

Annex 4: PART 6: PRICE CONTROL CONDITIONS AFTER RE-FINANCING

- Proposed deletions are indicated by text which has been struck through.
- Proposed additions are indicated by red text highlighted in yellow.

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PART 6: PRICE CONTROL CONDITIONS AFTER RE-FINANCING

Condition 6.1: General Provisions, Definitions and Reporting

6.1.1 General Provisions

- (a) This Part 6 shall be subject to the provisions of Part 5, and shall:
- (i) not have effect until the time and date which is specified in any direction issued by the Authority under Condition 5.1.2;
 - (ii) where such a direction is issued, have effect at that time and date and at all times thereafter.
- (b) Without prejudice to any other provisions of the Licence, the Authority shall be entitled on reasonable prior notice to inspect those records of the Licensee reasonably sufficient to enable it to satisfy itself as to the matters which are the subject of this Part 6.
- (c) The Licensee shall, in submitting or calculating any forecasts or estimates required to be submitted or calculated under or in accordance with this Part 6, 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.

6.1.2 Definitions

(a) Save where this Part 6 otherwise provides, words and expressions used in this Part 6 which are defined in another Part of the Licence shall have the same meaning as is given to them in that Part.

(b) In this Part 6, the following words and phrases shall have the meanings given to them below:

Actual Controllable Capital Expenditure	has the meaning given to that term in Condition 6.2.1(e)(i).
Actual Controllable Operating Expenditure	has the meaning given to that term in Condition 6.10.3(b).
Actual Uncontrollable Capital Expenditure	has the meaning given to that term in Condition 6.2.1(e)(ii).
Actual Capital Expenditure	means the Actual Controllable Capital Expenditure plus the Actual Uncontrollable Capital Expenditure.
Adverse Regulatory Event Period	means the period starting on the date on which an Adverse Regulatory Event occurs and ending on the date on which such Adverse Regulatory Event is waived or remedied in accordance with the provisions of the Finance Documents or (if another Adverse Regulatory Event is outstanding on such latter date) on the date on which such other Adverse Regulatory Event is so waived or remedied.
Adverse Regulatory Event Year	means: (a) a Gas Year; (i) which immediately succeeds a Gas Year part or all of which coincides with an Adverse Regulatory Event Period which is continuing at the date (the "charge setting date") on which the Licensee delivers its calculation of Forecast Required

	Revenue to the Authority (or publishes its statement of conveyance charges) for such immediately succeeding Gas Year pursuant to the Licence (and, in calculating the Forecast Required Revenue for such Gas Year, the Licensee shall assume that the Ratio Account Credit in respect of such Gas Year is zero); and (ii) in respect of which the Licensee gives notice to the Authority prior to the charge setting date for such Gas Year stating that such Gas Year will be an Adverse Regulatory Event Year, provided that no such Gas Year will be an Adverse Regulatory Event Year unless prior to the giving of such notice the Licensee has consulted with the Authority as to the events or other circumstances which (if such notice is given) will cause such Gas Year to be an Adverse Regulatory Event Year; or (b) any Gas Year (other than a Gas Year referred to in (a)): (i) part or all of which coincides with an Adverse Regulatory Event Period; and (ii) in respect of which the Licensee gives notice to the Authority prior to the end of such Gas Year stating that such Gas Year will be an Adverse Regulatory Event Year, provided that no such Gas Year will be an Adverse Regulatory Event Year unless prior to the giving of such notice the Licensee has consulted with the Authority as to the events or other circumstances which (if such notice is given) will cause such Gas Year to be an Adverse Regulatory Event Year.
ARE Rectification Gas Year	means a Gas Year in which an Adverse Regulatory Event Period ends.
ARE Suspense Account	has the meaning given to that term in a direction issued in accordance with Condition 6.5.1.

Available Post-ARE Cash	has, in respect of any ARE Rectification Gas Year, the meaning given to that term in a direction issued in accordance with Condition 6.5.1.
Capital Expenditure	means, in respect of the Network and/or any Postalised Distribution Pipelines: (a) expenditure relating to property, plant or equipment that would be recognised as an asset under: (i) International Accounting Standard 16 'Property, Plant and Equipment' (but excluding any attributable interest costs); or (ii) such alternative accounting treatment as may be specified by the Authority in a direction issued by it from time to time; and (b) such other expenditure as may be specified for the purposes of this definition in, or approved by the Authority under, any direction issued by the Authority from time to time.
Capitalised Interest Rate	has the meaning given to that term in Condition 6.5.6.
Capped Sum	has the meaning given to that term in Condition 6.2.2(c).
Compliance Plan	has the meaning given to that term in Condition 6.1.5(c).
Controllable Capital Expenditure	means Capital Expenditure other than Uncontrollable Capital Expenditure.
Controllable Capital Expenditure Estimate	has the meaning given to that term in Condition 6.2.1(a).

Controllable Operating Expenditure	has the meaning given to that term in Condition 6.10.4.
Controllable Operating Expenditure Estimate	has the meaning given to that term in Condition 6.10.2(a).
Cut-Off Date	means the date which falls 30 Months after the First Operational Commencement Date.
Cut-Off Year	means the Gas Year in which the Cut-Off Date falls.
Defaulting DPO	has the meaning given to that term in Condition 6.6.2(a).
Designated Pipeline	means any pipeline designated by the Department as forming part of the postalised pipeline network under Article 59 of the Order.
Designation Order	means the Gas (Designation of Pipelines) Order (Northern Ireland) 2004 (No. 404) and any other Order made at any time by the Department in exercise of the powers conferred on it by Article 59 of the Energy Order.
Determined Controllable Operating Expenditure	has the meaning given to that term in Condition 6.10.2(c).
DPO	means a person licensed to convey gas under Article 8(1)(a) of the Gas Order through the Postalised System, including the Licensee.
DPO Agreement	means the agreement defined as the Designated Pipe-line Operators Agreement in Part 2A of this Licence.

DPO Payment Failure	has the meaning given to that term in Condition 6.6.2(a).
Early Section	means a Section which has been constructed and: (a) in relation to which a gas supplier or gas shipper is able to book capacity, pursuant to the provisions of the Network Code, in respect of a date which is prior to the First Operational Commencement Date; or (b) which the Authority has otherwise, in a direction issued for that purpose, deemed to be operational with effect from a date prior to the First Operational Commencement Date, but such that that Section shall be treated as an Early Section for the purposes of this Part 6 only on and from the date applicable in accordance with paragraph (a) or (b) (as the case may be).
Early Sectional Completion	has the meaning given to that term in Condition 6.5.8.
Eligible Pass-Through Costs	has the meaning given to that term in Condition 6.1.4.
Final Repayment Date	means the date on which the lenders under the Finance Documents (or any agent or trustee on their behalf) confirm to the Licensee that they are satisfied that all the indebtedness owed under the Finance Documents has been irrevocably paid and discharged.
Finance Documents	means each and any document from time to time entered into by the Licensee or any holding company of the Licensee pursuant to which any funding is provided to the Licensee or to any such holding company for the purposes of financing the cost of development of the Network and the Postalised Distribution Pipeline and the payment of a capital contribution to [Name of Phoenix entity] pursuant to arrangements approved by the Authority or for the purpose of the Licensed Business.

Finance Gas Year	has the meaning given to that term in Condition 6.8.1(d).
Financial Closing	means (and shall occur at) the time at which the amount to be drawn down under the Finance Documents, on or about the date on which this Part 6 takes effect, is credited to a bank account of the Issuer.
Fixed Amount	in respect of a Gas Year, has the meaning given in Condition 6.5.1.
Fixed Sum	has the meaning given to that term in Condition 6.2.2(b).
Gas Conveyance Licence	means a licence to convey gas granted under Article 8(1)(a) of the Order in respect of any part of the Postalised System.
Government Agency	means any agency, authority, department, government, legislature, minister, ministry, official or other public person (whether autonomous or not) of, or of the government of, any state or supranational organisation.
Interest Accrued	means the aggregate amount of the interest or other investment return received (on an after tax basis) by the Issuer or the Licensee on the cash deposited or otherwise invested by the Issuer or the Licensee out of amounts drawn down or raised by the Issuer [or the Licensee] under the Finance Documents at Financial Closing during the period from Financial Closing up to (and including) the Cut-Off Date, but excluding that part (if any) of such interest which falls to be deducted from the amount which would otherwise be included in Eligible Pass-Through Costs.
Issuer	means West Transmission Financing PLC (an incorporated company registered in Northern Ireland under number NI644237).
Joint Holding Company	means, at any point in time, a holding company of the Licensee which owns and/or operates (or any one of the subsidiaries of which, other than the Licensee, owns and/or operates) gas

	pipelines or gas plant (excluding the Network) and/or electric lines or electrical plant in Northern Ireland.
Joint Support Company	means, at any point in time, a company which is a subsidiary of a Joint Holding Company and which provides or procures the provision of any services (including finance) to the Licensee and to one or more other subsidiaries of the Joint Holding Company of the nature referred to in the definition of Joint Holding Company.
LIBOR	means the sterling London Interbank Offered Rate as published in the Financial Times from time to time.
Licensee's Forecast OAV	has the meaning given to that term in Condition 6.4.7.
Liquidity Facility	means, at any given time, the Finance Document under which a facility of that name is made available to the Licensee or the Issuer or (as the context requires) such facility.
Net Debt Service	means, in respect of any Gas Year, an amount equal to 50 per cent of the actual (or, if the context requires, forecast) Fixed Amount for that Gas Year.
Non-OAV Adj Year	has the meaning given to that term in Condition 6.4.5.
OAV Addition	has the meaning given to that term in Condition 6.4.6.
OAV Adj Year	has the meaning given to that term in Condition 6.4.5.
OAV Deduction	has the meaning given to that term in Condition 6.4.5.
OAV Shortfall	has the meaning given to that term in Condition 6.4.5.

OAV Surplus	has the meaning given to that term in Condition 6.4.6.
Office and Overhead Costs	means administration, secretarial, employment, secondment, staff training, management, audit and other internal overhead costs, together with accountancy and other advisory fees.
Other DPOs	means at any time, all persons (other than the Licensee) who are DPOs at that time.
Postalisation Adjustment	has the meaning given to that term in Condition 6.6.1.
Postalisation Credit Provisions	means Sections 17, 18 and 21 and Appendices 5 and 6 of the Single Network Code as the same may be amended from time to time.
Postalisation Licence Provisions	means Part 2A of the Licence and the conditions in the Gas Conveyance Licences of Other DPOs which are analogous to the conditions in Part 2A of the Licence.
Postalised Distribution Pipeline	means such part of a low pressure gas pipeline as is specified in, or determined by or in accordance with, a direction given to the Licensee by the Authority for the purposes of this definition.
Postalised System	has the meaning given to it in Condition 2A.1.
Post-Finance Gas Year	has the meaning given to that term in Condition 6.8.1(d).
Provision of Law	means one of the following, to the extent that it applies to or is binding on the Licensee: (a) any enactment; (b) any regulation made by the Council or the Commission of the European Union or any decision taken by the Commission;

	(c) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which: (i) the period for making an appeal has expired; and (ii) no superior court or tribunal has reached a contrary interpretation or finding; and (d) any direction of a competent authority other than the Authority or the Department.
Provisional Controllable Capital Expenditure	has the meaning given to that term in Condition 6.2.1(d)(i).
Provisional Uncontrollable Capital Expenditure	has the meaning given to that term in Condition 6.2.1(d)(ii).
Rate of Return	means the regulatory allowed real weighted average rate of return calculated in accordance with Condition 6.5.3.
Ratio Account Credit	has the meaning given to that term in Condition 6.4.4.
Regulatory Authority	means the Authority, the Department, the Gas and Electricity Markets Authority, the Department for Business, Energy and Industrial Strategy, and any future body or person with equivalent authority or responsibility to any of the foregoing.
Relevant Change of Law	means any of the following, to the extent that it applies to or is binding on the Licensee: (a) the application of any Provision of Law that did not previously have effect; (b) the amendment of or change to any Provision of Law that did previously have effect;

	(c) the revocation or cessation of any Provision of Law that did previously have effect.
Retail Price Index or RPI	means the Index of that name published by the Office of National Statistics each month in respect of all items, or: (a) if that Index for the specified month in any year shall not have been published on or before the last day of the sixth month after the specified month, such alternative index for such month as the Authority may after consultation with the Licensee determine as appropriate in the circumstances; or (b) if there is a material change in the basis of the Index, such alternative index as the Authority may after consultation with the Licensee determine as appropriate in the circumstances.
Review Date	means 1 October 2017 and every fifth anniversary thereafter.
Section	means any part of the Network by which gas can be conveyed (either from that part of the Network or from a low-pressure pipe-line connected, or to be connected, to that part of the Network) to any of the following towns: (a) Dungannon (including Coalisland); (b) Cookstown (including Magherafelt); (c) Enniskillen (including Derrylin); (d) Omagh; (e) Strabane.
Sole Holding Company	means, at any point in time, any holding company of the Licensee which is not, at that time, a Joint Holding Company.
Supplemental Income	means any income that the Licensee receives as a result of owning and operating the Network but shall not include revenue from the Postalised Charges or revenue received pursuant to the Single Network Code.

Termination Payments	has the meaning given to that term in Condition 6.7.4.
Total Controllable Capital Expenditure	has the meaning given to that term in Condition 6.2.1(e).
Total Uncontrollable Capital Expenditure	has the meaning given to that term in Condition 6.2.1(e).
Transaction Authorisation	means: (a) the Licence and any document entered into by the Licensee pursuant to the Licence; (b) any letter from the Authority addressed to the Licensee and its financiers dealing (either solely or together with other things) with certain matters concerning the future modification or revocation of the Licence; (c) any letter from the Department (or any successor) addressed to the Licensee and its financiers dealing (either solely or together with other things) with certain matters concerning the future modification or revocation of the Licence; (d) any letter from the Authority addressed to the Licensee which contains a consent to the granting of security over relevant assets of the Licensee and certain related matters; (e) the Designation Order; and (f) any directions issued by the Authority pursuant to Part 5 and Condition 6.5.1.
Uncontrollable Capital Expenditure	has the meaning given to that term in Condition 6.2.3(a).

Uncontrollable Capital Expenditure Estimate	has the meaning given to that term in Condition 6.2.1(a).
Uncontrollable Operating Expenditure	has the meaning given to that term in Condition 6.10.4.
Verified Controllable Capital Forecast	means the Controllable Capital Expenditure Estimate verified (with or without amendment) by the Authority: (a) by being approved or determined by the Authority (as the case may be) in accordance with Condition 6.2.1(b); and (b) subject to any subsequent variation by the Authority in accordance with Condition 6.2.1(i) or Condition 6.2.4.

6.1.3 Adverse Regulatory Event

"Adverse Regulatory Event" means the occurrence of any of the following events:

- (a) any Regulatory Authority or Government Agency having authority or responsibility for or in respect of the Network or the Licensed Business indicates or states that:
 - (i) it will not or may not observe any of the terms of the Transaction Authorisations; or
 - (ii) it will or may act in a manner which is inconsistent with the terms of the Transaction Authorisations; or
- (b) any draft legislation (whether primary or secondary) or draft regulation is prepared, promulgated or comes into effect or any direction or guidance is given which effects or provides for the removal of, qualification of, or change (other than a change which is of a formal, minor or immaterial nature) to any of the Transaction Authorisations;

(c) any Regulatory Authority or Government Agency having authority or responsibility for or in respect of the Network or the Licensed Business indicates or states that it will or may do any thing (including any of the things described below) which, either on its own or when taken together with any of the things previously indicated or stated:

(i) could have a material adverse effect on any aspect of the Issuer's financing arrangements; or

(ii) could materially increase the level of risk undertaken by DPOs in any manner whatsoever, and including in particular in terms of:

(A) increased exposure of DPOs to each other or to PS Gas Suppliers;

(B) any reduction in the financial or other commitments (whether related to minimum volumes, minimum capacity, contribution to operation and maintenance costs or otherwise) undertaken by any PS Gas Supplier to any DPO as at the date on which this Part 6 comes into effect;

(C) increased exposure resulting from the payment of PS Transmission Payments to any person or account other than to the PoT Account;

(D) any reduction in the costs and other amounts which the Licensee is entitled to recover from conveyance charges pursuant to the Licence and the direction issued by the Authority pursuant to Condition 6.5.1; or

(E) in terms of the Licensee ceasing to have recourse (in order to enable it to obtain payment of such costs and other amounts) to the appropriate proportion of all the revenues received from charges for the conveyance of gas through the entire high-pressure gas network in Northern Ireland; or

(d) any draft legislation (whether primary or secondary) or draft regulation is prepared, promulgated or comes into effect or any direction or guidance is given which could have a material adverse effect, as referred to in paragraph (c)(i)),

or could materially increase the level of risk undertaken by DPOs, as referred to in paragraph (c)(ii),

but it shall not be an Adverse Regulatory Event within the meaning of paragraph (a) or (b) if a Regulatory Authority or Government Agency: indicates or states that it wishes to exercise any function or power assigned or transferred to it under the Order or the Energy Order (including any power to revoke any Transaction Authorisation on grounds upon which its revocation is permitted); indicates or states that it wishes to modify any Transaction Authorisation by the exercise of its powers under the Order; or does exercise any function or power assigned or transferred to it under the Order or the Energy Order.

The things referred to in paragraph (c) of the definition of Adverse Regulatory Event are:

- (a) the making of any modifications to the Postalisation Licence Conditions of any DPO or to the Postalisation Credit Provisions or the granting of any Gas Conveyance Licence in respect of any part of the Postalised System which does not include the Postalisation Licence Conditions or the putting in place by any Other DPO of a network code which does not contain the Postalisation Credit Provisions;
- (b) the Authority giving approval pursuant to Clause 3.1(b)(ii) of the DPO Agreement to the amendment or variation by any Other DPO of any of its Postalisation Rights and Obligations (as defined in the DPO Agreement);
- (c) the issue of any direction or the granting of any approval by the Authority pursuant to Clause 3.1(c) of the DPO Agreement for the giving of relief to any Other DPO from its obligation to pay sums paid directly to it by a PS Gas Supplier into the PoT Account;
- (d) the giving by the Authority of consent pursuant to Clause 12.1 of the DPO Agreement (where an insolvency-type event such as is referred to in Clause 12.2 of the DPO Agreement occurs in relation to the Licensee) to the Other DPOs terminating the Licensee's participation in the DPO Agreement prior to the time at which it ceases to hold a Gas Conveyance Licence; and
- (e) the withholding of consent by the Authority pursuant to the Credit Committee Terms of Reference (being those contained in Appendix 6 of the Single Network Code),

which in each such case, either on its own or when taken together with any of the other things referred to in the definition of Adverse Regulatory Event, could have a material adverse effect, as referred to in paragraph (c)(i) of that definition, or could materially increase the level of risk undertaken by DPOs, as referred to in paragraph (c)(ii) of that definition.

6.1.4 Eligible Pass-Through Costs

"Eligible Pass-Through Costs" means, in respect of any Gas Year, all costs incurred after this Part 6 comes into effect by the Licensee (or, as the context requires, the Issuer and/or any Sole Holding Company and/or Joint Holding Company and/or Joint Support Company) during that Gas Year in relation to:

(a) the operation, repair, reinstatement, refurbishment and/or maintenance of the Network (or the land or substrata in, on, under, over or through which the Network is laid) or the rectification of any design, engineering, manufacturing, installation, construction or other defect in the Network;

(b) insurance;

(c) the discharge of its obligations under:

(i) any agreement, code or other document relating to the Network to which it is a party or by which it is bound (including this Licence); and

(ii) any indemnity, counter-indemnity or other obligation to pay money arising under any such agreement, code or other document;

(d) any arrangement for the provision of services in respect of the Network;

(e) any land or premises occupied or used by the Licensee (or by any Sole Holding Company for the purposes of the Licensee) or on which any part of the Network is built, including in particular costs in respect of:

(i) local authority rates;

(ii) the discharge of claims for compensation (whether made before or after the Grant of this Licence);

(iii) liaison with landowners;

(iv) rentals or other amounts payable to any landowner;

(v) the repair, maintenance and upkeep of any drainage system associated with the Network,

and an appropriate proportion (in accordance with the provisions of the Compliance Plan) of any equivalent costs incurred by any Joint Holding Company or Joint Support Company;

- (f) (to the extent not separately reimbursed to the Licensee by Gas Suppliers or Gas Shippers) all amounts payable by the Licensee to the owner or operator of any gas plant or gas pipeline system to which the Network is directly or indirectly connected;
- (g) all amounts payable by the Licensee to any PS Gas Supplier or Shipper on account of any withdrawal from service, breakdown, unavailability, or reduction in availability of the Network;
- (h) the purchase of auxiliary electricity supplies for the Network;
- (i) actions required to be taken by the Licensee as a result of changes in legislation;
- (j) Office and Overhead Costs incurred by the Licensee or any Sole Holding Company and an appropriate proportion (in accordance with the provisions of the Compliance Plan) of the Office and Overhead Costs incurred by any Joint Holding Company or Joint Support Company;
- (k) the investigation of payment defaults by PS Gas Suppliers, the exercise of rights against any PS Gas Supplier or other person in respect of any such payment defaults, and the activities of any credit or like committee established pursuant to the Licence (and other Gas Conveyance Licences);
- (l) (to the extent not separately reimbursed to the Licensee by gas suppliers or gas shippers) the purchase of gas for balancing purposes;
- (m) Corporation Tax (or any replacement or successor tax) payable by the Licensee or any Sole Holding Company and an appropriate proportion (in accordance with the provisions of the Compliance Plan) of the amount of Corporation Tax (or any replacement or successor tax) payable by any Joint Holding Company or Joint Support Company;
- (n) any costs required to maintain balances in accounts necessary to support the issue of debt bonds or other financial instruments by the Licensee or the Issuer;
- (o) Capital Expenditure; and
- (p) all fees, costs, expenses (including legal costs and expenses), liabilities and other amounts of whatsoever nature incurred by the Licensee in that Gas Year

on or in relation to the Network and/or the Approved Business, to the extent to which they are not already included under paragraphs (a) to (o);

taken together with:

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

but excluding:

- (r) any cost, expense, loss, liability or other amount incurred by the Licensee if and to the extent the same falls under paragraph (a) or (c) of the definition of Postalisation Adjustment in Condition 6.6.1;
- (s) any amount which constitutes Actual Controllable Capital Expenditure or Actual Uncontrollable Capital Expenditure; and
- (t) any amount relating to actions required to be taken by the Licensee as a result of changes in legislation, where that amount is the subject of a Relevant Change of Law determination by the Authority in accordance with Condition 6.2.4,

and for the purposes of this definition all references to any fees, costs, expenses, liabilities or other amounts being incurred or payable by any person in respect of any Gas Year shall be treated as references to the amount of cash actually paid (or, if the context requires, forecast to be paid) by that person in that Gas Year (irrespective of the Gas Year in which the relevant amounts were actually incurred or became payable).

6.1.5 Reporting

- (a) The Licensee shall ensure that all costs information submitted by it to the Authority under or in accordance with this Part 6 or any other provision of this Licence, and whether in relation to actual or forecast costs, reports fully and accurately all the costs incurred (or forecast to be incurred) in the design, construction operation and maintenance of the Network and any Postalised Distribution Pipeline.
- (b) The Licensee shall ensure that no costs information submitted by it to the Authority under or in accordance with this Part 6 or any other provision of this

Licence, whether in relation to actual or forecast costs, relates to costs which are properly to be attributed or apportioned to:

(i) the Licensee in undertaking any Separate Business other than the Licensed Business (including in particular when carrying out activities under any other licence granted in accordance with the Order);

(ii) any affiliate or related undertaking of the Licensee.

(c) For the purposes of ensuring its compliance with paragraphs (a) and (b), the Licensee shall submit to the Authority, by no later than three months after the date of the Grant, a draft plan (a "**Compliance Plan**") which:

(i) shall set out the arrangements it proposes to establish in order to ensure its compliance with those paragraphs;

(ii) makes detailed provision in particular for a method by which:

(A) an appropriate apportionment of costs shall take place as between the Licensed Business and any other Separate Business of the Licensee;

(B) an appropriate apportionment of Office and Overhead Costs, costs relating to land, Corporation Tax and value added taxes shall take place as between the Licensee and any Joint Holding Company or Joint Support Company for the purposes of Condition 6.1.3;

(C) no amount which constitutes Actual Controllable Capital Expenditure or Actual Uncontrollable Capital Expenditure shall be treated as an Eligible Pass-Through Cost;

(iii) is consistent with the requirements of Conditions 1.2.4 to 1.2.6;

(iv) shall require to be approved by the Authority and, where the Authority does not approve the initial draft plan, shall be subject to further review and amendment, including any such amendment as the Authority may direct the Licensee to make, until the Authority considers that it is suitable for approval.

(d) The Licensee shall comply with any Compliance Plan approved by the Authority under paragraph (c), and:

(i) shall keep that plan under review and from time to time propose to the Authority any amendments required to ensure that it is accurate and up to date;

(ii) amend that plan in any manner directed by the Authority;

(iii) not otherwise amend that plan except with the approval of the Authority.

Condition 6.2: Capital Expenditure

6.2.1 Allowed Capital Expenditure

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

(i) 18 months after the date of the Grant of the Licence; or

(ii) such later date as the Authority may agree (taking account in particular of any exceptional circumstances which could not reasonably have been foreseen by the Licensee),

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

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

(b) The Authority may, following verification, by notice to the Licensee in respect of each such Controllable Capital Expenditure Estimate:

(i) approve the Controllable Capital Expenditure Estimate as the “**Verified Controllable Capital Forecast**”; or

(ii) determine as the Verified Controllable Capital Forecast such amended figure as it considers appropriate,

provided that before making any amendments to the Controllable Capital Expenditure Estimate for the purpose of determining the Verified Controllable Capital Forecast the Authority shall provide details of the amendments and the reasons for them (such reasons to be based on established high pressure gas pipeline engineering and cost control principles) and give the Licensee an appropriate period (being not less than 28 days) to comment on them.

(c) The Licensee shall:

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

provide to the Authority:

- (A) its current forecasts of the amount and timing of Capital Expenditure, separately identifying the amount of expenditure that the Licensee believes would be Uncontrollable Capital Expenditure; and
- (B) details of the amount and timing of Capital Expenditure the Licensee has actually incurred, separately identifying the amount of expenditure that the Licensee believes would be Uncontrollable Capital Expenditure.

(d) By a date which falls no later than 21 months after the First Operational Commencement Date, the Authority will determine and notify to the Licensee:

(i) a figure constituting the "**Provisional Controllable Capital Expenditure**", being the sum of:

- (A) the Authority's assessment, having regard to the information available to it, of the expenditure incurred by the Licensee prior to that date that will constitute part of the Actual Controllable Capital Expenditure in accordance with paragraph (e); and
- (B) the Authority's assessment, having regard to the information available to it, of the expenditure which it is satisfied will be incurred by the Licensee on and from that date but prior to the Cut-Off Date, and which will constitute part of the Actual Controllable Capital Expenditure in accordance with paragraph (e); and

(ii) a figure constituting the "**Provisional Uncontrollable Capital Expenditure**", being the sum of:

(A) the Authority's assessment, having regard to the information available to it, of the expenditure incurred by the Licensee prior to that date that will constitute part of the Actual Uncontrollable Capital Expenditure in accordance with paragraph (e); and

(B) the Authority's assessment, having regard to the information available to it, of the expenditure which it is satisfied will be incurred by the Licensee on and from that date but prior to the Cut-Off Date, and which will constitute part of the Actual Uncontrollable Capital Expenditure in accordance with paragraph (e).

(e) As soon as reasonably possible after completion of the Network and any Postalised Distribution Pipelines, the Licensee shall submit details of the amount and timing of cumulative Capital Expenditure actually incurred, separately identifying the amount of such expenditure which it has incurred which it believes to be Uncontrollable Capital Expenditure (the "**Total Uncontrollable Capital Expenditure**"), and the amount that the Licensee believes is not (the "**Total Controllable Capital Expenditure**"), and

(i) that Total Controllable Capital Expenditure shall, subject to paragraphs (f) and (g), be the "**Actual Controllable Capital Expenditure**"; and

(ii) that Total Uncontrollable Capital Expenditure shall, subject to paragraphs (f) and (h), be the "**Actual Uncontrollable Capital Expenditure**".

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

(g) The Authority shall, following audit pursuant to paragraph (f) and by no later than the Cut-Off Date, by notice to the Licensee in respect of the Total

Controllable Capital Expenditure figures submitted by the Licensee in accordance with paragraph (e):

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

(ii) determine as the Actual Controllable Capital Expenditure such amended figure as it considers appropriate:

(A) if, in its reasonable opinion, the figure proposed by the Licensee does not accurately reflect the Controllable Capital Expenditure incurred by the Licensee; and/or

(B) if the figure proposed by the Licensee requires amendment in order to give effect to any Fixed Sum or Capped Sum that was determined by the Authority in accordance with Condition 6.2.2,

provided that:

1) before making any amendments to the Total Controllable Capital Expenditure figure submitted by the Licensee, the Authority shall provide details of the amendments and the reasons for them (such reasons, except where they relate to the application of any Fixed Sum or Capped Sum, to be based on established high pressure gas pipeline engineering and cost control principles) and give the Licensee an appropriate period (being not less than 28 days) to comment on them; and

2) the figure representing the Actual Controllable Capital Expenditure that is determined by the Authority shall not be less than any figure previously determined as constituting the Provisional Controllable Capital Expenditure, save where the Authority issues a notice varying the Verified Controllable Capital Forecast by virtue of paragraph (i), in which case the Authority may (after consultation with the Licensee) determine the Actual Controllable Capital Expenditure at such level as it considers to be appropriate to take account of that fact.

(h) The Authority shall, following audit pursuant to paragraph (f), and by no later than the Cut-Off Date, by notice to the Licensee in respect of the Total Uncontrollable Capital Expenditure figures submitted by the Licensee in accordance with paragraph (e):

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

(ii) determine as the Actual Uncontrollable Capital Expenditure such amended figure as it considers appropriate if, in its reasonable opinion, the figure proposed by the Licensee does not accurately reflect Uncontrollable Capital Expenditure incurred by the Licensee (including if, in its reasonable opinion, any part of the expenditure included by the Licensee within the Total Uncontrollable Capital Expenditure figure falls outside the categories of Uncontrollable Capital Expenditure as set out in Condition 6.2.3(a)),

provided that:

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

(B) the figure representing the Actual Uncontrollable Capital Expenditure that is determined by the Authority shall not be less than any figure previously determined as constituting the Provisional Uncontrollable Capital Expenditure.

(i) The Authority may, following audit pursuant to paragraph (f), and by no later than the date on which it has issued a notice to the Licensee under paragraph (g), by notice to the Licensee vary the Verified Controllable Capital Forecast approved or determined in accordance with paragraph (b) in a manner that reduces the Verified Controllable Capital Forecast by such amount as in the opinion of the Authority:

(i) relates to the costs associated with activities that were taken into account by the Authority both in:

(A) approving or determining the Verified Controllable Capital Forecast; and

(B) determining the Provisional Controllable Capital Expenditure,

in each case as being activities remaining to be carried out by (or on behalf of) the Licensee after the date of that approval or determination;

(ii) to the extent that, by the date on which a notice under this paragraph is issued to the Licensee:

(A) the activities referred to in sub-paragraph (i) have not been carried out and the costs associated with them have not been incurred;

(B) no other activities of substantially equivalent effect have been carried out and the costs associated with such other activities have not been incurred;

(C) no alternative steps have been taken which have the effect (without any adverse consequences) of avoiding the need to carry any such activities as are referred to in sub-paragraphs (A) and (B), and the costs associated with such alternative steps have not been incurred; and

(iii) to the extent that where by any subsequent date any of the activities or steps referred to in sub-paragraph (ii) have been carried out or taken, and the costs associated with those activities or steps have been incurred, those costs will be recoverable by the Licensee as Capital Expenditure constituting Eligible Pass-Through Costs,

provided that before issuing any such notice to the Licensee the Authority shall have provided to the Licensee details of the proposed reduction in the Verified Controllable Capital Forecast and of the reasons for it, and given the Licensee an appropriate period (being not less than 28 days) to comment on them.

6.2.2 Fixed and Capped Sums

(a) At the same time as the Authority approves or determines the Verified Controllable Capital Expenditure Forecast in accordance with Condition 6.2.1(b), it may by notice to the Licensee determine that, for the purposes of the approval or determination of the Actual Controllable Capital Expenditure in accordance with Condition 6.2.1(g), the Controllable Capital Expenditure associated with specified activities or categories of activity is to be:

(i) subject to the application of a Fixed Sum in accordance with paragraph (b);

(ii) subject to the application of a Capped Sum in accordance with paragraph (c).

(b) For the purposes of paragraph (a)(i), a "**Fixed Sum**" means a figure to be included as part of the Actual Controllable Capital Expenditure that is approved or determined in accordance with Condition 6.2.1(g), in respect of the activity or category of activity to which it relates, regardless of the amount of Controllable Capital Expenditure actually incurred by the Licensee in respect of that activity or category of activity.

(c) For the purposes of paragraph (a)(ii), a "**Capped Sum**" means a figure constituting a maximum amount to be included in the Actual Controllable Capital Expenditure that is approved or determined in accordance with Condition 6.2.1(g), in respect of the activity or category of activity to which it relates, so that:

(i) if the amount of the Controllable Capital Expenditure actually incurred by the Licensee in respect of that activity or category of activity is less than the Capped Sum, the figure to be included in the Actual Controllable Capital Expenditure in respect of that activity or category of activity shall be equal to the amount of Controllable Capital Expenditure actually incurred;

(ii) if the amount of the Controllable Capital Expenditure actually incurred by the Licensee in respect of that activity or category of activity is greater than or equal to the Capped Sum, the figure to be included in the Actual Controllable Capital Expenditure in respect of that activity or category of activity shall be equal to the Capped Sum.

(d) Where the Authority gives a notice to the Licensee in accordance with paragraph (a):

(i) it shall specify each activity or category of activity to which that notice relates, and in respect of each such activity or category of activity state the applicable figure and whether it is a Fixed Sum or a Capped Sum; and

(ii) the notice shall have effect for the purposes of the approval or determination of the Actual Controllable Capital Expenditure in accordance with Condition 6.2.1(g).

6.2.3 Uncontrollable Capital Expenditure

(a) The following categories of Capital Expenditure shall comprise an exhaustive list of all Uncontrollable Capital Expenditure for the purposes of this Part 6:

(i) archaeology;

(ii) planning conditions;

(iii) stock up gas;

(iv) such other categories of Capital Expenditure as the Authority may accept as being Uncontrollable Capital Expenditure.

(b) The Licensee shall at all times use all reasonable endeavours to minimise the amount of Uncontrollable Capital Expenditure so far as is possible without adversely impacting on the safety of the Network.

6.2.4 Change of Law

(a) Paragraph (b) applies where the Authority determines prior to the Cut-Off Date that:

(i) there has been or will be, prior to that date, a Relevant Change of Law;

(ii) there has been or will be, prior to that date, an amount of Controllable Capital Expenditure incurred by the Licensee;

(A) in direct consequence of the Relevant Change of Law, and in relation to a cost for which no provision was made in the Verified Controllable Capital Forecast; or

(B) in relation to a cost for which provision has been made in the Verified Controllable Capital Forecast, but in respect of which the amount that was provided is, as a direct consequence of the Relevant Change of Law, greater than the amount that is required by the Licensee;

(iii) having regard to all the circumstances, it is appropriate to:

(A) in the situation described in sub-paragraph (ii)(A), amend the Verified Controllable Capital Forecast to include the relevant amount; or

(B) in the situation described in sub-paragraph (ii)(B), amend the Verified Controllable Capital Forecast to reduce the relevant amount,

in each case in order to ensure that the financial position and performance of the Licensee, acting efficiently, will be, so far as is reasonably practicable, the same as if the Relevant Change of Law had not taken place.

(b) Where this paragraph applies, the Authority may, prior to the Cut-Off Date, determine that the Verified Controllable Capital Forecast shall be amended in accordance with paragraph (a)(iii), and may by direction make such other consequential modifications to this Part 6 as it may consider requisite for giving effect to the determination

(c) The Authority may make a determination in accordance with paragraph (a):

(i) on an application made to it by the Licensee; or

(ii) otherwise, following consultation with the Licensee.

(d) An application made to the Authority by the Licensee pursuant to paragraph (a) shall contain or be accompanied by all relevant details relating to the relevant

Provision of Law and to the actual or anticipated Controllable Capital Expenditure, and such other information as the Authority may require.

Condition 6.3: The Revenue Restriction

6.3.1 Revenue Restriction if no Designation Order

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

6.3.2 Revenue Restriction during the Period of Designation

(a) In respect of any period during which a Designation Order is in force in relation to all or any part of the Network, the Licensee shall ensure that in respect of each Gas Year during that period:

(i) its Forecast Required Revenue to be notified to the Authority and the PSA in accordance with paragraphs (b) and (d) shall be calculated in accordance with Condition 6.4.1; and

(ii) its Actual Required Revenue to be notified to the Authority and the PSA in accordance with paragraph (e) shall be calculated in accordance with the formula set out in Condition 6.4.2.

(b) By no later than the fifteenth Business Day in March in each Gas Year, the Licensee shall provide to the Authority its calculation of Forecast Required Revenue for the next Gas Year and the following four Gas Years together with such explanation and supporting information as the Licensee considers to be reasonably necessary to permit the Authority to be satisfied that the Forecast Required Revenue is a reasonable forecast in accordance with Condition 4.1.1(b).

(c) If, by not later than the fifth Business Day in April, the Authority, having considered the Licensee's forecast in light of such information as may be submitted by the Licensee, notifies the Licensee, by notice accompanied by an explanation of its conclusions, that it considers that the forecast supplied is not a reasonable forecast of the Licensee's Forecast Required Revenue for the next Gas Year, the Licensee shall review the forecast in the light of the Authority's explanation and submit another forecast to the Authority no later

than the fifteenth Business Day in April (which may be the same as the original forecast).

- (d) By no later than the fifteenth Business Day in April in each Gas Year the Licensee shall provide to the PSA its calculation of Forecast Required Revenue, pursuant to paragraph (b), with any variation made thereto pursuant to paragraph (c), in respect of the next Gas Year and the following four Gas Years for the purpose of calculation of the Forecast Postalised Charges in accordance with Part 2A of the Licence.
- (e) By no later than the tenth Business Day in November after the end of each Gas Year the Licensee shall provide to the Authority and to the PSA its calculation of the Actual Required Revenue in that Gas Year and shall, at the same time, provide to the Authority such explanations and supporting information as may be reasonably necessary to permit the Authority to verify that the Actual Required Revenue has been calculated in accordance with the formula set out in Condition 6.4.2.
- (f) By no later than ten Business Days after the end of each Quarter, the Licensee shall provide the Authority, other Designated Pipeline Operators and all PS Gas Suppliers with a report setting out any material change to the Licensee's forecast of the revenue it requires comprised in its Forecast Required Revenue for the Gas Year in which the Quarter falls.

Condition 6.4: Forecast and Actual Required Revenue

6.4.1 Forecast Required Revenue

The Forecast Required Revenue of the Licensee in respect of each Gas Year shall be calculated by the Licensee as its forecast of its Actual Required Revenue for that Gas Year, on the basis of the formula at Condition 6.4.2, but omitting for this purpose the $Z_t^*(S_t)$ component of that formula.

6.4.2 Actual Required Revenue

(a) The Licensee's Actual Required Revenue (ARR_t) for any Gas Year shall be the amount determined in accordance with the formula set out in paragraph (b) for such Gas Year.

(b) The formula for the calculation of the Licensee's Actual Required Revenue in any Gas Year is as follows:

$$ARR_t = (F_t + B_t + C_t) - (D_t + E_t) - G_t - H_t + I_t$$

6.4.3 Definition of Formula Terms

For the purposes of Condition 6.4.2 and this Part 6 generally:

t denotes a Gas Year;

$t-1$ denotes the Gas Year which immediately precedes the Gas Year for the purposes of which any forecast or calculation is made in accordance with this Part 6 (and the subscript $t-2$ shall be construed accordingly);

F_t in respect of any Gas Year, means the Fixed Amount in respect of that Gas Year;

B_t in respect of any Gas Year, means the Eligible Pass-Through Costs for that Gas Year;

C_t in respect of any Gas Year, means the Postalisation Adjustment for that Gas Year calculated in accordance with Condition 6.6.1;

D_t in respect of any Gas Year, means the Termination Payments for that Gas Year as calculated in accordance with Condition 6.7.4;

E_t in respect of any Gas Year, means the Supplemental Income for that Gas Year as calculated in accordance with Condition 6.7.5;

G_t in respect of any Gas Year means means the Ratio Account Credit for that Gas Year, calculated in accordance with Condition 6.4.4;

H_t in respect of any Gas Year, means the OAV Deduction for that Gas Year, being an amount calculated in accordance with Condition 6.4.5 and constituting a reduction in the Licensee's Actual Required Revenue in respect of the amount by which the Licensee's Forecast OAV and the Interest Accrued exceed the amount of the Opening Asset Value; and

I_t in respect of any Gas Year, means the OAV Addition for that Gas Year, being an amount calculated in accordance with Condition 6.4.6 and constituting an addition to the Licensee's Actual Required Revenue in respect of the amount by which the Licensee's OAV and the Interest Accrued fall short of the amount of the Opening Asset Value.

6.4.4 Ratio Account Credit

For the purposes of this Condition 6.4, the “**Ratio Account Credit**” means:

- (a) in respect of any Gas Year (other than a Gas Year such as is referred to in paragraph (b), (c) or (d) below), an amount equal to the Net Debt Service for such Gas Year;
- (b) subject to paragraph (c) below, in respect of any Gas Year which is an Adverse Regulatory Event Year, an amount calculated in accordance with the following formula, namely:

$$RAC = \left[\left[1 - \frac{z}{y} \right] x NDS \right]$$

where:

RAC = the Ratio Account Credit for that Adverse Regulatory Event Year;

z = the number of days in that Adverse Regulatory Event Year which coincide with an Adverse Regulatory Event Period;

y = 365 (or, if the Month of February in that Adverse Regulatory Event Year has 29 days, 366);

NDS = the Net Debt Service for that Adverse Regulatory Event Year;

- (c) in respect of any Gas Year which is an Adverse Regulatory Event Year and also an ARE Rectification Gas Year, an additional amount equal to the Available Post-ARE Cash for such Adverse Regulatory Event Year; and
- (d) in respect of any Gas Year in relation to which the Authority, on application by the Licensee, agrees that, in the light of representations made by the Licensee, the Liquidity Facility available to the Licensee is not sufficient to fund the payments which the Licensee would have to fund through the making of drawings under the Liquidity Facility during the period to the end of that Gas Year, an amount less than the Net Debt Service for that Gas Year which is agreed by the Authority.

6.4.5 OAV Deduction

For the purposes of this Condition 6.4, the "**OAV Deduction**" means:

- (a) in respect of any Non-OAV Adj Year, zero; and
- (b) in respect of each OAV Adj Year, one-third of the OAV Shortfall,

where:

- (c) an "**OAV Adj Year**" means:

- (i) the Gas Year which immediately follows the Cut-Off Year; or
- (ii) (if the Cut-Off Date falls after 15 June in a Gas Year) the second Gas Year in the period of two Gas Years which immediately follows the Cut-Off Year, and
- (iii) in the case of each of (i) and (ii), each of the two subsequent Gas Years;

- (d) a "**Non-OAV Adj Year**" means any Gas Year which is not an OAV Adj Year; and

- (e) the "**OAV Shortfall**" means the amount (if any) by which the Opening Asset Value is less than the sum of the Licensee's Forecast OAV and the Interest Accrued (and shall be zero if the Opening Asset Value is equal to or greater than the sum of the Licensee's Forecast OAV and the Interest Accrued).

6.4.6 OAV Addition

For the purposes of this Condition 6.4, the "**OAV Addition**" means:

- (a) in respect of any Non-OAV Adj Year, zero; and
- (b) in respect of each OAV Adj Year, such amount as shall ensure that the Licensee recovers one-third of the OAV Surplus in that OAV Adj Year at an allowed rate of return equal to the True Up Rate of Return, such amount to be calculated in accordance with the following formula:

$$I_t = OAV\ Surplus \times TUR_m^{TUW} \times \frac{TUR_m - 1}{1 - TUR_m^{-36}} \times 12$$

where:

- (c) TUR_m means the true-up rate and is equal to $(1 + 3.5\%)^{1/12}$;
- (d) TUW means the true-up waiting period, and is the period expressed as a number of months from the Cut-Off Date to the first month of the first OAV Adj Year;
- (e) The "OAV Surplus" means the amount (if any) by which the Opening Asset Value exceeds the sum of the Licensee's Forecast OAV and the Interest Accrued or such lesser amount as the Licensee determines is to constitute the OAV Surplus (and shall be zero if the Opening Asset Value is equal to or less than the sum of the Licensee's Forecast OAV and the Interest Accrued).

6.4.7 Licensee's Forecast OAV

For the purposes of this Condition 6.4:

- (a) the Licensee shall, by no later than the date on which this Part 6 comes into effect, submit to the Authority a statement specifying what element of the amount drawn down under the Finance Documents constitutes funding that has been raised:
 - (i) in respect of the amounts that will be comprised in the Opening Asset Value;
 - (ii) in reliance on the Licensee's forecast of the Opening Asset Value.
- (b) The Licensee shall, together with that statement, provide such further information and explanation as it considers likely to be reasonably required by

the Authority for the purpose of verifying the amount of funding which has been raised in accordance with sub-paragraphs (a)(i) and (ii), including in particular such information and explanation as is required for the purpose of verifying the matters to which all other elements of the amount drawn down under the Finance Documents relate.

(c) The Licensee shall thereafter provide to the Authority any such additional information, explanation, documents and records as may be requested by the Authority and are reasonably required by it for the purposes set out at paragraph (b).

(d) The Authority, following a review of the information provided to it in accordance with paragraphs (b) and (c), may:

(i) by notice to the Licensee, approve the Licensee's statement of the amount of funding which has been raised in accordance with sub-paragraphs (a)(i) and (ii); or

(ii) by a direction to the Licensee, require the Licensee to make such amendment to that statement as the Authority deems necessary in order to ensure that the amount specified in the statement accurately reflects the amount of funding that has been raised in accordance with sub-paragraphs (a)(i) and (ii), provided that before issuing such a direction the Authority shall provide to the Licensee details of the proposed direction and the reasons for it and give the Licensee an appropriate period (being not less than 28 days) to comment on them,

and the amount as approved or amended in accordance with sub-paragraph (i) or (ii) (as the case may be) shall for the purposes of this Part 6 constitute the **"Licensee's Forecast OAV"**.

6.4.8 Actions Taken Before Part 6 Comes Into Effect

For the purposes of this Part 6:

(a) where either the Licensee or the Authority has taken any action prior to the coming into effect of this Part 6 which it would have been entitled or required

to take under the provisions of Condition 6.4.7 after the coming into effect of this Part 6, that action shall be treated as having been taken in accordance with Condition 6.4.7, and shall have effect for the purposes of that Condition on and from the date on which this Part 6 comes into effect; and

- (b) where, by virtue of paragraph (a), an amount that is approved or amended prior to the coming into effect of this Part 6 is treated, on the date on which this Part 6 comes into effect, as having been approved or amended in accordance with Condition 6.4.7(d), that amount shall constitute the Licensee's Forecast OAV for the purposes of this Part 6 on and from the date on which it comes into effect.

Condition 6.5: The licensee's revenue entitlement

6.5.1 The Fixed Amount

The "Fixed Amount" for each Gas Year shall be the sum of the amounts set out in respect of that Gas Year in the Columns headed Amount 1 and Amount 2 (each of which relates to a payment in respect of debt service comprising both capital and interest in respect of a half-year) in the table immediately below.

Gas Year Ending on 1st October in the year	Amount 1 (£)	Amount 2 (£)
2018		
2019		
2020		
2021		
2022		
2023		
2024		
2025		
2026		
2027		
2028		
2029		
2030		

Gas Year Ending on 1 st October in the year	Amount 1 (£)	Amount 2 (£)
2031		
2032		
2033		
2034		
2035		
2036		
2037		
2038		
2039		
2040		
2041		
2042		
2043		
2044		
2045		
2046		
2047		
2048		

Gas Year Ending on 1 st October in the year	Amount 1 (£)	Amount 2 (£)
2049	•	•
2050	•	•
2051	•	•
2052	•	•
2053	•	•
2054	•	•
2055	•	•
2056	•	•
2057	•	•
2058	•	•

The Authority may, at or about the same time as it issues any direction to the Licensee under Condition 5.1.2, issue a direction to the Licensee which:

- (a) shall set out the amounts to be identified in the columns headed Amount 1 and Amount 2 in the table immediately above in respect of each Gas Year specified in that table (which amounts may, in respect of certain of the Gas Years specified in the table, be zero);
- (b) may make such supplemental or consequential provision as the Authority considers appropriate in relation to the amounts set out in the table (which may include, in particular, provision for the the indexation or other adjustment of those amounts);
- (c) may specify that any items described in the direction which would otherwise be neither included in nor excluded from the definition of Eligible Pass-Through Costs at Condition

6.1.4 are to constitute Eligible Pass-Through Costs or be excluded from any calculation of Eligible Pass-Through Costs (as the case may be); and

- (d) shall specify the definitions of the terms ARE Suspense Account and Available Post-ARE Cash for the purposes of Condition 6.1.2(b),

and where any such direction is issued it shall have the effect of modifying:

- (e) this Condition 6.5.1, so that the amounts set out in the direction in accordance with paragraph (a) shall be incorporated into the table above;
- (f) this Condition 6.5.1, so that any supplemental or consequential provision made by the direction in accordance with paragraph (b) shall be incorporated into this Condition in the terms specified in the direction;
- (g) Condition 6.1.4, so that the definition of Eligible Pass-Through Costs shall be modified in any manner that may be specified by the direction in accordance with paragraph (c); and
- (h) Condition 6.1.2(b), so that the definitions of the terms ARE Suspense Account and Available Post-ARE Cash shall be modified in the manner specified in the direction.

6.5.2 The Licensee's Revenue Entitlement

Save to the extent expressly provided for by the operation of the provisions at Condition 6.4.5 (the OAV Deduction) and Condition 6.4.6 (the OAV Addition), nothing in Conditions 6.5.3 to 6.5.11 shall affect the calculation of the Actual Required Revenue, or the entitlement of the Licensee to recover the Actual Required Revenue, for the purposes of this Part 6 and any other relevant provisions of the Licence.

6.5.3 The Rate of Return

For the purposes of this Condition 6.5, the "**Rate of Return**" (rr_m) shall be a number expressed as a percentage representing the real cost of capital and shall be a percentage per month calculated as follows:

$$rr_m = (1 + 1.98\%)^{\left(\frac{1}{12}\right)} - 1$$

6.5.4 The Opening Asset Value

For the purposes of this Part 6, the Opening Asset Value (OAV) shall be calculated as follows:

$$\text{OAV} = A + \text{Base Return} + \text{Supplemental Return}$$

Where:

$$A = AC + CI - G + X$$

AC = the Allowed Capital Expenditure calculated in accordance with Condition 6.5.5.

CI = the amount of Capitalised Interest calculated in accordance with Condition 6.5.6.

G = the amount of Grant Funding calculated in accordance with Condition 6.5.7.

X = the amount in respect of Early Sectional Completion calculated in accordance with Condition 6.5.8.

Base Return is calculated in accordance with Condition 6.5.9.

Supplemental Return is calculated in accordance with Condition 6.5.10.

6.5.5 The Allowed Capital Expenditure

For the purposes of this Condition 6.5, the Allowed Capital Expenditure (AC) term is the value of Capital Expenditure, at the month in which the First Operational Commencement Date occurs, calculated in accordance with the following formula:

$$AC = VFCE + PG + UC$$

Where:

VFCE is the Verified Controllable Capital Forecast;

PG is a positive or negative amount representing the operation of a pain/gain mechanism, and shall be:

(i) where the Actual Controllable Capital Expenditure is greater than the Verified Controllable Capital Forecast, a positive amount equal to 65% of the difference;

(ii) where the Actual Controllable Capital Expenditure is less than the Verified Controllable Capital Forecast, a negative amount equal to 65% of the difference;

UC is the Actual Uncontrollable Capital Expenditure.

6.5.6 Capitalised Interest

For the purposes of this Condition 6.5, the Capitalised Interest (CI) term is the value of capitalised interest, at the month in which the First Operational Commencement Date occurs, calculated in accordance with the following formula:

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

Where:

CE_m is the Actual Capital Expenditure in month m ;

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

$m = h$ is the month of October 2014, being the first month from which Capitalised Interest will be charged;

$m=N=30$ is the 30th month after the month in which the First Operational Commencement Date occurs

rn_m is the regulatory allowed nominal weighted average rate of return in month m , and shall be calculated as follows:

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

where:

i_m is the RPI rate of inflation in month m calculated as follows

$$i_m = (RPI_m / RPI_{m-1}) - 1$$

6.5.7 Grant Funding

For the purposes of this Condition 6.5, the Grant Funding (G) term is the value at the First Operational Commencement Date of grants received in respect of the Network, and shall be calculated in accordance with the following formula:

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

Where:

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

$m = p$ is the first month in which an amount of capital grant is received by the Licensee where this month is before the First Operational Commencement Date.

6.5.8 Early Sectional Completion

For the purposes of this Condition 6.5, the "**Early Sectional Completion**" (X) term is an amount which has been calculated so as to comprise:

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

6.5.9 Base Return

The "**Base Return**" is the return earned during the period of 21 Months starting on the First Operational Commencement Date, calculated in accordance with the following formula:

$$A * (1.0198^{(21/12)} - 1) * (RPI_{m=21} / RPI_{m=0})$$

6.5.10 Supplemental Return

The "**Supplemental Return**" is an additional return earned on £50,000,000 of the Actual Capital Expenditure calculated in accordance with the following formula:

$$\text{Supplemental Return} = 50,000,000 * (1.0326^{(21/12)} - 1) * (\text{RPI}_{m=21} / \text{RPI}_{m=0})$$

6.5.11 Forecast Inflation Figures

- (a) In calculating the Opening Asset Value, it shall be assumed that the term i_m RPI rate of inflation for each Forecast RPI Month is $1.03^{(1/12)} - 1$.
- (b) The reference to Forecast RPI Month in paragraph (a) is a reference to any month m in respect of which a value of RPI has not been published at that time.
- (c) When the value of RPI is published for month m such that the term i_m , the RPI rate of inflation in month m , can be calculated for previous Forecast RPI Months, the Opening Asset Value (the "**Original Value**") shall be recalculated by reference to the published RPI figures (the recalculated Opening Asset Value being the "**Recalculated Value**").
- (d) If the Recalculated Value exceeds the Original Value, an amount equal to the excess shall constitute an Eligible Pass-Through Cost for the Gas Year in which the required value of RPI is published for the latest of the Forecast RPI Months.
- (e) If the Recalculated Value is less than the Original Value, an amount equal to the shortfall shall constitute a deduction in the calculation of the Eligible Pass-Through Costs for the Gas Year in which the required value of RPI is published for the latest of the Forecast RPI Months.

Condition 6.6: The Postalisation Adjustment

6.6.1 The Postalisation Adjustment

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

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

$$UNRPT_{t-2} \times (1 + RE)^{1.5} \times \frac{CPI_t}{CPI_{t-2}} \times \frac{ARR_{t-2}}{PS\ ARR_{t-2}}$$

Where:

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

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

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

most closely reflects the General Index of Consumer Prices – All items (1996 =100);

ARR_{t-2} is the Actual Required Revenue in respect of Gas Year t-2;

$PS\ ARR_{t-2}$ is the sum of the Actual Required Revenues (as defined in each Licensee's respective licence) of all Designated Pipeline Operators in respect of Gas Year t-2;

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

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

CPI_{t-1} is the absolute value of the General Index of Consumer Prices – All items (1996 =100) as published by the Office of National Statistics (Series Identifier CHVJ) – for Gas Year t-1, or if such index is available the latest CPI figure published in Gas Year t-1;

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

6.6.2 DPO Payment Failures

Notwithstanding the provisions of Condition 6.6.1, if:

- (a) any Other DPO (a "**Defaulting DPO**") fails to pay on the due date for payment any Year-End Amount payable by it to the PoT Account in respect of any Gas Year pursuant to Condition 2A.6.1.3 (any such failure being a "**DPO Payment Failure**"); and
- (b) the DPO Payment Failure has not been rectified at the time the Licensee submits its calculation of Forecast Required Revenue for Gas Year t+2 to the Authority pursuant to the Licence,

the amount to be included in the Licensee's Forecast Required Revenue and Actual Required Revenue for Gas Year t+2 pursuant to paragraph (b) of Condition 6.6.1 shall be increased by an amount equal to the amount by which the distributions made to the Licensee out of the PoT Account pursuant to the Licence fall short of the distributions which would have been made to the Licensee if the DPO Payment Failure in question had not occurred.

Condition 6.7: Other ARR Components

6.7.1 The Termination Payments

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

6.7.2 The Supplemental Income

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

Condition 6.8: Allowed Revenue after the Final Repayment Date

6.8.1 Allowed Revenue after the Final Repayment Date

(a) Not less than twelve (12) months prior to the Final Repayment Date, the Licensee shall submit to the Authority:

(i) a proposal as to the formula to be used for calculation of conveyance charges in respect of Post Finance Gas Years; and

(ii) a forecast of the amount of such charges in respect of the first five Post Finance Gas Years,

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

(b) The Licensee shall provide such further information or explanation and documents and records as the Authority reasonably requires for the purpose of verifying that the formula and forecasts submitted to it by the Licensee in accordance with paragraph (a) comply with the principles set out in paragraph (d).

(c) The Authority may, following review of the submissions provided in accordance with paragraph (a), by notice to the Licensee:

(i) approve the formula and forecasts; or

(ii) make such amendments to the formula and forecasts as it deems necessary or appropriate to ensure compliance with the basis of calculation set out in paragraph (d) provided that before making any modifications to the Licensee's formula and forecast, the Authority shall provide details of the proposed modifications and the reasons for them and give the Licensee an appropriate period (being not less than 28 days) to comment on them.

(d) The Licensee shall in setting its charges for the conveyance of gas in the Network for each Gas Year commencing after the Final Repayment Date (such Gas Years being "**Post Finance Gas Years**" and the expression "**Finance Gas Years**" shall be construed accordingly) do so in accordance with such

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

- (i) the costs incurred by the Licensee deemed necessary or appropriate by the Authority in administering, maintaining and operating the Network for each conveyance service;
- (ii) the costs incurred by the Licensee deemed necessary or appropriate by the Authority from time to time to expand, reinforce and renew the Network together with an appropriate return on those costs as agreed between the Authority and the Licensee;
- (iii) any costs incurred by the Licensee deemed necessary or appropriate by the Authority from time to time to carry out such works of decommissioning the Network as are required to be carried out pursuant to the applicable law and any contractual obligations of the Licensee;
- (iv) save that the aggregate of the amounts calculated under sub-paragraphs (i), (ii) and (iii) is to be reduced by:
 - (A) the amount of any free surplus cash (excluding 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 paragraphs (a), (b) and (c) above; and
 - (B) the amount of any Supplemental Income.

Condition 6.9: Certain Conditions to apply until the Final Repayment Date

6.9.1 Conditions to apply until the Final Repayment Date

The following Conditions of this Part 6:

(a) Conditions 6.3, 6.4, 6.5.1 and 6.5.2; and

(b) (to the extent required to give effect to the Conditions referred to in paragraph

(a)) Conditions 6.1.2, 6.1.3 and 6.1.4,

shall, subject to any modifications made to them under or by virtue of the Gas Order, apply until the Final Repayment Date.

Condition 6.10: The Shadow Price Control

6.10.1 General

Conditions 6.10.2, 6.10.3 and 6.10.4 shall have no impact on the calculation of the Actual Required Revenue in Condition 6.4.

6.10.2 Determined Controllable Operating Expenditure

- (a) The Licensee may at any time, and shall no later than:
- (i) the first Business Day of July 2016 (or such alternative date as may be determined by the Authority and notified to the Licensee in writing); and
 - (ii) no later than 15 months prior to each subsequent Review Date (or such alternative date as may be determined by the Authority and notified to the Licensee in writing),
- submit to the Authority, an estimate of its Controllable Operational Expenditure (a "**Controllable Operating Expenditure Estimate**") and an estimate of its Uncontrollable Operating Expenditure (an "**Uncontrollable Operating Expenditure Estimate**") for each of the next five Gas Years. The format of the submission will be set out in the Regulatory Instructions and Guidance ("**RIGs**") published by the Authority pursuant to Condition 1.21.
- The Licensee must also submit such explanation and supporting information as the Licensee considers to be reasonably necessary to permit the Authority to verify that such estimate is a reasonable estimate in accordance with Condition 6.1.1(b).
- (b) The Licensee shall provide such further information or explanation and access to documents and records as the Authority reasonably requires for the purpose of verifying each Controllable Operating Expenditure Estimate and each Uncontrollable Operating Expenditure Estimate (including all figures, costs, estimates and assumptions comprised in or underlying those estimates) in accordance with paragraph (a).
- (c) The Authority shall, following its verification of a Controllable Operating Expenditure Estimate, notify to the Licensee the amount of the "**Determined Controllable Operating Expenditure**" (being the sum of the amount of each item of Controllable Operating Expenditure determined to be reasonable by the Authority) that it considers appropriate for each of the next five Gas Years.

The Authority shall provide to the Licensee details of any changes that it has made to the Licensee's Controllable Operational Expenditure Estimate and Uncontrollable Operating Expenditure Estimate and the reasons for them and give the Licensee an appropriate period (being not less than 28 days) to comment on them.

- (d) After consideration of any comments received from the Licensee, the Authority shall notify the Licensee in writing of its determination of the amount of the Determined Controllable Operating Expenditure for each of the next five Gas Years (which may be the same as the amount that the Authority notified to the Licensee in accordance with paragraph (c)).
- (e) The Authority may, following a written request from the Licensee to review the DCO for any Gas Year to take into consideration any fact or matter that has arisen following the Authority's determination pursuant to paragraph (d) – provided that, if such a request is made in respect of the current Gas Year, such request is submitted before 31st of August in that Gas Year – conduct a review of DCO for that Gas Year.
- (f) The Licensee shall provide such information and explanation and access to documents and records as the Authority reasonably requires for the purpose of conducting its review. Before making any changes to its determination of the Determined Controllable Operating Expenditure, the Authority shall provide details of the changes and the reasons for them and give the Licensee an appropriate period (not being less than 28 days) to comment on them.
- (g) After consideration of the Licensee's comments, the Authority shall notify the Licensee in writing of its new determination of the Determined Controllable Operating Expenditure for the relevant Gas Year (which may be the same as the amount that the Authority notified to the Licensee in accordance with paragraph (d)).

6.10.3 Actual Controllable Operating Expenditure

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

format of the submission will be set out in the Regulatory Instructions and Guidance ("**RIGs**") published by the Authority pursuant to Condition 1.21.

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

6.10.4 Definition of Controllable Operating Expenditure

For the purposes of this Part 6, "**Controllable Operating Expenditure**" shall comprise those categories of expenditure that are properly within the control of the management of the Licensee, such categories to be those agreed in writing between the Licensee and the Authority no later than the first Business Day of June 2015 subject to any amendments by the agreement of the Authority and the Licensee from time to time. In the absence of agreement between the Licensee and the Authority, the Authority shall determine the categories of expenditure that comprise Controllable Operating Expenditure and notify the Licensee of its decision in writing.

For the purposes of this Part 6, "**Uncontrollable Operating Expenditure**" means Operating Expenditure which is outside the reasonable control of the Licensee and which has been included in the list of the "Uncontrollable Operating Expenditure" determined as such by the Authority for the purposes of this Condition, as such list may be amended, supplemented or varied by the Authority from time to time.