

Licence Granted: 9 June 2011

Last Modified: 29 January 2019

## **ELECTRIC IRELAND<sup>1</sup>**

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

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<sup>1</sup> Licence granted to ESB Independent Energy (NI) Ltd. Electric Ireland is a trading name of ESB Independent Energy (NI) Limited.

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

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## **GRANT AND TERMS OF LICENCE**

### **LICENCE FOR THE SUPPLY OF GAS**

#### **1 Grant and Terms of licence**

The Northern Ireland Authority for Utility Regulation (the “**Authority**”), in exercise of the powers conferred by Article 8(1)(c) of the Gas (Northern Ireland) Order 1996 (the “**Order**”) hereby grants to ESB Independent Energy (NI) Ltd a body corporate established in Ireland under the Companies Acts 1963 to 2006 and having its principal place of business at 18-21 St Stephens Green, Dublin 2 (the “**Licensee**”) a licence to supply gas:

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

#### **2 Conditions of licence**

The grant of the licence shall be deemed:

- (a) in accordance with Article 11(2) of the Order, to incorporate by this reference the standard conditions of licences for the supply of gas determined under Article 11(1) of the Order, subject to:
  - (i) those modifications to such standard conditions as are set out in the attachments hereto at the time of this grant as made in accordance with Article 11(3) of the Order (as such modifications may themselves

subsequently be modified by virtue of Article 14(1)(a) of the Order, Article 17 of the Order, or such other lawful power of modification as may exist from time to time); and

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

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

Granted on 9 June 2011

Name            Shane Lynch (Chief Executive)

Signature.....

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;
- (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;

- (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; and
- (f) any references to the Companies Act 2014 or the European Communities (Companies: Group Accounts) Regulations shall be construed as being to such statutes of Ireland.

### 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;
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"amount"	means, in relation to gas, the energy content thereof expressed in therms or Kilowatt hours; except with effect from 1st January 2000, it means the said content expressed in kilowatt hours;
"auditors"	means the Licensee's auditors for the time being holding office in accordance with the requirements of the Companies Act 2014;
"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"	<p>means (in relation to a Network Operator's Network and any relevant period for balancing under that Network Operator's Network Code), taking such measures as may be available to the Network Operator, in particular, measures:</p> <ul style="list-style-type: none"> <li>(i) for managing the relationship between deliveries of gas to and offtakes of gas from that Network during that period; and</li> <li>(ii) to maintain pressures in that Network at levels;</li> </ul> <p>which will, in the reasonable opinion of the Network Operator, ensure the safety and efficiency of the Network in that or any subsequent relevant period;</p>
"bill"	includes an invoice, account, statement or other instrument of like character;
“business consumer”	means a consumer supplied, or requiring to be supplied, with gas at Business Premises;
"business premises"	means any premises that are not Domestic Premises;
"charges for the supply of gas"	includes in relation to the Licensee and a particular



	consumer, charges made by the Licensee in respect of the provision to that consumer of a gas meter and cognate expressions shall be construed accordingly;
"chronically sick person"	means any person who, by reason of chronic sickness has special needs in connection with gas supplied to him, its use or the use of gas appliances or other gas fittings;
"company"	means a company within the meaning of section 2 of the Companies Act 2014 or any other body corporate;
"consumer"	means any person supplied or requiring to be supplied with gas by the Licensee (including any affiliate or related undertaking of the Licensee), or where the context requires, by any other gas supplier, at any premises in Northern Ireland;
"Contract"	means a contract for the supply of gas made between the Licensee and a consumer but does not include a Deemed Contract;
"Deemed Contract"	means, as between the Licensee and a consumer, a contract for the supply of gas to have been made under section 12 of the Energy Act (Northern Ireland) 2011;
"Department"	means the Department of Enterprise, Trade and Investment;
"Directive"	<p><del>means Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in gas and repealing Directive 2003/55/EC;</del></p> <p>means Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in gas and repealing Directive 2003/55/EC as it has effect immediately before Exit Day as read with the modifications set out in the Order;</p>

"disabled person"	means any person who, by reason of any disability, has special needs in connection with gas supplied to him, its use or the use of gas appliances or other gas fittings and includes any person who is in receipt of a social security benefit by reason of any disability;
"distribution pipe-line"	means any pipe-line which is not a transmission pipe-line;
"domestic consumer"	means a consumer supplied, or requiring to be supplied, with gas at Domestic Premises;
"Domestic Premises"	means premises where the supply of gas is taken wholly or mainly for domestic purposes;
"Energy Consumer Checklist"	means the document of that name which constitutes the guidance for consumers of gas and electricity as prepared and published, from time to time, by the Authority in accordance with Article 7(5) of the Energy Order;
"Energy Order"	means the Energy (Northern Ireland) Order 2003;
"exemption holder"	means the holder of an exemption under Article 7 of the Order;
"exercise of powers of entry"	means the Licensee entering any premises, in accordance with the powers conferred by Schedule 5 of the Order;
"Exit Day"	<a href="#">has the same meaning as that given in section 20(1) of the European Union (Withdrawal) Act 2018;</a>
"gas supplier"	means any person authorised by licence under Article 8 of the Order or by exemption under Article 7 of the Order to supply gas including the Licensee as so authorised or exempted;
"General Consumer Council"	means the General Consumer Council for Northern Ireland;

"Grant"		means the commencing section of this licence by which the Authority grants the Licensee the licence;
"information"		includes documents, accounts, estimates, returns, reports or other information;
"Internal Regulations"	Markets	means the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011;
"licence"		means the Grant together with those Conditions and Schedules referred to in paragraphs 1 and 2 thereof (as modified from time to time);
"Last Resort Direction"	Supply	means a direction given by the Authority to the Licensee that specifies or describes the premises to be supplied with gas in accordance with Article 24A of the Order;
"Licensed Business"		means the activities connected with the supply of gas pursuant to the licence;
"Licensee"		means the person referred to as such in the Grant, and/or any person to whom the licence is subsequently assigned in accordance with the Order, the Energy Order or the licence;
"Network"		means all pipe-lines owned or operated by a Network Operator through which a Network Operator is conveying gas for the Licensee;
"Network Code"		means that document so described and published by a Network Operator by virtue of the Network Operator's licence granted under Article 8 of the Order;
"Network Operator"		means a person licensed to convey gas under Article 8 of the Order who is conveying gas for the Licensee.
"Order"		means the Gas (Northern Ireland) Order 1996;
"person"		means any company, firm, partnership, association,

	body corporate or individual;
“Principal Terms”	<p>means in respect of any Contract or Deemed Contract, the terms and conditions that relate to:</p> <ul style="list-style-type: none"> <li>(i) the duration of the Contract or Deemed Contract;</li> <li>(ii) the charges for the supply of gas, including the applicable tariff and the unit rate, expressed in “pence per kWh” of the applicable tariff;</li> <li>(iii) any requirement to pay charges for the supply of gas through a prepayment meter;</li> <li>(iv) any requirement for a Security Deposit;</li> <li>(v) the termination of the Contract (including any requirement to pay a termination fee) or the circumstances in which the Deemed Contract will terminate,</li> </ul> <p>and any other term or condition that may reasonably be considered to significantly affect the evaluation by the consumer of the Contract;</p>
“Promotional Materials”	means any document which contains information about the Licensee’s gas supply activities, and is handed out, or sent directly, by or on behalf of the Licensee to consumers;
"related undertaking"	means any undertaking in which any person has a participating interest as defined by Regulation 35 of the European Communities (Companies: Group Accounts) Regulations 1992;
“Security Deposit”	means a deposit of money as security for the payment of charges for the supply of gas;
"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 transmission 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 distribution 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;
- (d) the supply of gas pursuant to this licence; and
- (e) the supply of gas pursuant to a licence (other than this 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;

"subsidiary"

has the same meaning as given to it in Section 7 of the Companies Act 2014; and

"transmission pipe-line"

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

1.1.7 References to energy

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

1.1.8 Singular/plural

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

## **Condition 1.2: Separate Accounts 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 31st December 2011 and thereafter each financial year of the Licensee shall run from 1<sup>st</sup> January to the following 31<sup>st</sup> December.

### **1.2.2 Separate Business Accounting**

This Condition applies for the purposes of ensuring that the Licensee (in conjunction with any relevant 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 Part V of Schedule 3 to the Companies Act 2014, 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. Then the Licensee shall, so far as is reasonably practicable, prepare for each Separate Business on a consistent basis from its accounting records in respect of each financial year, financial statements comprising:

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

### **1.2.4 Apportionment**

The financial statements prepared under Condition 1.2.3 shall set out and fairly present the costs (including depreciation), revenues, assets employed and liabilities of, or as may be reasonably attributable to, each 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 (such apportionment to be undertaken in accordance with the basis of apportionment approved by the Authority in accordance with Condition 1.2.5),

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

#### 1.2.5 Basis of apportionment

The Licensee shall, no later than three months after the date of the Grant, notify the Authority of the basis of apportionment that it proposes to use for the financial statements in respect of each Separate Business for the financial year commencing on 1 January 2012, and:

- (a) the basis of apportionment in respect of those financial statements shall be the basis so proposed by the Licensee unless the Authority following consultation with the Licensee gives a direction requiring the use of any other basis; and
- (b) except in so far as the Authority consents to the Licensee doing so the Licensee shall not change any basis of charge or apportionment used in the financial statements in respect of any Separate Business for any financial year subsequent to the financial year commencing on 1 January 2012 from the basis used in the financial statements in respect of that Separate Business for that financial year.

#### 1.2.6 Auditor's Reports

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

- (a) procure a report by the auditors and addressed to the Authority stating whether, in their opinion, that set of financial statements have been properly prepared in accordance with this Condition and give a true and fair view of the revenues, costs, assets and liabilities of, or reasonably attributable to, the 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..

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

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

1.2.8 Form of financial statements

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

- (a) conform to Irish generally accepted accounting principles and practices;
- (b) state the accounting policies adopted; and
- (c) be so prepared to a level of detail as may reasonably be required by the Authority and so that they may be reconciled with the published accounts of the Licensee under the Companies Act 2014.

1.2.9 Publication of Accounting Statements

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

1.2.10 Construction of "costs or liabilities"

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

1.2.11 Additional Definition

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

#### 1.2.12 Associated Undertakings

The Licensee shall set out, in notes to the published accounts (referred to in Condition 1.2.8(c), any transaction relating to any Separate Business that was undertaken with an associated undertaking and that has a value of over £500,000.

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

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

#### 1.2.13 Separate accounts for different classes of consumer

The Authority may, from time to time, direct that the definition of “Separate Business” is, for the purposes of this Condition 1.2, modified so that the activities of the Licensee connected with the supply of has to such class, or classes, of consumer as may be designated in the direction shall each be treated as a Separate Business.

#### 1.2.14 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

### **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, such information 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**

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

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

### **1.4.1 Policy statements for General Consumer Council**

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

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

and shall:

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

## **Condition 1.5: Powers of Entry**

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

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

- (a) submit to the Authority a statement of its proposed arrangements in respect of the matters mentioned in Condition 1.6;
- (b) if within 30 days of such submission the Authority notifies the Licensee that, in its opinion, the arrangements are not sufficient for the purposes of Condition 1.6, make changes to the arrangements requisite to secure compliance with such conditions as are specified by the Authority; and
- (c) make such arrangements;

and the arrangements so made in this Condition and in Condition 1.6 are referred to as "the arrangements".

### **1.5.2 Changes in arrangements for extensions to licence**

In the event of an extension of its licence, the Licensee shall ensure that the arrangements remain sufficient for the purposes of Condition 1.6 and shall make, subject to Condition 1.5.3, any necessary changes.

### **1.5.3 Consent of Authority to changes**

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

### **1.5.4 Conduct with domestic consumers**

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

## **Condition 1.6: Authorisation of Persons**

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

The arrangements shall comprise all reasonable steps:

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

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

The Licensee shall not authorise any person to exercise any powers of entry conferred by Schedule 5 to the Order unless the steps provided for in the arrangements described in Condition 1.6.1(a), (b) and (c) have been complied with and it appears to the Licensee that he is such a fit and proper person.

### **1.6.3 Licensee to take reasonable steps to keep relevant persons informed**

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

### **1.6.4 Information provided in invoice**

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

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

#### **1.7.1 Licensee to avoid undue disturbance**

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

#### **1.7.2 Construction of Condition**

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

## **Condition 1.8: Modifications**

### **1.8.1 Modification of licence Conditions**

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



### **Condition 1.9: Assignment of Licences**

#### **1.9.1 Licensee's ability to assign its licence**

For the purposes of Article 12 of the Order, the Licensee with the prior consent of the Authority may assign the licence either generally, or so far as relating to any specified persons or premises or to the whole or any part of the area within which the Licensee is authorised to supply gas.

#### **1.9.2 Matters affecting an assignment**

In deciding whether to give its consent under Condition 1.9.1 the Authority shall apply those criteria contained in Article 12(3) of the Order, and any consent shall be subject to compliance with the matters determined by the Authority under Article 12(4) of the Order.

#### **1.9.3 Licensee may not otherwise assign its licence**

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

### **Condition 1.10: Transfer of Business**

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

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

#### **1.10.2 Exception to Condition 1.10.1**

Nothing in Condition 1.10.1 shall prevent the Licensee from transferring all or the relevant part of its business to the assignee where the Authority has consented to the assignment of all or the relevant part of the licence under Article 12 of the Order or the Licensee has assigned all or the relevant part of the licence in accordance with Condition 1.9.

### **Condition 1.11: Payment of Fees to the Authority**

1.11.1 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**).

1.11.2 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.

1.11.3 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; and
- (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.

1.11.4 Where:

- (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 1.11.3(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 1.11.4(c) above.

1.11.5 Where the Licensee fails to pay the amount of the licence fee as notified to it under paragraph 1.11.2 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.

1.11.6 In this Condition:

- |                         |   |
|-------------------------|---|
| “Estimated Costs”       | <ul style="list-style-type: none"><li>(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</li><li>(ii) in relation to the costs of the Consumer Council, means either:<ul style="list-style-type: none"><li>(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</li><li>(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;</li></ul></li></ul> |
| “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.   |

## **Condition 1.12: Notices**

### **1.12.1 Notices**

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

**Licensee:** NI Sales Manager,  
ESB Independent Energy (NI) Ltd,  
Forsyth House,  
Cromac Square,  
Belfast,  
BT2 8LA  
  
Facsimile Telephone Number (02890) 278400

**Authority:** Northern Ireland Authority for Utility Regulation,  
Queen's House,  
16-18 Queen Street,  
Belfast,  
BT1 6ED  
Northern Ireland  
  
Facsimile Telephone Number (02890) 311740

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

### 1.12.2 Receipt

Any notice given under the provisions of Condition 1.12.1 shall be deemed to have been duly delivered and received:

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

## **PART 2**

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

#### **Condition 2.1: Deemed Contracts**

- 2.1.1 The Licensee shall, in accordance with section 12 of the Energy Act (Northern Ireland) 2011, make a scheme for determining the terms and conditions of its Deemed Contracts.
- 2.1.2 The Licensee shall ensure that each of its Deemed Contracts provides that it will terminate automatically in the event that a Last Resort Supply Direction is given to another Gas Supplier in relation to the premises supplied under that Deemed Contract.
- 2.1.3 Subject to paragraph 2.1.5, the Licensee must take all reasonable steps to ensure that the terms of each of its Deemed Contracts are not unduly onerous.
- 2.1.4 For the purposes of paragraph 2.1.3, the terms of a Deemed Contract shall be unduly onerous for any class of domestic consumers, or for any class of business consumers, only if the revenue derived from supplying gas to the premises of the relevant class of consumers on those terms:
- (a) significantly exceeds the Licensee's costs of supplying gas to those premises; and
  - (b) exceeds such costs of supplying gas by significantly more than the Licensee's revenue exceeds its costs of supplying gas to the premises of the generality of its domestic consumers or, as the case may be, to the premises of the generality of its business consumers (in each case excluding from the calculation premises supplied under a Last Resort Supply Direction).
- 2.1.5 Where a Consumer is being supplied by the Licensee with gas under a Deemed Contract as a result of a Last Resort Supply Direction being issued in relation to his premises, paragraph 2.1.3 shall not apply until that direction stops having effect.
- 2.1.6 The Licensee shall ensure that each of its Deemed Contracts shall provide that, where a consumer intends his premises to be supplied with gas under a Contract agreed with the

Licensee or any other gas supplier, the Deemed Contract will continue to have effect until the Licensee or the other gas supplier, as appropriate, begins to supply gas to the premises under such a Contract.

- 2.1.7 If the Licensee supplies gas to a consumer under a Deemed Contract, the Licensee may not demand of the consumer any sum of money or other compensation (whether financial or otherwise) solely because the Deemed Contract is terminated (by whatever means).
- 2.1.8 If the Licensee supplies gas to a consumer's premises under a Deemed Contract, it must take all reasonable steps to:
- (a) provide that consumer with a notice:
    - (i) setting out the Principal Terms of the Deemed Contract;
    - (ii) informing the consumer that Contracts with terms and conditions that may be different from the terms and conditions of Deemed Contracts may be available from the Licensee and of how further information about such terms may be obtained; and
  - (b) enter into a Contract with the consumer as soon as reasonably practicable.
- 2.1.9 If any person requests a copy of a Deemed Contract that the Licensee has available, the Licensee must provide it to that person within a reasonable period of time after receiving the request.
- 2.1.10 In determining the number of kilowatt hours of gas that are to be treated as supplied to or taken at premises under a Deemed Contract, the Licensee must act reasonably and take into account available gas consumption data for the premises and any other relevant factor.



### **Condition 2.1A: Supplier of Last Resort**

2.1A.1 Following the issue of a Last Resort Supply Direction, the Licensee shall (and shall procure that its Agents or Sub-contractors shall) use all reasonable endeavours to comply with any relevant arrangements that have been prepared and maintained by Gas Industry Representatives and approved by the Authority (that are in place from time to time) and that outline the processes that should be followed both in the initiation of, during and after the circumstances following the issue of a Last Resort Supply Direction.

2.1A.2 In this Condition:

**Agent or Sub-contractor**

means any person directly or indirectly authorised to represent the Licensee.

**Gas Industry  
Representatives**

means representatives from gas suppliers, distribution system operators, transmission system operators and also the Consumer Council for Northern Ireland (previously, the General Consumer Council for Northern Ireland).

### **Condition 2.1B: Last Resort Supply Direction**

2.1B.1 The Authority may give a Last Resort Supply Direction to the Licensee if it considers that:

(a) circumstances have arisen that would entitle it to revoke the gas supply licence of a gas supplier other than the Licensee (for this Condition only, the **other supplier**); and

(b) the Licensee could comply with the Last Resort Supply Direction without significantly prejudicing its ability:

- (i) to continue to supply gas to its consumers' premises; and
- (ii) to fulfil its contractual obligations for the supply of gas.

2.1B.2 The Last Resort Supply Direction will:

(a) have effect on and from the date on which and the time at which the other supplier's gas supply licence is revoked; and

(b) stop having effect on and from a date, specified in the Last Resort Supply Direction, that is up to six months after the date upon which the Last Resort Supply Direction has effect.

2.1B.3 The Licensee shall, subject to paragraph 4, comply with a Last Resort Supply Direction.

2.1B.4 The Licensee is not required to comply with a Last Resort Supply Direction in respect of premises to which it would not be required to supply gas because of any of the exceptions set out in sub-paragraphs 4(a), (b) and (c) of Condition 2.17A.

2.1B.5 Within a reasonable period of time after receiving a Last Resort Supply Direction, the Licensee must send a copy of a notice to each of the premises specified or described in the Last Resort Supply Direction to inform the consumer:

(a) that the other supplier stopped supplying gas to the premises with effect on and from the date upon which the Last Resort Supply Direction had effect;

- (b) that the Licensee began to supply gas to the premises with effect on and from the date upon which the Last Resort Supply Direction had effect;
- (c) that the Licensee is supplying gas to the consumer's premises under a Deemed Contract;
- (d) that the consumer may enter into a Contract with the Licensee or any other gas supplier under which gas will be supplied to the premises; and
- (e) of the charges for the supply of gas that the Licensee may charge the consumer while supplying him under the Last Resort Supply Direction.

- 2.1B.6 The Licensee's charges for the supply of gas to the premises specified or described in the Last Resort Supply Direction must not exceed an amount that may be expected, in total, approximately to equal the Licensee's reasonable costs of supply (including, where appropriate, the costs of purchasing gas at short notice) and a reasonable profit.
- 2.1B.7 If the Licensee purchases gas to comply with a Last Resort Supply Direction, it must take all reasonable steps to do so as economically as possible in all the circumstances of the case.
- 2.1B.8 The Licensee shall, so far as is reasonably practicable, give the Authority at least five days' notice of any increase in the charges for the supply of gas to premises to be supplied with gas by it in accordance with a Last Resort Supply Direction.
- 2.1B.9 Where, within five days of the receipt by the Authority of the notice referred to in paragraph 8, the Authority determines that the charges proposed by the Licensee would be likely to cause hardship to domestic consumers, it may issue a direction to the Licensee requiring it to ensure that its charges for the supply of gas do not exceed those specified in the direction as being appropriate in order to avoid or mitigate such hardship.
- 2.1B.10 The Licensee shall comply with any direction issued by the Authority under paragraph 9, but shall not be required by that direction to set its charges for the supply of gas at a level less than that applicable to the supply by it under Deemed Contracts of comparable Domestic Premises otherwise than in accordance with a Last Resort Supply Direction.

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

### **2.2.1 Licensee to maintain its financial affairs**

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

### **2.2.2 Licensee to maintain supply/demand match**

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

### **2.2.3 Security Standard**

The security standard means:

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

### **2.2.4 Additional Definitions**

In this Condition:

"daily firm demand"	means the peak aggregate daily demand for gas by the Licensee's consumers from time to time which might reasonably be expected after the Licensee had interrupted or reduced the supply of gas to each consumer to the extent that (otherwise than
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	in the circumstances mentioned in Condition 2.14.4) it was entitled to do so under its contract with that consumer;
"day"	means a period beginning at 05:00 hours on one day and ending immediately before 05:00 hours on the following day and "daily" shall be construed accordingly; and
"year"	means a period of 12 months beginning with 1st October.

### **Condition 2.3: Use of the Network**

#### **2.3.1 Compliance with the Network Code**

The Licensee shall:

- (a) comply with the provisions of every Network Code in so far as applicable to it; and
- (b) act in a reasonable and prudent manner in the use it makes of each Network,

provided that the Authority may (following consultation with the Network Operator responsible for the relevant Network Code) issue directions relieving the Licensee from its obligation under Condition 2.3.1(a) in respect of such parts of a Network Code and to such extent and subject to such conditions as may be specified in those directions.

#### **2.3.2 Particular compliance obligations**

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

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

#### **2.3.3 Information not intentionally to mislead**

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

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

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

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

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

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

- (c) within 28 days of the date on which the Authority gives notice of its withholding consent, the Licensee may request the Authority by notice to the Authority (a "disapplication notice") not to apply this Condition 2.4.1 in which event it shall not apply;
- (d) the disapplication notice may be withdrawn by the Licensee at any time within six months of the date of the disapplication notice;
- (e) unless within six months of the date of the disapplication notice (provided such disapplication notice has not been withdrawn) the Authority publishes a decision under Article 14(8) of the Order to modify in whole or part this Condition 2.4.1, this Condition 2.4.1 will continue not to be applied after that period has passed in respect of those consumers;

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

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

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

is appropriate.

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

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

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

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

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

#### 2.4.5 Classes of consumers

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

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

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

- (a) any question as to whether the Licensee is in a dominant position shall be determined by the Authority, having regard to any representations made to it;
- (b) different standard terms may be determined for consumers of different cases or classes of cases, or for different areas;
- (c) where it is not reasonably practicable to prepare standard terms as above in



respect of any consumer or for consumers of different cases or classes of cases or for different areas, the Licensee shall prepare a summary of the terms on which it would contract to supply gas; and

- (d) the Licensee shall give written notice of those terms and of any material variation therein (or if the Authority so requires, a revised notice of the terms) to the Authority and, with respect to contracts for the supply of gas where the supply is to individual premises and is not reasonably expected to exceed 732,500 kilowatt hours in any period of twelve months, the Licensee shall:
  - (i) on request by any other person, furnish that person with a copy of any such notice; and
  - (ii) shall publish the standard terms for such a supply and any variation thereto in such manner as in the reasonable opinion of the Licensee will secure adequate publicity for them,

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

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

### **2.5.1 Dominant position**

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

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

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

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

### **2.5.2 Established competition**

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

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

### **2.5.3 Predatory/unduly onerous terms**

For the purposes of Conditions 2.5.1 and 2.5.2,

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

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

#### 2.5.4 Class of consumers

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

#### 2.5.5 Determination by Authority

Any question arising under this Condition as to whether the Licensee or any other gas supplier (whether alone or together with any of its affiliated or related undertakings

operating in the same markets) is in a dominant position in a market shall be determined by the Authority, having regard to any representations made to it.

#### 2.5.6 Additional Definitions

In this Condition:

"avoidable costs"

means those costs which would not be incurred by the Licensee if he did not supply the consumers in question, including (but with due regard to the timing thereof all relevant future outlays affected by the decision to supply; and

"terms"

means all the terms on which a supply of gas is provided or offered, whether as respects charges, methods of payment or otherwise.

#### 2.5.7 Separate market for domestic consumers

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

## **Condition 2.6: Facilitating Supplier Transfers**

- 2.6.1 The Licensee shall ensure that its practices, procedures and systems facilitate Supplier Transfers to take place within the Relevant Period.
- 2.6.2 The Licensee shall inform the Authority as soon as it becomes aware that its practices, procedures and systems may not, as a result of the number of notifications it is receiving from any relevant Network Operator, be able to facilitate compliance with paragraph 2.6.1.
- 2.6.3 The Authority may issue directions requiring the Licensee to take steps to review and improve its practices, procedures and systems to facilitate a Supplier Transfer in such manner as may be specified in the directions and the Licensee shall comply with any such directions from the date specified.

2.6.4 In this Condition –

**Objection Period** means any period within which the Licensee or the Registered Supplier (as the case may be) may in accordance with the industry rules and procedures raise and/or withdraw (as the case may be) an objection to the Supplier Transfer.

**Relevant Date** has the meaning given in Condition 2.18.

**Relevant Period** means:

- (i) where the Licensee is the Registered Supplier for the premises, the 15 working day period (excluding the Objection Period) following notification to it by the relevant Network Operator that another gas supplier has applied to be the Registered Supplier for the relevant premises;
- (ii) where the Licensee has entered into a Contract with a consumer, the 15 working day period (excluding the Objection Period) following the Relevant Date.

**Registered Supplier** has the meaning given in Condition 2.18.

**Supplier Transfer** has the meaning given in Condition 2.18.

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

### **2.7.1 Supply of meters**

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

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

(e) where a domestic consumer terminates a contract with the Licensee for the supply of gas, the Licensee shall not:

- (i) exercise any right to recover any meter owned by the Licensee at, or by reason of, the termination of such contract, or
- (ii) authorise any of its officers to enter the consumer's premises for the purpose of removing any such meter;

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

(f) subject to Condition 2.7.1(g), the Licensee shall not be required to supply or continue to supply gas to a person, or to offer a new contract where that person takes his supply through a meter which belongs to him or if the meter is lent or hired to him otherwise than by the Licensee or by the relevant Network Operator, or if the meter is ordinarily to be read in accordance with arrangements made otherwise than by the Licensee, unless the meter is or the arrangements in question are acceptable to the Licensee; and

(g) from such date no earlier than as may be designated in writing for the purposes of this Condition generally by the Authority following such trials and consultation as it considers appropriate (the "metering liberalisation date"), the Licensee shall not:

- (i) refuse to accept a meter requested by the consumer the use of which does not contravene Article 22 of the Order and which is appropriate for registering the quantity of gas supplied, except on the ground that:
  - (aa) the Licensee requires the supply to be taken through a prepayment meter and the meter is not one of that type; or
  - (bb) the meter does not offer the facilities requisite for the purposes of the contract or having regard to its terms; or
- (ii) refuse to accept arrangements made by the consumer for the ordinary reading of the meter which comply with such requirements, designed to secure accurate reading of the meter and prompt transmission of data in an appropriate form as may be set out in such document (the "metering

code") or variation thereof as may be designated in writing for the purposes hereof by the Authority following consultation with any relevant licence or exemption holders or such other persons as the Authority considers appropriate.

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

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

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

#### 2.7.3 Extent of erroneous meter readings

Where the meter is found, when examined by a meter examiner appointed under Article 22 of the Order to register erroneously to a degree exceeding the degree permitted by regulations under that Article, the meter shall be deemed to have registered erroneously to the degree so found since the relevant date, except in a case where it is proved to have begun to do so on some later date and in this Condition 2.7.3 "the relevant date" means:

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



### **Condition 2.8: Code of Practice on Complaints Handling Procedure**

- 2.8.1 The Licensee shall, no later than three months after this Condition takes effect or such later date as the Authority directs, prepare, submit to and have approved by the Authority a code of practice for the handling of consumer complaints (the **Code of Practice**).
- 2.8.2 The Code of Practice shall include arrangements by which the Licensee will establish and operate an accessible, equitable and transparent, simple and inexpensive complaints procedure which shall enable any person who is being supplied with gas by the Licensee or has at any time received a supply of gas from the Licensee, to bring and have promptly dealt with any complaint he may have in respect of the Licensee's activities in providing such a supply.
- 2.8.3 The complaints procedure established and operated by the Licensee in accordance with the Code of Practice shall as a minimum:
- (a) specify the period, which may differ for different types of complaint but which shall not be longer than three months, within which it is intended that complaints will be processed and resolved;
  - (b) be made available to any person without charge;
  - (c) facilitate the fair and prompt settlement of complaints and disputes; and
  - (d) provide for a system, where required by the Authority under Condition 2.20 or otherwise warranted, of making a reimbursement and/or compensation payment to complainants.
- 2.8.4 This Condition is subject to Condition 2.13: Preparation, Revision Of and Compliance with Codes of Practice.

### **Condition 2.9: Code of Practice on Services for Prepayment Meter Consumers**

2.9.1 This Condition shall apply where the Licensee supplies, or offer to supply, gas to Domestic Premises.

2.9.2 The Licensee shall, no later than three months after this Condition takes effect or such later date as the Authority directs prepare, submit to and have approved by the Authority a code of practice describing the services the Licensee will make available for its domestic consumers who pay by prepayment meter (the **Code of Practice**).

2.9.3 The Code of Practice shall include arrangements by which the Licensee will:

- (a) provide advice, information, services and facilities, including the availability of emergency credit, which will assist the domestic consumer to avoid being without a supply of gas at particular times or in particular circumstances;
- (b) instructions for the operation of the prepayment meter system, including token availability, emergency credit and other such facilities;
- (c) details of the advantages and disadvantages of prepayment meters, including situations or types of consumer for which they are particularly suited or unsuited;
- (d) details of any additional charges which may be payable for the use of prepayment meters and the basis on which these charges are calculated;
- (e) details of where the consumer may obtain information or assistance if the prepayment meter or any device used to allow the charges for the supply of gas to be paid through the prepayment meter is not operating effectively; and
- (f) information about the procedures the Licensee will follow when removing or resetting the prepayment meter, including the timescale and any conditions for removing or resetting it
- (g) ensure that any calibration of the prepayment meter to recover outstanding charges due from any Consumer does not operate so as to recover more than 40% (except where the Consumer has in writing requested for a higher percentage to apply) from each amount that is purchased by the Consumer in any single transaction (and thereby transferred to the token, key or card by which the

prepayment meter is operated), as payment of or towards the outstanding charges.

2.9.4 The Licensee shall, no later than three months after this Condition takes effect or such later date as the Authority directs establish, and submit to the Authority, such arrangements as will ensure that in an event in which:

- (a) the Authority considers that circumstances have arisen that would entitle the Authority to revoke the Licence; or
- (b) the Licensee proposes to assign or transfer its business to another gas supplier or cease its business as a gas supplier,

each of the Licensee's prepayment domestic consumers is able to continue using, and to do so on the same basis, the prepayment meter services being provided to that domestic consumer by the Licensee until at least such time as another gas supplier starts to supply gas to the domestic consumer.

2.9.5 The Licensee shall not prevent the consumer from purchasing their gas in advance through a prepayment meter.

2.9.6 In this Condition "prepayment meter services" means the system of services for the operation of prepayment meters operated by the use of tokens, keys or cards.

2.9.7 Paragraphs 2.9.2 and 2.9.3 of this Condition are subject to Condition 2.13: Preparation, Revision Of and Compliance with Codes of Practice.

**Condition 2.10: Code of Practice on the efficient use of gas**

2.10.1 The Licensee shall, no later than three months after this Condition takes effect or such later date as the Authority directs, prepare, submit to and have approved by the Authority a code of practice setting out the ways in which the Licensee will make available to consumers information and guidance on the efficient use of gas (the **Code of Practice**).

2.10.2 The Code of Practice shall include arrangements by which the Licensee will make available information and advice about:

- (a) the efficient use of gas as will enable consumers to make informed judgments about measures to improve the efficiency with which they use the gas supplied to them;
- (b) the availability of heating systems and controls which are best calculated to make efficient use of gas and the selection and operation of such systems and controls;
- (c) the financial costs and benefits of energy efficient gas appliances;
- (d) sources, including the availability of a telephone information service, within the Licensee's organisation from which consumers may obtain further information about the efficient use of gas supplied to them; and
- (e) organisations (to the extent that the Licensee is aware of them) outside the Licensee's business from which consumers may obtain additional information or assistance about:
  - (i) measures to improve the efficiency with which they use the gas supplied to them;
  - (ii) the availability of financial assistance from Central or Local Government in respect of the costs of any such measures; and
  - (iii) bodies in receipt of financial support from Government in connection with measures to promote the efficiency of energy use.

2.10.3 The arrangements included in the Code of Practice pursuant to paragraph 2.10.2(e) shall provide for the contact details (including web-site addresses) of at least one organisation

that provides information or assistance in respect of paragraph 2(e)(i) to be made available to consumers:

- (a) on each occasion the Licensee:
  - (i) enters into a Contract with the consumer; or
  - (ii) makes a variation to the Contract entered into with a consumer;
- (b) with each bill or statement sent to the consumer; and
- (c) on the Licensee's web-site.

2.10.4 This Condition is subject to Condition 2.13: Preparation, Revision Of and Compliance with Codes of Practice.

**Condition 2.11: Code of Practice on Provision of Services for persons who are of Pensionable Age or Disabled or Chronically Sick**

2.11.1 This Condition shall apply where the Licensee supplies, or offers to supply, gas to Domestic Premises.

2.11.2 The Licensee shall, no later than three months after this Condition takes effect or such later date as the Authority directs, prepare, submit to and have approved by the Authority a code of practice describing the particular services the Licensee will make available for each of its domestic consumers who is:

(a) of pensionable age

(b) disabled, including in particular domestic consumers who are disabled by virtue of being blind, partially sighted, deaf or hearing impaired; or

(c) chronically sick,

(the **Code of Practice**).

2.11.3 The Code of Practice shall set out the arrangements by which the Licensee will at the request of any such domestic consumer, where reasonably practicable and appropriate, and in each case free of charge:

(a) provide special controls and adaptors for gas appliances and meters and reposition meters (including in both cases prepayment meters);

(b) provide special means, including agreeing a password with the consumer, of identifying officers authorised by the Licensee;

(c) give advice on the use of gas and gas appliances and other gas fittings;

(d) send bills in respect of the supply of gas to the consumer's premises to any other person as nominated by the consumer where that person agrees to receive them (irrespective of whether or not the bill is also sent to the consumer); and

(e) where neither the consumer nor any other person occupying his premises is able to read the gas meter at the premises, arrange to read that meter at least once each quarter and inform the consumer of that reading; and

(f) where all of the occupants of the household are either of pensionable age, disabled, chronically sick or minors, arrange for a safety inspection of the gas appliances and other gas fittings on the consumer's side of the meter to be undertaken by a person possessing appropriate expertise on at least an annual basis, other than an appliance for which the landlord of the consumer is

responsible for the annual inspection in accordance with the Gas Safety (Installation and Use) Regulations (Northern Ireland) 2004.

2.11.4 The Code of Practice shall include arrangements by which the Licensee will:

- (a) on request and free of charge:
  - (i) provide services which will enable a domestic consumer who is blind or partially sighted to receive, by means that are readily accessible to such consumers, information about (or set out in) any bill or statement relating to the supply of gas or any other services provided to the consumer by the Licensee;
  - (ii) make available facilities which will assist any domestic consumer who is blind or partially sighted or deaf or hearing impaired and in possession of appropriate equipment, to enquire or complain about any bill or statement relating to the supply of gas to him or any service provided by the Licensee;
- (b) not cut off, in any month from October to March, the supply of gas to the Domestic Premises in respect of which the domestic consumer has not paid Charges for the Supply of Gas if the Domestic Consumer at the Domestic Premises:
  - (i) is of pensionable age, disabled or chronically sick; and
  - (ii) lives alone or only with other persons who are of pensionable age, disabled, chronically sick or under the age of 18;
- (c) take all reasonable steps to avoid, in any month from October to March, cutting off the supply of gas to a Domestic Premises in respect of which the domestic consumer has not paid the charges for the supply of gas to the Domestic Premises where the occupants of the Domestic Premises include a person who is of pensionable age, disabled or chronically sick and to whom paragraph 2.11.4(b) does not apply;
- (d) take all reasonable steps to ascertain, before it exercises any right it may have to cut off the supply of gas to Domestic Premises, whether the Domestic Premises is one that falls within the scope of paragraph 2.11.4(b) or 2.11.4(c) above.

2.11.5 The Code of Practice shall include the Licensee's arrangements for:

- (a) establishing and maintaining a register which:
  - (i) lists all of the Licensee's domestic consumers who are of pensionable age, disabled or chronically sick and have asked to be included in the

register; and

- (ii) contains sufficient information about the age, disability or chronic sickness of each such domestic consumer in order to identify his special needs or requirements;
- (b) informing on at least an annual basis each of its domestic consumers of the existence of the register and how domestic consumers who are of pensionable age, disabled or chronically sick can be included on it;
- (c) providing, without charge, to a domestic consumer included on the register, advice and information on the services that can be provided to him by the Licensee because of his age, disability or chronic sickness; and
- (d) providing the information in the register to any relevant party licensed under the Gas Order to convey gas to the domestic consumer's premises in an appropriate form and at appropriate intervals.

2.11.6 The Licensee shall, in respect of each Domestic Premises to which it cuts off the supply of gas:

- (a) maintain for at least a period of six months, or (where a complaint has been made in respect of the Licensee's actions to cut off the supply) for at least a period of six months after the complaint has been resolved; and
- (b) provide to the Authority on request,

evidence of the reasonable steps it took pursuant to the arrangements set out in its Code of Practice in accordance with paragraph 2.11.4(e) above.

2.11.7 For the purposes of this Condition a person is 'disabled' if he/she has a 'disability' within the meaning given to that term in the Disability Discrimination (Northern Ireland) Order 2006

2.11.8 This Condition is subject to Condition 2.13: Preparation, Revision Of and Compliance with Codes of Practice.



**Condition 2.12: Code of Practice on payment of bills**

2.12.1 This Condition shall apply where the Licensee supplies, or offers to supply, gas to Domestic Premises.

2.12.2 The Licensee shall, no later than three months after this Condition takes effect or such later date as the Authority directs, prepare, submit to and have approved by the Authority a code of practice which sets out the services the Licensee will make available to assist domestic consumers who through misfortune or inability to cope with credit terms, may have difficulty in paying their gas bills (the **Code of Practice**).

2.12.3 The Code of Practice shall set out the arrangements by which the Licensee will:

- (a) distinguish, so far as is reasonably practicable, those consumers who may have difficulty in paying bills through misfortune or inability to cope with credit terms (“**consumers in difficulties**”) from other consumers in default;
- (b) provide relevant information as to how consumers in difficulties might be able to reduce their bills in the future by the more efficient use of gas;
- (c) make arrangements, taking into account consumers’ ability to comply with such arrangements, which enable consumers in difficulties to pay in instalments the charges accrued for the supply of gas (“instalment arrangements”);
- (d) detect failures by consumers in difficulties to comply with the instalment arrangements;
- (e) ascertain, with the assistance of any information provided by other persons or organisations, the ability of consumers in difficulties to comply with the instalment arrangements;
- (f) provide for consumers who have failed to comply with the instalment arrangements, or procure for them the provision of, a prepayment meter (where safe and practicable to do so);
- (g) calibrate any prepayment meter provided, whether in accordance with paragraph (f) above or otherwise, so as to take into account consumers’ ability to pay any

outstanding charges due from them to the Licensee in addition to the other charges lawfully being recovered through the prepayment meter;

- (h) ensure that any calibration of the prepayment meter to recover outstanding charges due from any consumer does not operate so as to recover more than 40% (except where the consumer has in writing requested for a higher percentage to apply) from each amount that is purchased by the consumer in any single transaction (and thereby transferred to the token, key or card by which the prepayment meter is operated), as payment of or towards the outstanding charges; and
- (i) in so far as is reasonable and practicable to do so, take all reasonable steps to avoid cutting off the supply of gas to Domestic Premises occupied by consumers in difficulties unless it has first taken all reasonable steps to recover the charges accrued for the supply of gas to the premises by means of a prepayment meter.

2.12.4 This Condition is subject to Condition 2.13: Preparation, Revision Of and Compliance with Codes of Practice.

**Condition 2.13: Preparation, Revision Of and Compliance with Codes of Practice**

- 2.13.1 This Condition applies to any Code of Practice (**Code**) which the Licensee is, pursuant to Conditions 2.8 – 2.12 of this Licence, required to prepare, submit to and have approved by the Authority.
- 2.13.2 The Licensee shall comply with the Code of Practice minimum standards on Payment of Bills, Code of Practice minimum standards on Provision of Services for persons who are of Pensionable Age or Disabled or Chronically Sick, Code of Practice minimum standards on Complaints Handling Procedure, Code of Practice minimum standards on Services for Prepayment Customers and Code of Practice minimum standards on the efficient use of gas, as amended or replaced from time to time.
- 2.13.3 The Licensee shall, before submitting any Code to the Authority for its approval, consult the General Consumer Council and shall consider any representations made by it about the Code or the manner in which it is likely to be operated.
- 2.13.4 The Licensee shall, whenever requested to do so by the Authority, review any Code and the manner in which it has been operated, with a view to determining whether any modification should be made to that Code or to the manner of its operation.
- 2.13.5 In carrying out any such review the Licensee shall consult the General Consumer Council and shall consider any representations made by it about the Code or the manner in which it is likely to be or has been operated.
- 2.13.6 The Authority, following consultation with the Licensee, the General Consumer Council and any other person who in the opinion of the Authority is likely to be interested or affected, may from time to time make such modifications to Conditions 2.8 – 2.12, as the Authority considers are necessary or expedient.
- 2.13.7 Where the Authority modifies a Condition in accordance with paragraph 2.13.6:
- (a) it shall:
    - (i) send a copy of the modification to the Licensee and the Department;
    - (ii) publish a copy of the modification in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modification; and
  - (b) the Licensee shall revise the Code to which the modification relates in such manner and to such extent as is required to ensure that the Code reflects and complies with the modified Condition.

2.13.8 Where the Licensee revises a Code:

- (a) in accordance with paragraph 2.13.7(b) above; or
  - (b) following a review undertaken in accordance with paragraphs 2.13.4 and 2.13.5,
- it shall submit the revised Code to, and have it approved by, the Authority.

2.13.9 The Licensee shall:

- (a) as soon as practicable following the Authority's approval of a Code (including following a revision):
  - (i) send a copy of the Code to the Authority and the General Consumer Council; and
  - (ii) draw the attention of its consumers to the Code and of how they may inspect or obtain a copy of it;
- (b) publish on and make readily accessible from its website a copy of the Code;
- (c) give or send free of charge a copy of the Code (as from time to time revised) to any person who requests it; and
- (d) make available to members of the public, in such form and in such manner as the Authority considers appropriate, information published by the Authority pursuant to Article 7 of the Energy Order.

2.13.10 Subject to paragraph 12, the Licensee shall comply with each Code to which this Condition applies and which has been approved by the Authority.

2.13.11 The Licensee shall provide the Authority with all assistance reasonably necessary to enable the Authority to monitor the implementation and operation of any Code and this assistance shall include providing statistical data at such times and in such a format as the Authority reasonably requires and permitting the Authority access to relevant documentation held by the Licensee.

2.13.12 The Authority may (following consultation with the Licensee) issue directions relieving the Licensee of any of its obligations under Conditions 2.8-2.12 and this Condition to such extent as may be specified in those directions and subject to such terms and conditions as the Authority thinks fit.

## **Condition 2.14: Emergencies**

### **2.14.1 Application to Network emergencies**

Condition 2.14.2 shall apply:

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

and that opinion is not manifestly unreasonable.

### **2.14.2 Licensee to use best endeavours**

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

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

### **2.14.3 Discontinuance of supply**

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

- (a) the Licensee is entitled at the request of the relevant Network Operator to discontinue the supply of gas to the premises; and

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

#### 2.14.4 Direction under the Energy Act

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

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

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

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

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

### **2.15.2 Record of arrangements**

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

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

### **2.15.3 Report to Authority and General Consumer Council**

As soon as is reasonably practicable after the end of each year ending on 31 December, the Licensee shall submit to the Authority and General Consumer Council a report dealing with the matters mentioned in Condition 2.15.2 which shall include a comparison of the Licensee's performance against the established standards in relation to that year and shall:

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

except that, in performing the obligations under Conditions 2.15.3(a) and (b), the Licensee shall exclude from the report such information as appears to it to be necessary or expedient to ensure that, save where they consent, individual consumers referred to therein cannot readily be identified.

### **2.15.4 Standard format**

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

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

**2.16.1 Provision of information**

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

**2.16.2 Prejudicial to commercial interests of Licensee**

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

**2.16.3 Civil proceedings**

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

**2.16.4 Effective arrangements**

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



## **Condition 2.17: Maintenance of Records**

### **2.17.1 Recorded information**

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

- (a) every premises to which gas has been supplied by the Licensee during the relevant period;
- (b) insofar as the Licensee has been furnished with the information, the ownership of every meter installed at any premises referred to in Condition 2.17.1 (a) for ascertaining the quantity of gas supplied to the premises by means of that system during the relevant period;
- (c) any information contained in a notice given to the Licensee under any regulations made by the Authority under Article 22 of the Order during the relevant period; and
- (d) any information which has been provided to the Licensee by any other licence or exemption holder whether directly or indirectly pursuant to the conditions of his licence or exemption.

### **2.17.2 Additional definition**

"relevant period" means the preceding five years or such shorter period to which the Authority may consent in respect of any of the above requirements.

### **Condition 2.17A: Duty to Offer Terms**

#### **2.17A.1 Where:**

- (a) the Licensee is authorised to supply gas to premises in one or more areas described in Schedule 1 (“authorised areas”); and
- (b) the Licensee supplies or offers to supply gas to Domestic Premises in one of those authorised areas

then the Licensee must, within a reasonable period of time after receiving a request from a Domestic Consumer for a supply of gas to Domestic Premises located in that same authorised area, offer to enter into a contract with that consumer.

#### **2.17A.2 If the Domestic Consumer accepts the terms of the Contract offered to him under paragraph 2.17A.1, the Licensee must supply gas in accordance with that Contract.**

#### **2.17A.3 A Contract must:**

- (a) be in writing; and
- (b) include all the terms and conditions for the supply of gas as provided for in Condition 2.18.

#### **2.17A.4 The Licensee is not required to comply with the obligations set out in paragraphs 2.17A.1 or 2.17A.2 in any of the following circumstances:**

- (a) the Domestic Premises are not connected to the network in the authorised area;
- (b) supplying gas to the Domestic Premises would, or might, involve danger to the public, provided that the licensee has taken all reasonable steps to prevent such danger from occurring;
- (c) it is not reasonable in all the circumstances of the case for the Licensee to supply gas to the Domestic Premises, provided that, if it is already supplying gas to the premises, it has given at least seven working days’ notice or, (where the circumstances of the case are that the relevant Network Operator has a legal right to disconnect the Domestic Premises and has notified the licensee that it is exercising this right and the licensee is unable to give at least seven working days’ notice) such advance notice as the licensee is reasonably able to give of its intention to stop doing so; or
- (d) the Licensee requires the Domestic Consumer to pay a reasonable Security Deposit and he does not do so.

### **Condition 2.18: Terms and Conditions of Gas Supply Contracts**

- 2.18.1 The Licensee shall ensure that any Contract it enters, or offers to enter, into with a consumer for a supply of gas contains provisions which are in clear and comprehensible language and which incorporate all relevant information so as to enable the consumer to understand the terms and conditions under which the supply of gas is, or is to be, made.
- 2.18.2 The Licensee shall ensure that the terms and conditions of any Contract it enters into with a consumer for a supply of gas provide that the Licensee will, where the premises is at the date of the Contract connected to a Network Operator's Network, start supplying gas under the Contract by no later than 15 working days after the Relevant Date, unless:
- (a) the consumer requests that the supply starts from a later date; or
  - (b) the Registered Supplier for the premises objects to the Supplier Transfer; or
  - (c) there are other circumstances beyond the Licensee's control which prevent it from starting to supply by that date.
- 2.18.3 The Licensee shall not enter, or offer to enter, into a Contract, for the supply of gas to premises, which contains a term that requires or has the effect of requiring the consumer to:
- (a) obtain a supply of gas to the same premises from another gas supplier from a date and for such period as may be specified (whether in the Contract or otherwise) by the Licensee; and
  - (b) immediately following the expiry of that specified period, recommence taking a supply of gas at the premises from the Licensee.
- 2.18.4 Before entering into or concluding a Contract with any domestic consumer, the Licensee shall:
- (a) explain to and draw to the attention of the domestic consumer, the Principal Terms of the Contract; and
  - (b) inform the domestic consumer of the Energy Consumer Checklist and of the sources from where the consumer can obtain a copy;
  - (c) provide a copy of the Energy Consumer Checklist free of charge to any domestic consumer requesting it; and

- (d) give the domestic consumer a written copy of the full terms and conditions of the Contract, including without limitation all the information referred to in paragraph 2.18.7.

2.18.5 The Licensee:

- (a) shall determine standard terms and conditions for the supply of gas to domestic consumers;
- (b) may determine different standard terms and conditions for different cases or classes of case or for different areas;
- (c) shall ensure that each set of standard terms and conditions it determines includes all of the terms and conditions that will apply to any Contract entered into with a domestic consumer on that set of standard terms and conditions;
- (d) shall not determine standard terms and conditions which impose an obligation on the domestic consumer to pay a termination fee, unless any such obligation has been approved in advance by the Authority;
- (e) shall ensure that an up to date copy of each set of standard terms and conditions that it has determined is published on and accessible from its website;
- (f) shall not enter, or offer to enter, into a Contract for the supply of gas with a domestic consumer otherwise than on a set of standard terms and conditions as determined in accordance with this paragraph 5.

2.18.6 The Licensee shall, for any different case, class of case or area in respect of which it has determined standard terms and conditions in accordance with paragraph 5, as a minimum determine a set of standard terms and conditions:

- (a) which provide for a Contract of an indefinite length; and
- (b) in respect of which the terms as to price do not differ as between any domestic consumers who may enter into that Contract (a **standard evergreen tariff**), provided that the Licensee may have a different standard evergreen tariff for each payment method offered by it.

2.18.7 The Licensee shall ensure that each set of standard terms and conditions it determines for

domestic consumers shall be fair (as between the Licensee and each domestic consumer) and shall, as a minimum, include the following:

- (a) the identity and address of the Licensee and any other appropriate contact details;
- (b) the services to be provided, the service quality levels offered by the Licensee (which may be subject to the approval of the Authority pursuant to Condition 2.20) and the date for the commencement of the gas supply under the Contract;
- (c) the duration of the Contract, the terms and conditions for renewal and for termination of the Contract (which terms and conditions shall be compliant with the requirements of this Condition), the services provided under the Contract and the existence of any right of cancellation or termination of the Contract;
- (d) (if offered by the Licensee) the types of maintenance service offered under the Contract;
- (e) a right for the domestic consumer to withdraw from and cancel the Contract:
  - (i) where a supply of gas has at any time previously been taken at the premises, within ten working days of entering into the Contract; or
  - (ii) where a supply of gas has not previously been taken at the premises, within ten working days of entering into the Contract, or any time up to ten working days prior to the premises being connected to a Network Operator's Network, whichever is the later;
- (f) a right for the domestic consumer to terminate the Contract where the Licensee proposes a variation to the terms and conditions of the Contract and the domestic consumer does not wish to accept such new terms and conditions;
- (g) the tariffs, charges and other payments which apply to the Contract and are required to be paid by the domestic consumer, in a manner that enables the domestic consumer to:
  - (i) identify the applicable tariff and the unit rate, in terms expressed as "pence per kWh", of the applicable tariff;
  - (ii) identify any other charge or payment, including in particular:

- (A) any applicable standing charge;
- (B) any payment which is or has the effect of being a Security Deposit;
- (iii) where the applicable tariff is not a standard evergreen tariff (because the Contract is not of an indefinite length), compare the unit rate of the applicable tariff against the unit rate of the standard evergreen tariff (in each case expressed in “pence per kWh”) that would apply if the relevant set of standard terms and conditions applied to a Contract of indefinite length;
- (h) the means by which up to date information on all applicable tariffs, charges and other payments (including any discounts and promotions) for the supply of gas and for any other services which are to be provided under the Contract:
  - (i) can be promptly obtained by the domestic consumer; and
  - (ii) will be communicated to the domestic consumer in writing by the Licensee;
- (i) the compensation and the refund arrangements (if any) which will apply if contracted service quality levels, including service quality levels relating to the timing, frequency and accuracy of bills and statements, are not met (which arrangements may be subject to the approval of the Authority pursuant to Condition 2.20);
- (j) details of how the domestic consumer may initiate the Licensee’s complaint handling procedure (as established in accordance with Condition 2.8); and
- (k) details of how the domestic consumer can contact, and the relevant address and telephone number of, the General Consumer Council for further help and advice.

2.18.8 Subject to paragraph 2.18.9, the Licensee shall not start to supply gas under a Contract entered into with a Domestic Consumer until the cancellation period referred to in paragraph 2.18.7(e) has expired.

2.18.9 The requirement in paragraph 2.18.8 does not apply where:

- (a) the Licensee or any other Gas Supplier has applied in writing to the Authority for paragraph 2.18.8 not to apply in respect of such circumstances or cases as described in the application; and
- (b) the Authority has issued a direction to the Licensee that the requirement in

paragraph 2.18.8 shall not apply in respect of such circumstances or cases as are specified in direction and from such date as may be specified in the direction.

2.18.10 The Authority may, at any time and following consultation with the Licensee, by a further direction amend or revoke a direction (or part thereof) given to the Licensee under paragraph 2.18.9(b).

2.18.11 Where the Licensee proposes to vary any of the terms and conditions of a Contract it has with a domestic consumer, it shall, by way of sending a notice that:

- (a) sets out the information in clear, transparent and easy to read and understand language; and
- (b) where the variation relates to terms as to price, sets out the unit rate (expressed in each case in 'pence per kWh') of the domestic consumer's current tariff and of the proposed new tariff,

notify each such domestic consumer of the proposed variation, together with the consumer's right (as included in the Contract in accordance with paragraph 2.18.7(f)) to terminate the Contract before the proposed variation is due to take effect, at least 21 days in advance of the date the variation is due to take effect.

2.18.12 Where the Licensee enters into a Contract with a domestic consumer which has a fixed term period:

- (a) any such Contract may not include any term or condition which has the effect of:
  - (i) extending the length of that fixed term period; or
  - (ii) applying a consecutive fixed term period,

unless the domestic consumer has the right to terminate the Contract at any time in the extended or consecutive fixed term period without payment of a termination fee; and

- (b) the Licensee shall, by way of sending a notice, notify each such domestic consumer of:
  - (i) the expiry date of the fixed term period at least 21 but no more than 42 days before that expiry date;

- (ii) the name and unit rate, expressed as “pence per kWh”, of the domestic consumer’s current tariff; and
- (iii) details of the standard evergreen tariff, including the applicable unit rate expressed as “pence per kWh”, that will apply under the Contract following the expiry date of the fixed term period.

2.18.13 The Licensee shall, on the request of a domestic consumer and without charge, send to that consumer a copy of the then current set or sets of standard terms and conditions (as determined in accordance with this Condition) that are applicable to the request (including, for the avoidance of doubt, the applicable charges and tariffs relating to each such set).

2.18.14 The Licensee shall ensure that its standard terms and conditions provide domestic consumers with a choice of payment methods, including as a minimum making payment:

- (a) in arrears (at such frequency as is set out in the terms and conditions);
- (b) by direct debit (at such frequency as is set out in the terms and conditions); and
- (c) in advance through a prepayment meter.

2.18.15 Any difference in or between the Licensee’s standard terms and conditions, including terms as to price, relating to the choice of payment methods shall be determined by the Licensee on a basis which reflects the costs to the Licensee of providing the different payment methods.

2.18.16 The Licensee shall not impose on, or request from, a domestic consumer any charge or payment for the purpose of enabling that consumer to exercise or preventing him from exercising (as the case may be) his right to receive a supply of gas from his gas supplier of choice.

2.18.17 Where a Contract also relates to or governs the provision of other goods or services, the Licensee shall ensure that the charges for such other goods or services are identified separately from the charges for the supply of gas.

2.18.18 In this Condition:

**Relevant Date**

means the earlier of:



- (i) the day after the end of any period within which the consumer has a right to withdraw from and cancel the Contract; or
- (ii) 10 working days after the day on which the consumer entered into the Contract.

**Registered Supplier**

means the gas supplier which is registered with the relevant Network Operator as being the gas supplier responsible for providing a supply of gas to the consumer at the relevant premises.

**Supplier Transfer**

means, as the case may be, the transfer of responsibility for the supply of gas to a premises from the Licensee to another gas supplier or from another gas supplier to the Licensee.

**terms and conditions**

means all the terms and conditions, including terms as to price, of the Contract.

## **Condition 2.19: Provision of Information to Consumers**

### **Consumer Checklist**

2.19.1 The Licensee shall:

- (a) make readily accessible from its website an up-to-date copy of the Energy Consumer Checklist:
  - (i) as published by the Authority; and
  - (ii) in each alternative form or language as the Licensee has, in accordance with paragraph 2.19.1(b)(ii), sent to a domestic consumer; and
- (b) on request, send to a domestic consumer a copy of the Energy Consumer Checklist:
  - (i) in the form or language that is available on its website and is requested by the domestic consumer; or
  - (ii) where practicable, in such alternative form or language as is reasonably requested by the domestic consumer.

### **Billing Code**

2.19.2 The Licensee shall comply with the Billing Code of Practice.

### **Billing Options**

2.19.3 The Licensee shall:

- (a) before entering into or concluding a contract with a consumer; and
- (b) on at least an annual basis thereafter,  
inform the consumer:
  - (c) that the consumer may request for bills and statements to be sent to him by electronic communication; and
  - (d) of the different types of electronic communications used by the Licensee which can

be made available to the consumer.

2.19.4 The Licensee shall, where the consumer requests for bills and statements to be sent to him by electronic communication and the type of electronic communication requested by the consumer is used by the Licensee, send bills and statements to the consumer by electronic communication as requested by the consumer

#### Frequency of Bills and Statements

2.19.5 The Licensee shall send a bill or statement:

- (a) at least once a quarter:
  - (i) to any consumer that the Licensee is required, pursuant to the provisions of paragraph 2.19.4, to send bills or statements by electronic communication; or
  - (ii) to any consumer that has requested the Licensee to send bills or statements on a quarterly basis;
- (b) at least once every six months to any consumer taking a supply of gas at premises at which the installed meter is not a Prepayment Meter; and
- (c) at least once every twelve months to any consumer taking a supply of gas at premises at which the installed meter is a Prepayment Meter.

2.19.6 The Licensee shall ensure that each bill or statement sent to a consumer is:

- (a) complete and accurate; and
- (b) sent by way of a paper hard copy or such other form as agreed by the consumer.

#### Information on Bills and Statements

2.19.7 The Licensee shall ensure that each bill or statement sent to a consumer includes:

- (a) the name and address of the Licensee;
- (b) the relevant Supply Meter Point Number;
- (c) details of the consumer's applicable tariff including:

- (i) the full name of the tariff;
  - (ii) the unit rate, expressed where applicable in “pence per kWh”, of the tariff; and
  - (iii) where the consumer is a Domestic Consumer, any discount or premium that applies to the tariff (and the period for which it applies) when compared with the Licensee’s standard evergreen tariff for domestic consumers;
- (d) the total charges, setting out separately any applicable standing charge and showing the charges both inclusive and exclusive of any value added tax, for the period of the bill or statement;
- (e) the amount of gas which the Licensee’s records show has been consumed by the consumer since the last bill or statement sent to that consumer;
- (f) where the bill or statement relates to any period during which the consumer was supplied with gas through a Prepayment Meter (the 'relevant period') the number and total value of pre-payments made by the consumer in each calendar month falling (whether in whole or in part) in the relevant period;
- (g) where the Licensee has provided a supply of gas to the consumer at the same premises continuously for:
- (i) 12 months or more, the amount of gas which the Licensee’s records show has been consumed by the consumer at those premises in the previous 12 months;
  - (ii) less than 12 months, the amount of gas which the Licensee’s records show has been consumed by the consumer at those premises since the date the Licensee started to provide the supply of gas;
- (h) where the consumer is eligible to take a supply of gas from another gas supplier, a statement to the effect that the consumer may change his gas supplier and details of where the consumer can obtain impartial advice and information about changing gas supplier; and
- (i) where the consumer is a domestic consumer, a statement to the effect that the Licensee has a Code of Practice which sets out the services, advice and assistance it provides to domestic consumers who may be having difficulty in paying for the supply of gas.

#### Bills and Statements Based on Meter Readings

2.19.8 For the purposes of paragraph 2.19.7(e), the amount of gas calculated as having been consumed by the consumer shall be determined by reference to:

- (a) an actual meter reading;
- (b) a meter reading taken by the consumer that the Licensee considers to be reasonably accurate (a 'consumer meter reading'); or
- (c) where no actual or consumer meter reading is available, the estimate of the Licensee (an 'estimated meter reading').

2.19.9 Where the Licensee considers that a meter reading taken by the consumer is not reasonably accurate it must take all reasonable steps to contact the consumer and request a new meter reading.

2.19.10 Where the consumer receives a bill from the Licensee showing an estimated meter reading and following receipt of that bill provides a consumer meter reading to the Licensee, the Licensee shall, where requested by the consumer, send an updated bill to the consumer reflecting the consumer meter reading.

2.19.11 The Licensee shall:

- (a) use all reasonable endeavours to take an actual meter reading in respect of each of its consumer (save insofar as he receives an unmetered supply) on at least an annual basis;
- (b) send a bill or statement to the consumer which reflects the actual meter reading taken in accordance with paragraph (a); and
- (c) maintain, for a period of at least three years, and provide to the Authority on request, evidence of the reasonable endeavours it has used to obtain such an actual meter reading for each of its consumers

### Consumption Information

2.19.12 The Licensee shall, on request, provide to a consumer information on the quantity of gas which the Licensee's records show as consumed by that consumer:

- (a) where the Licensee has provided a supply of gas to the consumer at the same premises continuously for 12 months or more, in the 12 months preceding the date of the request; or

- (b) where the Licensee has provided a supply of gas to the consumer for less than 12 months, in the period from the date the Licensee started to provide the supply of gas to the date of the request.

#### Final Bill or Statement

2.19.13 Where a domestic consumer terminates the Contract in accordance with its provisions, the Licensee shall:

- (a) send a final bill to the domestic consumer within six weeks of the Licensee ceasing to provide a supply of gas to the domestic consumer; and
- (b) use best endeavours to refund any outstanding credit to the domestic consumer within eight weeks of the Licensee ceasing to provide a supply of gas to the domestic consumer via an appropriate mechanism

#### Complaints Handling Information

2.19.14 The Licensee shall keep each of its consumers informed:

- (a) of the consumer's rights to initiate the Licensee's complaints handling procedure (as established in accordance with the requirements of Condition 2.8);
- (b) that the General Consumer Council can assist in resolving complaints which the Licensee has not resolved to the consumer's satisfaction;
- (c) that the consumer has the right to refer complaints which relate to billing matters to the Authority where the General Consumer Council has not been able to resolve the complaint to the consumer's satisfaction;
- (d) that the Energy Consumer Checklist can be accessed from the Licensee's website and that the Licensee will, on request, send a copy to the consumer free of charge; and
- (e) of the contact address and telephone number of:
  - (i) the Licensee's complaints handling department; and
  - (ii) the General Consumer Council.

2.19.15 The Licensee shall discharge its obligations under paragraph 2.19.14 by providing the information:

- (a) referred to in paragraphs 2.19.14 (a) to (d) on or with each bill or statement sent to

the consumer;

- (b) referred to in paragraph 2.19.14(e):
  - (i) on or with each bill or statement sent to the consumer; and
  - (ii) on all of its Promotional Materials.

#### Format of Bills and Statements

2.19.16 The Licensee shall provide the information required under this Condition 2.19 on or with each bill or statement in such detail and in such format as:

- (a) where the Authority has published the Billing Code of Practice, meets the requirements of the Billing Code of Practice; and
- (b) where the Authority has not published the Billing Code of Practice, has been determined by the Licensee in consultation with the Authority and the General Consumer Council.

2.19.17 The Licensee shall not charge the consumer for any information, including any bill or statement, which it is required to provide in accordance with or pursuant to this Condition 2.19. This paragraph does not apply in respect of providing additional copies of a bill or statement to the consumer.

#### Definitions

2.19.18 In this Condition:

**Billing Code of Practice**

means the document of that name, prepared and published from time to time by the Authority, following consultation with the Licensee, other gas suppliers and such other persons as the Authority deems appropriate (which consultation may take place before paragraph 2 comes into effect), in relation to consumer billing matters.

## **Condition 2.20: Approval of the Authority to the Licensee's Arrangements**

### **2.20.1 Provision of arrangements to the Authority**

The Licensee shall, within 28 days of any notice from the Authority requiring it to do so, provide to the Authority full details of the arrangements which it has in place in respect of any of the matters set out in Condition 2.20.3 and referred to in that notice.

### **2.20.2 Modification to arrangements**

If the Authority shall, within three months of the Licensee providing such details to the Authority, by notice in writing to the Licensee require the Licensee to make any modifications to those arrangements, the Licensee shall, use all reasonable endeavours to modify such arrangements within 60 days of the date of the notice.

### **2.20.3 Detail of arrangements**

The matters referred to in Condition 2.20.1 are:

- (a) the service quality levels offered by the Licensee to domestic consumers under and in accordance with any contract for the supply of gas to such consumers;
- (b) the compensation and refund arrangements which are to apply where the Licensee is unable to meet such contracted service quality levels; and
- (c) the standards of performance established by the Licensee for domestic consumers pursuant to Condition 2.15 which are not also provided for within the service quality levels offered under or in accordance with a contract for the supply of gas to such consumers.



**Condition 2.21: Marketing of Gas**

2.21.1 This Condition shall apply, from the date of the direction, where the Authority has directed that it shall apply to the Licensee. This Condition applies to the selling methods and marketing activities of the Licensee in respect of the supply or proposed supply of gas.

2.21.2 The Licensee shall (and shall procure that its agents or sub-contractors shall) comply with the Marketing Code of Practice for Domestic Customers and/or the Marketing Code of Practice for Business Customers.

2.21.3 In this Condition:

Marketing Code of Practice for Domestic Customers	means the relevant document of that name, prepared and published from time to time by the Authority, relating to marketing activities
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Marketing Code of Practice for Business Customers	means the relevant document of that name, prepared and published from time to time by the Authority, relating to marketing activities
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Agent of Sub-contractor	means any person directly or indirectly authorised to represent the Licensee in its dealings with Consumers.
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**Condition 2.22: Security Deposits**

2.22.1 The Licensee shall not require a domestic consumer to pay a Security Deposit in respect of the supply of gas to the domestic consumer's premises:

- (a) where the domestic consumer agrees for the gas to be supplied through a prepayment meter and it is safe and reasonably practicable in all the circumstances of the case for the Licensee to supply the premises through such a meter; or
- (b) where it is unreasonable in all the circumstances of the case to require the domestic consumer to pay a Security Deposit.

2.22.2 Any Security Deposit required by the Licensee shall be of an amount that:

- (a) is reasonable in all the circumstances of the case; and
- (b) does not exceed the charges for the supply of gas likely to be applicable for an average three month period of supply, as calculated by reference to the consumption of gas reasonably expected at the relevant premises by the domestic consumer.

2.22.3 The Licensee shall, where it requires a domestic consumer to pay a Security Deposit, at the same time inform the domestic consumer of the effect of paragraph 2.22.5.

2.22.4 Subject to paragraph 2.22.5, any Security Deposit given by a Domestic Consumer shall be repaid by the Licensee:

- (a) within 28 days where, in the previous 12 months, the domestic consumer has paid all charges for the supply of gas demanded from him within 28 days of each written demand made; or
- (b) as soon as reasonably practicable, and in any event within 1 month, where the Licensee has ceased to supply the domestic consumer and the consumer has paid all charges for the supply of gas demanded from him.

2.22.5 Sub-paragraph 2.22.4(a) shall not apply where it is reasonable in all the circumstances for the Licensee to retain the Security Deposit.

### **Condition 2.22A: Consumer Protection: Modification of Conditions**

- 2.22A.1 The Authority, following consultation with the Licensee, the General Consumer Council and any other person who in the opinion of the Authority is likely to be interested or affected, may from time to time modify the Conditions of the Licence in accordance with paragraph 2.22A.2.
- 2.22A.2 The Authority may modify the Conditions of the Licence under this paragraph where both:
- (a) the effect of the modification is to require the Licensee to prepare, submit and have approved by the Authority one or more codes of practice relating to the services or arrangements, as set out in the modification, to be provided or made available by the Licensee to such persons or class of persons as are specified in the modification; and
  - (b) the Authority is satisfied that the modification is necessary or expedient for the purposes of:
    - (i) ensuring that any activity authorised by the Licence is carried out in compliance with the requirements and prohibitions, relating to the protection of consumers, laid down by the Directive;
    - (ii) ensuring a high level of protection for consumers, in accordance with the purpose of the Directive; or
    - (iii) giving effect to Article 10A(9) of the Order.
- 2.22A.3 Where in accordance with this Condition 2.22A the Authority modifies the standard conditions of licences for the supply of gas (as determined under Article 11(1) of the Order), it:
- (a) shall also make (as nearly as may be) the same modifications of the standard conditions of licences for the supply of gas for the purpose of their incorporation in licences granted under Article 8(1)(c) of the Order after the date of the modification made under this Condition 2.22A; and
  - (b) may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of licences granted under Article 8(1)(c) of the Order before the date of the modification made under this Condition 2.22A.

**Condition 2.23: Report on Performance**

2.23.1 The Licensee shall keep a record of the operation of the arrangements set out in any Code of Practice prepared in accordance with Conditions 2.8 – 2.12 and, if the Authority so directs in writing, of the operation of any Code of Practice in particular cases specified, or of a description specified, by it.

2.23.2 The Licensee shall also keep for each quarter ending 30 June, 30 September, 31 December and 31 March, a statistical record of its performance in that quarter in relation to the provision of gas supply services to domestic consumers including:

- (a) the number of the different type of services offered by the Licensee to domestic consumers on the register maintained by it pursuant to Condition 2.11 and the number of domestic consumers included on the register;
- (b) the number of the Licensee's domestic consumers using each payment method offered by the Licensee;
- (c) the number of Domestic Premises to which the supply of gas was cut off by the Licensee for reason of non-payment of charges;
- (d) the quantities of gas supplied and the recovery of gas charges;
- (e) the number of consumer complaints, whether made in writing, in person or by telephone;
  - (i) received by the Licensee;
  - (ii) resolved by the Licensee; and
- (f) the number of visits made to consumers' premises and the number of responses made to enquiries.

2.23.3 As soon as reasonably practicable after 31 December in each year, the Licensee shall submit to the Authority and the General Consumer Council a report dealing with the matters mentioned in this Condition which shall include a comparison of the Licensee's performance against any established standards in relation to that year and shall:

- (a) make public the report so submitted in such manner as will in the reasonable

opinion of the Licensee secure adequate publicity for it; and

(b) send a copy of it free of charge to any person requesting one,

except that, in performing the obligations under paragraphs 2.23.3(a) and 2.23.3(b), the Licensee shall exclude from the report such information as appears to it to be necessary or expedient to ensure that, save where they consent, individual consumers referred to therein cannot readily be identified.

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

## **Condition 2.24: Safety of Supplies**

### **2.24.1 Duty to inform consumers**

The Licensee shall keep each of its consumers informed:

- (a) that an escape, or suspected escape, of gas should be reported immediately; and
- (b) of a telephone number which should be used for that purpose.

### **2.24.2 Means of discharging obligation**

The Licensee will discharge the duty imposed by Condition 2.24.1 by providing the requisite information to each of its consumers:

- (a) on the occasion of the consumer first commencing to take a supply from the Licensee; and
- (b) either:
  - (i) where bills in respect of charges for the supply of gas are rendered to the consumer, on a quarterly basis (it being sufficient that the information is included on or with any bill); or
  - (ii) where no bills in respect of charges for the supply of gas are rendered to the consumer, on an annual basis, and by publishing such information in such manner as will in the opinion of the Licensee secure adequate publicity for it.

### **2.24.3 Emergency telephone number**

The Licensee shall:

- (a) inform a consumer of the telephone number for the service referred to in Condition 2.24.1(b) if so requested; and
- (b) in so far as is practicable, take steps to inform each of its consumers of any change to such telephone number prior to such change becoming effective.

## **Condition 2.25: Reading, Inspection and Testing of Meters**

### **2.25.1 Obligation to inspect**

The Licensee shall use all reasonable endeavours to ensure that at intervals of not more than 2 years an inspection of the meter and associated installation at any premises for which it is the gas supplier shall take place in accordance with this Condition 2.25.

### **2.25.2 Supplier for less than two years**

Where the Licensee has supplied a premises for less than 2 years, the period of 2 years referred to in Condition 2.25.1 shall be deemed to expire on such date as is specified for that purpose in a notice given to the Licensee by the relevant Network Operator and which has been submitted to the Licensee at least 4 months in advance of the deemed expiry date.

### **2.25.3 Inspections**

An inspection under this Condition 2.25 shall be carried out by a person possessing appropriate expertise and shall include the following tasks:

- (a) reading the meter;
- (b) inspecting the meter and associated installation for evidence of any damage to, interference with or tampering of the meter or of the associated installation;
- (c) inspecting the meter and that installation for any evidence that the meter has not continuously been in position for the purpose of registering the quantity of gas supplied;
- (d) arranging for information in respect of any gas leakage identified in the vicinity of the meter to be passed on in accordance with the Gas Safety (Management) Regulations (Northern Ireland) 1997 as if the Licensee had been informed thereof;
- (e) inspecting the meter for any evidence of deterioration which might affect its due functioning or safety; and
- (f) where necessary and subject to the consent of the owner of the meter, changing any batteries in the meter.

### **2.25.4 Report to Network Operator**

The Licensee shall ensure that the results of each inspection undertaken in accordance with this Condition are reported promptly to the relevant Network Operator.

## **Condition 2.26: The Supply Meter Point Agreement**

### **2.26.1 The Supply Meter Point Agreement**

The Licensee shall be a party to and in conjunction and co-operation with all other suppliers, shall maintain, the Supply Meter Point Agreement, being the agreement designated by the Authority for the purposes of this condition and which shall:

- (a) be designed to facilitate achievement of the relevant objectives set out in Condition 2.26.4; and
- (b) include provisions relating to its modification, and such other matters, as set out in Condition 2.26.5.

### **2.26.2 Compliance with Supply Meter Point Agreement**

The Licensee shall comply with the relevant provisions of the Supply Meter Point Agreement.

### **2.26.3 Parties to the Supply Meter Point Agreement**

The Supply Meter Point Agreement shall be an agreement made between:

- (a) the Licensee acting in its capacity as a licensed gas supplier;
- (b) every other gas supplier which is required by a condition of its gas supply licence to be a party to the agreement; and
- (c) such other persons as are necessary parties (as collectively determined by the gas suppliers that are party to the agreement).

### **2.26.4 Relevant objectives**

The relevant objectives referred to in Condition 2.26.1 are:

- (a) the development, maintenance and operation of efficient, coordinated and economical arrangements and systems of communications between all parties for the implementation of, and compliance with, the change of supplier process as set out in the Network Code of each Network Operator;
- (b) the furtherance of effective competition between gas suppliers and between relevant agents;
- (c) the promotion of efficiency in the implementation and administration of the Supply Meter Point Agreement; and



- (d) so far as is consistent with sub-paragraphs (a), (b) and (c), the efficient discharge of the Licensee's obligations under this licence.

#### 2.26.5 Contents of Supply Meter Point Agreement

The Supply Meter Point Agreement shall contain:

- (a) provisions for admitting as an additional party to the Supply Meter Point Agreement any person who accepts the terms and fulfils the conditions (each as specified in the Supply Meter Point Agreement) on which accession to the Supply Meter Point Agreement is offered;
- (b) provisions for the Licensee to refer to the Authority for determination, whether of its own motion or as provided in the Supply Meter Point Agreement, any dispute which shall arise as to whether a person seeking to be admitted as a party to the Supply Meter Point Agreement has fulfilled any accession conditions and, if the Authority determines that the person seeking admission has fulfilled all relevant accession conditions, for admitting such person as a party to the Supply Meter Point Agreement;
- (c) arrangements enabling modification of the Supply Meter Point Agreement:
  - (i) so as to better facilitate the achievement of the relevant objectives as set out in paragraph 2.26.4; and
  - (ii) following consultation with the parties, or representatives of the parties, to that agreement and other interested parties;
- (d) provisions (which shall be approved in advance by the Authority) by virtue of which specified parts of the Supply Meter Point Agreement shall not be capable of modification without the prior approval of the Authority;
- (e) provisions enabling parties to the Supply Meter Point Agreement to appeal against any proposed modification, proposed pursuant to the arrangements established in accordance with paragraph (c) above, of the Supply Meter Point Agreement to the Authority for determination;
- (f) provisions for the Authority to be furnished with a copy of any modification which is made; and
- (g) provisions for a copy of the Supply Meter Point Agreement to be provided to any person requesting the same upon payment of an amount not exceeding the reasonable costs of making and providing such a copy.

## **Condition 2.27: Wholesale Contracts and Gas Derivatives**

2.27.1 Subject to paragraph 2.27.2, the Licensee shall, for every Contract or Gas Derivative entered into by the Licensee with a Wholesale consumer or a Gas Conveyance Licence Holder (the **relevant agreement**) and every transaction undertaken under or in accordance with the provisions of a relevant agreement (the **relevant transaction**), retain for a period of at least five years after the end date of the relevant agreement or the date of the relevant transaction (as the case may be) the information set out in paragraph 2.27.4.

2.27.2 Paragraph 2.27.1 shall not apply to a Gas Derivative entered into by the Licensee with a Wholesale consumer or a Gas Conveyance Licence Holder or to any transaction undertaken, under or in accordance with the provisions of a Gas Derivative entered into with a Wholesale consumer or a Gas Conveyance Licence Holder, prior to the date of the Guidelines referred to in Article 44(4) of the Directive (the **Guidelines**).

2.27.3 The Licensee shall retain the relevant information in accordance with such methods and arrangements for record keeping and in such form as may be set out in the Guidelines.

2.27.4 The information to be retained shall:

- (a) provide particulars of:
  - (i) the characteristics of the relevant agreement or the relevant transaction, including characteristics relating to duration and delivery and settlement rules;
  - (ii) the amount of gas specified in the relevant agreement or relevant transaction;
  - (iii) the time and date the relevant agreement or relevant transaction was executed and the prices pertaining to that agreement or transaction;
  - (iv) the means of identifying the Wholesale consumer to whom the relevant agreement or relevant transaction relates; and

- (b) include such information as is specified in a direction given to the Licensee by the Authority about relevant agreements under which any transactions continue to be unsettled.

2.27.5 The Licensee shall provide to the Authority, in such manner and at such times as the Authority may specify, such information as the Authority may require which is retained by the Licensee in accordance with this Condition.

2.27.6 In this Condition:

**Gas Derivative**

~~means a financial instrument, specified in points 5, 6, or 7 of Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, which relates to gas;~~

means a financial instrument which relates to gas as specified in points 5, 6, or 7 of Section C of Annex I to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU as it has effect immediately before Exit Day;

**Gas Conveyance Licence Holder**

means any person holding a licence granted under Article 8(1)(a) of the Order; and

**Wholesale Consumer**

means any person who is purchasing gas for the purposes of reselling it to another person and not for his own use.

**Condition 2.28: Provision of Information to gas suppliers and energy service providers**

- 2.28.1 Where paragraph 2.28.2 applies, the Licensee shall within ten working days of receiving a Consumer Information Request from any gas supplier or Energy Services Provider, provide, free of charge, to the gas supplier or the Energy Services Provider (as the case may be) the Billing Information specified in the Consumer Information Request and held or recorded by the Licensee.
- 2.28.2 This paragraph applies where the Licensee is supplying gas, or has at any time in the 12 months prior to the date of the consumer information request supplied gas, to the premises identified in the request and where the consumer identified in the request is, or was (as the case may be), a consumer of the Licensee.
- 2.28.3 Where in respect of a Consumer Information Request, the specified Billing Information is not held or recorded by the Licensee in a form that can be determined or ascertained for the Specified Period only, the Licensee shall:
- (a) give notice to the gas supplier or the Energy Services Provider (as the case may be) that the requested Billing Information cannot be provided for the Specified Period only; and
  - (b) provide the requested Billing Information held or recorded by the Licensee in respect of any period that includes the Specified Period.
- 2.28.4 The Licensee shall not submit a consumer information request to another gas supplier unless it has, and retains evidence of, the consent of the consumer for it to obtain the information which is specified in the request to the other gas supplier.
- 2.28.5 The Licensee shall not charge the consumer for any services provided to the consumer or to any gas supplier or Energy Services Provider pursuant to this Condition.
- 2.28.6 The Licensee is not required to comply with paragraph 2.28.1 in respect of any consumer information request received from an Energy Services Provider where:
- (a) the Licensee does not have the consent of the Consumer to provide Billing Information to the Energy Services Provider; and

- (b) the Energy Service Provider does not submit with the consumer information request written evidence of the consent of the Consumer for the Energy Services Provider to obtain from the Licensee such Billing Information as is specified in the consumer information request.

2.28.7 In this Condition:

**Billing Information** means:

- (a) any information relating to the consumption of gas by the consumer at the premises identified in the request; and
- (b) any information enclosed with or set out in any bill or statement previously sent by the Licensee to the consumer at such premises.

**Consumer Information Request** means a request for Billing Information in respect of the consumer at the premises identified, and for the period specified, in the request.

**Energy Services Provider** means any person, other than a gas supplier, that provides goods or services to Consumers at their premises for the purposes of enabling the Consumer to reduce their energy consumption or to make efficient use of energy.

**Specified Period** means the period specified in the Consumer Information Request

### **Condition 2.29: Business Separation**

2.29.1 This Condition applies where any affiliate or related undertaking of the Licensee is:

- (a) carrying on the activities of an Associated Business; and
- (b) that Associated Business is subject to Separation Conditions.

2.29.2 Where this Condition applies the Licensee shall not:

- (a) act in a manner which is inconsistent with the relevant affiliate or related undertaking's obligations under the Separation Condition; or
- (b) take any action that may impede or frustrate the relevant affiliate or related undertaking from fulfilling its obligations under the Separation Condition.

2.29.3 In this Condition:

<b>Associated Business</b>	means any business which is carrying on any activity that requires authorisation in accordance with either Article 8(1)(a) of the Order or section 7 of the Gas Act 1986; and
<b>Separation Conditions</b>	<p>means any conditions:</p> <ul style="list-style-type: none"><li>(a) which are included in a licence held by the affiliate or related undertaking of the Licensee, as granted under either Article 8(1)(a) of the Order or section 7 of the Gas Act 1986;</li><li>(b) which are at any given time applicable and in force in relation to the licence holder; and</li><li>(c) which in combination impose an obligation on the Associated Business to ensure the legal, managerial and operational separation of the Associated Business and, where applicable, to produce a compliance plan setting out how it will meet the obligation.</li></ul>

### **Condition 2.30: Code of Practice for the Theft of Gas**

2.30.1 The Licensee shall (and shall procure that its Agents or Sub-contractors shall) comply with the obligations applicable to it under, the Code of Practice for the Theft of Gas.

2.30.2 The Authority, following consultation with the Licensee, the General Consumer Council and any other person who in the opinion of the Authority is likely to be interested or affected, may from time to time make such modifications to the Code of Practice for the Theft of Gas, as the Authority considers necessary or expedient.

2.30.3 In order to comply with the obligations of the Code of Practice for the Theft of Gas, the Licensee shall establish and comply with Procedures to facilitate the prevention, detection, investigation (and management of the outcome of investigation) of the theft of gas.

2.30.4 In this Condition:

**Code of Practice for the Theft of Gas**

means the relevant document of that name, prepared and published from time to time by the Authority, relating to the activities for the prevention, detection, investigation (and management of the outcome of investigation) of the theft of gas;

**Procedures**

means the detailed industry procedures established, maintained, and from time to time amended, which set out the procedures and practices to be followed by the Licensee to ensure its compliance with the Code of Practice for the Theft of Gas.

**Agents or Subcontractors**

means any person directly or indirectly authorised to represent the Licensee in its dealings with gas consumers or other Licensees.

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

**Part 3A**

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

**Definitions For Supplier Postalisation Licence Conditions**

**Interpretation and Construction**

**Definitions**

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

“Annual Capacity Product”	means a Capacity Product with a duration of one year that provides for capacity to be made available throughout a Gas Year;
“Business Day”	means a day, other than a Saturday or Sunday, on which banks are open for ordinary banking business in Belfast;
“Capacity Product”	means the products for the provision of capacity at Entry Points or Exit Points made available by Designated Pipe-line Operators;
“Credit Committee”	means the committee which is convened and operates in accordance with the “Terms of Reference”;
“Designated Network”	means such parts of a Designated Pipe-line Operator’s Network as is or are designated from time to time pursuant to the Designation Order;
“Designated Pipe-line Operator”	means a person licensed to convey gas under Article 8(1)(a) of the Order for the Licensee through the Postalised System;
“Designation Date”	means the date specified in a Designation Order on which any part of a Designated Pipe-line Operator’s Network through which the



Licensee is entitled to have gas conveyed shall be designated as postalised;

“Designation Order” means an order made pursuant to Article 59 of the Energy (Northern Ireland) Order 2003 designating gas plant comprised within the Network as being subject to a common tariff;

“Enter”, “Entering” or forms thereof, refers to the offtaking of gas at an Entry Point;

“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 and which constitutes an Entry Point under the Network Code;

“Exit”, “Exiting” or forms thereof, refers to the offtaking of gas at an Exit Point;

“Exit Point” means a point on the Designated Network at which gas is offtaken from the Designated Network by the Licensee, which is not a Transit Point and which constitutes an Exit Point under the Network Code;

“Firm Capacity” means, at any relevant time in respect of a Gas Supplier, capacity (in KWh/day) held at such time by such Gas Supplier on a firm basis in respect of an Exit Point in accordance with the provisions of the Network Code and in respect of a Gas Year (or any part thereof); except that if any Minimum Capacity Value in respect of such period and such Gas Supplier is greater than such allocated capacity then the Firm Capacity deemed to be held by such Gas Supplier shall be that Minimum Capacity Value;

“Forecast Supplier Quantity” means the quantity of gas which the Licensee forecasts it will Enter and Exit from a Designated Network in a given period, provided that, if in relation to the Licensee such quantity is less than any applicable

Minimum Quantity Value, the Forecast Supplier Quantity in relation to the Licensee shall be such Minimum Quantity Value;

“Gas Supplier”	means any person authorised by licence under Article 8 of the Order or by exemption under Article 7 of the Order to supply gas, (including the Licensee as so authorised or exempted) and who is entitled to Enter and 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 Enter and Exit gas from the Designated Network as if it were a Gas Supplier;
“Gas Year”	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;
“kWh”	means 3,6000,000 joules as defined in ISO 1000-1981(E);
“Minimum Quantity Value”	means any minimum quantity of gas (in KWh) in respect of which the Licensee is obliged under contract to a Designated Pipe-line Operator to pay transmission charges in respect of a Gas Year or part thereof;
“Network”	means all gas plant owned, operated or utilised by a Designated Pipe-line Operator through which that Designated Pipe-line Operator is conveying gas for the Licensee;
“Network Code”	means that document so described and published by a Designated Pipe-line Operator by virtue of the licence granted to that Designated Pipe-line Operator under Article 8(1)(a) of the Order;
“Non Annual Capacity Product”	means a Capacity Product for a period shorter than a Gas Year that provides for capacity to be made available in a Gas Year;
“Order”	means The Gas (Northern Ireland) Order 1996;

“Postalised System”	means the system comprising all gas pipe-lines designated as being subject to a common tariff pursuant to all orders made pursuant to Article 59 of the Energy (Northern Ireland) Order 2003 in force at such time;
“Primary DPO”	means a Designated Pipe-line Operator holding a licence to convey gas in respect of a part of the Postalised System on which the Licensee is entitled to Exit gas;
“Primary DPO Network”	means all gas plant owned, operated or utilised by a Primary DPO through which that Primary DPO is conveying gas for the Licensee and from which the Licensee is entitled to Exit gas;
“PS Transmission Payments”	means any amount which a Primary DPO is obliged or entitled to charge to the Licensee in respect of the provision of gas conveyance services on the Postalised System under such Primary DPO’s licence to convey gas;
“Quarter”	means each successive three calendar month period in a Gas Year, the first of which shall run from and including 05:00 hours 01 October until 05:00 hours 01 January in that Gas Year; and “Quarterly” shall be construed accordingly.
“Terms of Reference”	means the terms of that name appended to the Network Code which govern the operation of the Credit Committee;
“Transit Point”	means a point of interconnection between a Designated Network and another pipeline forming part of the Postalised System;

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

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

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

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

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

**3A.2 Conveyance Charges**

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

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

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

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

- (a) the Forecast Supplier Quantity together with:
  - (i) an explanation of the reasons why any Forecast Supplier Quantity in respect of any of the Gas Years GY+1 to GY+4 are expected to be greater or less than the Forecast Supplier Quantity in respect of GY;
  - (ii) a breakdown showing the proportions of the Forecast Supplier Quantity in respect of each Entry Point and Exit Point attributable to each Quarter of GY; and
- (b) a breakdown of the Annual Capacity Products and Non-Annual Capacity Products which the Licensee is forecast to use at each Entry Point in GY to GY+4.
- (c) the assumptions on which the figures provided pursuant to Condition 3A.2.2.1(a) are based. In respect of power stations this shall include but not be limited to load factors, generation output and efficiency. In respect of a Licensee supplying gas to distribution networks this shall include but not be limited to numbers of consumers and average forecast quantity per consumer.

**3A.2.2.2** The Licensee shall use its reasonable endeavours to ensure that all forecasts and information supplied in accordance with Condition 3A.2.2.1 are as accurate as

possible having regard to the information and forecasts available to the Licensee and shall provide with such forecasts a full breakdown and reasoning as to how it has calculated those forecasts.

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

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

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

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

- 3A.3.1 The Licensee shall promptly and competently take all reasonable actions necessary to facilitate the efficient functioning of the Credit Committee, in accordance with the Terms of Reference. Excepted in certain circumstances as specified in the Terms of Reference such actions shall include:
- (A) attendance at any meeting of the Credit Committee convened,
  - (B) full and due consideration of any matters (including all relevant information) in respect of which a Credit Committee is convened;
  - (C) reasonable participation in the decision making process in relation to any matter with respect to which any Credit Committee has been convened with a view that appropriate decisions be made by such Credit Committee in a timely manner; and
  - (D) reasonable participation in the passing of any decisions made by any Credit Committee.
- 3A.3.2 The licensee shall ensure that the Credit Committee acts in a non-discriminatory and transparent manner.

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

1 The premises designated as a term of the licence in this Schedule 1 are any person or premises:

- (a) in the Greater Belfast Area;
- (b) in the Ten Towns Area; and
- (c) in the West Area

2 In this Schedule:

“BGE Conveyance Licence”	means the Licence for the Conveyance of Gas granted to Bord Gais Eireann by the Authority pursuant to Article 8(1)(a) of the Order;
“Greater Belfast Area”	means the Licensed Area within Schedule 1 of the Phoenix Conveyance Licence;
“Phoenix Conveyance Licence”	means the Licence for the Conveyance of Gas granted to Phoenix Natural Gas Limited by the Authority pursuant to Article 8(1)(a) of the Order;
“Scotia Gas Networks Conveyance Licence”	means the Licence for the Conveyance of Gas granted to Scotia Gas Networks Northern Ireland Ltd by the Authority pursuant to Article 8(1)(a) of the Order;
“Ten Towns Area”	means the Licensed Area within Schedule 1 of the BGE Conveyance Licence;
“West Area”	means the Licensed Area within Schedule 1 of the Scotia Gas Networks Conveyance Licence.



## **SCHEDULE 2**

### **Right of Authority to Revoke licence**

#### **1      Circumstances allowing revocation**

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

- (a) if the Licensee agrees in writing with the Authority that the licence should be revoked; or
- (b) if any amount payable under Condition 1.11 is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Authority has given the Licensee notice that the payment is overdue provided that no such notice shall be given earlier than the sixteenth day after which the amount payable becomes due; or
- (c) if the Licensee fails to comply with a Final Order (within the meaning of Article 42 of the Energy Order) or with a Provisional Order (within the meaning of Article 42 of the Energy Order) which has been confirmed under Article 42 of the Energy Order and which (in either case) has been made in respect of a contravention or apprehended contravention of a condition to which the licence is subject or of a “relevant requirement” as defined in Article 41(2)(b) of the Energy Order and such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 44 of the Energy Order could be made questioning the validity of the Final or Provisional Order or before the proceedings relating to any such application are finally determined; or
- (d) if the Licensee fails to pay any financial penalty (within the meaning of Article 45 of the Energy Order) imposed in respect of a contravention or apprehended contravention of a condition to which the licence is subject or of a “relevant

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

- (e) if the Licensee fails to comply with: an order made by a court. under section 34 of the Competition Act 1998; or fails to comply with an order made under section 72, 75, 76, 81, 83, 84, 158, 160 or 161 of, or under paragraph 2, 5, 6, 10 or 11 of Schedule 7 to, the Enterprise Act 2002; or is found guilty of an offence under section 188, 193 or 194 of the Enterprise Act 2002; or
- (f) if the Licensee:
  - (i) is unable to pay its debts (within the meaning of Article 103(1) or 92) of the Insolvency (Northern Ireland) Order 1989, but subject to paragraph 3 of this Schedule 2) or has any voluntary arrangement proposed in relation to it under Article 14 of that Order or if it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority); or
  - (ii) has a receiver (which expression shall include an administrative receiver within the meaning of Article 5(1) of the Insolvency (Northern Ireland) Order 1989) of the whole or any material part of its assets or undertaking appointed; or
  - (iii) has an administration order under Article 21 of the Insolvency (Northern Ireland) Order 1989 made in relation to it; or
  - (iv) passes any resolution for winding up other than a resolution previously approved in writing by the Authority; or

- (v) becomes subject to an order for winding up by a court of competent jurisdiction or if a petition for its winding up is presented to a court of competent jurisdiction; or
- (vi) shall suffer any event analogous to any of the foregoing in any jurisdiction in which it is incorporated or resident; or
- (g) if at any time the Licensee fails to notify the Authority of any change in ownership of the equity capital of the Licensee as soon as practicable after such change has occurred; or there has been a change in ownership of equity capital notified by the Licensee; and
  - (i) the Authority is satisfied that the new shareholder (together with the other companies in its group) does not have adequate technical, financial or managerial strength taking into account the size of its shareholdings in the Licensee;
  - (ii) the Authority serves notice on the Licensee stating that it proposes to revoke the licence in pursuance of this paragraph unless such further change in the ownership of the Licensee as is specified in the notice takes place (or ownership reverts to the person or those persons owning the equity capital of the Licensee prior to the change) within the period of three months beginning with the date of service of the notice; and
  - (iii) that further changes or reversion in ownership does not take place within that period; or
- (h) if at any time the Licensee fails to notify the Authority of a change in control as soon as practicable after such change in control has occurred; or there has been a change in control notified by the Licensee, and:

- (i) the Authority serves notice on the Licensee stating that the Authority proposes to revoke the licence in pursuance of this paragraph unless such further change in control of the Licensee as is specified in the notice takes place (or control reverts to the person(s) controlling the Licensee prior to the change) within the period of three months beginning with the date of service of the notice; and
- (ii) that further change or reversion in control does not take place within that period; or
- (i) if the Licensee is convicted of having committed an offence under Article 46 of the Order or under Article 63 of the Electricity (Northern Ireland) Order 1992.

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

The Authority may at any time by not less than 30 days notice to the Licensee revoke the licence if the Licensee has not commenced carrying on its Licensed Business within thirty-six (36) months of the date of the Grant or thereafter ceases for a period of 3 months to carry on its Licensed Business and in relation to any date or period given in this paragraph 2 the Authority shall substitute a later date or a longer period where reasonably satisfied that exceptional circumstances which could not have been reasonably foreseen by the Licensee had prevented, or could reasonably be expected to prevent, the carrying on of the relevant business.

## 3 Licensee's deemed ability to pay its debts

- (a) For the purposes of paragraph 1(f)(i) of this Schedule 2, 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.

4 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(h) of this Schedule 2, there is a change in the control of the Licensee whenever a person obtains control of the Licensee who did not have control of the Licensee when this licence was granted; and sub-sections (2) and (4) to (6) of Section 432 of the Taxes Consolidation Act 1997 shall apply for the purpose of determining whether for the purposes of this paragraph a person has or had control of the Licensee, but at any time should no person have control then for the words "the greater part" wherever they occur in the said sub-section (2) there shall be substituted the words "one-third or more".

Note: (does not form part of the Licence)

Consolidated to include –

1. Licence granted: 9 June 2011
2. Licence extension and modification re Schedule 1 – 28 March 2012 – signed letter
3. Modification dated 12 September 2012 – IME3 licence amendments as a result of Directive 2009/73/EC concerning common rules for the internal market in natural gas. Licence modifications approved by DETI
4. Licence modification of condition 1.11 Payment of fees to the Authority – September 2012
5. Licence modifications of condition 1.2 to implement further IME requirements as a result of Directive 2009/73/EC concerning common rules for the internal market in natural gas – 30 April 2013
6. Modifications to conditions 1.3, 2.11, 2.18 and 2.21 to implement further IME3 licence amendments as a result of Directive 2009/73/EC concerning common rules for the internal market in natural gas - dated 28th March 2014.
7. Modifications to conditions 1.8, 1.11 and 2.4 pursuant to Regulation 7 and Regulation 8 of The Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015 (the “Regulations”). Effective from 4 August 2015.
8. Modification to conditions 2.2, 3A.1 and 3A.2 made as a consequence of the introduction of entry capacity and a change in the gas day timing. The modifications for entry capacity come into effect on 7 August 2015, and the gas day changes come into effect on the 1 October 2015.
9. Name on cover of consolidated licence amended to Electric Ireland in line with letter sent to licence holder on 11 November 2015. Note licence was granted to ESB Independent Energy (NI) Ltd. Electric Ireland is a trading name of ESB Independent Energy (NI) Limited.
10. Modifications to conditions 2.10, 2.19 and 2.28 in accordance with Regulation 15 of the Energy Efficiency Regulations (Northern Ireland) 2014, for the purposes of implementation of the Energy Efficiency Directive. Notification of modifications provided on 23 November 2015 and modifications became effective on 23 November 2015.
11. Modifications to conditions 1.1, 1.2, 2.1, 2.5, 2.9, 2.13, 2.18, 2.19, 2.21, 2.27 and 2.28 and addition of new condition 2.17A became effective from 1 September 2016. Decision paper and notice of modifications published on 3 June 2016.
12. Schedule 1 of licence extended to include the West area. Notification of extension provided on 16 December 2016 and the extension is effective from 16 December 2016

13. Modification adding Conditions 2.1A Supplier of Last Resort and 2.1B Last Resort Supply Direction. Decision paper and Notice of modification published on the 4<sup>th</sup> July 2018 and modifications became effective on 31 August 2018.
14. New Licence Condition 2.30 on the Code of Practice for the Theft of Gas. Modification published 27 November 2018 and modification became effective on 29 January 2019.