

**THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION**  
**NOTICE UNDER ARTICLE 14(3) OF THE GAS (NORTHERN IRELAND) ORDER 1996 (AS AMENDED)**

**MODIFICATIONS PROPOSED TO PREMIER TRANSMISSION LTD'S CONVEYANCE LICENCE**

The Northern Ireland Authority for Utility Regulation (hereinafter referred to as the “**Authority**”) hereby gives notice under Article 14(3) of the Gas (Northern Ireland) Order 1996, (as amended) (the “**Order**”) as follows:

1. The Authority proposes to make modifications to the conveyance licence (the “**Licence**”) held by Premier Transmission Limited (the “**Licensee**”) under Article 8(1)(a) of the Order.
2. The proposed modifications are to reflect changes to Part 2A standard conditions of the Conveyance licence in order to accommodate the introduction of the Oversubscription and Buyback Mechanism. Modifications are also the conveyance licences of the other transmission system operators (see notices published today).
3. Modifications are also proposed to Condition 3.1 of the licence to ensure that revenue from Oversubscription Capacity and Buy Back Capacity is dealt with appropriately.
4. The modifications proposed are shown in redline or in strikethrough in the proposed revised version of Part 2A and Condition 3.1 as set out in Schedule 1 to this notice.
5. The reason for the proposed modifications is to address the Congestion Management Procedures (CMP) required by EC Regulation 715/2009 (the Regulation) and amended by the European Commission Decision of 24 August 2012.
6. Representations or objections with respect to the proposed modifications may be made on or before 29<sup>th</sup> October 2013 to:

Roisin McLaughlin  
Utility Regulator  
Queens House  
14 Queen Street  
Belfast  
BT1 6ED  
or by email to: [roisin.mclaughlin@uregni.gov.uk](mailto:roisin.mclaughlin@uregni.gov.uk)

and, where not withdrawn and made on or before the date stated above, will be considered by the Authority.

7. The Authority intends and prefers to publish all comments received to its consultations, but will consider facilitating those respondents who wish certain sections of their submission to remain confidential. Accordingly, respondents that so wish should submit these sections in an appendix that is clearly marked "Confidential", and explain why they believe such content should be so categorised.
8. The Authority has, pursuant to Article 14(4)(b) of the Order served a copy of this notice on the Licensee and sent a copy to the Department of Enterprise, Trade and Investment.

**Dated this 1<sup>st</sup> October 2013**

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

cc. Fiona Hepper, DETI

Paddy Larkin, Premier Transmission Ltd

## **SCHEDULE 1 – THE PROPOSED MODIFICATIONS**

### **Condition 2A.1 – Interpretation and Construction**

#### **2A.1.1 Definitions**

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

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

“Capacity Percentage”	shall have the meaning ascribed to that term in Condition 2A.2.5.2(a);
“Capacity Reconciliation Payment”	means a charge or a payment, as the context requires, made by the Licensee to each of its Gas Suppliers in respect of the difference between the Forecast Postalised Capacity Charge and the Year-End Postalised Capacity Charge applied to a Gas Year;
“Commodity Percentage”	shall have the meaning ascribed to that term in Condition 2A.2.5.1(a);
“Commodity Reconciliation Payment”	means a charge or a payment as the context requires, made by the Licensee to each of its Gas Suppliers in respect of the difference between the Forecast Postalised Commodity Charge and the Year-End Postalised Commodity Charge applied to a Gas Year;
“Credit Committee”	means the committee which is convened and operates in accordance with the Terms of Reference;
“Daily Capacity”	means capacity (in kWh / day) which has been allocated for a duration of one Day on a firm basis in accordance with the provisions of the Network Code and / or the Network Code of any other Designated Pipe-line Operator (and, for the avoidance of doubt, shall not include any capacity which is allocated for a duration of other than one Day).
“Debt Entitlement”	shall have the meaning ascribed to that term in Condition 2A.6.1.2(b);
“Debt Notice”	means a notice issued by the PSA as contemplated by Condition 2A.4.3.1(f);
“Debt Notice Date”	means the date on which the PSA shall issue the Debt Notice each month as contemplated by Condition 2A.4.3.1(f), being the eighth Business Day in the relevant month;
“Debt Payment”	means a charge payable by a PS Gas Supplier in respect of PS Notified Debt as contemplated by Condition 2A.3.4 and as detailed

	in the applicable Debt Notice;
“Debt Repayment”	means a repayment payable to a PS Gas Supplier in respect of a Recovery as contemplated by Condition 2A.3.4.3(ii) and as detailed in the applicable Debt Notice;
“Designated Network”	means such part(s) of the Licensee’s network as is or are designated from time to time pursuant to the Designation Order;
“Designated Pipe-line Operator”	means a person licensed to convey gas under Article 8(1)(a) of the Order through the Postalised System, including the Licensee;
“Designated Pipe-line Operators Agreement”	shall have the meaning ascribed to that term in Condition 2A.6.2.1;
“Designation Date”	means the date specified in a Designation Order on which any part of the Licensee’s network shall be designated as postalised;
“Designation Order”	means an order made pursuant to Article 59 of the Energy (Northern Ireland) Order 2003 designating gas pipe-lines comprised within the Licensee’s network as being subject to a common tariff;
“Directions”	shall have the meaning ascribed to that term in Condition 2A.3.2;
“Distribution Business”	means, where applicable, a Separate Business of the Licensee which carries on the business of conveyance of gas through distribution pipe-lines and which, with the Authority’s consent, may hold Firm Capacity;
“Due Date”	means the date on which payment of an invoice in respect of any PS Transmission Payment falls due, being the tenth Business Day in the month next after the month in which the relevant invoice was issued and shall be stipulated in the Network Code;
<u>“Entry Point”</u>	<u>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</u>

Designated Pipe-line Operator:

"Entry Point Additional Capacity"

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

"Entry Point Technical Capacity"

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

“Firm Capacity”

means, at any relevant time in respect of a Gas Supplier, capacity (in kWh/day) held at such time by such Gas Supplier on a firm basis in respect of an Exit Point in accordance with the provisions of the Network Code and in respect of a Gas Year (or any part thereof); except that if any Minimum Capacity Value in respect of such period and such Gas Supplier is greater than such held capacity then the Firm Capacity deemed to be held by such Gas Supplier shall be that Minimum Capacity Value but shall not include (i) Daily Capacity or (ii) OS Capacity;

“Forecast Annual Quantity”

shall have the meaning ascribed to that term in Condition 2A.2.3.1(a)(i);

“Forecast Figures”

shall mean such figures as are notified to the Authority under Condition 2A.2.3.1(a) as amended by any notice given by the Authority under Condition 2A.2.3.1(e), or such figures as are determined by the Authority under Condition 2A.2.3.1(g), as appropriate;

“Forecast Postalisation Formulae”

means the formulae set out in Condition 2A.2.5;

“Forecast Postalised Capacity Charge”

means a charge in respect of each kWh/day of Initial Firm Capacity held by the Licensee’s Gas Suppliers in respect of an Exit Point in a

	Gas Year which shall be calculated in accordance with Condition 2A.2.5.2;
“Forecast Postalised Charges”	means a Forecast Postalised Commodity Charge and a Forecast Postalised Capacity Charge;
“Forecast Postalised Commodity Charge”	means a charge in respect of each kWh of gas allocated to the Licensee’s Gas Suppliers for Exit from the Designated Network in a Gas Year which shall be calculated in accordance with Condition 2A.2.5.1;
“Forecast Required Revenue”	as the context requires, shall have the meaning ascribed to that term in the Special Conditions of this Licence;
“Forecast Supplier Quantity”	means the quantity of gas which a Gas Supplier forecasts it will Exit from the Designated Network in a given period, provided that, if in relation to a Gas Supplier such quantity is less than any applicable Minimum Quantity Value, the Forecast Supplier Quantity in relation to such Gas Supplier shall be such Minimum Quantity Value;
“Gas Supplier”	means any person authorised by licence under Article 8 of the Order or by exemption under Article 7 of the Order to supply gas, (including the Licensee as so authorised or exempted) and who is entitled to Exit gas from the Designated Network or any person who is not so authorised, but with the Authority’s consent either: (i) holds Firm Capacity; or (ii) is entitled to Exit gas from the Designated Network as if it were a Gas Supplier, but shall not include the Licensee if and to the extent that it is providing balancing gas in respect of any part of the Postalised System;
“Gas Year”	means the period of time beginning at 06:00 hours on 01 October in any calendar year and ending at 06:00 hours on 01 October in the next succeeding calendar year;
“GS Annual Exit Quantity”	shall have the meaning ascribed to that term in Condition 2A.2.6.3(b);

“GS Firm Capacity”	means the Firm Capacity held by a Gas Supplier in respect of all Exit Points on the Designated Network in a Gas Year multiplied in each case by the aggregate number of months in respect of which such Firm Capacity is held in such Gas Year and divided by 12
“Initial Firm Capacity”	means the total of all Firm Capacity held by the Licensee’s Gas Suppliers in respect of a Gas Year as at the last Business Day of June preceding such Gas Year except the Gas Year commencing 01 October 2004 where Initial Firm Capacity shall mean the total of all Firm Capacity (in kWh/day) in respect of a Gas Year, such figure to be determined by the Authority no later than 30 September 2004;
“Invoice Date”	means the tenth Business Day in a month;
“kWh”	means 3,600,000 joules as defined in ISO 1000-1981(E);
“LIBOR”	means the sterling London Interbank Offered Rate as published in the Financial Times from time to time;
“MDQ”	means the maximum quantity of gas which may be offtaken from an Exit Point by a Gas Supplier in any day in respect of the Firm Capacity held by that Gas Supplier under the Network Code;
“Minimum Capacity Value”	means any minimum quantum of capacity (in kWh/day) in respect of which a PS Gas Supplier is obliged under contract to the Licensee or to any other Designated Pipe-line Operator to pay transmission charges in respect of a Gas Year;
“Minimum Quantity Value”	means any minimum quantity of gas (in kWh) in respect of which a PS Gas Supplier is obliged under contract to the Licensee or to any other Designated Pipe-line Operator to pay transmission charges in respect of a Gas Year or part thereof;
“Monthly Debt Payment Entitlement”	means the entitlement of a Designated Pipe-line Operator in respect of the Net Debt Position in a month, calculated in accordance with Condition 2A.6.1.2(b);
“Monthly Distribution”	has the meaning ascribed in Condition 2A.6.1.4,



“Monthly Entitlements”	means Monthly Postalised Entitlements and Monthly Debt Payment Entitlements;
“Monthly Postalised Capacity Payment”	means an amount to be invoiced monthly by the Licensee to each of its Gas Suppliers in accordance with Condition 2A.2.5.2(b);
“Monthly Postalised Commodity Payment”	means an amount to be invoiced monthly by the Licensee to each of its Gas Suppliers in accordance with Condition 2A.2.5.1(b);
“Monthly Postalised Entitlement”	means the entitlement of a Designated Pipe-line Operator in respect of Monthly Postalised Payments and any Auxillary Payment payable into the PoT Account in a month, calculated in accordance with Condition 2A.6.1.2(a)(i);
“Monthly Postalised Payments”	means Monthly Postalised Commodity Payments and Monthly Postalised Capacity Payments;
“Net Debt Position”	means a balance calculated in respect of a month with reference to PS Notified Debt and Recoveries in accordance with Condition 2A.3.4.3 and in respect of which a Debt Payment or Debt Repayment may be made;
“Non Payment Month”	means a month in which a relevant PS Non-Payment occurred;
<u>“Oversubscription Capacity” or “OS Capacity”</u>	<u>means in respect of a given time, an amount of additional capacity (in kWh/day) (not exceeding the Entry Point Additional Capacity) which is available for allocation on a firm basis or is allocated on a firm basis at an Exit Point or a UC Exit Point for a duration of one Day as a result of the availability of Entry Point Additional Capacity and as determined in accordance with the OS Scheme and the Network Code;</u>
<u>“OS Charging Statement”</u>	<u>has the meaning given in the OS Conditions;</u>
<u>“OS Conditions”</u>	<u>means Condition 2A.2.1.17 to Condition 2A.2.1.27;</u>
<u>“OS Procedures”</u>	<u>has the meaning given to it in the OS Conditions;</u>
<u>“OS Scheme”</u>	<u>has the meaning given to it in the OS Conditions;</u>

"OS Services"

has the meaning given in the OS Conditions;

"PSA Agreement"	shall have the meaning ascribed to that term in Condition 2A.4.1.1;
"PSA Functions"	shall have the meaning ascribed to that term in Condition 2A.4.3.1;
"PS Actual Firm Capacity"	shall have the meaning ascribed to that term in Condition 2A.2.6.2;
"PS Annual Exit Quantity"	shall have the meaning ascribed to that term in Condition 2A.2.6.1;
"PS Forecast Annual Quantity"	shall have the meaning ascribed to that term in Condition 2A.2.5.1;
"PS Forecast Required Revenue (PSFRR)"	means in respect of a Gas Year the sum of all Forecast Required Revenues as such term is defined in each Respective Licence in respect of all Designated Pipe-line Operators in respect of such Gas Year;
"PS Gas Supplier"	means any person who is entitled to exit gas from the Postalised System;
"PS Initial Firm Capacity"	shall have the meaning ascribed to that term in Condition 2A.2.5.2;
"PS Non-Payment"	<p>means:</p> <p>(i) the failure of a PS Gas Supplier to pay into the PoT Account all or part of the PS Transmission Payments due from it by the Due Date, or the clawback by an administrator or liquidator of the amount of any payment (or part of such payment) made into the PoT Account by a PS Gas Supplier in respect of a PS Transmission Payment; or</p> <p>(ii) the amount of PS Transmission Payments which the relevant PS Gas Supplier has failed to pay or the amount which is subject to clawback by an administrator or liquidator</p> <p>as the context requires but shall not apply to any sums due under the Network Code upon termination of a PS Gas Supplier's Accession Agreement in respect of periods after the date of termination;</p>

“PS Notified Debt”	means, at any time, the aggregate of PS Non-Payments, excluding any VAT element, which are at that time or were prior to that time the subject of a notification by a Designated Pipe-line Operator to the PSA as contemplated in Condition 2A.3.4.1 of such Designated Pipe-line Operator’s licence;
“PS Transmission Payments”	means any amount payable by a PS Gas Supplier in respect of the provision of gas conveyance services on the Postalised System under Conditions 2A.2.2.1 (Monthly Postalised Payments); 2A.2.2.2 (Debt Payments); and 2A.2.2.3 (Reconciliation Payments); 2A.2.5.1(c) (Auxiliary Payments) and 2A.2.6.4 (Supplemental Payments) under each Designated Pipe-Line Operator’s Respective Licence;
“Quantity Figures”	shall have the meaning ascribed to that term in Condition 2A.2.3.1(b);
“Quarter”	means each successive three calendar month period in a Gas Year, the first of which shall run from and including 06:00 hours 01 October until 06:00 hours 01 January in that Gas Year; and “Quarterly” shall be construed accordingly;
“Quarterly Exit Quantity”	means the aggregate of Exit Quantities in a Quarter;
“Reconciliation Payment”	means the Capacity Reconciliation Payment and the Commodity Reconciliation Payment;
“Reconciliation Payment Formulae”	means the formulae contained in Condition 2A.2.6.3 in accordance with which Reconciliation Payments shall be calculated;
“Recovery”	means any amount (other than a Debt Payment) paid by or on behalf of a PS Gas Supplier either directly into the PoT Account or to a Designated Pipe-line Operator and subsequently paid by that Designated Pipe-line Operator into the PoT account, in full or partial satisfaction of any PS Notified Debt attributable to that PS Gas Supplier;
“Relevant Charge Date”	shall have the meaning ascribed to that term in Condition 2A.2.5.4;

“Respective Licence”	means in respect of each of the Designated Pipe-line Operators the licence for the conveyance of gas granted to it pursuant to Article 8(1) of the Order or that part of a combined licence relating to the conveyance of gas;
“Second Due Date”	means, in respect of a PS Non-Payment which occurred in a Non-Payment Month, the fifteenth Business Day after the respective Due Date as stipulated in the Network Code;
“Separate Business”	<p>means each of the following businesses of the Licensee (as appropriate):</p> <ul style="list-style-type: none"> <li>(i) the conveyance of gas through a transmission pipe-line pursuant to a licence granted in accordance with Article 8(1)(a) of the Order;</li> <li>(ii) the distribution of gas through distribution pipe-lines pursuant to a licence granted in accordance with Article 8(1)(a) of the Order; and</li> <li>(iii) the supply of gas pursuant to a licence granted in accordance with Article 8(1)(c) of the Order</li> </ul> <p>each taken separately from one another and from any other business of the Licensee or any affiliate or related undertaking of the Licensee;</p>
“Supplemental Payment”	means any sum (whether or not contingent) in addition to aggregate Monthly Postalised Payments which a PS Gas Supplier is committed to pay on an annual basis in respect of transmission through the Postalised System and which is calculated otherwise than on the basis of a minimum quantity of gas or minimum quantum of capacity;
“Supply Business”	means, where applicable, the Separate Business of the Licensee which carries on the business of the supply of gas;

“Termination Payments”	means any amount payable on the termination of a Gas Supplier’s Accession Agreement under the terms of the Network Code;
“Terms of Reference”	means the terms of that name appended to the Network Code which govern the operation of the Credit Committee;
“Total Monthly Payments”	shall have the meaning ascribed to that term in Condition 2A.3.4.3;
“Transit”, “Transiting”	or forms thereof, refers to the conveyance of gas through the Designated Network to another part of the Postalised System;
“Transit Point”	means a point of interconnection between the Designated Network and another pipe-line forming part of the Postalised System;
“Trust and Account Bank Agreement”	means the agreement in the form approved by the Authority and made between the Designated Pipe-line Operators, the Trustee and account bank which governs the operation of the PoT Account;
“Trustee”	shall have the meaning ascribed to that term in Condition 2A.5.1.1;
<u>“UC Exit Point”</u>	<u>shall have the meaning given to it in Condition 3.1 of [this Licence] [the Gas Conveyance Licence granted to Premier Transmission Limited on [date]];</u>
<u>“UC Gas Supplier”</u>	<u>shall have the meaning given to it in Condition 3.1 of [this Licence] [the Gas Conveyance Licence granted to Premier Transmission Limited on [date]];</u>
“Unrecovered Postalisation Payments”	shall have the meaning ascribed to that term in Condition 2A.4.3.1(l);
“VAT Distributions”	means distributions made by the Trustee on the instructions of the PSA from the PoT Account as calculated in accordance with condition 2A.4.3.1 (d);
“Year-End Amount”	shall have the meaning ascribed to that term in Condition 2A.6.1.3;
“Year-End Postalisation Formulae”	means the formulae set out in Condition 2A.2.6;

“Year-End Postalised Capacity Charge”	means a charge applicable to each kWh/day of Firm Capacity held by each Gas Supplier for Exit from any part of the Designated Network in respect of a Gas Year in accordance with Condition 2A.2.6.2;
“Year-End Postalised Charge”	means the Year-End Postalised Capacity Charge and the Year-End Postalised Commodity Charge; and
“Year-End Postalised Commodity Charge”	means a charge applicable to each kWh of gas allocated to each Gas Supplier in respect of an Exit Point during a Gas Year in accordance with Condition 2A.2.6.1.

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

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

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

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

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

For the avoidance of doubt:

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

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

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

- 2A.2.1.1 In respect of the Gas Year commencing on or after the Designation Date and each Gas Year or part of a Gas Year thereafter for so long as and to the extent that a Designation Order is and remains in force in respect of all or part of the network, the Licensee shall be subject to the provisions of this Part 2A.
- 2A.2.1.2 The Licensee shall require all of its Gas Suppliers to make all payments in settlement of PS Transmission Payments, Termination Payments and all Recoveries into the PoT Account. For the avoidance of doubt, PS Transmission Payments shall include any relevant Termination Payments payable in respect of PS Transmission Payments relating to the Gas Year in which termination occurs.
- 2A.2.1.3 The Licensee shall pay all sums which it receives directly from, or on behalf of, any of its Gas Suppliers in respect of PS Transmission Payments and Recoveries into the PoT Account.
- 2A.2.1.4 Where the Licensee has a Distribution Business and/or a Supply Business it shall for the purposes of this Condition 2A deal with such Distribution Business and/or Supply Business as if each such Separate Business were a third party Gas Supplier, including but not limited to providing or procuring forecasts relating to each such Separate Business, issuing invoices to each such Separate Business relating to PS Transmission Payments and maintaining appropriate records of all dealings with each such Separate Business.
- 2A.2.1.5 As used in this Condition ~~2A.2 and in Conditions 2A.1.6 to 2A.1.16:~~
- (a) **"Day", MDQ, and "PS Code Charges"** have the respective meanings given in the Network Code and / or (as the context requires) in the Network Codes of the other Designated Pipe-line Operators;
  - (b) **"Gas Year 2011 / 12"** means the Gas Year which commenced on 1 October 2011;



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

2A.2.1.6 The Licensee shall offer:

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

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

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

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

- (h) it shall be conclusively presumed that the amounts payable to the Licensee in respect of the charges described in Condition 2A.2.1.9 (and the amounts payable in respect of the like charges described in the corresponding Condition of the Respective Licences of the other Designated Pipe-line Operators) do not

constitute PS Transmission Payments and are not to be paid into the PoT Account;

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

2A.2.1.8 The following provisions shall also apply:

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

Licensee shall pay all sums which it receives directly from, or on behalf of, any of its Gas Suppliers in respect of such charges into the PoT Account; and

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

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

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

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

- 2A.2.1.11 Nothing in this Licence shall prejudice the right of the Licensee to impose on and recover from any Gas Supplier to whom it provides the STC / VRF Services or OS Services any PS Code Charges which are payable by that Gas Supplier in respect of the STC / VRF Services or OS Services pursuant to the Network Code.
- 2A.2.1.12 Notwithstanding any Condition of this Licence which may otherwise prohibit it from doing so, the Licensee shall apply charges in respect of the STC / VRF Services in accordance with the STC / VRF Conditions and the relevant provisions of the Network Code and (if and to the extent such would otherwise would be the case) the application of such charges shall not constitute a contravention of any of the Conditions of this Licence. The Conditions of this Licence (other than the STC / VRF Conditions) shall accordingly be read and given effect to accordingly.
- 2A.2.1.13 For the avoidance of doubt, the charges described in Condition 2A.2.1.9 shall not be subject to reconciliation or other adjustment on any ground following the end of a Gas Year (including the ground that forecast costs or other amounts differ from the corresponding outturn costs or other amounts).
- 2A.2.1.14 If the aggregate of the MDQs represented by Daily Capacity allocated at Exit Points on the Designated Network in respect of any period of twelve (12) consecutive months exceeds the Threshold Amount (or is forecast by the Licensee to be exceeded in respect of any period of twelve (12) consecutive months) the Licensee may give notice to the Authority stating that the Licensee wishes to secure the making of modifications to this Licence and the Network Code (and to the Respective Licences and Network Codes of other Designated Pipeline Operators) which will have the effect that the amounts payable to the Licensee in respect of such charges are postalised and brought within the regime for postalised charging applicable under the Postalisation Conditions (such modifications being the “required modifications”)
- 2A.2.1.15 The Authority may at any time (and irrespective of whether or not the circumstance described in Condition 2A.2.1.14 has occurred) give notice to the

Licensee stating that the Authority wishes to secure the making of the required modifications.

- 2A.2.1.16 If the Licensee gives notice pursuant to Condition 2A.2.1.14 or the Authority gives notice pursuant to Condition 2A.2.1.15, the Licensee shall co-operate with the Authority in taking and implementing the steps which are necessary in order to secure the making of the required modifications.

Capacity increase through oversubscription and buy back scheme

- 2A.2.1.17 The Licensee shall, in co-operation and conjunction with every other Designated Pipe-line Operator, and following consultation with such interested parties as the Licensee considers likely to be affected, by no later than [insert date] prepare and submit for approval to the Authority arrangements for the Oversubscription and Buy-Back of capacity, to be known as the OS Scheme.

- 2A.2.1.18 If the Authority does not approve the OS Scheme submitted to it, the Authority may issue a direction requiring the Licensee and every other Designated Pipe-line Operator to make such modifications to the OS Scheme which have been submitted to it as are specified in the direction.

- 2A.2.1.19 The Licensee shall implement and comply with the OS Scheme.

- 2A.2.1.20 The OS Scheme shall:

- (p) set out the circumstances in which (and the basis on which) the Licensee will:
  - (i) offer to allocate, and allocate, OS Capacity;
  - (ii) offer to purchase, and purchase, Buy-Back Capacity,collectively referred to as the “OS Services”;
- (q) set out the methodology for determining the Entry Point Additional Capacity and the amount of OS Capacity that may be offered at a given time in respect of a given Exit Point [and/or UC Exit Point];

- (r) include a charging methodology statement which sets out the methodology for determining the charges for the provision of OS Services (the “OS Charging Statement”);
  - (s) include provisions setting out the basis on which (and times at which) the revenues received and payments made in respect of the provision of OS Services are to be apportioned, such provisions to include:
    - (i) the definition of net revenues by reference to which such apportionment is to be made;
    - (ii) the proportions as determined by the Authority (from time to time) which shall apply to the apportionment of the net revenues, received in respect of the provision of the OS Services, between (i) the Licensee and any other Designated Pipe-line Operator, and (ii) Gas Suppliers, PS Gas Suppliers and the UC Gas Supplier; and
    - (iii) the timing of such payments following apportionment; and
  - (t) comply with the requirements of point 2.2.2 of Annex 1 to the EC Regulation.
- 2A.2.1.21 The processes and procedures to be adopted for the purposes of implementing the OS Scheme, allocating OS Capacity and purchasing Buy-Back Capacity shall be set out in the Licensee’s Network Code (the “OS Procedures”).
- 2A.2.1.22 The Licensee shall not impose or make payments of (as the case may be ) charges in respect of the provision of OS Services which are applicable at the relevant time of provision, other than as set out in (or as determined in accordance with) the OS Charging Statement.
- 2A.2.1.23 Without limiting Conditions 2A.2.1.8(a) and (b) the charges referred to in Condition 2A.2.1.22 shall, in respect of a Gas Year, not be subject to reconciliation or other adjustment on any ground.
- 2A.2.1.24 The Licensee shall not allocate OS Capacity (or purchase any Buy-Back Capacity) other than in accordance and in compliance with the OS Scheme and the Network Code.

2A.2.1.25 The Licensee shall:

- (a) not make any changes to the OS Scheme (including the OS Charging Statement) without the prior written approval of the Authority;
- (b) in cooperation and conjunction with other Designated Pipe-line Operators, make such changes to the OS Scheme as are set out in any direction issued, to the Licensee and other Designated Pipe-line Operators, by the Authority;
- (c) publish the most up to date and approved OS Scheme in a manner that will bring it to the attention of interested parties and provide a copy on request to any person.

2A.2.1.26 In applying or giving effect to the Conditions in this Part 2A (but without limiting Conditions 2A.2.1.8(a) and (b)) it shall be conclusively presumed that:

- (a) the amounts payable to the Licensee for the allocation of OS Capacity (and the amounts payable to any other Designated Pipe-line Operator for the allocation of capacity which is defined as OS Capacity in the Respective Licence of such Designated Pipe-line Operator), do not constitute PS Transmission Payments and are not to be paid into the PoT Account; and
- (b) any OS Capacity allocated pursuant to the Network Code (and / or, as the context requires, the Network Code of any other Designated Pipe-line Operator) in accordance with the OS Scheme does not constitute (and shall not be taken into account in any calculation of) Actual Firm Capacity, Firm Capacity, GS Firm Capacity, Initial Firm Capacity or PS Initial Firm Capacity.

2A.2.1.27 The Licensee shall, notwithstanding any other contrary provision in any of the Conditions of this Licence, apply charges for OS Capacity allocated (and pay for any Buy-Back Capacity bought) in accordance with the OS Scheme and the relevant provision of the Licensee's Network Code and (if and to the extent it would otherwise would be the case) the application of such charges shall not constitute a contravention of any of the Conditions of this Licence.

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

- 2A.2.2.1 Subject to Condition 2A.2.2.5, the Licensee shall charge each of its Gas Suppliers in respect of the Exit of gas from, and holding of capacity on, the Designated Network the Monthly Postalised Payments in respect of each month or part thereof in a Gas Year in accordance with the terms of this Licence and the applicable provisions of the Network Code.
- 2A.2.2.2 The Licensee shall charge each of its Gas Suppliers any Debt Payment payable by them in accordance with any Debt Notice; and shall reduce any relevant invoice in respect of Monthly Postalised Payments by the amount of any Debt Repayment in accordance with any Debt Notice in each case in accordance with the terms of this Licence and the applicable provisions of the Network Code.
- 2A.2.2.3 On or before the 10<sup>th</sup> Business Day in December following the end of each Gas Year in respect of which the Licensee has charged Monthly Postalised Payments to a Gas Supplier pursuant to Condition 2A.2.2.1 the Licensee shall, subject to Condition 2A.2.2.5, charge to such Gas Supplier any Supplemental Payment, and charge or repay (as appropriate) to such Gas Supplier a Commodity Reconciliation Payment and a Capacity Reconciliation Payment applicable in respect of that Gas Year calculated in accordance with the Reconciliation Payment Formulae in Condition 2A.2.6.3.
- 2A.2.2.4 Unless the Authority otherwise expressly consents in writing the Licensee shall apply no charge on the Postalised System other than the PS Transmission Payments or as otherwise permitted under the Licence or the Network Code.
- 2A.2.2.5 The Licensee shall acknowledge that each PS Gas Supplier's obligation to pay PS Transmission Payments shall be consideration for the allocation by the Licensee to such PS Gas Supplier, their nominee or agent (such nominee or agent to be a PS Gas Supplier or otherwise approved by the Authority) of both Firm Capacity at a Transit Point on the Designated Network and the relevant quantity of gas for exit at a Transit Point for the purpose of the Transit of such gas.
- the Designated Network.



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

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

#### **3.1.1 General**

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

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

- (a) In respect of any Gas Year (other than, in the case of (i) below, the Gas Year which commenced on 1<sup>st</sup> October 2004) for so long as a Designation Order is and remains in force in respect of all or any part of the Network, the Licensee shall ensure that:
  - (i) its Forecast Required Revenue to be notified to the Authority and the PSA in accordance with Conditions 3.1.2(b) and 3.1.2(d) shall be calculated in accordance with Condition 3.1.3; and

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

of Actual Required Revenue and shall, at the same time, provide to the Authority such explanations and supporting information as may be reasonably necessary to permit the Authority to verify that the Actual Required Revenue has been calculated in accordance with the formula set out in Condition 3.1.4.

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

### **3.1.3 The Forecast Required Revenue**

- (a) The Forecast Required Revenue of the Licensee in respect of the Gas Year which commenced on 1 October 2004 shall be an amount to be determined by the Authority and notified to the Licensee on or before the date that the Licence comes into full force and effect.
- (b) The Forecast Required Revenue of the Licensee in respect of each subsequent Gas Year<sub>t</sub> (other than any Gas Year which is a Post Finance Gas Year) shall be:
  - (i) the Licensee's forecast of (aa) (bb) and (cc) below, namely:-
    - (aa) the Fixed Amount for such Gas Year<sub>t</sub> (which is represented by the term  $A_t$  in the formula set out in Condition 3.1.4(b)) plus
    - (bb) the amount of the Eligible Pass-Through Costs for such Gas Year<sub>t</sub> (which is represented by the term  $B_t$  in the formula set out in Condition 3.1.4(b)); plus
    - (cc) the Postalisation Adjustment for such Gas Year<sub>t</sub> (which is represented by the term  $C_t$  in the formula set out in Condition 3.1.4(b))

Minus

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

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

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

(ff) the UC Revenues for such Gas Year<sub>t</sub> derived from charges calculated in accordance with Condition 3.1.8 (which is represented by the term F<sub>t</sub> in the formula set out in Condition 3.1.4(b)); plus

(gg) the STC / VRF Revenues for such Gas Year (which is represented by the term G<sub>t</sub> in the formula set out in Condition 3.1.4(b)).

(hh) the Licensee OS Revenues Share for such Gas Year (which is represented by the term H<sub>t</sub> in the formula set out in Condition 3.1.4(b)).

### 3.1.4 Actual Required Revenue

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

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

$$ARR_t = (A_t + B_t + C_t + Z^*(S_t)) - (D_t + E_t + F_t + G_t + \underline{H_t}).$$

### 3.1.5 Definition of Formula Terms

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

t = denotes a Gas Year;

- $t-1$  = denotes the Gas Year which immediately precedes the Gas Year for the purposes of which any forecast or calculation is made in accordance with this Condition 3.1 (and the subscript  $t-2$  shall be construed accordingly);
- $A_t$  = in respect of any Gas Year, the Fixed Amount for such Gas Year;
- $B_t$  = in respect of any Gas Year, the Eligible Pass-Through Costs for such Gas Year;
- $C_t$  = in respect of any Gas Year, the Postalisation Adjustment for such Gas Year;
- $S_t$  = in respect of any Gas Year, the Approved Surplus determined by the Authority in accordance with Condition 3.1.6 and notified by the Authority to the Licensee on or before the eighth Business Day in November following the end of such Gas Year;
- $Z_t$  = in respect of any Gas Year: and
- (a) the part of  $S_t$  which is not attributable to the value ascribed to that term by the  $H_t$  term embodied in the formula in Condition 3.1.6 a factor between 0 to 1, as determined by the Authority for such Gas Year and notified by the Authority to the Licensee on or before the eighth Business Day in November following the end of such Gas Year; and
- (b) the part of  $S_t$  which is attributable to the value ascribed to that term by the  $H_t$  term embodied in the formula in Condition 3.1.6, a factor equal to 1;
- $D_t$  = in respect of any Gas Year, the Ratio Account Credit for such Gas Year;
- $E_t$  = in respect of any Gas Year, the Insurance Recoveries for such Gas Year;
- $F_t$  = in respect of any Gas Year, the UC Revenues for such Gas Year.
- $G_t$  = in respect of any Gas Year, the STC / VRF Revenues for such Gas Year
- $H_t$  = in respect of any Gas Year, the Licensee OS Revenues Share for such Gas Year.

### 3.1.6 Approved Surplus Determination

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

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

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

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

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

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

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

and;

where  $H_t$  is the Licensee OS Revenues Share for such Gas Year, as calculated in accordance with the relevant provisions of the OS Scheme.

For the avoidance of doubt  $St$  for Gas Year 2004/05 shall equal zero

**(b) Determination of BCO**

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

(aa) the first Business Day of July 2005; and

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

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

(ii) The Licensee shall provide such further information or explanation and access to documents and records as the Authority reasonably requires for the purpose of verifying the Controllable Operational Expenditure estimates (including, without limitation, all figures, costs, estimates and assumptions comprised in or underlying those estimates) in accordance with Condition 3.1.6(b)(i).

(iii) The Authority shall, no later than 28 days following its verification of the Controllable Operational Expenditure estimates in accordance with Condition 3.1.6(b)(i), notify to the Licensee the amount of BCO (being the sum of the amount of each item of Controllable Operational Expenditure determined to be reasonable by the Authority) that it considers appropriate for each of the next three Gas Years. The Authority shall provide details of any changes that it has made to the Licensee's estimates of the Controllable Operational Expenditure

and the reasons for them and give the Licensee an appropriate period (being not less than fourteen days) to comment on them.

- (iv) After consideration of the Licensee's comments referred to in Condition 3.1.6(b)(iii), the Authority shall notify the Licensee in writing of its determination of the amount of BCO for each of the next three Gas Years, which, for the avoidance of doubt, may be the same as the amount that the Authority notified to the Licensee in accordance with Condition 3.1.6(b)(iii).

#### Revision of BCO

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

#### (c) **Determination of ACO**

- (i) The Licensee shall, no later than the first Business Day of November following the end of each Gas Year, submit to the Authority, in a format to be approved by the Authority, a statement detailing the amounts of Controllable Operational Expenditure actually incurred by the Licensee in that Gas Year.

- (ii) The Licensee's ACO for each Gas Year shall be the aggregate of the actual amounts of Controllable Operational Expenditure referred to in the statement submitted in accordance with Condition 3.1.6(c)(i).

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

For the purposes of this Condition 3.1.6, "Controllable Operational Expenditure" shall comprise those categories of expenditure that are properly within the control of the management of the Licensee, such categories to be agreed in writing between the Licensee and the Authority no later than the first Business Day of June 2005 and may be amended by the agreement of the Authority and the Licensee from time to time. In the absence of agreement between the Licensee and the Authority, the Authority shall determine the categories of expenditure that comprise Controllable Operational Expenditure and notify the Licensee of its decision in writing.

3.1.6A In respect of each Gas Year for which the Licensee has an obligation pursuant to the OS Scheme to make a payment during the Gas Year, the Licensee shall make such payment at the time prescribed and otherwise in accordance with the OS Scheme.

**3.1.7 Authority Direction and Definitions**

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

3.1.7.2 As used in this Licence:-

"UC Revenues" means, in respect of any Gas Year, the cash amounts actually received (or in the context requires forecast to be received) by the Licensee from business upstream of the Northern Ireland high water mark in that Gas Year, in respect of the



charges calculated in accordance with Condition 3.1.8 after deduction of value added tax (if any) and any other taxes based directly on the amounts so received;

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

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

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

where:

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

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

$\text{CPI}_{t-2}$  = the absolute value of the General Index of Consumer Prices – All items (1996 = 100) as published by the Office of National Statistics

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

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

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

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

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

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

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

"**Bord Gais**" means Bord Gais Eireann or any other person or entity (whether or not possessing independent legal personality) which for the time being or from time to

time constructs or procures the construction of and/or operates (or which represents its intentions so to do) the Bord Gais Network;

**"Bord Gais Network"** means the pipeline constructed, owned or controlled by or on behalf of Bord Gais from a point at or near Moffat to a point at or near Twynholm;

**"Licensee Predictable Operating Costs"** means costs and expenses incurred by the Licensee or any affiliate thereof in or associated with the following matters relating to the operation of the Economic Network:

- (a) inspection of the Economic Network, the Economic Network backfill material and the Economic Network route (or any parts thereof) by aerial, subsea or any other method;
- (b) on line inspection of the pipe-line interior;
- (c) measures for protection against corrosion including but not limited to the checking of and confirmation that such measures are functioning correctly;
- (d) routine testing and test operation of all valves fixtures, fittings and instrumentation comprised in the Economic Network;
- (e) routine or recommended pressure testing and certification of the Economic Network as required under legislation, standards or applicable recommendations current at February 1992;
- (f) liaison with landowners; and
- (g) all internal and overhead costs and expenses of the Licensee (whether or not containing a profit element) of or in any way associated with the performance, management, procuring, arranging or supervision of any of the items or matters referred to in paragraphs (a) to (f) of this definition.

For the avoidance of doubt, such costs and expenses shall be assessed on a basis consistent with applicable external man-hour rates of charge from time to time of the Licensee,

but shall exclude any such costs or expenses relating to the Bord Gais Network; and

**"Licensee Unpredictable Operating Costs"** means

- (a) all costs and expenses which have been reasonably and properly incurred by the Licensee or any affiliate thereof in operating, repairing or maintaining the Economic Network and any land or substrata on, in, under or over which it is laid other than the Licensee Predictable Operating Costs and excluding any such costs or expenses relating to the Bord Gais Network; and
- (b) to the extent to which they constitute Licensee Unpredictable Operating Costs for the purposes of paragraph (a) of this definition, any amounts that the Network Code shall specify as constituting Licensee Unpredictable Operating Costs.

**"Predecessor Conveyance Licence"** means the licence to convey gas dated 6<sup>th</sup> September 1996 granted to the Licensee under Article 8(1) of the Order, which was revoked by the Department at the time of grant of the Licence.

**"STC / VRF Revenues"** means in respect of any Gas Year, the cash amounts actually received by the Licensee for the provision of the STC / VRF Services in that Gas Year, after deduction of value added tax (if any) and any other taxes based directly on the amounts so received.

**"OS Revenues"** means, in respect of any Gas Year, the net revenues received in respect of the provision of the OS Services as determined in accordance with the OS Scheme;"

**"Licensee OS Revenues Share"** means, in respect of any given Gas Year, the part of

the OS Revenues actually received and retained in cash by the Licensee during such Gas Year out of the proceeds of OS Revenues, after deduction of value added tax (if any) and any other taxes payable by the Licensee on the amounts so received and in accordance with the relevant provision of the OS Scheme.

“OS Capacity” and “Buy-Back Capacity” have the meanings given to them in Condition 2A.1.1)

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

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

### 3.1.8 UC Charges

The Forecast UC Commodity Charge shall be calculated by the PSA in accordance with Condition 3.1.8.1 (a) and a Forecast UC Capacity Charge shall be calculated by the PSA in accordance with Condition 3.1.8.2 (a).

#### 3.1.8.1 Forecast UC Commodity Charge

(a) The Forecast UC Commodity Charge to be charged to each person (a “UC Gas Supplier”) shipping gas to an exit point (a “UC Exit Point”) from the Economic Network upstream of the Northern Ireland high water mark in respect of each unit of gas allocated to such UC Gas Supplier under the Network Code in respect of each UC Exit Point shall be calculated by the PSA in accordance with the following formula:

$$\text{UCComC} = \frac{[(\text{PSFRR} - \text{FRR}) + \text{FRRU}] * \text{Commodity Percentage}}{(\text{PS Forecast Annual Quantity} + \text{UC Forecast Annual Quantity})}$$

where:

$FRRU =$  the Licensee's Forecast Required Revenue including UC Revenues,  
which shall be the aggregate of the Licensee's  
forecast of the amounts referred to in Condition  
3.1.3(B)(1)(aa),(bb) and (cc) minus the Licensee's  
forecast of the amounts referred to in Condition  
3.1.3(B)(2)(dd), (ee), (gg) and (hh)

$UCComC =$  the Forecast UC Commodity Charge;

$UC\ Forecast\ Annual\ Quantity =$  the Licensee's forecast total quantity of gas,  
in respect of a Gas Year which all UC Gas Suppliers  
will exit from UC Exit Points.

- (b) The Monthly UC Commodity Payment shall be calculated in accordance with the following formula in respect of gas allocated to each UC Gas Supplier at a UC Exit Point in respect of the previous month, the components of which shall be applied in respect of month (“m”) in Gas Year (“t”) and shall be payable by UC Gas Supplier (“s”):

$$MUCComP_s = UCComC \times MUCEQ_s$$

where:

$MUCComP_s =$  the Monthly UC Commodity Payment for UC Gas Supplier s;

$UCComC =$  the Forecast UC Commodity Charge applicable in respect of  
Gas Year<sub>t</sub>;

$MUCEQ_s =$  the total quantity of gas, allocated to UC Gas Supplier s in  
respect of a UC Exit Point in respect of month m.

### STC/VRF services at Stranraer now appears following 3.1.8.3

#### 3.1.8.2 Forecast UC Capacity Charge

- (a) The Forecast UC Capacity Charge to be charged to each UC Gas Supplier in respect of each unit of firm capacity held by each UC Gas Supplier in respect of a UC Exit Point shall be calculated by the PSA in accordance with the following formula:

$$\text{UCCapC} = \frac{[(\text{PSFRR}-\text{FRR})+\text{FRRU}] \times \text{Capacity Percentage}}{\text{PS Initial Firm Capacity} + \text{UC Firm Capacity}}$$

where:

“UCCapC” = the Forecast UC Capacity Charge;

“UC Firm Capacity” = at any relevant time in respect of a UC Gas Supplier, capacity held by such UC Gas Supplier on a firm basis in respect of a UC Exit Point in accordance with the provisions of the Network Code and in respect of a Gas Year (or any part of a Gas Year);

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

where:

$$\text{MUCCapP}_s = \frac{\text{UCCapC}}{12} \times \text{UCFC}_s$$

12

MUCCapPs = the Monthly UC Capacity Payment;

$UCCapC_t$  = the Forecast UC Capacity Charge applicable in respect of Gas Year<sub>t</sub>; and

$UCFCs_t$  = the UC Firm Capacity held by UC Gas Supplier *s* in respect of Gas Year<sub>t</sub>.

### 3.1.8.3 **Forecast UC Revenue Receivable and Forecast STC and VRF Revenue Receivable**

The Licensee's forecast of UC Revenues in respect of any Gas Year <sub>t</sub> shall be the aggregate of  $(UCComC_t \times UC \text{ Forecast Annual Quantity }_t) + (UCCapC_t \times \text{the UC Firm Capacity held by all UC Gas Suppliers in Gas Year }_t)$ .

The Licensee's forecast of STC / VRF Revenues shall be set at zero. The Licensee shall provide to the Authority such data and information as it has received from Gas Suppliers pursuant to the Network Code concerning their likely usage of Daily Capacity and of the Virtual Reverse Flow Service in such forthcoming Gas Year and their actual usage of Daily Capacity and of the Virtual Reverse Flow Service in any Gas Year which has ended prior to the making of the request). Such data to be provided no later than the last Business Day in June in the case of likely usage of Daily Capacity and of the Virtual Reverse Flow Service in such forthcoming Gas Year, and by the tenth Business Day in November in the case of actual usage of Daily Capacity and of the Virtual Reverse Flow Service in any Gas Year which has ended prior to the submission of the data.

### 3.1.8A **STC / VRF Services at Stranraer**

- (u) Notwithstanding any provision of or in (and, specifically, any definition which is set out in or is incorporated into) the STC / VRF Conditions which might indicate to the contrary, the provisions concerning the calculation and application of charges for the provision of the STC / VRF Services in the STC / VRF Conditions:
  - (i) shall only apply to STC / VRF Services which involve Exit Points on the Designated Network; and



- (ii) accordingly shall not regulate the calculation and application of charges for any provision of STC / VRF Services which involve a UC Exit Point (as defined in Condition 3.1.8.1(a))
- (v) Charges for any provision of the STC / VRF Services which involve a UC Exit Point shall be calculated and applied in accordance with the following provisions of this Condition 3.1.8A, namely;
  - (i) the Licensee shall charge to each UC Gas Supplier (as defined in Condition 3.1.8.1(a)) to whom it allocates Daily Capacity at a UC Exit Point in respect of a given Day an amount (in respect of each kWh / day of such Daily Capacity) equal to the capacity charge per kWh for that Day, as determined pursuant to the charging methodology statement referred to in Condition 2A.2.1.9(a);
  - (ii) the Licensee shall charge to each UC Gas Supplier, in respect of each kWh of gas which is allocated to that UC Gas Supplier at a UC Exit Point in any circumstance in which the UC Gas Supplier's entitlement to the allocation of such gas arises from the utilisation of Daily Capacity, an amount equal to the UCComC (as defined in Condition 3.1.8.1(a)) which is applicable at the time of the allocation;
  - (iii) the Licensee shall charge to each UC gas supplier to whom it makes any provision of the VRF Service in respect of a UC Exit Point, the same charge as is applicable at the time of the provision of the VRF Service, as determined pursuant to the charging methodology statement referred to in Condition 2A.2.1.9(b).
- (w) Nothing in this Licence shall prejudice the right of the Licensee to impose on and recover from any person to whom it makes any provision of the STC / VRF Service which involves a UC Exit Point any Code Charges which are payable by that Gas Supplier in respect of the STC / VRF Services pursuant to the Network Code.

- (x) For the avoidance of doubt, the charges described in this Condition 3.1.8A shall not be subject to reconciliation or other adjustment on any ground following the end of a Gas Year (including the ground that forecast costs or other amounts differ from the corresponding outturn costs or other amounts).
- (y) As used in this Condition 3.1.8A:
  - (i) the expression "STC / VRF Conditions" has the meaning ascribed to it in Condition 2A.2.1.6; and
  - (ii) other capitalised expressions which are defined in the STC / VRF Conditions shall have the respective meanings ascribed to them in the STC / VRF Conditions.

### 3.1.8B OS Services at Stranraer

- (a) Notwithstanding any provision of or in (and, specifically, any definition which is set out in or is incorporated into) the OS Conditions or the OS Scheme, which might indicate to the contrary, the provisions concerning the calculation and application of charges (whether payable by or to the Licensee) for the provision of the OS Services:
  - (i) shall only apply to OS Services which involve Exit Points on the Designated Network; and
  - (ii) accordingly shall not regulate the calculation and application of charges for any provision of OS Services which involve a UC Exit Point (as defined in Condition 3.1.8.1(a))
- (b) Charges for any provision of OS Services which relate to or involve a UC Exit Point shall be calculated and applied in accordance with the following provisions of this Condition 3.1.8B namely:
  - (iii) the Licensee shall charge to each UC Gas Supplier (as defined in Condition 3.1.8.1(a)) to whom it allocates OS Capacity at a UC Exit Point in respect of a given Day an amount (in respect of each kWh / day of such OS Capacity) equal to the capacity charge kWh for Daily

Capacity for that Day, as determined pursuant to the charging methodology statement referred to in Condition 2A.2.1.9(a)

- (iv) the Licensee shall charge to each UC Gas Supplier, in respect of each kWh of gas which is allocated to that UC Gas Supplier at a UC Exit Point in any circumstance in which the UC Gas Supplier's entitlement to the allocation of such gas arises from the utilisation of OS Capacity, an amount equal to the UCComC (as defined in Condition 3.1.8.1(a)) which is applicable at the time of the allocation;
- (v) the Licensee shall pay to UC Gas Suppliers from whom the Licensee purchases Buy-Back Capacity such amounts as are determined pursuant to the charging methodology statement referred to in Condition 2A.2.1.20(c);.
- (d) For the avoidance of doubt, the charges described in this Condition 3.1.8B shall, in respect of a Gas Year, not be subject to reconciliation or other adjustment on any ground following the end of a Gas Year.
- (e) As used in this Condition 3.1.8B, “OS Scheme”, “OS Services”, “OS Capacity”, and “Buy-Back Capacity” shall have the meaning given to them in the OS Conditions (as defined in Part 2A).

### 3.1.9 **Supplemental Payment**

The Licensee shall charge a Supplemental Payment to the Gas Supplier supplying gas to Premier Power Limited and who had a contract in place with Premier Power Limited at the date of the Grant (the “Committed Supplier”) in respect of each Gas Year ending with the Gas Year 2010/2011 if at the end of any such Gas Year:

$$\text{CSCP} \times \frac{\text{ARR}}{\text{PSARR}} < \left[ \{ (\text{AUOC} \times (1 - (\text{cap}))) + ((\text{ARR} - \text{AUOC}) \times ((1 - F) - (\text{cap}))) \} - \text{OTHCP} \times \frac{\text{ARR}}{\text{PSARR}} \right]$$

and that Supplemental Payment shall be calculated as follows:

$$\frac{\{(AUOC \times (1 - (cap))) + ((ARR - AUOC) \times ((1 - F) - (cap)))\} - (OTHCP + CSCP) \times \frac{ARR}{PSARR}}$$

where:

CSCP = the total of the Monthly Postalised Commodity Payments paid by the Committed Supplier during the Gas Year;

AUOC = the total of the Licensee Unpredictable Operating Costs incurred by the Licensee in the Gas Year;

OTHCP = the total of the Monthly Postalised Commodity Payments paid by all PS Gas Suppliers other than the Committed Supplier during the Gas Year;

F = the value in respect of the Gas Year taken from the following table:

Gas Year	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011
F	0.0895	0.0931	0.0947	0.0963	0.0976	0.0987	0.0996

(cap) = the Capacity Percentage.

### 3.1.10 Allowed Revenue after Final Repayment Date

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

- (i) a proposal as to the formula to be used for calculation of its allowed revenue recovery from conveyance charges (the "Total Allowed

Transmission Revenue") in respect of Post Finance Gas Years (as defined in Condition 3.1.10.2) (the "Proposed Formula"); and

- (ii) a forecast of the amount of its Total Allowed Transmission Revenue in respect of the first five Post Finance Gas Years (the "Forecast");

3.1.10.2 The Licensee shall, in setting its charges for the conveyance of gas for each Gas Year which starts after the Final Repayment Date (such Gas Years being "Post Finance Gas Years" and the expression "Finance Gas Years" shall be construed accordingly) shall do so in accordance with such arrangements as are agreed by the Authority having regard to the principle that the Licensee shall be entitled to receive by way of conveyance charges:-

- (a) the costs incurred by the Licensee deemed necessary or appropriate by the Authority in administering, maintaining and operating the Economic Network;
- (b) the costs incurred by the Licensee deemed necessary or appropriate by the Authority to expand, reinforce and renew the Economic Network;
- (c) during the Post Finance Gas Years which end prior to the date on which an expert appointed by the Licensee (the "Expert") anticipates that the required decommissioning works as described below will be commenced, revenues which (when aggregated with any revenues recovered by it during Finance Gas Years in respect of the costs of decommissioning pursuant to the Authority Direction) are sufficient to fund the expected costs (as determined by the Expert) of carrying out such works of decommissioning of the Economic Network as are required to be carried out pursuant to applicable law and the contractual obligations of the Licensee. The remit of the Expert shall be the assessment of the nature and extent of the decommissioning works which are required and the likely costs of those decommissioning works; and
- (d) the aggregate of the amounts calculated under (a), (b) and (c) above will be reduced by the amount of any free surplus cash (excluding, for the avoidance

of doubt, any cash which is held in a fund or reserve for the purpose of financing future costs or decommissioning costs) available to the Licensee for payment of the costs referred to in (a), (b) and (c) above.

3.1.10.3 The Licensee shall promptly provide such further information or explanation and access to documents and records as the Authority reasonably requires for the purpose of verifying that the Proposed Formula and the Forecast submitted to it by the Licensee comply with the principles set out in Condition 3.1.10.2.

3.1.10.4 The Authority may, following review of the Proposed Formula and the Forecast, by written notice (including, where approval has been given by the Authority pursuant to Condition 3.1.10.4(ii), details of the amendments made by the Authority and the reasons for them) to the Licensee:

- (i) approve the Proposed Formula and the Forecast. The Proposed Formula shall then be the basis for calculating Total Allowed Transmission Revenue; or
- (ii) approve the Proposed Formula and the Forecast with such amendments as it deems necessary or appropriate to ensure compliance with the basis of calculation set out in Condition 3.1.10.2.

3.1.10.5 In the event that the Authority gives its approval under Condition 3.1.10.4(ii) (in this Condition 3.1.10.5, the “Approval”):-

- (i) the Approval shall not have effect for 28 days commencing with the date of the notice of the Approval;
- (ii) the Licensee may within 28 days of the date of the notice of the Approval request the Authority by written notice to the Authority (a "disapplication notice"), not to apply the provisions of Condition 3.1.10.4(ii) in which event the Approval shall not apply;

- (iii) unless within three months of the date of the disapplication notice the Authority makes a reference to the Competition Commission under Article 15 of the Order relating in whole or part to a modification of this Condition 3.1.10, then the Proposed Formula and the Forecast (in the form originally proposed by the Licensee under Condition 3.1.10.1) shall apply as if approved by the Authority pursuant to 3.1.10.4(i);
- (iv) in the event of such a reference to the Competition Commission under Condition 3.1.10.5(iii), and if the Competition Commission finds that the continuation of this Condition 3.1.10 without modification operates or may be expected to operate against the public interest, then until this Licence shall be modified in accordance with the Order as a result of that reference and any findings by the Competition Commission, then the Proposed Formula and the Forecast (in the form originally proposed by the Licensee under Condition 3.1.10.1) shall apply as if approved by the Authority pursuant to 3.1.10.4(i).

#### **3.1.11 Termination Payments**

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

#### **3.1.12 Payments for Previous Use of Economic Network**

The Licensee shall be entitled to invoice and receive (or, if already invoiced prior to the grant of the Licence, to receive), pursuant to the Licence and the Network Code, any charge or other amount in respect of the conveyance of gas through the Economic Network at any time prior to the revocation of the Predecessor Conveyance Licence and which (if the Predecessor Conveyance Licence had remained in full force and

effect in accordance with its terms) the Licensee would have been entitled to invoice and receive (or, as the context requires, to receive) after the time of revocation of the Predecessor Conveyance Licence in accordance with the Predecessor Conveyance Licence and the Network Code.