### 1.2.8 Form of financial statements

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

- (a) conform to UK generally accepted accounting principles and practices;
- (b) state the accounting policies adopted; and
- (c) be so prepared to a level of detail as may reasonably be required by the Authority and so that they may be reconciled with the published accounts of the Licensee under the Companies (Northern Ireland) Order 1986.

#### 1.2.9 Publication of Accounting Statements

The Authority may direct the Licensee to publish such accounting statements and reports (including but not limited to an auditor's report) as the Licensee is required to deliver to the Authority under this Condition 1.2 with the annual accounts of the Licensee.

#### 1.2.10 Construction of "costs or liabilities"

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

#### 1.2.11 Additional Definition

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

#### 1.2.12 Related Undertakings

The Licensee shall set out in notes to its annual account any transactions relating to the Licensed Business over £500,000 with related undertakings.

For the purpose of this Condition 1.2.12, 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 voting rights in that undertaking.

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

### **1.3.1 Furnishing information**

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

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

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

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

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

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

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

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

### 1.3.5 Limitation on obligation to furnish information

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



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

**1.4.1 Policy statements for General Consumer Council**

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

(a) its policies for the conduct of its business activities relating to the conveyance of gas insofar as they may affect consumers; and

(b) the general arrangements for their implementation;

and shall:

(c) give the General Consumer Council reasonable notice of the publication, announcement or implementation (if no publication or announcement is made) of details of any significant change in any such policies and general arrangements; and

(d) give to the General Consumer Council as the General Consumer Council may reasonably request an explanation of any such significant change and of the implementation of those policies.

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

### **1.5.1 Use of protected information**

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

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

provided that the obligation on the Licensee:

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

### 1.5.2 Compliance with directions

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

### 1.5.3 Limitation of non disclosure obligations

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

- (a) authorised by Article 63(3) or (4) of the Energy Order; or
- (b) made in compliance with the duties of the Licensee or any affiliate or related undertaking of the Licensee under the Order or the Energy Order or by any other requirement of a competent authority; or
- (c) made in compliance with the Conditions of the Licence or any document referred to in the Licence with which the Licensee or any affiliate or related undertaking of the Licensee is required by virtue of the Order or the Energy Order or the Licence to comply.

### 1.5.5 Additional definition

In this Condition:

**"protected information"** means any commercially confidential information which relates to the affairs of a person who is not an affiliate or related undertaking of the Licensee holding a licence or exemption to convey, store or supply gas or any affiliate or related undertaking of that person which has been furnished to or otherwise acquired by the Licensee under or pursuant to or in the course of any dealings with that person or any affiliate or related undertaking of his other than information which is in, or comes into, the public domain other than as

a result of breach by the Licensee of this Condition or of any other Conditions of the Licence.

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

### **1.6.1 Arrangements for powers of entry**

The Licensee shall, unless it has done so before being licensed, within six months of the Licence coming into force:

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

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

### **1.6.2 Changes in arrangements for extensions to Licence**

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

### **1.6.3 Consent of Authority to changes**

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

### **1.6.4 Conduct with domestic consumers**

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

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

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

The arrangements shall comprise all reasonable steps:

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

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

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

### 1.7.3 Licensee to take reasonable steps to keep relevant persons informed

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

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

1.8.1 Licensee to avoid undue disturbance

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

1.8.2 Construction of Condition 1.8.1

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



**Condition 1.9: Modifications**

1.9.1 Modification of Licence Conditions

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

**Condition 1.10: Assignment of Licences**

1.10.1 Licensee's ability to assign its Licence

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

1.10.2 Matters affecting an assignment

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

1.10.3 Licensee may not otherwise assign its Licence

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

**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 prevent the Licensee from transferring all or the relevant part of its business to the transferee where the Authority has consented to the assignment of all or the relevant part of the Licence under Article 12 of the Order or the Licensee has assigned all or the relevant part of the Licence in accordance with Condition 1.10.

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

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

Except:

- (a) in relation to an assignment permitted under Condition 1.10 and the disposal or relinquishing of operational control of any relevant asset necessary for the assignment to have effect; or
- (b) in relation to a transfer of business permitted under Condition 1.11 and the disposal or relinquishing of operational control of any relevant asset necessary for the transfer to have effect; or
- (c) in so far as the Authority consents to the Licensee so doing; or
- (d) 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 Energy Order or the carrying on of activities authorised or required by the Licence and any question arising under this Condition 1.12.1 as to whether such disposal or relinquishing of control is such as aforesaid shall be determined by the Authority.

### 1.12.2 Notice to be given to Authority

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

### 1.12.3 Notice not required for minor disposals

The Licensee shall not be required to give the Authority any notice of its intention to dispose of or relinquish operational control of any relevant asset having a value of less than £20,000 in September 1996 prices (such sum to be adjusted annually by reference to the retail price index), provided that:

- (a) the disposal of or relinquishing of operational control of such relevant asset would not materially affect the Licensee's ability to discharge its obligations under the Order or the Energy Order or the carrying on of activities required by the Licence; and
- (b) the disposal or relinquishing of any such relevant assets does not exceed an aggregate value of £20,000 in September 1996 prices (such sum to be adjusted annually by reference to the retail price index), in any period of twelve months.

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

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

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

#### 1.12.5 Consultation with other licence holders

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

1.12.6 Additional Definitions

In this Condition:

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

"relevant asset" means any part of the Network operated from time to time by the Licensee or any gas plant used by the Licensee for or for purposes connected with the conveyance of gas, together with any estate or interest in land required for the utilisation of the Network or gas plant, and any intangible assets (including patents, copyright, design rights and other similar rights) relating to or arising from its business.

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

#### 1.13.1 Licensee to pay annual fee

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

#### 1.13.2 Initial Fee

Within thirty days of the Authority giving the Licensee notice of the sum due, the Licensee shall pay to the Authority a sum not exceeding **£50,000** determined by the Authority in accordance with the principles set out in Condition 1.13.3 in respect of the fee payable for that part of the year commencing on the date that the Licence comes into full force and effect and ending on 31st March 2008 and for each subsequent year commencing on 1st April the fees payable by the Licensee under this Condition shall be payable by the Licensee within 30 days of the Authority giving the Licensee notice of the sum due.

#### 1.13.3 Amount of annual fee

In respect of the year beginning on 1st April 2008 and in each subsequent year, within 30 days of the Authority giving the Licensee notice of the sums due, the Licensee shall pay to the Authority a fee which is the aggregate of the following amounts:

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

having been incurred in the year immediately preceding the year in question by the Competition Commission in connection with references made to it under Article 15 of the Order with respect to the Licence or any other licence granted under Article 8(1)(a) of the Order; and

- (c) the difference (being a positive or negative amount), if any, between:
- (i) the amount of the fee paid by the Licensee in respect of the year immediately preceding the year in question in relation to the Licence, less any refund to the Licensee in respect of that year under Condition 1.13.4 below 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 2008, had the amount comprised therein which was attributable to the matters referred to in that Condition, as determined by the Authority according to a method disclosed in writing to the Licensee) been calculated by reference to the total costs of the Authority in connection with its functions under the Order and its functions in relation to gas under the Energy Order, and the proportion thereof actually attributable to the Licence;

such total costs being apportioned in each case as determined by the Authority according to a method previously disclosed in writing to the Licensee provided that the total fees payable by the Licensee in respect of the amounts determined by the Authority under Conditions 1.13.3(a) shall not in respect of the period ending on 31 March 2008 exceed **£50,000** and, in respect of any subsequent year commencing on 1<sup>st</sup> April exceed **£650,000** adjusted from the date the Licence comes into full force and effect annually by reference to the retail price index.

- 1.13.4 In respect of each year beginning on the 1<sup>st</sup> April 2007 and for each subsequent year, the Authority may pay the Licensee an amount (“the refund) calculated in accordance with the method previously disclosed in writing to the Licensee and by reference to the difference between:



- (a) the proportion of the Licence fee for that year paid by the Licensee which is attributable to the Authority's estimates in accordance with Conditions 1.13.3 (a) and 1.13.3(b) above; and
- (b) the Authority's reasonable revised estimate of those costs;

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

1.13.5 Definition for the purposes of this Condition

In this Condition 1.13, the “**Director**” means the Director General of Gas for Northern Ireland.

**Condition 1.14: Notices**

1.14.1 Notices

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

Licensee: Phoenix Natural Gas Limited  
First Floor  
The Arena Building,  
85 Ormeau Road,  
Belfast, B7 1SH

Authority: Northern Ireland Authority for Utility Regulation  
Queen's House,  
16 – 18 Queen Street,  
Belfast, BT1 6ED

Facsimile Telephone Number (02890) 311740

Department: Department of Enterprise, Trade and Investment,  
Energy Division,  
Netherleigh House,  
Massey Avenue,  
Belfast, BT4 2JP

Facsimile Telephone Number (02890) 529549

1.14.2 Receipt

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

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

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

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

**Condition 2.1: Territorial Scope**

2.1.1 Territorial Scope

The Licensee is authorised to convey gas from one place to another in the Licensed Area and is further authorised to convey gas in other areas in Northern Ireland in order to convey gas to the Licensed Area.

2.1.2 Conveyance of Gas for Transshipment

Nothing in Condition 2.1.1 shall exclude the entitlement of any other person authorised by licence or exemption to convey gas through pipe-lines in the Licensed Area.

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

In respect of any Gas Year (as defined in Condition 2A.1.1) or part of a Gas Year where a Designation Order (as defined in Condition 2A.1.1) is not in force in relation to all or part of the Network, the Licensee shall be subject to the provisions of Conditions 2.2.1, 2.2.2, 2.2.3, 2.2.4 and 2.2.8. For the avoidance of doubt the Licensee shall not be subject to such provisions in respect of any Gas Year or part of a Gas Year for which a Designation Order is in force.

**2.2.1 Determination of conveyance charges by the Licensee**

The Licensee shall establish the methods and principles on which transmission charges shall be determined for gas suppliers wishing and entitled (or entitled within the Gas Year in respect of which the methods and principles shall be determined for the next following Gas Year) to use the Network and, provided the Authority's approval has been obtained in accordance with Condition 2.2.3, the Licensee shall publish the same in accordance with Condition 2.2.2. Those methods and principles shall ensure cost recovery in each Post-Finance Gas Year (as defined in Condition 3.1.8.2) in accordance with Condition 3.1.8 and, in each Finance Gas Year (as defined in Condition 3.1.8.2) in accordance with the other provisions of Condition 3.1.

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

Subject to Condition 2.2.3:

(a) the Licensee shall (no later than 1 October in each preceding year) for the forthcoming Gas Year publish a statement of:

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

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

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

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

### 2.2.3 Approval of Authority to conveyance charges and other terms for the conveyance of gas

No later than one month and five working days before it intends to publish its statement under Condition 2.2.2 the Licensee shall notify the Authority of the contents of that statement, and:

- (a) provide the Authority with such information as will enable the Authority to be reasonably satisfied that the methodology and principles for the conveyance charges have been determined to ensure cost recovery in the manner referred to in Condition 2.2.1;
- (b) provide the Authority with an explanation of the other terms for conveyance set out in the statement; and
- (c) prior to publication, obtain the Authority's approval to the form and content of that statement.

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

The Licensee shall:

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

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

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

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

#### 2.2.6 Resolution of Disputes

The Authority may, on the application of the Licensee or any person entitled (or claiming to be entitled) to be provided with conveyance services by the Licensee, provided that the Authority shall have first given the Licensee not less than one month in which to make representations regarding such application, settle any dispute between the Licensee and any person entitled (or claiming to be entitled) to be provided with conveyance services, in so far as it relates to any of the following matters and at any time thereafter the Licensee shall provide a gas supplier with conveyance services:

- (a) in accordance with the conveyance charges and/or other terms for the conveyance of gas, and where applicable the Licensee's connection charges, as determined by the Authority pursuant to any party referring the matter to it for such determination, where the gas supplier is willing to accept the same and the Licensee has otherwise refused to provide such conveyance services; and
- (b) notwithstanding the provisions of Conditions 2.2.1 and 2.2.2, in accordance with a price determined by the Authority as will allow the Licensee to obtain appropriate recompense in accordance with any then applicable charging regime of the Licensee approved by the Authority and then in force and, where applicable, the Licensee's connection charges, and on such other terms as the Authority reasonably considers appropriate in all the circumstances, including terms as to the Network Code, or as may establish, 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 Authority for the conveyance services sought by the gas supplier;
- (ii) the Licensee and gas supplier have been unable to reach agreement on appropriate terms; and
- (iii) the gas supplier is willing to accept the Authority's determination;

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

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

#### 2.2.7 Additional duty to provide information

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

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

#### 2.2.8 Direction by the Authority

- (a) Where the Authority directs that it is necessary for the Licensee to revise:
  - (i) the methods and principles on which it has determined the conveyance charges as provided in the Licensee's latest published statement; and/or
  - (ii) the conveyance charges and other terms for the conveyance of gas determined and included in the latest published statement,



in order to ensure that they are (or continue to be) proportionate and applied in a non-discriminatory manner, the Authority may direct the Licensee to revise its methods, principles, charges or terms (as the case may be) in accordance with the provisions of the direction.

- (b) The Licensee shall comply with the requirements of any direction issued by the Authority under this Condition 2.2.8 and shall publish a revised statement in accordance with Condition 2.2.3.

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

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

Subject to Conditions 2.3.2 and 2.3.3, the Licensee shall no later than the date that (i) this Condition 2.3 or (ii) any modification of this Condition 2.3 (as the case may be) takes effect give the Authority a statement, for the approval of the Authority as to form and content, showing the methods by which and the principles on which charges are to be determined by the Licensee, for:

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

and in any such case the Licence shall when giving such a statement include in that statement the Licensee's other terms for the connection and an explanation of those terms together with the Licensee's technical design and operational requirements which apply to the making of a connection to its Network.

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

The statement given by the Licensee under Condition 2.3.1 shall:

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

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

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

- (a) prepare the statement in such a manner as will reasonably enable a person to estimate the Licensee's connection charges in those circumstances; and
- (b) enable a person requesting a connection in those circumstances to determine what works or other actions he would need to undertake, including without limitation any work or action required to comply with the Licensee's technical design and operational requirements, for the Licensee to provide the connection.

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

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

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

The Licensee shall:

- (a) not charge for a connection of premises, of any gas meter, gas meter not owned by it or any pipe-line system to the Network on any basis or establish other terms for the connection on any basis other than that contained in the statement published under Condition 2.3.4;

- (b) not show any undue preference towards or undue discrimination against any person or case or classes of cases of person seeking a connection of premises to the Network, or of any gas meter, or gas meter not owned by the Licensee or any person who operates or proposes to operate a pipe-line system, in relation to the connection of that system to the Network and, in the case of a pipe-line system to be connected to the Network, the Licensee shall not refuse a request for connection where the person seeking the connection is willing to pay the Licensee's charges for connection and comply with the Licensee's other terms for connection, including any terms as to technical and safety matters; and
- (c) within 28 days of receiving a request for the quotation of connection charges covered by the published statement, provide the person requesting the quotation with a specific statement of the connection charges and other terms of connection applicable to the request for a quotation;

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

#### 2.3.6 Direction by the Authority

- (a) Where the Authority directs that it is necessary for the Licensee to revise:
  - (i) the methods and principles on which it has determined the charges and other terms for connection in the latest published statement; and/or
  - (ii) the charges and other terms for connection it has determined and included in the latest published statement,

in order to ensure that they are (or continue to be) proportionate and applied in a non-discriminatory manner, the Authority may direct the Licensee to revise its methods, principles, charges or terms (as the case may be) in accordance with the provisions of the direction.

- (b) The Licensee shall comply with the requirements of any direction issued by the Authority under this Condition 2.3.6 and shall publish revised statements in accordance with Condition 2.3.4.

### 2.3.7 Revising connection charges

Without prejudice to Condition 2.3.6, the Licensee shall not revise the basis of its charges for a connection of any premises, any gas meter, any gas meter not owned by it or any pipe-line system to the Network, or the other terms for the connection, without first giving the Authority a revised statement in the same terms as in Condition 2.3.1 and obtaining the Authority's approval to such a revision in the same terms as Condition 2.3.4.

### 2.3.8 Resolution of disputes by the Authority

The Authority may, on the application of any person entitled (or claiming to be entitled) to require a connection to the Network will refer the application in the first instance to the General Consumer Council who will try to resolve the dispute, provided the General Consumer Council shall give the Licensee not less than one month in which to make representations regarding such application:

- (a) the General Consumer Council will settle any dispute between the applicant and the Licensee in so far as it relates to the provision or making of a connection by the Licensee; and
- (b) in particular, determine the charges and other terms on which the Licensee shall (notwithstanding Condition 2.3.5) provide or make the connection in question (where the applicant is willing to accept the same),

in such manner as the Authority considers appropriate having regard to (in so far as is appropriate) the obligations that would otherwise have applied to the Licensee under Condition 2.3.5 and the relevant objective as defined in Condition 2.4.1. . If the General Consumer Council is unable to resolve the dispute the application will be referred back to the Authority. The Authority will try to resolve the dispute with reference to conditions 2.3.8 (a) and 2.3.8 (b).

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

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

- (a) modifying apparatus and works associated with a 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 for doing so.

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

The Licensee shall not:

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

### 2.3.11 Publication of connection charge statements

The Licensee shall:

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

(b) send a copy of any such statement to any person who asks for one.

2.3.12 Interpretation and construction

References in this Condition to

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

2.3.13 Obligation to permit a connection

Subject to a person who has a licence or exemption to convey gas:

- (a) satisfying any technical and safety criteria contained in the Network Code;
- (b) satisfying the Licensee’s technical design and operational requirements; and
- (c) paying to the Licensee a connection fee (determined by the Licensee except insofar as the Authority otherwise directs or determines under Condition 2.3.8(b)), to connect a pipe- line between the Network and the premises,

the Licensee shall permit a connection to the Network by that person.

## **Condition 2.4: Network Code**

### **2.4.1 The relevant objective**

The Licensee shall, unless it has already done so prior to the date that the Licence comes into full force and effect submit to the Authority as soon as practicable after such date 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 secure, safe, reliable, efficient and economic development and operation and maintenance of the Network with due regard to the environment; and

(b) subject thereto:

(i) compliance with the Licensee's other obligations under the Licence; and

(ii) subject to Condition 2.4.1(b)(i) the promotion of effective competition between Users ;

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

### **2.4.2 The Network Code**

The Licensee shall:

(a) prepare and provide to the Authority for its approval a "**Network Code**", that is to say a document setting out the arrangements established under Condition 2.4.1 and the terms on which it will enter into such arrangements with Users for the conveyance of gas no later than the date that the Licence comes into full force and effect;

(b) where pursuant to Condition 2.14.1 the Licensee is designated as a transmission system operator, ensure that the Network Code contains provisions that establish:

(i) the measures that the Licensee will put in place for the balancing of the Network;

(ii) the methodology used by the Licensee to procure the gas required for balancing the Network;



- (i) the methodology by which the charges to be levied on Users for the balancing of the Network are to be determined; and
  - (ii) the technical safety criteria applicable to the operation of the Network;
- (c) where, pursuant to Condition 2.14.2 the Licensee is designated as a distribution system operator, ensure that the Network Code contains provisions that establish:
- (i) the measures that the Licensee will put in place for the balancing of the Network;
  - (ii) the methodology by which the charges to be levied on gas suppliers for the balancing of the Network are to be determined; and
  - (iii) the technical safety criteria applicable to the operation of the Network;
- (d) put such Network Code in place except as the Authority otherwise consents and comply with the provisions of the approved Network Code;
- (e) put in place appropriate contractual arrangements, approved by the Authority, which require compliance with the Network Code by the Licensee, the Users, and any third parties who may become parties to the Network Code; and
- (f) except in so far as the Authority 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 with regard to whether it facilitates the achievement of the relevant objective, either the Licensee or any other party to the Network Code who has entered into the arrangements to which that term applies, may, to the extent that the term so provides, refer to the Authority for determination any question as to whether a manner in which the Licensee proposes to implement the term would secure that objective.

#### 2.4.4 Modification of the Network Code

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

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

#### 2.4.5 Modification Rules

The Licensee shall:

- (a) prepare "the modification rules", that is to say a document setting out the terms of the procedures established under Condition 2.4.4, and shall furnish the Authority with a copy of the modification rules;
- (b) not make any modification to the modification rules except:
  - (i) after consulting the other parties to the Network Code;

- (ii) after furnishing the Authority with a report on such consultation and consideration; and
  - (iii) with the consent of the Authority; and
- (c) furnish the Authority with a copy of any modification so made.

#### 2.4.6 Prohibition on irregular modification

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

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

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

#### 2.4.7 Role of Authority in modifications

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

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

- (v) stating the factors which, in its opinion, justify making or not making the proposed modification; and
  - (vi) giving such further information as may be prescribed by the modification rules; and
- (c) comply with any direction given by the Authority to make a modification to the Network Code in accordance with a proposal described in a notice given to the Authority under Condition 2.4.7(b) which, in the opinion of the Authority will, as compared to the existing provisions of the Network Code or any alternative proposal, better facilitate the achievement of the relevant objective.

#### 2.4.8 Publication of Network Code

The Licensee shall:

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

#### 2.4.9 Authority to determine material affect on persons of transportation arrangements

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

#### 2.4.10 Reasons for refusal of access

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

#### 2.4.11 Prohibition on undue discrimination

The Licensee shall not show an undue preference for or undue discrimination against any person or class or classes of person:

- (a) in assessing a person's application to become a party to the Network Code; and/or
- (b) in its interpretation of the Network Code and the application of procedures contained in the Network Code.

#### 2.4.12 Definitions

In this Condition 2.4, "User" means, as the context requires, any gas supplier or any person acting on behalf of a gas supplier who has made, or seeks to make, arrangements with the Licensee in pursuance of which gas is, or is to be, conveyed through the Network.

## **Condition 2.4A Compliance with System Operator Agreements**

### **2.4A.1 Ability to require other licence holders to enter into agreements**

Subject to Condition 2.4A.2, where the Licensee is designated under this Licence as either a transmission system operator or a distribution system operator, it may require any other person holding a licence granted under Article 8(1)(a) of the Order (whether or not that person is also designated as a transmission system operator or a distribution system operator) to enter into an agreement relating to the interaction or interoperability of its Network with that person's network such that will ensure the conveyance of gas in a manner compatible with the secure and efficient operation of both systems.

### **2.4A.2 Approval by the Authority**

The Licensee shall not require any person to enter any agreement of the type referred to in Condition 2.4A.1 unless the agreement, and where applicable any amendment to the agreement, has first been submitted to and approved by the Authority.

### **2.4A.3 Obligation to enter into agreements**

Where the Licensee is required, either by a designated transmission system operator or by a designated distribution system operator (and in accordance with that person's licence), to enter into an agreement of the type mentioned in Condition 2.4A.1, the Licensee shall enter into any such agreement as may be reasonably required by that designated transmission system operator or distribution system operator (as the case may be).

### **2.4A.4 Network operator agreement**

Without prejudice to Condition 2.4A.3, where the Licensee is a designated transmission system operator it shall enter into and comply with the Northern Ireland Network Operators Agreement (being the document of that name specified as such from time to time by the Authority).

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

### **2.5.1 Installation of Gas Suppliers' Meter**

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 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 that meter, such charges to have been determined using such principles and methodology as shall have been agreed with the Authority.

2.5.2 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 the meter and any subsequent disconnection.

### **2.5.3 Prohibition on undue discrimination**

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

### **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 identity and time of disconnection or return of the meter and the premises from which it was disconnected to be ascertained and shall keep such a record for a period of not less than two years from the date of the later of such disconnection or return whichever is the later.

### **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:

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

(ii) thereafter for as 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.



## **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:

- (a) use its best endeavours to secure that any information relating to or derived from its Licensed Business is not disclosed for the benefit, or used for the purposes, of:
  - (i) any trading business, affiliate or (so far as the Licensee can require it) related undertaking of the Licensee;
  - (ii) any company of which the Licensee is an affiliate or related undertaking; and
- (b) subject to paragraph (a) above, not show any undue discrimination against, or undue preference towards, any person or class of person, in disclosing any information relating to its Licensed Business which may be commercially advantageous to any other person.

### **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 Authority to the Licensee; or

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

#### 2.6.4 Additional definition

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

## **Condition 2.6A Provision of information to a relevant gas licence holder**

### 2.6A.1 Obligation to provide information

The Licensee shall furnish to any relevant gas licence holder such information concerning the operation and technical specifications of the Network in such manner and at such times as may:

- (a) reasonably be required by that relevant gas licence holder to enable it to comply with its obligations under its own gas conveyance or gas storage licence or under any document established pursuant to a gas licence; or
- (b) be specified in directions issued from time to time by the Authority to the Licensee for the purpose of this Condition 2.6A.1, having taken into consideration any representations made to the Authority by the Licensee and any relevant gas licence holder, and in accordance with any conditions contained in such directions.

### 2.6A.2 Ability to refuse

The Licensee shall be entitled to refuse to provide information under Condition 2.6A.1 on the grounds that its disclosure would seriously and prejudicially affect the commercial interests of the Licensee unless and until the Authority, by notice in writing given to the Licensee, directs it to provide that information on the ground that provision thereof is necessary or expedient for the purpose mentioned in Condition 2.6A.1.

### 2.6A.3 Excluded information

This Condition 2.6A shall not require the Licensee to produce any documents or give any information which it could not be compelled to produce or give in evidence in civil proceedings before the High Court.

### 2.6A.4 Arrangements for protecting confidentiality

The Licensee shall not be obliged under Condition 2.6A.1(a) to provide information to any relevant gas licence holder which has not established, whether in pursuance of a licence condition or otherwise, effective arrangements designed to secure that information provided in pursuance of this condition (and similar licence conditions) is not communicated, directly or indirectly, to any gas supplier or any person acting on

behalf of a gas supplier who has made or seeks to make arrangements with that licensee in pursuance of which gas is conveyed through that licensee's network.

2.6A.5 Definitions and interpretation

In this Condition 2.6A, unless the context otherwise requires:

- (a) "relevant gas licence holder" means any holder of a licence granted pursuant to Article 8(1)(a) or 8(1)(b) of the Order and/or any holder of a licence to convey (whether by transmission pipe-lines or distribution pipe-lines) or store gas granted under the relevant legislation of a jurisdiction other than Northern Ireland; and
- (b) references to "licence" and "gas supplier" shall not be limited to licences granted under, or gas suppliers operating pursuant to licences or exemptions granted under, the Order.

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

### **2.7.1 Emergency telephone service**

The Licensee shall, in co-ordination with all other relevant persons:

- (a) establish, or procure the establishment of, and subsequently operate and maintain, or procure the subsequent operation and maintenance of, a single continuously attended telephone service (including reasonable facilities to communicate with deaf or partially hearing persons):
  - (i) for the receipt of reports of escapes of gas in respect of which the Licensee or such other relevant persons may have obligations under Article 60 of the Order or under any regulations made by the Department under Schedule 5 paragraph 2 of the Order; and
  - (ii) for the Licensee to be informed of any escapes of gas in respect of which it may have such obligations; and
- (b) secure adequate publicity for the service and its telephone number, having regard, in particular, to the special needs of blind or partially sighted persons.

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

Where any gas escapes from the Network the Licensee shall, as soon as reasonably practicable of being informed of the escape, attend the place where gas is escaping and the Licensee shall take all necessary steps to prevent an escape of gas from any part of the Network or otherwise in any premises within 12 hours of receiving a report of such an escape (or 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

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

### 2.7.3 Carrying out of work

Nothing in Condition 2.7.2 shall oblige the Licensee to carry out any work which cannot be completed within 30 minutes of entering the premises for the purpose of preventing the escape or would use materials costing more than £4.00 adjusted annually in line with the retail price index from September 1996.

### 2.7.4 Application of Condition 2.7.5

Condition 2.7.5 shall apply in relation to:

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

### 2.7.5 Priority for maintenance of supply

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

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

give priority to the maintenance of the supply of gas to consumers on the priority list required by Condition 2.7.7 and the conveyance of gas to their premises.

#### 2.7.6 Consultation with the Department

Where the reasons of safety referred to in Condition 2.7.5 relate to the whole or a substantial part of Northern Ireland or there is a significant shortage of gas affecting the whole or a substantial part of Northern Ireland, the Licensee shall consult with the Department on the taking of any such steps as are mentioned in Condition 2.7.5 (a) or (b) and, so far as is reasonably practicable in the circumstances having regard to the overriding importance of safety, shall do so before taking any such steps.

#### 2.7.7 Priority List

The Licensee shall:

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

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

#### 2.7.8 Determination by the Department

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

#### 2.7.9 Definition

In this Condition 2.7

“relevant persons” means all persons that undertake in Northern Ireland the activities specified in Article 6(1)(a) of the Order.

**Condition 2.8**      **Not used**



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

### **2.9.1 Recorded information**

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

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

### **2.9.2 Additional definition**

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

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

2.10.1 The provisions of:

(a) Schedule 2; and

(b) Schedule 3;

of the Order shall apply to the Licensee.

**Condition 2.11      Not Used**

## **Condition 2.12: Independence of the Licensed Business**

### **2.12.1 Application**

This Condition shall apply where the Licensee (or any affiliate or related undertaking of the Licensee) is at any time carrying on the activities of a Gas Supply Business.

### **2.12.2 Managerial and operational independence**

Where this Condition applies the Licensee shall:

- (a) unless it has already done so prior to this Condition coming into force, establish; and
- (b) at all times thereafter maintain,

the full managerial and operational independence of the Authorised Business from any Associated Business.

### **2.12.3 Means of achieving such independence**

In order to facilitate its compliance with Condition 2.12.2, the Licensee shall use all reasonable endeavours to ensure that:

- (a) the Authorised Business is provided with such premises, systems, equipment, facilities, property, personnel, data and management resources as are necessary for its efficient and effective managerial and operational independence;
- (b) it does not hold or acquire shares in any Gas Supply Business that does not form part of the Authorised Business or in any Holding Company of any such Gas Supply Business;
- (c) subject to any financial supervisory rights of a Holding Company of the Licensee as provided for in the Licensee's financial plan, commercial and operational decisions relating to the operation, maintenance and development of the Licensee's Network are taken only by those persons who are employed by, and are engaged in the operation and management of, the Authorised Business;
- (d) any Associated Business may not use or have access to:

- (i) premises or parts of premises occupied by persons engaged in the management or operation of the Authorised Business;
  - (ii) systems for the recording, processing or storage of data to which persons engaged in the management or operation of the Authorised Business also have access;
  - (iii) commercially sensitive or confidential information relating to, or derived from, the Authorised Business;
  - (iv) equipment, facilities or property employed for the management or operation of the Authorised Business;
- (e) it can and does, insofar as is legally possible:
- (i) ensure that any director of the Licensee is not at the same time also a director of a company which carries on a Gas Supply Business that does not form part of the Authorised Business; and
  - (ii) prevent any person who has ceased to be engaged in the management or operation of the Authorised Business from being employed by, or engaged in the activities of, any Associated Business until the expiry of an appropriate time from the date on which he ceased to be engaged by the Authorised Business.

#### 2.12.4 Additional Definitions

In this Condition:

- |                       |   |
|-----------------------|---|
| “Act”                 | means the Gas Act 1986, as amended from time to time;   |
| “Associated Business” | means any business, other than the Authorised Business, of the Licensee (or of any affiliate or related undertaking of the Licensee) which is carrying out any activity that requires authorisation in accordance with either Article 6(1) of the Order or section 5(1) of the Act or |

which is involved in the production or purchase of gas;

“Authorised Business”

means the Licensed Business, taken together with (if applicable) either:

(a) where the Licensee has so notified the Department and the Authority, any business of the Licensee (or of any affiliate or related undertaking of the Licensee) that is carrying out activities that require authorisation in accordance with Article 6(1)(a) of the Order or with section 5(1)(a) of the Act, except that the Licensee may not give such notification where the Department or the Authority (as the case may be) has given an approval under paragraph (b) below; or

(b) where the Department or the Authority (as the case may be) has given it approval, any business of the Licensee (or of any affiliate or related undertaking of the Licensee) that is carrying out activities that require authorisation in accordance with Article 6(1)(c) of the Order or with section 5(1)(b) of the Act;

“Gas Supply Business”

means any business carrying out activities that require authorisation in accordance with Article 6(1)(c) of the Order or section 5(1)(b) of the Act; and

“Holding Company”

has the meaning given to it in Article 4 of The Companies (Northern Ireland) Order 1986.



**Condition 2.13: Business Separation Compliance Plan**

2.13.1 Application

This Condition shall apply where Condition 2.12 applies to the Licensee.

2.13.2 Submittal of plan

The Licensee shall, no later than 28 days after Condition 2.12 first applies to the Licensee, prepare and submit to the Authority (for its approval) a compliance plan (the “Compliance Plan”) setting out the practices, procedures, systems and rules of conduct which the Licensee has adopted, or intends to adopt, together with the timescales for adoption, to ensure its compliance with Condition 2.12.

2.13.3 Complying with Compliance Plan

The Licensee shall use its best endeavours to comply with the Compliance Plan as approved by the Authority and revised from time to time in accordance with this Condition 2.13.

2.13.4 Authority’s role

The Authority may:

- (a) within 30 days of the Licensee submitting an initial or revised Compliance Plan; or
- (b) following any review of the Compliance Plan that the Authority may conduct from time to time,

serve notice on the Licensee:

- (c) informing the Licensee that, in the Authority’s opinion, the Compliance Plan is not, or is no longer, sufficient for the purposes of the Licensee’s compliance with Condition 2.12; and
- (d) requiring the Licensee to make such revisions to the Compliance Plan as, the Authority’s opinion, are necessary or expedient in order for the Compliance Plan to be sufficient for the purposes of ensuring the Licensee’s compliance or continued compliance with Condition 2.12.



#### 2.13.5 Revision of Compliance Plan

Where the Licensee receives a notification in accordance with Condition 2.13.4, it shall, within 30 days, revise the Compliance Plan, in such manner and to such extent that will reflect the Authority's requirements and ensure that it is sufficient for the purposes of ensuring the Licensee's compliance with Condition 2.12.

#### 2.13.6 Review of Compliance Plan

The Licensee shall, on at least an annual basis during the period in which Condition 2.12 is in force, review its Compliance Plan so as to ensure:

- (a) its continued compliance with its obligations under Condition 2.12; and
- (b) that the information set out therein shall continue to be accurate in all material respects.

#### 2.13.7 Authority approval

Where the Licensee revises its Compliance Plan, either in accordance with Condition 2.13.5 or following a review conducted by it in accordance with Condition 2.13.6, it shall submit the revised Compliance Plan to the Authority for its approval.

#### 2.13.8 Facilitating compliance with the Compliance Plan

The Licensee shall ensure that persons engaged in the management and operation of the Licensed Business:

- (a) are made aware of the practices, procedures, systems and rules of conduct set out in the Compliance Plan;
- (b) have the necessary information and facilities to comply with their respective obligations as provided for in the Compliance Plan; and
- (c) are aware of the disciplinary procedures that may be activated should they fail to comply with their obligations under the Compliance Plan.

#### 2.13.9 Compliance Manager

The Licensee shall, following consultation with the Authority, appoint a senior member of its personnel engaged in the management and operation of the Licensed Business as a compliance manager (the “Compliance Manager”) for the purpose of facilitating compliance with its obligations under Condition 2.12 and with its Compliance Plan.

#### 2.13.10 Assisting the Compliance Manager

The Licensee shall ensure that the Compliance Manager has access to such staff, premises, systems, information, documentation, equipment, facilities and other resources as he might reasonably expect to require to fulfil the duties and tasks assigned to him.

#### 2.13.11 Duties of the Compliance Manager

The duties and tasks assigned to the Compliance Manager shall include:

- (a) providing relevant advice and information to the Licensee for the purpose of ensuring its compliance with Condition 2.12 and with the Compliance Plan;
- (b) monitoring the effectiveness of, and the Licensee’s compliance with, the Compliance Plan;
- (c) investigating any complaint or representation received by the Licensee from any person in respect of any matter arising under or by virtue of Condition 2.12 or in relation to the Compliance Plan;
- (d) recommending and advising upon the remedial action which any such investigation has demonstrated to be necessary or desirable, including where necessary revising the Compliance Plan to reflect such recommendation and advice; and
- (e) reporting, at such frequency as is determined in writing by the Authority, to the directors of the Licensee on his activities during the period covered by the report, the investigations he has conducted and on progress implementation of the Compliance Plan.

#### 2.13.12 Report of Compliance Manager

- (a) The Licensee shall, at such frequency as is determined in writing by the Authority but no less than twice every twelve months, submit a report to the Authority detailing the activities of the Compliance Manager during the period covered by the report;
- (b) providing a progress update on the Licensee's implementation of the Compliance Plan;
- (c) setting out the details of any investigations conducted by the Compliance Manager, including:
  - (i) the number, type and source of the complaint or representation on which such investigations were based;
  - (ii) the outcome of such investigations; and
  - (iii) any remedial action taken by the Licensee following such investigations.

## **Condition 2.14 System Operator Designation**

### **2.14.1 Transmission system operator**

The Licensee is (for the purposes of Article 7 of Directive 2003/55/EC) hereby designated as transmission system operator for the Network.

### **2.14.2 Distribution system operator**

Not used

### **2.14.3 Definition**

In this Condition 2.14:

“Directive 2003/55/EC” means Directive 2003/55/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas.

**STANDARD CONDITIONS APPLICABLE TO THE CONVEYANCE OF GAS BY DESIGNATED PIPELINE OPERATORS****Condition 2A.1 – Interpretation and Construction****2A.1.1 Definitions**

In Part 2A of this Licence, except where expressly stated to the contrary and unless the context otherwise requires, the following terms shall have the meanings ascribed to them below:

- “Actual Figures” means the Annual Exit Quantity and the Actual Firm Capacity figures to be provided by the Licensee to the Authority under Condition 2A.2.3.2(a);
- “Actual Firm Capacity” means the aggregate of GS Firm Capacity which has been held by Gas Suppliers in respect of a Gas Year and in respect of Exit Points on the Designated Network;
- “Actual Required Revenue” as the context requires, shall have the meaning ascribed to that term in the Special Conditions of this Licence or the meaning ascribed to it in the relevant licence of each Designated Pipe-line Operator;
- “Annual Exit Quantity” means the aggregate of all Gas Suppliers’ Exit Quantities in respect of a relevant Gas Year and in respect of Exit Points on the Designated Network;
- ”Auxiliary Payment” means any sum (whether or not contingent) in addition to aggregate Monthly Postalised Payments which a PS Gas Supplier is committed to pay on an annual basis in respect of Minimum Quantity Value;
- “Business Day” means a day, other than a Saturday or Sunday, on which banks are open for ordinary banking business in Belfast;
- “Capacity Percentage” shall have the meaning ascribed to that term in Condition 2A.2.5.2(a);

“Capacity Reconciliation Payment”	means a charge or a payment, as the context requires, made by the Licensee to each of its Gas Suppliers in respect of the difference between the Forecast Postalised Capacity Charge and the Year-End Postalised Capacity Charge applied to a Gas Year;
“Commodity Percentage”	shall have the meaning ascribed to that term in Condition 2A.2.5.1(a);
“Commodity Reconciliation Payment”	means a charge or a payment as the context requires, made by the Licensee to each of its Gas Suppliers in respect of the difference between the Forecast Postalised Commodity Charge and the Year-End Postalised Commodity Charge applied to a Gas Year;
“Credit Committee”	means the committee which is convened and operates in accordance with the Terms of Reference;
“Debt Entitlement”	shall have the meaning ascribed to that term in Condition 2A.6.1.2(b);
“Debt Notice”	means a notice issued by the PSA as contemplated by Condition 2A.4.3.1(f);
“Debt Notice Date”	means the date on which the PSA shall issue the Debt Notice each month as contemplated by Condition 2A.4.3.1(f), being the eighth Business Day in the relevant month;
“Debt Payment”	means a charge payable by a PS Gas Supplier in respect of PS Notified Debt as contemplated by Condition 2A.3.4 and as detailed in the applicable Debt Notice;
“Debt Repayment”	means a repayment payable to a PS Gas Supplier in respect of a Recovery as contemplated by Condition 2A.3.4.3(ii) and as detailed in the applicable Debt Notice;
“Designated Network”	means such part(s) of the Licensee’s network as is or are designated from time to time pursuant to the Designation Order;
“Designated Pipe-line	means a person licensed to convey gas under Article 8(1)(a) of the

Operator”	Order through the Postalised System, including the Licensee;
“Designated Pipe-line Operators Agreement”	shall have the meaning ascribed to that term in Condition 2A.6.2.1;
“Designation Date”	means the date specified in a Designation Order on which any part of the Licensee’s network shall be designated as postalised;
“Designation Order”	means an order made pursuant to Article 59 of the Energy (Northern Ireland) Order 2003 designating gas pipe-lines comprised within the Licensee’s network as being subject to a common tariff;
“Directions”	shall have the meaning ascribed to that term in Condition 2A.3.2;
“Distribution Business”	means, where applicable, a Separate Business of the Licensee which carries on the business of conveyance of gas through distribution pipe-lines and which, with the Authority’s consent, may hold Firm Capacity;
“Due Date”	means the date on which payment of an invoice in respect of any PS Transmission Payment falls due, being the tenth Business Day in the month next after the month in which the relevant invoice was issued and shall be stipulated in the Network Code;
“Exit”, “Exiting”	or forms thereof, refers to the offtaking of gas at an Exit Point;
“Exit Point”	means a point on the Designated Network at which gas is offtaken from the Designated Network by a Gas Supplier, which is not a Transit Point and which constitutes an Exit Point under the Network Code;
“Exit Quantity”	means the total quantity of gas, (measured in kWh) allocated to the Licensee’s relevant Gas Supplier in respect of an Exit Point within a certain period, or any applicable Minimum Quantity Value in respect of such period, if higher;
“Firm Capacity”	means, at any relevant time in respect of a Gas Supplier, capacity (in kWh/day) held at such time by such Gas Supplier on a firm basis

in respect of an Exit Point in accordance with the provisions of the Network Code and in respect of a Gas Year (or any part thereof); except that if any Minimum Capacity Value in respect of such period and such Gas Supplier is greater than such held capacity then the Firm Capacity deemed to be held by such Gas Supplier shall be that Minimum Capacity Value;

- “Forecast Annual Quantity” shall have the meaning ascribed to that term in Condition 2A.2.3.1(a)(i);
- “Forecast Figures” shall mean such figures as are notified to the Authority under Condition 2A.2.3.1(a) as amended by any notice given by the Authority under Condition 2A.2.3.1(e), or such figures as are determined by the Authority under Condition 2A.2.3.1(g), as appropriate;
- “Forecast Postalisation Formulae” means the formulae set out in Condition 2A.2.5;
- “Forecast Postalised Capacity Charge” means a charge in respect of each kWh/day of Initial Firm Capacity held by the Licensee’s Gas Suppliers in respect of an Exit Point in a Gas Year which shall be calculated in accordance with Condition 2A.2.5.2;
- “Forecast Postalised Charges” means a Forecast Postalised Commodity Charge and a Forecast Postalised Capacity Charge;
- “Forecast Postalised Commodity Charge” means a charge in respect of each kWh of gas allocated to the Licensee’s Gas Suppliers for Exit from the Designated Network in a Gas Year which shall be calculated in accordance with Condition 2A.2.5.1;
- “Forecast Required Revenue” as the context requires, shall have the meaning ascribed to that term in the Special Conditions of this Licence;
- “Forecast Supplier Quantity” means the quantity of gas which a Gas Supplier forecasts it will Exit from the Designated Network in a given period, provided that, if in



relation to a Gas Supplier such quantity is less than any applicable Minimum Quantity Value, the Forecast Supplier Quantity in relation to such Gas Supplier shall be such Minimum Quantity Value;

- “Gas Supplier” means any person authorised by licence under Article 8 of the Order or by exemption under Article 7 of the Order to supply gas, (including the Licensee as so authorised or exempted) and who is entitled to Exit gas from the Designated Network or any person who is not so authorised, but with the Authority’s consent either: (i) holds Firm Capacity; or (ii) is entitled to Exit gas from the Designated Network as if it were a Gas Supplier, but shall not include the Licensee if and to the extent that it is providing balancing gas in respect of any part of the Postalised System;
- “Gas Year” means the period of time beginning at 06:00 hours on 01 October in any calendar year and ending at 06:00 hours on 01 October in the next succeeding calendar year;
- “GS Annual Exit Quantity” shall have the meaning ascribed to that term in Condition 2A.2.6.3(b);
- “GS Firm Capacity” means the Firm Capacity held by a Gas Supplier in respect of all Exit Points on the Designated Network in a Gas Year multiplied in each case by the aggregate number of months in respect of which such Firm Capacity is held in such Gas Year and divided by 12;
- “Initial Firm Capacity” means the total of all Firm Capacity held by the Licensee’s Gas Suppliers in respect of a Gas Year as at the last Business Day of June preceding such Gas Year except the Gas Year commencing 01 October 2004 where Initial Firm Capacity shall mean the total of all Firm Capacity (in kWh/day) in respect of a Gas Year, such figure to be determined by the Authority no later than 30 September 2004;
- “Invoice Date” means the tenth Business Day in a month;

“kWh”	means 3,600,000 joules as defined in ISO 1000-1981(E);
“LIBOR”	means the sterling London Interbank Offered Rate as published in the Financial Times from time to time;
“MDQ”	means the maximum quantity of gas which may be offtaken from an Exit Point by a Gas Supplier in any day in respect of the Firm Capacity held by that Gas Supplier under the Network Code;
“Minimum Capacity Value”	means any minimum quantum of capacity (in kWh/day) in respect of which a PS Gas Supplier is obliged under contract to the Licensee or to any other Designated Pipe-line Operator to pay transmission charges in respect of a Gas Year;
“Minimum Quantity Value”	means any minimum quantity of gas (in kWh) in respect of which a PS Gas Supplier is obliged under contract to the Licensee or to any other Designated Pipe-line Operator to pay transmission charges in respect of a Gas Year or part thereof;
“Monthly Debt Payment Entitlement”	means the entitlement of a Designated Pipe-line Operator in respect of the Net Debt Position in a month, calculated in accordance with Condition 2A.6.1.2(b);
“Monthly Distribution”	has the meaning ascribed in Condition 2A.6.1.4,
“Monthly Entitlements”	means Monthly Postalised Entitlements and Monthly Debt Payment Entitlements;
“Monthly Postalised Capacity Payment”	means an amount to be invoiced monthly by the Licensee to each of its Gas Suppliers in accordance with Condition 2A.2.5.2(b);
“Monthly Postalised Commodity Payment”	means an amount to be invoiced monthly by the Licensee to each of its Gas Suppliers in accordance with Condition 2A.2.5.1(b);
“Monthly Postalised Entitlement”	means the entitlement of a Designated Pipe-line Operator in respect of Monthly Postalised Payments and any Auxillary Payment payable into the PoT Account in a month, calculated in accordance with Condition 2A.6.1.2(a)(i);

“Monthly Postalised Payments”	means Monthly Postalised Commodity Payments and Monthly Postalised Capacity Payments;
“Net Debt Position”	means a balance calculated in respect of a month with reference to PS Notified Debt and Recoveries in accordance with Condition 2A.3.4.3 and in respect of which a Debt Payment or Debt Repayment may be made;
“Non Payment Month”	means a month in which a relevant PS Non-Payment occurred;
“Postalised Charges”	means the Forecast Postalised Charges and/or the Year-End Postalised Charges as the case may be;
“Postalised System” or “PS”	means the system comprising all gas pipe-lines designated as being subject to a common tariff pursuant to all orders made pursuant to Article 59 of the Energy (Northern Ireland) Order 2003 in force at such time;
“PoT Account”	shall have the meaning ascribed to that term in Condition 2A.5.3.1(a);
“Primary DPO”	means the Designated Pipe-line Operator holding a licence to convey gas in respect of a part of the Postalised System on which the PS Gas Supplier is entitled to exit gas;
“PSA”	shall have the meaning ascribed to that term in Condition 2A.4.1.1;
“PS Actual Required Revenue (PSARR)”	means, in respect of a Gas Year, the sum of all Actual Required Revenues in respect of such Gas Year;
“PSA Agreement”	shall have the meaning ascribed to that term in Condition 2A.4.1.1;
“PSA Functions”	shall have the meaning ascribed to that term in Condition 2A.4.3.1;
“PS Actual Firm Capacity”	shall have the meaning ascribed to that term in Condition 2A.2.6.2;
“PS Annual Exit Quantity”	shall have the meaning ascribed to that term in Condition 2A.2.6.1;

“PS Forecast Annual Quantity”	shall have the meaning ascribed to that term in Condition 2A.2.5.1;
“PS Forecast Required Revenue (PSFRR)”	means in respect of a Gas Year the sum of all Forecast Required Revenues as such term is defined in each Respective Licence in respect of all Designated Pipe-line Operators in respect of such Gas Year;
“PS Gas Supplier”	means any person who is entitled to exit gas from the Postalised System;
“PS Initial Firm Capacity”	shall have the meaning ascribed to that term in Condition 2A.2.5.2;
“PS Non-Payment”	<p>means:</p> <p>(i) the failure of a PS Gas Supplier to pay into the PoT Account all or part of the PS Transmission Payments due from it by the Due Date, or the clawback by an administrator or liquidator of the amount of any payment (or part of such payment) made into the PoT Account by a PS Gas Supplier in respect of a PS Transmission Payment; or</p> <p>(ii) the amount of PS Transmission Payments which the relevant PS Gas Supplier has failed to pay or the amount which is subject to clawback by an administrator or liquidator</p> <p>as the context requires but shall not apply to any sums due under the Network Code upon termination of a PS Gas Supplier’s Accession Agreement in respect of periods after the date of termination;</p>
“PS Notified Debt”	means, at any time, the aggregate of PS Non-Payments, excluding any VAT element, which are at that time or were prior to that time the subject of a notification by a Designated Pipe-line Operator to the PSA as contemplated in Condition 2A.3.4.1 of such Designated Pipe-line Operator’s licence;

“PS Transmission Payments”	means any amount payable by a PS Gas Supplier in respect of the provision of gas conveyance services on the Postalised System under Conditions 2A.2.2.1 (Monthly Postalised Payments); 2A.2.2.2 (Debt Payments); and 2A.2.2.3 (Reconciliation Payments); 2A.2.5.1(c) (Auxiliary Payments) and 2A.2.6.4 (Supplemental Payments) under each Designated Pipe-Line Operator’s Respective Licence;
“Quantity Figures”	shall have the meaning ascribed to that term in Condition 2A.2.3.1(b);
“Quarter”	means each successive three calendar month period in a Gas Year, the first of which shall run from and including 06:00 hours 01 October until 06:00 hours 01 January in that Gas Year; and “Quarterly” shall be construed accordingly;
“Quarterly Exit Quantity”	means the aggregate of Exit Quantities in a Quarter;
“Reconciliation Payment”	means the Capacity Reconciliation Payment and the Commodity Reconciliation Payment;
“Reconciliation Payment Formulae”	means the formulae contained in Condition 2A.2.6.3 in accordance with which Reconciliation Payments shall be calculated;
“Recovery”	means any amount (other than a Debt Payment) paid by or on behalf of a PS Gas Supplier either directly into the PoT Account or to a Designated Pipe-line Operator and subsequently paid by that Designated Pipe-line Operator into the PoT account, in full or partial satisfaction of any PS Notified Debt attributable to that PS Gas Supplier;
“Relevant Charge Date”	shall have the meaning ascribed to that term in Condition 2A.2.5.4;
“Respective Licence”	means in respect of each of the Designated Pipe-line Operators the licence for the conveyance of gas granted to it pursuant to Article 8(1) of the Order or that part of a combined licence relating to the conveyance of gas;

“Second Due Date”	means, in respect of a PS Non-Payment which occurred in a Non-Payment Month, the fifteenth Business Day after the respective Due Date as stipulated in the Network Code;
“Separate Business”	<p>means each of the following businesses of the Licensee (as appropriate):</p> <p>(i) the conveyance of gas through a transmission pipe-line pursuant to a licence granted in accordance with Article 8(1)(a) of the Order;</p> <p>(ii) the distribution of gas through distribution pipe-lines pursuant to a licence granted in accordance with Article 8(1)(a) of the Order; and</p> <p>(iii) the supply of gas pursuant to a licence granted in accordance with Article 8(1)(c) of the Order</p> <p>each taken separately from one another and from any other business of the Licensee or any affiliate or related undertaking of the Licensee;</p>
“Supplemental Payment”	means any sum (whether or not contingent) in addition to aggregate Monthly Postalised Payments which a PS Gas Supplier is committed to pay on an annual basis in respect of transmission through the Postalised System and which is calculated otherwise than on the basis of a minimum quantity of gas or minimum quantum of capacity;
“Supply Business”	means, where applicable, the Separate Business of the Licensee which carries on the business of the supply of gas;
“Termination Payments”	means any amount payable on the termination of a Gas Supplier’s Accession Agreement under the terms of the Network Code;
“Terms of Reference”	means the terms of that name appended to the Network Code which govern the operation of the Credit Committee;

“Total Monthly Payments”	shall have the meaning ascribed to that term in Condition 2A.3.4.3;
“Transit”, “Transiting”	or forms thereof, refers to the conveyance of gas through the Designated Network to another part of the Postalised System;
“Transit Point”	means a point of interconnection between the Designated Network and another pipe-line forming part of the Postalised System;
“Trust and Account Bank Agreement”	means the agreement in the form approved by the Authority and made between the Designated Pipe-line Operators, the Trustee and account bank which governs the operation of the PoT Account;
“Trustee”	shall have the meaning ascribed to that term in Condition 2A.5.1.1;
“Trustee Functions”	shall have the meaning ascribed to that term in Condition 2A.5.3.1;
“Undesignated Network”	means such part(s) of the network as is or are not from time to time comprised in the Designated Network;
“Unrecovered Postalisation Payments”	shall have the meaning ascribed to that term in Condition 2A.4.3.1(l);
“VAT Distributions”	means distributions made by the Trustee on the instructions of the PSA from the PoT Account as calculated in accordance with Condition 2A.4.3.1 (d);
“Year-End Amount”	shall have the meaning ascribed to that term in Condition 2A.6.1.3;
“Year-End Postalisation Formulae”	means the formulae set out in Condition 2A.2.6;
“Year-End Postalised Capacity Charge”	means a charge applicable to each kWh/day of Firm Capacity held by each Gas Supplier for Exit from any part of the Designated Network in respect of a Gas Year in accordance with Condition 2A.2.6.2;
“Year-End Postalised Charge”	means the Year-End Postalised Capacity Charge and the Year-End Postalised Commodity Charge; and

“Year-End Postalised Commodity Charge” means a charge applicable to each kWh of gas allocated to each Gas Supplier in respect of an Exit Point during a Gas Year in accordance with Condition 2A.2.6.1.

### **2A.1.2 Interpretation**

In Part 2A all capitalised terms shall have the meaning ascribed to them in such part, notwithstanding any other definition of any such term elsewhere in the Licence. Capitalised terms within Part 2A which are not defined within such part shall have the meaning ascribed to them elsewhere in the Licence.

### **2A.1.3 Provision of Information**

Nothing in Part 2A shall require the Licensee to produce any information or provide any document to any other party which the Licensee could not be compelled to produce or provide in any civil proceedings.

### **2A.1.4 Units of Measurement**

For the avoidance of doubt:

- (a) the Licensee shall be entitled to invoice for any Postalised Charges in the unit of Mwh or Mwh/day, subject to the Authority’s consent; and
- (b) where any measurement is to be expressed in Kwh or Kwh/day the Licensee may satisfy such obligations by using the Kwh or Kwh/day equivalent of a measurement expressed in Mwh or Mwh/day as the case may be;



## **Condition 2A.2 – Postalisation Charges**

### **2A.2.1 Charges on the Designated Network**

- 2A.2.1.1 In respect of the Gas Year commencing on or after the Designation Date and each Gas Year or part of a Gas Year thereafter for so long as and to the extent that a Designation Order is and remains in force in respect of all or part of the network, the Licensee shall be subject to the provisions of this Part 2A.
- 2A.2.1.2 The Licensee shall require all of its Gas Suppliers to make all payments in settlement of PS Transmission Payments, Termination Payments and all Recoveries into the PoT Account. For the avoidance of doubt, PS Transmission Payments shall include any relevant Termination Payments payable in respect of PS Transmission Payments relating to the Gas Year in which termination occurs.
- 2A.2.1.3 The Licensee shall pay all sums which it receives directly from, or on behalf of, any of its Gas Suppliers in respect of PS Transmission Payments and Recoveries into the PoT Account.
- 2A.2.1.4 Where the Licensee has a Distribution Business and/or a Supply Business it shall for the purposes of this Condition 2A deal with such Distribution Business and/or Supply Business as if each such Separate Business were a third party Gas Supplier, including but not limited to providing or procuring forecasts relating to each such Separate Business, issuing invoices to each such Separate Business relating to PS Transmission Payments and maintaining appropriate records of all dealings with each such Separate Business.

### **2A.2.2 Charging methodology for the conveyance of gas**

- 2A.2.2.1 Subject to Condition 2A.2.2.5, the Licensee shall charge each of its Gas Suppliers in respect of the Exit of gas from, and holding of capacity on, the Designated Network the Monthly Postalised Payments in respect of each month or part thereof in a Gas Year in accordance with the terms of this Licence and the applicable provisions of the Network Code.
- 2A.2.2.2 The Licensee shall charge each of its Gas Suppliers any Debt Payment payable by them in accordance with any Debt Notice; and shall reduce any relevant invoice in respect of Monthly Postalised Payments by the amount of any Debt Repayment in

accordance with any Debt Notice in each case in accordance with the terms of this Licence and the applicable provisions of the Network Code.

2A.2.2.3 On or before the 10<sup>th</sup> Business Day in December following the end of each Gas Year in respect of which the Licensee has charged Monthly Postalised Payments to a Gas Supplier pursuant to Condition 2A.2.2.1 the Licensee shall, subject to Condition 2A.2.2.5, charge to such Gas Supplier any Supplemental Payment, and charge or repay (as appropriate) to such Gas Supplier a Commodity Reconciliation Payment and a Capacity Reconciliation Payment applicable in respect of that Gas Year calculated in accordance with the Reconciliation Payment Formulae in Condition 2A.2.6.3.

2A.2.2.4 Unless the Authority otherwise expressly consents in writing the Licensee shall apply no charge on the Postalised System other than the PS Transmission Payments or as otherwise permitted under the Licence or the Network Code.

2A.2.2.5 The Licensee shall acknowledge that each PS Gas Supplier's obligation to pay PS Transmission Payments shall be consideration for the allocation by the Licensee to such PS Gas Supplier, their nominee or agent (such nominee or agent to be a PS Gas Supplier or otherwise approved by the Authority) of both Firm Capacity at a Transit Point on the Designated Network and the relevant quantity of gas for exit at a Transit Point for the purpose of the Transit of such gas.

### **2A.2.3 Duty to provide forecasts and information relating to the calculation of the Postalised Charges**

#### **2A.2.3.1 Forecasts and information relating to following Gas Years**

(a) For the purpose of Condition 2A.2.5, the Licensee shall use its reasonable endeavours, in each Gas Year, to provide the following forecasts and information in respect of the next Gas Year ("GY") and each of the following four Gas Years inclusive ("GY+1" to "GY+4" respectively) (the "Forecast Figures") to the Authority no later than the last Business Day in June:

(i) the total of all Forecast Supplier Quantities in a Gas Year (the "Forecast Annual Quantity") together with:

- (aa) an explanation of the reasons why any Forecast Annual Quantity in respect of any of the Gas Years GY+1 to GY+4 are expected to be greater or less than the Forecast Annual Quantity in respect of GY;
  - (bb) a breakdown of the Forecast Annual Quantities in respect of each Exit Point in each relevant Gas Year; and
  - (cc) a breakdown showing the proportions of the Forecast Annual Quantity and aggregated Forecast Supplier Quantities attributable to each Quarter of GY;
- (ii) the assumptions on which the figures provided pursuant to Condition 2A.2.3.1(a)(i) were based:
- (aa) which for power stations shall include but not be limited to load factors, generation output and efficiency;
  - (bb) which for Gas Suppliers to distribution networks shall include but not be limited to numbers of consumers and average forecast quantity per consumer;

and in either case shall include an explanation of any material difference between such forecasts for the year GY and the forecast in respect of the then current Gas Year; and

- (iii) the Initial Firm Capacity in respect of GY and a forecast of Initial Firm Capacity in respect of GY+1 to GY+4 inclusive, together, if applicable, with an explanation of the reasons why any forecast is higher or lower than the Initial Firm Capacity figure for GY.

- (b) The Licensee shall use its reasonable endeavours to ensure that all Forecast Figures supplied to the Authority in accordance with Condition 2A.2.3.1(a) are as accurate as possible having regard to the information and forecasts available to the Licensee including that provided by its Gas Suppliers and shall provide to the Authority, with the figures provided under Condition 2A.2.3.1(a)(i) (the “Quantity Figures”), a full explanation as to how they have been calculated. In the event that any such Gas Supplier has failed to provide such information prior to the date specified by

2A.2.3.1(a), the Licensee shall ensure that the Quantity Figures are as accurate as possible having regard to the information and forecasts available to the Licensee and shall inform the Authority which Gas Suppliers have failed to provide the required information.

- (c) The Licensee shall promptly provide to the Authority such further information or explanation and access to relevant documents and records, in each case as the Authority reasonably requires, in relation to the Quantity Figures.
- (d) The Licensee may fulfil its obligations under this Condition 2A.2.3.1 by providing the relevant information in a joint report with one or more other Designated Pipe-line Operators which shall comply with this Condition 2A.2.3.1 in respect of the Licensee and each such Designated Pipe-line Operator.
- (e) If, in the Authority's reasonable opinion, having regard to information and explanations provided by the Licensee and representations made on or before the twelfth Business Day in July by parties which the Authority reasonably considers to have sufficient interest in making such representations (such parties to include the Licensee):
  - a Forecast Annual Quantity figure does not represent an accurate estimate taking into proper account all relevant information; and/or
  - the assumptions provided in accordance with Condition 2A.2.3.1(a)(ii) are inappropriate;

the Authority may by notice to the Licensee given on or before the thirteenth Business Day in July of the relevant Gas Year modify the Forecast Annual Quantity, such notice to contain an explanation of the reasons for such modification. The modified figure set out in any such notice shall be substituted for and for all purposes treated as the Forecast Annual Quantity submitted by the Licensee.

- (f) The Licensee shall, not later than the fifteenth Business Day in July submit the Forecast Figures (adjusted to reflect any modification made by the Authority pursuant to Condition 2A.2.3.1(e)) to the PSA for calculation of the Forecast Postalised Charges in accordance with the PSA Agreement.

- (g) If the Licensee fails to provide the Forecast Figures in accordance with, and/or by the date specified in, Condition 2A.2.3.1(a) the Authority shall be entitled on or after the thirteenth Business Day in July by written notice to the Licensee and the PSA to determine the Forecast Figures. Forecast Figures so determined may at the Authority's discretion either:
- (i) reflect the Actual Figures in respect of the previous Gas Year; or
  - (ii) be such other figures as the Authority reasonably deems appropriate.

### **2A.2.3.2 Information relating to previous Gas Year**

- (a) In each Gas Year commencing on or after 1<sup>st</sup> October 2005, for the purpose of Condition 2A.2.6, the Licensee shall submit to the Authority and to the PSA, in each case no later than the tenth Business Day in November, the following information (the "Actual Figures") for the immediately preceding Gas Year:
- (i) the Annual Exit Quantity in that Gas Year, together with a breakdown of that figure by Exit Point; and
  - (ii) the Actual Firm Capacity.

and with the Actual Figures, the Licensee shall provide the Authority and each of the other Designated Pipe-Line Operators with any further information required under any other Condition of this Licence.

- (b) The Licensee shall provide to the Authority such further information or explanation and access to relevant documents and records, in each case as the Authority reasonably requires in connection with its consideration of any differences between the Forecast Figures and the corresponding Actual Figures for the relevant Gas Year.
- (c) If the Licensee fails to provide the Actual Figures in accordance with, and/or by the date specified in, Condition 2A.2.3.2(a) the Authority shall be entitled to determine the Actual Figures as it reasonably deems appropriate and shall inform the Licensee and the PSA by notice of the Actual Figures so determined.

### **2A.2.3.3 Provision of quarterly information**

- (a) In respect of each Gas Year commencing on or after the Designation Date, the Licensee shall provide:
  - (i) the Authority; and
  - (ii) all of the other Designated Pipe-line Operators;

with a breakdown of the Quarterly Exit Quantities by Exit Point for the relevant Quarter and any other information required to be provided by the Licensee on a Quarterly basis under this Licence, no later than 10 Business Days after the end of each Quarter in a Gas Year.

- (b) At the same time as the Licensee provides the figures required under Condition 2A.2.3.3(a), the Licensee shall confirm to the Authority, the other Designated Pipe-line Operators and each of the PS Gas Suppliers whether it is aware of or has reason to believe that the Forecast Figures provided in accordance with Condition 2A.2.3.1(a) for the remainder of the current or any future Gas Years will or may be materially inaccurate. If the Licensee suspects such material inaccuracy, it shall provide details of the extent of such inaccuracy, and its reasons for such belief.
- (c) The Licensee may fulfil its obligations under this Condition 2A.2.3.3, by submitting, together with one or more other Designated Pipe-line Operators, a joint report which shall comply with this Condition 2A.2.3.3.
- (d) The Licensee shall provide to each PS Gas Supplier details of the aggregate sum of all Quarterly Exit Quantities (whether in the form of a joint report or otherwise) in respect of each Exit Point on the Designated Network.

**2A.2.4                      Duty to co-operate with the PSA and other Designated Pipe-line Operators**

The Licensee shall co-operate with the PSA and other Designated Pipe-line Operators with a view to facilitating the PSA in complying with its obligations under the PSA Agreement and to facilitating the other Designated Pipe-line Operators in complying with their obligations under Conditions 2A.2 and 2A.4 of their Respective Licences.

**2A.2.5                      Forecast Postalised Charges**

Subject to Condition 2A.2.8, the Forecast Postalised Charges shall be calculated by the PSA and shall comprise a Forecast Postalised Commodity Charge calculated in accordance with Condition 2A.2.5.1 and a Forecast Postalised Capacity Charge calculated in accordance with Condition 2A.2.5.2.

#### **2A.2.5.1 Forecast Postalised Commodity Charge**

- (a) Subject to Conditions 2A.2.5.3, 2A.2.5.4 and 2A.2.8, the Forecast Postalised Commodity Charge to be charged in respect of Gas Year “t” to each Gas Supplier in respect of each kWh of gas allocated to each such Gas Supplier under the Network Code in respect of each Exit Point during that Gas Year shall be calculated in accordance with the following formula:

$$\text{FPComC}_t = \frac{\text{PSFRR}_t * \text{Commodity Percentage}}{\text{PS Forecast Annual Quantity}_t}$$

where:

“**FPComC<sub>t</sub>**” means the Forecast Postalised Commodity Charge for Gas Year “t”;

“**Commodity Percentage**” means:

- (i) 50% in respect of Gas Years ending on or before 06:00 hours on 01 October 2008; and
- (ii) 25% in respect of Gas Years ending after 06:00 hours on 01 October 2008.

Notwithstanding the above, where the PS Forecast Annual Quantity is zero, the Commodity Percentage shall be 0%.

“**PS Forecast Annual Quantity<sub>t</sub>**” means:

the sum of the Forecast Annual Quantities (as that term is defined in each Designated Pipe-line Operator’s Respective Licence) in respect of all PS Gas Suppliers for the relevant Gas Year “t”; and

“**PSFRR<sub>t</sub>**” means the PS Forecast Required Revenue for Gas Year “t”.

- (b) A Monthly Postalised Commodity Payment shall be calculated in accordance with the following formula in respect of gas allocated to each Gas Supplier for Exit in

respect of the previous month, the components of which shall be applied in respect of month (“m”) in Gas Year “t” and shall be payable by a Gas Supplier “s”:

$$MPCOMP_{sm} = FPCOMC_t \times MEQ_{sm}$$

where

$MPCOMP_{sm}$  means the Monthly Postalised Commodity Payment payable by a Gas Supplier “s” in respect of month “m” of Gas Year “t”;

$FPCOMC_t$  means the Forecast Postalised Commodity Charge applicable in respect of Gas Year “t” in accordance with 2A.2.5.1(a); and

$MEQ_{sm}$  means the Exit Quantity allocated to Gas Supplier “s” in respect of an Exit Point and in respect of month “m”.

- (c) If the aggregate of the Monthly Postalised Commodity Payments invoiced or to be invoiced to a Gas Supplier “s” in respect of a Gas Year “t” ( $\Sigma MPCOMP_{st}$ ) is less than the product of  $FPCOMC$  multiplied by the Minimum Quantity Value in respect of Gas Year “t” for Gas Supplier “s” the Licensee shall invoice to Gas Supplier “s” in accordance with the provisions of this Licence, an Auxiliary Payment calculated by the Licensee as follows:

$$(FPCOMC_t \times \text{Minimum Quantity Value}_{st}) - \Sigma MPCOMP_{st}$$

Such Auxiliary Payments shall be included in the invoice for PS Transmission Payments applicable for the last month in Gas Year “t”

- (d) The Forecast Postalised Commodity Charge invoiced to a Gas Supplier “s” in respect of a Gas Year “t” or month “m” of Gas Year “t” calculated in accordance with Condition 2A.2.5.1 (a) shall be rounded to seven [7] decimal places.

#### 2A.2.5.2 **Forecast Postalised Capacity Charge**

- (a) Subject to Conditions 2A.2.5.3, 2A.2.5.4 and 2A.2.8, the Forecast Postalised Capacity Charge to be charged to each Gas Supplier in respect of each kWh/day of Firm Capacity in respect of a Gas Year shall be calculated in accordance with the following formula:



$$FPCapC_t = \frac{PSFRR_t * Capacity\ Percentage}{PS\ Initial\ Firm\ Capacity_t}$$

where:

“**FPCapC**” means the Forecast Postalised Capacity Charge; and

“**Capacity Percentage**” means:

- (i) 50% in respect of Gas Years ending on or before 06:00 hours on 01 October 2008; and
- (ii) 75% in respect of Gas Years ending after 06:00 hours on 01 October 2008.

Notwithstanding the above, where the PS Forecast Annual Quantity is zero, the Capacity Percentage shall be 100%.

“**PS Initial Firm Capacity<sub>t</sub>**” means:

the sum of the Initial Firm Capacity (as that term is defined in each Designated Pipe-line Operator’s Respective Licence) held by PS Gas Suppliers for the relevant Gas Year “t”.

“**PSFRR<sub>t</sub>**” means the PS Forecast Required Revenue for Gas Year “t” .

- (b) A Monthly Postalised Capacity Payment shall be calculated in accordance with the following formula in respect of the Firm Capacity held by each Gas Supplier, the components of which shall be applied in respect of month “m” in Gas Year “t” and shall be payable by a Gas Supplier “s”:

$$MPCapP_s = \frac{FPCapC_t}{12} \times FC_s$$

where

MPCapP<sub>s</sub> means the Monthly Postalised Capacity Payment payable by a Gas Supplier “s” in respect of month “m” of Gas Year “t”;

FPCapC<sub>t</sub> means the Forecast Postalised Capacity Charge applicable in respect of Gas Year “t” in accordance with 2A.2.5.2(a); and

FC<sub>s</sub> means the Firm Capacity held by a Gas Supplier “s” in respect of Gas Year “t”.

- (c) The Forecast Postalised Capacity Charge invoiced to a Gas Supplier “s” in respect of a Gas Year “t” or month “m” of Gas Year “t” calculated in accordance with Condition 2A.2.5.2 (a) shall be rounded to five [5] decimal places.

### **2A.2.5.3 Emergency Events**

If at any point in the period from the date of provision of the Forecast Figures for the next Gas Year referred to in Condition 2A.2.3.1 to the start of the next Gas Year an unforeseen event occurs which the Authority believes is likely materially to affect the Forecast Figures for that next Gas Year the Authority may at its discretion by notice to the Licensee and the PSA adjust the Forecast Figures in respect of such next Gas Year to reflect the effect of such event. The Forecast Postalised Charges for such next Gas Year shall be calculated by the PSA in accordance with such adjusted figures.

### **2A.2.5.4 Amendment to Forecast Postalised Charges**

If at any date during any Gas Year (“Relevant Charge Date”) the Department issues a Designation Order, or if any Designated Pipe-line Operator ceases to be a Designated Pipe-line Operator, unless the Authority determines otherwise:

- (a) the Forecast Postalised Charges shall be recalculated with effect from the Relevant Charge Date; and
- (b) the Year-End Postalised Charges shall be calculated in respect of the period up to the Relevant Charge Date and the period following the Relevant Charge Date

in each case as determined by the Authority so that an appropriate proportion only of the Forecast Required Revenue of the relevant Designated Pipe-line Operator (as defined in that Designated Pipe-line Operator’s Respective Licence) shall be taken into account before and after the Relevant Charge Date and such adjustments as the

Authority considers appropriate shall be made to the PS Forecast Annual Quantity, PS Annual Exit Quantity, PS Initial Firm Capacity, PS Forecast Required Revenue, and PS Actual Firm Capacity, and notified to the Designated Pipe-Line Operators and the PSA.

#### **2A.2.6 Year-End Postalised Charges**

The Year-End Postalised Charges shall comprise a Year-End Postalised Commodity Charge calculated in accordance with Condition 2A.2.6.1 and a Year-End Postalised Capacity Charge calculated in accordance with Condition 2A.2.6.2 in each case calculated by the PSA. In addition, where one or more Gas Suppliers is or are subject to a commitment to make a Supplemental Payment the Licensee shall comply with Condition 2A.2.6.4.

##### **2A.2.6.1 Year-End Postalised Commodity Charge**

The Year-End Postalised Commodity Charge in respect of each kWh of gas allocated to each Gas Supplier under the Network Code in respect of each Exit Point on each day during a Gas Year “t” shall be calculated as determined in accordance with the following formula, the components of which shall be in relation to Gas Year “t”:

$$\text{YEPComC}_t = \frac{((\text{PSARR}_t - T_t) * \text{Commodity Percentage}) - \text{Supplemental Payments}_t}{\text{PS Annual Exit Quantity}_t}$$

where:

**YEPComC<sub>t</sub>** means the Year-End Postalised Commodity Charge for Gas Year “t”;

**PSARR<sub>t</sub>** means the PS Actual Required Revenue in respect of Gas Year “t”;

**T<sub>t</sub>** means any Termination Payments payable in respect of PS Transmission Payments relating to Gas Year “t”;

**“PS Annual Exit Quantity<sub>t</sub>”** means:

the sum of the Annual Exit Quantities (as that term is defined in each Designated Pipe-line Operator’s Respective Licence) for the relevant gas year “t”.

Notwithstanding the provisions of Condition 2A.2.5.1, where the PS Annual Exit Quantity is zero, the Commodity Percentage shall be 0%.

#### **2A.2.6.2 Year-End Postalised Capacity Charge**

The Year-End Postalised Capacity Charge in respect of each kWh/day of Firm Capacity held by each Gas Supplier for Exit from any part of the Designated Network during a Gas Year “t” shall be determined in accordance with the following formula:

$$\text{YEPCapC}_t = \frac{\text{PSARR}_t - T_t * \text{Capacity Percentage}}{\text{PS Actual Firm Capacity}_t}$$

where:

“**YEPCapC<sub>t</sub>**” means the Year-End Postalised Capacity Charge for Gas Year “t”;

**PSARR<sub>t</sub>** = the PS Actual Required Revenue in respect of Gas Year “t”;

**T<sub>t</sub>** means any Termination Payments payable in respect of PS Transmission Payments relating to Gas Year “t”;

“**PS Actual Firm Capacity<sub>t</sub>**” means the sum of the Actual Firm Capacity (as that term is defined in each Designated Pipeline Operator’s Respective Licence) held in a Gas Year by all PS Gas Suppliers.

Notwithstanding the provisions of Condition 2A.2.5.2, where the PS Annual Exit Quantity is zero, the Capacity Percentage shall be 100%.

#### **2A.2.6.3 Reconciliation Payments**

- (a) A Capacity Reconciliation Payment shall be calculated in respect of each Gas Supplier in accordance with the following formula (which, together with the formula contained in Condition 2A.2.6.3(b) below, shall be referred to as the “Reconciliation Payment Formulae”) and shall be payable by a Gas Supplier “s” if a positive value, and payable to Gas Supplier “s” if a negative value:

$$\text{CapRP}_{st} = (\text{YEPCapC}_t - \text{FPCapC}_t) \times \text{GS Firm Capacity}_{st}$$

where:

“**CapRP<sub>st</sub>**” means the Capacity Reconciliation Payment payable by or to Gas Supplier “s” in respect of Gas Year “t”;

“**YEPComC<sub>t</sub>**” means the Year-End Postalised Capacity Charge applied in respect of Gas Year “t”;

“**FPComC<sub>t</sub>**” means the Forecast Postalised Capacity Charge applied in respect of Gas Year “t”; and

“**GS Firm Capacity<sub>st</sub>**” means the GS Firm Capacity held by a Gas Supplier “s” in respect of Gas Year “t”;

- (b) A Commodity Reconciliation Payment shall be calculated in respect of each Gas Supplier in accordance with the following formula and shall be due from a Gas Supplier “s” if a positive value, and shall be due to a Gas Supplier “s” if a negative value:

$ComRP_{st} = E$  or, in the event that E is a positive value, the lesser of E and the sum of 15% of  $\Sigma MPComP_{st}$  plus 15% of any Auxiliary Payments invoiced to that Gas Supplier in accordance with Condition 2A.2.5.1(c)

where:

“**ComRP<sub>st</sub>**” means the Commodity Reconciliation Payment payable by or to Gas Supplier “s” in respect of Gas Year “t”;

$E = (YEPComC_t - FPComC_t) \times GS \text{ Annual Exit Quantity}_{st}$ ;

“**YEPComC<sub>t</sub>**” means the Year-End Postalised Commodity Charge applied in respect of Gas Year “t”;

“**FPComC<sub>t</sub>**” means the Forecast Postalised Commodity Charge applied in respect of Gas Year “t”;

“**GS Annual Exit Quantity<sub>t</sub>**” means the Exit Quantities of Gas Supplier “s” in respect of Gas Year “t”; and

“ **$\Sigma MPComP_{st}$** ” means the aggregate of the Monthly Postalised Commodity Payments invoiced to a Gas Supplier “s” in respect of a Gas Year “t”

**2A.2.6.4** Where a Gas Supplier is subject to a commitment which gives rise to an obligation to make a Supplemental Payment in respect of any Gas Year the Licensee shall invoice the Gas Supplier promptly in accordance with the terms of the commitment and Condition 2A2.2.3 in respect of that Supplemental Payment and shall provide full details of the amount payable to the Authority, the PSA and the other Designated Pipe-line Operators.

**2A.2.7                      Publication of Postalised Charges**

Subject to any contrary requirements in this Condition 2A, the Licensee shall publish in such form and manner as the Authority may direct:

- (a) no later than 3 Business Days after notification to it by the PSA of the Forecast Postalised Charges, or revised Forecast Postalised Charges as calculated under Condition 2A.2.5.3, in respect of the next Gas Year and each of the following four Gas Years, a statement of such charges; and
- (b) no later than 3 Business Days after notification to it by the PSA of the Year-End Postalised Charges in respect of a Gas Year, a statement of the Year-End Postalised Charges; and
- (c) no later than 3 Business Days after notification to it by the Authority of any amendments to Forecast Postalised Charges required under Condition 2A.2.5.4, a statement of the amended charges.

**2A.2.8                      Forecast Postalised Charges for Gas Year commencing 01 October 2004**

The Forecast Postalised Charges to be charged by the Licensee in respect of the Gas Year commencing 01 October 2004 shall be such charges as shall be calculated by the Authority by application of the Forecast Postalisation Formulae using such estimates and relevant information as may have been provided to the Authority or as the Authority otherwise deems appropriate, and notified to the Designated Pipe-Line Operators and the PSA.

## **Condition 2A.3 –Recovery of PS Non-Payments**

### **2A.3.1 Invoicing of PS Transmission Payments**

The Licensee shall issue all invoices, including appropriate VAT invoices to Gas Suppliers in respect of PS Transmission Payments promptly, accurately, and in accordance with the Network Code and the provisions of this Licence.

### **2A.3.2 PS Non-Payment and Recovery**

In the event of a PS Non-Payment by a Gas Supplier, the Licensee shall:

- (a) take all reasonable steps which a prudent network operator acting efficiently and in accordance with best industry practice would take to recover the amount of the PS Non-Payment,
- (b) in accordance with the Terms of Reference:
  - (i) convene a first meeting of the Credit Committee within 10 Business Days of such PS Non-Payment and such further meetings as may be necessary or appropriate;
  - (ii) attend and participate in any meetings of the Credit Committee convened in connection with the PS Non-Payment; and
  - (iii) comply with any directions issued by the Credit Committee at any time in respect of any PS Non-Payment (“Directions”);
- (c) prior to the first meeting of the Credit Committee referred to in Condition 2A.3.2(b)(i) provide to all parties entitled to attend that meeting the following information (or as much of it as the Licensee is able to provide):
  - (i) full details of the PS Non-Payment(s) including the amount of each PS Non-Payment and the identity of the debtor;
  - (ii) full details of the security provided by the debtor in respect of PS Transmission Payments under the Network Code and, where applicable any steps taken or being taken to enforce it;

- (iii) if desired, a draft of any Directions it believes appropriate for the Credit Committee to consider in respect of the PS Non-Payment(s);
- (iv) all relevant information relating to any proceedings for the liquidation or winding up of the debtor, the making of an administration order or arrangement with any class of creditors, the appointment of an administrator or administrative receiver or receiver or any equivalent insolvency event;
- (v) full details of the steps taken by the Licensee to recover the outstanding amounts with evidence supporting such details; and
- (vi) a full explanation of the reasons why the Licensee has failed to recover the PS Non-Payment(s) at the relevant date;

provided that all such information shall be updated and resubmitted to the relevant parties by the Licensee prior to any further meetings of the Credit Committee which are convened after the first such meeting under Condition 2A.3.2(b)(i), in the event that such information becomes inaccurate with the passage of time; and

- (d) notify the Designated Pipe-line Operators, the PSA and the Authority promptly of any Recoveries received by it and transfer any such Recoveries into the PoT Account within 2 Business Days of such receipt.

### **2A.3.3 Non Payments by other Designated Pipe-line Operators' Suppliers**

The Licensee may itself, or in common with other Designated Pipe-line Operators, convene a meeting of the Credit Committee in relation to any PS Non-Payments caused by a PS Gas Supplier failing to pay PS Transmission Payments invoiced by another Designated Pipe-Line Operator in the event that it believes that the Designated Pipe-line Operator from whose network the defaulting PS Gas Supplier exits gas has failed to convene the Credit Committee within the appropriate period following a PS Non-Payment, or is not fulfilling any Directions.

### **2A.3.4 Debt Payments**

- 2A.3.4.1 The Licensee shall, not later than 5 Business Days before the Invoice Date occurring in the month following a Non-Payment Month, notify the PSA, all Designated Pipe-



line Operators, all PS Gas Suppliers, and the Authority of the amount of any PS Non-Payment(s) caused by or relating to its Gas Suppliers arising in that Non-Payment Month which are still outstanding on such date.

2A.3.4.2 The Licensee shall invoice to all Gas Suppliers any Debt Payment or account to all Gas Suppliers in respect of any Debt Repayment, in each case in accordance with the Network Code and as detailed in any Debt Notice in order to give effect to Condition 2A.3.4.3 and shall provide to each Gas Supplier sufficient supporting information to enable it to verify the calculation of Debt Payment or Debt Repayment due from or to it.

2A.3.4.3 Each month “**m**”, the Net Debt Position (“**NDP**”) as at the Debt Notice Date will be calculated by the PSA as follows:

$$NDP_m = (A - B - C) + Z$$

Where:

A = as at the Debt Notice Date the PS Notified Debt;

B = as at the Debt Notice Date, the sum of all Debt Payments then paid or payable (including any interest accrued or accruing in respect of late payments) minus the sum of all Debt Repayments then paid or payable (including any interest accrued or accruing in respect of late payments);

C = as at the Debt Notice Date, the total value of all Recoveries received into the PoT Account, together with any interest paid on such Recoveries;

Z = the sum of all interest charges accrued in relation to NDP in previous months calculated in respect of each such previous month (“**pm**”) and each such interest charge being “**I<sub>pm</sub>**”) as:

$$I_{pm} = NDP_{pm} \times r$$

r = the interest rate from time to time calculated at the monthly equivalent rate of 0.75 plus the one month LIBOR rate, published five Business Days before the relevant Invoice Date.

- (i) Where NDP is positive, a Debt Payment shall be invoiced to each Gas Supplier in respect of such positive figure. Such Debt Payment shall, in reference to Gas Supplier “s” be calculated by the PSA in accordance with the following method:

the Debt Payment payable by a Gas Supplier “s” in any month shall be equal to the lower of X and Y:

where:

X = the sum of 10% of the total amount payable by a Gas Supplier “s” in respect of the Total Monthly Payment invoiced in the month preceding the month in which the Debt Payment is to be invoiced (such earlier month being “m-1”) and 100% of the amount payable to Gas Supplier(s) in respect of Reconciliation Payments in the month in which the Debt Payment is to be invoiced.

$$Y = \frac{(NDP_m + I_m) \times (TMP_{sm-1})}{PSTMP_{m-1}}$$

where:

$TMP_{sm-1}$  = Total Monthly Payment, calculated as the sum of Monthly Postalised Payments plus any Auxiliary Payments, payable by a Gas Supplier “s” invoiced in the month preceding the month when the Debt Payment is invoiced (“m-1”);

$$I_m = NDP_m \times r; \text{ and}$$

$PSTMP_{m-1}$  = the aggregate of Total Monthly Payments payable by all PS Gas Suppliers invoiced in respect of the month preceding the month when the Debt Payment is invoiced (“m-1”);

- (ii) Where NDP is negative in respect of a month (month “m”), an amount (a “Debt Repayment”) shall be payable by the Licensee to each relevant Gas

Supplier (or former Gas supplier, as the case may be) in respect of any such negative figure. In reference to a Gas Supplier “s” a Debt Repayment shall be calculated by the PSA in accordance with the following formula (the “**Debt Repayment Formula**”):

$$\text{Debt Repayment to Gas Supplier "s"} = -\text{NDP} \times \frac{\text{ADP}_s}{\text{APSDP}}$$

where:

“ADP<sub>s</sub>” means the aggregate Debt Payments payable by a Gas Supplier “s” over the Debt Payment Period;

“Debt Payment Period” means the last month preceding month “m” in which a Debt Payment was payable by PS Gas Suppliers, or, if a Debt Payment has been payable by PS Gas Suppliers in respect of two or more consecutive months preceding month “m”, the period of all such consecutive months preceding month “m”.

“APSDP” means the aggregate of Debt Payments payable by PS Gas Suppliers during the Debt Payment Period.

## **Condition 2A.4 – The Postalisation System Administrator**

### **2A.4.1 The PSA’s primary obligations**

2A.4.1.1 Subject to Condition 2A.4.1.2, unless the Authority otherwise directs or consents, the Licensee shall do all things within its power to:

- (a) enter into, before such date as is appointed by the Authority; and
- (b) be party at all times thereafter to

arrangements whereby a person who fulfils the criteria set out in Condition 2A.4.2 (referred to as the “Postalisation System Administrator” or “PSA”) carries out the activities specified in Condition 2A.4.3 pursuant to an agreement between the PSA and the Designated Pipe-line Operators which fulfils the criteria referred to in Conditions 2A.4.3 and 2A.4.4 and has been and remains approved by the Authority (referred to as the “PSA Agreement”).

2A.4.1.2 The Licensee shall only be entitled to terminate the PSA Agreement without the Authority’s prior written consent if the PSA is or becomes insolvent; if the PSA, in the reasonable opinion of the Licensee, commits a material breach of the terms or warranties of the PSA Agreement; or if any approval given by the Authority under Condition 2A.4.2.2 expires or is revoked. Upon such termination the Licensee shall use its best endeavours promptly to appoint a new PSA in accordance with this Condition 2A.4.

2A.4.1.3 Where written consent of the Authority is required to terminate the PSA Agreement and such consent is sought by the Licensee, such consent shall be deemed as having been given if the Authority has not sent written notice to the Licensee of its objection to such termination and the grounds for such objection within 4 weeks after its receipt of full written details of the proposed termination. The Licensee shall provide the Authority with any further relevant information requested during that four weeks.

2A.4.1.4 Unless the Authority otherwise consents, if the Licensee fails to enter into the arrangements referred to in Condition 2A.4.1.1 above by the date required by that Condition the Licensee shall use its best endeavours to enter into such arrangements as soon as possible thereafter.

## **2A.4.2                               Criteria for appointment of the PSA**

2A.4.2.1    The person fulfilling the functions of PSA from time to time pursuant to this Condition 2A.4 shall:

- (a)        be a competent, fit and proper person to fulfil the PSA Functions having the systems and controls in place to fulfil those functions; and
- (b)        have sufficient suitably qualified and skilled personnel to enable it to perform the PSA Functions.

2A.4.2.2    The criteria specified in Condition 2A.4.2.1 shall be treated as satisfied in respect of any appointment if the Licensee appoints as the PSA a person who at the time of appointment is a person approved by the Authority for the purposes of this Condition and if that approval has not expired or been revoked.

## **2A.4.3                               The PSA’s functions**

2A.4.3.1    The PSA Agreement shall, in accordance with Condition 2A.4.1.1, impose on the PSA the following functions (referred to as the “PSA Functions”):

- (a)        the receipt from each of the Designated Pipe-line Operators of the information to be submitted to the PSA pursuant to Condition 2A.2.3 of each Designated Pipe-line Operator’s Respective Licence and the receipt from each of the Designated Pipe-line Operators of its Forecast Required Revenue for the coming Gas Year “t” and the following four Gas Years pursuant to its Respective Licence;
- (b)        the calculation of the relevant Forecast Postalised Charges for the next Gas Year and the following four Gas Years through application of the Forecast Postalisation Formulae and notification thereof to all Designated Pipe-line Operators in each case within 5 Business Days of receipt of the information specified in (a) above and in any event at least two Business Days before the first Business Day in August;
- (c)        the verification of payments into the PoT Account (to include keeping a record of all Debt Payments paid by each PS Gas Supplier in relation to particular PS Non-Payments) and prompt notification to Designated Pipe-line

Operators of any PS Non-Payment and of any Recovery paid into the PoT Account;

- (d) the calculation of any VAT Distributions due in respect of sums received into the PoT Account from PS Gas Suppliers on the date of calculation of the Monthly Distribution in the relevant month (month “m”), provided that where a sum is received from a PS Gas Supplier in respect of PS Transmission Payments and such sum is insufficient to meet both the PS Transmission Payments and VAT due on such PS Transmission Payments in full the PSA shall calculate the VAT element of the amount so received, calculated as;

$$\text{VAT}_{Lm} = (\text{VI}_{Lm-1}/\text{TI}_{Lm-1}) \times \text{TAR}_{LGm}$$

$\text{VAT}_L$  = the aggregate amount of VAT Distributions for the relevant Designated Pipe-line Operator “L” for month “m”

$\text{VI}_{Lm-1}$  = the sum of VAT amounts invoiced by the relevant Designated Pipe-line Operator “L” in the preceding month (“m-1”)

$\text{TI}_{Lm-1}$  = the sum of all amounts including VAT payable for PS Transmission Payments invoiced by the relevant Designated Pipe-line Operator “L” in the preceding month (“m-1”)

$\text{TAR}_{LGm}$  = the sum of all amounts received into the PoT Account from the relevant Designated Pipe-line Operator “L”’s PS Gas Suppliers in month “m” in respect of the amounts referred to in the definition of the term  $\text{TI}_{Lm-1}$  above.

- (e) notification to the Designated Pipe-line Operators of any part or full settlement of PS Non-Payments by PS Gas Suppliers made on or before the Second Due Date in relation to such PS Non-Payments and the issue of directions to the Trustee to distribute such settlements payments according to Condition 2A.6.
- (f) on the Debt Notice Date each month the calculation of the Net Debt Position and each Designated Pipe-line Operator’s Debt Entitlement and, where applicable, any Debt Payment or Debt Repayment to be charged or credited to

each PS Gas Supplier and the issue to Designated Pipe-line Operators and the Authority of a notice (a “Debt Notice”) in relation to any such Debt Payment and/or Debt Repayment arising which shall contain:

- (i) details of any PS Notified Debt and interest thereon and any Recovery to which such Debt Payments/Repayments relate;
  - (ii) details of the relevant Designated Pipe-line Operator’s Debt Entitlement;
  - (iii) particulars of the Debt Payment or Debt Repayment to be charged or credited to each PS Gas Supplier;
  - (iv) sufficient information concerning the Total Monthly Payments and Auxiliary Payments in any period relevant to the calculation of Debt Payment or Debt Repayment to permit verification of the calculations of Debt Payment or Debt Repayment in the Debt Notice.
- (g) the calculation of the Year-End Postalised Charges and any Capacity Reconciliation Payments and Commodity Reconciliation Payments applicable to each PS Gas Supplier in accordance with the provisions of Condition 2A.2.6.3; and the notification of the results of all such calculations to all Designated Pipe-line Operators and to the Authority no later than the 1<sup>st</sup> Business Day in December after the end of each Gas Year;
- (h) the calculation as soon as reasonably practicable, and within 5 Business Days of receipt of all relevant information in accordance with Condition 2A.6.1.3 of the Year-End Amount, if any, to be paid by or to each of the Designated Pipe-line Operators in respect of the previous Gas Year;
- (i) the calculation of upstream tariffs as required under the terms of Designated Pipe-line Operators’ licences and notification to the respective Designated Pipe-line Operator and the Authority, no later than the 17 Business Day in July;
- (j) on or before the 5th Business Day following each Due Date the calculation in respect of each Designated Pipe-line Operator of the applicable Monthly Postalised Entitlements and Monthly Distributions in respect of the relevant

month; and the issue of appropriate directions to the Trustee for the purpose of implementing Condition 2A.6 so that any such Monthly Distributions are made to Designated Pipe-line Operators as soon as possible and at least within 7 Business Days of the Due Date;

- (k) calculation of any additional sums due by way of Monthly Distribution in respect of any sum received into the PoT Account after the issue of instructions to the Trustee in accordance with (j) above and before the next Debt Notice Date;
- (l) following the end of each Gas Year, the calculation, recording and notification to the Authority and the Designated Pipe-Line Operators not later than the 10<sup>th</sup> Business Day in December of the next Gas Year of the amount of any Commodity Reconciliation Payments which would have been payable by each PS Gas Supplier in respect of each Gas Year but for the application of the 15%  $\Sigma\text{MPComP}_{st}$  cap contained in Condition 2A.2.6.3(b). Such amounts in respect of each Gas Year and each PS Gas Supplier shall be defined as the “Unrecovered Postalisation Payments” (“UNRP<sub>t</sub>”) and shall be calculated in accordance with the following formula:

$$\text{UNRP}_t = (\text{YEPComC}_t - \text{FPComC}_t) \times \text{PS Annual Exit Quantity}_t - \Sigma\text{ComRP}_t$$

where  $\Sigma\text{ComRP}_t$  is equal to all Commodity Reconciliation Payments as determined under Condition 2A.2.6.3 (b) in Gas Year “t”

- (m) the re-calculation of the Forecast Postalised Charges as required under Condition 2A 2.5.3 within three Business Days of receipt of adjusted figures from the Authority.
- (n) The division of any amounts in respect of Termination Payments received into the PoT Account:
  - (aa) between Designated Pipe-Line Operators where two or more Designated Pipe-line Operators have invoiced such payments to the same PS Gas Supplier in the same month, in proportion to the relevant invoices;



- (bb) between that part of Termination Payments payable in respect of PS Transmission Charges relating to the Gas Year in which termination occurs and that part of Termination Payments related to future Gas Years, the allocation to be made in such a way that:
  - (i) Termination Payments shall be applied first in respect of sums due in respect of PS Transmission Charges in the Gas Year in which termination occurs; and
  - (ii) secondly, in respect of Termination Payments related to future Gas Years.

The PSA shall notify the Designated Pipe-line Operators of the sums allocated and issue directions to the Trustee to transfer the part of any such Termination Payment applicable to future Gas Years to the relevant Primary DPO in accordance with Condition 2A. 6.1.4.

#### **2A.4.4 PSA Agreement criteria**

- 2A.4.4.1 The PSA Agreement shall not, by object or effect, impose undue discrimination or confer undue preference on any Designated Pipe-line Operator or PS Gas Supplier and shall:
- (a) require the PSA to fulfil the PSA Functions in a manner which is transparent and which does not unduly discriminate as between Designated Pipe-line Operators or PS Gas Suppliers;
  - (b) require the PSA to institute appropriate arrangements and procedures to enable the PSA to fulfil the PSA Functions in an efficient and economic manner;
  - (c) make provision for the modification of the PSA Agreement, in the following circumstances only:
    - (i) with the written consent of the Authority (such consent to be deemed as having been given at such time when the Authority has not sent written notice to the parties to the PSA Agreement of its objection to such modification and the grounds for such objection within 4 weeks of its receipt of full written details of the proposed modification,

together with any further relevant information requested by the Authority); or

- (ii) in accordance with a written direction made by the Authority to the extent necessary to ensure consistency with the Licence, following consultation with the Designated Pipe-line Operators;
- (d) provide for its termination in the event that any approval granted by the Authority pursuant to Condition 2A.4.2.2 is revoked;
- (e) require the PSA to co-operate with the Authority including without limitation by the sharing of information, both generally and to enable the Authority as far as is reasonably practicable to monitor whether the PSA is continuing to fulfil the PSA Functions in an efficient and economic manner;
- (f) require the PSA to perform its functions promptly and diligently with reasonable skill and care, and in conformity with all applicable laws, rules and regulations;
- (g) require the PSA to perform all calculations in accordance with any financial model approved by the Authority from time to time following consultation by the Authority with the Designated Pipe-Line Operators;
- (h) require the Licensee to co-operate with the PSA, such co-operation to include but not be limited to providing the PSA and other Designated Pipe-line Operators with such information as is at the Licensee's disposal and which would facilitate the operation of the system of postalised charges in respect of the Postalised System, provided that the Licensee shall not be required to provide to another Designated Pipe-line Operator confidential information, the provision of which would, or might, in the opinion of the Authority, seriously and prejudicially affect the interests of the Licensee or any PS Gas Supplier or Designated Pipe-line Operator; and
- (i) subject to Condition 2A.4.1.2 provide that, except with the consent of the Authority, the Licensee shall not terminate the PSA Agreement until such time as a new PSA has been appointed under a PSA Agreement conforming with all the requirements under this Condition 2A.4.

## **2A.4.5**

### **Licensee's obligations in relation to the PSA**

#### 2A.4.5.1 The Licensee shall:

- (a) promptly after becoming aware thereof, notify the Authority of any material or persistent breach of any obligation by any party under the PSA Agreement;
- (b) take all reasonable steps to enforce the obligations of the parties to the PSA Agreement whenever required, or whenever so directed by the Authority by written notice, and in accordance with the terms of the direction;
- (c) not knowingly waive any right under the PSA Agreement without the prior written consent of the Authority;
- (d) comply with its obligations under the PSA Agreement;
- (e) exercise its rights to terminate the PSA Agreement whenever directed by the Authority by written notice;
- (f) immediately notify the Authority if any party to the PSA Agreement, terminates or gives notice to terminate the PSA Agreement;
- (g) use its reasonable endeavours to procure that the PSA performs its functions promptly and diligently, with reasonable skill and care, and in conformity with all applicable laws, rules and regulations and in accordance with generally accepted best accounting practice; and
- (h) provide the PSA promptly with any information it requires to perform the PSA Functions including copies of all PS Transmission Payment invoices as soon as reasonably practicable, and is at the Licensee's disposal and which would facilitate operation of the system of postalised charges in respect of the Postalised System.

## **Condition 2A.5 – The Trustee**

### **2A.5.1 The Trustee’s and Account Bank’s primary obligations**

2A.5.1.1 Subject to Condition 2A.5.1.2, unless the Authority otherwise directs or consents, the Licensee shall do all things within its power to:

(a) enter into, before such date as is appointed by the Authority; and

(b) be party at all times thereafter to

arrangements whereby

- (i) a person who fulfils the criteria set out in Condition 2A.5.2.1 (referred to as the “Trustee”) carries out the activities specified in Condition 2A.5.3 pursuant to an agreement between the Trustee and the Designated Pipe-line Operators which fulfils the criteria referred to in Condition 2A.5.3 and 2A.5.4 (referred to as the “Trust and Account Bank Agreement”) and which has been and remains approved by the Authority; and
- (ii) a person who fulfils the criteria set out in Condition 2A.5.2.2. (referred to as the “Account Bank”) provides an account for use as the PoT Account pursuant to the Trust and Account Bank Agreement and which has been and remains approved by the Authority.

2A.5.1.2 The Licensee shall only be entitled to terminate the Trust and Account Bank Agreement without the Authority’s prior written consent if the Trustee and/or the Account Bank is or becomes insolvent; if in the reasonable opinion of the Designated Pipe-Line Operators, the Trustee and/or the Account Bank commits a material breach of the terms or warranties of the Trust and Account Bank Agreement; or if any approval given by the Authority under Condition 2A.5.2.3 expires or is revoked.

2A.5.1.3 Unless the Authority otherwise consents if the Licensee fails to enter into the arrangements referred to in Condition 2A.5.1.1 above by the date required by that Condition the Licensee shall use its best endeavours to enter into such arrangements as soon as possible thereafter.

## **2A.5.2 Criteria for appointment of the Trustee**

- 2A.5.2.1 The person fulfilling the functions of Trustee from time to time pursuant to this Condition 2A.5 shall:
- (a) be a competent, fit and proper person to fulfil the Trustee Functions having the systems and controls in place to fulfil those functions; and
  - (b) have sufficient suitably qualified and skilled personnel to enable it to perform the Trustee Functions.
- 2A.5.2.2 The person fulfilling the functions of Account Bank from time to time pursuant to this Condition 2A.5 shall:
- (a) be a competent, fit and proper person to provide and administer the PoT Account having the systems and controls in place to fulfil those functions; and
  - (b) have sufficient suitably qualified and skilled personnel to enable it to provide and administer the PoT Account.
- 2A.5.2.3 The criteria specified in Conditions 2A.5.2.1 and 2A.5.2.2 shall be treated as satisfied in respect of any appointment if the Licensee appoints as the Trustee and/or the Account Bank, as appropriate, a person who at the time of appointment is a person approved by the Authority for the purposes of this Condition and if that approval has not expired or been revoked.

## **2A.5.3 The Trustee's functions**

- 2A.5.3.1 The Trust and Account Bank Agreement shall, in accordance with Condition 2A.5.1.1, impose on the Trustee the following functions (referred to as the "Trustee Functions"):
- (a) the maintenance of a bank account (the "PoT Account") into which all monies paid by PS Gas Suppliers in respect of PS Transmission Payments shall be received, held on trust for and distributed to the Licensee and the other Designated Pipe-line Operators at the intervals and in accordance with the instructions of the PSA;

- (b) the receipt into the PoT Account and holding on trust of all monies paid by PS Gas Suppliers in discharge of PS Transmission Payments;
- (c) the distribution of monies from the PoT Account on the instructions of the PSA; and
- (d) providing the PSA promptly with any details concerning payments into and from the PoT Account as it may require at any time.

#### **2A.5.4 Trust and Account Bank Agreement criteria**

2A.5.4.1 The Trust and Account Bank Agreement shall not, by object or effect, impose undue discrimination or confer undue preference on any Designated Pipe-line Operator and shall:

- (a) require the Trustee to fulfil the Trustee Functions in a manner which is transparent and which does not unduly discriminate as between Designated Pipe-line Operators;
- (b) require the Trustee to institute appropriate arrangements and procedures to enable the Trustee to fulfil the Trustee Functions in an efficient and economic manner;
- (c) make provision for the modification of the Trust and Account Bank Agreement, in the following circumstances only:
  - (i) with the written consent of the Authority (such consent to be deemed as having been given at such time when the Authority has not sent written notice to the parties to the Trust and Account Bank Agreement of its objection to such modification and the grounds for such objection within 4 weeks of its receipt of full written details of the proposed modification); or
  - (ii) in accordance with a written direction made by the Authority to the extent necessary to ensure consistency with the Licence following consultation with the Designated Pipe-line Operators;

- (d) provide for its termination in the event that any approval granted by the Authority pursuant to Condition 2A.5.2.3 is revoked;
- (e) require the Trustee to co-operate with the Authority including without limitation by the sharing of information, both generally and to enable the Authority as far as is reasonably practicable to monitor whether the Trustee is continuing to fulfil the Trustee Functions;
- (f) require the Trustee to perform its functions promptly and diligently with reasonable skill and care, and in conformity with all applicable laws, rules and regulations;
- (g) require the Licensee to co-operate with the Trustee: such co-operation shall include but not be limited to providing the Trustee and other Designated Pipe-line Operators with such information as is at the Licensee's disposal which would facilitate the operation of the system of postalised charges in respect of the Postalised System provided that the Licensee shall not be required to provide to another Designated Pipe-line Operator confidential information, the provision of which would, or might, in the opinion of the Authority, seriously and prejudicially affect the interests of the Licensee or any PS Gas Supplier or Designated Pipe-line Operator;
- (h) subject to Condition 2A.5.1.2, provide that, except with the consent of the Authority, the Licensee shall not terminate the Trust and Bank Agreement until such time as a new Trustee has been appointed under a Trust and Bank Agreement conforming with all the requirements under this Condition 2A.5; and
- (i) require the parties thereto to ensure at all times that the terms and conditions of the Trust and Account Bank Agreement comply with the terms of the Licence.

**2A.5.5 Licensee's obligations in relation to the Trustee**

2A.5.5.1 The Licensee shall:

- (a) promptly after becoming aware thereof notify the Authority of any material or persistent breach of any obligation by any party under the Trust and Account Bank Agreement;
- (b) take all reasonable steps to enforce the obligations of the parties to the Trust and Account Bank Agreement whenever required, or whenever so directed by the Authority by written notice, and in accordance with the terms of the direction;
- (c) not knowingly waive any right under the Trust and Account Bank Agreement without the prior written consent of the Authority;
- (d) comply with its obligations under the Trust and Account Bank Agreement;
- (e) exercise its rights to terminate the Trust and Account Bank Agreement whenever directed by the Authority by written notice;
- (f) immediately notify the Authority if any party to the Trust and Account Bank Agreement, terminates or gives notice to terminate the Trust and Account Bank Agreement; and
- (g) use its reasonable endeavours to procure that the Trustee performs its functions promptly and diligently, with reasonable skill and care, and in conformity with all applicable laws, rules and regulations.



**Condition 2A.6 – Distributions from the PoT Account and Designated Pipe-line Operators Agreement**

**2A.6.1 PoT Account Calculations – Entitlements, Distributions and Payments**

2A.6.1.1 The following shall be calculated in accordance with the provisions of this Condition 2A.6.1:

- (a) the monthly entitlement of the Licensee to sums from the PoT Account calculated on the basis of amounts receivable in respect of Monthly Postalised Payments, Auxiliary Payments, Termination Payments and Debt Payments;
- (b) the Year-End Amount if any due to or from the Licensee; and
- (c) the amount to be distributed to the Licensee from the PoT Account on a monthly basis in respect of (a) and (b) above.

**2A.6.1.2 Monthly Entitlements**

- (a) Monthly Postalised Entitlement

The Monthly Postalised Entitlement (“MPE<sub>Lm</sub>”) of Licensee “L” in respect of a month “m” shall be the lower of the following:

- (i)  $(TMPT_m + DPI_m) \times FRR_{Lt}$

$$PSFRR_t$$

and

- (ii)  $FRR_{Lt} + ADPI_{Lt} - AMPE_{Lt}$

Where:

TMPT<sub>m</sub> = the aggregate (excluding any VAT on all such amounts) of:

- (aa) all Monthly Postalised Payments payable into the PoT Account, which:

- (1) have their Due Date falling in month “m”; and
- (2) are payable in respect of Postalised System transmission services provided in month “m-2”, being the month in which gas flowed and the invoice for which was issued in month “m-1”; plus

(bb) any Auxiliary Payments payable into the PoT Account which have their Due Date falling in month “m” and are payable in respect of the Gas Year “t” in which month “m-2” falls;

(cc) any Termination Payments payable in respect of PS Transmission Payments relating to Gas Year “t” in which month “m-2” falls received into the PoT Account in month “m”.

$FRR_{Lt}$  = the Licensee’s Forecast Required Revenue in respect of the Gas Year “t” in which month “m-2” falls;

$PSFRR_t$  = PS Forecast Required Revenue in respect of the Gas Year “t” in which month “m-2” falls;

$AMPE_{Lt}$  = the aggregate Monthly Postalised Entitlements of the Licensee in respect of prior months in the Gas Year “t” in which month “m-2” falls;

$DPI_m$  = any interest paid on payments relating to Total Monthly Payments in month “m” received after the Due Date and before or on the Second Due Date; and

$$ADPI_{Lt} = \sum DPI_{mt} \times \frac{FRR_{Lt}}{PSFRR_t}$$

(b) **Debt Entitlement**

The Debt Entitlement (“DE<sub>L</sub>”) of Licensee “L” calculated on a rolling monthly basis shall be its proportionate entitlement to Debt Payments, comprising:

- (i) its entitlement to outstanding Total Monthly Payments for services provided during a Gas Year and outstanding Debt Payments representing unpaid Total Monthly Payments relating to that Gas Year, in each case calculated by reference to the Licensee’s Forecast Required Revenue as a proportion of PS Forecast Required Revenue; plus
- (ii) its entitlement to debt incurred in respect of Year-End Amounts calculated by reference to the Licensee’s Year-End Amounts due to it as a proportion of the sum of all PS Year-End Amounts that are positive.

calculated as:

$$DE_L = \frac{[(\text{Shortfall}_L - DPE_L)/(\text{PSShortfall} - \text{PSDPE})] * (DP_m + DPID)}$$

where:

DPE<sub>L</sub> = the aggregate of all Debt Entitlements of the Licensee in respect of previous months excluding the interest element, Z.

PSDPE = the aggregate of all Debt Entitlement amounts for all Designated Pipe-line Operators under their Respective Licences in respect of previous months excluding the interest element, Z.

Shortfall<sub>L</sub> = AE<sub>L</sub> – AD<sub>L</sub> in all previous months in Gas Years commencing on or after the Designation Date in respect of each Designated Pipe-line Operator;

PSShortfall = the aggregate all Shortfall amounts for all Designated Pipe-line Operators under their Respective Licence;

AE<sub>L</sub> = the aggregate of all entitlement amounts for the Licensee in respect of all previous months in Gas Years commencing on or after the Designation Date.

$AD_L =$  the aggregate of all distribution amounts for the Licensee in respect of all previous months in Gas Years commencing on or after the Designation Date.

$DP_m =$  the total charges payable by PS Gas Suppliers due in month “m” in respect of PS Notified Debt as contemplated by Condition 2A.3.4.1 and as detailed in the applicable Debt Notice;

$DPID_m =$  Any interest paid on payments relating to Debt Payments in month “m” received after the Due Date and before or on the Second Due Date.

**(c) Termination Entitlement**

The Termination Entitlement (“ $TE_L$ ”) of Licensee “L” in relation to Termination Payments received into the PoT Account from Gas Suppliers to which the Licensee is the Primary DPO, with respect to future Gas Years as calculated by the PSA according to Condition 2A.4.3.1(n).

**2A.6.1.3 Year-End Amounts – Calculation of Entitlement/Obligation**

(a) A year-end amount (“Year-End Amount” or “ $YEA_{Lt}$ ”) in respect of that Gas Year shall be calculated in accordance with the following formula, in relation to which if  $YEA_{Lt}$  is a negative figure, the Licensee shall be obliged to make payment into the PoT Account of the amount of such figure within 25 Business Days of the date that it receives notice from the PSA of the relevant amount, and if  $YEA_{Lt}$  is a positive figure, the Licensee shall be entitled to receive the amount of the Year-End Amount from the PoT Account:

$$YEA_{Lt} = (ARR_{Lt} \times (PSTMPT_t + \sum DPI_{mt} + RP_{Total} + DPIR_t)) - AMPE_{Lt} \div PSARR_t$$

Where:

$YEA_{Lt} =$  Year-End Amount in respect of Gas Year “t” and Licensee “L”;

- $ARR_{Lt}$  = the Licensee's Actual Required Revenue in respect of Gas Year "t";
- $PSARR_t$  = the PS Actual Required Revenue in respect of Gas Year "t";
- $PSTMPT_t$  = the aggregate of  $TMPT_m$  as calculated in Condition 2A.6.1.2 (a) in respect of all the months falling within Gas Year "t";
- $RP_{Total}$  = the aggregate of all Capacity Reconciliation Payments and Commodity Reconciliation Payments, each in respect of Gas Year "t" and receivable from PS Gas Suppliers; and
- $AMPE_{Lt}$  = the aggregate of Monthly Postalised Entitlements of the Licensee in respect of Gas Year "t".
- $DPIR_t$  = any interest paid on payments relating to Reconciliation Payments received after the Due Date and before or on the Second Due Date falling in month "m".
- $\Sigma DPI_{mt}$  = the aggregate amount of interest paid on payments relating to Total Monthly Payments for Gas Year "t" payable in any month "m" received after the Due Date and before or on the Second Due Date.

#### **2A.6.1.4 Monthly Distributions**

The amount of the distribution to be made to the Licensee from the PoT Account in any month (the "Monthly Distribution") shall be calculated by the PSA on the basis of the balance of monies in the PoT Account, net of any amounts in the PoT account as a result of any requirement to maintain a minimum account balance and any interest earned on the PoT account balance, on the date of calculation of the Monthly Distribution in the relevant month (month "m") (such balance of monies on the PoT Account at that date being referred to below as "W"). The Licensee shall be entitled to receive by way of Monthly Distribution an amount equal to the sum of each of  $DA1_L$ ,  $DA2_L$ ,  $DA3_L$ ,  $DA4_L$ ,  $DA5_L$  and  $DA6_L$  calculated as follows:

(a) **VAT Distributions**

$$DA1_L = VAT_L$$

where:

$VAT_L =$  the aggregate amount of VAT Distributions for the Licensee as calculated by the PSA according to Condition 2A4.3.1 (d)

(b) **Distribution to enable Licensee to fulfil obligation to reimburse Gas Suppliers**

Where the Licensee is obliged to reimburse any sum to one or more of its Gas Suppliers in accordance with this Part 2A of the Licence and the Network Code then  $DA2_L$  shall be a sum equal to GSR provided that if no such payment is payable by the Licensee to any of its Gas Suppliers in the relevant month  $DA2_L$  shall be zero.

Where:

$GSR =$  the aggregate amounts that the Licensee is required to reimburse to its Gas Suppliers in relation to PS Transmission Payments in accordance with this Part 2A of the Licence and the Network Code;

(c) **Year-End Amount Distributions**

In the month following a month in which Reconciliation Payments have been invoiced to one or more PS Gas Suppliers a distribution in respect of Year-End Entitlement  $DA3_L$  shall be calculated as follows:

$$(i) \quad \text{If } W - PSDA1 - PSDA2 \geq PSYEA$$

then  $DA3_L$  shall be a sum equal to  $YEA_{Lt}$ ; or

$$(ii) \quad \text{If } W - PSDA1 - PSDA2 < PSYEA$$

then  $DA3_L$  shall be calculated as follows:

$$DA3_L = \frac{(W - PSDA1 - PSDA2)}{PSYEA} \times YEA_{Lt}$$

Provided that if  $YEA_L$  is a negative figure then  $DA3_L$  shall be zero.

where:

$W$  = the balance of monies in the PoT Account, net of any amounts in the PoT Account as a result of any requirement to maintain a minimum account balance and any interest earned on the PoT Account balance

$PSDA1$  = the aggregate of all  $DA1_L$  figures for all Designated Pipe-line Operators under their Respective Licence for month “m”;

$PSDA2$  = the aggregate of all  $DA2_L$  figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

$YEA_{Lt}$  = the Year-End Amount calculated in accordance with Condition 2 A.6.1.3;

$PSYEA$  = the aggregate of all positive Year-End Amounts for all Designated Pipe-line Operators under their Respective Licences;

**(d) Monthly Postalisation Distributions**

(i) If  $W - PSDA1 - PSDA2 - PSDA3 \geq PSMPE$

then  $DA4_L$  shall be an amount equal to  $MPE_L$ ; or

(ii) If  $W - PSDA1 - PSDA2 - PSDA3 < PSMPE$

then  $DA4_L$  shall be calculated as follows:

$$DA4_L = \frac{(W - PSDA1 - PSDA2 - PSDA3) \times MPE_{Lm}}{PSMPE}$$

where:

$PSDA1$  = the aggregate of all  $DA1_L$  figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

$PSDA2$  = the aggregate of all  $DA2_L$  figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

PSDA3 = the aggregate of all DA3<sub>L</sub> figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

MPE<sub>Lm</sub> = the Monthly Postalised Entitlement of the Licensee calculated in accordance with Condition 2A.6.1.2(a) above;

PSMPE = the aggregate of all Monthly Postalised Entitlement figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

(e) **Termination Distributions**

(i) If  $W - PSDA1 - PSDA2 - PSDA3 - PSDA4 \geq$  PSTE

then DA5<sub>L</sub> shall be a sum equal to TE<sub>L</sub>; or

(ii) If  $W - PSDA1 - PSDA2 - PSDA3 - PSDA4 <$  PSTE

then DA5<sub>L</sub> shall be calculated as follows:

$$DA5_L = \frac{(W - PSDA1 - PSDA2 - PSDA3 - PSDA4) \times TE_{Lm}}{PSTE}$$

where:

PSDA1 = the aggregate of all DA1<sub>L</sub> figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

PSDA2 = the aggregate of all DA2<sub>L</sub> figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

PSDA3 = the aggregate of all DA3<sub>L</sub> figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

PSDA4 = the aggregate of all DA4<sub>L</sub> figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

TE<sub>Lm</sub> = the amount, if any, payable to the Licensee in respect of Termination Payments received into the PoT Account under the Network Code in month “m” which relate to Gas Years after the Gas Year in which



termination occurs as calculated by the PSA under Condition 2A4.3.1 (n); and

PSTE = the aggregate of all  $TE_{Lm}$  figures for all Designated Pipe-line Operators under their Respective Licences for month “m”.

(f) **Monthly Debt Payment Distributions**

(i) If  $W - PSDA1 - PSDA2 - PSDA3 - PSDA4 - PSDA5 \geq PSDE$

then  $DA6_L$  shall be a sum equal to  $DE_L$ ; or

(ii) If  $W - PSDA1 - PSDA2 - PSDA3 - PSDA4 - PSDA5 < PSDE$

then  $DA6_L$  shall be calculated as follows:

$$DA6_L = (W - PSDA1 - PSDA2 - PSDA3 - PSDA4 - PSDA5) \times \frac{DE_{Lm}}{PSDE}$$

where:

$PSDA1$  = the aggregate of all  $DA1_L$  figures for all Designated Pipe-line Operators under their Respective Licence for month “m”;

$PSDA2$  = the aggregate of all  $DA2_L$  figures for all Designated Pipe-line Operators under their Respective Licence for month “m”;

$PSDA3$  = the aggregate of all  $DA3_L$  figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

$PSDA4$  = the aggregate of all  $DA4_L$  figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

$PSDA5$  = the aggregate of all  $DA5_L$  figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

$DE_{Lm}$  = the Debt Entitlement of the Licensee “L” for month “m” calculated in accordance with Condition 2A.6.1.2(b) above;

$PSDE$  = the aggregate of all Debt Entitlement figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

## **2A.6.2 Inter-Designated Pipeline Operators Provisions**

### **2A.6.2.1 Designated Pipe-line Operators Agreement**

Unless the Authority otherwise consents, the Licensee shall on or before a date appointed by the Authority enter into and be a party at all times thereafter to a binding agreement with the other Designated Pipe-line Operators which complies with the criteria specified in Condition 2A.6.2.2 and which is in a form approved in advance by the Authority pursuant to which it will:

- (a) act together with the other Designated Pipe-line Operators to appoint and re-appoint the PSA from time to time;
- (b) establish the PoT Account and appoint and re-appoint the Trustee and/or the Account Bank from time to time;
- (c) in conjunction with other Designated Pipe-line Operators, enforce the PSA Agreement and the Trust and Account Bank Agreement; and
- (d) undertake to the other Designated Pipe-line Operators (in consideration of equivalent undertakings) to issue invoices promptly and accurately, and to give effect to common payment terms and credit arrangements,

and which will contain such other provisions for the efficient operation of a system of PS Transmission Payments as the Designated Pipe-line Operators may agree and the Authority may approve (the “Designated Pipe-line Operators Agreement”).

### **2A.6.2.2 Designated Pipe-line Operators’ Agreement Criteria**

- (a) The Designated Pipe-line Operators’ Agreement shall not, by object or effect, impose undue discrimination or confer undue preference on any Designated Pipe-line Operator or PS Gas Supplier and shall:
  - (i) ensure the PSA, the Trustee and the Account Bank institute appropriate arrangements and procedures to enable the PSA to fulfil the PSA Functions and the Trustee to fulfil the Trustee Functions in an efficient and economic manner;

- (ii) make provision for the modification of the Designated Pipe-line Operators Agreement in the following circumstances only:
  - (aa) with the written consent of the Authority (such consent to be deemed as having been given at such time when the Authority has not sent written notice to the parties to the Designated Pipe-line Operators Agreement of its objection to such modification and the grounds for such objection within 8 weeks of its receipt of full written details of the proposed modification); and
  - (bb) in accordance with a written direction made by the Authority to the extent necessary to ensure consistency with the Licence, following consultation with the Designated Pipe-line Operators.
  
- (b) The Designated Pipe-line Operators' Agreement shall include an obligation on the Licensee to co-operate with the other Designated Pipe-line Operators. Such co-operation shall include but not be limited to providing the PSA and other Designated Pipe-line Operators 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 Authority, seriously and prejudicially affect the interests of the Licensee or any PS Gas Supplier or Designated Pipe-line Operator) and which would facilitate the operation of a system of PS Transmission Payments in respect of the Postalised System.

**Condition 2A.7 – New Licence Requirements relating to the Network Code**

- 2A.7.1** At any time when, and to the extent that, a Designation Order is and remains in force in respect of all or part of the Network the following provisions shall apply in relation to the Licensee’s obligation to establish and implement procedures for the modification of its Network Code.
- 2A.7.2** The relevant objective, the achievement of which is to be facilitated by the Licensee’s Network Code, shall include the operation of efficient and economic arrangements for a system of common tariffs in respect of the Licensee’s Designated Network and the Designated Network (as such term is defined in the licence of each other Designated Pipe-line Operator) of all other Designated Pipe-line Operators.
- 2A.7.3** The procedures which the Licensee is required to establish and implement for the modification of the Network Code shall provide:-
- (a) for all other Designated Pipe-line Operators and PS Gas Suppliers to be consulted by the Licensee in relation to any modification of the Network Code proposed by the Licensee or any other party entitled to raise such proposals;
  - (b) for all other Designated Pipe-line Operators and PS Gas Suppliers to be notified as soon as possible of any proposed modification put forward by the Authority or by any PS Gas Supplier;
  - (c) that in proposing or reporting on any modification, the Licensee shall have regard to the impact that such modification might have on the operation of any other Designated Pipe-line Operator’s network code; and
  - (d) where appropriate, for joint reports to be prepared.
- 2A.7.4** The Licensee shall consult all other Designated Pipe-line Operators and the PS Gas Suppliers before proposing any modification to the modification rules.

## **PART 3 – THE SPECIAL CONDITIONS**

### **Condition 3.1 – Allowed Revenue Determination**

#### **3.1.1 General**

- (a) Without prejudice to any other provisions of the Licence, the Authority shall be entitled on reasonable prior notice to inspect those records of the Licensee reasonably sufficient to enable it to satisfy itself as to the matters which are the subject of this Condition 3.1.
- (b) The Licensee shall in submitting or calculating any forecasts or estimates required to be submitted or calculated under this Condition 3.1 or under the Authority Direction (as defined in Condition 3.1.7.1) use all reasonable endeavours to ensure that it submits or calculates the best forecasts or estimates reasonably achievable, based on the most comprehensive, current information obtainable at the time of submission or calculation.
- (c) Save where this Condition 3.1 otherwise provides, words and expressions used in this Condition 3.1 which are defined elsewhere in the Licence or in the Authority Direction, shall have the meaning given to them elsewhere in the Licence or in the Authority Direction (as the case may be).

#### **3.1.2 Allowed revenue recovery during period of designation**

- (a) In respect of any Gas Year (other than, in the case of (i) below, the Gas Year which commenced on 1<sup>st</sup> October 2007) for so long as a Designation Order is and remains in force in respect of all or any part of the Network, the Licensee shall ensure that:
  - (i) its Forecast Required Revenue to be notified to the Authority and the PSA in accordance with Conditions 3.1.2(b) and 3.1.2(d) shall be calculated in accordance with Condition 3.1.3; and

- (ii) its Actual Required Revenue to be notified to the Authority and the PSA in accordance with Condition 3.1.2(e) shall be calculated in accordance with the formula set out in Condition 3.1.4.
- (b) No later than the fifteenth Business Day in June in each Gas Year, the Licensee shall provide to the Authority its calculation of Forecast Required Revenue for the next Gas Year and the following four Gas Years together with such explanation and supporting information as the Licensee considers to be reasonably necessary to permit the Authority to be satisfied that the Forecast Required Revenue is a reasonable forecast in accordance with Condition 3.1.1(b).
- (c) If, by not later than two weeks after the provision of the calculation of Forecast Required Revenue pursuant to Condition 3.1.2(b), the Authority, having considered the Licensee's forecast in light of such information as may be submitted by the Licensee, notifies the Licensee, by notice accompanied by an explanation of its conclusions, that it considers that the forecast supplied is not a reasonable forecast of the Licensee's Forecast Required Revenue for the next Gas Year, the Licensee shall review the forecast in the light of the Authority's explanation and submit a revised forecast to the Authority within fourteen days of the date of the notice, which, for the avoidance of doubt, may be the same as the original forecast.
- (d) No later than the fifteenth Business Day in July in each Gas Year the Licensee shall provide to the PSA its calculation of Forecast Required Revenue, pursuant to Condition 3.1.2(b), with any variation made thereto pursuant to Condition 3.1.2(c), in respect of the next Gas Year and the following four Gas Years for the purpose of calculation of the Forecast Postalised Charges in accordance with Part 2A of the Licence.
- (e) No later than the tenth Business Day in November after the end of each Gas Year the Licensee shall provide to the Authority and to the PSA its calculation of Actual Required Revenue and shall, at the same time, provide to the Authority such explanations and supporting information as may be

reasonably necessary to permit the Authority to verify that the Actual Required Revenue has been calculated in accordance with the formula set out in Condition 3.1.4.

- (f) No later than ten Business Days after the end of each Quarter, the Licensee shall provide the Authority, other Designated Pipeline Operators and all PS Gas Suppliers with a report setting out any material change to the Licensee's forecast of the revenue it requires comprised in its Forecast Required Revenue for the Gas Year in which the Quarter falls.

### 3.1.3 The Forecast Required Revenue

- (a) The Forecast Required Revenue of the Licensee in respect of the Gas Year which commenced on 1 October 2007 shall be an amount to be determined by the Authority and notified to the Licensee on or before the date that the Licence comes into full force and effect.
- (b) The Forecast Required Revenue of the Licensee in respect of each subsequent Gas Year<sub>t</sub> (other than any Gas Year which is a Post Finance Gas Year) shall be:
- (i) the Licensee's forecast of (aa) (bb) and (cc) below, namely:-
- (aa) the Fixed Amount for such Gas Year<sub>t</sub> (which is represented by the term  $A_t$  in the formula set out in Condition 3.1.4(b)) plus
- (bb) the amount of the Eligible Pass-Through Costs for such Gas Year<sub>t</sub> (which is represented by the term  $B_t$  in the formula set out in Condition 3.1.4(b)); plus
- (cc) the Postalisation Adjustment for such Gas Year<sub>t</sub> (which is represented by the term  $C_t$  in the formula set out in Condition 3.1.4(b))

Minus

- (ii) the Licensee's forecast of (dd) and (ee) below, namely:-

- (dd) the Ratio Account Credit for such Gas Year<sub>t</sub> (which is represented by the term D<sub>t</sub> in the formula set out in Condition 3.1.4(b)); plus
- (ee) the Insurance Recoveries for such Gas Year<sub>t</sub> (which is represented by the term E<sub>t</sub> in the formula set out in Condition 3.1.4(b)).

### 3.1.4 Actual Required Revenue

(a) The Licensee's Actual Required Revenue (ARR<sub>t</sub>) for any Gas Year shall be the amount determined in accordance with the formula set out in Condition 3.1.4(b) for such Gas Year.

(b) The formula for the calculation of the Licensee's Actual Required Revenue is as follows, namely:-

$$ARR_t = (A_t + B_t + C_t + Z*(S_t)) - (D_t + E_t).$$

### 3.1.5 Definition of Formula Terms

As used in the formula in Condition 3.1.4 and elsewhere in this Condition 3.1:-

t = denotes a Gas Year;

t-1 = denotes the Gas Year which immediately precedes the Gas Year for the purposes of which any forecast or calculation is made in accordance with this Condition 3.1 (and the subscript t-2 shall be construed accordingly);

A<sub>t</sub> = in respect of any Gas Year, the Fixed Amount for such Gas Year;

B<sub>t</sub> = in respect of any Gas Year, the Eligible Pass-Through Costs for such Gas Year;

C<sub>t</sub> = in respect of any Gas Year, the Postalisation Adjustment for such Gas Year;

S<sub>t</sub> = in respect of any Gas Year, the Approved Surplus determined by the Authority in accordance with Condition 3.1.6 and notified by the Authority to the Licensee on or before the eighth Business Day in November following the end of such Gas Year;



$Z_t$  = in respect of any Gas Year, a factor between 0 to 1, as determined by the Authority for such Gas Year and notified by the Authority to the Licensee on or before the eighth Business Day in November following the end of such Gas Year;

$D_t$  = in respect of any Gas Year, the Ratio Account Credit for such Gas Year; and

$E_t$  = in respect of any Gas Year, the Insurance Recoveries for such Gas Year;

### 3.1.6 Approved Surplus Determination

- (a) The formula for the calculation of the Approved Surplus in any Gas Year shall be as follows, namely:

$$S_t = (BCO_t - ACO_t) + ARF_t$$

If  $S_t$  is less than zero, it shall be deemed to be zero.

$BCO_t$  = the amount determined in accordance with Condition 3.1.6 (b) for Gas Year  $t$

$ACO_t$  = the amount determined in accordance with Condition 3.1.6(c) for Gas Year  $t$

and where  $ARF_t = \sum_{i=3}^1 [(BCO_{t-i} - ACO_{t-i}) - (Z_{t-i} * S_{t-i})]$

where  $i$  is each Gas Year in the period of the three previous Gas Years before Gas Year  $t$

#### (b) Determination of BCO

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

(aa) the first Business Day of July 2008; and

(bb) the first Business Day of July of every third subsequent year

submit to the Authority, in a format to be approved by the Authority, an estimate of its Controllable Operational Expenditure (as defined in Condition 3.1.6(d)) for each of the next three Gas Years, together with such explanation and supporting information as the Licensee considers to be reasonably necessary to permit the Authority to verify that such estimates are reasonable estimates in accordance with Condition 3.1.1(b).

- (ii) The Licensee shall provide such further information or explanation and access to documents and records as the Authority reasonably requires for the purpose of verifying the Controllable Operational Expenditure estimates (including, without limitation, all figures, costs, estimates and

assumptions comprised in or underlying those estimates) in accordance with Condition 3.1.6(b)(i).

- (iii) The Authority shall, no later than 28 days following its verification of the Controllable Operational Expenditure estimates in accordance with Condition 3.1.6(b)(i), notify to the Licensee the amount of BCO (being the sum of the amount of each item of Controllable Operational Expenditure determined to be reasonable by the Authority) that it considers appropriate for each of the next three Gas Years. The Authority shall provide details of any changes that it has made to the Licensee's estimates of the Controllable Operational Expenditure and the reasons for them and give the Licensee an appropriate period (being not less than fourteen days) to comment on them.
- (iv) After consideration of the Licensee's comments referred to in Condition 3.1.6(b)(iii), the Authority shall notify the Licensee in writing of its determination of the amount of BCO for each of the next three Gas Years, which, for the avoidance of doubt, may be the same as the amount that the Authority notified to the Licensee in accordance with Condition 3.1.6(b)(iii).

#### Revision of BCO

- (v) The Authority may, following a written request from the Licensee to review BCO for any Gas Year, provided that, if such a request is made in respect of the current Gas Year, such request is submitted before 31<sup>st</sup> of August in that Gas Year, to take into consideration any fact or matter that has arisen following the Authority's determination pursuant to Condition 3.1.6(b)(iv), conduct a review of BCO for that Gas Year. The Licensee shall provide such information and explanation and access to documents and records as the Authority reasonably requires for the purpose of conducting its review. Before making any changes to its determination of BCO, the Authority shall provide details of the changes and the reasons for them and give the Licensee an appropriate period (not being less than fourteen days) to comment on them. After consideration of the Licensee's comments, the Authority shall notify the Licensee in writing of its

determination of the revised BCO for the relevant Gas Year, which, for the avoidance of doubt, may be the same as the amount that the Authority notified to the Licensee in accordance with Condition 3.1.6(b)(iv).

**(c) Determination of ACO**

- (i) The Licensee shall, no later than the first Business Day of November following the end of each Gas Year, submit to the Authority, in a format to be approved by the Authority, a statement detailing the amounts of Controllable Operational Expenditure actually incurred by the Licensee in that Gas Year.
- (ii) The Licensee's ACO for each Gas Year shall be the aggregate of the actual amounts of Controllable Operational Expenditure referred to in the statement submitted in accordance with Condition 3.1.6(c)(i).

**(d) Definition of "Controllable Operational Expenditure"**

For the purposes of this Condition 3.1.6, "**Controllable Operational Expenditure**" shall comprise those categories of expenditure that are properly within the control of the management of the Licensee, such categories to be agreed in writing between the Licensee and the Authority no later than the first Business Day of June 2008 and may be amended by the agreement of the Authority and the Licensee from time to time. In the absence of agreement between the Licensee and the Authority, the Authority shall determine the categories of expenditure that comprise Controllable Operational Expenditure and notify the Licensee of its decision in writing.

**3.1.7 Authority Direction and Definitions**

- 3.1.7.1 Words and expressions used in Condition 3.1.5 or elsewhere in this Condition 3.1 (including Fixed Amount, Eligible Pass-Through Costs, Ratio Account Credit and Insurance Recoveries and Final Repayment Date) which are not defined in the Licence shall have the meanings given to them in a direction (the "**Authority**

**Direction**") issued by the Authority to the Licensee for the purposes of this Condition 3.1.7.1.

3.1.7.2 As used in this Licence:-

**“Postalisation Adjustment”** means, in respect of any Gas Year<sub>t</sub>, the aggregate (which may be positive or negative) of the amounts set out in (i), (ii) and (iii) below:

- (i) costs and expenses, losses and/or liabilities incurred or to be incurred by the Licensee in Gas Year<sub>t</sub> associated with the PSA and/or the Trustee under the agreements under which they are appointed;
- (ii) amounts due in respect of Commodity Reconciliation Payments in Gas Year<sub>t</sub>, calculated according to the following formula:

$$\text{UNRPT}_{t-2} \times (1+\text{RE})^{1.5} \times \left[ \frac{\text{CPI}_t}{\text{CPI}_{t-2}} \right] \times \left[ \frac{\text{ARR}_{t-2}}{\text{PS ARR}_{t-2}} \right]$$

where:

$\text{UNRPT}_{t-2}$  = the Unrecovered Postalisation Payment as calculated by the PSA in respect of Gas Year<sub>t-2</sub>;

$\text{CPI}_t$  = the forecast of the absolute value of the General Index of Consumer Prices – All items (1996 =100) as published by the Office of National Statistics (Series Identifier CHVJ) for Gas Year<sub>t</sub>, as published in the preceding year’s May edition of the Bank of England Inflation Report or if such index is no longer published, such alternative index as the Authority shall, after consultation with the Licensee, determine most closely reflects the General Index of Consumer Prices (1996 = 100);

$CPI_{t-2}$  = the absolute value of the General Index of Consumer Prices – All items (1996 =100) as published by the Office of National Statistics (Series Identifier CHVJ) - for Gas Year  $t-2$ , or if such index is no longer published, such alternative index as the Authority shall, after consultation with the Licensee, determine most closely reflects the General Index of Consumer Prices – All items (1996 =100);

$ARR_{t-2}$  = the Licensee's Actual Required Revenue in respect of Gas Year  $t-2$ ;

$PS\ ARR_{t-2}$  = the sum of the Actual Required Revenues (as defined in the Respective Licence of each Designated Pipe-line Operator) of all Designated Pipe-line Operators in respect of Gas Year  $t-2$ ;

$RE$  = the applicable real interest rate, which is calculated as the one year LIBOR rate, as published on the 10th Business Day of June in Gas Year  $t-1$ , plus 2% minus a CPI factor, calculated as:

$$LIBOR\ rate\ \% + 2\% - \left( \left[ \frac{CPI_t}{CPI_{t-1}} - 1 \right] \times 100 \right);$$

$CPI_{t-1}$  = the absolute value of the General Index of Consumer Prices – All items (1996 =100) as published by the Office of National Statistics (Series Identifier CHVJ) - for Gas Year  $t-1$ , or if such index is not available the latest CPI figure published in Gas Year  $t-1$  (or if such index is no longer published, such alternative index as the Authority shall, after consultation with the Licensee, determine most closely reflects the General Index of Consumer Prices – All items (1996 =100));

- (iii) such amount as the Authority may, after consultation with the Department, deem appropriate in respect of costs incurred by the Licensee in connection with approved activities in relation to the development and maintenance of an efficient, economic and co-ordinated gas industry in Northern Ireland;

**"Predecessor Conveyance Licence"** means the licence to convey gas dated 1 January 2008 granted to the Licensee under Article 8(1)(a) of the Order, which was revoked by the Authority at the time of grant of the Licence and any other licence to convey gas held by the Licensee prior to the time that such licence came into effect.

3.1.7.3 The Authority Direction shall not be capable of being revoked or modified without the prior written consent of the Licensee, but shall, in accordance with its terms, not have effect in relation to any Gas Year which commences on or after the Final Repayment Date.

3.1.7.4 The Licensee shall perform any obligation imposed on it by the Authority Direction.

### 3.1.8 **Allowed Revenue after Final Repayment Date**

3.1.8.1 Not less than 12 months prior to the date which the Licensee anticipates will be the Final Repayment Date the Licensee shall submit to the Authority:

- (i) a proposal as to the formula to be used for calculation of its allowed revenue recovery from conveyance charges (the **"Total Allowed Transmission Revenue"**) in respect of Post Finance Gas Years (as defined in Condition 3.1.8.2) (the **"Proposed Formula"**); and
- (ii) a forecast of the amount of its Total Allowed Transmission Revenue in respect of the first five Post Finance Gas Years (the **"Forecast"**);

3.1.8.2 The Licensee shall, in setting its charges for the conveyance of gas for each Gas Year which starts after the Final Repayment Date (such Gas Years being **"Post Finance Gas Years"** and the expression **"Finance Gas Years"** shall be construed accordingly) shall do so in accordance with such arrangements as are agreed by the Authority 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 Authority in administering, maintaining and operating the Network;
- (b) the costs incurred by the Licensee deemed necessary or appropriate by the Authority to expand, reinforce and renew the Network;
- (c) during the Post Finance Gas Years which end prior to the date on which an expert appointed by the Licensee (the “**Expert**”) anticipates that the required decommissioning works as described below will be commenced, revenues which (when aggregated with any revenues recovered by it during Finance Gas Years in respect of the costs of decommissioning pursuant to the Authority Direction) are sufficient to fund the expected costs (as determined by the Expert) of carrying out such works of decommissioning of the Network as are required to be carried out pursuant to applicable law and the contractual obligations of the Licensee. The remit of the Expert shall be the assessment of the nature and extent of the decommissioning works which are required and the likely costs of those decommissioning works; and
- (d) the aggregate of the amounts calculated under (a), (b) and (c) above will be reduced by the amount of any free surplus cash (excluding, for the avoidance of doubt, any cash which is held in a fund or reserve for the purpose of financing future costs or decommissioning costs) available to the Licensee for payment of the costs referred to in (a), (b) and (c) above.

3.1.8.3 The Licensee shall promptly provide such further information or explanation and access to documents and records as the Authority reasonably requires for the purpose of verifying that the Proposed Formula and the Forecast submitted to it by the Licensee comply with the principles set out in Condition 3.1.8.2.

3.1.8.4 The Authority may, following review of the Proposed Formula and the Forecast, by written notice (including, where approval has been given by the Authority pursuant to Condition 3.1.8.4(ii), details of the amendments made by the Authority and the reasons for them) to the Licensee:

- (i) approve the Proposed Formula and the Forecast. The Proposed Formula shall then be the basis for calculating Total Allowed Transmission Revenue; or
- (ii) approve the Proposed Formula and the Forecast with such amendments as it deems necessary or appropriate to ensure compliance with the basis of calculation set out in Condition 3.1.8.2.

3.1.8.5 In the event that the Authority gives its approval under Condition 3.1.8.4(ii) (in this Condition 3.1.8.5, the “**Approval**”):-

- (i) the Approval shall not have effect for 28 days commencing with the date of the notice of the Approval;
- (ii) the Licensee may within 28 days of the date of the notice of the Approval request the Authority by written notice to the Authority (a “**disapplication notice**”), not to apply the provisions of Condition 3.1.8.4(ii) in which event the Approval shall not apply;
- (iii) unless within three months of the date of the disapplication notice the Authority makes a reference to the Competition Commission under Article 15 of the Order relating in whole or part to a modification of this Condition 3.1.8, then the Proposed Formula and the Forecast (in the form originally proposed by the Licensee under Condition 3.1.8.1) shall apply as if approved by the Authority pursuant to 3.1.8.4(i);
- (iv) in the event of such a reference to the Competition Commission under Condition 3.1.8.5(iii), and if the Competition Commission finds that the continuation of this Condition 3.1.8 without modification operates or may be expected to operate against the public interest, then until this Licence shall be modified in accordance with the Order as a result of that reference and any findings by the Competition Commission, then the Proposed Formula and the



Forecast (in the form originally proposed by the Licensee under Condition 3.1.8.1) shall apply as if approved by the Authority pursuant to 3.1.8.4(i).

### **3.1.9 Termination Payments**

If the Licensee receives any sums due under the Network Code upon the termination of a Gas Supplier's Accession Agreement in respect of future Gas Years following the Gas Year in which the date of termination occurs, the Authority shall amend the Forecast Required Revenue and Actual Required Revenue to take account of such payment, according to a methodology agreed with the Licensee.

### **3.1.10 Payments for Previous Use of Network**

The Licensee shall be entitled to invoice and receive (or, if already invoiced prior to the grant of the Licence, to receive), pursuant to the Licence and the Network Code, any charge or other amount in respect of the conveyance of gas through the Network at any time prior to the coming into effect of this Licence and which (if the Predecessor Conveyance Licence had remained in full force and effect in accordance with its terms) the Licensee would have been entitled to invoice and receive (or, as the context requires, to receive) after the time of revocation of the Predecessor Conveyance Licence in accordance with the Predecessor Conveyance Licence and the Network Code.

### **Condition 3.2 Corporate Governance**

3.2.1 The Licensee shall at all times when the Licence is in force and for so long as the Licensee remains the holder of the Licence:-

- (i) comply with the terms of its Memorandum and Articles of Association;
- (ii) not make any change to its Memorandum and Articles of Association or either of them without the prior written consent of the Authority;
- (iii) have non-executive directors of appropriate standing with relevant experience who shall be greater in number than the executive directors;
- (iv) refrain from taking any action which would cause the Licensee to be in contravention of any of the Conditions of the Licence; and
- (v) to the extent they are appropriate to the circumstances of the Licensee, comply with the principles and guidance of the Combined Code on Corporate Governance for the time being annexed to the Listing Rules of the UK Listing Authority.

3.2.2 The Licensee shall procure that Northern Ireland Energy Holdings Limited, the company limited by guarantee which is to become the ultimate holding company of the Licensee (the "**Holding Company**"), shall deliver to the Authority not later than seven days after the date on which the Licence comes into full force and effect, a legally enforceable undertaking from the Holding Company in favour of the Authority, which is expressed to remain in force for so long as the Licensee remains the holder of the Licence, in which the Holding Company undertakes to the Authority that:-

- (i) it shall comply with, and shall procure that each other holding company (which expression shall in this Part 3 have the meaning given to it in Article 4 of the Companies (Northern Ireland) Order 1986) of the Licensee shall comply with, the terms of its Memorandum and Articles of Association;

- (ii) it shall not make, and shall procure that no other holding company of the Licensee shall make, any change to its Memorandum and Articles of Association or either of them without the prior written consent of the Authority;
- (iii) it shall, and shall procure that each other holding company of the Licensee shall, exercise all such rights as are available to it to procure that each of it, each other holding company of the Licensee and the Licensee itself shall have non-executive directors of appropriate standing with relevant experience who shall be greater in number than the executive directors;
- (iv) it shall refrain, and shall procure that each other holding company of the Licensee shall refrain, from taking any action which would cause the Licensee to be in contravention of any of the Conditions of the Licence;
- (v) it shall continue to be a company limited by guarantee within the meaning of Article 12 of the Companies (Northern Ireland) Order 1986;
- (vi) it shall not permit any change of control of the Licensee or any other holding company of the Licensee to occur without the prior written consent of the Authority;
- (vii) to the extent that they are appropriate to the circumstances of the company in question, it shall comply with, and procure that each other holding company of the Licensee complies with, the principles and guidance of the Combined Code on Corporate Governance for the time being annexed to the Listing Rules of the UK Listing Authority.

For the purposes of this condition, 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".

3.2.3 In this Condition 3.2, a reference to the memorandum and/ or articles of association of the Licensee, the Holding Company or any holding company of the Licensee shall be a reference to its memorandum and/or articles in force at the time the Licence comes into full force and effect as varied from time to time in accordance with the provisions of Condition 3.2.1 (ii) or 3.2.2 (ii).

3.2.4 The Licensee shall inform the Authority without delay when:-

- (i) a new Director (of it or a holding company) is appointed;
- (ii) the resignation or removal of a Director takes effect; or
- (iii) any important change in the functions or executive responsibilities of a Director occurs.

The Licensee shall notify the Authority of the effective date of the change and, in the case of an appointment, whether the position is executive or non-executive and the nature of any specific function or responsibility.

3.2.5 The Licensee shall procure that each Related Company shall prepare annual accounting statements in accordance with UK generally accepted accounting principles and practices (as defined in Condition 1.2.11 of Part 1) and send a copy of the statements to the Authority within a period of 10 months from the end of the financial year to which the relevant statements relate. Where used in this Part 3, "Related Company" means (a) the Holding Company (b) each other holding company of the Licensee and (c) each Joint Support Company (as defined in the Authority Direction).

3.2.6 The Licensee shall not carry on any business or activity other than the Licensee's Business. In this Condition, "**Licensee's Business**" means the business of the Licensee in conveying, or participating in the conveyance of, gas through the

Network and all activities and matters connected or incidental thereto (including the entering into and performance of the financing documents which will be entered into at or about the time at which the Licensee becomes a wholly owned subsidiary of the Holding Company) and any other activities and matters (including any social enhancement projects) approved by the Authority from time to time.

3.2.7 The Licensee shall not own any shares in any company or (other than in the ordinary course of business) any other investments.

3.2.8 Without prejudice to Condition 1.12 of Part I, the Licensee shall not without the written consent of the Authority after disclosure of all material facts by the Licensee to the Authority:

(a) create 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 of any obligation otherwise than:

(i) on an arm's length basis;

(ii) on normal commercial terms;

(iii) for a Permitted Purpose; and

(iv) (if the transaction is within the ambit of Condition 1.12.1 of Part I) in accordance with Conditions 1.12.2 to 1.12.4 of Part I;

provided that nothing in this Condition shall prevent the Licensee guaranteeing any obligation owed by a Related Company where the obligation has been or is to be incurred for a Permitted Purpose;

(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) repayment of capital or a distribution or other return of assets on a winding-up;

- (ii) payment properly due for any goods, services or assets provided on an arm's length basis and on normal commercial terms;
- (iii) a transfer, lease, licence or loan of any asset, right or benefit on an arm's length basis and on normal commercial terms;
- (iv) repayment of any loan or payment of any interest on such a loan on an arm's length basis and on normal commercial terms;
- (v) payments for group corporation tax relief;
- (vi) a loan not prohibited by Condition 3.2.8(c); or

(c) make loans to any affiliate or related undertaking of the Licensee, other than loans for a Permitted Purpose.

3.2.9 As used in Condition 3.2.8:-

**"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 herewith;

**"Permitted Purpose"** means the purpose of all or any of the following:-

- (a) the Licensee's Business;
- (b) without prejudice to the generality of paragraph (a), any payment or transaction lawfully made or undertaken by the Licensee in relation to the disposal of or relinquishment of operational control over any relevant asset in accordance with Condition 1.12 of Part I;
- (c) without prejudice to the generality of paragraph (a), any payment or transaction lawfully made or undertaken by the Licensee for a purpose within Condition 3.2.8(b).



### **Condition 3.3 Operational Obligations**

3.3.1 The Licensee shall perform its functions, acting as a Reasonable and Prudent Operator, with respect to the Network in such manner as it considers is best designed to secure the objectives of:-

- (i) maintaining the capacity and functionality of the Network; and
- (ii) optimising the efficiency, reliability, availability and operational life of the Network.

**"Reasonable and Prudent Operator"** or **"RPO"** means a person acting in good faith with the intention of performing its obligations under the Licence and who in so doing and in the general conduct of its undertaking, exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced operator complying with applicable law and engaged in the same type of undertaking and under the same or similar circumstances and conditions.

### **3.3.2 Procurement**

- (a) The Licensee shall contract for the provision of such Network Services as the Licensee considers appropriate acting as a Reasonable and Prudent Operator in order to enable the Licensee to discharge its obligations under the Order and Condition 3.3.1.
- (b) In contracting for the provision of Network Services pursuant to Condition 3.3.2(a), the Licensee shall, consistent with the objectives stated in Condition 3.3.1, purchase or otherwise acquire Network Services from the most economical sources available to it having regard to the quantity and nature of the Network Services required to enable the discharge of its obligations under the Order and Condition 3.3.1 and to the diversity, sources and reliability of such Network Services which are available at that time for purchase or other acquisition.



- (c) This Condition shall not extend to prescribing the manner or circumstances in which the Licensee shall at any time call for the delivery of the Network Services under any contract entered into pursuant to the Licence.
- (d) The Licensee shall not be in breach of this Condition by reason only of performing any obligations imposed on it by any enactment or by any of the Conditions of the Licence.
- (e) As used in this Condition, "**Network Services**" means any services which are being, or (as the context requires) are to be, provided to the Licensee which fall within any of the following categories, namely:-
- (i) the carrying out of works of maintenance on the Network (including by way of the refurbishment of any component or the provision of any replacement components);
  - (ii) the carrying out of any survey or inspection works on the Network;
  - (iii) the carrying out of any repair or reinstatement works in the aftermath of the occurrence of any damage to or destruction of the Network or any part of it;
  - (iv) the effecting or maintenance of insurances;
  - (v) management, consultancy or other services in relation to any of the matters described in (i), (ii), (iii) or (iv) above.
- (f) When requested to do so by Authority, the Licensee shall produce a Procurement Plan, within 28 days of the request. The Procurement Plan shall state the list of contracts entered into by the Licensee for activities associated with the Licensee's Business; the duration and costs of such contracts. The Plan shall also report on the details of the procurement process and an assessment by the Licensee of how its procurement activities fulfil Condition 3.3.1.

### 3.3.3 Management Incentive Plan

- (a) When requested to do so by Authority, the Licensee shall within 28 days of the request send to the Authority a plan (a “**Management Incentive Plan**”) under which the level of remuneration of the executive directors of the Licensee and any Related Company and such other persons as the Authority shall from time to time specify is expressly related to specified standards concerning their personal performance and the performance of the Licensee in such a way as to enhance their incentives to improve those standards.
- (b) Every time that the Licensee sends a Management Incentive Plan to the Authority under Condition 3.3.3(a), the Licensee shall, at the same time, send to the Authority a statement summarising the principal terms of the Management Incentive Plan and the principles underlying it. Without prejudice to the generality of the foregoing, the statement shall include:
- (i) details of the categories of persons to whom the Management Incentive Plan applies;
  - (ii) the maximum entitlement of any such category of persons; and
  - (iii) an indication of the criteria which are applied in determining the level of remuneration (with particular regard and making express reference to the criteria set out in Condition 3.3.3(c)) and the relative weighting given to each such criterion.
- (c) When formulating a Management Incentive Plan, the Licensee shall have regard to such criteria as it considers to be appropriate in all the circumstances, which may, without limitation, include:
- (i) safety;
  - (ii) reliability and performance of the Network;
  - (iii) fulfilment of obligations under contracts and under the Licence;
  - (iv) maximising the availability of the Network;

- (v) maximising available capacity which is economical;
- (vi) openness and transparency of operations through regular reports to industry; and
- (vii) operational expenditure performance.

#### 3.3.4 Single TSO for Northern Ireland Gas Transmission Network etc

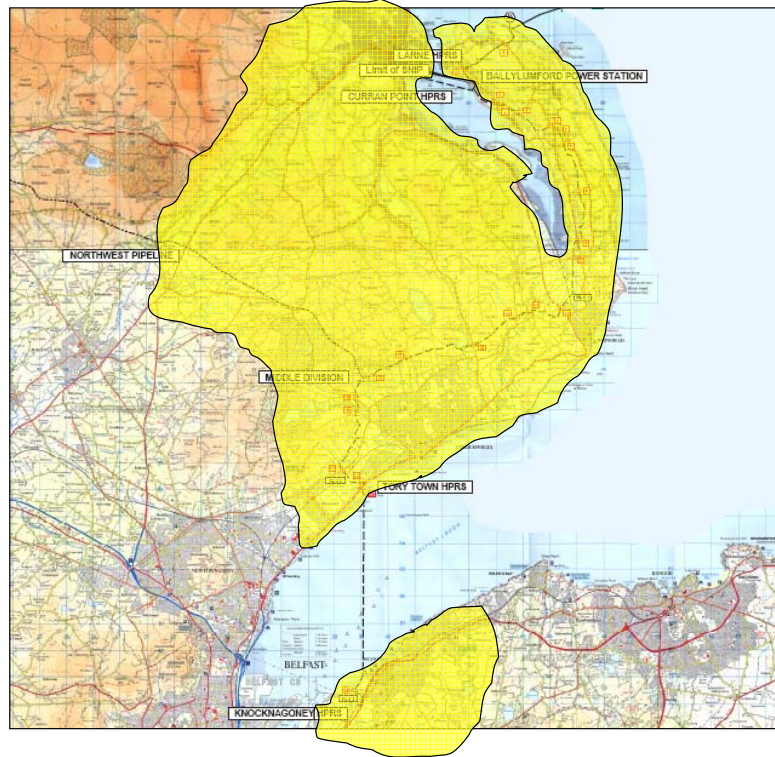
- (a) The Licensee shall co-operate with any implementation of arrangements for a Single Transmission Operator for the Northern Ireland Gas Transmission Network,
- (b) The Licensee shall in addition cooperate in the implementation of arrangements for the rationalisation of the regime for the conveyance of gas through transmission pipelines in Northern Ireland either by way of the reduction of the number of Network Codes applicable to the system of transmission pipelines in Northern Ireland and/or by way of the creation of identical (or near identical Network Codes) for the Licensee and one or more other Designated Pipe-line Operators.
- (c) The Licensee shall not be required to do anything pursuant to this Condition which would cause it to be in contravention of any statutory obligation, any of the Finance Documents (as defined in the Authority Direction referred to in Condition 3.1.7.1) or any other Condition of this Licence.
- (d) As used in this Condition "**Single Transmission Operator**" means any person who is authorised (under the Energy Order or any other enactment in force at any relevant time) to operate the system of transmission pipe-lines in Northern Ireland.

**Authorised Area for the Conveyance of Gas****SCHEDULE 1**  
**Licensed Area for the Conveyance of Gas****The Licensed Area**

The Licensed Area comprises:-

- (a) to the extent within Northern Ireland, the land (including the foreshore and seabed) in, on, under and over which the pipe-lines (as defined by the Order) (and / or any plant, equipment or apparatus used for, or for any purposes connected with, the conveyance of gas) which are owned and / or operated by or for the Licensee is situated at the date of the Grant; and
- (b) the following district electoral areas, namely, Larne Lough, Larne Town, Kilroot, Knockagh Monument, Carrick Castle and Holywood, being the areas which, as at the date of the Grant, are referred to in and are identified as such on the Ordnance Survey Administrative Boundary Map entitled Local Government District Electoral Areas – 1992, Index Map of Northern Ireland Final Recommendations; and
- (c) without limiting the foregoing, the land coloured yellow on the attached map; and
- (d) without limiting the foregoing, the Licensed Area shall (to the extent located within Northern Ireland) include the land (including the foreshore and seabed) in, on, under or over which the following pipe-lines, plant, equipment and / or apparatus which are owned and /or operated by or for the Licensee, is situated, namely the pipeline known as the Belfast pipe-line consisting of three sections, which runs for 26 kilometres from the Pressure Reduction Station at Ballylumford power station to (and including) the Pressure Reduction Station at Torytown, and for 9 kilometres from Torytown to (and including) the Knocknagoney Pressure Reduction Station, and for 3 kilometres from

the Pressure Reduction Station at Ballylumford power station to (and including) the Pressure Reduction Station at Curran Point, Larne.





**SCHEDULE**

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**Right of Authority to Revoke Licence**1. Circumstances allowing revocation

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

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

- (cc) if the Licensee fails to pay any financial penalty (within the meaning of Article 45 of the Energy Order) imposed in respect of a contravention or apprehended contravention of a condition to which such Licence is subject or of a “relevant requirement” as defined in Article 41(2)(b) of the Energy Order by the due date for such payment and the payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 49 of the Energy Order could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined; or
- (d) if the Licensee fails to comply with any order made by a court under Section 34 of the Competition Act 1998 or fails to comply with an order made under section 72, 75, 76, 81, 83, 84, 158, 160 or 161 of, or under paragraph 2, 5, 6, 10 or 11 of Schedule 10 to, the Enterprise Act 2002 or is found guilty of an offence under Section 188, 193 or 194 of the Enterprise Act 2002 ; 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 than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority); or
  - (ii) has a receiver (which expression shall include an administrative receiver within the meaning of 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 Authority; 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 Authority of a change in control as soon as practicable after such change in control should have occurred; or where there has been a change in control notified by the Licensee:

(i) the Authority serves notice on the Licensee stating that the Authority proposes to revoke the Licence in pursuance of this paragraph unless such further change in control of the Licensee as is specified in the notice takes place (or control reverts to the person(s) controlling the Licensee prior to the change) within the period of three months beginning with the date of service of the notice; and

(ii) that further change or reversion in control does not take place within that period; or

(g) if the Licensee is convicted of having committed an offence under Article 46 of the Order or under Article 63 of the Electricity (Northern Ireland) Order 1992.

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

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

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

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

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

4. Licensee's deemed ability to pay its debts

(a) For the purposes of paragraph 1(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 Authority may from time to time determine by notice in writing to the Licensee.

(b) The Licensee shall not be deemed to be unable to pay its debts for the purposes of paragraph 1(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 Authority under paragraph 1 of this Schedule 2.

5. 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".