

Last Modified: 31 August 2018

**West Transmission Limited<sup>1</sup>**

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

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<sup>1</sup> <sup>1</sup> The licence was granted to Northern Ireland Energy Holdings Limited on 11 February 2015. The company changed its name to West Transmission Limited on 28 April 2015.

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## **GRANT AND TERMS OF LICENCE**

### **1     Grant of Licence**

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

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

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

The grant of the licence shall be deemed:

- (a) in accordance with Article 11(2) of the Order, to incorporate by this reference the standard conditions of licences for the conveyance of gas determined under Article 11(1) of the Order, subject to:
  - (i) those modifications to such standard conditions as are set out in the attachments hereto at the time of this grant as made in accordance with Article 14(1)(b) of the Order (as such modifications may themselves

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

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

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

Granted on 11 February 2015

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Jenny Pyper

Chief Executive

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

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

### **Condition 1.1: Interpretation and Construction**

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

Unless the contrary intention appears:

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

#### **1.1.2 General Rules of Construction**

Unless otherwise specified:

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

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

#### 1.1.3 Headings

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

#### 1.1.4 Time Related Obligations

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

#### 1.1.5 Natural Persons

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

#### 1.1.6 Definitions

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

<b>"affiliate"</b>	means, in relation to any person, any company which is a subsidiary of such person or a company of which such person is a subsidiary or a company which is another
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subsidiary of a company of which such person is a subsidiary;

**"amount"**

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

**"Approved Business"**

means:

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

**"auditors"**

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

**"authorisation of persons"**

means the power of the Licensee to authorise persons, pursuant to Schedule 5 of the Order;

**"Authority"**

means the Northern Ireland Authority for Utility Regulation;

**"balancing"**

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

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

	which in the reasonable opinion of the Licensee ensure the safety and efficiency of the Network in that or any subsequent relevant period;
<b>"company"</b>	means a company within the meaning of section 1(1) of the Companies Act 2006 or any other body corporate;
<b>"consumer"</b>	means any person supplied with gas to premises;
<b>"conveyance charges"</b>	means the charges made by the Licensee for the conveyance of gas;
<b>"conveyance services"</b>	means all services provided by the Licensee of conveying gas to, through and within the Licensed Area;
<b>"Department"</b>	means the Department of Enterprise, Trade and Investment;
<b>"designated pipe-lines"</b>	means any pipe-line designated by the Department in the exercise of powers conferred upon it by Article 59 of the Energy Order;
<b>"distribution system operator"</b>	means any person authorised to convey gas through local or regional pipe-lines by virtue of holding a licence granted under Article 8(1)(a) of the Order;
<b>"domestic consumer"</b>	means a consumer supplied, or requiring to be supplied, with gas at Domestic Premises;
<b>"domestic premises"</b>	means premises where the supply of gas is taken wholly or mainly for domestic purposes;
<b>"Energy Order"</b>	means the Energy (Northern Ireland) Order 2003;
<b>"Exclusive Area"</b>	means the Licensed Area;
<b>"exemption holder"</b>	means the holder of an exemption under Article 7 of the Order;

<b>"exercise of powers of entry"</b>	means the Licensee entering any premises, in accordance with the powers conferred by Schedule 5 of the Order;
<b>"First Operational Commencement Date"</b>	means:  the date specified in any direction issued by the Authority following consultation with the licence holder, as being the date on or from which the Network is deemed to be operational,
<b>"gas supplier"</b>	means any person authorised by licence under Article 8(1)(c) of the Order or by exemption under Article 7 of the Order to supply gas including the Licensee as so authorised or exempted;
<b>"Gas Year"</b>	means the period of time beginning at 05:00 hours on 01 October in any calendar year and ending at 05:00 hours on 01 October in the next succeeding calendar year;
<b>"Grant"</b>	means the commencing section of this licence by which the Authority grants the Licensee the licence;
<b>"high pressure pipe-line"</b>	means any pipe-line having a design operating pressure exceeding 7 bar gauge;
<b>"information"</b>	includes documents, accounts, estimates, returns, reports or other information;
<b>"licence"</b>	means the Grant together with the Conditions and the Schedules;
<b>"Licensed Area"</b>	means the area in which the Licensee is authorised to convey gas in accordance with Schedule 1;
<b>"Licensed Business"</b>	means the business of the Licensee in developing, constructing, operating and maintaining the Network and in the conveyance (or participation in the conveyance) of

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

**"Licensee"**

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

**"LNG Facility"**

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

**"low pressure pipe-line"**

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

**"Network"**

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

**"Network Code"**

means the document prepared by the Licensee under Condition 2.4;

<b>"non-domestic consumer"</b>	means a consumer who is not a domestic consumer;
<b>"non-domestic premises"</b>	means premises which are not domestic premises;
<b>"operational"</b>	means in relation to any pipe-line that the pipe-line is in all respects complete and ready for gas to be conveyed through it and that, in so far as it lies within the Licensee's control, all necessary commissioning tests in respect of the pipe-line (as distinct from facilities to which such pipe-line is connected) have been successfully completed;
<b>"Order"</b>	means the Gas (Northern Ireland) Order 1996;
<b>"owned"</b>	means in relation to any gas meter title in or control over a meter and includes meters leased to a person;
<b>"person"</b>	means any company, firm, partnership, association, body corporate or individual;
<b>"postalisation"</b>	means the application of a system of uniform common tariffs for the conveyance of gas through a designated pipe-line, irrespective of the proportion of any such pipe-line used;
<b>"Reasonable and Prudent Operator"</b>	means a person acting in good faith with the intention of performing its obligations under the Licence and who in so doing and in the general conduct of its undertaking, exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced operator complying with applicable law and engaged in the same type of undertaking and under the same or similar circumstances and conditions.

<b>"related undertaking"</b>	means any undertaking in which any person has a participating interest within the meaning of section 421A of the Financial Services and Markets Act 2000;
<b>"separate accounts"</b>	means the accounts which are to be prepared for each Separate Business;
<b>"Separate Business"</b>	<p>means, each of the activities of the Licensee connected with:</p> <ul style="list-style-type: none"> <li>(a) the conveyance of gas by means of a high pressure pipe-line pursuant to a licence granted in accordance with Article (8)(1)(a) of the Order;</li> <li>(b) the conveyance of gas by means of a low pressure pipe-line pursuant to a licence granted in accordance with Article (8)(1)(a) of the Order;</li> <li>(c) the storage of gas pursuant to a licence granted in accordance with Article 8(1)(b) of the Order; and</li> <li>(d) the supply of gas pursuant to a licence granted in accordance with Article 8(1)(c) of the Order;</li> </ul> <p>each taken separately from one another and from any other business of the Licensee or any affiliate or related undertaking of the Licensee, but so that where all or any part of any such business is carried on by an affiliate or related undertaking of the Licensee (save in respect of an affiliate or related undertaking which has a separate licence or exemption), such part of the business as is carried on by that affiliate or related undertaking shall be consolidated with any other such business of the Licensee (and of any other affiliate or related undertaking of the Licensee) so as to form a single Separate Business;</p>

<b>"Storage Facility"</b>	means a facility used for the storage of gas and includes any part of a LNG Facility used for storage but does not include: <ul style="list-style-type: none"> <li>(a) any part of the facility that is used for production of gas; and</li> <li>(b) any facility which is reserved exclusively by or for the Licensee in carrying out functions authorised by the Licence;</li> </ul>
<b>"subsidiary"</b>	has the same meaning as given to it in section 1159 of the Companies Act 2006;
<b>"transportation arrangements"</b>	means the arrangements which licence holders or exemption holders may have with the Licensee to have gas introduced into, conveyed by means of and taken out of the Network; and
<b>"working day"</b>	means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.

#### 1.1.7 Singular/plural

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

#### 1.1.8 Application

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

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

### **1.2.1 Financial years**

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

### **1.2.2 Separate Business Accounting**

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

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

In this regard the Licensee shall not be required to prepare such financial statements as if they were annual accounts (in relation to each Separate Business) prepared under section 394, 398 or 399 of the Companies Act 2006, but shall be required to prepare such accounts in accordance with this Condition.

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

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

- (a) a profit and loss account;
- (b) a statement of net assets at the end of the period;



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

#### 1.2.4 Apportionment

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

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

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

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

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

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

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

The basis of apportionment in respect of the financial statements referred to in Condition 1.2.3 shall be the basis proposed by the Licensee under Condition 1.2.5

unless the Authority following consultation with the Licensee gives a direction requiring the use of any other basis.

Except in so far as the Authority consents to the Licensee doing so the Licensee shall not change any basis of apportionment used in the financial statements in respect of any Separate Business for any financial year subsequent to the financial year commencing on 1 April 2016 from the basis used in the financial statements in respect of that Separate Business for that financial year.

#### 1.2.7 Auditor's Reports

In respect of each set of financial statements prepared in accordance with this Condition 1.2 in respect of a financial year, the Licensee shall:

- (a) procure a report by the auditors and addressed to the Authority stating whether in their opinion that set of financial statements have been properly prepared in accordance with this Condition 1.2 and give a true and fair view of the revenues, costs, assets and liabilities of, or reasonably attributable to, the Separate Business to which they relate; and
- (b) use its reasonable endeavours to procure a report by the auditors and addressed to the Authority verifying that the internal accounting and financial reporting arrangements of the Licensee are implemented in such a way as to ensure that there is no discrimination, cross-subsidisation or distortion of competition between the Separate Business and any other business of the Licensee.

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

The Licensee shall provide the Authority with a copy of each set of financial statements and auditor's reports required under this Condition 1.2 as soon as reasonably practicable and in any event not later than six months after the end of each financial year.

#### 1.2.9 Form of financial statements

Financial statements prepared for the purposes of this Condition 1.2 shall, so far as reasonably practicable and unless otherwise approved by the Authority having regard to the purposes of this Condition:

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

#### 1.2.10 Publication of Accounting Statements

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

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

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

#### 1.2.12 Provision of Accounts to the Department

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

#### 1.2.13 Additional Definition

"UK GAAP/IFRS" means the body of accounting standards and other guidance published by the Financial Reporting Council/International Accounting Standards Board.

#### 1.2.14 Associated Undertakings

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

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

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

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

#### **1.3.1 Furnishing information**

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

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

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

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

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

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

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

#### **1.3.5 Limitation on obligation to furnish information**

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

## **Condition 1.4: Consultation with the Consumer Council for Northern Ireland**

### **1.4.1 Policy statements for Consumer Council for Northern Ireland**

The Licensee shall in due time consult with the Consumer Council for Northern Ireland in the formulation of:

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

and shall:

- (c) give the Consumer Council for Northern Ireland reasonable notice of the publication, announcement or implementation (if no publication or announcement is made) of details of any significant change in any such policies and general arrangements; and
- (d) give to the Consumer Council for Northern Ireland as the Consumer Council for Northern Ireland may reasonably request an explanation of any such significant change and of the implementation of those policies.

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

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

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

- (a) that the Licensee shall not obtain any unfair commercial advantage from its possession of protected information with respect to any Separate Business;
- (b) that protected information is not used by any other person for the purpose of obtaining for that person:
  - (i) any unfair commercial advantage from its possession of protected information;
  - (ii) any licence;
  - (iii) any exemption;
  - (iv) control of any body corporate which, directly or indirectly, has the benefit of any such licence or exemption; and
- (c) that protected information is not disclosed except with the prior consent in writing of the relevant person to whose affairs the protected information relates, provided that the obligation on the Licensee:
  - (d) to procure the above in relation to an affiliate or related undertaking which has control of the Licensee (control having the meaning attributed to it by Section 450 (as read in conjunction with section 451) of the Corporation Tax Act 2010), shall be to do so using reasonable endeavours and obtaining an appropriate contractual undertaking from that affiliate or related undertaking in respect of such protected information; and
  - (e) not to obtain any unfair commercial advantage from its possession of protected information under Condition 1.5.1(a) shall be construed to exclude protected



information received by any Separate Business, if applicable, not engaged in the conveyance of gas independently of the Separate Business engaged in the conveyance of gas.

#### 1.5.2 Compliance with directions

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

#### 1.5.3 Limitation of non disclosure obligations

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

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

#### 1.5.4 Additional definition

In this Condition:

**"protected information"**

means any commercially confidential information which:

- (a) relates to the affairs of a person; and
- (b) has been furnished to, or otherwise acquired by, the Licensee or by any affiliate or related undertaking of the Licensee in the course of any dealings with that person or any affiliate or related undertaking of his,

other than information which is in, or comes into, the public domain other than as a result of breach by the Licensee of any Condition of the Licence.

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

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

The Licensee shall, unless it has done so before being licensed, no less than 15 days before gas is first introduced into the Network and in any event within six months of the licence coming into force:

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

and the arrangements so made in this Condition and in Condition 1.7 are referred to as "the arrangements".

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

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

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

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

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

The Licensee shall use its best endeavours to ensure that, so far as is reasonably practicable, when exercising powers of entry under Schedule 5 to the Order, it conducts

itself towards domestic consumers to whose premises the Licensee arranges for gas to be conveyed in conformity with the arrangements.

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

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

The arrangements shall comprise all reasonable steps:

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

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

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

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

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

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

### **1.8.1 Licensee to avoid undue disturbance**

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

### **1.8.2 Construction of Condition 1.8.1**

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

## **Condition 1.9: Modifications**

### **1.9.1 Modification of Licence Conditions**

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



## **Condition 1.10: Assignment of Licences**

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

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

### **1.10.2 Matters affecting an assignment**

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

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

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

## **Condition 1.11: Transfer of Business**

### **1.11.1 Restrictions on transfer of business in conveying gas**

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

### **1.11.2 Exception to Conditions 1.11.1**

Nothing in Condition 1.11.1 shall prevent the Licensee from transferring all or the relevant part of its business to the assignee where the Authority has consented to the assignment of all or the relevant part of the licence under Article 12 of the Order or the Licensee has assigned all or the relevant part of the licence in accordance with Condition 1.10.

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

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

Except:

- (a) in relation to an assignment permitted under Condition 1.10 and the disposal or relinquishing of operational control of any relevant asset necessary for the assignment to have effect; or
- (b) in relation to a transfer of business permitted under Condition 1.11 and the disposal or relinquishing of operational control of any relevant asset necessary for the transfer to have effect; or
- (c) in so far as the Authority consents to the Licensee so doing; or
- (d) where the Licensee has relevant assets which do not form an integral part of the Network, or are not otherwise required for continuous system control and data acquisition or the safe and continuous operation of the Network, which may be the subject of arms length asset and financing leasing arrangements,

the Licensee shall not dispose of or relinquish operational control over any relevant asset if the disposal or relinquishing of control would materially affect its ability to discharge its obligations under the Order or the Energy Order or the carrying on of activities authorised or required by the licence and any question arising under this Condition 1.12.1 as to whether such disposal or relinquishing of control is such as aforesaid shall be determined by the Authority.

### **1.12.2 Notice to be given to Authority**

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

#### 1.12.3 Notice not required for minor disposals

The Licensee shall not be required to give the Authority any notice of its intention to dispose of or relinquish operational control of any relevant asset having a value of less than £35,000 in January 2014 prices (such sum to be adjusted annually by reference to the retail price index), provided that:

- (a) the disposal of or relinquishing of operational control of such relevant asset would not materially affect the Licensee's ability to discharge its obligations under the Order or the Energy Order or the carrying on of activities required by the licence; and
- (b) the disposal or relinquishing of any such relevant assets does not exceed an aggregate value of £35,000 in January 2014 prices (such sum to be adjusted annually by reference to the retail price index), in any period of twelve months.

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

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

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

#### 1.12.5 Consultation with other licence holders

Any consent of the Authority pursuant to Condition 1.12.4 shall be given after the Authority shall have consulted and taken into consideration any representations made

in a timely manner by any other licence holder liable to be materially affected by the disposal in question.

#### 1.12.6 Additional Definitions

In this Condition:

**"disposal"**

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

**"relevant asset"**

means any part of the Network operated from time to time by the Licensee or any gas plant used by the Licensee for or for purposes connected with the conveyance of gas, together with any estate or interest in land required for the utilisation of the Network, gas storage facility or gas plant.

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

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

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

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

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

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

1.13.4 Where:

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

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

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

1.13.6 In this Condition:

**“Estimated Costs”**

- (i) in relation to the costs of the Authority, means the costs estimated by the Authority as likely to be its costs for the relevant year as calculated in accordance with the Principles;
- (ii) in relation to the costs of the Consumer Council for Northern Ireland, means either:
  - (A) the costs notified to the Authority by the Consumer Council for Northern Ireland as its estimated costs for the relevant year as approved by the Department; or

(B) in the event that the Authority does not receive such notification by 31 July in the relevant year, the costs estimated by the Authority (having regard to any estimate of such costs in any forward work programme published by the Consumer Council for Northern Ireland in respect of the relevant year) as likely to be the costs of the Consumer Council for Northern Ireland for the relevant year.

**“Principles”**

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

**“Relevant Contribution”**

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



## **Condition 1.14: Notices**

### **1.14.1 Notices**

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

Licensee: Northern Ireland Energy Holdings Limited,

The Arena Building,

85 Ormeau Road,

Belfast, BT7 1SH

Authority: Northern Ireland Authority for Utility Regulation,

Queens House,

14 Queens Street,

Belfast, BT1 6ED

Facsimile Telephone Number (02890) 311575

Department: Department of Enterprise, Trade and Investment,

Energy Division,

Netherleigh House,

Massey Avenue,

Belfast, BT4 2JP

Facsimile Telephone Number (02890) 529549

### **1.14.2 Receipt**

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

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

## **Condition 1.15: Independence of the Licensee**

### **1.15.1 Application**

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

### **1.15.2 Independence**

The Licensee shall:

(a) unless it has already done so prior to this Condition coming into force, establish;  
and

(b) at all times thereafter maintain,

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

### **1.15.3 Means of achieving such independence**

In order to facilitate its compliance with Condition 1.15.2, the Licensee shall ensure that:

(a) the Authorised Business is provided with such premises, systems, equipment, facilities, property, personnel, data and management resources as are necessary for its efficient and effective legal, managerial and operational independence;

(b) [not used];

(c) subject to any financial supervisory rights of a Holding Company of the Licensee as provided for in the Licensee's financial plan, commercial and operational decisions relating to the operation, maintenance and development of the Network are taken only by those persons who are employed by, and are engaged in the operation and management of, the Authorised Business;

(d) any Energy Business may not use or have access to:

- (i) premises or parts of premises occupied by persons engaged in the management or operation of the Authorised Business;
  - (ii) systems for the recording, processing or storage of data to which persons engaged in the management or operation of the Authorised Business also have access;
  - (iii) commercially sensitive or confidential information relating to, or derived from, the Authorised Business;
  - (iv) equipment, facilities or property employed for the management or operation of the Authorised Business; or
  - (v) the services of any persons who are (whether or not as their principal occupation) engaged in the management or operation of the Authorised Business;
- (e) where, in order to comply with this Condition any Energy Business ceases to be an affiliate or related undertaking of the Licensee, the employment of any employee of the Licensee is not transferred to that Energy Business by virtue of the arrangements under which the Energy Business ceases to be an affiliate or related undertaking of the Licensee; and
- (f) in so as far as it is legally possible for it to do so, it prevents any person who has ceased to be employed by, or engaged in the activities of, the Authorised Business from being employed by, or engaged in the activities of, any Related Energy Business until the expiry of an appropriate time from the date on which the person ceased to be engaged or employed by the Authorised Business.

#### 1.15.4 Undertaking

The Licensee shall procure from the person that is the Ultimate Holding Company of the Licensee a legally enforceable undertaking in favour of the Licensee in a form specified by the Authority, that the Ultimate Holding Company will refrain from any action, and will procure that every subsidiary of the Ultimate Holding Company (other than the Licensee and its subsidiaries) will refrain from any action, which would be likely to cause the Licensee to be in contravention of this Condition. Such undertaking

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

#### 1.15.5 Definitions

In this Condition:

<b>“Authorised Business”</b>	means the Licensed Business, taken together with (if applicable) where the Licensee has so notified the Department and the Authority, any business of the Licensee (or of any affiliate or related undertaking of the Licensee) that is carrying out activities that require authorisation in accordance with Article 6(1)(a) of the Order or with section 5(1)(a) of the Gas Act;
<b>“Energy Business”</b>	means any business that is involved in the generation or supply of electricity or in the production, purchase or supply of gas;
<b>“Gas Act”</b>	means the Gas Act 1986, as amended from time to time;
<b>“Holding Company”</b>	has the meaning given to it in section 1159 of the Companies Act 2006;
<b>“Related Energy Business”</b>	means any Energy Business which was an affiliate or related undertaking of the Licensee at any given time in the six months prior to the date the person ceased to be engaged or employed by the Authorised Business; and
<b>“Ultimate Holding Company”</b>	means any person which is a Holding Company of the Licensee, and which is not itself a subsidiary of another company.

**Condition 1.16: Not Used**

**Condition 1.17: Not Used**

**Condition 1.18: Not Used**



**Condition 1.19: Not Used**

**Condition 1.20: Not Used**

## **Condition 1.21: Regulatory Instructions and Guidance**

### **1.21.1 Introduction**

- (a) The purpose of this Condition 1.21 is to set out the scope, contents, and common governance arrangements for the Regulatory Instructions and Guidance (“**RIGs**”) published by the Authority pursuant to this condition.
- (b) The RIGs are the primary means by which the Authority directs the Licensee to collect and provide the information to the Authority that the Authority needs to enable it to administer the Price Control Conditions Part 4 of this licence and any determinations made by the Authority under or for the purposes of the Price Control Conditions.

### **1.21.2 Licensee’s obligation under this condition**

- (a) Unless and so far as the Authority otherwise consents, the Licensee must have in place and maintain appropriate systems, processes, and procedures to enable it:
  - (i) to estimate, measure, and record the information detailed in the RIGs (“specified information”); and
  - (ii) to provide such information to the Authority in respect of such periods and within such timeframes as are specified in the RIGs.
- (b) To facilitate compliance with paragraph (a) of this Condition 1.21.2, the accounting records and other records kept by the Licensee with respect to the specified information must:
  - (i) be so arranged as to ensure that such information can be separately identified and reasonably attributed as between the Licensee’s business and the business of any affiliate or related undertaking of the Licensee; and
  - (ii) be maintained for a period of eight years, or such shorter period as set out in the RIGs, from the date that they are made.

1.21.3 Scope and content of RIGs

- (a) Subject to paragraphs (b) and (c) of this Condition 1.21.3, the matters that may be included, or for which provision may be made, in the RIGs are:
  - (i) instructions and guidance on the establishment of systems, processes, procedures, and ways for recording and providing specified information;
  - (ii) instructions and guidance on the standards of accuracy and reliability that are applicable to the recording of specified information (including different classes of such information);
  - (iii) a timetable for the development of such systems, processes, and procedures as are required to achieve such standards;
  - (iv) the methodology for calculating or deriving numbers comprising specified information;
  - (v) provision with respect to the meaning of words and phrases used in defining specified information;
  - (vi) requirements as to the form and manner in which, or the frequency with which, specified information must be recorded;
  - (vii) requirements as to the form and manner in which, or the frequency with which, specified information must be provided to the Authority;
  - (viii) requirements as to which (if any) of the specified information is to be subject to audit, the terms on which an auditor is to be appointed by the Licensee for that purpose, and the nature of the audit to be carried out by that person;
  - (ix) requirements as to the circumstances in which the Authority may appoint an examiner to examine the recording of the specified information by the Licensee;

- (x) a statement on whether and to what extent each category of the specified information is required for the purposes of the RIGs; and
  - (xi) provision about how the Authority intends to monitor, assess, and enforce compliance with the RIGs (as to which, see also Condition 1.21.6).
- (b) The provisions of the RIGs must not exceed what is reasonably required to achieve the purposes of this condition, having regard to the materiality of the costs likely to be incurred by the Licensee in complying with those provisions.
  - (c) No specified information may exceed what could be requested from the Licensee by the Authority under Condition 1.3.1.

1.21.4 Development and modification of the RIGs

- (a) The Authority may issue new RIGs or modify any existing RIGs by issuing a direction for that purpose to the Licensee.
- (b) Data collected in relation to each formula year must be reported according to the RIGs issued to the Licensee by the Authority as they may be (where applicable) modified in line with this Condition 1.21.4 and with Condition 1.21.5.
- (c) A direction issued by the Authority under paragraph (a) of this Condition 1.21.4 will be of no effect unless the Authority has first:
  - (i) given notice to the Licensee that it proposes to issue new RIGs or (as the case may be) to modify the RIGs:
    - (A) specifying the date on which it proposes that the provisions of the document to be issued or modified should take effect;
    - (B) setting out the text of the RIGs to be issued or (as the case may be) modified and the Authority's reasons for proposing to issue or modify it; and

- (C) specifying the time (which will not be less than a period of 28 days from the date of the notice) within which representations in response to such proposals may be made; and
- (ii) considered any representations in response to the notice that are duly made and not withdrawn.
- (d) The requirements for the issuing of new RIGs or modification of existing RIGs set out in paragraph (c) of this Condition 1.21.4 may be satisfied by actions taken by the Authority before as well as after the coming into effect of this condition.

1.21.5 Requirements for new or more detailed information

- (a) This Condition 1.21.5 applies if any modified or new RIGs have the effect of introducing a requirement to provide:
  - (i) a new category of specified information; or
  - (ii) an existing category of specified information to a greater level of detail, which has not previously been collected by the Licensee, whether under the provisions of the RIGs or otherwise.
- (b) Where this Condition 1.21.5 applies, the Licensee may provide estimates to the Authority in respect of the relevant category of specified information for any formula year specified by the Authority.
- (c) The estimates that are mentioned in paragraph (b) of this condition may be derived from such other information available to the Licensee as may be appropriate for that purpose.

1.21.6 Compliance with the provision of the RIGs

- (a) The Licensee must at all times comply with the provisions of the RIGs for the time being in force pursuant to this condition.

- (b) Where the Licensee holds more than one gas conveyance licence within a single legal entity, it must comply with the requirements of this condition separately in respect of each such licence.
- (c) Nothing in this condition requires the Licensee to provide any documents or give any information that it could not be compelled to produce or give in evidence in civil proceedings before a court.

#### 1.21.7 Definitions

For the purposes of this condition:

**"examiner"** means, in relation to the RIGs, a person whose degree of knowledge and experience of the matters that are the subject of the RIGs will enable him to properly carry out and complete the tasks required of him under the terms of his nomination by the Authority pursuant to the provisions of the RIGs;

**"specified information"** means information (or a category of information) that is so described or defined in the RIGs.

**"Price Control Conditions"**

Means condition 4.5 and 4.7 in this Licence

## **PART 2: CONDITIONS APPLICABLE TO THE CONVEYANCE OF GAS BY THE LICENCE HOLDER**

### **Condition 2.1: Territorial Scope**

#### 2.1.1 Territorial Scope

The Licensee is authorised to convey gas through high pressure pipe-lines from one place to another in the Licensed Area.



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

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

2.1A.2 In this Condition:

<b>Agent or Sub-contractor</b>	means any person directly or indirectly authorised to represent the Licensee.
<b>Gas Industry Representatives</b>	means representatives from gas suppliers, distribution system operators, transmission system operators and also the Consumer Council for Northern Ireland.
<b>Last Resort Supply Direction</b>	means a direction given by the Authority to the Licensee that specifies or describes the premises to be supplied with gas in accordance with Article 24A of the Order.

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

**2.2.1 Application**

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

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

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

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

Subject to Condition 2.2.4:

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

and subject to Condition 2.2.5(b) such statement shall clearly distinguish cases and classes of cases of gas supplier for whom the conveyance charging methodology may result in differing conveyance charges.

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

No later than one month and five working days before it intends to publish its statement under Condition 2.2.3 the Licensee shall notify the Authority of the contents of that statement, and:

- (a) provide the Authority with such information as will enable the Authority to be reasonably satisfied that the methodology and principles for the conveyance charges have been determined in accordance with the provisions of Condition 2.2.9;
- (b) provide the Authority with an explanation of the other terms for conveyance set out in the statement; and
- (c) prior to publication obtain the Authority's approval to the form and content of that statement.

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

The Licensee shall:

- (a) unless the Authority otherwise consents, not charge for the conveyance of gas in the Network during any year or apply other terms for the conveyance of gas on any basis other than contained in its statement of conveyance charges published under Condition 2.2.3 in respect of that year;
- (b) not show any undue preference towards or undue discrimination against any gas supplier or case or classes of cases of gas supplier in the conveyance charges made or other terms for the conveyance of gas applied in relation to the Network; and
- (c) within 28 days of receiving a request for the quotation of conveyance charges for specified conveyance services by a gas supplier, provide the gas supplier with a specific statement of the conveyance charges and other terms for the conveyance of gas applicable to the conveyance services for which the gas supplier requested a quotation;

and for the purposes of Condition 2.2.5(c) and the Licensee's obligation to provide a specific statement of conveyance charges, a request for the quotation of conveyance charges for specified conveyance services shall be treated as such if it is in such form as the Licensee can reasonably be expected to provide a specific statement of conveyance charges in return.

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

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

#### 2.2.7 Resolution of Disputes

Where:

- (a) there is a dispute between the Licensee and any person entitled or claiming to be entitled to be provided with conveyance services by the Licensee pursuant to this Condition 2.2, in respect of the terms of the agreement offered by the Licensee to such person pursuant to this Condition 2.2, any party to the dispute may make an application to the Authority to determine the terms of the agreement in dispute.
- (b) the Authority receives an application pursuant to sub-paragraph (a) and the dispute:
  - (i) has not previously been referred by either party to the Consumer Council for Northern Ireland for investigation; or
  - (ii) has previously been referred by one of the parties to the Consumer Council for Northern Ireland but the Consumer Council for Northern Ireland has advised the Authority that it has not concluded its investigation of the dispute.

the Authority may refer the dispute to the Consumer Council for Northern Ireland for the purposes of enabling the Consumer Council for Northern Ireland to assist the parties in the resolution of the dispute.

- (c) the Authority refers the dispute to the Consumer Council for Northern Ireland under paragraph (b) it will at the same time inform the parties of that referral;
- (d) the Consumer Council for Northern Ireland has not been able to assist the parties in the resolution of the dispute within 3 months of the Authority's referral under paragraph (b) (the 'applicable timescale'), either party to the dispute may refer the matter back to the Authority for determination;
- (e) a dispute referred to the authority under paragraph (a):
  - (i) is not referred by the Authority to the Consumer Council for Northern Ireland under paragraph (c), or
  - (ii) is referred by the Authority to the Consumer Council for Northern Ireland under paragraph (c) but is referred back to the Authority under paragraph (d).

the Authority may, having given both parties not less than one month in which to make any further representations, settle the terms of the agreement dispute in such manner as appears to the Authority to be reasonable having (insofar as is relevant) regard in particular to the following considerations:

- (iii) the efficient and safe operation of the Network by the Licensee;
- (iv) the conveyance by the Network of:
  - (A) the quantities of gas which the Licensee requires or may reasonably be expected to require to be conveyed by the Network to enable the Licensee to comply with the conditions of the licence; and
  - (B) the quantities of gas of any person who has a right to have gas conveyed by the Network is entitled to require to be so conveyed in exercise of that right.
- (f) the person entitled or claiming to be entitled to conveyance services from the Licensee wishes to proceed on the basis of the terms the agreement as settled by

the Authority, the Licensee shall forthwith enter into and implement such agreement in accordance with its terms.

#### 2.2.8 Additional duty to provide information

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

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

#### 2.2.9 Direction by the Authority

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

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

- (b) The Licensee shall comply with the requirements of any direction issued by the Authority under this Condition 2.2.9 and shall publish a revised statement in accordance with Conditions 2.2.3 and 2.2.4.

## **Condition 2.3: Connection Charges and Obligation to Connect**

### **2.3.1 Statement of connection charges and terms for connection to the Network**

The Licensee shall, no later than three months after this Condition takes effect, prepare and submit to the Authority for approval as to form and content, a statement showing the methods by, and the principles on, which charges are to be determined by the Licensee, for, connecting to, and disconnecting from, the Network:

- (a) subject to and in accordance with the requirements of Condition 2.3.13, any premises;
- (b) any non standard gas meter and any gas meter that is owned or not owned by the Licensee (or any affiliate or related undertaking of the Licensee) and is located in any premises;
- (c) any pipe-line system to or from which gas will be conveyed by means of the Network; and
- (d) any Storage Facility or LNG Facility,

and in each case the statement shall include:

- (i) the methods by, and principles on, which charges are to be determined by the Licensee for maintaining, repairing or modifying any connection between the Network and any premises or pipe-line system, Storage Facility or LNG Facility, including without limitation in the case of a connection between the Network and any premises, removing any gas fittings that are owned by the Licensee and comprised in the connection; and
- (ii) the Licensee's other terms for such a connection, and an explanation of those terms together with the Licensee's technical design and operational requirements which shall apply to the making of any particular, or particular type of, connection.

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

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

- (a) modifying apparatus and works associated with a pipe-line so as to increase the capacity of a pipe-line; or
- (b) supplying and installing any pipe-line or works,

including where practicable an indication of likely costs and other terms for the making of such a connection.

#### 2.3.3 Other requirements to be included in the statement

A statement submitted to the Authority by the Licensee under Condition 2.3.1 shall:

- (a) subject to Condition 2.3.12, clearly distinguish between cases and classes of cases of person for whom the Licensee proposes different methods by, or principles on which charges are to be determined for connection; and
- (b) in respect of any such case, or class of cases, show that element of connection costs the Licensee proposes to recover by way of conveyance charges to gas suppliers, including any Separate Business engaged in the supply of gas.

#### 2.3.4 The statement to give likely indication of costs

A statement submitted to the Authority by the Licensee under Condition 2.3.1 shall:

- (a) where practicable, indicate for the Authority's information the costs likely to arise in respect of work done and materials used in connecting any premises, gas meter (including a non standard gas meter, or a gas meter owned or not owned by the Licensee), pipe-line system, Storage Facility or LNG Facility;
- (b) (b)include such information as will reasonably enable any person to estimate the Licensee's connection charges in connecting any premises, gas meter



(including a non standard gas meter, or a gas meter owned or not owned by the Licensee), pipe-line system, Storage Facility or LNG Facility; and

- (c) include such information as will reasonably enable any person requesting a connection to the Network to determine the works and/or other actions he would need to undertake, including, without limitation, any work or action required to comply with the Licensee's technical design and operational requirements, in order for the connection to be made.

#### 2.3.5 Authority's approval

The Authority shall, in approving the Licensee's basis for charging for connection as set out in the statement submitted to it by the Licensee under Condition 2.3.1, have regard to the need of the Licensee to be able to finance the carrying on of its activities and obtain a return equal to that which is, in the reasonable opinion of the Authority, appropriate.

#### 2.3.6 Publication of and compliance with statement

The Licensee shall:

- (a) put in place and comply with the statement, as approved by the Authority under Condition 2.3.5;
- (b) publish each approved statement in such manner as will secure adequate publicity for it; and
- (c) send a copy of any such statement to any person who requests one.

#### 2.3.7 Direction by the Authority

Where the Authority determines that it is necessary for the Licensee to revise:

- (a) the methods and principles on which it has determined the charges and other terms for connection in the latest published statement; and/or
- (b) the charges and other terms for connection it has determined and included in the latest published statement,

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

#### 2.3.8 Revising connection charges

Without prejudice to Condition 2.3.7, the Licensee shall:

- (a) periodically, and on each occasion Condition 2.3 is modified, review its published statement for compliance with the Licensee's obligations under the Licence and propose, and submit to the Authority for approval, any changes necessary in light of the review;
- (b) not revise the basis of its charges for a connection of any premises, gas meter (including a non standard gas meter, or a gas meter owned or not owned by the Licensee), pipe-line system, Storage Facility or LNG Facility, or the other terms for connection, without first giving the Authority a revised statement in the same terms as Condition 2.3.1 and, where such revision is other than any increase in the Retail Prices Index, obtaining Authority's approval to such a revision.

#### 2.3.9 Compliance with a Direction

The Licensee shall comply with the requirements of any direction issued by the Authority under Condition 2.3.7 and shall publish any revised statement as soon as reasonably practical in accordance with Condition 2.3.6.

#### 2.3.10 Connection and Quotation Requests

The Licensee shall:

- (a) within 28 days of receiving a request from any person for a connection to the Network in respect of a gas meter (including a non standard gas meter, or a gas meter owned or not owned by the Licensee), pipe-line system, Storage Facility or LNG Facility or to introduce gas into the Network, or for a quotation of connection charges likely to apply in respect of a connection to the Network,

provide that person with a specific statement of the connection charges, and other terms of connection, applicable to the request;

- (b) within 10 days of receiving a request for a connection to the Network from any person requesting a connection in respect of any type of premises not included within paragraph (a) above:
  - (i) inform that person that the approval of the Authority is required to the making of the connection; and
  - (ii) submit a copy of the connection request to the Authority, together with such supporting information as the Authority may reasonably require for the purposes of its approval decision;
- (c) where following receipt of the information referred to in paragraph (b)(ii) above the Authority gives its approval to the making of the connection, within 28 days of receiving the Authority's approval provide the person requesting the connection with a specific statement of the connection charges, and other terms of connection, applicable to the request.

#### 2.3.11 Treatment of Request for Connection and Quotation

For the purposes of Conditions 2.3.10(a) and (b) and the Licensee's obligation to provide a specific statement of connection charges, a request for a connection to the Network and quotation of the applicable connection charges shall be treated as such if it is in such form that it can be reasonably expected of the Licensee to provide a specific statement of connection charges in response to it.

#### 2.3.12 Prohibition on undue discrimination

The Licensee shall not show any undue preference towards or undue discrimination against any person or cases or classes of cases of person (including any other business of the Licensee):

- (a) seeking, and entitled pursuant to the provisions of Condition 2.3.14, a connection to be made between their premises and the Network;

- (b) seeking a connection to be made between a non standard gas meter, or a gas meter owned or not owned by the Licensee (or any affiliate or related undertaking of the Licensee), and the Network;
- (c) that own or operate (or proposes to own or operate) a pipe-line system, a Storage Facility or an LNG Facility and seek a connection of that system or facility to the Network;
- (d) seeking a connection for the purposes of introducing gas to the Network.

#### 2.3.13 Connection of Premises – Requirement for Authority Approval

The Licensee shall not make or agree to make a connection between any premises (other than any premises which may constitute a Storage Facility or LNG Facility) and the Network without the prior written approval of the Authority to the making of that connection.

#### 2.3.14 Requests for Connection – Obligation to Connect

Where:

- (a) the Authority gives approval to the making of a connection between a premises and the Network (the '**relevant premises**'); and
- (b) the person seeking the connection is willing to pay the Licensee's charges for connection and comply with the Licensee's other terms for connection, including in relation to compliance with any technical and safety criteria contained in the Network Code and the Licensee's technical design and operational requirements (the '**relevant terms**'),

the Licensee shall make the connection between the relevant premises and the Network in accordance with the applicable legislation and relevant terms or permit the connection to be made (as the case may be).

#### 2.3.15 Connection of other systems and facilities – Obligation to Connect

Where the person seeking a connection to the Network of any gas meter (including a non standard gas meter, or a gas meter owned or not owned by the Licensee), pipe-line

system, Storage Facility or LNG Facility or seeking a connection for the purposes of introducing gas to the Network, is willing to pay the Licensee's charges for connection and comply with the Licensee's other terms for connection, including in relation to compliance with any technical and safety criteria contained in the Network Code and the Licensee's technical design and operational requirements (the '**relevant terms**'), the Licensee shall make the connection requested in accordance with the applicable legislation and relevant terms or permit the connection to be made (as the case may be).

#### 2.3.16 No obligation to connect premises

Nothing in Condition 2.3.14 and Condition 2.3.15 shall require the Licensee to make or maintain the connection:

- (a) if the making or maintaining of the connection involves danger to the public and / or a risk to the safety of the Network, provided that the Licensee has taken all such reasonable steps to prevent such danger from occurring;
- (b) if there is insufficient capacity in the Network;
- (c) if the Licensee has reasonable grounds to believe the making of the connection would be in conflict with:
  - (i) the relevant objectives set out in Condition 2.4.1;
  - (ii) any public service obligation (where applicable); or
- (d) if there are any serious economic difficulties with take or pay contracts;

and in any such case the Licensee shall give duly substantiated reasons for believing such circumstances apply.

#### 2.3.17 Resolution of disputes by the Authority

Where:

- (a) there is a dispute between the Licensee and any person entitled or claiming to be entitled to a connection to the Network in respect of the terms of an agreement for the connection to be made ('connection agreement'), any party to the dispute may make an application to the Authority for determination of the terms of the connection agreement.
- (b) the Authority receives an application pursuant to sub-paragraph (a) and the dispute:
  - (i) has not previously been referred by either party to the Consumer Council for Northern Ireland for investigation; or
  - (ii) has previously been referred by one of the parties to the Consumer Council for Northern Ireland but the Consumer Council for Northern Ireland has advised the Authority that it has not concluded its investigation of the dispute,

the Authority may refer the dispute to the Consumer Council for Northern Ireland for the purposes of enabling the Consumer Council for Northern Ireland to assist the parties in the resolution of the dispute;

- (c) the Authority refers the dispute to the Consumer Council for Northern Ireland under paragraph (b) it will at the same time inform the parties of that referral;
- (d) the Consumer Council for Northern Ireland has not been able to assist the parties in the resolution of the dispute within 3 months of the Authority's referral under paragraph (b) (the 'applicable timescale'), either party to the dispute may refer the matter back to the Authority for determination;
- (e) a dispute referred to the Authority under paragraph (a):
  - (i) is not referred by the Authority to the Consumer Council for Northern Ireland under paragraph (c); or

- (ii) is referred by the Authority to the Consumer Council for Northern Ireland under paragraph (c) but is referred back to the Authority under paragraph (d),

the Authority may, having given both parties not less than one month in which to make any further representations, settle the terms of the connection agreement in such manner as appears to the Authority to be reasonable having regard (insofar as is relevant and appropriate) to the obligations that would otherwise have applied to the Licensee under this Condition 2.3; and

- (f) the person entitled or claiming to be entitled to a connection to the Network wishes to proceed on the basis of the terms the connection agreement as settled by the Authority, the Licensee shall forthwith enter into and implement such agreement in accordance with its terms.

#### 2.3.18 Interpretation and construction

References in this Condition 2.3 to:

- (a) "**charges**" shall include references to means whereby such charges may be ascertained.
- (b) "**premises**" includes any land, building or structure.

## **Condition 2.4: Network Code**

### **2.4.1 The relevant objective**

The Licensee shall establish arrangements for the conveyance of gas, being arrangements other than those to which Conditions 2.2 and 2.3 relate, which are calculated to facilitate the achievement of the "relevant objective", that is to say:

- (a) the secure, safe, reliable, efficient and economic development and operation and maintenance of the Network with due regard to the environment; and
- (b) where the Licensee is responsible for the balancing of the Network, the balancing of the Network pursuant to rules for that purpose which are objective, transparent and non-discriminatory (including the rules for the charging of system users for energy imbalances); and
- (c) subject thereto:
  - (i) compliance with the Licensee's other obligations under this Licence; and
  - (ii) subject to Condition 2.4.1(c)(i) the promotion of effective competition between Users.

### **2.4.2 The Network Code**

The Licensee shall:

- (a) prepare and provide to the Authority for its approval a "Network Code", that is to say a document setting out the arrangements established under Condition 2.4.1 and the terms on which it will enter into such arrangements with Users for the conveyance of gas, by no later than 6 months before the First Operational Commencement Date;
- (b) ensure that the Network Code contains provisions that establish:
  - (i) the measures that the Licensee will put in place for the balancing of the Network;



- (ii) the methodology used by the Licensee to procure the gas required for balancing the Network;
  - (iii) the methodology by which the charges to be levied on Users for the balancing of the Network are to be determined; and
  - (iv) the technical safety criteria applicable to the operation of the Network;
- (c) put such Network Code in place except as the Authority otherwise consents and comply with the provisions of the approved Network Code; and
  - (d) put in place appropriate contractual arrangements, approved by the Authority, which require compliance with the Network Code by the Licensee, the Users, and any third parties who may become parties to the Network Code; and
  - (e) except in so far as the Authority consents to the Licensee doing so, not enter into any arrangements for the conveyance of gas except in accordance with the provisions of the Network Code applicable from time to time to the circumstances of the case.

#### 2.4.3 Referring Matters to the Authority

Where a term of the Network Code or of the modification rules referred to in Condition 2.4.5 is framed so that its proper implementation is to be determined with regard to whether it facilitates the achievement of the relevant objective, either the Licensee or any other party to the Network Code who has entered into arrangements to which that term applies, may, to the extent that the term so provides, refer to the Authority for determination any question as to whether a manner in which the Licensee proposes to implement the term would secure that objective.

#### 2.4.4 Modification of the Network Code

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

- (a) the Network Code to be reviewed;

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

#### 2.4.5 Modification Rules

The Licensee shall:

- (a) prepare "the modification rules", that is to say a document setting out the terms of the procedures established under Condition 2.4.4, and shall furnish the Authority with a copy of the modification rules;
- (b) not make any modification to the modification rules except:
  - (i) after consulting the other parties to the Network Code;
  - (ii) after furnishing the Authority with a report on such consultation and consideration; and
  - (iii) with the consent of the Authority; and
- (c) furnish the Authority with a copy of any modification so made.

#### 2.4.6 Prohibition on irregular modification

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

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

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

#### 2.4.7 Role of Authority in modifications

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

- (a) refer for determination by the Authority any question whether the representations or objections by any other party to the Network Code or by any other person in respect of the proposal have been properly considered in accordance with those rules;
- (b) as soon as reasonably practicable, give notice to the Authority:
  - (i) giving particulars of the proposal;
  - (ii) where the proposal is made by any other party to the Network Code, giving particulars of any alternative proposal by the Licensee to modify the Network Code in respect of the same matter;
  - (iii) giving particulars of any representations or objections made by a party to the Network Code or by any other person in respect of those proposals;
  - (iv) stating whether, in its opinion, any proposed modification should or should not be made;
  - (v) stating the factors which, in its opinion, justify making or not making the proposed modification; and
  - (vi) giving such further information as may be prescribed by the modification rules; and

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

#### 2.4.8 Publication of Network Code

The Licensee shall:

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

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

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

#### 2.4.10 Reasons for refusal of access

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

#### 2.4.11 Prohibition on undue discrimination

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

- (a) in assessing a person's application to become a party to the Network Code; and/or

- (b) in its interpretation of the Network Code and the application of procedures contained in the Network Code.

#### 2.4.12 Definitions

In this Condition:

**“User”**

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

**Condition 2.4A: Not Used**

**Condition 2.4B: Not Used**

**Condition 2.4C: Not Used**



## **Condition 2.4D: Single Network Code**

### Licensee's Obligations

2.4D.1 The Licensee shall, acting in conjunction and co-operation with every other HP Conveyance Licensee, by 1 October 2017 or by such later date as may be directed by the Authority, take all reasonable steps to:

- (a) prepare, provide to the Authority for its approval, and at all times have in force a Single Network Code, being a document which:
  - (i) sets out the terms and arrangements established by the Licensee and every other HP Conveyance Licensee for the conveyance of gas, being arrangements other than those to which Conditions 2.2 and 2.3 relate, in respect of the Networks of the HP Conveyance Licensees;
  - (ii) is designed to facilitate achievement of the “relevant objectives” set out in paragraph 2.4D.2;
  - (iii) provides for the matters set out in paragraph 2.4D.3;
  - (iv) provides for mechanisms for the resolution of any disputes arising in relation to any of the provisions of the Single Network Code; and
- (b) put in place appropriate contractual arrangements, approved by the Authority, which require compliance with the Single Network Code by the Licensee, every other HP Conveyance Licensee, the Users, and any third parties who may become parties to the Single Network Code.

### Objectives

2.4D.2 The “relevant objectives” of the Single Network Code referred to in paragraph 2.4D.1(a)(ii) are:

- (a) the secure, safe, reliable, efficient and economic development and operation and maintenance of the Network, with due regard to the environment; and
- (b) subject thereto:
  - (i) the efficient discharge of and compliance with the obligations imposed on the Licensee and each HP Conveyance Licensee by their respective gas conveyance licensees; and

- (ii) subject to sub-paragraph (b)(i), the promotion of effective competition between Users.

#### Relevant Matters

2.4D.3 The Single Network Code shall provide for such matters as may be specified by the Authority and which include:

- (a) measures for the balancing of the HP System;
- (b) the methodology used to procure the gas required for the balancing of the HP System;
- (c) the methodology by which the charges are to be levied on Users for the balancing of the HP System;
- (d) the technical safety criteria applicable to the operation of the HP System.

#### Other Arrangements for the Conveyance of Gas

2.4D.4 Subject to the provisions of Conditions 2.2 and 2.3, the Licensee shall not, except in so far as the Authority consents to the Licensee doing so, put in place or require any person to accept or enter into terms for the conveyance of gas except in accordance with the Single Network Code.

#### Referring Matters to the Authority

2.4D.5 Where a term of the Single Network Code or of the modification rules referred to in Condition 2.4D.6 is framed so that its proper implementation is to be determined with regard to whether it facilitates the achievement of the relevant objectives, either the Licensee or any other party to the Single Network Code who has entered into arrangements to which that term applies, may, to the extent that the term so provides, refer to the Authority for determination any question as to whether a manner in which the Licensee proposes to implement the term would secure that objective.

#### Code Modification Procedures

2.4D.6 The Licensee shall, acting in conjunction and co-operation with every other HP Gas Conveyance Licensee, take all reasonable steps to establish and implement procedures for the modification of the Single Network Code, subject to the provisions of this Condition, so as to better facilitate the achievement of the relevant objectives and which will enable:

- (a) the Single Network Code to be reviewed;
- (b) modifications to be proposed by the Authority, the Licensee, any HP Conveyance Licensee or any other party to the Single Network Code;

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

#### Modification Rules

2.4D.7 Subject to Standard Condition 2A, the Licensee shall, acting in conjunction and co-operation with every other HP Conveyance Licensee, take all reasonable steps to:

- (a) prepare "the modification rules", that is to say a document setting out the terms of the procedures established under Condition 2.4D.6, and shall furnish the Authority with a copy of the modification rules for approval by no later than 6 weeks prior to 1<sup>st</sup> October 2017.
- (b) ensure that no amendment is made to the modification rules except:
  - (i) after consulting the other parties to the Single Network Code;
  - (ii) after furnishing the Authority with a report on such consultation and consideration; and
  - (iii) with the consent of the Authority;
- (c) furnish the Authority with a copy of any modification so made.

#### Prohibition on irregular modifications

2.4D.8 Subject to Standard Condition 2A, the Licensee, acting in conjunction and co-operation with every other HP Conveyance Licensee, shall not modify the Single Network Code except:

- (a) to comply with Condition 2.4D.9(c); or
- (b) otherwise, with the consent of the Authority,

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

Role of Authority in modifications

2.4D.9 Subject to Standard Condition 2A, where a proposal is made pursuant to the modification rules to modify the Single Network Code, the Licensee shall, acting in conjunction and co-operation with every other HP Conveyance Licensee:

- (a) refer for determination by the Authority any question whether the representations or objections by any other party to the Single Network Code or by any other person in respect of the proposal have been properly considered in accordance with those rules;
- (b) as soon as reasonably practicable, give notice to the Authority:
  - (i) giving particulars of the proposal;
  - (ii) where the proposal is made by any other party to the Single Network Code, giving particulars of any alternative proposal by the Licensee, acting in conjunction and co-operation with every other HP Conveyance Licensee, to modify the Single Network Code in respect of the same matter;
  - (iii) giving particulars of any representations or objections made by a party to the Single Network Code or by any other person in respect of those proposals;
  - (iv) stating whether in its view any proposed modification should or should not be made;
  - (v) stating the factors which it believes justify making or not making the proposed modification; and
  - (vi) giving such further information as may be prescribed by the modification rules;

- (c) comply with any direction given by the Authority to the Licensee and to all other HP Conveyance Licensees to make a modification to the Single Network Code in accordance with a proposal described in a notice given to the Authority under subparagraph (b) which, in the opinion of the Authority will, as compared to the existing provisions of the Single Network Code or any alternative proposal, better facilitate the achievement of the relevant objective.

#### Publication of the Single Network Code

2.4D.10 The Licensee shall, acting in conjunction and co-operation with every other HP Conveyance Licensee, take all reasonable steps to:

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

#### Authority to determine material effect on persons of transportation arrangements

2.4D.11 Except in so far as the Authority otherwise consents, the Licensee shall, acting in conjunction and co-operation with every other HP Conveyance Licensee, refer for determination by the Authority any question as to whether a person is likely to be materially affected by a proposal to modify the Single Network Code.

#### Reasons for refusal of access

2.4D.12 The Single Network Code prepared in accordance with this Condition shall require the Licensee, acting in conjunction and co-operation with every other HP Conveyance Licensee, to give duly substantiated reasons for any refusal of access to any pipeline forming part of the Network.

#### Prohibition on undue discrimination

2.4D.13 The Licensee shall, acting in conjunction and co-operation with every other HP Conveyance Licensee, ensure that it does not show an undue preference for or undue discrimination against any person or class or classes of person:

- (a) in assessing, in conjunction and co-operation with any every other HP Conveyance Licensee, a person's application to become a party to the Single Network Code; and/or
- (b) in its interpretation of the Single Network Code and the application of procedures contained in the Single Network Code.

#### Definitions

2.4D.14 In this Condition:

<b>HP Conveyance Licensee</b>	has the same meaning given to it in Condition 2.17 (Single System Operation of the High Pressure Gas System)
<b>User</b>	means, as the context requires, any gas supplier or any person acting on behalf of a gas supplier, who has made, or seeks to make, arrangements with the Licensee, acting in conjunction and co-operation with every other HP Conveyance Licensee, in pursuance of which gas is, or is to be, conveyed through the HP System and/or any gas conveyance transmission system forming part of the HP System.

## **Condition 2.5: Compliance with System Operator Agreements**

### **2.5.1 Agreements for interoperability of systems**

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

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

which agreement:

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

### **2.5.2 Minimum Requirements – Technical Rules**

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

### **2.5.3 Approval by the Authority**

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

#### 2.5.4 Obligation to enter into agreements

Where the Licensee is required, either by a designated transmission system operator or by a designated distribution system operator (and in accordance with that person's licence), to enter into an agreement of the type mentioned in Condition 2.5.1, the Licensee shall enter into any such agreement as may be reasonably required by that designated transmission system operator or distribution system operator (as the case may be).

#### 2.5.5 Network operator agreement

Without prejudice to Condition 2.5.4, the Licensee shall enter into and comply with the Single System Network Operator Agreement (being the document of that name specified as such from time to time by the Authority).

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

(a) The Licensee shall:

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

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



## 2.5.7 Definitions

In this Condition 2.5:

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

## **Condition 2.5A: Compliance with European Requirements**

2.5A.1 The Licensee shall enter into such agreement as may reasonably be required by a Gas Transporter for the purposes of:

- (a) facilitating the Licensee's or the Gas Transporter's compliance with a European Network Code; or
- (b) giving full and timely effect to any relevant legally binding decision of the Agency or the European Commission which relates to the activities of the Licensee or the Gas Transporter.

2.5A.2 Where the Licensee is a party to an agreement:

- (a) entered into pursuant to paragraph 2.5A.1; or
- (b) which relates to activities that fall within the scope of a European Network Code (or to activities connected to such activities),

the Licensee shall take such steps and do such things as are within its power to amend any such agreement as may be necessary from time to time to:

- (c) comply with the European Network Code;
- (d) give full and timely effect to any relevant legally binding decision of the Agency or the European Commission.

2.5A.3 The Licensee shall not enter into an agreement, or amend or agree to amend an agreement, to which it is party pursuant to the requirements of paragraph 2.5A.1 or 2.5A.2 unless:

- (a) the agreement or proposed amendment (as the case may be) has first been submitted to the Authority by the Licensee; and
- (b) the Authority has given its approval to the agreement or proposed amendment (as the case may be).

2.5A.4 The Licensee shall comply with any direction issued to it by the Authority requiring it to enter into an agreement, or to amend or agree to amend an agreement to which it is a party, for the purposes of:

- (a) facilitating compliance with a European Network Code;
- (b) giving full and timely effect to any relevant legally binding decision of the Agency or the European Commission relating to the conveyance of gas through pipe-lines or activities connected with the conveyance of gas through pipe-lines.

2.5A.5 In this Condition:

<b>Agency</b>	means the Agency for the Cooperation of Energy Regulators established by Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009.
<b>European Network Code</b>	means a network code adopted by the European Commission pursuant to or in accordance with Article 6 of Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks.
<b>Gas Transporter</b>	means any person holding a high pressure licence granted (or treated as granted) under: <ul style="list-style-type: none"><li>(a) Article 8(1)(a) of the Order and which is also a high pressure pipeline under Article 36(8) of the Order,</li><li>(b) section 7 of the Gas Act 1986;</li><li>(c) section 7ZA of the Gas Act 1986; or</li><li>(d) section 16(1)(b) of the Gas (Interim)(Regulation) Act 2002.</li></ul>

## **Condition 2.6: Conduct of Transportation Business**

### **2.6.1 Conduct of business activities**

The Licensee shall conduct its business activities relating to the conveyance of gas in the manner best calculated to secure that neither:

- (a) the Licensee or any affiliate or related undertaking of it or any company of which the Licensee is an affiliate or related undertaking; nor
- (b) any other licence holder or exemption holder,

obtains any unfair commercial advantage in any business in the storage or supply of gas including, in particular, any such advantage from a preferential or discriminatory arrangement.

### **2.6.2 Not Used**

### **2.6.3 Disclosure of information**

The Licensee shall:

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

### **2.6.4 Exempt information**

Condition 2.6.2 shall not extend to:

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

#### 2.6.5 Additional definition

In this Condition:

<b>"trading business"</b>	means activities connected with the acquisition and disposal of gas in Northern Ireland other than for the efficient operation of the Network operated by the Licensee or for replacing gas lost from the Network.
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## **Condition 2.7: Provision of information to a relevant gas licence holder**

### **2.7.1 Obligation to provide information**

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

- (a) reasonably be required by that relevant gas licence holder to enable it to comply with its obligations under its own gas conveyance or gas storage licence or under any document established pursuant to a gas licence; or
- (b) be specified in directions issued from time to time by the Authority to the Licensee for the purpose of this Condition 2.7.1, having taken into consideration any representations made to the Authority by the Licensee and any relevant gas licence holder, and in accordance with any conditions contained in such directions.

### **2.7.2 Ability to refuse**

The Licensee shall be entitled to refuse to provide information under Condition 2.7.1 on the grounds that its disclosure would seriously and prejudicially affect the commercial interests of the Licensee unless and until the Authority, by notice in writing given to the Licensee, directs it to provide that information on the ground that provision thereof is necessary or expedient for the purpose mentioned in Condition 2.7.1.

### **2.7.3 Excluded information**

This Condition 2.7 shall not require the Licensee to produce any documents or give any information which it could not be compelled to produce or give in evidence in civil proceedings before the High Court.

### **2.7.4 Arrangements for protecting confidentiality**

The Licensee shall not be obliged under Condition 2.7.1(a) to provide information to any relevant gas licence holder which has not established, whether in pursuance of a licence condition or otherwise, effective arrangements designed to secure that

information provided in pursuance of this condition (and similar licence conditions) is not communicated, directly or indirectly, to any gas supplier or any person acting on behalf of a gas supplier who has made or seeks to make arrangements with that licensee in pursuance of which gas is conveyed through that licensee's network.

#### 2.7.5 Definitions and interpretation

In this Condition 2.7, unless the context otherwise requires:

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

## **Condition 2.8: Emergency Services and Obligations**

### **2.8.1 Emergency telephone service**

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

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

### **2.8.2 Prevention of gas escapes**

Where any gas escapes from the Network the Licensee shall, as soon as reasonably practicable of being informed of the escape, attend the place where gas is escaping and the Licensee shall take all necessary steps to prevent an escape of gas from any part of the Network or otherwise in any premises within 12 hours of receiving a report of such an escape (or earlier if becoming aware of the same); and subject to Condition 2.8.3, the Licensee shall make arrangements whereby, in preventing an escape of gas in any premises to which it conveys gas:

- (a) the prevention is effected, so far as it is reasonably practicable and safe to do so:
  - (i) in such a way as to maintain the supply of gas to those premises and to appliances designed for use by domestic consumers for heating or cooking;



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

2.8.3 Not Used

2.8.4 Not Used

2.8.5 Not Used

2.8.6 Application of Condition 2.8.7

Condition 2.8.7 shall apply in relation to:

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

2.8.7 Priority for maintenance of supply

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

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

(b) when interrupting or restricting the conveyance of gas,

give priority to the maintenance of the supply of gas to consumers on the priority list required by Condition 2.8.9 and the conveyance of gas to their premises.

#### 2.8.8 Consultation with the Department

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

#### 2.8.9 Priority List

The Licensee shall:

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

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

#### 2.8.10 Determination by the Department

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

#### 2.8.11 Definition

In this Condition 2.8:

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

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

### **2.9.1 Recorded information**

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

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

### **2.9.2 Additional definition**

In this Condition:

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

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

2.10.1 The provisions of:

- (a) Schedule 2; and
- (b) Schedule 3

of the Order shall apply to the Licensee.

## **Condition 2.11: Network Forecasts**

### **2.11.1 Network Forecasts**

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

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

as will assist:

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

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

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

### **2.11.3 Revised Network forecasts**

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

#### 2.11.4 Provision and Publication of forecasts

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

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

#### 2.11.5 Particular interests

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

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

#### 2.11.6 Determination by Authority of Particular interests



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

#### 2.11.7 Definition

In this Condition:

<b>Designated Pipe-line</b>	has the meaning given to it in Condition 2A.1 of
<b>Operator</b>	the Licence.

**Condition 2.12: Not Used**

**Condition 2.13: Not Used**

**Condition 2.14: Not Used**

**Condition 2.15: Not Used**

**Condition 2.16: Not Used**

## Condition 2.17: Single System Operation Arrangements

### **Introduction**

2.17.1 The purpose of this Condition 2.17 is to streamline the interaction and communication that is required between gas suppliers and each HP Conveyance Licensee, through the common provision by all HP Conveyance Licensees of their services and systems (which common provision shall be referred to as "**Single System Operation**") that facilitates the achievement of the following objectives:

- (a) development and administration of gas transportation services in Northern Ireland in an efficient and coordinated manner;
- (b) the identification and implementation of cost efficiencies by HP Conveyance Licensees to be obtained from Single System Operation;
- (c) the implementation and maintenance of a Single Network Code;
- (d) the provision of a single point and system of contact for gas suppliers, including through the use of a single IT interface, for all administration services relating to Single System Operation; and
- (e) the accurate and transparent allocation, and robust monitoring and reporting, of costs associated with the implementation and operation of Single System Operation.

### **Arrangements for Single System Operation**

2.17.2 The Licensee shall take all reasonable steps to establish, implement, maintain in force, and comply with arrangements which ensure delivery of Single System Operation (by the Licensee and every other HP Conveyance Licensee) to any User using any part of the HP System of the HP Conveyance Licensees ("**Single System Operation Arrangements**").

2.17.3 The arrangements referred to in paragraph 2.17.2 shall include the following:

- (a) the entering into by the Licensee and every other HP Conveyance Licensee, by a date as directed by the Authority, a Single System Operation agreement (a **SSO Agreement**) which contains such provisions as are requisite to meet the

objectives set out in paragraph 2.17.1, and implement the requirements set out in paragraphs 2.17.2; 2.17.3 and 2.17.4;

- (b) the preparation, implementation and maintenance in force of a Single Network Code pursuant to the requirements of Condition 2.4, which sets out:
  - (i) the terms of the transportation arrangements established by the Licensee, and every other HP Gas Conveyance Licensee, in respect of the conveyance of gas through any part of the HP System; and
  - (ii) the procedures whereby modifications to the Single Network Code may be proposed, considered and implemented or rejected (“**single network code modification procedures**”);
- (c) the establishment of a governing committee that shall provide oversight and governance and have responsibility for the delivery and operation of the Single System Operation Arrangements (the **Governing Committee**);
- (d) the establishment of a dedicated team (the **SSO Team**) to:
  - (i) carry out the day-to-day activities involved in delivering the Single System Operation Arrangements; (this does not include Control Room Services and physical pipeline operation); and
  - (ii) provide secretarial and administration services in respect of the Single Network Code including, without limitation, the administration of the single network code modifications procedures;
- (e) the implementation, and subsequent maintenance and operation, of an information technology system to store, retrieve, transmit and manipulate data required or used for the purposes of providing the Single System Operation Arrangements (the **SSO IT System**);
- (f) the use only of the SSO IT System, and no other gas transportation information technology system, in the provision of the Single System Operation Arrangements save that it is acknowledged that the SSO IT system will need to



interface with any other external IT system required to deliver Single System Operations (e.g. PRISMA); and

- (g) any other matter relating to the common provision of Single System Operation.:
  - (i) which, following agreement with the Licensee, is specified in a direction issued by the Authority, to the Licensee under this Condition 2.17 and to every other HP Conveyance Licensee under the equivalent condition in the Conveyance Licence held by that licensee; or
  - (ii) in respect of which the Authority has given its consent following a joint request made to it by the Licensee and every other HP Conveyance Licensee.

### **SSO Agreement**

2.17.4 The Licensee shall, in conjunction and co-operation with every other HP Conveyance Licensee, take all reasonable steps to prepare and, by no later than 6 weeks prior to 1st October 2017 or by such later date as may be directed by the Authority, submit to the Authority for its approval a SSO Agreement which meets the requirements of this Condition.

2.17.5 The SSO Agreement shall:

- (a) set out all of the terms that govern the relationship between the Licensee and every other HP Conveyance Licensee (each a **Party**) to act in conjunction and co-operation with each other to establish, implement and comply with the Single System Operation Arrangements; and
- (b) include, in particular, terms that provide for:
  - (i) the procedures to be adopted by the Parties, and the rights, obligations and principal tasks of each Party, in implementing, operating and maintaining the Single System Operation Arrangements;
  - (ii) the level of resources, including financial and personnel resources, to be contributed by each Party to the implementation, operation and maintenance of the Single System Operation Arrangements;

- (iii) the establishment, constitution (by reference to the seniority and number of employees of each Party), and role and responsibilities, of the Governing Committee;
- (iv) the establishment, constitution (by reference to the seniority and number of employees of each Party), role and responsibilities of the SSO Team;
- (v) the procedures to be adopted by the Parties for:
  - (A) processing and resolving any dispute between them in respect of their respective rights, obligations and principal tasks in implementing, operating and maintaining the Single System Operation Arrangements;
  - (B) amending the SSO Agreement, including if required to reflect the resolution of any such dispute; and
  - (C) unresolved disputes to be referred to an appropriate third party for determination, which third party may in respect of certain types of dispute be the Authority;
- (vi) any other matter which may be specified in a direction issued following agreement with the Licensee or consent given by the Authority to the Licensee under this Condition 2.17 and to every other HP Conveyance Licensee under the equivalent condition in the Conveyance Licence held by that licensee.

2.17.6 The Authority may within 25 Business Days of receiving an SSO Agreement for approval pursuant to paragraph 2.17.5:

- (a) approve the SSO Agreement as submitted; or
- (b) give notice to the Licensee and every other HP Conveyance Licensee that in its opinion the SSO Agreement does not meet the requirements of this Condition 2.17 which notice shall specify the reasons for such opinion.

2.17.7 Where the Authority gives notice under paragraph 2.17.6(b), it may require the Licensee to make, acting in conjunction and co-operation with every other HP Conveyance

Licensee, such revisions as are in the Authority's opinion necessary or expedient in order for the SSO Agreement to meet the requirements of this Condition 2.17.

2.17.8 The Licensee shall not enter into an SSO Agreement which has not been approved by the Authority.

2.17.9 The Licensee shall, acting in conjunction and co-operation with every other HP Conveyance Licensee, take all reasonable steps to:

- (a) vary the SSO Agreement as may be required to:
  - (i) comply with any notice given by the Authority under paragraph 2.17.7;
  - (ii) reflect any direction issued or consent given by the Authority under paragraph 2.17.5(b)(vi);
- (b) take all reasonable steps to reach agreement on variations proposed by the different Parties to the SSO;
- (c) periodically conduct a review of the SSO Agreement to ensure that it continues to be fit for the purpose of meeting the requirements of this Condition 2.17;
- (d) submit a copy of the report of the review conducted in accordance with sub-paragraph (b) to the Authority as soon as reasonably practicable after the review; and
- (e) vary the SSO Agreement as may be required in light of any outcome of the review.

2.17.10 The Licensee shall not vary, or agree to vary, the SSO Agreement approved by the Authority without the Authority's approval to the variation.

#### **SSO Team**

2.17.11 The Licensee shall, acting in conjunction and co-operation with every other HP Conveyance Licensee, take all reasonable steps to establish an operational SSO Team by no later than 1 October 2017 or at such later date as may be directed by the Authority.

#### **SSO IT System**

2.17.12 The Licensee shall, acting in conjunction and co-operation with every other HP Conveyance Licensee, take all reasonable steps to ensure that:

- (a) a SSO IT System is implemented by no later than 1 October 2017 or at such later date as may be directed by the Authority; and
- (b) the SSO IT System is capable of handling, and delivering the arrangements (relating to data storage, manipulation, exchange and retrieval) set out in the Single Network Code.

### **Single Network Code**

2.17.13 The Single Network Code shall be prepared pursuant to, and meet the requirements set out in Condition 2.4 of the Licence.

### **Reports**

2.17.14 The Licensee shall, acting in conjunction and co-operation with every other HP Conveyance Licensee, take all reasonable steps to submit, as soon as reasonably practicable after 31 December and not later than six months after the gas year end, a report providing details of the performance of the Licensee, acting in conjunction and co-operation with every other HP Conveyance Licensee, in implementing, maintaining in force and complying with the Single System Operation Arrangements made pursuant to paragraph 2.17.2, in that calendar year.

2.17.15 Form and content of the report required by paragraph 2.17.14 to be as so specified by the Authority.

### **Interpretation and Definitions**

2.17.16 Where any provision in this Condition requires the Licensee to act '*in conjunction and co-operation with every other HP Conveyance Licensee*' in the fulfilment of an obligation, the Licensee shall:

- (a) use all reasonable endeavours to work together with every other HP Conveyance Licensee to fulfil the relevant obligation;

- (b) provide such assistance as is reasonably required by each other HP Conveyance Licensee such that the relevant obligation may be fulfilled; and
- (c) to the extent the Licensee is not reasonably capable of fulfilling the relevant obligation without the assistance of any or every other HP Conveyance Licensee:
  - (i) ensure that the SSO Agreement requires the HP Conveyance Licensee to provide the assistance in question, and, where it does not, seek to amend the SSO Agreement so that it does include such a requirement; and
  - (ii) exercise all rights available to it in order to obtain the assistance in question.

2.17.17 In this Condition:

<b>Governing Committee</b>	has the meaning given to it in paragraph 2.17.3(c).
<b>HP Conveyance Licensee</b>	means any person holding a licence granted, or treated as granted, under Article 8(1)(a) of the Gas (Northern Ireland) Order and authorising the holder to convey gas through high pressure pipe-lines.
<b>HP System</b>	means the total system that comprises all of the systems of high pressure gas pipe-lines in Northern Ireland through which gas is conveyed by HP Conveyance Licensees.
<b>Network</b>	has the meaning given to it in Condition 1.
<b>Party</b>	has the meaning given to it in paragraph 2.17.5.
<b>Single System Operation</b>	has the meaning given to it in paragraph 2.17.1 and does not include control room services and physical pipeline operation

<b>SSO Agreement</b>	has the meaning given to it in paragraph 2.17.3(a).
<b>SSO IT System</b>	has the meaning given to it in paragraph 2.17.3(e).
<b>SSO Team</b>	has the meaning given to it in paragraph 2.17.3(d).
<b>Single Network Code</b>	has the meaning given to it in paragraph 2.4.1(a).
<b>Single System Operation Arrangements</b>	has the meaning given to it in paragraph 2.17.2.
<b>User</b>	has the meaning given to it in paragraph 2.4.14.



**Condition 2.18: Not Used**



**Condition 2.19: Not Used**

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

### **2.20.1 Application**

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

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

The Licensee shall comply with any reasonable request by any gas supplier wishing to supply gas to premises directly connected to the Network to provide and install at those premises a gas meter belonging to the Licensee of an appropriate type, specified by the gas supplier, if a meter of that type is readily available to the Licensee and the gas supplier agrees to pay the Licensee's charges in respect of that meter, such charges to have been determined using such principles and methodology as shall have been agreed with the Authority.

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

The Licensee shall comply with any reasonable request by any gas supplier wishing to supply gas to premises to install at those premises a gas meter of an appropriate type belonging to the gas supplier (or the owner or occupier of the premises) if the gas supplier agrees to pay the Licensee's charges in respect of the installation of the meter and any subsequent disconnection.

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

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

### **2.20.5 Disconnection of Meters**

Subject to Condition 2.20.6, where any gas meter owned by the Licensee is disconnected by or returned to the Licensee, it shall promptly make an appropriate record of the details displayed on the register of the meter at the time of disconnection or return and of such other information in its possession as shall subsequently enable

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

#### 2.20.6 Safe Custody of Meters

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

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

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

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

#### 2.20.7 Provision of Information

Where the Licensee is notified, pursuant to any regulations made under Article 22 of the Order, of the connection or disconnection of any meter at any premises it shall promptly give to the gas suppliers in respect of those premises the information so notified and furnish any further information as such gas suppliers may reasonably request relating to the meter and which the Licensee either has or may readily obtain.

**Condition 2.21: Not Used**

**Condition 2.22: Not Used**

**Condition 2.23: Not Used**

**Condition 2.24: Not Used**

## **Condition 2.25: Reasonable and Prudent Operator**

### **2.25.1 Reasonable and Prudent Operator**

The Licensee shall:

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

acting at all times as a Reasonable and Prudent Operator.



**Condition 2.26:**      **Not Used**

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

### **2.27.1 Effect of this Condition**

This Condition 2.27 shall be subject to the provisions of Part 5, and:

- (a) it shall have effect at all times prior to the time and date which is specified in any direction issued by the Authority under Condition 5.1.1;
- (b) where such a direction is issued:
  - (i) Conditions 2.27.2 to 2.27.6 shall cease to have effect at that time and date and have no effect at any time thereafter;
  - (ii) this Condition 2.27.1 and Condition 2.27.7 shall be unaffected and shall continue to have effect.

### **2.27.2 Development of the Network**

Subject to Condition 2.27.4, the Licensee shall use all reasonable endeavours to install and bring into operation a high pressure pipe-line in the Licensed Area such that gas can be conveyed (either by such high pressure pipe-line or by a low pressure pipe-line connected, or to be connected, to such high-pressure pipe-line) to each town specified in Annex 1 to this Condition 2.27 (the 'Development Plan') by the date specified in respect of that town, for the purposes of enabling gas to be supplied to any premises in each such town where the supply of gas is reasonably requested by the customer at such premises.

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

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

- (a) exceptional circumstances (excluding lack of funds) which could not have been reasonably avoided by the Licensee have prevented, or could reasonably be expected to prevent, the Licensee from complying with its obligation under Condition 2.27.2;

- (b) due to any process required to be followed by an applicable law, which could not reasonably have been further expedited or avoided by the Licensee, the Licensee has been delayed in complying with its obligations under Condition 2.27.2.

#### 2.27.4 Modification of Licence

Without prejudice to Article 14 and Article 14A of the Order, where by virtue of the provisions of Condition 2.27.3, any revision is made to the Development Plan that revision shall be applied for the purposes of this Licence and shall (to the extent applicable) be a modification to this Condition and/or Annex 1 of this Condition.

#### 2.27.5 Loss of Exclusivity

Notwithstanding Condition 1.1.4, where in respect of any part of the Licensed Area the Licensee ceases to be entitled to exclusively convey gas by means of high pressure pipe-lines (in accordance with Schedule 3), obligations set out in Condition 2.27.2 shall cease to apply to that part of the Licensed Area with effect from the date on which the entitlement ceased.

#### 2.27.6 Development Plan Report

The Licensee shall, by no later than 1 March of each year, submit to the Authority a report of its progress in the development of the Network (having regard to its obligations under Condition 2.27.2).

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

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

would facilitate the development of infrastructure necessary for gas supply along the network route (as that term is defined in the definition of Licensed Area).

**Annex 1 to Condition 2.27**

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

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

### **2.28.1 Designing and Developing the Network**

The Licensee shall:

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

### **2.28.2 Conduct of Licensee**

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

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

### 2.28.3 Resolution of Disputes

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

### 2.28.4 Definitions

In this Condition:

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

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

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

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

### **2.29.2 Contractual Arrangements**

The Licensee shall ensure that:

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

### **2.29.3 Reporting**

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

- (a) furnish to the Authority information which will evidence the processes and procedures followed by Licensee in undertaking any transaction of the type referred to in Condition 1.2.14; and
- (b) permit the Authority access to relevant documentation held by the Licensee in respect of any such transaction.





# STANDARD CONDITIONS APPLICABLE TO THE CONVEYANCE OF GAS BY DESIGNATED PIPELINE OPERATORS

## Condition 2A.1 – Interpretation and Construction

### 2A.1.1 Definitions

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

“Actual Figures”	means the Annual Exit Quantity and the Actual Firm Capacity figures to be provided by the Licensee to the Authority under Condition 2A.2.3.2(a);
“Actual Firm Capacity”	means the aggregate of GS Firm Capacity which has been held by Gas Suppliers in respect of a Gas Year and in respect of Entry and 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 Capacity Product”	means a Capacity Product with a duration of one year that provides for capacity to be made available throughout a Gas Year;
“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;
“Auction Premium”	means the amount calculated in accordance with Condition 2A.2.5.3(d) for each Capacity Product in a relevant Gas Year;
“Auction Price”	means, in respect of auctions for Capacity Products that are bundled with the capacity products of an interconnected system operator, the

	share of the price determined in the auction that is payable to the Licensee;
"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;
"Buy-Back Capacity"	means capacity that has been allocated as Firm Capacity or OS Capacity (as the case may be) and subsequently made available for purchase by the Licensee in accordance with the OS Scheme and the Network Code;
"Capacity Figures"	shall have the meaning ascribed to that term in Condition 2A.2.3.1(b);
"Capacity Percentage"	shall have the meaning ascribed to that term in Condition 2A.2.5.3(b);
"Capacity Product"	means the products for the provision of capacity at Entry Points or Exit Points made available by Designated Pipe-line Operators listed in the Gas Product Multipliers and Time Factors Table;
"Capacity Reconciliation Payment"	means a charge or a payment, as the context requires, made by the Licensee to each of its Gas Suppliers, and as calculated in accordance with condition 2A.2.6.4;
"Commodity Percentage"	shall have the meaning ascribed to that term in Condition 2A.2.5.2(a);
"Commodity Reconciliation Payment"	means a charge or a payment as the context requires, made by the Licensee to each of its Gas Suppliers in respect of the difference between the Forecast Postalised Commodity Charge and the Year-End Postalised Commodity Charge applied to a Gas Year;

“Credit Committee”	means the committee which is convened and operates in accordance with the Terms of Reference;
“Debt Entitlement”	shall have the meaning ascribed to that term in Condition 2A.6.1.2(b);
“Debt Notice”	means a notice issued by the PSA as contemplated by Condition 2A.4.3.1(f);
“Debt Notice Date”	means the date on which the PSA shall issue the Debt Notice each month as contemplated by Condition 2A.4.3.1(f), being the eighth Business Day in the relevant month;
“Debt Payment”	means a charge payable by a PS Gas Supplier in respect of PS Notified Debt as contemplated by Condition 2A.3.4 and as detailed in the applicable Debt Notice;
“Debt Repayment”	means a repayment payable to a PS Gas Supplier in respect of a Recovery as contemplated by Condition 2A.3.4.3(ii) and as detailed in the applicable Debt Notice;
“Designated Network”	means such part(s) of the Licensee’s network as is or are designated from time to time pursuant to the Designation Order;
“Designated Pipe-line 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;
“Entry Overrun Charge”	means an entry overrun charge payable by a Gas Supplier in respect of an Entry Point where the quantity of gas allocated to the Gas Supplier under the Network Code exceeds the capacity booked by the Gas Supplier under the Network Code at that Entry Point, which charges are to be calculated in accordance with the Gas Transmission Charging Methodology Statement;
“Entry Point”	means a point of interconnection between the network of a Designated Pipe-line Operator and any other transmission pipe-line (except for any other transmission pipe-line operated by another Designated Pipe-line Operator) at which capacity is subject to booking procedures pursuant to the Network Code of that Designated Pipe-line Operator and which constitutes an Entry Point under the Network Code;
“Entry Point Additional Capacity”	means in respect of a given time the amount of additional capacity (in kWh/day), in excess of the Entry Point Technical Capacity, determined as available (on a firm basis) by the Designated Pipe-line Operator (on whose network the Entry Point is located) in accordance with the OS Scheme and the Network Code of that Designated Pipe-line Operator;
“Entry Point Technical Capacity”	means in respect of a given time the maximum capacity (in kWh/day) available on a firm basis at an Entry Point taking account of the

	technical requirements of such Entry Point, system integrity and the operational requirements of the network;
“Entry”, “Entering”	or forms thereof, refers to the input of gas at an Entry Point;
“Exit”, “Exiting”	or forms thereof, refers to the offtaking of gas at an Exit Point;
“Exit Point”	means a point on the Designated Network at which gas is offtaken from the Designated Network by a Gas Supplier, which is not a Transit Point and which constitutes an Exit Point under the Network Code;
“Exit Quantity”	means the total quantity of gas, (measured in kWh) allocated to the Licensee’s relevant Gas Supplier in respect of an Exit Point within a certain period, or any applicable Minimum Quantity Value in respect of such period, if higher;
“Exit Ratchet Charge”	means, at any relevant time in respect of a Gas Supplier, charges relating to nominations in excess of Firm Annual Capacity (in kWh/day) deemed to be held at such time by such Gas Supplier in respect of an Exit Point in accordance with the provisions of the Network Code, the charge for which shall be calculated in accordance with Condition 2A.2.5.3(b)
“Firm Annual Capacity”	means, at any relevant time in respect of a Gas Supplier and a Gas Year, annual capacity (in kWh/day) held at such time by such Gas Supplier by way of Annual Capacity Products on a firm basis in respect of an Entry Point or an Exit Point and in respect of that Gas Year;
“Firm Capacity”	means, at any relevant time in respect of a Gas Supplier and a Gas Year, the total of Firm Annual Capacity and Firm Non-Annual Capacity (in kWh/day) held at such time by such Gas Supplier and that Gas Year except that if any Minimum Capacity Value in respect of such Gas Year and such Gas Supplier is greater than such held

	capacity then such Gas Supplier shall be deemed to hold a Firm Capacity equal to that Minimum Capacity Value;
“Firm Non- Annual Capacity”	means, at any relevant time in respect of a Gas Supplier and a Gas Year (or any relevant part thereof), the capacity (in kWh/day) held at such time by such Gas Supplier by way of Non-Annual Capacity Products on a firm basis in respect of an Entry Point or an Exit Point and in respect of the relevant part of that Gas Year, but shall not include any 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 Annual Capacity Charge”	means a charge in respect of each kWh/day of Firm Annual Capacity held by the Licensee’s Gas Suppliers in respect of an Entry or an Exit Point in a Gas Year which shall be calculated in accordance with Condition 2A.2.5.3(b);
“Forecast Postalised Non Annual Capacity Charge”	means a charge in respect of each kWh/day of Non-Annual Firm Capacity held by the Licensee’s Gas Suppliers in respect of an Entry Point in a Gas Year which shall be calculated in accordance with Condition 2A.2.5.3(c);
“Forecast Postalised Charges”	means the Forecast Postalised Commodity Charges, the Forecast Postalised Annual Capacity Charges, the Forecast Postalised Non-Annual Capacity Charges , and charges for the VRF Service;

“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.2.5.2;
“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 Product Multipliers and Time Factors Table	A table published on the Authority’s website and updated periodically setting out the Capacity Products to be offered by the DPOs and the weightings for Capacity Products to be used in the calculation of the Postalised Charges
“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 Transmission Charging Methodology Statement”	means the statement published by the Licensee on its website concerning the methodology for the calculation of gas transmission charges, as provided for in Condition 2A.2.1.9.
“Gas Year”	means the period of time beginning at 05:00 hours on 01 October in any calendar year and ending at 05:00 hours on 01 October in the next succeeding calendar year;



“GS Annual Exit Quantity”	shall have the meaning ascribed to that term in Condition 2A.2.6.4(e);
“GS Firm Capacity”	means the total of GS Firm Annual Capacity and GS Firm Non Annual Capacity held by a Gas Supplier in respect of all Entry Points and Exit Points on the Designated Network in a Gas Year;
“GS Firm Annual Capacity”	means the Firm Annual Capacity held by a Gas Supplier in respect of all Entry Points and 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 Annual Capacity is held in such Gas Year;
“GS Firm Non Annual Capacity”	means the Firm Non Annual Capacity held by a Gas Supplier in respect of all Entry Points and Exit Points on the Designated Network in a Gas Year;
“Initial Firm Capacity”	means the total of all Firm Annual 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 and the total Firm Non-Annual Capacity forecast to be held by the Licensee’s Gas Suppliers in respect of [the same] a Gas Year;
“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;
“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 (Annual Capacity)”	means the amount to be invoiced monthly by the Licensee to each of its Gas Suppliers in accordance with Condition 2A.2.5.4(b);
“Monthly Postalised Capacity Payment (Non Annual Capacity)”	means the amount to be invoiced monthly by the Licensee to each of its Gas Suppliers in accordance with Condition 2A.2.5.4(c);
“Monthly Postalised Capacity Payment”	means the total amount to be invoiced monthly by the Licensee to each of its Gas Suppliers in respect of the “Monthly Postalised Capacity Payment (Annual Capacity)” and the “Monthly Postalised Capacity Payment (Non Annual Capacity)”;
“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.2.5.2(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 Annual Capacity Product”	means a Capacity Product for a period shorter than a Gas Year that provides for capacity to be made available in a Gas Year;
“Non Payment Month”	means a month in which a relevant PS Non-Payment occurred;
“Oversubscription Capacity” or “OS Capacity”	means in respect of a given time, an amount of additional capacity (in kWh/day) (not exceeding the Entry Point Additional Capacity) which is available for allocation on a firm basis or is allocated on a firm basis at an Entry Point, for a duration of one Day as a result of the availability of Entry Point Additional Capacity and as determined in accordance with the OS Scheme and the Network Code;
“OS Charging Statement”	has the meaning given in the OS Conditions;
“OS Conditions”	means Condition 2A.2.1.11 to Condition 2A.2.1.21;
“OS Procedure”	has the meaning given to it in the OS Conditions;
“OS Scheme”	has the meaning given to it in the OS Conditions;
“OS Services”	has the meaning given in the OS Conditions;
“Postalised Charges”	means the Forecast Postalised Charges and/or the Year-End Postalised Charges as the case may be;
“Postalisation Conditions”	means the Conditions in Part 2A and the OS Conditions;
“Postalised System” or “PS”	means the system comprising all gas pipe-lines designated as being subject to a common tariff pursuant to all orders made pursuant to Article 59 of the Energy (Northern Ireland) Order 2003 in force at such time;

“PoT Account”	shall have the meaning ascribed to that term in Condition 2A.5.3.1(a);
“Primary DPO”	means the Designated Pipe-line Operator holding a licence to convey gas in respect of a part of the Postalised System on which the PS Gas Supplier is entitled to exit gas;
“PSA”	shall have the meaning ascribed to that term in Condition 2A.4.1.1;
“PS Actual Required Revenue (PSARR)”	means, in respect of a Gas Year, the sum of all Actual Required Revenues in respect of such Gas Year;
“PSA Agreement”	shall have the meaning ascribed to that term in Condition 2A.4.1.1;
“PSA Functions”	shall have the meaning ascribed to that term in Condition 2A.4.3.1;
“PS Actual Firm Capacity”	[shall have the meaning ascribed to that term in Condition 2A.2.6.2];
“PS Annual Exit Quantity”	shall have the meaning ascribed to that term in Condition 2A.2.6.2;
“PS Forecast Annual Quantity”	shall have the meaning ascribed to that term in Condition 2A.2.5.2(a);
“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 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 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”	<p>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;</p>
“PS Transmission Payments”	<p>means any amount payable by a PS Gas Supplier in respect of the provision of gas conveyance services on the Postalised System under Condition 2A.2.1.7 (Entry Overrun Charges and Exit Ratchet Charges); Conditions 2A.2.5.5 (Monthly Postalised Payments); 2A.3.4 (Debt Payments); and 2A.2.6.4 (Reconciliation Payments); 2A.2.5.2(c) (Auxiliary Payments) and 2A.2.6.6 (Supplemental Payments) under each Designated Pipe-Line Operator’s Respective Licence;</p>
“Quantity Figures”	<p>shall have the meaning ascribed to that term in Condition 2A.2.3.1(b);</p>

“Quarter”	means each successive three calendar month period in a Gas Year, the first of which shall run from and including 05:00 hours 01 October until 05:00 hours 01 January in that Gas Year; and “Quarterly” shall be construed accordingly;
“Quarterly Capacity Quantities”	means for each Capacity Product the aggregate of Firm Annual Capacity or Firm Non Annual Capacity held by all Gas Suppliers in a Quarter;
“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 Conditions 2A.2.6.4(a) to (e) and 2A.2.6.5 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.2.5.7;
“Respective Licence”	means in respect of each of the Designated Pipe-line Operators the licence for the conveyance of gas granted to it pursuant to Article 8(1) of the Order or that part of a combined licence relating to the conveyance of gas;
“Second Due Date”	means, in respect of a PS Non-Payment which occurred in a Non-Payment Month, the fifteenth Business Day after the respective Due Date as stipulated in the Network Code;

“Separate Business”	<p>means each of the following businesses of the Licensee (as appropriate):</p> <p>(i) the conveyance of gas through a transmission pipe-line pursuant to a licence granted in accordance with Article 8(1)(a) of the Order;</p> <p>(ii) the distribution of gas through distribution pipe-lines pursuant to a licence granted in accordance with Article 8(1)(a) of the Order; and</p> <p>(iii) the supply of gas pursuant to a licence granted in accordance with Article 8(1)(c) of the Order</p> <p>each taken separately from one another and from any other business of the Licensee or any affiliate or related undertaking of the Licensee;</p>
“Supplemental Payment”	means any sum (whether or not contingent) in addition to aggregate Monthly Postalised Payments which a PS Gas Supplier is committed to pay on an annual basis in respect of transmission through the Postalised System and which is calculated otherwise than on the basis of a minimum quantity of gas or minimum quantum of capacity;
“Supply Business”	means, where applicable, the Separate Business of the Licensee which carries on the business of the supply of gas;
“Termination Payments”	means any amount payable on the termination of a Gas Supplier’s Accession Agreement under the terms of the Network Code;
“Terms of Reference”	means the terms of that name appended to the Network Code which govern the operation of the Credit Committee;
“Total Monthly Payments	shall have the meaning ascribed to that term in Condition 2A.3.4.3;
“Transit”, “Transiting”	or forms thereof, refers to the conveyance of gas through the Designated Network to another part of the Postalised System;

“Transit Point”	means a point of interconnection between the Designated Network and another pipe-line forming part of the Postalised System;
“Trust and Account Bank Agreement”	means the agreement in the form approved by the Authority and made between the Designated Pipe-line Operators, the Trustee and account bank which governs the operation of the PoT Account;
“Trustee”	shall have the meaning ascribed to that term in Condition 2A.5.1.1;
“Trustee Functions”	shall have the meaning ascribed to that term in Condition 2A.5.3.1;
“Total Weighted Forecast Capacity”	means the figure calculated in accordance with 2A.2.5.3(a)
“Total Weighted Year-End Capacity”	means the figure calculated in accordance with 2A.2.6.3(a)
“Undesignated Network”	means such part(s) of the network as is or are not from time to time comprised in the Designated Network;
“Unrecovered Postalisation Payments”	shall have the meaning ascribed to that term in Condition 2A.4.3.1(l);
“VAT Distributions”	means distributions made by the Trustee on the instructions of the PSA from the PoT Account as calculated in accordance with Condition 2A.4.3.1 (d);
“VRF Service”	means the Interruptible Virtual Reverse Flow service offered by the Licensee in accordance with Condition 2A.2.1.6 and Conditions 2A.2.1.8 to 2A.2.1.10;
“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 Annual Capacity Charge (Annual Capacity)”	means a year-end charge in respect of each kWh/day of Firm Annual Capacity held by the Licensee’s Gas Suppliers in respect of an Entry Point or an Exit Point in a Gas Year which shall be calculated in accordance with Condition 2A.2.6.3(b);
“Year-End Postalised Non-Annual Capacity Charge”	means a year-end charge in respect of each kWh/day of Firm Non-Annual Capacity held by the Licensee’s Gas Suppliers in respect of an Entry Point or an Exit Point in a Gas Year which shall be calculated in accordance with Condition 2A.2.6.3(c);
“Year-End Postalised Capacity Charge”	means the total charges applicable to each kWh/day of Firm Capacity held by each Gas Supplier for Entry and or Exit from any part of the Designated Network in respect of a Gas Year in accordance with Condition 2A.2.6.3(b) and 2A.2.6.3(c);
“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.2.6.2.

#### 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 the Licensee shall invoice for any Postalised Charges in the unit of Kwh or Kwh/day.

## **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 "Day" 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.
- 2A.2.1.6 The Licensee shall offer:
- (a) the VRF Services referred to in Conditions numbered 2A.2.1.8 to 2A.2.1.10 (the "VRF Conditions"); and
  - (b) the OS Services referred to in Condition numbered 2A.2.1.11 to 2A.2.1.20 (the "OS Conditions").

- 2A.2.1.7 The Licensee may charge each of its Gas Suppliers an Entry Overrun Charge' and/or a 'Exit Ratchet Charge' as provided for under the terms of the Network Code.
- 2A.2.1.8 The Licensee shall charge each of its Gas Suppliers to whom it provides the VRF Services the following amounts, namely:
- (a) 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 Gas Transmission Charging Methodology Statement approved by the Authority from time to time;
  - (b) no commodity based 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, not later than 1 July in the Gas Year 2015 / 2016 and in each subsequent Gas Year, publish a Gas Transmission Charging Methodology Statement approved by the Authority (and in a manner so approved) showing the charges referred to in Condition 2A.2.1.7 in respect of Overrun Charges and Condition 2A.2.1.8(a) in respect of each kWh/day of VRF Services to be provided in the forthcoming Gas Year.
- The Licensee shall not make any changes to the Gas Transmission Charging Methodology Statement without the prior written approval of the Authority. If the Authority does not approve the Gas Transmission Charging Methodology Statement (or any changes to it) submitted to the Authority, the Licensee must make such modifications to the statement as the Authority may direct and must re-submit the statement to the Authority for approval.
- 2A.2.1.10 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 VRF Services or OS Services any PS Code Charges which are payable by that Gas Supplier in respect of the VRF Services or OS Services pursuant to the Network Code.

Capacity increase through oversubscription and buy back scheme

- 2A.2.1.11 The Licensee shall, in co-operation and conjunction with every other Designated Pipe-line Operator, and following consultation with such interested parties as the Licensee considers likely to be affected, by no later than 12 December 2013 prepare and submit for approval to the Authority arrangements for the Oversubscription and Buy-Back of capacity, to be known as the OS Scheme.
- 2A.2.1.12 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.2.1.13 The Licensee shall implement and comply with the OS Scheme. The OS Scheme shall:
- (a) set out the circumstances in which (and the basis on which) the Licensee will:
    - (i) offer to allocate, and allocate, OS Capacity;
    - (ii) offer to purchase, and purchase, Buy-Back Capacity,collectively referred to as the “OS Services”;
  - (b) set out the methodology for determining the Entry Point Additional Capacity and the amount of OS Capacity that may be offered at a given time in respect of a given Entry Point, and the entry points of other DPOs as defined in their licences;
  - (c) include a charging methodology statement which sets out the methodology for determining the charges for the provision of OS Services (the “OS Charging Statement”);
  - (d) include provisions setting out the basis on which (and times at which) net revenues received in respect of the provision of OS Services are to be apportioned, such provisions to include:
    - (i) the definition of net revenues by reference to which such apportionment is to be made;
    - (ii) the proportions as determined by the Authority (from time to time) which shall apply to the apportionment of the net revenues, received in respect

of the provision of the OS Services, between (i) the Licensee and any other Designated Pipe-line Operator, and (ii) Gas Suppliers, PS Gas Suppliers and the UC Gas Supplier; and

(iii) the timing of such payments following apportionment; and

(e) comply with the requirements of point 2.2.2 of Annex 1 to the EC Regulation 715/2009.

2A.2.1.14 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.2.1.15 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.2.1.16 The charges referred to in Condition 2A.2.1.13(c) and 2A.2.1.15 shall, in respect of a Gas Year, not be subject to reconciliation or other adjustment on any ground.

2A.2.1.17 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.2.1.18 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.2.1.19 In applying or giving effect to the Conditions in this Part 2A (but without limiting Conditions 2A.2.1.7(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, or Initial Firm Capacity.
- 2A.2.1.20 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 Entry to and 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 10th 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.2.5.5 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.2.6.4(b).
- 2A.2.2.4 Unless the Authority otherwise expressly consents in writing the Licensee shall apply no charge on the Postalised System other than the PS Transmission Payments or as otherwise permitted under the Licence or the Network Code.
- 2A.2.2.5 The Licensee shall acknowledge that each PS Gas Supplier's obligation to pay PS Transmission Payments shall be consideration for the allocation by the Licensee to such PS Gas Supplier, their nominee or agent (such nominee or agent to be a PS Gas Supplier or otherwise approved by the Authority) of both Firm Capacity at a Transit Point on the Designated Network and the relevant quantity of gas for exit at a Transit Point for the purpose of the Transit of such gas.
- 2A.2.3 Duty to provide forecasts and information relating to the calculation of the Postalised Charges
- 2A.2.3.1 Forecasts and information relating to following Gas Years
- (a) For the purpose of Condition 2A.2.5, the Licensee shall use its reasonable endeavours, in each Gas Year, to provide the following forecasts and information in respect of the next Gas Year ("GY") and each of the following four Gas Years inclusive ("GY+1" to "GY+4" respectively) (the "Forecast Figures") to the Authority no later than the fifteenth Business Day in March:
- (i) the total of all Forecast Supplier Quantities in a Gas Year (the "Forecast Annual Quantity") together with:
- (aa) an explanation of the reasons why any Forecast Annual Quantity in respect of any of the Gas Years GY+1 to GY+4 are



expected to be greater or less than the Forecast Annual Quantity in respect of GY;

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

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

- (iii) for each Capacity Product a breakdown in respect of each Entry Point and Exit Point of the Initial Firm Capacity in respect of GY and a forecast of Initial Firm Capacity in respect of GY+1 to GY+4 inclusive, together, with:.
- (aa) An explanation of the reasons why any Initial Firm Capacity in respect of any of the Gas Years GY+1 to GY+4 are expected to be greater or less than the Initial Firm Capacity in respect of GY;
  - (bb) For each Non Annual Capacity Product a breakdown of the Initial Firm Capacity attributable to each Quarter of GY;
- (iv) the assumptions on which the figures provided pursuant to Condition 2A.2.3.1(a)(iii) were based:

- (b) The Licensee shall use its reasonable endeavours to ensure that all Forecast Figures supplied to the Authority in accordance with Condition 2A.2.3.1(a) are as accurate as possible having regard to the information and forecasts available to the Licensee including that provided by its Gas Suppliers and shall provide to the Authority, with the figures provided under Condition 2A.2.3.1(a)(i) (the “Quantity Figures”), and 2A.2.3.1(a)(iii) (the “Capacity Figures”), a full explanation as to how they have been calculated. In the event that any such Gas Supplier has failed to provide such information prior to the date specified by 2A.2.3.1(a), the Licensee shall ensure that the Quantity Figures and the Capacity Figures are as accurate as possible having regard to the information and forecasts available to the Licensee and shall inform the Authority which Gas Suppliers have failed to provide the required information.
- (c) The Licensee shall promptly provide to the Authority such further information or explanation and access to relevant documents and records, in each case as the Authority reasonably requires, in relation to the Quantity Figures and the Capacity Figures.
- (d) The Licensee may fulfil its obligations under this Condition 2A.2.3.1 by providing the relevant information in a joint report with one or more other Designated Pipe-line Operators which shall comply with this Condition 2A.2.3.1 in respect of the Licensee and each such Designated Pipe-line Operator.
- (e) If, in the Authority’s reasonable opinion, having regard to information and explanations provided by the Licensee and representations made on or before the fourth Business Day in April by parties which the Authority reasonably considers to have sufficient interest in making such representations (such parties to include the Licensee):
- a Forecast Annual Quantity figure does not represent an accurate estimate taking into proper account all relevant information; and/or
  - a Initial Firm Capacity figure does not represent an accurate estimate taking into proper account all relevant information; and/or

- the assumptions provided in accordance with Condition 2A.2.3.1(a)(ii) or 2A.2.3.1(a)(iv) are inappropriate;

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

- (f) The Licensee shall, not later than the fifteenth Business Day in April submit the Forecast Figures (adjusted to reflect any modification made by the Authority pursuant to Condition 2A.2.3.1(e)) to the PSA for calculation of the Forecast Postalised Charges in accordance with the PSA Agreement.
- (g) If the Licensee fails to provide the Forecast Figures in accordance with, and/or by the date specified in, Condition 2A.2.3.1(a) the Authority shall be entitled on or after the fifth Business Day in April by written notice to the Licensee and the PSA to determine the Forecast Figures. Forecast Figures so determined may at the Authority's discretion either:
  - (i) reflect the Actual Figures in respect of the previous Gas Year; or
  - (ii) be such other figures as the Authority reasonably deems appropriate.

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

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

(iii) the Actual Firm Capacity by Entry Point and by product.

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

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

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

- (a) In respect of each Gas Year commencing on or after the Designation Date, the Licensee shall no later than 10 Business Days after the end of each Quarter in a Gas Year provide:
  - (i) the Authority; and
  - (ii) all of the other Designated Pipe-line Operators;

with a breakdown of the Quarterly Exit Quantities by Exit Point for the relevant Quarter and any other information required to be provided by the Licensee on a Quarterly basis under this Licence,

with a breakdown of the Quarterly Capacity Quantities by each Entry Point and by each Exit Point for the relevant Quarter.

- (b) At the same time as the Licensee provides the figures required under Condition 2A.2.3.3(a), the Licensee shall confirm to the Authority, the other Designated Pipe-line Operators and each of the PS Gas Suppliers whether it

is aware of or has reason to believe that the Forecast Figures provided in accordance with Condition 2A.2.3.1(a) for the remainder of the current or any future Gas Years will or may be materially inaccurate. If the Licensee suspects such material inaccuracy, it shall provide details of the extent of such inaccuracy, and its reasons for such belief.

- (c) The Licensee may fulfil its obligations under this Condition 2A.2.3.3, by submitting, together with one or more other Designated Pipe-line Operators, a joint report which shall comply with this Condition 2A.2.3.3.
- (d) No later than [10] Business Days after the end of each Quarter in a Gas Year the Licensee shall provide to each PS Gas Supplier details of:
  - (i) the aggregate sum of all Quarterly Exit Quantities (whether in the form of a joint report or otherwise) in respect of each Exit Point on the Designated Network; and
  - (ii) the aggregate sum of all Quarterly Capacity Quantities (whether in the form of a joint report or otherwise) in respect of each entry Point and each Exit Point on the Designated Network.

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

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

#### 2A.2.5 Forecast Postalised Charges

- 2A.2.5.1 The Forecast Postalised Charges shall be calculated by the PSA and shall comprise a Forecast Postalised Commodity Charge calculated in accordance with Condition 2A.2.5.2 and a Forecast Postalised Annual Capacity Charge calculated in accordance with Condition 2A.2.5.3(b) and a Forecast Postalised Non Annual Capacity Charge calculated in accordance with Condition 2A.2.5.3(c).

For the purpose of this Condition 2A.2.5, Capacity Products include those set out in the Gas Product Multipliers and Time Factors Table.

#### 2A.2.5.2 Forecast Postalised Commodity Charge

- (a) Subject to Conditions 2A.2.5.6, 2A.2.5.7, the Forecast Postalised Commodity Charge to be charged in respect of Gas Year “t” to each Gas Supplier in respect of each kWh of gas allocated to each such Gas Supplier under the Network Code in respect of each Exit Point during that Gas Year shall be calculated in accordance with the following formula:

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

where:

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

“Commodity Percentage” means 25%.

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

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

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

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

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

where

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

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

MEQ<sub>smt</sub> means the Exit Quantity allocated to Gas Supplier “s” in respect of an Exit Point and in respect of month “m” of Gas year “t”.

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

$$\text{Aux}_{st} = (\text{FPComC}_t \times \text{Minimum Quantity Values}_t) - \Sigma\text{MPComP}_{st}$$

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

- (d) The Forecast Postalised Commodity Charge invoiced to a Gas Supplier “s” in respect of a Gas Year “t” or month “m” of Gas Year “t” calculated in accordance with Condition 2A.2.5.2 (a) shall be rounded to seven 7 decimal places.

#### 2A.2.5.3 Forecast Postalised Annual Capacity Charge

- (a) The Total Weighted Forecast Capacity bookings for year “t” for all Firm Capacity held by Gas Suppliers for all time periods in Gas Year “t”, shall be calculated according to the following formula:

$$\text{TWFC}_t = \Sigma[\text{FQ}_{\text{pdt}} \times \text{w}_{\text{pdt}}]$$

Where:

“TWFC<sub>t</sub>” is the Total Weighted Forecast Capacity bookings for Gas Year “t”

“FQ<sub>pdt</sub>” is the total forecast capacity booking for Capacity Product “p” in time period “d” of Gas Year “t”

“w<sub>pdt</sub>” is the product weighting for Capacity Product “p” listed in the Gas Product Multipliers and Time Factors Table in time period “d” of Gas Year “t”, in accordance with the Gas Product Multipliers and Time Factors Table.

- (b) Subject to Conditions 2A.2.5.6, 2A.2.5.7, the Forecast Postalised Annual Capacity Charge to be charged in respect of each kWh/day of Firm Annual Capacity at each Entry Point and Exit Point in respect of Gas Year “t” shall be calculated in accordance with the following formula:

$$FPACapC_t = \frac{PSFRR_t * \text{Capacity Percentage} * PMA}{TWFC_t}$$

where:

“FPACapC<sub>t</sub>” means the Forecast Postalised Annual Capacity Charge in Gas Year “t”; and

“Capacity Percentage” means 75%.

“PMA” means the annual product multiplier and/or seasonal factor as appropriate for Gas Year t, in accordance with the “Gas Product Multipliers and Time Factors Table”.

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

“TWFC<sub>t</sub>” means the Total Weighted Forecast Capacity bookings for Gas Year “t” as calculated in Condition 2A.2.5.3(a).

- (c) The Forecast Non-Annual Postalised Capacity Charge to be charged in respect of each kWh/day of Firm Non-Annual Capacity in respect of Gas Year “t” for each NonAnnual Capacity Product “p” shall be calculated in accordance with the following formula:

$$FPNACapC_{pt} = FPACapC_t \times PM_{pt}$$

“FPNACapC<sub>pt</sub>” means the Forecast Postalised Non Annual Capacity Charge in Gas Year “t” for Capacity Product “p”

“FPACapC<sub>t</sub>” means the Forecast Postalised Annual Capacity Charge in Gas Year “t”; and

“PM<sub>pt</sub>” means the product multiplier and/or seasonal factor as appropriate for Capacity Product “p” for Gas Year “t”, in accordance with the Gas Product Multipliers and Time Factors Table.



This formula shall not apply to VRF Services, the charge for which shall be determined pursuant to the Gas Transmission Charging Methodology Statement as set out in Condition 2A.2.1.8.

- (d) In the event that the Auction Price for the corresponding Capacity Product at the corresponding time period is greater than the Forecast Postalised Annual Capacity Charge or the Forecast Postalised Non-Annual Capacity Charge calculated in accordance with paragraphs (b) and (c) respectively, the relevant auction premium shall be calculated as follows.

The Auction Premium at the auction conducted in Gas Year “a” for each Capacity Product “p” in Gas Year “t” shall be defined as:

$$Pre_{apt} = Auc_{apt} - FPCapC_{apt}$$

“Pre<sub>apt</sub>” means the Auction Premium for product “p” in Gas Year “t”

“Auc<sub>apt</sub>” means the Auction Price for Capacity Product “p” in Gas Year “t”

“FPCapC<sub>pt</sub>” means the relevant Forecast Postalised Annual Capacity Charge or Forecast Postalised Non-Annual Capacity Charge for Capacity Product “p” in Gas Year “t”;

#### 2A.2.5.4 Monthly invoices to Shippers for capacity products

- (a) For the purposes of this section, the Forecast Postalised Capacity Charges invoiced to a Gas Supplier “s” in respect of a Gas Year “t” or month “m” of Gas Year “t” for each Capacity Product “p” shall be rounded to seven [7] decimal places.
- (b) The Monthly Annual Postalised Capacity Payment for Gas Supplier “s” for Gas Year “t” shall be calculated as:

$$APCP_{st} = \frac{\sum_{a=1}^{15} \{ (FPACapC_{apt} + Pre_{apt}) \times (Q_{stpa}) \}}{12}$$

Where:

$APCP_{st}$  is the Annual Postalised Capacity Payment for Gas Supplier “s” for Gas Year “t”

$FPACapC_{apt}$  means the Forecast Postalised Annual Capacity Charge for Annual Capacity Product “p” in Gas Year “t” in the auction in Gas Year “a”;

$Pre_{apt}$  means the Auction Premium for Capacity Product “p” in Gas Year “t” in the auction in Gas Year “a”;

$Q_{stpa}$  is the quantity of capacity allocated to Gas Supplier “s” for product “p” to be used in Gas Year “t” that was bought in the auction in Gas Year “a”.

- (c) For each Non Annual Capacity Product “p”, a Monthly Capacity Payment (Non – Annual Capacity) amount exclusive of VAT and termination payments shall be calculated for each Gas Supplier for each Entry Point according to the following formula:

$$MPNACapP_{psm} = (FPNACapC_t + Pre_{pmt}) \times NAC_{psmt}$$

Where:

$MPNACapP_{ps}$  means the Monthly Postalised Capacity Payment payable by a Gas Supplier “s” in respect of month “m” of Gas Year “t”. This payment shall be calculated separately for the entry capacity booked at each Entry Point;

$FPNACapC_t$  means the Forecast Postalised Non Annual Capacity Charge applicable in respect of Gas Year “t” in accordance with Conditions 2A.2.5.3(c) and 2A.2.5.3(d);

$NAC_{psmt}$  means the Firm Non- Annual Capacity for Capacity Product “p” held by a Gas Supplier “s” in respect of month “m” of Gas Year “t”

$Pre_{pmt}$  means the Auction Premium for Capacity Product “p” in month “m” of Gas Year “t”. For the avoidance of doubt, these premia may refer to auctions conducted in Gas Years prior to Gas Year “t”, as well as during Gas Year “t”, if they relates to bookings for capacity in Gas Year “t”.

#### 2A.2.5.5 Total monthly invoices to Shippers

- (a) The total monthly capacity and commodity gas costs for Gas Supplier “s” in month “m” of year “t” shall be calculated as the sum of the annual and non-annual invoice amounts calculated in accordance with conditions 2A.2.5.2(a), 2A.2.5.4(a), 2A.2.5.4(c) above, plus Exit Ratchet Charges and Entry Overrun Charges in month “m” of Gas Year “t”.
- (b) The total invoice amount for Gas Supplier “s” in month “m” of year “t” shall be calculated as follows:

$$TIA_{smt} = (TMGC_{smt}) \times (1 + VAT) + T_{smt} + D_{smt} + Aux_{smt} + ORC_{smt} + ERC_{smt}$$

Where:

“TIA<sub>smt</sub>” is the total invoice amount for Gas Supplier “s” in month “m” of year “t”.

“TMGC<sub>smt</sub>” is the total of Forecast Postalised Charges for Gas Supplier “s” in month “m” of year “t”, calculated in accordance with Condition 2A.2.5.5(a) above.

“VAT” is the appropriate rate of Value Added Tax which will be applied to the applicable elements of the invoice.

“T<sub>smt</sub>” is the amount of the termination payment allocated to Gas Supplier “s” in month “m” of year “t”.

“D<sub>smt</sub>” is the amount of the Debt Payment allocated to Gas Supplier “s” in month “m” of year “t”.

“Aux<sub>smt</sub>” means Auxiliary Payment payable by Gas Supplier “s” in month “m” of year “t” and calculated in accordance with condition 2A.2.5.2(c) above.

“ORC<sub>smt</sub>” means the Entry Overrun Charges payable by Gas Supplier “s” in month “m” of year “t”.

“ERC<sub>smt</sub>” means the Exit Ratchet Charges payable by Gas Supplier “s” in month “m” of year “t”.

#### 2A.2.5.6 Emergency Events

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

#### 2A.2.5.7 Amendment to Forecast Postalised Charges

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

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

in each case as determined by the Authority so that an appropriate proportion only of the Forecast Required Revenue of the relevant Designated Pipe-line Operator (as defined in that Designated Pipe-line Operator’s Respective Licence) shall be taken into account before and after the Relevant Charge Date and such adjustments as the Authority considers appropriate shall be made to the PS Forecast Annual Quantity, PS Annual Exit Quantity, PS Forecast Required Revenue, and Total Weighted Year End Capacity bookings, and notified to the Designated Pipe-Line Operators and the PSA.

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

- 2A.2.6.1 The Year-End Postalised Charges shall comprise a Year-End Postalised Commodity Charge calculated in accordance with Condition 2A.2.6.2 and a Year-End Postalised Capacity Charge for each Capacity Product listed in the Gas Product Multipliers and Time Factors Table calculated in accordance with Condition 2A.2.6.3 in each case calculated by the PSA. In addition, where one or more Gas Suppliers is or are subject

to a commitment to make a Supplemental Payment the Licensee shall comply with Condition 2A.2.6.6.

#### 2A.2.6.2 Year-End Postalised Commodity Charge

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

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

where:

$YEPCoM C_t$  means the Year-End Postalised Exit Commodity Charge for Gas Year “t”;

$PSARR_t$  means the PS Actual Required Revenue in respect of Gas Year “t”;

$T_t$  means any Termination Payments payable in respect of PS Transmission Payments relating to Gas year “t”

$PS \text{ Annual Exit Quantity}_t$  means:

the sum of the Annual Exit Quantities (as that term is defined in each Designated Pipeline Operator’s Respective Licence) for the relevant Gas Year “t”.

#### 2A.2.6.3 Year-End Postalised Capacity Charges

- (a) The Total Weighted Year-End Capacity bookings for Gas Year “t” for all Firm Capacity products “p” held by Gas Suppliers listed in the Gas Product Multipliers and Time Factors Table for all time periods “d” in Gas Year “t”, shall be calculated according to the following formula:

$$TWC_t = \sum [YEQ_{pdt} \times w_{pdt}]$$

Where:

“ $TWC_t$ ” is the Total Weighted Year-End Capacity bookings for Gas Year “t”

“ $YEQ_{pdt}$ ” is the total outturn year-end capacity booking for Capacity Product “p” in time period “d” of Gas Year “t”

“ $w_{pdt}$ ” is the product weighting for Capacity Product “p” in time period “d” of Gas Year “t” in accordance with the Gas Product Multipliers and Time Factors Table posted by the Authority on its website and updated from time to time.

- (b) The Year-End Postalised Annual Capacity Charge to be charged to each Gas Supplier in respect of each kWh/day of Firm Annual Capacity in respect of a Gas Year shall be calculated in accordance with the following formula:

$$YPACapC_t = \frac{PSARR_t * \text{Capacity Percentage} * PM_A}{TWC_t}$$

where:

“ $YPACapC_t$ ” means the Year-End Postalised Annual Capacity Charge in Gas Year “t”; and

“Capacity Percentage” means 75%.

“ $PM_A$ ” means the annual product multiplier and/or seasonal factor as appropriate for Gas Year “t”, in accordance with the Gas Product Multipliers and Time Factors Table.

“ $PSARR_t$ ” means the PS Actual Required Revenue for Gas Year “t”.

“ $TWC_t$ ” means the Total Weighted Year End Capacity bookings for Gas Year “t” as calculated in paragraph 2A.2.6.3(a).

- (c) The Year-End Postalised Non Annual Capacity Charge to be charged to each Gas Supplier in respect of each kWh/day of Firm Capacity at each Entry Point in respect of time period “d” in Gas Year “t” for each Capacity Product “p” shall be calculated in accordance with the following formula:

$$YPNACapC_{pdt} = YPACapC_t \times PM_{pt}$$

“ $YPNACapC_{pdt}$ ” means the Year-End Postalised Non-Annual Capacity Charge in time period “d” of Gas Year “t” for Capacity Product “p”

“YPACapC<sub>t</sub>” means the Year-End Postalised Annual Capacity Charge in Year t;  
and

“PM<sub>pdt</sub>” means the product multiplier and/or seasonal factor as appropriate for Capacity Product “p” for time period “d” of Gas Year “t”, in accordance with the Gas Product Multipliers and Time Factors Table.

#### 2A.2.6.4 Reconciliation Payments

- (a) For Firm Annual Capacity , pertaining to gas offtaken in Gas Year “t”, there shall be calculated a Reconciliation Unit Charge as follows:

(i) 
$$RUC_{A_{pat}} = YPACapC_t - (FPACapC_{pt} + \sum Pre_{apt})$$

Where:

RUC<sub>A<sub>pat</sub></sub> is the Reconciliation Unit Charge for Firm Annual Capacity pertaining to gas offtaken in Gas Year “t”, including for the auctions held in Gas Year “a” in respect of capacity during Gas Year “t”; FPACapC<sub>pt</sub> means the Forecast Postalised Annual Capacity Charge for Gas Year “t”;

Pre<sub>apt</sub> means the Auction Premium for Firm Annual Capacity product “p” in Gas Year “t” achieved in the auction in Gas Year “a”;

YPACapC<sub>t</sub> means the Year-End Postalised Annual Capacity Charge in Gas Year “t”.

- (b) For each Non Annual Capacity Product listed in the Gas Product Multipliers and Time Factors Table, for each time period “d” in Gas Year “t”, there shall be calculated a Reconciliation Unit Charge as follows:

$$RUC_{NA_{dpt}} = YPNACapC_{ptd} - (FPNACapC_{pt} + Pre_{pdt})$$

Where:

RUC<sub>NA<sub>dpt</sub></sub> is the Reconciliation Unit Charge for Firm Non Annual Capacity

FPNACapC<sub>pt</sub> means the Forecast Postalised Non Annual Capacity Charge (for Capacity Product “p” in Gas Year “t”;

$Pre_{pdt}$  means the Auction Premium for Capacity Product “p” in time period “d” of Gas Year “t”;

$YPNACapC_{pdt}$  means the Year-End Postalised Non- Annual Capacity Charge for Capacity Product “p” in Gas Year “t”;

- (c) For each Firm Annual Capacity Product “p” listed in the Gas Product Multipliers and Time Factors Table in Gas Year “t”, there shall be calculated a Capacity Reconciliation Payment in respect of each Gas Supplier “s” in accordance with the following formula (which, together with the formula contained in Conditions 2A.2.6.4 (b) above and (d) and (e) below, shall be referred to as the “Reconciliation Payment Formulae”):

$$CapARP_{stp} = \sum (RUC_{astp} \times GS \text{ Firm Annual Capacity}_{astp})$$

where:

“ $CapARP_{stp}$ ” means the Capacity Reconciliation Payment for Firm Annual Capacity payable by or to Gas Supplier “s” in respect of Gas Year “t”;

“ $RUC_{astp}$ ” is the Reconciliation Unit Charge for Firm Annual Capacity for Gas Supplier “s”, for the Annual Capacity awarded in auctions in Gas Year “a” for Firm Annual Capacity in Gas Year “t” for Firm Annual Capacity product “p”;

“ $GS \text{ Firm Annual Capacity}_{astp}$ ” means the GS Firm Annual Capacity held by a Gas Supplier “s” for the capacity awarded in auctions in Gas Year “a” for Firm Annual Capacity in Gas Year “t” for Firm Annual Capacity product “p”,

- (d) For each Non Annual Capacity Product “p” listed in the Gas Product Multipliers and Time Factors Table, for each time period “d” in Gas Year “t”, there shall be calculated a Capacity Reconciliation Payment in respect of each Gas Supplier “s” in accordance with the following formula:

$$CapNARP_{stdp} = RUCNA_{stdp} \times GS \text{ Firm Non Annual Capacity}_{stdp}$$

where:



“CapNARP<sub>stdp</sub>” means the Capacity Reconciliation Payment for Firm Non Annual Capacity payable by or to Gas Supplier “s” in respect of Gas Year “t” and Capacity Product “p” for time period “d”;

“RUCNA<sub>stdp</sub>” is the Reconciliation Unit Charge for Firm Non Annual Capacity for Capacity Product “p” for supplier “s”, in time period “d” of Gas Year “t”;

“GS Firm Non Annual Capacity<sub>stdp</sub>” means the GS Firm Non Annual Capacity held by a Gas Supplier “s” in respect of Capacity Product “p” for time period “d” of Gas Year “t”.

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

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

where:

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

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

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

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

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

“ΣMPComP<sub>st</sub>” means the aggregate of the Monthly Postalised Commodity Payments invoiced to a Gas Supplier “s” in respect of a Gas Year “t”.

2A.2.6.5 The Total Reconciliation Payment shall be calculated in respect of each Gas Supplier “s” for Gas Year “t” as:

$$TRP_{st} = ComRP_{st} + CapARP_{stp} + CapNARP_{stp} - TORC_{st}$$

Where:

TRP<sub>st</sub> is the Total Reconciliation Payment to Gas Supplier “s” in Gas Year “t”;

ComRP<sub>st</sub> is the Commodity Reconciliation Payment for Gas Supplier “s” in Gas Year “t”, calculated in accordance with condition 2A.2.6.4(e) above;

CapARP<sub>stp</sub> is the Annual Capacity Reconciliation Payment for Gas Supplier “s” in time period “t”, calculated in accordance with condition 2A.2.6.4(c) above;

CapNARP<sub>stp</sub> is the Non-Annual Capacity Reconciliation Payment for Gas Supplier “s” in time period “t”, calculated in accordance with condition 2A.2.6.4(d) above;

TORC<sub>ut</sub> is the proportion of the total of the Entry Overrun Charges due to Gas Supplier “u” in Gas Year “t” calculated according to the following formula:

$$TORC_{ut} = \frac{\sum_{s=1}^n (ORC_{st} \times TIA_{ut})}{\sum_{s=1}^n TIA_{st}}$$

where:

TORC<sub>st</sub> is the proportion of the total of the Entry Overrun Charges due to Gas Supplier “s” in Gas Year “t”

ORC<sub>st</sub> is the charge to Gas Supplier “s” for Entry Overrun Charges in Gas Year “t”, calculated as the sum of monthly overrun charges as defined in Condition 2A.2.5.5

TIA<sub>ut</sub> is the total invoice amount for Gas Supplier “u” in of year “t”, calculated as the sum of monthly invoice amounts for Gas Supplier “u” calculated according to Condition 2A.2.5.5

n is the total number of Gas Suppliers active in Gas Year “t”

The Total Reconciliation Payment shall be due from a Gas Supplier “s” if a positive value, and shall be due to a Gas Supplier “s” if a negative value.

2A.2.6.6 Where a Gas Supplier is subject to a commitment which gives rise to an obligation to make a Supplemental Payment in respect of any Gas Year the Licensee shall invoice the Gas Supplier promptly in accordance with the terms of the commitment and Condition 2A2.2.3 in respect of that Supplemental Payment and shall provide full details of the amount payable to the Authority, the PSA and the other Designated Pipe-line Operators.

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

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

- (a) no later than 31<sup>st</sup> May each year the Forecast Postalised Charges, or revised Forecast Postalised Charges as calculated under Condition 2A.2.5.3, in respect of the next Gas Year and each of the following four Gas Years, a statement of such charges; and
- (b) no later than 3 Business Days after notification to it by the PSA of the Year-End Postalised Charges in respect of a Gas Year, a statement of the Year-End Postalised Charges; and
- (c) no later than 3 Business Days after notification to it by the Authority of any amendments to Forecast Postalised Charges required under Condition 2A.2.5.7, a statement of the amended charges.

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

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

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

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

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

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

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

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

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

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

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

2A.3.4 Debt Payments

2A.3.4.1 The Licensee shall, not later than 5 Business Days before the Invoice Date occurring in the month following a Non-Payment Month, notify the PSA, all Designated Pipeline Operators, all PS Gas Suppliers, and the Authority of the amount of any PS Non-Payment(s) caused by or relating to its Gas Suppliers arising in that Non-Payment Month which are still outstanding on such date.

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

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

$$\text{NDP}_m = (A - B - C) + Z$$

Where:

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

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

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

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

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

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

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

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

where:

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

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

where:

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

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

PSTMP<sub>m-1</sub> = the aggregate of Total Monthly Payments payable by all PS Gas Suppliers invoiced in respect of the month preceding the month when the Debt Payment is invoiced (“m-1”);

- (ii) Where NDP is negative in respect of a month (month “m”), an amount (a “Debt Repayment”) shall be payable by the Licensee to each relevant Gas Supplier (or former Gas supplier, as the case may be) in respect of any such negative figure. In reference to a Gas Supplier “s” a Debt Repayment shall be calculated by the PSA in accordance with the following formula (the “Debt Repayment Formula”):

$$\text{Debt Repayment to Gas Supplier “s”} = -\text{NDP} \times \frac{\text{ADPs}}{\text{APSDP}}$$

where:

- |                       |   |
|-----------------------|---|
| “ADPs ”               | means the aggregate Debt Payments payable by a Gas Supplier “s” over the Debt Payment Period;   |
| “Debt Payment Period” | means the last month preceding month “m” in which a Debt Payment was payable by PS Gas Suppliers, or, if a Debt Payment has been payable by PS Gas Suppliers in respect of two or more consecutive months preceding month “m”, the period of all such consecutive months preceding month “m”. |
| “APSDP”               | means the aggregate of Debt Payments payable by PS Gas Suppliers during the Debt Payment Period.  |



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

2A.4.1 The PSA's primary obligations

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

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

(b) be party at all times thereafter to

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

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

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

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

2A.4.2 Criteria for appointment of the PSA

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

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

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

2A.4.3 The PSA's functions

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

- (a) the receipt from each of the Designated Pipe-line Operators of the information to be submitted to the PSA pursuant to Condition 2A.2.3 of each Designated Pipe-line Operator's Respective Licence and the receipt from each of the Designated Pipe-line Operators of its Forecast Required Revenue for the coming Gas Year "t" and the following four Gas Years pursuant to its Respective Licence;
- (b) the calculation of the relevant Forecast Postalised Charges for the next Gas Year and the following four Gas Years through application of the Forecast Postalisation Formulae and notification thereof to all Designated Pipe-line Operators in each case within 5 Business Days of receipt of the information specified in (a) above;

- (c) the verification of payments into the PoT Account (to include keeping a record of all Debt Payments paid by each PS Gas Supplier in relation to particular PS Non-Payments) and prompt notification to Designated Pipe-line Operators of any PS Non-Payment and of any Recovery paid into the PoT Account;
- (d) the calculation of any VAT Distributions due in respect of sums received into the PoT Account from PS Gas Suppliers on the date of calculation of the Monthly Distribution in the relevant month (month “m”), provided that where a sum is received from a PS Gas Supplier in respect of PS Transmission Payments and such sum is insufficient to meet both the PS Transmission Payments and VAT due on such PS Transmission Payments in full the PSA shall calculate the VAT element of the amount so received, calculated as;

$$\text{VATLm} = (\text{VILm-1}/\text{TILm-1}) \times \text{TARLGm}$$

VATL = the aggregate amount of VAT Distributions for the relevant Designated Pipe-line Operator “L” for month “m”

VILm-1 = the sum of VAT amounts invoiced by the relevant Designated Pipe-line Operator “L” in the preceding month (“m-1”)

TILm-1 = the sum of all amounts including VAT payable for PS Transmission Payments invoiced by the relevant Designated Pipe-line Operator “L” in the preceding month (“m-1”)

TARLGm = the sum of all amounts received into the PoT Account from the relevant Designated Pipe-line Operator “L”’s PS Gas Suppliers in month “m” in respect of the amounts referred to in the definition of the term TILm-1 above.

- (e) notification to the Designated Pipe-line Operators of any part or full settlement of PS Non-Payments by PS Gas Suppliers made on or before the Second Due Date in relation to such PS Non-Payments and the issue of directions to the Trustee to distribute such settlements payments according to Condition 2A.6.
- (f) on the Debt Notice Date each month the calculation of the Net Debt Position and each Designated Pipe-line Operator's Debt Entitlement and, where applicable, any Debt Payment or Debt Repayment to be charged or credited to each PS Gas Supplier and the issue to Designated Pipe-line Operators and the Authority of a notice (a "Debt Notice") in relation to any such Debt Payment and/or Debt Repayment arising which shall contain:
  - (i) details of any PS Notified Debt and interest thereon and any Recovery to which such Debt Payments/Repayments relate;
  - (ii) details of the relevant Designated Pipe-line Operator's Debt Entitlement;
  - (iii) particulars of the Debt Payment or Debt Repayment to be charged or credited to each PS Gas Supplier;
  - (iv) sufficient information concerning the Total Monthly Payments and Auxiliary Payments in any period relevant to the calculation of Debt Payment or Debt Repayment to permit verification of the calculations of Debt Payment or Debt Repayment in the Debt Notice.
- (g) the calculation of the Year-End Postalised Charges and any Capacity Reconciliation Payments and Commodity Reconciliation Payments applicable to each PS Gas Supplier in accordance with the provisions of Condition 2A.2.6.3 and Condition 2A.2.6.4; and the notification of the results of all such calculations to all Designated Pipe-line Operators and to the Authority no later than the 1st Business Day in December after the end of each Gas Year;
- (h) the calculation as soon as reasonably practicable, and within 5 Business Days of receipt of all relevant information in accordance with Condition 2A.6.1.3 of

the Year-End Amount, if any, to be paid by or to each of the Designated Pipe-line Operators in respect of the previous Gas Year;

- (i) the calculation of upstream tariffs as required under the terms of Designated Pipe-line Operators' licences and notification to the respective Designated Pipe-line Operator and the Authority, no later than the 17 Business Day in July;
- (j) on or before the 5th Business Day following each Due Date the calculation in respect of each Designated Pipe-line Operator of the applicable Monthly Postalised Entitlements and Monthly Distributions in respect of the relevant month; and the issue of appropriate directions to the Trustee for the purpose of implementing Condition 2A.6 so that any such Monthly Distributions are made to Designated Pipe-line Operators as soon as possible and at least within 7 Business Days of the Due Date;
- (k) calculation of any additional sums due by way of Monthly Distribution in respect of any sum received into the PoT Account after the issue of instructions to the Trustee in accordance with (j) above and before the next Debt Notice Date;
- (l) following the end of each Gas Year, the calculation, recording and notification to the Authority and the Designated Pipe-Line Operators not later than the 10th Business Day in December of the next Gas Year of the amount of any Commodity Reconciliation Payments which would have been payable by each PS Gas Supplier in respect of each Gas Year but for the application of the 15%  $\Sigma\text{MPComPst}$  cap contained in Condition 2A.2.6.4(e). Such amounts in respect of each Gas Year and each PS Gas Supplier shall be defined as the "Unrecovered Postalisation Payments" ("UNRPt") and shall be calculated in accordance with the following formula:

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

where  $\Sigma\text{ComRPt}$  is equal to all Commodity Reconciliation Payments as determined under Condition 2A.2.6.4 (e) in Gas Year "t"

- (m) the re-calculation of the Forecast Postalised Charges as required under Condition 2A 2.5.2 and Condition 2A.2.5.3 within three Business Days of receipt of adjusted figures from the Authority.
- (n) The division of any amounts in respect of Termination Payments received into the PoT Account:
  - (aa) between Designated Pipe-Line Operators where two or more Designated Pipe-line Operators have invoiced such payments to the same PS Gas Supplier in the same month, in proportion to the relevant invoices;
  - (bb) between that part of Termination Payments payable in respect of PS Transmission Charges relating to the Gas Year in which termination occurs and that part of Termination Payments related to future Gas Years, the allocation to be made in such a way that:
    - (i) Termination Payments shall be applied first in respect of sums due in respect of PS Transmission Charges in the Gas Year in which termination occurs; and
    - (ii) secondly, in respect of Termination Payments related to future Gas Years.

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

#### 2A.4.4 PSA Agreement criteria

2A.4.4.1 The PSA Agreement shall not, by object or effect, impose undue discrimination or confer undue preference on any Designated Pipe-line Operator or PS Gas Supplier and shall:

- (a) require the PSA to fulfil the PSA Functions in a manner which is transparent and which does not unduly discriminate as between Designated Pipe-line Operators or PS Gas Suppliers;
- (b) require the PSA to institute appropriate arrangements and procedures to enable the PSA to fulfil the PSA Functions in an efficient and economic manner;
- (c) make provision for the modification of the PSA Agreement, in the following circumstances only:
  - i. with the written consent of the Authority (such consent to be deemed as having been given at such time when the Authority has not sent written notice to the parties to the PSA Agreement of its objection to such modification and the grounds for such objection within 4 weeks of its receipt of full written details of the proposed modification, together with any further relevant information requested by the Authority); or
  - ii. in accordance with a written direction made by the Authority to the extent necessary to ensure consistency with the Licence, following consultation with the Designated Pipe-line Operators;
- (d) provide for its termination in the event that any approval granted by the Authority pursuant to Condition 2A.4.2.2 is revoked;
- (e) require the PSA to co-operate with the Authority including without limitation by the sharing of information, both generally and to enable the Authority as far as is reasonably practicable to monitor whether the PSA is continuing to fulfil the PSA Functions in an efficient and economic manner;
- (f) require the PSA to perform its functions promptly and diligently with reasonable skill and care, and in conformity with all applicable laws, rules and regulations;

- (g) require the PSA to perform all calculations in accordance with any financial model approved by the Authority from time to time following consultation by the Authority with the Designated Pipe-Line Operators;
- (h) require the Licensee to co-operate with the PSA, such co-operation to include but not be limited to providing the PSA and other Designated Pipe-line Operators with such information as is at the Licensee's disposal and which would facilitate the operation of the system of postalised charges in respect of the Postalised System, provided that the Licensee shall not be required to provide to another Designated Pipe-line Operator confidential information, the provision of which would, or might, in the opinion of the Authority, seriously and prejudicially affect the interests of the Licensee or any PS Gas Supplier or Designated Pipe-line Operator; and
- (i) subject to Condition 2A.4.1.2 provide that, except with the consent of the Authority, the Licensee shall not terminate the PSA Agreement until such time as a new PSA has been appointed under a PSA Agreement conforming with all the requirements under this Condition 2A.4.

#### 2A.4.5 Licensee's obligations in relation to the PSA

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

- (a) promptly after becoming aware thereof, notify the Authority of any material or persistent breach of any obligation by any party under the PSA Agreement;
- (b) take all reasonable steps to enforce the obligations of the parties to the PSA Agreement whenever required, or whenever so directed by the Authority by written notice, and in accordance with the terms of the direction;
- (c) not knowingly waive any right under the PSA Agreement without the prior written consent of the Authority;
- (d) comply with its obligations under the PSA Agreement;
- (e) exercise its rights to terminate the PSA Agreement whenever directed by the Authority by written notice;



- (f) immediately notify the Authority if any party to the PSA Agreement, terminates or gives notice to terminate the PSA Agreement;
- (g) use its reasonable endeavours to procure that the PSA performs its functions promptly and diligently, with reasonable skill and care, and in conformity with all applicable laws, rules and regulations and in accordance with generally accepted best accounting practice; and
- (h) provide the PSA promptly with any information it requires to perform the PSA Functions including copies of all PS Transmission Payment invoices as soon as reasonably practicable, and is at the Licensee's disposal and which would facilitate operation of the system of postalised charges in respect of the Postalised System.

## **Condition 2A.5 – The Trustee**

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

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

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

(b) be party at all times thereafter to

arrangements whereby

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

(ii) a person who fulfils the criteria set out in Condition 2A.5.2.2. (referred to as the “Account Bank”) provides an account for use as the PoT Account pursuant to the Trust and Account Bank Agreement and which has been and remains approved by the Authority.

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

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

- 2A.5.2 Criteria for appointment of the Trustee
- 2A.5.2.1 The person fulfilling the functions of Trustee from time to time pursuant to this Condition 2A.5 shall:
- (a) be a competent, fit and proper person to fulfil the Trustee Functions having the systems and controls in place to fulfil those functions; and
  - (b) have sufficient suitably qualified and skilled personnel to enable it to perform the Trustee Functions.
- 2A.5.2.2 The person fulfilling the functions of Account Bank from time to time pursuant to this Condition 2A.5 shall:
- (a) be a competent, fit and proper person to provide and administer the PoT Account having the systems and controls in place to fulfil those functions; and
  - (b) have sufficient suitably qualified and skilled personnel to enable it to provide and administer the PoT Account.
- 2A.5.2.3 The criteria specified in Conditions 2A.5.2.1 and 2A.5.2.2 shall be treated as satisfied in respect of any appointment if the Licensee appoints as the Trustee and/or the Account Bank, as appropriate, a person who at the time of appointment is a person approved by the Authority for the purposes of this Condition and if that approval has not expired or been revoked.
- 2A.5.3 The Trustee's functions
- 2A.5.3.1 The Trust and Account Bank Agreement shall, in accordance with Condition 2A.5.1.1, impose on the Trustee the following functions (referred to as the "Trustee Functions"):
- (a) the maintenance of a bank account (the "PoT Account") into which all monies paid by PS Gas Suppliers in respect of PS Transmission Payments shall be received, held on trust for and distributed to the Licensee and the other Designated Pipe-line Operators at the intervals and in accordance with the instructions of the PSA;

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

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

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

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

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

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

2A.5.5.1 The Licensee shall:

- (a) promptly after becoming aware thereof notify the Authority of any material or persistent breach of any obligation by any party under the Trust and Account Bank Agreement;

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

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

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

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

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

#### 2A.6.1.2 Monthly Entitlements

##### (a) Monthly Postalised Entitlement

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

$$(i) \quad (TMPT_m + DPI_m) \times FRRL_t$$

$$PSFRRL_t$$

and

$$(ii) \quad FRRL_t + ADPIL_t - AMPEL_t$$

Where:

$TMPT_m$  = the aggregate (excluding any VAT on all such amounts) of:

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

- (1) have their Due Date falling in month “m”; and

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

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

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

FRRL<sub>t</sub> = the Licensee’s Forecast Required Revenue in respect of the Gas Year “t” in which month “m-2” falls;

PSFRR<sub>t</sub> = PS Forecast Required Revenue in respect of the Gas Year “t” in which month “m-2” falls;

AMPEL<sub>t</sub> = the aggregate Monthly Postalised Entitlements of the Licensee in respect of prior months in the Gas Year “t” in which month “m-2” falls;

DPI<sub>m</sub> = any interest paid on payments relating to Total Monthly Payments in month “m” received after the Due Date and before or on the Second Due Date; and

ADPIL<sub>t</sub> =  $\sum \text{DPI}_{mt} \times \frac{\text{FRRL}_t}{\text{PSFRR}_t}$



(b) Debt Entitlement

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

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

calculated as:

$$\text{DEL} = [(\text{ShortfallL} - \text{DPEL})/(\text{PSShortfall} - \text{PSDPE})] * (\text{DPm} + \text{DPID})$$

where:

DPEL = the aggregate of all Debt Entitlements of the Licensee in respect of previous months excluding the interest element, Z.

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

ShortfallL = AEL – ADL in all previous months in Gas Years commencing on or after the Designation Date in respect of each Designated Pipe-line Operator;

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

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

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

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

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

(c) Termination Entitlement

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

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

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

$$\text{YEALt} = \frac{(\text{ARRLt} \times (\text{PSTMPTt} + \sum \text{DPImt} + \text{RPTotal} + \text{DPIRt})) - \text{AMPELt}}{\text{PSARRt}}$$

Where:

YEALt = Year-End Amount in respect of Gas Year “t” and Licensee “L”;

ARRL<sub>t</sub> = the Licensee's Actual Required Revenue in respect of Gas Year "t";

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

PSTMPT<sub>t</sub> = the aggregate of TMPT<sub>m</sub> as calculated in Condition 2A.6.1.2 (a) in respect of all the months falling within Gas Year "t";

RPT<sub>total</sub> = the aggregate of all Capacity Reconciliation Payments and Commodity Reconciliation Payments, each in respect of Gas Year "t" and receivable from PS Gas Suppliers; and

AMPEL<sub>t</sub> = the aggregate of Monthly Postalised Entitlements of the Licensee in respect of Gas Year "t".

DPIR<sub>t</sub> = any interest paid on payments relating to Reconciliation Payments received after the Due Date and before or on the Second Due Date falling in month "m".

$\sum \text{DPI}_{mt}$  = the aggregate amount of interest paid on payments relating to Total Monthly Payments for Gas Year "t" payable in any month "m" received after the Due Date and before or on the Second Due Date.

#### 2A.6.1.4 Monthly Distributions

The amount of the distribution to be made to the Licensee from the PoT Account in any month (the "Monthly Distribution") shall be calculated by the PSA on the basis of the balance of monies in the PoT Account, net of any amounts in the PoT account as a result of any requirement to maintain a minimum account balance and any interest earned on the PoT account balance, on the date of calculation of the Monthly Distribution in the relevant month (month "m") (such balance of monies on the PoT Account at that date being referred to below as "W"). The Licensee shall be entitled to receive by way of Monthly Distribution an amount equal to the sum of each of DA1L, DA2L, DA3L, DA4L, DA5L and DA6L calculated as follows:

(a) VAT Distributions

$$DA1L = VATL$$

where:

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

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

Where the Licensee is obliged to reimburse any sum to one or more of its Gas Suppliers in accordance with this Part 2A of the Licence and the Network Code then DA2L shall be a sum equal to GSR provided that if no such payment is payable by the Licensee to any of its Gas Suppliers in the relevant month DA2L shall be zero.

Where:

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

(c) Year-End Amount Distributions

In the month following a month in which Reconciliation Payments have been invoiced to one or more PS Gas Suppliers a distribution in respect of Year-End Entitlement DA3L shall be calculated as follows:

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

then DA3L shall be a sum equal to YEAL<sub>t</sub>; or

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

then DA3L shall be calculated as follows:

$$DA3L = \frac{(W - PSDA1 - PSDA2) \times YEAL_t}{PSYEA}$$

Provided that if YEAL is a negative figure then DA3L shall be zero.

where:

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

$PSDA1$  = the aggregate of all DA1L figures for all Designated Pipe-line Operators under their Respective Licence for month “m”;

$PSDA2$  = the aggregate of all DA2L figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

$YEAL_t$  = the Year-End Amount calculated in accordance with Condition 2 A.6.1.3;

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

(d) Monthly Postalisation Distributions

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

then DA4L shall be an amount equal to MPEL; or

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

then DA4L shall be calculated as follows:

$$DA4L = \frac{(W - PSDA1 - PSDA2 - PSDA3) \times MPEL_m}{PSMPE}$$

where:

$PSDA1$  = the aggregate of all DA1L figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

$PSDA2$  = the aggregate of all DA2L figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

$PSDA3$  = the aggregate of all DA3L figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

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

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

(e) Termination Distributions

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

then DA5L shall be a sum equal to TEL; or

(ii) If  $W - \text{PSDA1} - \text{PSDA2} - \text{PSDA3} - \text{PSDA4} < \text{PSTE}$

then DA5L shall be calculated as follows:

$$\text{DA5L} = \frac{(W - \text{PSDA1} - \text{PSDA2} - \text{PSDA3} - \text{PSDA4}) \times \text{TEL}_m}{\text{PSTE}}$$

where:

PSDA1 = the aggregate of all DA1L figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

PSDA2 = the aggregate of all DA2L figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

PSDA3 = the aggregate of all DA3L figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

PSDA4 = the aggregate of all DA4L figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

TEL<sub>m</sub> = the amount, if any, payable to the Licensee in respect of Termination Payments received into the PoT Account under the Network Code in month “m” which relate to Gas Years after the Gas Year in which termination occurs as calculated by the PSA under Condition 2A4.3.1 (n); and

PSDE =the aggregate of all TELm figures for all Designated Pipe-line Operators under their Respective Licences for month “m”.

(f) Monthly Debt Payment Distributions

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

then DA6L shall be a sum equal to DEL; or

(ii) If  $W - \text{PSDA1} - \text{PSDA2} - \text{PSDA3} - \text{PSDA4} - \text{PSDA5} < \text{PSDE}$

then DA6L shall be calculated as follows:

$$\text{DA6L}_{\text{DELm}} = \frac{(W - \text{PSDA1} - \text{PSDA2} - \text{PSDA3} - \text{PSDA4} - \text{PSDA5}) \times \text{PSDE}}{\text{PSDE}}$$

where:

PSDA1 =the aggregate of all DA1L figures for all Designated Pipe-line Operators under their Respective Licence for month “m”;

PSDA2 =the aggregate of all DA2L figures for all Designated Pipe-line Operators under their Respective Licence for month “m”;

PSDA3 =the aggregate of all DA3L figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

PSDA4 =the aggregate of all DA4L figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

PSDA5 =the aggregate of all DA5L figures for all Designated Pipe-line Operators under their Respective Licences for month “m”;

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

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

2A.6.2 Inter-Designated Pipeline Operators Provisions

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

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

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

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



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

- (a) The Designated Pipe-line Operators' Agreement shall not, by object or effect, impose undue discrimination or confer undue preference on any Designated Pipe-line Operator or PS Gas Supplier and shall:
  - (i) ensure the PSA, the Trustee and the Account Bank institute appropriate arrangements and procedures to enable the PSA to fulfil the PSA Functions and the Trustee to fulfil the Trustee Functions in an efficient and economic manner;
  - (ii) make provision for the modification of the Designated Pipe-line Operators Agreement in the following circumstances only:
    - (aa) with the written consent of the Authority (such consent to be deemed as having been given at such time when the Authority has not sent written notice to the parties to the Designated Pipe-line Operators Agreement of its objection to such modification and the grounds for such objection within 8 weeks of its receipt of full written details of the proposed modification); and
    - (bb) in accordance with a written direction made by the Authority to the extent necessary to ensure consistency with the Licence, following consultation with the Designated Pipe-line Operators.
- (b) The Designated Pipe-line Operators' Agreement shall include an obligation on the Licensee to co-operate with the other Designated Pipe-line Operators. Such co-operation shall include but not be limited to providing the PSA and other Designated Pipe-line Operators with such information as is at the Licensee's disposal (other than confidential information the provision of which would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of the Licensee or any PS Gas Supplier or Designated Pipe-line Operator) and which would facilitate the operation of a system of PS Transmission Payments in respect of the Postalised System.

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

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

## **PART 3: ADDITIONAL SPECIAL CONDITIONS**

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

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

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

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

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

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

- (a) it shall comply with, and shall procure that each other holding company (which expression shall in this Part 3 have the meaning given to it in section 1159 of

the Companies Act 2006) of the Licensee shall comply with, the terms of its Memorandum and Articles of Association;

- (b) it shall not make, and shall procure that no other holding company of the Licensee shall make, any change to its Memorandum and Articles of Association or either of them without the prior written consent of the Authority;
- (c) it shall, and shall procure that each other holding company of the Licensee shall, exercise all such rights as are available to it to procure that each of it, each other holding company of the Licensee and the Licensee itself shall have non-executive directors of appropriate standing with relevant experience who shall be greater in number than the executive directors;
- (d) it shall refrain, and shall procure that each other holding company of the Licensee shall refrain, from taking any action which would cause the Licensee to be in contravention of any of the Conditions of the Licence;
- (e) it shall continue to be a company limited by guarantee within the meaning of section 3(3) of the Companies Act 2006;
- (f) it shall not permit any change of control of the Licensee or any other holding company of the Licensee to occur without the prior written consent of the Authority;
- (g) to the extent that they are appropriate to the circumstances of the company in question, it shall comply with, and procure that each other holding company of the Licensee complies with, the principles and guidance of the UK Corporate Governance Code, as referred to at the relevant time in the Listing Rules of the UK Listing Authority.

### 3.1.3 Meaning of Control

For the purposes of this condition, there is a change in the control of the Licensee whenever a person obtains control of the Licensee who did not have control of the Licensee when this Licence was granted; and sub-sections (2), (3) and (4) of Section 450 of the Corporation Tax Act 2010 shall apply for the purpose of determining whether for the purposes of this paragraph a person has or had control of the Licensee,

but at any time should no person have control then for the words "the greater part" wherever they occur in said sub-section (3) there shall be substituted the words "one-third or more".

#### 3.1.4 Memorandum and Articles of Association

In this Condition 3.1, a reference to the memorandum and/ or articles of association of the Licensee, the Holding Company or any holding company of the Licensee shall be a reference to its memorandum and/or articles in force at the time the Licence comes into full force and effect as varied from time to time in accordance with the provisions of Condition 3.1.1(b) or 3.1.2(b).

#### 3.1.5 Notification of Directors

The Licensee shall:

- (a) inform the Authority without delay when:-
  - (i) a new Director (of it or a holding company) is appointed;
  - (ii) the resignation or removal of a Director takes effect; or
  - (iii) any important change in the functions or executive responsibilities of a Director occurs; and
- (b) notify the Authority of the effective date of the change and, in the case of an appointment, whether the position is executive or non-executive and the nature of any specific function or responsibility.

#### 3.1.6 Accounting Statements

The Licensee shall procure that each Related Company shall prepare annual accounting statements in accordance with UK generally accepted accounting principles and practices or International Financial Reporting Standards and send a copy of the statements to the Authority within a period of 10 months from the end of the financial year to which the relevant statements relate. Where used in this Condition 3.1 "Related Company" means (a) the Holding Company (b) each other

holding company of the Licensee and (c) each Joint Support Company (as defined in Condition 4.1.2).

### 3.1.7 Prohibition on carrying out any other business

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

### 3.1.8 Share Ownership

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

### 3.1.9 Ring Fencing

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

- (a) create any mortgage, charge, pledge, lien or other form of security or encumbrance whatsoever, undertake any indebtedness to any other person or enter into any guarantee of any obligation otherwise than
  - (i) on an arm's length basis;
  - (ii) on normal commercial terms;
  - (iii) for a Permitted Purpose; and
  - (iv) (if the transaction is within the ambit of Condition 1.12.1) in accordance with Conditions 1.12.2 to 1.12.4 of Part 1;

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

- (b) transfer, lease, license or lend any sum or sums, asset, right or benefit to any affiliate or related undertaking of the Licensee otherwise than by way of:

- (i) repayment of capital or a distribution or other return of assets on a winding-up;
  - (ii) payment properly due for any goods, services or assets provided on an arm's length basis and on normal commercial terms;
  - (iii) a transfer, lease, licence or loan of any asset, right or benefit on an arm's length basis and on normal commercial terms;
  - (iv) repayment of any loan or payment of any interest on such a loan on an arm's length basis and on normal commercial terms;
  - (v) payments for group corporation tax relief;
  - (vi) a loan not prohibited by Condition 2.29; or
- (c) make loans to any affiliate or related undertaking of the Licensee, other than loans for a Permitted Purpose.

### 3.1.10 Definitions

In this Condition:

<b>"indebtedness"</b>	means all liabilities now or hereafter due, owing or incurred, whether actual or contingent, whether solely or jointly with any other person and whether as principal or surety, together with any interest accruing thereon and all costs, charges, penalties and expenses incurred in connection herewith
<b>"Permitted Purpose"</b>	means the purpose of all or any of the following:- <ul style="list-style-type: none"> <li>(a) the Licensed Business;</li> <li>(b) without prejudice to the generality of paragraph (a), any payment or transaction lawfully made or undertaken by the Licensee in relation to the disposal of or</li> </ul>

	<p>relinquishment of operational control over any relevant asset in accordance with Condition 1.12;</p> <p>(c) without prejudice to the generality of paragraph (a), any payment or transaction lawfully made or undertaken by the Licensee for a purpose within Condition 2.29.</p>
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## **Condition 3.2: Management Incentive Plan**

### **3.2.1 Management Incentive Plan**

When requested to do so by the Authority, the Licensee shall within 28 days of the request send to the Authority a plan (a “Management Incentive Plan”) under which the level of remuneration of the executive directors of the Licensee and any Related Company and such other persons as the Authority shall from time to time specify is expressly related to specified standards concerning their personal performance and the performance of the Licensee in such a way as to enhance their incentives to improve those standards.

### **3.2.2 Summary of Principal Terms and Principles**

Every time that the Licensee sends a Management Incentive Plan to the Authority under Condition 3.2.1, the Licensee shall, at the same time, send to the Authority a statement summarising the principal terms of the Management Incentive Plan and the principles underlying it. Without prejudice to the generality of the foregoing, the statement shall include:

- (a) details of the categories of persons to whom the Management Incentive Plan applies;
- (b) the maximum entitlement of any such category of persons; and
- (c) an indication of the criteria which are applied in determining the level of remuneration (with particular regard and making express reference to the criteria set out in Condition 3.2.3) and the relative weighting given to each such criterion.

### **3.2.3 Criteria**

When formulating a Management Incentive Plan, the Licensee shall have regard to such criteria as it considers to be appropriate in all the circumstances, which may, without limitation, include:

- (a) safety;

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

### Condition 3.3: Procurement

#### 3.3.1 Procurement

- (a) The Licensee shall contract for the provision of such Network Services as the Licensee considers appropriate acting as a Reasonable and Prudent Operator in order to enable the Licensee to discharge its obligations under the Order and Condition 2.25.1.
- (b) In contracting for the provision of Network Services pursuant to Condition 3.3.1(a), the Licensee shall, consistent with the objectives stated in Condition 2.25.1, purchase or otherwise acquire Network Services from the most economical sources available to it having regard to the quantity and nature of the Network Services required to enable the discharge of its obligations under the Order and Condition 2.25.1 and to the diversity, sources and reliability of such Network Services which are available at that time for purchase or other acquisition.
- (c) This Condition shall not extend to prescribing the manner or circumstances in which the Licensee shall at any time call for the delivery of the Network Services under any contract entered into pursuant to the Licence.
- (d) The Licensee shall not be in breach of this Condition by reason only of performing any obligations imposed on it by any enactment or by any of the Conditions of the Licence.
- (e) As used in this Condition, "**Network Services**" means any services which are being, or (as the context requires) are to be, provided to the Licensee which fall within any of the following categories, namely:
  - (i) the carrying out of works of maintenance on the Network (including by way of the refurbishment of any component or the provision of any replacement components);
  - (ii) the carrying out of any survey or inspection works on the Network;

- (iii) the carrying out of any repair or reinstatement works in the aftermath of the occurrence of any damage to or destruction of the Network or any part of it;
  - (iv) the effecting or maintenance of insurances;
  - (v) management, consultancy, or other services in relation to any of the matters described in (i), (ii), (iii) or (iv) above.
- (f) When requested to do so by Authority, the Licensee shall produce a Procurement Plan, within 28 days of the request. The Procurement Plan shall state the list of contracts entered into by the Licensee for activities associated with the Approved Business; the duration and costs of such contracts. The Plan shall also report on the details of the procurement process and an assessment by the Licensee of how its procurement activities fulfil Condition 2.25.1.

## **PART 4: PRICE CONTROL CONDITIONS**

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

#### **4.1.1 General Provisions**

- (a) This Part 4 shall be subject to the provisions of Part 5, and shall:
  - (i) have effect at all times prior to the time and date which is specified in any direction issued by the Authority under Condition 5.1.1;
  - (ii) where such a direction is issued, cease to have effect at that time and date and have no effect at any time thereafter (excepting only this paragraph (a) which shall continue in force for the purposes of giving effect to the direction).
- (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 4.
- (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 4, use all reasonable endeavours to ensure that it submits or calculates the best forecasts or estimates reasonably achievable, based on the most comprehensive, current information obtainable at the time of submission or calculation.

#### **4.1.2 Definitions**

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

<b>Actual Controllable Capital Expenditure</b>	has the meaning given to that term in Condition 4.2.1(d)(i).
<b>Actual Controllable Operating Expenditure</b>	has the meaning given to that term in Condition 4.7.3(b).
<b>Actual Uncontrollable Capital Expenditure</b>	has the meaning given to that term in Condition 4.2.1(d)(ii).
<b>Actual Capital Expenditure</b>	means the Actual Controllable Capital Expenditure plus the Actual Uncontrollable Capital Expenditure.
<b>Actual Supplemental Income</b>	has the meaning given to that term in Condition 4.7.6(e).
<b>Capital Expenditure</b>	<p>means, in respect of the Network and/or any Postalised Distribution Pipelines:</p> <ul style="list-style-type: none"> <li>(a) expenditure relating to property, plant or equipment that would be recognised as an asset under: <ul style="list-style-type: none"> <li>(i) International Accounting Standard 16 ‘Property, Plant and Equipment’ (but excluding any attributable interest costs); or</li> <li>(ii) such alternative accounting treatment as may be specified by the Authority in a direction issued by it from time to time; and</li> </ul> </li> <li>(b) such other expenditure as may be specified for the purposes of this definition in, or approved by the Authority under, any</li> </ul>

	direction issued by the Authority from time to time.
<b>Capitalised Interest Rate</b>	has the meaning given to that term in Condition 4.5.7.
<b>Capped Sum</b>	has the meaning given to that term in Condition 4.2.2(c).
<b>Compliance Plan</b>	has the meaning given to that term in Condition 4.1.4(c).
<b>Controllable Capital Expenditure</b>	means Capital Expenditure other than Uncontrollable Capital Expenditure.
<b>Controllable Capital Expenditure Estimate</b>	has the meaning given to that term in Condition 4.2.1(a).
<b>Controllable Operating Expenditure</b>	has the meaning given to that term in Condition 4.7.4.
<b>Controllable Operating Expenditure Estimate</b>	has the meaning given to that term in Condition 4.7.2(a).
<b>Designated Pipeline</b>	means any pipeline designated by the Department as forming part of the postalised pipeline network under Article 59 of the Gas Order.
<b>Determined Controllable Operating Expenditure</b>	has the meaning given to that term in Condition 4.7.2(c).

<b>Early Section</b>	<p>means a Section which has been constructed and:</p> <p>(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</p> <p>(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,</p> <p>but such that that Section shall be treated as an Early Section for the purposes of this Part 4 only on and from the date applicable in accordance with paragraph (a) or (b) (as the case may be).</p>
<b>Early Sectional Completion</b>	has the meaning given to that term in Condition 4.5.9.
<b>Eligible Pass-Through Costs</b>	has the meaning given to that term in Condition 4.1.3.
<b>Fixed Sum</b>	has the meaning given to that term in Condition 4.2.2(b).
<b>Joint Holding Company</b>	means, at any point in time, a holding company of the Licensee which owns and/or operates (or any one of the subsidiaries of which, other than the Licensee, owns and/or operates) gas pipelines or gas plant (excluding the Network) and/or electric lines or electrical plant in Northern Ireland.



<b>Joint Support Company</b>	means, at any point in time, a company which is a subsidiary of a Joint Holding Company and which provides or procures the provision of any services (including finance) to the Licensee and to one or more other subsidiaries of the Joint Holding Company of the nature referred to in the definition of Joint Holding Company.
<b>“LIBOR”</b>	means the sterling London Interbank Offered Rate as published in the Financial Times from time to time.
<b>Office and Overhead Costs</b>	means administration, secretarial, employment, secondment, staff training, management, audit and other internal overhead costs, together with accountancy and other advisory fees.
<b>Postalised Distribution Pipeline</b>	means such part of a low pressure gas pipeline as is specified in, or determined by or in accordance with, a direction given to the Licensee by the Authority for the purposes of this definition.
<b>Rate of Return</b>	means the regulatory allowed real weighted average rate of return calculated in accordance with Condition 4.5.3.
<b>Revenue Recovery Period</b>	means, in respect of the Network, the period of 40 years commencing on the First Operational Commencement Date.
<b>Review Date</b>	means:  1 October 2017 and every fifth anniversary thereafter

<p><b>“Retail Price Index” or “RPI”</b></p>	<p>means the Index of that name published by the Office of National Statistics each month in respect of all items, or:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(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;</li> </ul>
<p><b>Section</b></p>	<p>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:</p> <ul style="list-style-type: none"> <li>(c) Dungannon (including Coalisland);</li> <li>(d) Cookstown (including Magherafelt);</li> <li>(e) Enniskillen (including Derrylin);</li> <li>(f) Omagh;</li> <li>(g) Strabane.</li> </ul>

<b>Sole Holding Company</b>	means, at any point in time, any holding company of the Licensee which is not, at that time, a Joint Holding Company.
<b>Supplemental Income</b>	means any income that the Licensee receives as a result of owning and operating the Network as determined by the Authority, but shall not include revenue from the Postalised Charges.
<b>Termination Payments</b>	has the meaning given to that term in Condition 4.7.5.
<b>Total Controllable Capital Expenditure</b>	has the meaning given to that term in Condition 4.2.1(d).
<b>Total Uncontrollable Capital Expenditure</b>	has the meaning given to that term in Condition 4.2.1(d).
<b>Uncontrollable Capital Expenditure</b>	has the meaning given to that term in Condition 4.2.4(a).
<b>Uncontrollable Capital Expenditure Estimate</b>	has the meaning given to that term in Condition 4.2.1(a).
<b>Uncontrollable Operating Expenditure</b>	has the meaning given to that term in Condition 4.7.4.
<b>Verified Controllable Capital Forecast</b>	means the Controllable Capital Expenditure Estimate verified (with or without amendment) by the Authority in accordance with Condition 4.2.1(b).

#### 4.1.3 Eligible Operating Pass-Through Costs

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

- (a) the operation, repair, reinstatement, refurbishment and/or maintenance of the Network (or the land or substrata in, on, under, over or through which the Network is laid) or the rectification of any design, engineering, manufacturing, installation, construction or other defect in the Network;
- (b) insurance;
- (c) the discharge of its obligations under:
  - (i) any agreement, code or other document relating to the Network to which it is a party or by which it is bound (including this Licence); and
  - (ii) any indemnity, counter-indemnity or other obligation to pay money arising under any such agreement, code or other document;
- (d) any arrangement for the provision of services in respect of the Network;
- (e) any land or premises occupied or used by the Licensee (or by any Sole Holding Company for the purposes of the Licensee) or on which any part of the Network is built, including in particular costs in respect of:
  - (i) local authority rates;
  - (ii) the discharge of claims for compensation (whether made before or after the Grant of this Licence);
  - (iii) liaison with landowners;
  - (iv) rentals or other amounts payable to any landowner;
  - (v) the repair, maintenance and upkeep of any drainage system associated with the Network,

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

- (f) (to the extent not separately reimbursed to the Licensee by Gas Suppliers or Gas Shippers) all amounts payable by the Licensee to the owner or operator of any gas plant or gas pipeline system to which the Network is directly or indirectly connected;
- (g) all amounts payable by the Licensee to any PS Gas Supplier or Shipper on account of any withdrawal from service, breakdown, unavailability, or reduction in availability of the Network;
- (h) the purchase of auxiliary electricity supplies for the Network;
- (i) actions required to be taken by the Licensee as a result of changes in legislation;
- (j) Office and Overhead Costs incurred by the Licensee or any Sole Holding Company and an appropriate proportion (in accordance with the provisions of the Compliance Plan) of the Office and Overhead Costs incurred by any Joint Holding Company or Joint Support Company;
- (k) the investigation of payment defaults by PS Gas Suppliers, the exercise of rights against any PS Gas Supplier or other person in respect of any such payment defaults, and the activities of any credit or like committee established pursuant to the Licence (and other Gas Conveyance Licences);
- (l) (to the extent not separately reimbursed to the Licensee by gas suppliers or gas shippers) the purchase of gas for balancing purposes;
- (m) Corporation Tax payable by the Licensee or any Sole Holding Company and an appropriate proportion (in accordance with the provisions of the Compliance Plan) of the amount of Corporation Tax payable by any Joint Holding Company or Joint Support Company;

taken together with:

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

but excluding:

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

#### 4.1.4 Reporting

- (a) The Licensee shall ensure that all costs information submitted by it to the Authority under or in accordance with this Part 4 or any other provision of this Licence, and whether in relation to actual or forecast costs, reports fully and accurately all the costs incurred (or forecast to be incurred) in the design, construction operation and maintenance of the Network and any Postalised Distribution Pipeline.
- (b) The Licensee shall ensure that no costs information submitted by it to the Authority under or in accordance with this Part 4 or any other provision of this Licence, whether in relation to actual or forecast costs, relates to costs which are properly to be attributed or apportioned to:
  - (i) the Licensee in undertaking any Separate Business other than the Licensed Business (including in particular when carrying out activities under any other licence granted in accordance with the Order);
  - (ii) any affiliate or related undertaking of the Licensee.
- (c) For the purposes of ensuring its compliance with paragraphs (a) and (b), the Licensee shall submit to the Authority, by no later than three months after the date of the Grant, a draft plan (a "**Compliance Plan**") which:

- (i) shall set out the arrangements it proposes to establish in order to ensure its compliance with those paragraphs;
  - (ii) makes detailed provision in particular for a method by which:
    - (A) an appropriate apportionment of costs shall take place as between the Licensed Business and any other Separate Business of the Licensee;
    - (B) an appropriate apportionment of Office and Overhead Costs, costs relating to land, Corporation Tax and value added taxes shall take place as between the Licensee and any Joint Holding Company or Joint Support Company for the purposes of Condition 4.1.3;
    - (C) no amount constituting Capital Expenditure shall be treated as an Eligible Pass-Through Cost;
  - (iii) is consistent with the requirements of Conditions 1.2.4 to 1.2.6;
  - (iv) shall require to be approved by the Authority and, where the Authority does not approve the initial draft plan, shall be subject to further review and amendment, including any such amendment as the Authority may direct the Licensee to make, until the Authority considers that it is suitable for approval.
- (d) The Licensee shall comply with any Compliance Plan approved by the Authority under paragraph (c), and:
- (i) shall keep that plan under review and from time to time propose to the Authority any amendments required to ensure that it is accurate and up to date'
  - (ii) amend that plan in any manner directed by the Authority;
  - (iii) not otherwise amend that plan except with the approval of the Authority.

## Condition 4.2: Capital Expenditure

### 4.2.1 Allowed Capital Expenditure

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

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

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

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

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



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

(c) The Licensee shall:

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

provide to the Authority:

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

- (e) The Licensee shall provide such further information or explanation and documents and records as the Authority reasonably requires for the purpose of auditing the Total Controllable Capital Expenditure and the Total Uncontrollable Capital Expenditure figures submitted by the Licensee in accordance with paragraph (d), and/or the forecasts and details provided by the Licensee in accordance with paragraph (c).
- (f) The Authority may, following audit pursuant to paragraph (e), by notice to the Licensee in respect of the Total Controllable Capital Expenditure figures submitted by the Licensee in accordance with paragraph (d):
  - (i) approve the Licensee's Total Controllable Capital Expenditure figure as the Actual Controllable Capital Expenditure; or
  - (ii) determine as the Actual Controllable Capital Expenditure such amended figure as it considers appropriate:
    - (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 4.2.2,

provided that, before making any amendments to the Total Controllable Capital Expenditure figure submitted by the Licensee, the Authority shall provide details of the amendments and the reasons for them (such reasons, except where they related 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.

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

- (i) approve the Licensee's Total Uncontrollable Capital Expenditure figure as the Actual Uncontrollable Capital Expenditure; or
- (ii) determine as the Actual Uncontrollable Capital Expenditure such amended figure as it considers appropriate if, in its reasonable opinion, the figure proposed by the Licensee does not accurately reflect Uncontrollable Capital Expenditure incurred by the Licensee (including if, in its reasonable opinion, any part of the expenditure included by the Licensee within the Total Uncontrollable Capital Expenditure figure falls outside the categories of Uncontrollable Capital Expenditure as set out in Condition 4.2.4(a),

provided that, before making any amendments to the Total Uncontrollable Capital Expenditure figure submitted by the Licensee, the Authority shall provide details of the amendments and the reasons for them (such reasons to be based on established 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.

#### 4.2.2 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 4.2.1(b), it may determine that, for the purposes of the approval or determination of the Actual Controllable Capital Expenditure in accordance with Condition 4.2.1(f), 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),

and where it makes such a determination it shall notify the Licensee of what has been determined.

- (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 4.2.1(f), 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(f), 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 makes a determination in accordance with paragraph (a):
  - (i) it shall specify each activity or category of activity to which that determination 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 determination shall have effect for the purposes of the subsequent approval or determination of the Actual Controllable Capital Expenditure in accordance with Condition 4.2.1(f).

#### 4.2.3 Actions Taken Before Part 4 Comes Into Effect

For the purposes of this Part 4, where prior to Condition 4.2.2 coming into effect the Authority has made a determination that it would have been entitled to make under the provisions of Condition 4.2.2(a) after that Condition had come into effect, then:

- (a) that determination shall be treated as having been made in accordance with Condition 4.2.2, and shall have effect for the purposes of this Part 4 on and from the date on which that Condition comes into effect; and
- (b) that determination shall be construed purposively, and the Authority shall be deemed to have determined a Fixed Sum or a Capped Sum where that is the clear purpose and substantive effect of the determination (regardless of the terminology used in it); and
- (c) any amount which is a Fixed Sum or Capped Sum by virtue of that determination shall be treated as such for the purposes of this Part 4 on and from the date on which Condition 4.2.2 comes into effect.

#### 4.2.4 Uncontrollable Capital Expenditure

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

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

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

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

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

- (a) In respect of any period during which a Designation Order is in force in relation to all or any part of the Network, the Licensee shall ensure that in respect of each Gas Year during that period:
  - (i) its Forecast Required Revenue to be notified to the Authority and the PSA in accordance with paragraphs (b) and (d) shall be calculated in accordance with Condition 4.4.1; and
  - (ii) its Actual Required Revenue to be notified to the Authority and the PSA in accordance with paragraph (e) shall be calculated in accordance with the formula set out in Condition 4.4.2.
- (b) By no later than the fifteenth Business Day in 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 4.4.2.
- (f) By no later than ten Business Days after the end of each Quarter, the Licensee shall provide the Authority, other Designated Pipeline Operators and all PS Gas Suppliers with a report setting out any material change to the Licensee's forecast of the revenue it requires comprised in its Forecast Required Revenue for the Gas Year in which the Quarter falls.

## Condition 4.4: Forecast and Actual Required Revenue

### 4.4.1 Forecast Required Revenue

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

### 4.4.2 Actual Required Revenue

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

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

### 4.4.3 Definition of Formula Terms

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

- $t$  denotes a Gas Year;
- $t-1$  denotes the Gas Year which immediately precedes the Gas Year for the purposes of which any forecast or calculation is made in accordance with this Part 4 (and the subscript  $t-2$  shall be construed accordingly);
- $A_t$  in respect of any Gas Year, means the Capital Revenue Requirement for that Gas Year, calculated in accordance with Condition 4.5.1;
- $B_t$  in respect of any Gas Year, means the Eligible Pass-Through Costs relating to the Network for that Gas Year;
- $C_t$  in respect of any Gas Year, means the Postalisation Adjustment for that Gas Year calculated in accordance with Condition 4.6.1;



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

## Condition 4.5: The Capital Revenue Requirement

### 4.5.1 The Capital Revenue Requirement

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

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

Where:

q is the first month in Gas Year t;

s is the twelfth month in Gas Year t;

A<sub>m</sub> is to be calculated in accordance with Condition 4.5.2

### 4.5.2 The Monthly Capital Revenue Requirement

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

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

Where:

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

rr<sub>m</sub> is the regulatory allowed real weighted average rate of return calculated in accordance with Condition 4.5.3;

OAV<sub>m</sub> is the opening asset value in month m calculated in accordance with Condition 4.5.5;

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

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

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

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

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

where:

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

$k_m$  is an error correction mechanism to take account of variances in outturn and forecast variables (including revenue and inflation) calculated in accordance with Condition 4.5.4.

#### 4.5.3 The Rate of Return

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

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

#### 4.5.4 The Error Correction Mechanism

For the purposes of Condition 4.5.2:

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

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

Where:

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

And:

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

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

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

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

Such that:

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

And:

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

#### 4.5.5 The Opening Asset Value

For the purposes of Condition 4.5.1:

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

Where:

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

And:

OAV is the Opening Asset Value;

AC is the Allowed Capital Expenditure calculated in accordance with Condition 4.5.6;

CI is the amount of Capitalised Interest calculated in accordance with Condition 4.5.7;

G is the amount of Grants Received calculated in accordance with Condition 4.5.8;

X is the amount in respect of Early Sectional Completion calculated in accordance with Condition 4.5.9.

#### 4.5.6 The Allowed Capital Expenditure

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

$$AC = VFCE + PG + UC$$

Where:

VFCE is the Verified Controllable Capital Forecast;

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

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

UC is the Actual Uncontrollable Capital Expenditure.

#### 4.5.7 Capitalised Interest

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

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

- $CE_m$  is the Actual Capital Expenditure in month  $m$ ;
- $CIR_m$  is the Capitalised Interest Rate for month  $m$ , being  $(1 + LIBOR + 0.5\%)^{(1/12)} - 1$  where LIBOR is the annual LIBOR rate at the first business day of each month;
- $m = i$  is the month of October 2014, being the first month from which capitalised interest will be charged;
- 0 is the month in which the First Operational Commencement Date occurs;
- $m=1$  is the first month after the month in which the First Operational Commencement Date occurs;
- $N$  is a number of months after the month in which the First Operational Commencement Date occurs.

#### 4.5.8 Grants Received

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

$$G = \sum_{m=i}^0 \left( AMGR_m \prod_{r=p}^m (1 + CIR_m) \right) + \sum_{m=1}^N \left( AMGR_m \cdot \prod_{r=1}^m (1 + r n_m)^{-1} \right)$$

Where:

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

$m = p$  is the first month that the capital grant is received by the Licensee, where that month is before the month in which the First Operational Commencement Date occurs;

0 is the month in which the First Operational Commencement Date occurs;

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

N is a number of months after the month in which the First Operational Commencement Date occurs.

#### 4.5.9 Early Sectional Completion

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

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



## Condition 4.6: The Postalisation Adjustment

### 4.6.1 The Postalisation Adjustment

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

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

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

Where:

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

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

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

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

$ARR_{t-2}$  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 10<sup>th</sup> business day of June in Gas Year t-1, plus 2% minus CPI factor, calculated as:

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

$CPI_{t-1}$  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.

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

### 4.7.1 The Approved Surplus

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

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

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

Where:

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

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

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

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

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

### 4.7.2 Determination of DCO

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

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

- (b) The Licensee shall provide such further information or explanation and access to documents and records as the Authority reasonably requires for the purpose of verifying each Controllable Operating Expenditure Estimate 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**" (DCO) (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.

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.

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

#### 4.7.3 Determination of ACO

- (a) The Licensee shall, by no later than the first Business Day of November following the end of each Gas Year, submit to the Authority, 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).

#### 4.7.4 Definition of Controllable Operating Expenditure and Uncontrollable Operating Expenditure

For the purposes of this Part 4, “**Controllable Operating Expenditure**” shall comprise those categories of expenditure that are properly within the control of the management of the Licensee, such categories to be those agreed in writing between the Licensee and the Authority no later than the first Business Day of June 2015 subject to any amendments by the agreement of the Authority and the Licensee from time to time. In the absence of agreement between the Licensee and the Authority, the Authority shall determine the categories of expenditure that comprise Controllable Operational Expenditure and notify the Licensee of its decision in writing.

For the purposes of this Part 4, "**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.

#### 4.7.5 The Termination Payments

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

#### 4.7.6 The Supplemental Income

- (a) The Licensee shall, on a good faith basis use its reasonable endeavours to maximise the Supplemental Income provided that it is acknowledged that the primary purpose of the Network is to transport gas for the purposes of its supply to customers in Northern Ireland.
- (b) The Licensee shall report to the Authority not later than six months before the end of each Gas Year:
  - (i) with the Licensee's calculation of all Supplemental Income reasonably anticipated by it to become due to, or receivable by, it in the forthcoming Gas Year; and

- (ii) details of what the Licensee considers to be the Supplemental Income recovered in the preceding Gas Year.
- (c) The Licensee shall promptly provide to the Authority such information, explanations, documents and records as the Authority may reasonably require in connection with or relating to Supplemental Income and the report provided in accordance with paragraph (b).
- (d) The Authority may, following verification, by notice to the Licensee in respect of the figures submitted in the Licensee's report in accordance with paragraph (b)(i):
  - (i) approve the figures in the report as the Supplemental Income for the relevant Gas Year; or
  - (ii) determine as the Supplemental Income for the relevant Gas Year such amended figure as it considers appropriate,

provided that before making any amendments to the figures in the report submitted by the Licensee in accordance with paragraph (b)(i) the Authority shall provide details of the amendments and the reasons for them and give the Licensee an appropriate period (being not less than 28 days) to comment on them.
- (e) The Authority may, following verification, by notice to the Licensee in respect of the figures submitted in the Licensee's report in accordance with paragraph (b)(ii):
  - (i) approve the figures in the report as the "**Actual Supplemental Income**" ( $E_t$ ) for the relevant Gas Year; or
  - (ii) determine as the Actual Supplemental Income for the relevant Gas Year such amended figure as it considers appropriate.

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

### **4.8.1 Allowed Revenue after the Final Repayment Date**

- (a) Not less than twelve (12) months prior to the expiry of the Revenue Recovery Period the Licensee shall submit to the Authority:
  - (i) a proposal as to the formula to be used for calculation of conveyance charges following the end of the Revenue Recovery Period; and
  - (ii) a forecast of the amount of such charges for the five years following expiry of the Revenue Recovery Period,which comply with the basis of calculation set out in paragraph (d).
- (b) The Licensee shall provide such further information or explanation and documents and records as the Authority reasonably requires for the purpose of verifying that the formula and forecasts submitted to it by the Licensee in accordance with paragraph (a) comply with the principles set out in paragraph (d).
- (c) The Authority may, following review of the submissions provided in accordance with paragraph (a), by notice to the Licensee:
  - (i) approve the formula and forecasts; or
  - (ii) make such amendments to the formula and forecasts as it deems necessary or appropriate to ensure compliance with the basis of calculation set out in paragraph (d) provided that before making any modifications to the Licensee's formula and forecast, the Authority shall provide details of the proposed modifications and the reasons for them and give the Licensee an appropriate period (being not less than 28 days) to comment on them.
- (d) The Licensee shall in setting its charges for the conveyance of gas in the Network for each Gas Year commencing after the expiry of the Revenue Recovery Period do so in accordance with such arrangements as shall have been



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

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

## **PART 5: SPECIAL CONDITION – RE-FINANCING**

### **Condition 5.1: Cessation of Part 4 and Certain Provisions of Condition 2.27, and coming into effect of Part 6**

#### **5.1.1 Cessation of Part 4 and certain provisions of Condition 2.27**

The Authority may issue a direction to the Licensee specifying a time and date at which the following provisions will cease to have effect:

- (a) the provisions of Conditions 2.27.2 to 2.27.6; and
- (b) the provisions of Part 4 (excepting only Condition 4.1.1(a), which shall continue in force for the purpose of giving effect to the direction),

and those provisions will cease to have effect for all purposes in this Licence from the time and date specified in that direction.

#### **5.1.2 Coming into effect of Part 6**

The Authority may issue a direction to the Licensee specifying a time and date at and from which the provisions of Part 6 shall have effect, and:

- (a) prior to that time and date the provisions of Part 6 shall have no effect for any purpose of this Licence; and
- (b) at that time and date, and at all times thereafter, those provisions shall have effect for all purposes in this Licence.

#### **5.1.3 Co-ordination of directions**

The Authority may issue a direction under either Condition 5.1.1 or Condition 5.1.2 only where:

- (a) at the same time it also issues a direction (whether or not incorporated in the same document) under the other of those Conditions; and
- (b) the time and date specified in each such direction is the same.

#### 5.1.4 Transitional provisions

Where the Authority has issued directions under both Conditions 5.1.1 and 5.1.2, then, on and from the time and date at which the provisions of Part 4 cease to have effect and the provisions of Part 6 have effect by virtue of those directions:

- (a) any reference in Parts 1 to 3 of this Licence to Part 4 shall be treated as a reference to Part 6;
- (b) any reference in Parts 1 to 3 of this Licence to a provision of Part 4 shall be treated as a reference to the corresponding provision of Part 6; and
- (c) any action previously taken or treated as taken by the Licensee or the Authority under or in accordance with any provision of Part 4 shall be treated as if it had been taken under or in accordance with the corresponding provision of Part 6.

## **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:

<b>Actual Controllable</b>	has the meaning given to that term in Condition 6.2.1(e)(i).
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<b>Capital Expenditure</b>	
<b>Actual Controllable Operating Expenditure</b>	has the meaning given to that term in Condition 6.10.3(b).
<b>Actual Uncontrollable Capital Expenditure</b>	has the meaning given to that term in Condition 6.2.1(e)(ii).
<b>Actual Capital Expenditure</b>	means the Actual Controllable Capital Expenditure plus the Actual Uncontrollable Capital Expenditure.
<b>Adverse Regulatory Event Period</b>	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.
<b>Adverse Regulatory Event Year</b>	means: <ul style="list-style-type: none"> <li>(a) a Gas Year: <ul style="list-style-type: none"> <li>(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</li> </ul> </li> </ul>

	<p>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</p> <p>(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</p> <p>(b) any Gas Year (other than a Gas Year referred to in (a)):</p> <p>(i) part or all of which coincides with an Adverse Regulatory Event Period; and</p> <p>(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</p>
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	is given) will cause such Gas Year to be an Adverse Regulatory Event Year.
<b>ARE Rectification Gas Year</b>	means a Gas Year in which an Adverse Regulatory Event Period ends.
<b>ARE Suspense Account</b>	<p>means the account designated as the ARE Suspense Account in the name of the Licensee, opened with the Account Bank and maintained pursuant to the Accounts Mandate Agreement.</p> <p>And for these purposes the expressions "Account Bank" and "Accounts Mandate Agreement" shall have the meanings given to them in Condition 6.5.1.</p>
<b>Available Post-ARE Cash</b>	<p>means, if an Adverse Regulatory Event is waived or remedied in accordance with the provisions of the Common Terms Agreement (and no other Adverse Regulatory Event remains outstanding), and the credit balance in the ARE Suspense Account is transferred to the WTL Operating Account, an amount equal to:</p> <p>(a) the credit balance so transferred; less</p> <p>(b) the Net Debt Service for the Gas Year in which the credit balance is so transferred</p> <p>save that if (b) exceeds (a) that amount shall be zero.</p> <p>And for these purposes the expressions "Common Terms Agreement" and "WTL Operating Account", as used above shall have the meanings given to them in Condition 6.5.1.</p>
<b>Capital Expenditure</b>	<p>means, in respect of the Network and/or any Postalised Distribution Pipelines:</p> <p>(a) expenditure relating to property, plant or equipment that would be recognised as an asset under:</p>

	<p>(i) International Accounting Standard 16 ‘Property, Plant and Equipment’ (but excluding any attributable interest costs); or</p> <p>(ii) such alternative accounting treatment as may be specified by the Authority in a direction issued by it from time to time; and</p> <p>(b) any other cost, liability or expenditure as may be specified for the purposes of this definition in, or approved by the Authority under, any direction issued by the Authority from time to time.</p>
<b>Capitalised Interest Rate</b>	has the meaning given to that term in Condition 6.5.6.
<b>Capped Sum</b>	has the meaning given to that term in Condition 6.2.2(c).
<b>Compliance Plan</b>	has the meaning given to that term in Condition 6.1.5(c).
<b>Controllable Capital Expenditure</b>	means Capital Expenditure other than Uncontrollable Capital Expenditure.
<b>Controllable Capital Expenditure Estimate</b>	has the meaning given to that term in Condition 6.2.1(a).
<b>Controllable Operating Expenditure</b>	has the meaning given to that term in Condition 6.10.4.



<b>Controllable Operating Expenditure Estimate</b>	has the meaning given to that term in Condition 6.10.2(a).
<b>Cut-Off Date</b>	means the date which falls 30 Months after the First Operational Commencement Date.
<b>Cut-Off Year</b>	means the Gas Year in which the Cut-Off Date falls.
<b>Defaulting DPO</b>	has the meaning given to that term in Condition 6.6.2(a).
<b>Designated Pipeline</b>	means any pipeline designated by the Department as forming part of the postalised pipeline network under Article 59 of the Order.
<b>Designation Order</b>	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.
<b>Determined Controllable Operating Expenditure</b>	has the meaning given to that term in Condition 6.10.2(c).
<b>DPO</b>	means a person licensed to convey gas under Article 8(1)(a) of the Gas Order through the Postalised System, including the Licensee.
<b>DPO Agreement</b>	means the agreement defined as the Designated Pipe-line Operators Agreement in Part 2A of this Licence.

<b>DPO Payment Failure</b>	has the meaning given to that term in Condition 6.6.2(a).
<b>Early Section</b>	<p>means a Section which has been constructed and:</p> <p>(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</p> <p>(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,</p> <p>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).</p>
<b>Early Sectional Completion</b>	has the meaning given to that term in Condition 6.5.8.
<b>Eligible Pass-Through Costs</b>	has the meaning given to that term in Condition 6.1.4.
<b>Final Repayment Date</b>	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.
<b>Finance Documents</b>	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 Phoenix Natural Gas Limited pursuant to arrangements approved by the Authority or for the purpose of the Licensed Business.
<b>Finance Gas Year</b>	has the meaning given to that term in Condition 6.8.1(d).
<b>Financial Closing</b>	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.
<b>Fixed Amount</b>	in respect of a Gas Year, has the meaning given in Condition 6.5.1.
<b>Fixed Sum</b>	has the meaning given to that term in Condition 6.2.2(b).
<b>Gas Conveyance Licence</b>	means a licence to convey gas granted under Article 8(1)(a) of the Order in respect of any part of the Postalised System.
<b>Government Agency</b>	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.
<b>Interest Accrued</b>	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.
<b>Issuer</b>	means West Transmission Financing PLC (an incorporated company registered in Northern Ireland under number NI644237).
<b>Joint Holding Company</b>	means, at any point in time, a holding company of the Licensee which owns and/or operates (or any one of the subsidiaries of which, other than the Licensee, owns and/or operates) gas pipelines or gas plant (excluding the Network) and/or electric lines or electrical plant in Northern Ireland.
<b>Joint Support Company</b>	means, at any point in time, a company which is a subsidiary of a Joint Holding Company and which provides or procures the provision of any services (including finance) to the Licensee and to one or more other subsidiaries of the Joint Holding Company of the nature referred to in the definition of Joint Holding Company.
<b>LIBOR</b>	means the sterling London Interbank Offered Rate as published in the Financial Times from time to time.
<b>Licensee's Forecast OAV</b>	has the meaning given to that term in Condition 6.4.7.
<b>Liquidity Facility</b>	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.

<b>Net Debt Service</b>	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.
<b>Non-OAV Adj Year</b>	has the meaning given to that term in Condition 6.4.5.
<b>OAV Addition</b>	has the meaning given to that term in Condition 6.4.6.
<b>OAV Adj Year</b>	has the meaning given to that term in Condition 6.4.5.
<b>OAV Deduction</b>	has the meaning given to that term in Condition 6.4.5.
<b>OAV Shortfall</b>	has the meaning given to that term in Condition 6.4.5.
<b>OAV Surplus</b>	has the meaning given to that term in Condition 6.4.6.
<b>Office and Overhead Costs</b>	means administration, secretarial, employment, secondment, staff training, management, audit and other internal overhead costs, together with accountancy and other advisory fees.
<b>Other DPOs</b>	means at any time, all persons (other than the Licensee) who are DPOs at that time.
<b>Postalisation Adjustment</b>	has the meaning given to that term in Condition 6.6.1.
<b>Postalisation Credit Provisions</b>	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.

<b>Postalisation Licence Provisions</b>	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.
<b>Postalised Distribution Pipeline</b>	means such part of a low pressure gas pipeline as is specified in, or determined by or in accordance with, a direction given to the Licensee by the Authority for the purposes of this definition.
<b>Postalised System</b>	has the meaning given to it in Condition 2A.1.
<b>Post-Finance Gas Year</b>	has the meaning given to that term in Condition 6.8.1(d).
<b>Provision of Law</b>	<p>means one of the following, to the extent that it applies to or is binding on the Licensee:</p> <ul style="list-style-type: none"> <li>(a) any enactment;</li> <li>(b) any regulation made by the Council or the Commission of the European Union or any decision taken by the Commission;</li> <li>(c) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which: <ul style="list-style-type: none"> <li>(i) the period for making an appeal has expired; and</li> <li>(ii) no superior court or tribunal has reached a contrary interpretation or finding; and</li> </ul> </li> <li>(d) any direction of a competent authority other than the Authority or the Department.</li> </ul>

<b>Provisional Controllable Capital Expenditure</b>	has the meaning given to that term in Condition 6.2.1(d)(i).
<b>Provisional Uncontrollable Capital Expenditure</b>	has the meaning given to that term in Condition 6.2.1(d)(ii).
<b>Rate of Return</b>	means the regulatory allowed real weighted average rate of return calculated in accordance with Condition 6.5.3.
<b>Ratio Account Credit</b>	has the meaning given to that term in Condition 6.4.4.
<b>Regulatory Authority</b>	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.
<b>Relevant Change of Law</b>	<p>means any of the following, to the extent that it applies to or is binding on the Licensee:</p> <ul style="list-style-type: none"> <li>(a) the application of any Provision of Law that did not previously have effect;</li> <li>(b) the amendment of or change to any Provision of Law that did previously have effect;</li> <li>(c) the revocation or cessation of any Provision of Law that did previously have effect.</li> </ul>
<b>Retail Price Index or RPI</b>	means the Index of that name published by the Office of National Statistics each month in respect of all items, or:

	<p>(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</p> <p>(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.</p>
<b>Review Date</b>	means 1 October 2017 and every fifth anniversary thereafter.
<b>Section</b>	<p>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:</p> <p>(a) Dungannon (including Coalisland);</p> <p>(b) Cookstown (including Magherafelt);</p> <p>(c) Enniskillen (including Derrylin);</p> <p>(d) Omagh;</p> <p>(e) Strabane.</p>
<b>Sole Holding Company</b>	means, at any point in time, any holding company of the Licensee which is not, at that time, a Joint Holding Company.
<b>Supplemental Income</b>	means any income that the Licensee receives as a result of owning and operating the Network but shall not include



	revenue from the Postalised Charges or revenue received pursuant to the Single Network Code.
<b>Termination Payments</b>	has the meaning given to that term in Condition 6.7.4.
<b>Total Controllable Capital Expenditure</b>	has the meaning given to that term in Condition 6.2.1(e).
<b>Total Uncontrollable Capital Expenditure</b>	has the meaning given to that term in Condition 6.2.1(e).
<b>Transaction Authorisation</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) the Licence and any document entered into by the Licensee pursuant to the Licence;</li> <li>(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 potential future requests for, or grants of, consent in relation to the exercise of rights of security over relevant assets;</li> <li>(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;</li> <li>(d) any letter from the Authority addressed to the Licensee which contains a consent to the granting</li> </ul>

	<p>of security over relevant assets of the Licensee and certain related matters;</p> <p>(e) the Designation Order; and</p> <p>(f) any directions issued by the Authority pursuant to Part 5 and Condition 6.5.1.</p>
<b>Uncontrollable Capital Expenditure</b>	has the meaning given to that term in Condition 6.2.3(a).
<b>Uncontrollable Capital Expenditure Estimate</b>	has the meaning given to that term in Condition 6.2.1(a).
<b>Uncontrollable Operating Expenditure</b>	has the meaning given to that term in Condition 6.10.4
<b>Verified Controllable Capital Forecast</b>	<p>means the Controllable Capital Expenditure Estimate verified (with or without amendment) by the Authority:</p> <p>(a) by being approved or determined by the Authority (as the case may be) in accordance with Condition 6.2.1(b); and</p> <p>(b) subject to any subsequent variation by the Authority in accordance with Condition 6.2.1(i) or Condition 6.2.4.</p>

### 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 amounts required to ensure that balances are maintained in bank accounts of the Licensee and/or the Issuer in compliance with the Finance Documents;
- (o) any amount paid by the Licensee, pursuant to arrangements approved by the Authority from time to time, into any bank account for the purpose of building

up a fund to finance the cost of removing, restoring, reinstating, making safe or other decommissioning of any part of the Network;

- (p) Capital Expenditure; and
- (q) any amount paid by the Licensee, pursuant to arrangements approved by the Authority from time to time, into any bank account for the purpose of building up a fund to finance the cost of removing, restoring, reinstating, making safe or other decommissioning of any part of the Network;
- (r) 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 (q);

taken together with:

- (s) any value added tax or equivalent form of tax on any amount falling within paragraphs (a) to (r), 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:

- (t) any cost, expense, loss, liability or other amount incurred by the Licensee which is met by withdrawals from the fund referred to in paragraph (q) or any interest earned on that fund;
- (u) 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;
- (v) any amount which constitutes Actual Controllable Capital Expenditure or Actual Uncontrollable Capital Expenditure; and
- (w) 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 in consequence of any one or more of sub-paragraphs (A) to (C) applying, namely:
    - (A) in the reasonable opinion of the Authority, the figure proposed by the Licensee does not accurately reflect the Controllable Capital Expenditure incurred by the Licensee;
    - (B) in the opinion of the Authority, the figure proposed by the Licensee requires to be amended to exclude costs related to activities which are the subject of a notice issued by the Authority varying the Verified Controllable Capital Forecast in accordance with paragraph (i); and/or
    - (C) 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, where they relate to sub-paragraph (A), 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 figure proposed by the Licensee is amended in accordance with sub-paragraph (B), in which case it may be less than the Provisional Controllable Capital Expenditure to such extent as is necessary to reflect that amendment.
- (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 issues 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 that Verified Controllable Capital Forecast by such amount as in the opinion of the Authority is appropriate by virtue of the circumstances (and in respect of the costs) referred to in either or both of sub-paragraphs (i) and (ii).
  - (i) The circumstances referred to in this sub-paragraph (i) are that:
    - (A) costs associated with certain activities were taken into account by the Authority both in:
      - 1) approving or determining the Verified Controllable Capital Forecast; and
      - 2) determining the Provisional Controllable Capital Expenditure,
- in each case being costs in respect of activities remaining to be carried out by (or on behalf of) the Licensee after the date of that approval or determination;
- (B) by the date on which a notice under paragraph (i) is issued by the Authority to the Licensee:



- 1) the activities referred to in sub-paragraph (A) have not been carried out and the costs associated with them have not been incurred;
  - 2) no other activities of substantially equivalent effect have been carried out and the costs associated with such other activities have not been incurred; and
  - 3) no alternative steps have been taken which have the effect (without any adverse consequences) of avoiding the need to carry out such activities as are referred to in sub-paragraphs 1) and 2), and the costs associated with such alternative steps have not been incurred; and
- (C) where at any subsequent date any of the activities or steps referred to in sub-paragraph (B) are carried out or taken and the costs associated with those activities or steps are incurred, those costs will be recoverable by the Licensee as Capital Expenditure constituting Eligible Pass-Through Costs.

(ii) The circumstances referred to in this sub-paragraph (ii) are that:

- (A) costs associated with certain activities were taken into account by the Authority both in:
  - 1) approving or determining the Verified Controllable Capital Forecast; and
  - 2) determining the Provisional Controllable Capital Expenditure,

in each case as an estimate of costs that were uncertain at the date of that approval or determination, whether being costs in respect of activities remaining to be carried out by (or on behalf of) the Licensee after that date or activities already carried out by that date;

- (B) in the opinion of the Authority, by the date on which a notice under paragraph (i) is issued by it to the Licensee:
  - 1) it is not reasonably practicable for the Authority to make an accurate assessment of the Controllable Capital Expenditure incurred by the Licensee in respect of one or more of the activities referred to in sub-paragraph (A); or
  - 2) there is a dispute or similar cause of uncertainty in relation to one or more such activities such that it would otherwise be inappropriate in all the circumstances for the Authority, at that date, to either approve or determine the Controllable Capital Expenditure in respect of those activities;
- (C) it is likely that at a subsequent date either an accurate assessment may be made of the Controllable Capital Expenditure incurred by the Licensee in respect of the activities referred to in sub-paragraph (B) or (as the case may be) the dispute or similar cause of uncertainty in relation to those activities will be resolved;
- (D) where the circumstances described in sub-paragraph (C) occur, the costs associated with the relevant activities will be recoverable by the Licensee as Capital Expenditure constituting Eligible Pass-Through Costs.

The entitlement of the Authority to issue a notice under this paragraph (i) is subject to the requirement that, before issuing any such notice, the Authority shall have first 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 Forecast in accordance with Condition 6.2.1(b), it may

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 makes a determination in accordance with paragraph (a):
  - (i) it shall specify each activity or category of activity to which that determination 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 determination shall have effect for the purposes of the subsequent 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.

### 6.4.2 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 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<sub>t</sub> in respect of any Gas Year, means the Fixed Amount in respect of that Gas Year;
- B<sub>t</sub> in respect of any Gas Year, means the Eligible Pass-Through Costs for that Gas Year;
- C<sub>t</sub> in respect of any Gas Year, means the Postalisation Adjustment for that Gas Year calculated in accordance with Condition 6.6.1;
- D<sub>t</sub> in respect of any Gas Year, means the Termination Payments for that Gas Year as calculated in accordance with Condition 6.7.1;



- $E_t$  in respect of any Gas Year, means the Supplemental Income for that Gas Year as calculated in accordance with Condition 6.7.2;
- $G_t$  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 Forecast 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 the fifteenth Business Day in March 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<sub>m</sub>** means the true-up rate and is equal to  $((1+3.5\%) * (1 + \text{Annual Rate of Inflation as measured by RPI at } m = 30))^{1/12}$ ;
- (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 to be drawn down under the Finance Documents constitutes funding that will be 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 is to be 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 is to be 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 is to be 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 equal to twice the debt service amount comprising both capital and interest in respect of a half-year) in the table immediately below, where each such amount shall first have been subject to indexation in accordance with the provisions set out under the sub-heading Indexation following that table.

<b>Gas Year Ending on 1<sup>st</sup> October in the year</b>	<b>Amount 1 (£)</b>	<b>Amount 2 (£)</b>
<b>2018</b>	Zero	Zero
<b>2019</b>	6,797,927.07	4,994,395.40
<b>2020</b>	4,994,395.40	4,994,395.40
<b>2021</b>	4,994,395.40	4,994,395.40
<b>2022</b>	4,994,395.40	4,994,395.40
<b>2023</b>	4,994,395.40	4,994,395.40

<b>Gas Year Ending on 1<sup>st</sup> October in the year</b>	<b>Amount 1 (£)</b>	<b>Amount 2 (£)</b>
<b>2024</b>	4,994,395.40	4,994,395.40
<b>2025</b>	4,994,395.40	4,994,395.40
<b>2026</b>	4,994,395.40	4,994,395.40
<b>2027</b>	4,994,395.40	4,994,395.40
<b>2028</b>	4,994,395.40	4,994,395.40
<b>2029</b>	4,994,395.40	4,994,395.40
<b>2030</b>	4,994,395.40	4,994,395.40
<b>2031</b>	4,994,395.40	4,994,395.39
<b>2032</b>	4,994,395.39	4,994,395.39
<b>2033</b>	4,994,395.39	4,994,395.39
<b>2034</b>	4,994,395.39	4,994,395.39
<b>2035</b>	4,994,395.39	4,994,395.39
<b>2036</b>	4,994,395.39	4,994,395.39
<b>2037</b>	4,994,395.39	4,994,395.39
<b>2038</b>	4,994,395.39	4,994,395.39
<b>2039</b>	4,994,395.39	4,994,395.39
<b>2040</b>	4,994,395.39	4,994,395.39
<b>2041</b>	4,994,395.39	4,994,395.39
<b>2042</b>	4,994,395.39	4,994,395.39
<b>2043</b>	4,994,395.39	4,994,395.39
<b>2044</b>	4,994,395.39	4,994,395.39
<b>2045</b>	4,994,395.39	4,994,395.39
<b>2046</b>	4,994,395.39	4,994,395.39
<b>2047</b>	4,994,395.39	4,994,395.39
<b>2048</b>	4,994,395.39	4,994,395.39

<b>Gas Year Ending on 1<sup>st</sup> October in the year</b>	<b>Amount 1 (£)</b>	<b>Amount 2 (£)</b>
<b>2049</b>	4,994,395.39	4,994,395.39
<b>2050</b>	4,994,395.39	4,994,395.39
<b>2051</b>	4,994,395.39	4,994,395.39
<b>2052</b>	4,994,395.39	4,994,395.39
<b>2053</b>	4,994,395.39	4,994,395.39
<b>2054</b>	4,994,395.39	4,994,395.39
<b>2055</b>	Zero	Zero
<b>2056</b>	Zero	Zero
<b>2057</b>	Zero	Zero
<b>2058</b>	Zero	Zero

### *Indexation*

Each of the amounts set out in respect of any Gas Year in the columns headed Amount 1 and Amount 2 in the table immediately above shall be multiplied by the Index Ratio applicable to (in the case of amounts in the column headed Amount 1) the month of March or (in the case of amounts in the column headed Amount 2) the month of September in such Gas Year, in each case rounded to five decimal places (0.000005 being rounded upwards).

### *Change or delay in the Index*

The following provisions shall apply in order to take account of changes in circumstances affecting the Index:

#### **A. Change in base**

If at any time and from time to time the Index is changed by the substitution of a new base therefor, then with effect from the calendar month from and including that in which such substitution takes effect:

- (a) the definition of "Index" in this Condition 6.5.1 shall be deemed to refer to the new date or month in substitution for January 1987 (or, as the case may be, to such other date or month as may have been substituted therefor); and
- (b) the definition of "Base Index Figure" in this Condition 6.5.1 shall be deemed to refer to the number calculated as the product of the existing Base Index Figure (being initially the figure set out below) and the Index Figure immediately following such substitution, divided by the Index Figure immediately prior to such substitution.

**B. Delay in publication of Index**

If (other than in circumstances which fall within section A. above) the Index which is normally published in the Monthly Digest of Statistics in the third month and which relates to the fourth month (the "relevant month") before the month in which a payment is due to be made in respect of the Notes is not published on or before the fifth Business Day (the "relevant day") before the date (the "date for payment") on which such payment is due, the definition of "Index Figure" in this Condition 6.5.1 which is applicable to the month in which the date of payment falls shall be deemed to refer to:

- (a) such substitute figure (if any) as the Noteholder Agent (acting on the instructions of the Majority Noteholders) determines to have been published by the Bank of England or such other body designated by the UK Government for such purpose for the purposes of indexation of payments on the Reference Gilt or, failing such publication, on any one or more issues of index-linked Treasury stock selected by an Adviser; or
- (b) if no such determination is made by the Noteholder Agent (acting on the instructions of the Majority Noteholders) or Adviser within two Business Days of the relevant day, the Index Figure last published (or, if later, the substitute figure last determined pursuant to (a) above) before the date for payment.



If an Index Figure, having been applied pursuant to (b) above to the relevant month, is subsequently published while a Note is still outstanding, then one of the amounts stated in the table above in respect of the Gas Year in which the date of such subsequent publication falls (being Amount 1 if the date of subsequent publication falls in the six month period ending on 31 March in the Gas Year and Amount 2 if the date of subsequent publication falls in the six month period ending on 30 September in the Gas Year) shall be deemed to be increased or reduced by an amount equal to (respectively) the shortfall or excess of the amount of the relevant payment made to the Noteholders on the basis of the Index Figure applicable by virtue of (b) above, below or above the amount of the relevant payment that would have been due if the Index subsequently published had been published on or before the relevant day.

*Definitions relating to indexation*

The following words and expressions shall have the meanings ascribed to them below.

**"Account Bank"** means Barclays Bank PLC or any other bank which is a Qualifying Bank and is agreed between the parties to the Common Terms Agreement that are also parties to the Accounts Mandate Agreement, and which holds any of the WTL Accounts or Issuer Accounts and acts as custodian pursuant to the terms of the Accounts Mandate Agreement;

**"Accounts Mandate Agreement"** means the Finance Document of that name;

**"Adviser"** means an index-linked gilt edged market maker (or any other appropriate party), in each case as selected by the Issuer and approved by the Noteholders, or, in the event the Issuer fails to appoint such person within a reasonable period of time, such person selected by the Noteholder Agent (acting on the instructions of the Majority Noteholders);

**"Base Index Figure"** means 280.50645;

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks and financial markets are open for the transaction of business of the nature required by the Common Terms Agreement in Northern Ireland and London;

**"Common Terms Agreement"** means the Finance Document of that name;

**"Index"** means (a) subject to (b) below, the United Kingdom All Items RPI as published by the Office for National Statistics (January 1987 = 100) contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefor) or any comparable index which may replace the United Kingdom All Items RPI or (b) such other index as is substituted therefor pursuant to Clause 9.2.3 (*Cessation of or fundamental changes to the Index*) of the Note Purchase Agreement);

**"Index Figure"** means:

(a) subject as provided below:-

- (i) in relation to the first calendar day of any calendar month, the Index for the calendar month falling 3 (three) calendar months earlier (for example, the Index Figure for 1st June in any year shall be the Index for March in that year); and
- (ii) in relation to any other day ("Reference Day"), a figure (rounded to the nearest fifth decimal place) calculated by linear interpolation between the Index for the first calendar day of the month falling 3 (three) calendar months earlier than the Reference Day falls and the Index for the first calendar day of the month falling 2 (two) calendar months earlier than the Reference Day falls, and the formula used to calculate the Index in relation to the Reference Day ("RI<sub>Date</sub>") can be expressed as follows:

$$RI_{Date} = RI_M + \left( \frac{t-1}{D} \right) [RI_{M+1} - RI_M]$$

where:

**"RI<sub>M</sub>"** is the Index in relation to the first day of the calendar month falling 3 (three) calendar months earlier than the Reference Day falls;

**"t"** is the calendar day corresponding to the Reference Day;

**"D"** is the number of days in the calendar month in which the Reference Day falls; and

" $RI_{M+I}$ " is the Index in relation to the first day of the calendar month falling 2 (two) calendar months earlier than the Reference Day falls; or

- (a) (if the Index Figure is amended pursuant to Clause 9.2.3 (*Cessation of or fundamental changes to the Index*) of the Note Purchase Agreement) such amended Index Figure.

**"Index Ratio"** applicable to any month means the Index Figure applicable to such month divided by the Base Index Figure.

**"Issuer Accounts"** means the account designated as the Issuer Operating Account in the name of the Issuer and such other accounts as may be opened by the Issuer with the consent of the Noteholder Agent with the Account Bank under the terms of the Accounts Mandate Agreement;

**"Majority Noteholders"** means Noteholders representing more than 50 per cent (50%) of the total Outstanding Principal Amount of the Notes

**"Moody's"** means Moody's Investors Service, Inc, a Delaware Corporation, and any successor thereto, and if such corporation shall for any reason no longer perform the function of a rating agency, Moody's shall be deemed to refer to any other internationally recognised rating agency designated by the Noteholder Agent;

**"Notes"** means the £180,700,000 0% per cent. guaranteed secured notes issued by the Issuer due September 2054;

**"Noteholder"** means in respect of a Note, the person in whose name such Note is for the time being registered in the Register;

**"Noteholder Agent"** means at any given time, the person who is a party to the Note Purchase Agreement at that time in the capacity of Noteholder Agent;

**"Note Purchase Agreement"** means the Finance Document of that name;

**"Outstanding Principal Amount"** means the outstanding principal amount of the Notes;

**"Qualifying Bank"** means any bank which is authorised to accept deposits (for the purposes of the Financial Services and Markets Act 2000) and:

- (a) whose short-term debt is rated at least A-2 by S&P and P-2 by Moody's and whose long-term debt is rated at least A- by S&P and at least A3 by Moody's or
- (b) in the case of a bank whose long-term debt is not rated, any other bank, specifically approved in writing by the Noteholder Agent, whose short-term debt is rated at least A-2 by S&P and P-2 by Moody's

**"Reference Gilt"** means:

- (a) on and from the date of the Note Purchase Agreement to and including 31 March 2019, the index-linked sterling obligation of the United Kingdom Government listed on the Official List of the Financial Conduct Authority (in its capacity as competent authority under the Financial Services and Markets Act 2000, as amended) and traded on the London Stock Exchange as 1½% Index-Linked Treasury Gilt 2037; and
- (b) thereafter, the index-linked sterling obligation of the United Kingdom Government listed on the Official List of the Financial Conduct Authority (in its capacity as competent authority under the Financial Services and Markets Act 2000, as amended) and traded on London Stock Exchange whose comparable weighted average life most closely matches the weighted average life of the Notes on the relevant day.

**"Register"** means the Register maintained pursuant to the Note Purchase Agreement;

**"S&P"** means Standard and Poor's Ratings Services, a division of the McGraw-Hill Companies, Inc, a Delaware Corporation, and any successor thereto, and if such corporation shall for any reason no longer perform the function of a rating agency, S&P shall be deemed to refer to any other internationally recognised rating agency designated by the Noteholder Agent;

**"WTL Accounts"** means the accounts with the following designations in the name of the Licensee:

- (a) the ARE Suspense Account;
- (b) the Social Enhancement Account;
- (c) the Debt Service Payment Account;
- (d) the Debt Service Reserve Account;
- (e) the Reconciliation Account;
- (f) the WTL Operating Account;
- (g) the Insurance Account;
- (h) the Liquidity Reserve Account;
- (i) the BBR<sub>e</sub> Account,

and such other accounts as may be opened by WTL with the consent of the Noteholder Agent with the Account Bank under the terms of the Accounts Mandate Agreement;

**"WTL Operating Account"** means the account designated as the WTL Operating Account in the name of the Licensee opened with the Account Bank and maintained pursuant to the Accounts Mandate Agreement.

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 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:

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

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:

$$CI = \sum_{m=i}^0 \left( CE_m \cdot \prod_{r=i}^m (1 + CIR_r) - CE_m \right) + \sum_{m=1}^N \left( CE_m \cdot \prod_{r=1}^m (1 + r n_m)^{-1} - CE_m \right)$$

Where:

- CE<sub>m</sub> is the Actual Capital Expenditure in month m;
- CIR<sub>m</sub> 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 = i is the month of October 2014, being the first month from which Capitalised Interest will be charged;
- 1 is the month in which the First Operational Commencement Date occurs;
- m=1 is the first month after the month in which the First Operational Commencement Date occurs;



N is a number of months 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 Grants Received

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:

$$G = \sum_{m=p}^0 \left( AMGR_m \prod_{r=p}^m (1 + CIRR_r) \right) + \sum_{m=1}^N \left( AMGR_m \cdot \prod_{r=1}^m (1 + rn_r) \right)^{-1}$$

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 that month is before the month in which the First Operational Commencement Date occurs.

0 is the month in which the First Operational Commencement Date occurs;

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

N is a number of months after the month in which the First Operational Commencement Date occurs.

#### 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:

$$A * [(1.0198^{(21/12)} * (RPI_{m=21} / RPI_{m=0})) - 1] + Z * [(1.0198^{(9/12)} * (RPI_{m=30} / RPI_{m=21})) - 1]$$

Where Z is the sum of capital expenditure between month 22 ( $CE_{m=22}$ ) and month 30 ( $CE_{m=30}$ ) valued at month 21 price base.

#### 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:

Supplemental Return =

$$50,000,000 * [(1.0530^{(21/12)} * (RPI_{m=21} / RPI_{m=0})) - 1]$$

minus

$$50,000,000 * [(1.0198^{(21/12)} * (RPI_{m=21} / RPI_{m=0})) - 1]$$

#### 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 10<sup>th</sup> business day of June in Gas Year t-1, plus 2% minus CPI factor, calculated as:

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

$CPI_{t-1}$  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<sub>t</sub> 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: 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 to 6.10.4 shall have no effect on the calculation of the Actual Required Revenue in accordance with 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 and Uncontrollable 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.

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

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

## **Schedule 2: Right of the Authority to Revoke the Licence**

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

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

- (a) if the Licensee agrees in writing with the Authority that such licence should be revoked; or
- (b) if any amount payable under Condition 1.13 is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Authority has given the Licensee notice that the payment is overdue provided that no such notice shall be given earlier than the sixteenth day after which the amount payable becomes due; or
- (c) if the Licensee fails to comply with a final order (within the meaning of Article 42 of the Energy Order) or with a provisional order (within the meaning of Article 42 of the Energy Order) which has been confirmed under Article 42 of the Energy Order and which (in either case) has been made in respect of a contravention or apprehended contravention of a condition to which the licence is subject or of a “relevant requirement” as defined in Article 41(2) of the Energy Order and such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 44 of the Energy Order could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined; or
- (d) if the Licensee fails to pay any financial penalty (within the meaning of Article 45 of the Energy Order) imposed in respect of a contravention or apprehended contravention of a condition to which such licence is subject or of a “relevant requirement” as defined in Article 41(2) of the Energy Order by the due date for such payment and the payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the Licensee,

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

- (e) if the Licensee fails to comply with any order made by a court under section 34 of the Competition Act 1998; or fails to comply with an order made under section 72, 75, 76, 81, 83, 84, 158, 160 or 161 of, or under paragraph 2, 5, 6, 10 or 11 of Schedule 7 to, the Enterprise Act 2002; or any partner, director, member, secretary or manager is found guilty of an offence under section 188 or 201 of the Enterprise Act 2002; or
- (f) if the Licensee:
  - (i) is unable to pay its debts (within the meaning of Article 103(1) or (2) of the Insolvency (Northern Ireland) Order 1989, but subject to paragraph 4 of this Schedule 2) or if any voluntary arrangement is proposed in relation to it under Article 14 of that Order or if it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority); or
  - (ii) has a receiver (which expression shall include an administrative receiver within the meaning of Article 5(1) of the Insolvency (Northern Ireland) Order 1989) of the whole or any material part of its assets or undertaking appointed; or
  - (iii) has an administration order under paragraph 14 of Schedule B1 to the Insolvency (Northern Ireland) Order 1989 made in relation to it; or
  - (iv) passes any resolution for winding up other than a resolution previously approved in writing by the Authority; or
  - (v) becomes subject to an order for winding up by a court of competent jurisdiction; or



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

- (i) if the Licensee is convicted of having committed an offence under Article 46 of the Order or under Article 63 of the Electricity (Northern Ireland) Order 1992; or
- (j) if consent under Article 35 of the Order for the execution of works for the construction of the Network is refused.

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

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

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

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

4. Licensee's deemed ability to pay its debts

- (a) For the purposes of paragraph 1(f)(i) of this Schedule 2, Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 shall have effect as if for "£750" there

was substituted "£250,000" or such higher figure as the Authority may from time to time determine by notice in writing to the Licensee.

- (b) The Licensee shall not be deemed to be unable to pay its debts for the purposes of paragraph 1(f)(i) of this Schedule 2 if any such demand as is mentioned in Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 is being contested in good faith by the Licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 1 of this Schedule 2.

5. Additional definition

- (a) Except where expressly stated to the contrary, and unless the context otherwise requires, the expressions used in this Schedule 2 shall have the meanings ascribed to them in the Conditions at the date of the Grant, and shall be construed in accordance with the rules of construction and interpretation set out in the Conditions at the date of the Grant.
- (b) For the purposes of paragraph 1(g) of this Schedule 2, there is a change in the control of the Licensee whenever a person obtains control of the Licensee who did not have control of the Licensee when this licence was granted; and section 450 (as read in conjunction with section 451) of the Corporation Tax Act 2010 shall apply for the purpose of determining whether for the purposes of this paragraph a person has or had control of the Licensee, but at any time should no person have control then for the words "the greater part" wherever they occur in the said section 450 there shall be substituted the words "one-third or more".

### **Schedule 3: Exclusivity**

#### **1      Definitions**

- 1.1      Except where expressly stated to the contrary, and unless the context otherwise requires, the expressions used in this Schedule 3 shall have the meanings ascribed to them in the Conditions at the date of the Grant, and shall be construed in accordance with the rules of construction and interpretation set out in the Conditions at the date of the Grant.
- 1.2      When used in this Schedule 3, the expression “Exclusive Area” shall mean the area that constitutes the Licensed Area.

#### **2.      Exclusivity**

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

#### **3.      Modification of this Schedule**

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

#### **4.      Relevant Conditions**

- 4.1      For the purposes of Article 9(6) of the Order, each of the following conditions is a 'relevant condition':
- (a)      Condition 1.11,
  - (b)      Condition 1.12,
  - (c)      Condition 1.13; and
  - (d)      Condition 2.27 (including Annex 1 to that Condition).

Note: (does not form part of the Licence)

Consolidated to include

1. Licence modifications of Standard Condition Part 2A – 14 May 2015.
2. Licence modification to include condition 2.5A - Compliance with European Requirements and Part 2A licence modifications - 09 June 2016.
3. Licence mods to update definition of domestic consumer and provide new definitions of domestic and non-domestic premises and non-domestic consumers – 01 September 2016.
4. Licence modifications following GT17 – 01 August 2017
5. Licence modification to insert condition 2.17 and 2.4D for the implementation of single system operations – 05 August 2017
6. Revised postalised tariff setting timetable – effective 15<sup>th</sup> January 2018
7. Licence modifications to standardise the connections condition and consequential modifications effective 25<sup>th</sup> June 2018.
8. Licence modifications - Cessation of Part 4 and Certain Provisions of Condition 2.27, and coming into effect of Part 6 as per Directions made under Part 5. Effective 19<sup>th</sup> July 2018.
9. Modification adding Condition 2.1A Supplier of Last Resort. Decision paper and Notice of modification published on the 4<sup>th</sup> July 2018 and modification became effective on 31 August 2018.