

**Consultation on Conveyance Licence for Gas to the West High Pressure – published 18  
December 2014**

**Northern Ireland Energy Holdings Limited**

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

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## **GRANT AND TERMS OF LICENCE**

### **1 Grant of Licence**

The Northern Ireland Authority for Utility Regulation (the "Authority"), in exercise of the powers conferred by Article 8(1)(a) of the Gas (Northern Ireland) Order 1996 (the "Order") hereby grants to Northern Ireland Energy Holdings Limited (a company registered in Northern Ireland under company number NI 073229) having its principal place of business at The Arena Building, 85 Ormeau Road, Belfast, BT7 1SH (the "Licensee") a licence to convey gas from one place to another:

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

### **2 Conditions of the Licence**

The grant of the licence shall be deemed:

- (a) in accordance with Article 11(2) of the Order, to incorporate by this reference the standard conditions of licences for the conveyance of gas determined under Article 11(1) of the Order, subject to:
  - (i) those modifications to such standard conditions as are set out in the

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attachments hereto at the time of this grant as made in accordance with Article 14(1)(aa) of the Order (as such modifications may themselves subsequently be modified by virtue of Article 14(1)(a) of the Order, Article 17 of the Order, or such other lawful power of modification as may exist from time to time); and

(ii) any subsequent modification to such standard conditions as may be made in accordance with Article 14(1)(b) of the Order, Article 17 of the Order, or such other lawful power of modification as may exist from time to time; and

(b) in accordance with Article 10(1) of the Order, to include the further conditions attached hereto at the time of this grant (as such conditions may subsequently be modified in accordance with Article 14(1)(a) of the Order, Article 17 of the Order, or such other lawful power of modification as may exist from time to time).

[Date]

Jenny Pyper

Chief Executive

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

**PART 1: GENERAL CONDITIONS APPLICABLE TO THE LICENCE HOLDER**

**Condition 1.1: Interpretation and Construction**

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

Unless the contrary intention appears:

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

1.1.2 General Rules of Construction

Unless otherwise specified:

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

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

### 1.1.3 Headings

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

### 1.1.4 Time Related Obligations

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

### 1.1.5 Natural Persons

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

### 1.1.6 Definitions

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

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

subsidiary of a company of which such person is a subsidiary;

**"amount"** means, in relation to gas, the energy content thereof expressed in kilowatt hours;

**"Approved Business"** means:

- (a) the Licensed Business; and
- (b) any other activities and matters (including any social enhancement projects) approved by the Authority from time to time;

**"auditors"** means the Licensee's auditors for the time being holding office in accordance with the requirements of the Chapter 2 of Part 16 of the Companies Act 2006;

**"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 Code and relevant period for balancing under the Network Code) taking such measures as may be available to the Licensee, in particular measures:

- (a) for managing the relationship between deliveries of gas to and offtakes from the Network during that period; and
- (b) to maintain pressures in the Network at all levels,

which in the reasonable opinion of the Licensee ensure the safety and efficiency of the Network in that or any

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	subsequent relevant period;
<b>"company"</b>	means a company within the meaning of section 1(1) of the Companies Act 2006 or any other body corporate;
<b>"consumer"</b>	means any person supplied with gas to premises;
<b>"conveyance charges"</b>	means the charges made by the Licensee for the conveyance of gas;
<b>"conveyance services"</b>	means all services provided by the Licensee of conveying gas to, through and within the Licensed Area;
<b>"Department"</b>	means the Department of Enterprise, Trade and Investment;
<b>"designated pipe-lines"</b>	means any pipe-line designated by the Department in the exercise of powers conferred upon it by Article 59 of the Energy Order;
<b>"distribution system operator"</b>	means any person authorised to convey gas through local or regional pipe-lines by virtue of holding a licence granted under Article 8(1)(a) of the Order;
<b>"domestic consumer"</b>	means a person who is supplied with gas conveyed to premises at a rate which is reasonably expected not to exceed 73,250 kilowatt hours a year;
<b>"Energy Order"</b>	means the Energy (Northern Ireland) Order 2003;
<b>"Exclusive Area"</b>	means the Licensed Area;
<b>"exemption holder"</b>	means the holder of an exemption under Article 7 of the Order;
<b>"exercise of powers of entry"</b>	means the Licensee entering any premises, in accordance with the powers conferred by Schedule 5 of the Order;

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<b>"First Operational Commencement Date"</b>	means:  (a) the first date for which it is possible for a User to book capacity, pursuant to the provisions of the Network Code, in respect of the Network; or  (b) the date specified in any direction issued by the Authority as being the date on or from which the Network is deemed to be operational,  whichever is the earlier.
<b>"gas supplier"</b>	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;
<b>"Gas Year"</b>	means the period of time beginning at 05:00 hours on 01 October in any calendar year and ending at 05:00 hours on 01 October in the next succeeding calendar year;
<b>"Grant"</b>	means the commencing section of this licence by which the Authority grants the Licensee the licence;
<b>"high pressure pipe-line"</b>	means any pipe-line having a design operating pressure exceeding 7 bar gauge;
<b>"information"</b>	includes documents, accounts, estimates, returns, reports or other information;
<b>"licence"</b>	means the Grant together with the Conditions and the Schedules;
<b>"Licensed Area"</b>	means the area in which the Licensee is authorised to convey gas in accordance with Schedule 1;
<b>"Licensed Business"</b>	means the business of the Licensee in developing,

constructing, operating and maintaining the Network and in the conveyance (or participation in the conveyance) of gas through the Network and all activities and matters connected thereto (including, without limitation, the entering into and performance of the financing documents which will be entered into by the Licensee in order to raise finance or refinance for such business);

**"Licensee"** means the person referred to as such in the Grant and /or any person to whom the Licence is subsequently assigned in accordance with the Order, the Energy Order or the Licence;

**"LNG Facility"** means a facility or terminal used for the liquefaction of gas or the importation, offloading and re-gasification of LNG and includes ancillary services and temporary storage for the re-gasification process and delivery to the gas conveyance system comprising of high pressure pipe-lines but does not include any part of the facility used for the storage of gas;

**"low pressure pipe-line"** means any pipe-line which is not a high pressure pipe-line;

**"Network"** means the network of high pressure pipe-lines within the Licensed Area that are owned and/or operated by the Licensee (and shall also include any plant, equipment or apparatus used for, or for any purposes connected with, the conveyance of gas through such pipe-lines) 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 to the first gas meter at such premises;

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<b>"Network Code"</b>	means the document prepared by the Licensee under Condition 2.4;
<b>"operational"</b>	means in relation to any pipe-line that the pipe-line is in all respects complete and ready for gas to be conveyed through it and that, in so far as it lies within the Licensee's control, all necessary commissioning tests in respect of the pipe-line (as distinct from facilities to which such pipe-line is connected) have been successfully completed;
<b>"Order"</b>	means the Gas (Northern Ireland) Order 1996;
<b>"owned"</b>	means in relation to any gas meter title in or control over a meter and includes meters leased to a person;
<b>"person"</b>	means any company, firm, partnership, association, body corporate or individual;
<b>"postalisation"</b>	means the application of a system of uniform common tariffs for the conveyance of gas through a designated pipe-line, irrespective of the proportion of any such pipe-line used;
<b>"Reasonable and Prudent Operator"</b>	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.
<b>"related undertaking"</b>	means any undertaking in which any person has a participating interest within the meaning of section 421A

of the Financial Services and Markets Act 2000;

**"separate accounts"** means the accounts which are to be prepared for each Separate Business;

**"Separate Business"** means, each of the activities of the Licensee connected with:

- (a) the conveyance of gas by means of a high pressure pipe-line pursuant to a licence granted in accordance with Article (8)(1)(a) of the Order;
- (b) the conveyance of gas by means of a low pressure pipe-line pursuant to a licence granted in accordance with Article (8)(1)(a) of the Order;
- (c) the storage of gas pursuant to a licence granted in accordance with Article 8(1)(b) of the Order; and
- (d) the supply of gas pursuant to a licence granted in accordance with Article 8(1)(c) of the Order;

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

**"Storage Facility"** means a facility used for the storage of gas and includes any part of a LNG Facility used for storage but does not

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include:

- (a) any part of the facility that is used for production of gas; and
- (b) any facility which is reserved exclusively by or for the Licensee in carrying out functions authorised by the Licence;

**“subsidiary”** has the same meaning as given to it in section 1159 of the Companies Act 2006;

**"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; and

**"working day"** means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.

1.1.7 Singular/plural

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

1.1.8 Application

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

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

#### 1.2.1 Financial years

For the purposes of this Condition, the first financial year of the Licensee shall run from the date of the Grant to the following 31 March and thereafter each financial year of the Licensee shall run from 1 April in one year to 31 March in the next year.

#### 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 separate financial statements to be prepared for each Separate Business and showing the financial affairs of each such Separate 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 (in relation to each Separate Business) prepared under section 394, 398 or 399 of the Companies Act 2006, but shall be required to prepare such accounts in accordance with this Condition.

#### 1.2.3 Separation of Internal Accounts

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

- (a) a profit and loss account;

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

### **1.2.4 Apportionment**

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

- (a) charged from or to any other business of the Licensee (or of any affiliate or related undertaking of the Licensee); and/or
- (b) apportioned between that Separate Business and any other business of the Licensee (or of any affiliate or related undertaking of the Licensee), such apportionment to be undertaken in accordance with the basis of apportionment notified to the Authority in accordance with Condition 1.2.5 or otherwise directed by the Authority in accordance with Condition 1.2.6,

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

### **1.2.5 Bases of charge or apportionment - Notification**

The Licensee shall as soon as practicable and in any event prior to the end of the first financial year notify the Authority of:

- (a) the basis of apportionment that it proposes to use for the financial statements prepared under Condition 1.2.3 in respect of each Separate Business for that financial year; and
- (b) the principles and factors taken into account for such basis of apportionment.

### **1.2.6 Basis of charge or apportionment - Application**

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The basis of apportionment in respect of the financial statements referred to in Condition 1.2.3 shall be the basis proposed by the Licensee under Condition 1.2.5 unless the Authority following consultation with the Licensee gives a direction requiring the use of any other basis.

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 any Separate Business for any financial year subsequent to the financial year commencing on [1 April 2016] from the basis used in the financial statements in respect of that Separate Business for that financial year.

### **1.2.7 Auditor's Reports**

In respect of each set of financial statements prepared in accordance with this Condition 1.2 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 1.2 and give a true and fair view of the revenues, costs, assets and liabilities of, or reasonably attributable to, the Separate Business to which they relate; 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 Separate Business and any other business of the Licensee.

### **1.2.8 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 1.2 as soon as reasonably practicable and in any event not later than six months after the end of each financial year.

### **1.2.9 Form of financial statements**

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Financial statements prepared for the purposes of this Condition 1.2 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 or International Financial Reporting Standards (IFRS);
- (b) state the accounting policies adopted, including policies for the allocation of costs between the Licensee and any affiliate or related undertaking of the Licensee; and
- (c) be so prepared to a level of detail and explanation as may reasonably be required by the Authority so that they may be reconciled with and compared against the published accounts of the Licensee under the Companies Act 2006.

### **1.2.10 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.

### **1.2.11 Construction of "costs or liabilities"**

References in this Condition 1.2 to costs or liabilities of, or reasonably attributable to, any Separate Business shall be construed as excluding taxation, capital liabilities which do not relate principally to a particular Separate Business, and interest thereon; and references to any accounting statement shall be construed accordingly.

### **1.2.12 Provision of Accounts to the Department**

The Licensee shall, where requested to do so by the Department, provide to the Department a copy of its accounting records for the period specified in the request.

### **1.2.13 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

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regarded as permissible or legitimate by the accountancy profession irrespective of the degree of use.

### **1.2.14 Associated Undertakings**

The Licensee shall set out, in notes to the published accounts referred to in Condition 1.2.9(c), any transaction relating to any Separate Business that was undertaken with an associated undertaking and that has a value of over £500,000.

For the purpose of this Condition 1.2.14, an “associated undertaking” is:

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

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

1.3.1 Furnishing information

Subject to Conditions 1.3.2 and 1.3.3 below, the Licensee shall, furnish to the Authority, in such manner and at such times as the Authority may reasonably require, information as the Authority may reasonably require or as may be necessary for the purpose of performing any of its functions relating to gas as conferred on, or assigned or transferred to, it by or under any legislation.

1.3.2 Licensee to comment on accuracy of information

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

1.3.3 Condition 1.3 exclusive of other powers to require information

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

1.3.4 Condition 1.3 and other powers to require information

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

1.3.5 Limitation on obligation to furnish information

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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.

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**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.

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**Condition 1.5: Restriction on Use and Disclosure of Certain Information**

1.5.1 Use of protected information

Where the Licensee or any affiliate or related undertaking of the Licensee holds 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 having the meaning attributed to it by Section 450 (as read in conjunction with section 451) of the Corporation Tax Act 2010), shall be to do so using reasonable endeavours and obtaining an appropriate contractual undertaking from that affiliate or related undertaking in respect of such protected information; and

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- (e) not to obtain any unfair commercial advantage from its possession of protected information under Condition 1.5.1(a) shall be construed to exclude protected information received by any Separate Business, if applicable, not engaged in the conveyance of gas independently of the Separate Business engaged in the conveyance of gas.

### **1.5.2 Compliance with directions**

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

### **1.5.3 Limitation of non disclosure obligations**

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

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

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1.5.4 Additional definition

In this Condition:

- "protected information"** means any commercially confidential information which:
- (a) relates to the affairs of a person; and
  - (b) has been furnished to, or otherwise acquired by, the Licensee or by any affiliate or related undertaking of the Licensee 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 any Condition 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

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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 paragraph 6 of Schedule 5 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.

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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.

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

1.8.1 Licensee to avoid undue disturbance

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

1.8.2 Construction of Condition 1.8.1

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

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**Condition 1.9: Modifications**

1.9.1 Modification of Licence Conditions

The Conditions of the licence are subject to modification in accordance with their terms or with Articles 9, 14, 17, 17A, or 18 of the Order or with any provision for the modification of the same in the Order or the Energy Order or any other lawful power of modification as may exist from time to time.

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**Condition 1.10: Assignment of Licences**

1.10.1 Licensee's ability to assign its licence

For the purposes of Article 12 of the Order, the Licensee with the prior consent of the 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.

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**Condition 1.11: Transfer of Business**

1.11.1 Restrictions on transfer of business in conveying gas

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

1.11.2 Exception to Conditions 1.11.1

Nothing in Condition 1.11.1 shall prevent the Licensee from transferring all or the relevant part of its business to the assignee where the 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

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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 £35,000 in January 2014 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 £35,000 in January 2014 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**

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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; and

**"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, gas storage facility or gas plant.

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**Condition 1.13: Payment of Fees to the Authority**

1.13.1 In respect of each year, beginning on 1 April, during which the Licence is in force, the Licensee shall pay to the Authority a fee of the amount determined in accordance with this Condition (the **licence fee**).

1.13.2 The Licensee shall pay to the Authority the licence fee for each year (the **relevant year**) within 30 days of the Authority giving notice to the Licensee of the amount due from the Licensee for the relevant year.

1.13.3 For each relevant year, the licence fee shall be the total of:

- (a) an amount that is the Relevant Contribution to the Estimated Costs of the Authority for the relevant year;
- (b) an amount that is the Relevant Contribution to the Estimated Costs of the Consumer Council with regard to the exercise of its functions relating to gas consumers for the relevant year;
- (c) an amount which is the difference (which may be a positive or negative amount), if any, between:
  - (i) the licence fee that would have been due from the Licensee for the year immediately preceding the relevant year (the '**previous year**') had such fee been calculated in relation to the actual costs of:
    - (A) the Authority for the previous year; and
    - (B) the Consumer Council with regard to the exercise of its functions relating to gas consumers for the previous year; and
  - (ii) the licence fee paid by the Licensee for the previous year,

provided that where the Licence is in force for only a part of the relevant year, the amount payable in respect of that year shall be a proportionate part of the licence fee due for the full year.

1.13.4 Where:

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- (a) the Estimated Costs of the Authority or of the Consumer Council are revised during the course of the relevant year (**Revised Costs**);
- (b) the Licensee has paid the licence fee for the relevant year; and
- (c) the Revised Costs would, had they applied to the calculation of the licence fee paid by the Licensee, have resulted in the calculation of a lower licence fee than that paid by the Licensee,

the Authority may, where it is reasonable for it to do so taking into consideration the timing of the Revised Costs and the provisions of paragraph 1.13.3(c), refund to the Licensee the difference between the amount of the licence fee paid by the Licensee and the amount of the lower licence fee referred to in paragraph 1.13.4(c) above.

1.13.5 Where the Licensee fails to pay the amount of the licence fee as notified to it under paragraph 1.13.2 above within the 30 day period specified, it shall with effect from the end of that 30 day period pay simple interest on the amount at the rate which is from time to time equivalent to the base lending rate of an institution designated by the Authority for this purpose.

1.13.6 In this Condition:

**“Estimated Costs”**

- (i) in relation to the costs of the Authority, means the costs estimated by the Authority as likely to be its costs for the relevant year as calculated in accordance with the Principles; and
- (ii) in relation to the costs of the Consumer Council, means either:
  - (A) the costs notified to the Authority by the Consumer Council as its estimated costs for the relevant year as approved by the Department; or
  - (B) in the event that the Authority does not

receive such notification by 31 July in the relevant year, the costs estimated by the Authority (having regard to any estimate of such costs in any forward work programme published by the Consumer Council in respect of the relevant year) as likely to be the costs of the Consumer Council for the relevant year.

**“Principles”**

means the principles determined by the Authority for the purposes of this Condition generally, following consultation with the Licensee and with others likely to be affected by the application of such principles and as notified to the Licensee in writing.

**“Relevant Contribution”**

means, in respect of the Estimated Costs, the level of contribution to those costs applicable, whether by way of a specified amount or a stated proportion, to the Licensee as determined under or in accordance with the Principles.

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**Condition 1.14: Notices**

1.14.1 Notices

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

Licensee: Northern Ireland Energy Holdings Limited

The Arena Building

85 Ormeau Road

Belfast, BT7 1SH

Authority: Northern Ireland Authority for Utility Regulation

Queens House,

14 Queens Street,

Belfast, BT1 6ED

Facsimile Telephone Number (02890) 311575

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

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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.

**Condition 1.15: Independence of the Licensee**

1.15.1 Application

This Condition shall apply to the Licensee where it conveys, or is authorised to convey, gas through high pressure pipe-lines.

1.15.2 Independence

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 legal, managerial and operational independence of the Authorised Business from any Energy Business.

1.15.3 Means of achieving such independence

In order to facilitate its compliance with Condition 1.15.2, the Licensee shall 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 legal, managerial and operational independence;

(b) [not used];

(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 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 Energy Business may not use or have access to:

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- (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; or
  - (v) the services of any persons who are (whether or not as their principal occupation) engaged in the management or operation of the Authorised Business;
- (e) where, in order to comply with this Condition any Energy Business ceases to be an affiliate or related undertaking of the Licensee, the employment of any employee of the Licensee is not transferred to that Energy Business by virtue of the arrangements under which the Energy Business ceases to be an affiliate or related undertaking of the Licensee; and
- (f) in so as far as it is legally possible for it to do so, it prevents any person who has ceased to be employed by, or engaged in the activities of, the Authorised Business from being employed by, or engaged in the activities of, any Related Energy Business until the expiry of an appropriate time from the date on which the person ceased to be engaged or employed by the Authorised Business.

**1.15.4 Undertaking**

The Licensee shall procure from the person that is the Ultimate Holding Company of the Licensee a legally enforceable undertaking in favour of the Licensee in a form specified by the Authority, that the Ultimate Holding Company will refrain from any action, and will procure that every subsidiary of the Ultimate Holding Company (other than the Licensee and its subsidiaries) will refrain from any action, which

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would be likely to cause the Licensee to be in contravention of this Condition. Such undertaking shall be obtained within 7 days after the date when this paragraph first become effective, or after the person in question becomes an Ultimate Holding Company (as the case may be) and shall remain in force for as long as the Licensee remains the holder of this Licence and the giver of the undertaking remains an Ultimate Holding Company of the Licensee.

### 1.15.5 Definitions

In this Condition:

- “Authorised Business”** means the Licensed Business, taken together with (if applicable) 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 Gas Act;
- “Energy Business”** means any business that is involved in the generation or supply of electricity or in the production, purchase or supply of gas;
- “Gas Act”** means the Gas Act 1986, as amended from time to time;
- “Holding Company”** has the meaning given to it in section 1159 of the Companies Act 2006;
- “Related Energy Business”** means any Energy Business which was an affiliate or related undertaking of the Licensee at any given time in the six months prior to the date the person ceased to be engaged or employed by the Authorised Business; and
- “Ultimate Holding Company”** means any person which is a Holding Company of the Licensee, and which is not itself a subsidiary of another

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company.

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**Condition 1.16: Not Used**

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**Condition 1.17: Not Used**

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**Condition 1.18: Not Used**

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**Condition 1.19: Not Used**

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**Condition 1.20: Not Used**

**PART 2: 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 through high pressure pipe-lines from one place to another in the Licensed Area.

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

2.2.1 Application

Conditions 2.2.2 to 2.2.5 and Condition 2.2.7 apply subject to the application of Part 2A.

2.2.2 Determination of conveyance charges by the Licensee

The Licensee shall establish the methods and principles on which conveyance charges shall be determined for gas suppliers wishing and entitled to use the Network and the Licensee shall publish the same in accordance with Condition 2.2.3 and 2.2.9.

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

Subject to Condition 2.2.4:

- (a) the Licensee shall no later than 1 October in each preceding year for the forthcoming year publish, in such manner as will secure adequate publicity for it, a statement of:
  - (i) its conveyance charging methodology for the use of the Network by gas suppliers for the forthcoming year, by which any such gas supplier may reasonably be able to calculate applicable conveyance charges; and
  - (ii) its other terms for the use by them of the Network (and in relation to the Network Code by reference to the Network Code);
- (b) the Licensee shall send a copy of any such statement to any person who asks for one,

and subject to Condition 2.2.5(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.

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### **2.2.4 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 2.2.3 the Licensee shall notify the Authority of the contents of that statement, and:

- (a) provide the Authority with such information as will enable the Authority to be reasonably satisfied that the methodology and principles for the conveyance charges have been determined in accordance with the provisions of Condition 2.2.9;
- (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.

### **2.2.5 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 2.2.3 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;

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and for the purposes of Condition 2.2.5(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.

### **2.2.6 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.

### **2.2.7 Resolution of Disputes**

- (a) This condition 2.2.7 applies where there is a dispute, between the Licensee and any person entitled, or claiming to be entitled, to be provided with conveyance services by the Licensee pursuant to this Condition 2.2, in respect of the terms of the agreement offered by the Licensee to such person pursuant to this Condition 2.2.
- (b) Where this condition 2.2.7 applies, any party to the dispute may make an application to the Authority to determine the terms of the agreement in dispute.
- (c) Paragraph (d) applies where the Authority receives an application pursuant to sub-paragraph (b) above and the dispute:
  - (i) has not previously been referred by either party to the General Consumer Council for investigation; or
  - (ii) has previously been referred by one of the parties to the General Consumer Council but the General Consumer Council has advised the Authority that it has not concluded its investigation of the dispute.
- (d) Where this paragraph applies the Authority may refer the dispute to the General Consumer Council for the purposes of enabling the General Consumer Council to assist the parties in the resolution of the dispute.

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- (e) Where the Authority refers the dispute to the General Consumer Council it will at the same time inform the parties of that referral.
- (f) Where the General Consumer Council has not been able to assist the parties in the resolution of the dispute within 3 months of the Authority's referral (the 'applicable timescale'), either party to the dispute may refer the matter back to the Authority for determination.
- (g) Paragraph (h) applies in respect of a dispute (i) which is not referred by the Authority to the General Consumer Council under paragraph (d), or (ii) which has been referred back to the Authority for determination under paragraph (f).
- (h) Where this paragraph applies the Authority may, having given both parties not less than one month in which to make any further representations, settle the terms of the agreement dispute in such manner as appears to the Authority to be reasonable having (insofar as is relevant) regard in particular to the following considerations:
  - (i) the efficient and safe operation of the Network by the Licensee;
  - (ii) the conveyance by the Network of:
    - (A) 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
    - (B) the quantities of gas of any person who has a right to have gas conveyed by the Network is entitled to require to be so conveyed in exercise of that right.
- (i) Where the person entitled or claiming to be entitled to conveyance services from the Licensee wishes to proceed on the basis of the terms the agreement as settled by the Authority, the Licensee shall forthwith enter into and implement such agreement in accordance with its terms.

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2.2.8 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.

2.2.9 Direction by the Authority

- (a) Where the Authority determines 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 its 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 2.2.9 and shall publish a revised statement in accordance with Conditions 2.2.3 and 2.2.4.

**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 6 months before the First Operational Commencement Date 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 non standard gas meters and gas meters not owned by the Licensee in any premises;
- (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
- (d) connecting to the network any Storage Facility and any LNG Facility,

and in any such case the Licensee shall when giving such a statement include in that statement the Licensee's other terms for the connection and an explanation of those terms together with the Licensee's technical design and operational requirements which shall apply to the making of any connection, including in particular a connection referred to in paragraphs (c) and (d) above.

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

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- (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

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

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

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

Subject to the Authority's prior approval to the form and contents of any 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

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The Licensee shall:

- (a) not charge for a connection of premises, of any non standard gas meter, gas meter not owned by it or any pipe-line system to the Network on any basis or establish other terms for the connection on any basis other than contained in the statement published under Condition 2.3.4;
- (b) not show any undue preference towards or undue discrimination against any person or case or classes of cases of person seeking a connection of premises to the Network, or of any non standard gas meter, or gas meter not owned by the Licensee or any 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 determines 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

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- (ii) the charges and other terms for connection it has determined and included in the latest published statement
- (b) 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.
- (c) 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 as soon as reasonably practicable 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 non standard 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

- (a) This Condition 2.3.8 applies where there is a dispute between the Licensee and any person requiring a connection to the Network in respect of the terms of an agreement for the connection to be made ('connection agreement').
- (b) Where this Condition 2.3.8 applies, any party to the dispute may make an application to the Authority for determination of the terms of the connection agreement.
- (c) Paragraph (d) applies where the Authority receives an application pursuant to sub-paragraph (b) above and the dispute:
  - (i) has not previously been referred by either party to the General Consumer Council for investigation; or

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- (ii) has previously been referred by one of the parties to the General Consumer Council and the General Consumer Council has advised the Authority that it has not concluded its investigation of the dispute.
- (d) Where this paragraph applies the Authority may refer the dispute to the General Consumer Council for the purposes of enabling the General Consumer Council to assist the parties in the resolution of the dispute.
- (e) Where the Authority refers the dispute to the General Consumer Council it will at the same time inform the parties of that referral.
- (f) Where the General Consumer Council has not been able to assist the parties in the resolution of the dispute within 3 months of the Authority's referral (the 'applicable timescale'), either party to the dispute may refer the dispute back to the Authority for determination.
- (g) Paragraph (h) applies in respect of a dispute:
  - (i) which is not referred by the Authority to the General Consumer Council under paragraph (d); or
  - (ii) which is referred back to the Authority for determination under paragraph (f).
- (h) Where this paragraph applies the Authority may, having given both parties not less than one month in which to make any further representations, settle the terms of the connection agreement in such manner as appears to the Authority to be reasonable having regard (insofar as is relevant and appropriate) to the obligations that would otherwise have applied to the Licensee under this Condition 2.3.
- (i) Where the person entitled or claiming to be entitled to a connection to the Network wishes to proceed on the basis of the terms of the connection agreement as determined by the Authority, the Licensee shall forthwith enter into and implement such agreement in accordance with its terms.

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

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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

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to under Condition 2.3.10 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 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; and
- (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, then the Licensee shall permit a connection to the Network by that person.

**2.3.13 Reasons for Refusal**

Where the Licensee refuses a request for connection to the Network it shall provide duly substantiated reasons for doing so.

**2.3.14 Interpretation and construction**

References in this Condition to:

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

**Condition 2.4: Network Code**

2.4.1 The relevant objective

The Licensee shall establish arrangements for the conveyance of gas, being arrangements other than those to which Conditions 2.2 and 2.3 relate, which are calculate to 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) where the Licensee is responsible for the balancing of the Network, the balancing of the Network pursuant to rules for that purpose which are objective, transparent and non-discriminatory (including the rules for the charging of system users for energy imbalances); and
- (c) subject thereto:
  - (i) compliance with the Licensee's other obligations under this Licence; and
  - (ii) subject to Condition 2.4.1(c)(i) the promotion of effective competition between Users.

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, by no later than 6 months before the First Operational Commencement Date;
- (b) 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;

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- (ii) the methodology used by the Licensee to procure the gas required for balancing the Network;
  - (iii) the methodology by which the charges to be levied on Users for the balancing of the Network are to be determined; and
  - (iv) the technical safety criteria applicable to the operation of the Network;
- (c) put such Network Code in place except as the Authority otherwise consents and comply with the provisions of the approved Network Code; and
- (d) 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
- (e) 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 Referring Matters to the Authority

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 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;

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- (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 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.

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### **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

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- (vi) giving such further information as may be prescribed by the modification rules; and
- (c) comply with any direction given by the Authority to make a modification to the Network Code in accordance with a proposal described in a notice given to the Authority under sub-paragraph (b) which, in the opinion of the Authority will, as compared to the existing provisions of the Network Code or any alternative proposal, better facilitate the achievement of the relevant objective.

### **2.4.8 Publication of Network Code**

The Licensee shall:

- (a) publish 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:

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- (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:

**“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 2.5: Compliance with System Operator Agreements**

2.5.1 Agreements for interoperability of systems

Where the licensee is under and in accordance with Article 8H of the Order designated as a transmission system operator or is designated as a distribution system operator (as the case may be), it shall use all reasonable endeavours to enter into an agreement with:

- (a) any other person holding a licence granted under Article 8(1)(a) of the Order;
- (b) any person holding a licence granted under Article 8(1)(b) of the Order; and
- (c) any person holding a licence granted under Article 8(1)(d) of the Order,

which agreement:

- (d) relates to the interaction or interoperability of the Licensee's Network with that person's gas conveyance system, gas storage facility or LNG facility (as the case may be); and
- (e) ensures that the conveyance of gas between the Licensee's Network and that other system or facility is undertaken in a manner which is compatible with the secure and efficient operation of the Licensee's Network and that other system or facility.

2.5.2 Minimum Requirements – Technical Rules

Each agreement entered into by the Licensee in accordance with Condition 2.5.1 shall set out (either directly or by reference to a separate document) the Licensee's technical design and operational requirements as applicable to the connection, interaction and interoperability between the Licensee's Network and the other system or facility, which requirements shall be objective and shall not show any undue discrimination between persons or classes of person.

2.5.3 Approval by the Authority

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The Licensee shall not require any person to enter any agreement of the type referred to in Condition 2.5.1 unless the agreement, and where applicable any amendment to the agreement, has first been submitted to and approved by the Authority.

### **2.5.4 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 2.5.1, 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).

### **2.5.5 Network operator agreement**

Without prejudice to Condition 2.5.4, the Licensee 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).

### **2.5.6 Single System Operator for Northern Ireland High Pressure Gas Network**

- (a) The Licensee shall:
- (i) in conjunction and cooperation with persons authorised by licence in Northern Ireland to convey gas through high pressure pipe-lines and whose licences to do so include a condition substantively equivalent to this condition 2.5.6, take all reasonable steps, and do such all such reasonable things, as are (in each case) within its power and necessary or expedient to develop, submit to the Authority for approval, and implement Single System Operator Arrangements for the High Pressure Gas Network by [October 2016]; and
  - (ii) comply with any direction issued by the Authority for the purposes of the establishment of a Single System Operator for the High Pressure Gas Network.

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- (b) The Licensee shall not be required to do anything pursuant to Condition 2.5.6 which would cause it to be in contravention of any statutory obligation, or any other Condition of this Licence.

2.5.7 Definitions

In this Condition 2.5:

**High Pressure Gas Network** means all of the systems of high pressure pipelines in Northern Ireland; and

**Single System Operator Arrangements** means arrangements for the High Pressure Gas Network to be operated by a single operator (through the establishment of a contractual joint venture), including in particular (and without limitation) through the establishment or utilisation of a single designated operations team, IT system, network code and control room.

**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 Not Used

2.6.3 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 be commercially advantageous to any other person.

2.6.4 Exempt information

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Condition 2.6.2 shall not extend to:

- (a) information received by the Licensee which is relevant to any trading business of the Licensee;
- (b) information specified in any consent to non-compliance with that Condition given by the Authority to the Licensee;
- (c) 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;
- (d) 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;
- (e) information which is in the public domain (other than as a result of contravention by the Licensee of any Condition of the licence); or
- (f) information which is required to be disclosed pursuant to a Condition of the licence.

### 2.6.5 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.

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**Condition 2.7: Provision of information to a relevant gas licence holder**

2.7.1 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 2.7.1, 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.

2.7.2 Ability to refuse

The Licensee shall be entitled to refuse to provide information under Condition 2.7.1 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 2.7.1.

2.7.3 Excluded information

This Condition 2.7 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.

2.7.4 Arrangements for protecting confidentiality

The Licensee shall not be obliged under Condition 2.7.1(a) to provide information to any relevant gas licence holder which has not established, whether in pursuance of a

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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.

### **2.7.5 Definitions and interpretation**

In this Condition 2.7, 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 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.

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**Condition 2.8: Emergency Services and Obligations**

2.8.1 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.

2.8.2 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 2.8.3, 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:

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- (i) in such a way as to maintain the supply of gas to those premises and to appliances designed for use by domestic consumers for heating or cooking;
  - (ii) by carrying out any appropriate minor appliance repairs; and
  - (iii) by a person adequately trained in recognising the signs of leakage of carbon monoxide and instructed to report any such signs to the owner or occupier of the premises; and
- (b) if further repair work is required, information is given to the owner or occupier of the premises or, in their absence, left at the premises as to persons in the locality who are permitted pursuant to regulations under the Health and Safety at Work (Northern Ireland) Order 1978 to perform repairs on gas fittings.

2.8.3 Not Used

2.8.4 Not Used

2.8.5 Not Used

2.8.6 Application of Condition 2.8.7

Condition 2.8.7 shall apply in relation to:

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

2.8.7 Priority for maintenance of supply

Where the Licensee considers that, for reasons of safety (unrelated to particular premises or a particular locality), the supply of gas to any non-domestic consumer to whom this Condition applies or the conveyance of gas to their premises needs to be

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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 2.8.9 and the conveyance of gas to their premises.

### **2.8.8 Consultation with the Department**

Where the reasons of safety referred to in Condition 2.8.7 relate to the whole or a substantial part of Northern Ireland or there is a significant shortage of gas affecting the whole or a substantial part of Northern Ireland, the Licensee shall consult with the Department on the taking of any such steps as are mentioned in Condition 2.8.7 (a) or (b) and, so far as is reasonably practicable in the circumstances having regard to the over-riding importance of safety, shall do so before taking any such steps.

### **2.8.9 Priority List**

The Licensee shall:

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

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

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

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2.8.10 Determination by the Department

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

2.8.11 Definition

In this Condition 2.8:

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

**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

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**"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.

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

2.10.1 The provisions of:

(a) Schedule 2; and

(b) Schedule 3;

of the Order shall apply to the Licensee.

**Condition 2.11: Network Forecasts**

2.11.1 Network Forecasts

The licensee shall comply with a direction given by the Authority to prepare a statement in such form as may be specified in the direction giving, with respect to each of the 10 succeeding years beginning with 1 June following the date of the grant of the Licence, such information by way of forecasts of:

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

as will assist:

- (c) a person seeking to connect a pipe-line of his to the Network or enter into arrangements for the conveyance of gas in identifying and evaluating the opportunities for so doing; and
- (d) the Authority to monitor issues relating to security of supply.

2.11.2 Co-ordination with Statements of other Designated Pipe-line Operators

Where the Licensee is a Designated Pipe-line Operator, the preparation of any statement in accordance with paragraph 1 shall, so far as possible be co-ordinated with the preparation of the corresponding or equivalent statement required to be produced by every other Designated Pipe-line Operator and such statements shall, so far as possible and save to the extent the Authority consents otherwise, be prepared on a consistent basis.

2.11.3 Revised Network forecasts

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

### **2.11.4 Provision and Publication of forecasts**

The Licensee shall, subject to any requirement to comply as is appropriate with the listing rules (within the meaning of Part VI of the Financial Services and Markets Act 2000 ) of the Stock Exchange and with Condition 2.11.5:

- (a) no later than the tenth working day of June in each calendar year, furnish the Authority with a copy of the statement prepared under Condition 2.11.1 and of each revision of the statement prepared under Condition 2.11.3;
- (b) in such form and manner as the Authority may direct, publish a description of the statement and of each revision; and
- (c) send a copy of the statement and of each revision to any person who asks for one on payment of a charge in respect of the cost incurred by the Licensee in complying with this requirement which does not exceed such amount as the Authority may from time to time direct.

### **2.11.5 Particular interests**

In complying with the requirements of Condition 2.11.4(b) and (c), the Licensee shall have regard to the need for excluding, so far as practicable:

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

### **2.11.6 Determination by Authority of Particular interests**

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

2.11.7 Definition

In this Condition:

<b>Designated Pipe-line Operator</b>	has the meaning given to it in Condition 2A.1 of the Licence.
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**Condition 2.12: Not Used**

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**Condition 2.13: Not Used**

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**Condition 2.14: Not Used**

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**Condition 2.15: Not Used**

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**Condition 2.16: Not Used**

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**Condition 2.17: Not Used**

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**Condition 2.18: Not Used**

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**Condition 2.19: Not Used**

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### **Condition 2.20: Provision and Return of Meters**

#### **2.20.1 Application**

This Condition shall apply to the Licensee where it conveys, or is authorised to convey, gas through high pressure pipe-lines.

#### **2.20.2 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.

#### **2.20.3 Request from Gas Supplier**

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.

#### **2.20.4 Prohibition on undue discrimination**

The Licensee shall not show any undue preference towards or undue discrimination against any gas supplier seeking the provision and/or installation of a gas meter under this Condition 2.20.

#### **2.20.5 Disconnection of Meters**

Subject to Condition 2.20.6, 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

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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.

### **2.20.6 Safe Custody of Meters**

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

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

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

- (c) 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
- (d) thereafter for as long as, to the Licensee's knowledge, the meter is so relevant.

### **2.20.7 Provision of Information**

Where the Licensee is notified, pursuant to any regulations made under Article 22 of the Order, of the connection or disconnection of any meter at any premises 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.

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**Condition 2.21: Not Used**

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**Condition 2.22: Not Used**

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**Condition 2.23: Not Used**

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**Condition 2.24: Not Used**

**Condition 2.25: Reasonable and Prudent Operator**

2.25.1 Reasonable and Prudent Operator

The Licensee shall:

- (a) carry out the activities authorised by this Licence; and
- (b) perform its functions with respect to the Network in such manner as it considers is best designed to secure the objectives of optimising and maintaining the capacity, functionality efficiency, reliability, availability and operational life of the Network,

acting at all times as a Reasonable and Prudent Operator.

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**Condition 2.26: Not Used**

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### **Condition 2.27: Network Development Duties**

#### **2.27.1 Development of the Network**

Subject to Condition 2.27.3, the Licensee shall use all reasonable endeavours to install and bring into operation a high pressure pipe-line in the Licensed Area such that gas can be conveyed (either by such high pressure pipe-line or by a low pressure pipe-line connected, or to be connected, to such high-pressure pipe-line) to each town specified in Annex 1 to this Condition 2.27 (the 'Development Plan') by the date specified in respect of that town, for the purposes of enabling gas to be supplied to any premises in each such town where the supply of gas is reasonably requested by the customer at such premises.

#### **2.27.2 Revising Licensee's Obligations to Develop the Network**

The Authority may revise Annex 1 to this Condition 2.27 where it is reasonably satisfied that:

- (a) exceptional circumstances (excluding lack of funds) which could not have been reasonably avoided by the Licensee have prevented, or could reasonably be expected to prevent, the Licensee from complying with its obligation under Condition 2.27.1;
- (b) due to any process required to be followed by an applicable law, which could not reasonably have been further expedited or avoided by the Licensee, the Licensee has been delayed in complying with its obligations under Condition 2.27.1.

#### **2.27.3 Modification of Licence**

Without prejudice to Article 14 of the Order, where by virtue of the provisions of Condition 2.27.2, any revision is made to the Development Plan that revision shall be applied for the purposes of this Licence and shall (to the extent applicable) be a modification to this Condition and/or Annex 1 of this Condition.

#### **2.27.4 Loss of Exclusivity**

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Notwithstanding Condition 1.1.4, where in respect of any part of the Licensed Area the Licensee ceases to be entitled to exclusively convey gas by means of high pressure pipe-lines (in accordance with Schedule 3), obligations set out in Condition 2.27.1 shall cease to apply to that part of the Licensed Area with effect from the date on which the entitlement ceased.

### **2.27.5 Duty to co-operate with District Councils for Northern Ireland and others**

The Licensee shall co-operate with District Councils for Northern Ireland, actual or potential operators of low pressure pipe-lines and spurs, and actual or potential gas suppliers with a view to developing the availability of gas supplies from the Licensee's high pressure pipe-lines. Such co-operation shall include providing District Councils for Northern Ireland, actual or potential operators of low pressure pipe-lines and actual or potential gas suppliers with such information as is at the Licensee's disposal, (other than confidential information the provision of which would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of the Licensee) which would facilitate the development of infrastructure necessary for gas supply along the network route (as that term is defined in the definition of Licensed Area).

### **2.27.6 Development Plan Report**

The Licensee shall, by no later than 1 March of each year, submit to the Authority a report of its progress in the development of the Network (having regard to its obligations under Condition 2.27.1).

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**Annex 1 to Condition 2.27**

<b>Town</b>	<b>Year</b>
Dungannon including Coalisland	Quarter 4 2017
Cookstown including Magherafelt	Quarter 4 2017
Enniskillen including Derrylin	Quarter 4 2017
Omagh	Quarter 4 2017
Strabane	Quarter 4 2017

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**Condition 2.28: Gas to the West Conveyance Networks - Liaison and Cooperation**

2.28.1 Designing and Developing the Network

The Licensee shall:

- (a) act in a reasonable and prudent manner in designing and developing the Network (including the location of any part of the Network) in so far as such design and development (including location) may affect the location, design and development of the low pressure pipe-line system of the Low Pressure Conveyance Licensee;
- (b) liaise and co-operate with the Low Pressure Conveyance Licensee for the purposes of:
  - (i) complying with its obligations in paragraph (a) above;
  - (ii) facilitating that the location, design and development of the Network (including any part of the Network) is, insofar as is possible taking into due account and consideration all applicable technical and safety constraints and matters, cognisant of and complementary to the location, design and development of the low pressure pipe-line system of the Low Pressure Conveyance Licensee; and
  - (iii) ensuring that the location, design and development of the Network taken together with the location, design and development of the low pressure pipe-line system of the Low Pressure Conveyance Licensee, provides for the efficient and economic conveyance of gas to customers in the GTTW Towns.

2.28.2 Conduct of Licensee

Without prejudice to the generality of paragraph 2.28.1, the Licensee shall not knowingly or recklessly pursue any course of conduct which is likely to prejudice the design and development of the low pressure pipe-line system being undertaken by the Low Pressure Conveyance Licensee in a manner which facilitates:

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- (a) the Low Pressure Conveyance Licensee's compliance with the Low Pressure Conveyance Licence; and
- (b) the efficient and economic conveyance of gas to customers in the GTTW Towns.

2.28.3 Resolution of Disputes

- (a) Paragraph (b) below applies where there is a dispute between the Licensee and the Low Pressure Conveyance Licensee in relation to the proposed location, design and development of the Network (or any part of the Network) which proposal affects the proposed or actual location, design and development of the low pressure pipeline system of the Low Pressure Conveyance Licensee.
- (b) Where this paragraph applies, the Authority may on the application of either party to the dispute, settle the terms of the dispute in such manner as appears to it to be reasonable in all the circumstances of the case.
- (c) Where the Authority settles a dispute under paragraph (b), the License shall comply with the Authority's determination.

2.28.4 Definitions

In this Condition:

<b>"GTTW Towns"</b>	means the towns listed in paragraph 2 of Schedule 1 of the Licence.
<b>"Low Pressure Conveyance Licence"</b>	means the gas conveyance licence originally granted, on the same date as the Grant, to [name of company].
<b>"Low Pressure Conveyance Licensee"</b>	means the person from time to time authorised to convey gas under the Low Pressure Conveyance Licence.

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### **Condition 2.29: Trading with Associated Businesses**

#### **2.29.1 Prohibition of Cross-Subsidies**

The Licensee shall procure that no Separate Business gives any cross-subsidy to, or receives any cross-subsidy, from any other business of the Licensee or of any affiliate or related undertaking of the Licensee (whether or not a Separate Business).

#### **2.29.2 Contractual Arrangements**

The Licensee shall ensure that:

- (a) any tender issued by or on behalf of Licensee in respect of goods and/or services to be provided to the Licensed Business includes a condition requiring the tenderer to declare whether or not it is an affiliate or related undertaking of the Licensee; and
- (b) any contract entered, or to be entered, into by the Licensee for the provision of goods and/ or services to the Licensed Business (the 'primary contract') includes a condition requiring each counterparty to the primary contract to ensure that any sub-contract it enters into with a person for the purpose of fulfilling its obligations under the primary contract includes a condition requiring the sub-contractor to:
  - (i) declare whether or not it an affiliate or related undertaking of the Licensee; and
  - (ii) procure such a declaration from any person with whom it enters into a contract for the purposes of fulfilling its obligations under the sub-contract.

#### **2.29.3 Reporting**

The Licensee shall in such manner and at such times as the Authority may require:

- (a) furnish to the Authority information which will evidence the processes and procedures followed by Licensee in undertaking any transaction of the type referred to in Condition 1.2.14; and

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- (b) permit the Authority access to relevant documentation held by the Licensee in respect of any such transaction.

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**PART 2A**

**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

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open for ordinary banking business in Belfast;

“Buy-Back Capacity” means capacity that has been allocated as Firm Capacity, OS Capacity, or Daily Capacity (as the case may be) and subsequently made available for purchase by the Licensee in accordance with the OS Scheme and the Network Code;

“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;

“Daily Capacity” means capacity (in kWh / day) which has been allocated for a duration of one Day on a firm basis in accordance with the provisions of the Network Code and / or the Network Code of any other Designated Pipe-line Operator (and, for the avoidance of doubt, shall not include any capacity which is allocated for a duration of other than one Day or OS Capacity);

“Debt Entitlement” shall have the meaning ascribed to that term in Condition 2A.6.1.2(b);

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“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 Operator”	means a person licensed to convey gas under Article 8(1)(a) of the 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

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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;

“Entry Point” means a point of interconnection between the network of a Designated Pipe-line Operator and any other transmission pipe-line (except for any other transmission pipe-line operated by another Designated Pipe-line Operator) at which capacity is subject to booking procedures pursuant to the Network Code of that Designated Pipe-line Operator;

“Entry Point Additional Capacity” means in respect of a given time the amount of additional capacity (in kWh/day), in excess of the Entry Point Technical Capacity, determined as available (on a firm basis) by the Designated Pipe-line Operator (on whose network the Entry Point is located) in accordance with the OS Scheme and the Network Code of that Designated Pipe-line Operator ;

“Entry Point Technical Capacity” means in respect of a given time the maximum capacity (in kWh/day) available on a firm basis at an Entry Point taking account of the technical requirements of such Entry Point, system integrity and the operational requirements of the network;

“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;

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- “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 but shall not include (i) Daily Capacity or (ii) OS Capacity;
- “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;

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“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);

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- “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;

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“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;

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“Oversubscription Capacity” or “OS Capacity”	means in respect of a given time, an amount of additional capacity (in kWh/day) (not exceeding the Entry Point Additional Capacity) which is available for allocation on a firm basis or is allocated on a firm basis at an Exit Point, the exit points of other DPOs as defined in their licences, or a UC Exit Point for a duration of one Day as a result of the availability of Entry Point Additional Capacity and as determined in accordance with the OS Scheme and the Network Code;
“OS Charging Statement”	has the meaning given in the OS Conditions;
“OS Conditions”	means Condition 2A.2.1.17 to Condition 2A.2.1.27;
“OS Procedure”	has the meaning given to it in the OS Conditions;
“OS Scheme”	has the meaning given to it in the OS Conditions;
“OS Services”	has the meaning given in the OS Conditions;
“Postalised Charges”	means the Forecast Postalised Charges and/or the Year-End Postalised Charges as the case may be;
“Postalisation Conditions”	means the Conditions in Part 2A, other than the STC/VRF Conditions (as defined in Condition 2A.2.1.6) and the OS Conditions;
“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);

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“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;

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- “PS Non-Payment” means:
- (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
  - (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
- 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;
- “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);

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- “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;

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- “Separate Business” means each of the following businesses of the Licensee (as appropriate):
- (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;
  - (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
  - (iii) the supply of gas pursuant to a licence granted in accordance with Article 8(1)(c) of the Order
- each taken separately from one another and from any other business of the Licensee or any affiliate or related undertaking of the Licensee;
- “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;

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“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;
“UC Exit Point”	shall have the meaning given to it in Condition 3.1 of the Gas Conveyance Licence granted to Premier Transmission Limited on 3 March 2005;
“UC Gas Supplier”	shall have the meaning given to it in Condition 3.1 of the Gas Conveyance Licence granted to Premier Transmission Limited on 3 March 2005;
“Unrecovered Postalisation Payments”	shall have the meaning ascribed to that term in Condition 2A.4.3.1(I);
“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;

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“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;

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**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.2.1.5 As used in this Condition 2A.2

- (a) **"Day", MDQ, and "PS Code Charges"** have the respective meanings given in the Network Code and / or (as the context requires) in the Network Codes of the other Designated Pipe-line Operators;
- (b) **"Gas Year 2011 / 12"** means the Gas Year which commenced on 1 October 2011;

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- (c) "Gas Year 2012 / 13" means the Gas Year commencing on 1 October 2012;
- (d) "Gas Year 2013 / 14" means the Gas Year commencing on 1 October 2013; and
- (e) The "**Threshold Amount**" or "Threshold Quantity" means an amount or quantity equal to 5% of the aggregate of the MDQs represented by Firm Capacity (as defined in 2A.1.1) allocated at Exit Points on the designated Network

2A.2.1.6 The Licensee shall offer:

- (a) firm and interruptible third party access services down to a period of one day; and
- (b) an interruptible virtual reverse flow service,

(the services referred to in (a) and (b) above being respectively the "**Short Term Capacity Service**" (or the "**STC Service**") and the "**Virtual Reverse Flow Service**" (or the "**VRF Service**") and together the "**STC / VRF Services**") and, in order to facilitate the provision of the STC/VRF Services, this Licence has been modified by the incorporation of the Conditions numbered 2A.2.1.5 to 2A.2.1.16 (such Conditions being together the "**Short Term Capacity / Virtual Reverse Flow Conditions**" (or the "**STC / VRF Conditions**") and the remaining Conditions of this Part 2A being the "**Postalisation Conditions**") except for the OS Services referred to in Condition numbered 2A.2.1.17 to 2A.2.1.27 (the **OS Conditions**).

Modifications having equivalent effect have been made to the Respective Licences of each other Designated Pipe-line Operator.

2A.2.1.7 In applying or giving effect to the Conditions in this Part 2A

- (a) it shall be conclusively presumed that the amounts payable to the Licensee in respect of the charges described in Condition 2A.2.1.9 (and the amounts payable in respect of the like charges described in the corresponding Condition of the

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Respective Licences of the other Designated Pipe-line Operators) do not constitute PS Transmission Payments and are not to be paid into the PoT Account;

- (b) it shall be conclusively presumed that Daily Capacity allocated pursuant to the Network Code (and / or, as the context requires, the Network Code of any other Designated Pipe-line Operator) does not constitute (and shall not be taken into account in any calculation of) Actual Firm Capacity, Firm Capacity, GS Firm Capacity, Initial Firm Capacity or PS Initial Firm Capacity; and
- (c) any gas which is allocated to a Gas Supplier at any Exit Point on the Designated Network pursuant to any use of the VRF Service shall be disregarded in any calculation of Exit Quantity, Annual Exit Quantity, Forecast Supplier Quantity, Forecast Annual Quantity, GS Annual Exit Quantity, Gas Suppliers' Exit Quantities, PS Forecast Annual Quantity or PS Annual Exit Quantity either as defined in this Licence or the Respective Licence of any other Designated Pipe-line Operator which falls to be made pursuant to the Postalisation Conditions.

2A.2.1.8 The following provisions shall also apply:

- (a) subject to (c) below, each Gas Supplier shall, in respect of each kWh of gas which is allocated to that Gas Supplier at any Exit Point on the Designated Network, be liable to pay the same commodity based charge as each other Gas Supplier for whom gas is exited anywhere on the Designated Network, irrespective of whether the Gas Supplier's entitlement to the allocation of gas arises from the utilisation of Firm Capacity (as defined in Condition 2A.1.1) or from the utilisation of Daily Capacity, OS Capacity or Available Interruptible Capacity allocated pursuant to the Network Code;
- (b) such commodity based charge shall constitute PS Transmission Payments for all the purposes of this Licence and the respective licences of the other Designated Pipeline Operators, without in any way limiting the foregoing, (i) the Licensee shall require all of its Gas Suppliers to make all payments in respect of such charge into the PoT Account and (ii) the Licensee shall pay all sums which it

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receives directly from, or on behalf of, any of its Gas Suppliers in respect of such charges into the PoT Account; and

- (c) no commodity based charge (or, other than as referred to in Conditions 2A.2.1.9(b) or 2A.2.1.11, any other charge) shall be payable by a Gas Supplier in respect of any gas which is allocated to that Gas Supplier at any Exit Point where the allocation is made pursuant to a utilisation of the VRF Service.

2A.2.1.9 The Licensee shall charge each of its Gas Suppliers to whom it provides the STC / VRF Services the following amounts, namely:

- (a) in respect of each kWh / day of Daily Capacity which is allocated in respect of a given Day, an amount equal to the capacity charge per kWh applicable for that Day, as determined pursuant to the charging methodology statement approved by the Authority pursuant to Condition 2A.2.1.10 for the Gas Year in which that Day falls; and
- (b) in respect of each provision of the VRF Service, the charge for such provision which is applicable at the relevant time, as determined pursuant to the charging methodology statement approved by the Authority from time to time.

2A.2.1.10 Not later than the date on which this Licence is modified by the incorporation of this Condition, the Licensee shall publish a charging methodology statement approved by the Authority (and in a manner so approved) showing the charges referred to in Condition 2A.2.1.9(a) and (b) in respect of (i) the Day which commences on 1 July 2012 and each subsequent Day in the Gas Year 2011 / 12 and (ii) each Day in the Gas Year 2012 / 13. The Licensee shall, not later than 1 July in the Gas Year 2012 / 2013 and in each subsequent Gas Year, publish a charging methodology statement approved by the Authority (and in a manner so approved) showing the charges referred to in Condition 2A.2.1.9(a) and (b) in respect of each Day in the forthcoming Gas Year.

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- 2A.2.1.11 Nothing in this Licence shall prejudice the right of the Licensee to impose on and recover from any Gas Supplier to whom it provides the STC / VRF Services or OS Services any PS Code Charges which are payable by that Gas Supplier in respect of the STC / VRF Services or OS Services pursuant to the Network Code.
- 2A.2.1.12 Notwithstanding any Condition of this Licence which may otherwise prohibit it from doing so, the Licensee shall apply charges in respect of the STC / VRF Services in accordance with the STC / VRF Conditions and the relevant provisions of the Network Code and (if and to the extent such would otherwise would be the case) the application of such charges shall not constitute a contravention of any of the Conditions of this Licence. The Conditions of this Licence (other than the STC / VRF Conditions) shall accordingly be read and given effect to accordingly.
- 2A.2.1.13 For the avoidance of doubt, the charges described in Condition 2A.2.1.9 shall not be subject to reconciliation or other adjustment on any ground following the end of a Gas Year (including the ground that forecast costs or other amounts differ from the corresponding outturn costs or other amounts).
- 2A.2.1.14 If the aggregate of the MDQs represented by Daily Capacity allocated at Exit Points on the Designated Network in respect of any period of twelve (12) consecutive months exceeds the Threshold Amount (or is forecast by the Licensee to be exceeded in respect of any period of twelve (12) consecutive months) the Licensee may give notice to the Authority stating that the Licensee wishes to secure the making of modifications to this Licence and the Network Code (and to the Respective Licences and Network Codes of other Designated Pipeline Operators) which will have the effect that the amounts payable to the Licensee in respect of such charges are postalised and brought within the regime for postalised charging applicable under the Postalisation Conditions (such modifications being the “required modifications”)

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- 2A.2.1.15 The Authority may at any time (and irrespective of whether or not the circumstance described in Condition 2A.2.1.14 has occurred) give notice to the Licensee stating that the Authority wishes to secure the making of the required modifications.
- 2A.2.1.16 If the Licensee gives notice pursuant to Condition 2A.2.1.14 or the Authority gives notice pursuant to Condition 2A.2.1.15, the Licensee shall co-operate with the Authority in taking and implementing the steps which are necessary in order to secure the making of the required modifications.

### **Capacity increase through oversubscription and buy back scheme**

- 2A.2.1.17 The Licensee shall, in co-operation and conjunction with every other Designated Pipe-line Operator, and following consultation with such interested parties as the Licensee considers likely to be affected, by no later than 12 December 2013 prepare and submit for approval to the Authority arrangements for the Oversubscription and Buy-Back of capacity, to be known as the OS Scheme.
- 2A.2.1.18 If the Authority does not approve the OS Scheme submitted to it, the Authority may issue a direction requiring the Licensee and every other Designated Pipe-line Operator to make such modifications to the OS Scheme which have been submitted to it as are specified in the direction.
- 2A.2.1.19 The Licensee shall implement and comply with the OS Scheme.
- 2A.2.1.20 The OS Scheme shall:
- (a) set out the circumstances in which (and the basis on which) the Licensee will:
    - (i) offer to allocate, and allocate, OS Capacity;
    - (ii) offer to purchase, and purchase, Buy-Back Capacity,collectively referred to as the “**OS Services**”;
  - (b) set out the methodology for determining the Entry Point Additional Capacity and the amount of OS Capacity that may be offered at a given time in respect of a

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given Exit Point, the exit points of other DPOs as defined in their licences, and a UC Exit Point;

- (c) include a charging methodology statement which sets out the methodology for determining the charges for the provision of OS Services (the “**OS Charging Statement**”);
- (d) include provisions setting out the basis on which (and times at which) net revenues received in respect of the provision of OS Services are to be apportioned, such provisions to include:
  - (i) the definition of net revenues by reference to which such apportionment is to be made;
  - (ii) the proportions as determined by the Authority (from time to time) which shall apply to the apportionment of the net revenues, received in respect of the provision of the OS Services, between (i) the Licensee and any other Designated Pipe-line Operator, and (ii) Gas Suppliers, PS Gas Suppliers and the UC Gas Supplier; and
  - (iii) the timing of such payments following apportionment; and
- (e) comply with the requirements of point 2.2.2 of Annex 1 to the EC Regulation.

2A.2.1.21 The processes and procedures to be adopted for the purposes of implementing the OS Scheme, allocating OS Capacity and purchasing Buy-Back Capacity shall be set out in the Licensee’s Network Code (the “**OS Procedures**”).

2A.2.1.22 The Licensee shall not impose or make payments of (as the case may be ) charges in respect of the provision of OS Services which are applicable at the relevant time of provision, other than as set out in (or as determined in accordance with) the OS Charging Statement.

2A.2.1.23 Without limiting Conditions 2A.2.1.8(a) and (b) the charges referred to in Condition 2A.2.1.20(c) and 2A.2.1.22 shall, in respect of a Gas Year, not be subject to reconciliation or other adjustment on any ground.

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- 2A.2.1.24 The Licensee shall not allocate OS Capacity (or purchase any Buy-Back Capacity) other than in accordance and in compliance with the OS Scheme and the Network Code.
- 2A.2.1.25 The Licensee shall:
- (a) not make any changes to the OS Scheme (including the OS Charging Statement) without the prior written approval of the Authority;
  - (b) in cooperation and conjunction with other Designated Pipe-line Operators, make such changes to the OS Scheme as are set out in any direction issued, to the Licensee and other Designated Pipe-line Operators, by the Authority;
  - (c) publish the most up to date and approved OS Scheme in a manner that will bring it to the attention of interested parties and provide a copy on request to any person.
- 2A.2.1.26 In applying or giving effect to the Conditions in this Part 2A (but without limiting Conditions 2A.2.1.8(a) and (b)) it shall be conclusively presumed that:
- (a) the amounts payable to the Licensee for the allocation of OS Capacity (and the amounts payable to any other Designated Pipe-line Operator for the allocation of capacity which is defined as OS Capacity in the Respective Licence of such Designated Pipe-line Operator), do not constitute PS Transmission Payments and are not to be paid into the PoT Account; and
  - (b) any OS Capacity allocated pursuant to the Network Code (and / or, as the context requires, the Network Code of any other Designated Pipe-line Operator) in accordance with the OS Scheme does not constitute (and shall not be taken into account in any calculation of) Actual Firm Capacity, Firm Capacity, GS Firm Capacity, Initial Firm Capacity or PS Initial Firm Capacity.
- 2A.2.1.27 The Licensee shall, notwithstanding any other contrary provision in any of the Conditions of this Licence, apply charges for OS Capacity allocated (and pay for any Buy-Back Capacity bought) in accordance with the OS Scheme and the relevant

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provision of the Licensee's Network Code and (if and to the extent it would otherwise would be the case) the application of such charges shall not constitute a contravention of any of the Conditions of this Licence.

**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

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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;

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- (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

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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.

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- (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

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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.

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- (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.

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**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.

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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”:

$$\text{MPComP}_{sm} = \text{FPComC}_t \times \text{MEQ}_{sm}$$

where

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

$\text{FPComC}_t$  means the Forecast Postalised Commodity Charge applicable in respect of Gas Year “t” in accordance with 2A.2.5.1(a); and

$\text{MEQ}_{sm}$  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” ( $\sum \text{MPComP}_{st}$ ) is less than the product of  $\text{FPComC}$  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:

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$$(FPComC_t \times \text{Minimum Quantity Value}_{st}) - \Sigma MPComP_{st}$$

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:

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

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:

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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”:

$$\text{MPCapP}_s = \text{FPCapC}_t \times \frac{\text{FC}_s}{12}$$

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

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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.

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**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.

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**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 Pipeline 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:

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

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”;

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

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“**FPCapC<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

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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 Pipeline Operators.

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**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.

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**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;

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- (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

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to convene the Credit Committee within the appropriate period following a PS Non-Payment, or is not fulfilling any Directions.

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**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;

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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<sub>sm-1</sub> = Total Monthly Payment, calculated as the sum of Monthly Postalised Payments plus any Auxiliary Payments, payable by a Gas Supplier “s” invoiced in

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the month preceding the month when the Debt Payment is invoiced (“m-1”);

$$I_m = \text{NDP}_m \times r; \text{ and}$$

$\text{PSTMP}_{m-1}$  = 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**”):

$$\text{Debt Repayment to Gas Supplier “s”} = -\text{NDP} \times \text{ADP}_s \quad \text{APSDP}$$

where:

“ $\text{ADP}_s$ ” 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”.

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“APSDP”

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

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**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.

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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

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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;

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- (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.

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- (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;

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- (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 10th 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% ΣMPComPst 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" ("UNRPt") and shall be calculated in accordance with the following formula:

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$$\text{UNRPt} = (\text{YEPComCt} - \text{FPComCt}) \times \text{PS Annual Exit Quantityt} - \text{\Sigma ComRPt}$$

where  $\Sigma\text{ComRPt}$  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.

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**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;

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- (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;

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- (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.

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**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

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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"):

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- (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

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- 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

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- (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.

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**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:

$$(i) \quad (TMPT_m + DPI_m) \times \frac{FRR_{Lt}}{PSFRR_t}$$

and

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

Where:

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

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- (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

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

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**(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:

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

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;

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$AE_L =$  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:

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

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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”.

$\sum DPI_{mt}$  = 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

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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<sub>L</sub>, DA2<sub>L</sub>, DA3<sub>L</sub>, DA4<sub>L</sub>, DA5<sub>L</sub> and DA6<sub>L</sub> calculated as follows:

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**(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) If  $W - PSDA1 - PSDA2 \geq PSYEA$

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

(ii) If  $W - PSDA1 - PSDA2 < PSYEA$

then  $DA3_L$  shall be calculated as follows:

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

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:

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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”;

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”;

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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<sub>Lm</sub> 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<sub>L</sub> shall be a sum equal to DE<sub>L</sub>; or

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

then DA6<sub>L</sub> 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<sub>L</sub> figures for all Designated Pipe-line Operators under their Respective Licence for month “m”;

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

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PSDA5 =the aggregate of all DA5<sub>L</sub> figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

DE<sub>Lm</sub> =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”).

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**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

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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: ADDITIONAL SPECIAL CONDITIONS**

### **Condition 3.1: Corporate Governance**

#### **3.1.1 General Corporate Governance Requirements**

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:-

- (a) comply with the terms of its Memorandum and Articles of Association;
- (b) not make any change to its Memorandum and Articles of Association or either of them without the prior written consent of the Authority;
- (c) have non-executive directors of appropriate standing with relevant experience who shall be greater in number than the executive directors;
- (d) refrain from taking any action which would cause the Licensee to be in contravention of any of the Conditions of the Licence; and
- (e) to the extent they are appropriate to the circumstances of the Licensee, comply with the principles and guidance of the UK Corporate Governance Code, as referred to at the relevant time in the Listing Rules of the UK Listing Authority.

#### **3.1.2 Undertaking from Ultimate Holding Company**

The Licensee shall procure that the company limited by guarantee which is 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:

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- (a) it shall comply with, and shall procure that each other holding company (which expression shall in this Part 4 have the meaning given to it in section 1159 of the Companies Act 2006) of the Licensee shall comply with, the terms of its Memorandum and Articles of Association;
- (b) 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;
- (c) 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;
- (d) 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;
- (e) it shall continue to be a company limited by guarantee within the meaning of section 3(3) of the Companies Act 2006;
- (f) 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;
- (g) 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 UK Corporate Governance Code, as referred to at the relevant time in the Listing Rules of the UK Listing Authority.

**3.1.3 Meaning of Control**

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

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Licensee when this Licence was granted; and sub-sections (2), (3) and (4) of Section 450 of the Corporation Tax Act 2010 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 said sub-section (3) there shall be substituted the words "one-third or more".

### **3.1.4 Memorandum and Articles of Association**

In this Condition 2.29, 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 2.29.1(b) or 2.29.2(b).

### **3.1.5 Notification of Directors**

The Licensee shall:

- (a) 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; and
- (b) 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.

### **3.1.6 Accounting Statements**

The Licensee shall procure that each Related Company shall prepare annual accounting statements in accordance with UK generally accepted accounting principles and practices or International Financial Reporting Standards and send a copy of the statements to the Authority within a period of 10 months from the end of

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the financial year to which the relevant statements relate. Where used in this Condition 2.29 "Related Company" means (a) the Holding Company (b) each other holding company of the Licensee and (c) each Joint Support Company (as defined in Condition 4.1.2).

### **3.1.7 Prohibition on carrying out any other business**

The Licensee shall not carry on any business or activity other than the Approved Business.

### **3.1.8 Share Ownership**

Except with the prior written approval of the Authority, the Licensee shall not own any shares in any company or (other than in the ordinary course of business) any other investments.

### **3.1.9 Ring Fencing**

Without prejudice to Condition 1.12, 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) 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;

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

3.1.10 Definitions

In this Condition:

<b>"indebtedness"</b>	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
<b>"Permitted Purpose"</b>	means the purpose of all or any of the following:- <ul style="list-style-type: none"> <li>(a) the Licensed Business;</li> <li>(b) without prejudice to the generality of paragraph (a), any payment or transaction</li> </ul>

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	<p>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;</p> <p>(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 2.29.10(b).</p>
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**Condition 3.2: Management Incentive Plan**

3.2.1 Management Incentive Plan

When requested to do so by the 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.

3.2.2 Summary of Principal Terms and Principles

Every time that the Licensee sends a Management Incentive Plan to the Authority under Condition 2.30.1, 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:

- (a) details of the categories of persons to whom the Management Incentive Plan applies;
- (b) the maximum entitlement of any such category of persons; and
- (c) 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 2.30.3) and the relative weighting given to each such criterion.

3.2.3 Criteria

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:

- (a) safety;

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- (b) reliability and performance of the Network;
- (c) fulfilment of obligations under contracts and under the Licence;
- (d) maximising the availability of the Network;
- (e) maximising available capacity which is economical;
- (f) openness and transparency of operations through regular reports to industry;  
and
- (g) operational expenditure performance.

**Condition 3.3: Procurement**

3.3.1 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 2.25.1.
- (b) In contracting for the provision of Network Services pursuant to Condition 3.3.1(a), the Licensee shall, consistent with the objectives stated in Condition 2.25.1, 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 2.25.1 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;

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- (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 Approved 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 2.25.1.

**PART 4: PRICE CONTROL CONDITIONS**

**Condition 4.1: General Provisions, Definitions and Reporting**

4.1.1 General Provisions

- (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 Part 4.
- (b) The Licensee shall, in submitting or calculating any forecasts or estimates required to be submitted or calculated under or in accordance with this Part 4, 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.

4.1.2 Definitions

- (a) Save where this Part 4 otherwise provides, words and expressions used in this Part 4 which are defined in another Part of the Licence shall have the same meaning as is given to them in that Part.
- (b) In this Part 4, the following words and phrases shall have the meanings given to them below:

<b>Actual Controllable Capital Expenditure</b>	means the cumulative actual Controllable Capital Expenditure, in accordance with Condition 4.2.1(d)(i).
<b>Actual Controllable Operating Expenditure</b>	has the meaning given to that term in Condition 4.7.3(b).
<b>Actual Uncontrollable Capital Expenditure</b>	means the cumulative actual Uncontrollable Capital Expenditure, in accordance with

	Condition 4.2.1(d)(ii).
<b>Actual Capital Expenditure</b>	means the Actual Controllable Capital Expenditure plus the Actual Uncontrollable Capital Expenditure.
<b>Actual Supplemental Income</b>	has the meaning given to that term in Condition 4.7.6(e).
<b>Capital Expenditure</b>	<p>means, in respect of the Network and/or any Postalised Distribution Pipelines:</p> <p>(a) expenditure relating to property, plant or equipment that would be recognised as an asset under:</p> <p>(i) International Accounting Standard 16 ‘Property, Plant and Equipment’ (but excluding any attributable interest costs); or</p> <p>(ii) such alternative accounting treatment as may be specified by the Authority in a direction issued by it from time to time; and</p> <p>(b) such other expenditure as may be specified for the purposes of this definition in, or approved by the Authority under, any direction issued by the Authority from time to time.</p>
<b>Capitalised Interest Rate</b>	has the meaning given to that term in Condition 4.5.7.

<b>Compliance Plan</b>	has the meaning given to that term in Condition 4.1.4(c).
<b>Controllable Capital Expenditure</b>	means Capital Expenditure other than Uncontrollable Capital Expenditure.
<b>Controllable Capital Expenditure Estimate</b>	has the meaning given to that term in Condition 4.2.1(a).
<b>Controllable Operating Expenditure</b>	has the meaning given to that term in Condition 4.7.4.
<b>Controllable Operating Expenditure Estimate</b>	has the meaning given to that term in Condition 4.7.2(a).
<b>Designated Pipeline</b>	means any pipeline designated by the Department as forming part of the postalised pipeline network under Article 59 of the Gas Order.
<b>Determined Controllable Operating Expenditure</b>	has the meaning given to that term in Condition 4.7.2(c).
<b>Early Section</b>	means a Section which has been constructed and: <ul style="list-style-type: none"> <li>(a) in relation to which a gas supplier or gas shipper is able to book capacity, pursuant to the provisions of the Network Code, in respect of a date which is prior to the First Operational Commencement Date; or</li> <li>(b) which the Authority has otherwise, in a direction issued for that purpose, deemed to be operational with effect from a date prior to the First Operational Commencement Date,</li> </ul>

	but such that that Section shall be treated as an Early Section for the purposes of this Part 4 only on and from the date applicable in accordance with paragraph (a) or (b) (as the case may be).
<b>Early Sectional Completion</b>	has the meaning given to that term in Condition 4.5.9.
<b>Eligible Pass-Through Costs</b>	has the meaning given to that term in Condition 4.1.3.
<b>Joint Holding Company</b>	means, at any point in time, a holding company of the Licensee which owns and/or operates (or any one of the subsidiaries of which, other than the Licensee, owns and/or operates) gas pipelines or gas plant (excluding the Network) and/or electric lines or electrical plant in Northern Ireland.
<b>Joint Support Company</b>	means, at any point in time, a company which is a subsidiary of a Joint Holding Company and which provides or procures the provision of any services (including finance) to the Licensee and to one or more other subsidiaries of the Joint Holding Company of the nature referred to in the definition of Joint Holding Company.
<b>“LIBOR”</b>	means the sterling London Interbank Offered Rate as published in the Financial Times from time to time.
<b>Office and Overhead Costs</b>	means administration, secretarial, employment, secondment, staff training, management, audit and other internal overhead costs, together with accountancy and other advisory fees.

<b>Postalised Distribution Pipeline</b>	means such part of a low pressure gas pipeline as is specified in, or determined by or in accordance with, a direction given to the Licensee by the Authority for the purposes of this definition.
<b>Rate of Return</b>	means the regulatory allowed real weighted average rate of return calculated in accordance with Condition 4.5.3.
<b>Revenue Recovery Period</b>	means, in respect of the Network, the period of [40] years commencing on the First Operational Commencement Date.
<b>Review Date</b>	means:  (a) the First Operational Commencement Date (which is also "the first Review Date"); and  (b) thereafter, the date of each subsequent review of the rate of return as determined by the Authority at the previous Review Date.
<b>“Retail Price Index” or “RPI”</b>	means the Index of that name published by the Office of National Statistics each month in respect of all items, or:  (a) if that Index for the specified month in any year shall not have been published on or before the last day of the sixth month after the specified month, such alternative index for such month as the Authority may after consultation with the Licensee determine as appropriate in the circumstances; or  (b) if there is a material change in the basis of the Index, such alternative index as the

	Authority may after consultation with the Licensee determine as appropriate in the circumstances;
<b>Section</b>	means any part of the Network by which gas can be conveyed (either from that part of the Network or from a low-pressure pipe-line connected, or to be connected, to that part of the Network) to any of the following towns:  (c) Dungannon (including Coalisland); (d) Cookstown (including Magherafelt); (e) Enniskillen (including Derrylin); (f) Omagh; (g) Strabane.
<b>Sole Holding Company</b>	means, at any point in time, any holding company of the Licensee which is not, at that time, a Joint Holding Company.
<b>Supplemental Income</b>	means any income that the Licensee receives as a result of owning and operating the Network as determined by the Authority, but shall not include revenue from the Postalised Charges.
<b>Termination Payments</b>	has the meaning given to that term in Condition 4.7.5.
<b>Total Controllable Capital Expenditure</b>	has the meaning given to that term in Condition 4.2.1(d).
<b>Total Uncontrollable Capital Expenditure</b>	has the meaning given to that term in Condition 4.2.1(d).

<b>Uncontrollable Capital Expenditure</b>	has the meaning given to that term in Condition 4.2.2(a).
<b>Uncontrollable Capital Expenditure Estimate</b>	has the meaning given to that term in Condition 4.2.1(a).
<b>Verified Controllable Capital Forecast</b>	means the Controllable Capital Expenditure Estimate verified (with or without amendment) by the Authority in accordance with Condition 4.2.1(b).
<b>Virtual Reverse Flow (VRF) Revenues</b>	has the meaning given to that term in Condition 4.7.8.

#### 4.1.3 Eligible Operating Pass-Through Costs

"**Eligible Pass-Through Costs**" means, in respect of any Gas Year following the First Operational Commencement Date, the sum of such costs as have been incurred by the Licensee during that Gas Year in relation to:

- (a) the operation, repair, reinstatement, refurbishment and/or maintenance of the Network (or the land or substrata in, on, under, over or through which the Network is laid) or the rectification of any design, engineering, manufacturing, installation, construction or other defect in the Network;
- (b) insurance;
- (c) the discharge of its obligations under:
  - (i) any agreement, code or other document relating to the Network to which it is a party or by which it is bound (including this Licence); and
  - (ii) any indemnity, counter-indemnity or other obligation to pay money arising under any such agreement, code or other document;
- (d) any arrangement for the provision of services in respect of the Network;

- (e) any land or premises occupied or used by the Licensee (or by any Sole Holding Company for the purposes of the Licensee) or on which any part of the Network is built, including in particular costs in respect of:
- (i) local authority rates;
  - (ii) the discharge of claims for compensation (whether made before or after the Grant of this Licence);
  - (iii) liaison with landowners;
  - (iv) rentals or other amounts payable to any landowner;
  - (v) the repair, maintenance and upkeep of any drainage system associated with the Network,
- and an appropriate proportion (in accordance with the provisions of the Compliance Plan) of any equivalent costs incurred by any Joint Holding Company or Joint Support Company;
- (f) (to the extent not separately reimbursed to the Licensee by Gas Suppliers or Gas Shippers) all amounts payable by the Licensee to the owner or operator of any gas plant or gas pipeline system to which the Network is directly or indirectly connected;
- (g) all amounts payable by the Licensee to any PS Gas Supplier or Shipper on account of any withdrawal from service, breakdown, unavailability, or reduction in availability of the Network;
- (h) the purchase of auxiliary electricity supplies for the Network;
- (i) actions required to be taken by the Licensee as a result of changes in legislation;
- (j) Office and Overhead Costs incurred by the Licensee or any Sole Holding Company and an appropriate proportion (in accordance with the provisions of the Compliance Plan) of the Office and Overhead Costs incurred by any Joint Holding Company or Joint Support Company;

- (k) the investigation of payment defaults by PS Gas Suppliers, the exercise of rights against any PS Gas Supplier or other person in respect of any such payment defaults, and the activities of any credit or like committee established pursuant to the Licence (and other Gas Conveyance Licences);
- (l) (to the extent not separately reimbursed to the Licensee by gas suppliers or gas shippers) the purchase of gas for balancing purposes;
- (m) Corporation Tax payable by the Licensee or any Sole Holding Company and an appropriate proportion (in accordance with the provisions of the Compliance Plan) of the amount of Corporation Tax payable by any Joint Holding Company or Joint Support Company;

taken together with:

- (n) any value added tax of equivalent form of tax on any amount falling within paragraphs (a) to (n), to the extent such taxes is not recoverable by the Licensee or (as the case may be) by any Sole Holding Company, Joint Holding Company or Joint Support Company;

but excluding:

- (o) any cost, expense, loss, liability or other amount incurred by the Licensee if and to the extent the same falls under paragraph (a) or (c) of the definition of Postalisation Adjustment in Condition 4.6.1;
- (p) any amount constituting Capital Expenditure.

#### 4.1.4 Reporting

- (a) The Licensee shall ensure that all costs information submitted by it to the Authority under or in accordance with this Part 4 or any other provision of this Licence, and whether in relation to actual or forecast costs, reports fully and accurately all the costs incurred (or forecast to be incurred) in the design, construction operation and maintenance of the Network and any Postalised Distribution Pipeline.

- (b) The Licensee shall ensure that no costs information submitted by it to the Authority under or in accordance with this Part 4 or any other provision of this Licence, whether in relation to actual or forecast costs, relates to costs which are properly to be attributed or apportioned to:
- (i) the Licensee in undertaking any Separate Business other than the Licensed Business (including in particular when carrying out activities under any other licence granted in accordance with the Order);
  - (ii) any affiliate or related undertaking of the Licensee.
- (c) For the purposes of ensuring its compliance with paragraphs (a) and (b), the Licensee shall submit to the Authority, by no later than three months after the date of the Grant, a draft plan (a "**Compliance Plan**") which:
- (i) shall set out the arrangements it proposes to establish in order to ensure its compliance with those paragraphs;
  - (ii) makes detailed provision in particular for a method by which:
    - (A) an appropriate apportionment of costs shall take place as between the Licensed Business and any other Separate Business of the Licensee;
    - (B) an appropriate apportionment of Office and Overhead Costs, costs relating to land, Corporation Tax and value added taxes shall take place as between the Licensee and any Joint Holding Company or Joint Support Company for the purposes of Condition 4.1.3;
    - (C) no amount constituting Capital Expenditure shall be treated as an Eligible Pass-Through Cost;
  - (iii) is consistent with the requirements of Conditions 1.2.4 to 1.2.6;
  - (iv) shall require to be approved by the Authority and, where the Authority does not approve the initial draft plan, shall be subject to further review and amendment, including any such amendment as the Authority may

direct the Licensee to make, until the Authority considers that it is suitable for approval.

- (d) The Licensee shall comply with any Compliance Plan approved by the Authority under paragraph (c), and:
  - (i) shall keep that plan under review and from time to time propose to the Authority any amendments required to ensure that it is accurate and up to date'
  - (ii) amend that plan in any manner directed by the Authority;
  - (iii) not otherwise amend that plan except with the approval of the Authority.

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### Condition 4.2: Capital Expenditure

#### 4.2.1 Allowed Capital Expenditure

- (a) The Licensee may at any time, and shall no later than:
- (i) 18 months after the date of the Grant of the Licence; or
  - (ii) such later date as the Authority may agree (taking account in particular of any exceptional circumstances which could not reasonably have been foreseen by the Licensee),

submit a forecast of the amount and timing of Capital Expenditure, separately identifying the amount of such expenditure that the Licensee believes would be Uncontrollable Capital Expenditure (each an “**Uncontrollable Capital Expenditure Estimate**”) and the amount that the Licensee believes would not (each a “**Controllable Capital Expenditure Estimate**”).

The Licensee shall provide such further information or explanation and documents and records as the Authority reasonably requires for the purpose of verifying each Controllable Capital Expenditure Estimate and Uncontrollable Capital Expenditure Estimate, including all figures, costs, estimates and assumptions comprised in or underlying the same.

- (b) The Authority may, following verification, by notice to the Licensee in respect of each such Controllable Capital Expenditure Estimate:
- (i) approve the Controllable Capital Expenditure Estimate as the "**Verified Controllable Capital Forecast**"; or
  - (ii) determine as the Verified Controllable Capital Forecast such amended figure as it considers appropriate,

provided that before making any amendments to the Controllable Capital Expenditure Estimate for the purpose of determining the Verified Controllable Capital Forecast the Authority shall provide details of the amendments and the reasons for them (such reasons to be based on established high pressure gas

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

- (c) The Licensee shall:
- (i) not later than 3 months after the end of each 12 month period from the date of the Grant up to the First Operational Commencement Date; and
  - (ii) not later than 3 months after the end of each Gas Year,

provide to the Authority:

- (A) its current forecasts of the amount and timing of Capital Expenditure, separately identifying the amount of expenditure that the Licensee believes would be Uncontrollable Capital Expenditure; and
  - (B) details of the amount and timing of Capital Expenditure the Licensee has actually incurred, separately identifying the amount of expenditure that the Licensee believes would be Uncontrollable Capital Expenditure.
- (d) As soon as reasonably possible after completion of the Network and any Postalised Distribution Pipelines, the Licensee shall submit details of the amount and timing of cumulative Capital Expenditure actually incurred, separately identifying the amount of such expenditure which it has incurred which it believes to be Uncontrollable Capital Expenditure (the “**Total Uncontrollable Capital Expenditure**”), and the amount that the Licensee believes is not (the “**Total Controllable Capital Expenditure**”), and
- (i) that Total Controllable Capital Expenditure shall, subject to paragraphs (e) and (f), be the “**Actual Controllable Capital Expenditure**”; and
  - (ii) that Total Uncontrollable Capital Expenditure shall, subject to paragraphs (e) and (g), be the “**Actual Uncontrollable Capital Expenditure**”.

(e) The Licensee shall provide such further information or explanation and documents and records as the Authority reasonably requires for the purpose of auditing the Total Controllable Capital Expenditure and the Total Uncontrollable Capital Expenditure figures submitted by the Licensee in accordance with paragraph (d), and/or the forecasts and details provided by the Licensee in accordance with paragraph (c).

(f) The Authority may, following audit pursuant to paragraph (e), by notice to the Licensee in respect of the Total Controllable Capital Expenditure figures submitted by the Licensee in accordance with paragraph (d):

(i) approve the Licensee's Total Controllable Capital Expenditure figure as the Actual Controllable Capital Expenditure; or

(ii) determine as the Actual Controllable Capital Expenditure such amended figure as it considers appropriate if, in its reasonable opinion, the figure proposed by the Licensee does not accurately reflect the Controllable Capital Expenditure incurred by the Licensee,

provided that, before making any amendments to the Total Controllable Capital Expenditure figure submitted by the Licensee, the Authority shall provide details of the amendments and the reasons for them (such reasons to be based on established gas pipeline engineering and cost control principles) and give the Licensee an appropriate period (being not less than 28 days) to comment on them.

(g) The Authority may, following audit pursuant to paragraph (e), by notice to the Licensee in respect of the Total Uncontrollable Capital Expenditure figures submitted by the Licensee in accordance with paragraph (d):

(i) approve the Licensee's Total Uncontrollable Capital Expenditure figure as the Actual Uncontrollable Capital Expenditure; or

(ii) determine as the Actual Uncontrollable Capital Expenditure such amended figure as it considers appropriate if, in its reasonable opinion, the figure proposed by the Licensee does not accurately reflect

Uncontrollable Capital Expenditure incurred by the Licensee (including if, in its reasonable opinion, any part of the expenditure included by the Licensee within the Total Uncontrollable Capital Expenditure figure falls outside the categories of Uncontrollable Capital Expenditure as set out in Condition 4.2.2(a),

provided that, before making any amendments to the Total Uncontrollable Capital Expenditure figure submitted by the Licensee, the Authority shall provide details of the amendments and the reasons for them (such reasons to be based on established gas pipeline engineering and cost control principles) and give the Licensee an appropriate period (being not less than 28 days) to comment on them.

#### 4.2.2 Uncontrollable Capital Expenditure

- (a) The following categories of Capital Expenditure shall comprise an exhaustive list of all Uncontrollable Capital Expenditure for the purposes of this Part 4:
  - (i) archaeology;
  - (ii) planning conditions;
  - (iii) stock up gas;
  - (iv) such other categories of Capital Expenditure as the Authority may accept as being Uncontrollable Capital Expenditure.
- (b) The Licensee shall at all times use all reasonable endeavours to minimise the amount of Uncontrollable Capital Expenditure so far as is possible without adversely impacting on the safety of the Network.

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### **Condition 4.3: The Revenue Restriction**

#### **4.3.1 Revenue Restriction if no Designation Order**

In respect of any period during which a Designation Order is not in force in relation to the Network, the Licensee shall use its reasonable endeavours to ensure that in each Gas Year during that period its total revenue shall not exceed the Actual Required Revenue for that Gas Year.

#### **4.3.2 Revenue Restriction during the Period of Designation**

- (a) In respect of any period during which a Designation Order is in force in relation to all or any part of the Network, the Licensee shall ensure that in respect of each Gas Year during that period:
  - (i) its Forecast Required Revenue to be notified to the Authority and the PSA in accordance with paragraphs (b) and (d) shall be calculated in accordance with Condition 4.4.1; and
  - (ii) its Actual Required Revenue to be notified to the Authority and the PSA in accordance with paragraph (e) shall be calculated in accordance with the formula set out in Condition 4.4.2.
- (b) By 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 4.1.1(b).
- (c) If, by not later than two weeks after the provision of the calculation of Forecast Required Revenue pursuant to paragraph (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 another forecast to the Authority within fourteen days of the date of the notice (which may be the same as the original forecast).

- (d) By 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 paragraph (b), with any variation made thereto pursuant to paragraph (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) By 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 the Actual Required Revenue in that Gas Year 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 4.4.2.
- (f) By 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.

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### Condition 4.4: Forecast and Actual Required Revenue

#### 4.4.1 Forecast Required Revenue

The Forecast Required Revenue of the Licensee in respect of each Gas Year shall be calculated by the Licensee as its forecast of its Actual Required Revenue for that Gas Year, on the basis of the formula at Condition 4.4.2, but omitting for this purpose the  $Z_t*(S_t)$  component of that formula.

#### 4.4.2 Actual Required Revenue

- (a) The Licensee's Actual Required Revenue ( $ARR_t$ ) for any Gas Year shall be the amount determined in accordance with the formula set out in paragraph (b) for such Gas Year.
- (b) The formula for the calculation of the Licensee's Actual Required Revenue in any Gas Year is as follows:

$$ARR_t = (A_t + B_t + C_t + Z_t*(S_t)) - (D_t + E_t + F_t)$$

#### 4.4.3 Definition of Formula Terms

For the purposes of Condition 4.4.2 and this Part 4 generally:

- $t$  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 Part 4 (and the subscript  $t-2$  shall be construed accordingly);
- $A_t$  in respect of any Gas Year, means the Capital Revenue Requirement for that Gas Year, calculated in accordance with Condition 4.5.1;
- $B_t$  in respect of any Gas Year, means the Eligible Pass-Through Costs relating to the Network for that Gas Year;
- $C_t$  in respect of any Gas Year, means the Postalisation Adjustment for that Gas Year calculated in accordance with Condition 4.6.1;

- $S_t$  in respect of any Gas Year, means the Approved Surplus determined by the Authority in accordance with Condition 4.7.1 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, means a factor between 0 and 1, as determined by the Authority for such Gas Year and notified to the Licensee on or before the eighth Business Day in November following the end of such Gas Year;
- $D_t$  means the Termination Payments as calculated in accordance with Condition 4.7.5;
- $E_t$  means the Actual Supplemental Income as calculated in accordance with Condition 4.7.6;
- $F_t$  means the Virtual Reverse Flow (VRF) Revenues as calculated in accordance with Condition 4.7.7.

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### Condition 4.5: The Capital Revenue Requirement

#### 4.5.1 The Capital Revenue Requirement

The formula for the calculation of the Licensee's Capital Revenue Requirement in any Gas Year is as follows:

$$A_t = \sum_{m=q}^s A_m$$

Where:

q is the first month in Gas Year t;

s is the twelfth month in Gas Year t;

$A_m$  is to be calculated in accordance with Condition 4.5.2

#### 4.5.2 The Monthly Capital Revenue Requirement

For the purposes of Condition 4.5.1 and this Part 4 generally:

$$A_m = \frac{OAV_m \cdot rr_m}{1 - (1 + rr_m)^{-(N-m+1)}} \cdot (1 + i_m) - k_m$$

Where:

$A_m$  is the revenue required to recover invested capital at the allowed rate of return in month m calculated to be a constant real amount for  $m = 1 \dots 480$ ;

$rr_m$  is the regulatory allowed real weighted average rate of return calculated in accordance with Condition 4.5.3;

$OAV_m$  is the opening asset value in month m calculated in accordance with Condition 4.5.5;

$m = 1$  is the month in which the First Operational Commencement Date occurs;

$m=N=480$  is the 480<sup>th</sup> month after the month in which the First Operational Commencement Date occurs;

$i_m$  is the rate of inflation in month  $m$ , and:

- (i) for the purposes of forecast figures, shall be  $1.03^{(1/12)} - 1$  during the period until the first Review Date and thereafter shall be the forecast long term RPI rate of inflation as approved by the Authority and
- (ii) for the purposes of actual figures, shall be the RPI rate of inflation calculated as follows:

$$i_m = (1 + i_t)^{1/12} - 1$$

where:

$$i_t = (\text{RPI}^{\text{Oct}}_{t+1} / \text{RPI}^{\text{Oct}}_t) - 1$$

$k_m$  is an error correction mechanism to take account of variances in outturn and forecast variables (including revenue and inflation) calculated in accordance with Condition 3.5.4.

#### 4.5.3 The Rate of Return

- (a) For the purposes of Condition 4.5.2, the Rate of Return ( $rr_m$ ) shall be a number expressed as a percentage representing the real cost of capital and shall be established in accordance with this Condition 4.5.3.
- (b) The Rate of Return from the first Review Date shall be equal to  $(1+1.98\%)^{(1/12)} - 1$  or such other value (expressed as a percentage) as may be determined by the Authority in light of material changes in financial market conditions since April 2014.
- (c) Except where paragraph (e) applies, the Authority shall review the Rate of Return prior to each subsequent Review Date.

- (d) The Rate of Return following each Review Date shall be equal to the Rate of Return prior to that date, unless the Authority specifies a different number in a modification of this Part 4 made by it under Article 14 of the Order in which case the Rate of Return shall be the number so specified.
- (e) Where the Authority has, at the request of the Licensee, determined that the Rate of Return shall be fixed for any period which covers one or more Review Dates, the Authority shall not be required to review the Rate of Return prior to such dates. The Licensee may use all reasonable endeavours to effect a long term debt financing arrangement approved (including as to tenor, interest rate and amount) by the Authority on or as soon as practicable after the later of (a) the First Operational Commencement Date and (b) the date on which the pipelines comprised in the Network become designated pipe-lines or such earlier date as may be agreed by the Authority.

#### 4.5.4 The Error Correction Mechanism

For the purposes of Condition 4.5.2:

$k_m$  is an error correction mechanism to take account of variances in outturn and forecast variables including revenue, inflation, corporate tax rates and capital allowances and shall be calculated in accordance with the following formula:

$$k_m = \frac{(K_m) \cdot rr_m}{1 - (1 + rr_m)^{-(N-m+1)}} \cdot (1 + i_m)$$

Where:

$$K_{m=j+1} = \left( \sum_{m=1}^j \frac{A_m^a - A_m^{rf}}{\prod_{m=1}^j (1 + rn_m)} \cdot \prod_{m=1}^j (1 + rn_m) \right)$$

And:

$A_m^a$  is the actual revenue in month m, up to j = month before the review month;

$A_m^{rf}$  is the reforecast revenue in month m, up to j = month before the review month;

$rn_m$  is the regulatory allowed nominal weighted average rate of return in month m:

$$rn_m = ((1+rr_m) \cdot (1+i_m)) - 1$$

Such that:

$$\sum_{m=j+1}^N \frac{A_m}{\prod_{m=j+1}^N (1+rn_m)} \cdot \prod_{m=1}^j \frac{1}{1+rn_m} + \sum_{m=1}^j \frac{A_m^a}{\prod_{m=1}^j (1+rn_m)} = OAV_{m=1}$$

And:

$$K_m = K_{m-1} - \left( \frac{(K_{m-1}) \cdot (rr_{m-1})}{1 - (1+rr_{m-1})^{-(N-m+1)}} - (K_{m-1}) \cdot (rn_{m-1}) \right)$$

#### 4.5.5 The Opening Asset Value

For the purposes of Condition 4.5.1:

$$OAV_m = OAV_{m-1} - \left( \frac{(OAV_{m-1}) \cdot (rr_{m-1})}{1 - (1+rr_{m-1})^{-(N-m+1)}} - (OAV_{m-1}) \cdot (rn_{m-1}) \right)$$

Where:

$$OAV_{m=1} = AC + CI - G + X$$

And:

OAV is the Opening Asset Value;

- AC is the Allowed Capital Expenditure calculated in accordance with Condition 4.5.6;
- CI is the amount of Capitalised Interest calculated in accordance with Condition 4.5.7;
- G is the amount of Grants Received calculated in accordance with Condition 4.5.8;
- X is the amount in respect of Early Sectional Completion calculated in accordance with Condition 4.5.9.

#### 4.5.6 The Allowed Capital Expenditure

For the purposes of Condition 4.5.5, the Allowed Capital Expenditure (AC) term is the present value of Capital Expenditure, at the month in which the First Operational Commencement Date occurs, calculated in accordance with the following formula:

$$AC = VFCE + PG + UC$$

Where:

- VFCE is the Verified Controllable Capital Forecast;
- PG is a positive or negative amount representing the operation of a pain/gain mechanism, and shall be:
- (i) where the Actual Controllable Capital Expenditure is greater than the Verified Controllable Capital Forecast, a positive amount equal to 65% of the difference;
  - (ii) where the Actual Controllable Capital Expenditure is less than the Verified Controllable Capital Forecast, a negative amount equal to 65% of the difference;
- UC is the Actual Uncontrollable Capital Expenditure.

#### 4.5.7 Capitalised Interest

For the purposes of Condition 4.5.5, the Capitalised Interest (CI) term is the present value of capitalised interest, at the month in which the First Operational Commencement Date occurs, calculated in accordance with the following formula:

$$CI = \sum_{m=h}^0 \left( CE_m \cdot \prod_{m=h}^0 (1 + CIR_m) - CE_m \right) - \sum_{m=1}^N \left( CE_m \cdot \prod_{m=1}^N (1 + rn_m)^{-1} - CE_m \right)$$

Where:

$CE_m$  is the Actual Capital Expenditure in month m;

$CIR_m$  is the Capitalised Interest Rate for month m, being  $(1 + \text{LIBOR} + 0.5\%)^{(1/12)} - 1$  where LIBOR is the annual LIBOR rate at the first business day of each month;

$m = h$  is the month of [October] 2014, being the first month from which capitalised interest will be charged;

#### 4.5.8 Grants Received

For the purposes of Condition 4.5.5, the Grants Received (G) term is the present value at the First Operational Commencement Date of grants received in respect of the Network, calculated in accordance with the following formula:

$$G = \sum_{m=p}^0 AMGR_m \cdot \prod_{m=p}^0 (1 + CIR_m) + \sum_{m=1}^N AMGR_m \cdot \prod_{m=1}^N (1 + rn_m)^{-1}$$

Where:

$AMGR_m$  is the actual monthly grant receipt amount audited and approved by the Authority as being equal to the amount of capital grant actually received by the Licensee in each calendar month ending prior to and after the First Operational Commencement Date in respect of the design, development and construction of the Network;

$m = p$  is the first month that the capital grant is received by the Licensee;

#### 4.5.9 Early Sectional Completion

For the purposes of Condition 4.5.5, the Early Sectional Completion (X) term is an amount which has been calculated so as to comprise:

- (a) any operating costs in relation to Early Sections which have been approved by the Authority; plus
- (b) any additional interest in relation to Early Sections calculated by the Authority to reflect the application of the Rate of Return (rather than the Capitalised Interest Rate) between the date when each Early Section is operational and the First Operational Commencement Date; minus
- (c) any revenues determined by the Authority as having been received in respect of Early Sections prior to the First Operational Commencement Date.

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### Condition 4.6: The Postalisation Adjustment

#### 4.6.1 The Postalisation Adjustment

The Postalisation Adjustment (which may be a negative or positive amount) shall be calculated as the sum of the amounts identified in paragraphs (a) to (c):

- (a) the costs, expenses, losses and/or liabilities incurred (or to be incurred) by the Licensee which related to the PSA or the Trustee under the agreements under which they were appointed;
- (b) the amounts due in respect of Commodity Reconciliation Payments for Gas Year t-2, calculated in accordance with the following formula:

$$\text{UNRPT}_{t-2} \times (1+\text{RE})^{1.5} \times \frac{\text{CPI}_t}{\text{CPI}_{t-2}} \times \frac{\text{ARR}_{L,t-2}}{\text{PS ARR}_{t-2}}$$

Where:

$\text{UNRPT}_{t-2}$  are the unrecovered Postalisation Payments in respect of Gas Year t-2, as calculated by the PSA;

$\text{CPI}_t$  is 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 t, 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 Consumer Prices Index;

$\text{CPI}_{t-2}$  is 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<sub>t-2</sub> is the Actual Required Revenue in respect of Gas Year t-2;

PS ARR<sub>t-2</sub> is the sum of the Actual Required Revenues (as defined in each Licensee's respective licence) of all Designated Pipeline Operators in respect of Gas Year t-2;

RE is the applicable real interest rate, which is calculated as the one-year LIBOR rate, as published on the 10<sup>th</sup> business day of June in Gas Year t-1, plus 2% minus CPI factor, calculated as:

$$\text{LIBOR rate \%} + 2\% - \left[ \left( \frac{\text{CPI}_t}{\text{CPI}_{t-1}} \right) - 1 \right] \times 100$$

CPI<sub>t-1</sub> is 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 available the latest CPI figure published in Gas Year t-1;

- (c) 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.

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### Condition 4.7: The Approved Surplus and Other ARR Components

#### 4.7.1 The Approved Surplus

The formula for the calculation of the Approved Surplus ( $S_t$ ) in any Gas Year is as follows:

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

but such that, where in accordance with this formula  $S_t$  is a negative number, it shall be deemed to be zero.

Where:

$DCO_t$  is the Determined Controllable Operating Expenditure in Gas Year  $t$ ;

$ACO_t$  is the Actual Controllable Operating Expenditure in Gas Year  $t$ ;

$ARF_t$  is to be determined in accordance with the following formula:

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

where  $i$  is each Gas Year in the period of the three Gas Years prior to Gas Year  $t$ .

#### 4.7.2 Determination of DCO

(a) The Licensee may at any time, and shall no later than:

- (i) the first Business Day of July 2016 (or such alternative date as may be determined by the Authority and notified to the Licensee in writing); and
- (ii) 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 (a "**Controllable Operating Expenditure Estimate**") 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 estimate is a reasonable estimate in accordance with Condition 4.1.1(b).

- (b) 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 each Controllable Operating Expenditure Estimate (including all figures, costs, estimates and assumptions comprised in or underlying those estimates) in accordance with paragraph (a).
- (c) The Authority shall, no later than 28 days following its verification of a Controllable Operating Expenditure Estimate, notify to the Licensee the amount of the "**Determined Controllable Operating Expenditure**" (being the sum of the amount of each item of Controllable Operating Expenditure determined to be reasonable by the Authority) that it considers appropriate for each of the next three Gas Years.

The Authority shall provide to the Licensee details of any changes that it has made to the Licensee's Controllable Operational Expenditure Estimate and the reasons for them and give the Licensee an appropriate period (being not less than 14 days) to comment on them.

- (d) After consideration of any comments received from the Licensee, the Authority shall notify the Licensee in writing of its determination of the amount of the Determined Controllable Operating Expenditure for each of the next three Gas Years (which may be the same as the amount that the Authority notified to the Licensee in accordance with paragraph (c)).
- (e) The Authority may, following a written request from the Licensee to review the DCO for any Gas Year to take into consideration any fact or matter that has arisen following the Authority's determination pursuant to paragraph (d) – provided that, if such a request is made in respect of the current Gas Year,

such request is submitted before 31st of August in that Gas Year – conduct a review of DCO 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 the Determined Controllable Operating Expenditure, the Authority shall provide details of the changes and the reasons for them and give the Licensee an appropriate period (not being less than 14 days ) to comment on them.

After consideration of the Licensee’s comments, the Authority shall notify the Licensee in writing of its new determination of the Determined Controllable Operating Expenditure for the relevant Gas Year (which may be the same as the amount that the Authority notified to the Licensee in accordance with paragraph (d)).

#### 4.7.3 Determination of ACO

- (a) The Licensee shall, by 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 Operating Expenditure actually incurred by the Licensee in that Gas Year.
- (b) The Licensee’s "**Actual Controllable Operating Expenditure**" for each Gas Year shall be the aggregate of the actual amounts of Controllable Operating Expenditure referred to in the statement submitted in accordance with paragraph (a).

#### 4.7.4 Definition of Controllable Operating Expenditure

For the purposes of this Part 4, “**Controllable Operating Expenditure**” shall comprise those categories of expenditure that are properly within the control of the management of the Licensee, such categories to be those agreed in writing between the Licensee and the Authority no later than the first Business Day of [June 2015] subject to any amendments 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.

#### 4.7.5 The Termination Payments

The Termination Payments ( $D_t$ ) in any Gas Year shall be calculated as the aggregate of any sums received by the Licensee during that year after falling due under the Network Code upon the termination of any Gas Supplier's Accession Agreement in respect of future years following the Gas Year in which the termination occurred.

#### 4.7.6 The Supplemental Income

- (a) The Licensee shall, on a good faith basis use its reasonable endeavours to maximise the Supplemental Income provided that it is acknowledged that the primary purpose of the Network is to transport gas for the purposes of its supply to customers in Northern Ireland.
- (b) The Licensee shall report to the Authority not later than six months before the end of each Gas Year:
  - (i) with the Licensee's calculation of all Supplemental Income reasonably anticipated by it to become due to, or receivable by, it in the forthcoming Gas Year; and
  - (ii) details of what the Licensee considers to be the Supplemental Income recovered in the preceding Gas Year.
- (c) The Licensee shall promptly provide to the Authority such information, explanations, documents and records as the Authority may reasonably require in connection with or relating to Supplemental Income and the report provided in accordance with paragraph (b).
- (d) The Authority may, following verification, by notice to the Licensee in respect of the figures submitted in the Licensee's report in accordance with paragraph (b)(i):
  - (i) approve the figures in the report as the Supplemental Income for the relevant Gas Year; or

- (ii) determine as the Supplemental Income for the relevant Gas Year such amended figure as it considers appropriate,

provided that before making any amendments to the figures in the report submitted by the Licensee in accordance with paragraph (b)(i) the Authority shall provide details of the amendments and the reasons for them and give the Licensee an appropriate period (being not less than 28 days) to comment on them.

- (e) The Authority may, following verification, by notice to the Licensee in respect of the figures submitted in the Licensee's report in accordance with paragraph (b)(ii):

- (i) approve the figures in the report as the "**Actual Supplemental Income**" ( $E_t$ ) for the relevant Gas Year; or
- (ii) determine as the Actual Supplemental Income for the relevant Gas Year such amended figure as it considers appropriate.

#### 4.7.7 The Virtual Reverse Flow Revenues

The VRF Revenues ( $F_t$ ) in any Gas Year shall be calculated as the aggregate of the sums received by the Licensee during that year for the provision of Virtual Reverse Flow Services in that year, after the deduction of value added tax (if any) and any other taxes based directly on the amounts so received.

## **Condition 4.8: Allowed Revenue after the Final Repayment Date**

### 4.8.1 Allowed Revenue after the Final Repayment Date

- (a) Not less than twelve (12) months prior to the expiry of the Revenue Recovery Period the Licensee shall submit to the Authority:
  - (i) a proposal as to the formula to be used for calculation of conveyance charges following the end of the Revenue Recovery Period; and
  - (ii) a forecast of the amount of such charges for the five years following expiry of the Revenue Recovery Period,

which comply with the basis of calculation set out in paragraph (d).

- (b) The Licensee shall provide such further information or explanation and documents and records as the Authority reasonably requires for the purpose of verifying that the formula and forecasts submitted to it by the Licensee in accordance with paragraph (a) comply with the principles set out in paragraph (d).
- (c) The Authority may, following review of the submissions provided in accordance with paragraph (a), by notice to the Licensee:
  - (i) approve the formula and forecasts; or
  - (ii) make such amendments to the formula and forecasts as it deems necessary or appropriate to ensure compliance with the basis of calculation set out in paragraph (d) provided that before making any modifications to the Licensee's formula and forecast, the Authority shall provide details of the proposed modifications and the reasons for them and give the Licensee an appropriate period (being not less than 28 days) to comment on them.
- (d) The Licensee shall in setting its charges for the conveyance of gas in the Network for each Gas Year commencing after the expiry of the Revenue Recovery Period do so in accordance with such arrangements as shall have

been approved by the Authority having regard to the principle that the Licensee shall be entitled to receive by way of conveyance charges:

- (i) the costs incurred by the Licensee deemed necessary or appropriate by the Authority in administering, maintaining and operating the Network for each conveyance service; and
- (ii) the costs incurred by the Licensee deemed necessary or appropriate by the Authority from time to time to expand, reinforce and renew the Network together with an appropriate return on those costs as agreed between the Authority and the Licensee;
- (iii) minus any Supplemental Income.

## Schedule 1: Licensed Area for the Conveyance of Gas

1. The Licensed Area comprises the land:
  - (a) in, on or over which the high pressure pipe-lines and any associated spurs may be situated pursuant to and in accordance with any consent given under Article 35 of the Order for the construction of a pipe-line for the purpose of conveying gas to the towns listed in paragraph 2 below (the '**network route**'); and
  - (b) which is within a [5 metre] radius of the network route.
2. The towns referred to in paragraph 1(a) are:
  - (a) Dungannon including Coalisland
  - (b) Cookstown including Magherafelt
  - (c) Enniskillen including Derrylin
  - (d) Omagh; and
  - (e) Strabane.

## **Schedule 2: Right of the Authority to Revoke the 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) of the Energy Order and such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 44 of the Energy Order could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined; or
- (d) if the Licensee fails to pay any financial penalty (within the meaning of Article 45 of the Energy Order) imposed in respect of a contravention or apprehended contravention of a condition to which such licence is subject or of a “relevant requirement” as defined in Article 41(2) of the Energy Order by the due date for such payment and the payment is not made to the Authority within three months after the Authority has given notice in writing of such

failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 49 of the Energy Order could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined; or

- (e) if the Licensee fails to comply with 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 7 to, the Enterprise Act 2002; or any partner, director, member, secretary or manager is found guilty of an offence under section 188 or 201 of the Enterprise Act 2002; or
- (f) 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 paragraph 14 of Schedule B1 to 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

- (g) 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 has 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
- (h) if the Licensee intentionally or recklessly fails to notify the Authority of any change in ownership of the equity capital of the Licensee as soon as practicable after such change has occurred; or where there has been a change in ownership of equity capital notified by the Licensee, and:
  - (i) the Authority is satisfied that the new shareholder (together with the other companies in its group) does not have adequate technical, financial or managerial strength taking into account the size of its shareholding in the Licensee;
  - (ii) the Authority serves notice on the Licensee stating that it proposes to revoke the Licence in pursuance of this paragraph unless such further change in the ownership of the Licensee as is specified in the notice takes place (or ownership reverts to the person or those persons owning the equity capital of the Licensee prior to the change) within the period of three months beginning with the date of service of the notice; and
  - (iii) that further change or reversion in control does not take place within that period; or

- (i) if 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; or
- (j) if consent under Article 35 of the Order for the execution of works for the construction of the Network is refused.

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

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

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

- (a) The Licensee shall acquire ownership of the relevant assets (as the same are defined in Condition 1.12.6) required for the conduct of its Licensed Business and save as is permitted under Conditions 1.11 and 1.12, if the Licensee does not have ownership of the relevant assets required for the conduct of its Licensed Business under the licence, then the Authority may at any time by not less than 30 days' notice to the Licensee revoke the licence for such Licensed Business.
- (b) For the purposes of this paragraph 3 of this Schedule 2 the Licensee shall own a relevant asset if it could not otherwise be treated as having been disposed of (as disposal is defined in Condition 1.12.6).

4. Licensee's deemed ability to pay its debts

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

- (a) Except where expressly stated to the contrary, and unless the context otherwise requires, the expressions used in this Schedule 2 shall have the meanings ascribed to them in the Conditions at the date of the Grant, and shall be construed in accordance with the rules of construction and interpretation set out in the Conditions at the date of the Grant.
- (b) For the purposes of paragraph 1(g) 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 section 450 (as read in conjunction with section 451) of the Corporation Tax Act 2010 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 section 450 there shall be substituted the words "one-third or more".

### **Schedule 3: Exclusivity**

1. Exclusivity

Subject to paragraph 2 of this Schedule 3, the Licensee shall be entitled exclusively to convey gas in the Exclusive Area by means of high pressure pipe-lines (such conveyance within such area being a "designated activity" for the purposes of Article 9 of the Order) for the period from the date of the Grant of this Licence until 1 October 2019.

2. Modification of this Schedule 3

The Authority may, after the date of the Grant and in accordance with Article 9 of the Order, modify the terms of the exclusivity conferred under this Schedule 3.

3. Relevant Conditions

For the purposes of Article 9(6) of the Order, each of the following conditions is a 'relevant condition':

- (a) Condition 1.11,
- (b) Condition 1.12,
- (c) Condition 1.13; and
- (d) Condition 2.27 (including Annex 1 to that Condition).