

CONSULTATION ON THE MODIFICATION OF THE GAS TRANSPORTER STANDARD LICENCE CONDITIONS AND INTRODUCTION OF RELATIVE PRICE CONTROL CONDITION FOR INDEPENDENT GAS TRANSPORTERS

Dear Sir/Madam

30 September 2003

**The Regulation of Independent Gas Transporter Charging**

Introduction

1. Views are invited on the modifications to the licence conditions of Independent Gas Transporters (IGTs) set out in this letter that are necessary to implement Ofgem's July 2003 final proposals. This letter includes a summary of the final proposals and implementation procedure; and an explanation of how the licence modifications are designed to put in place each element of the final proposals. An annex to this letter sets out a log of the proposed changes to the licence conditions and copies of the draft licence modifications.

Background and implementing the licence modifications

2. In July 2003 Ofgem published its final proposals for the regulation of IGT charges<sup>1</sup>. The final proposals followed an extensive period of consultation. The proposals cover a number of important areas which would control the level and structure of charges levied by IGTs and introduce financial ring-fencing arrangements. These would include:
  - ◆ a relative price control (RPC) for all new premises following implementation on 1 January 2004, which caps IGT charges to a level broadly consistent with Transco equivalent charges;
  - ◆ migration arrangements to transfer premises currently connected to an IGT and charged under the existing standard licence conditions 4 and 4C in RPC;
  - ◆ implementation of financial ring-fencing licence conditions for IGTs with greater than 30,000 existing consumers; and
  - ◆ arrangements for a surcharge in respect of rural infill premises to facilitate the provision of gas supplies to non-gas areas.
3. A number of licence modifications to the standard gas transporter conditions and introduction of a new condition are required in order to give effect to the final proposals. It is Ofgem's intention to enable each IGT to reject the modifications on an individual basis if they consider the proposals are not acceptable. Ofgem would then be in a position to consider referral to the Competition Commission on a case by case basis.
4. The planned timetable for introduction of these licence conditions is as follows:
  - ◆ 17 October 2003, responses to these draft licence modifications received from interested parties;

---

<sup>1</sup> Ofgem's July 2003 final proposals, the December 2002 draft proposals paper and the May 2002 consultation paper are available on Ofgem's website at [www.ofgem.gov.uk](http://www.ofgem.gov.uk)

- ◆ November 2003, Ofgem intends to publish a Notice of licence modification as required by section 23 of the Gas Act (as amended) 1986 including final draft of modified licence conditions;
  - ◆ December 2003, subject to considering and taking account of views of respondents, Ofgem implements licence modifications or, in the event of a licensee rejecting the modification, considers referral to the Competition Commission;
  - ◆ 1 January 2004, the licence modifications take effect.
5. The financial ring-fencing conditions shall be phased in over an 18 month period following the licence modifications taking effect, as explained below.

#### Relative Price Control

6. Chapter 3 of the final proposals set out the regulatory arrangements for RPC based on the Transco equivalent incremental charge between the connected system exit point (CSEP) and single supply point (SSP) for a premises. The path of future IGT charges would follow the change in Transco's SSP charge from one year to the next within a pre-determined floor and ceiling. Charges would be adjusted in January of each year, except for those premises that joined RPC in the immediately preceding October to December. Such premises shall have their charges adjusted in the following January. The time period set out allows IGTs to notify shippers and adjust their charging systems accordingly.
7. The RPC arrangements will not apply to Transco as it is subject to a full price control. A summary of the RPC arrangements is set out below, noting any developments or clarifications since final proposals were published. The draft licence modifications are designed to put these arrangements in place.

#### Starting point of control:

- ◆ RPC would apply to all premises where an IGT provides transportation arrangements after 31 December 2003 and the premises are not subject to the migration arrangements (see below).
- ◆ The initial charge that IGTs may levy on shippers for transportation arrangements for any particular premises shall be derived from the difference between Transco's CSEP charge and SSP charge.
- ◆ The initial year, or entry-point, for the RPC charges shall be calculated from the date premises were connected or from the date of binding contractual agreement to provide the gas connection with the person requiring the connection. IGTs would have 60 days from the date of contractual agreement to choose the method used to determine the entry-point into RPC.
- ◆ IGTs would determine RPC charges using industry standard (i.e. NExA) Annual Quantity (AQ) for new build domestic premises or agreed AQ for other types of premises.

#### Path of charges:

- ◆ IGTs would adjust charges to premises on 1 January each year, except for those premises that joined RPC in the immediately preceding period from 1 October to 31 December.

- ◆ The charges would be adjusted according to the proportional change in Transco's SSP charge over a year between October of one year to the following October. Ofgem will publish this change in the October preceding 1 January of each year.
  - ◆ Irrespective of the change in SSP charges, charges would not fall below or rise above a floor or ceiling determined as +/- 5 per cent of the initial charge. Thereafter, the path of the floor and ceiling would fall by a fixed annual percentage change determined in respect of the Transco region in which the premises are located.
  - ◆ Premises with an entry-point in the first ten years of the implementation of these arrangements shall be allowed to continue charging on the above basis for at least 10 years from that point.
8. The licence modifications also enable specific arrangements for the treatment of domestic infill and non-domestic premises. This is set out further below.

#### Migration of legacy sites

9. Chapter 4 of the final proposals paper set out the basis on which legacy sites, i.e. those premises subject to charges under the existing SLC 4 and 4C licence conditions, would migrate to the RPC. Legacy sites are defined as premises with a methodology accepted under SLC 4C or, for SLC 4, all premises that form part of the same clearly identifiable site or project on condition that at least one property within that project was connected and that gas had entered its service pipe before 1 January 2004. This definition has changed from the original 'meter installation' date following representations from IGTs. Legacy sites do not include existing premises which were developed as either domestic infill premises or non-domestic premises where the Authority accepts that other charging arrangements are more appropriate (see below). Migration of legacy sites to RPC regulation will occur on a revenue neutral basis at a date agreed or directed by the Authority.
10. At the point of migration, the charges for legacy sites would be set at the appropriate 'shadow price'. The shadow price is the charge for a particular property, determined in accordance with the RPC mechanism but calculated from 1 January 2004 to the migration date. If a revenue neutral migration date is more than 10 years after the date of implementation of RPC, then premises shall enter RPC as if they were new premises, charging at the appropriate prevailing level.
11. IGTs should provide to the Authority the relevant data necessary to assess the revenue neutral migration date. Further guidelines in respect of calculating a migration date were sent to IGTs on 3 September 2003 and are available on Ofgem's website. In summary the migration arrangements are:
- ◆ Within 60 days of the RPC licence condition coming into force the licensee shall submit a revenue neutral migration date and the necessary supporting evidence;
  - ◆ Ofgem would have six months on receipt of this information in which to accept the proposed date or direct an alternative date to the licensee;
  - ◆ At the point of migration any existing charging arrangements under SLC 4 and 4C would cease to have effect.

### Domestic infill premises

12. In July 2003 Ofgem also published its proposals for the regulation of domestic infill premises. A domestic infill property is one which is located in an area that previously had no access to the gas network. Given the benefits of extending the gas network an additional allowance of 10 pence per therm (approximately 0.34 p/kWh) over a period of 20 years will be allowed for network extensions to these premises. This allowance is specifically to enable the gas transporter to contribute towards the additional costs of pipeline infrastructure associated with infill developments. The level of this allowance will be kept under review. In summary, the infill arrangements are:
- ◆ the surcharge (capped at 10p/therm) may only apply to existing domestic premises which have not previously received a supply of gas, and where the IGT has specifically extended its gas mains to connect those premises;
  - ◆ the licensee must notify the Authority of the amount and duration of the proposed infill surcharge 150 days prior to any such charge falling due; and
  - ◆ the Authority may direct the licensee not to make the surcharge within 28 days of the notification. This is likely to be the case where the licensee proposes an amount not consistent with the guidance on infill charging published by Ofgem.
13. IGTs may also maintain the existing charges to domestic premises which were originally developed as infill sites. In these cases, where the Authority consents, the premises shall not be subject to RPC from 1 January 2004 and shall not be subject to the migration arrangements.

### Non-domestic premises

14. Some IGTs have agreed higher transportation charges with the owners or occupiers of non-domestic premises in order to reduce the initial capital contributions required for connection. For non-domestic premises already connected to an IGT's transportation system the Authority may accept charging arrangements other than RPC. In these cases such premises shall not be subject to the migration requirements. Transportation charges for non-domestic premises connected after 1 January 2004 will however be subject to RPC.

### Financial ring fencing

15. The financial ring-fence licence conditions are at present contained in section C of the GT standard licence conditions and include:
- ◆ SLC 43 – restriction in activity and financial ring-fencing;
  - ◆ SLC 44 – availability of resources;
  - ◆ SLC 45 – undertaking from ultimate controller;
  - ◆ SLC 46 – credit rating of licensee; and
  - ◆ SLC 47 – indebtedness.

16. As set out in the final proposals, financial ring-fence conditions form an important part of the regulations required to appropriately protect the interest of consumers. Taken together the ring-fence conditions ensure a licensee has sufficient financial resources and management capability to deliver essential services to consumers and that it conducts commercial transactions in a manner that should not expose the licensee to undue risk. These arrangements should be suitable for all efficiently managed businesses. However, the final proposals noted that the regulatory requirements imposed by these conditions should be proportionate and may need to be phased in for existing licensees.

#### *Implementation date*

17. Those licence conditions currently in part C of the gas transporter standard licence conditions would be moved to section B of the licence to take effect from 1 January 2004.

#### *Derogations*

18. The licence conditions would be modified to enable the Authority to grant derogations or consent to other appropriate arrangements. In deciding whether to grant derogations the following principles would be considered:
- ◆ where an existing licensee serves in total, regardless of number of licences held, fewer than 30,000 consumers financial ring-fence conditions would not apply;
  - ◆ where an existing licensee serves more than 30,000 but less than 300,000 consumers then all ring-fence conditions would apply with the exception of SLC 46;
  - ◆ where an existing licensee serves more than 300,000 consumers SLC 46 would apply in addition to the remaining ring-fence conditions.
19. The granting of further derogations shall only be made where it can be demonstrated that consumers will not be exposed to additional risk, and that they are necessary for the IGT to comply in a proportional manner.

#### *Timetable to introduce ring-fence conditions*

20. The licence conditions shall be effective from 1 January 2004. However, it may be the case that an IGT must take specific actions to ensure compliance. To account for this, derogations shall be granted to existing licensees to enable these conditions to be phased in. Any newly licensed IGTs shall be expected to fully comply with the ring-fence requirements.
21. The timetable for phasing in the financial ring-fence conditions is:
- ◆ 1 January 2004 SLC 45, undertaking from ultimate controller, and SLC 44, availability of resources would apply i.e. they shall not be subject to derogations;
  - ◆ a derogation until July 2004 would apply to SLC 43, restriction in activity and financial ring-fencing;
  - ◆ a derogation until January 2005 would apply to SLC 47, indebtedness; and

- ◆ a derogation until July 2005 would apply to SLC 46, credit rating of licensee.
22. Given this timetable, licensees shall be expected to take all reasonable measures necessary to ensure compliance with the relevant conditions once the derogations falls away. Should an IGT seek any additional consents or derogations they must clearly and robustly demonstrate that they would not expose consumers to additional risk and they are necessary to comply with the conditions in a proportionate manner.

Responding to this consultation

23. Representations in respect of these draft modifications should be received by Ofgem no later than **Friday 17 October 2003** and addressed to:

John D Holmes  
Ofgem  
9 Millbank  
London  
SW1P 3GE

Tel: 020 7901 7072  
E-mail: [john.holmes@ofgem.gov.uk](mailto:john.holmes@ofgem.gov.uk)

Yours faithfully

John D Holmes  
Manager, Gas Distribution  
Enc.

## **Annex 1. Log of licence modifications**

This log sets out the changes made to the existing standard licence conditions for gas transporters necessary to implement the final proposals for the regulation of IGT charging.

The log should allow respondents to identify the specific changes made and consider the rationale for the changes against the regime described in the final proposals and in the accompanying letter.

The log is numbered and includes a reference to the licence condition, section and paragraph, a copy of the specific change where practicable and an explanation of the effect and rationale for the change.

### Log of changes to the proposed licence modification.

Note: formatting changes alone have not been included.

| No. | Condition | Paragraph | Change  | Effect of change and rationale   |
|-----|-----------|-----------|---|--|
| 1   | 4A        | 6 (iv)    | inserted 'revenue derived from that business by way of charges established under paragraph 2 of standard licence condition 4AA (Charging of Gas Shippers – Relative Price Control)' | This excludes any revenues derived from charges regulated by RPC from the test of 'reasonable profits' relevant to SLC 4 charging methodologies.   |
| 2   | 4A        | 6 (v)     | re-numbered this clause from 6 (iv) in the present standard licence conditions to (v)   | Re-numbering due to change No. 1 above.  |
| 3   | 4AA (new) | 1         | New licence condition and paragraph   | Sets out conditions for RPC to take effect from 1 Jan 2003 and for RPC to replace paragraph 5 of SLC 4 for deriving charges to premises from that point forward. Paragraph 1 (c) excludes Transco from the RPC.  |
| 4   | 4AA (new) | 2         | New licence condition and paragraph   | Describes the RPC price cap condition. This includes: setting the initial level of charges using standard AQs; indexing later unit charges with the proportionate change in Transco's charges; setting the floor and ceiling; and ensuring that unit charges made under RPC shall follow the RPC arrangements as drafted for 10 years from entry-point.  |
| 5   | 4AA (new) | 3         | New licence condition and paragraph   | Sets out the migration requirements including the timescale to agree a revenue neutral migration date or enabling the Authority to determine such a date, and defines legacy sites. On migration, charges for those premises shall be made according to a 'shadow-price' calculated as if the premises had an entry-point into RPC of 1 Jan 2004. In addition, SLC4(5) and SLC4C shall cease to have effect. |
| 6   | 4AA (new) | 4         | New licence condition and paragraph   | This condition allows, on application by an IGT, Ofgem to grant a derogation in respect of RPC and migration. Specifically, this condition is to allow premises that were  |



| No. | Condition | Paragraph | Change                              | Effect of change and rationale   |
|-----|-----------|-----------|-------------------------------------|--|
|     |           |           |                                     | originally developed as infills and some non-domestic premises to continue to charge under arrangements they originally agreed with their customers.   |
| 7   | 4AA (new) | 5         | New licence condition and paragraph | Enables charges for domestic infill premises to include a surcharge at a level above RPC according to conditions agreed by the Authority. The amount, form and conditions of the surcharge are to be determined according to the guidance on infills published by Ofgem. At present this is a surcharge of 10 pence/therm above RPC chargeable for a period of 20 years. The level of the surcharge for future sites shall be kept under review. |
| 8   | 4AA (new) | 6         | New licence condition and paragraph | Requires the licensee to publish a statement of charges it levies under RPC and make this statement available to others on request. In addition, the licensee is obliged to provide Ofgem with information in respect of its charging as required. This is to enable effective enforcement of the RPC regime.  |
| 9   | 4AA (new) | 7         | New licence condition and paragraph | This excludes charges for pipe-line balancing or other charges in the Network code as accepted by the Authority from the scope of RPC  |
| 10  | 4AA (new) | 8         | New licence condition and paragraph | Sets out the possibility to apply for disapplication in accordance with paragraph 9 of SLC 4AA   |
| 11  | 4AA (new) | 9         | New licence condition and paragraph | Sets out the form and restrictions of the disapplication request. It is restricted to SLC 4AA within three years of the implementation of the licence condition. The disapplication date must be no earlier than 18 months after delivery of the notice.   |
| 12  | 4AA (new) | 10        | New licence condition and paragraph | Allows the licensee to withdraw the disapplication request   |
| 13  | 4AA (new) | 11        | New licence condition and paragraph | Implements the disapplication request if the Authority   |

| No. | Condition | Paragraph | Change   | Effect of change and rationale  |
|-----|-----------|-----------|--|---|
|     |           |           |  | consents  |
| 14  | 4AA (new) | 12        | New licence condition and paragraph  | Allows Ofgem a 6 month window to make a reference to the Competition Commission (CC), failing which the disapplication request may be implemented by the licensee   |
| 15  | 4AA (new) | 13        | New licence condition and paragraph  | Where the CC makes a report, finding that disapplication is not likely to act against the public interest, the disapplication request shall be implemented. Otherwise, Ofgem shall implement the conclusions of the CC. |
| 15  | 4C        | 3 (b)     | inserted "the application by the licensee for a designated area pursuant to paragraph 1 has been received by the Authority no later than 31 December 2003" | This inserts an additional clause as to when SLC4C shall cease to apply.  |
| 16  | XX (43)   | 1         | inserted 'unless the Authority consents otherwise'   | Enables the Authority to grant a derogation in line with the principles to be considered for the financial ring-fence conditions  |
| 17  | XX (44)   | 1 and 2   | inserted 'unless the Authority consents otherwise'   | Enables the Authority to grant a derogation in line with the principles to be considered for the financial ring-fence conditions  |
| 18  | XX (45)   | 1         | inserted 'unless the Authority consents otherwise'   | Enables the Authority to grant a derogation in line with the principles to be considered for the financial ring-fence conditions  |
| 19  | XX (46)   | 1         | inserted 'unless the Authority consents otherwise'   | Enables the Authority to grant a derogation in line with the principles to be considered for the financial ring-fence conditions  |

## ***Condition 4A. Obligations as Regards Charging Methodology***

1. Except in so far as the Authority consents to the licensee not doing so, the licensee shall, subject to paragraphs 2 and 3, from time to time make such modifications of the methodology established in pursuance of paragraph 5 of standard condition 4 (Charging of Gas Shippers – General) (“the charging methodology”) as may be requisite for the purpose of achieving the relevant methodology objectives.
2. Except in so far as the Authority otherwise approves, the licensee shall not make a modification of the charging methodology unless it has -
  - (a) consulted the relevant shippers on the proposed modification and allowed them a period of not less than 28 days within which to make written representations; and
  - (b) furnished the Authority with a report setting out -
    - (i) the terms originally proposed for the modification;
    - (ii) the representations (if any) made by relevant shippers; and
    - (iii) any change in the terms of the modification intended in consequence of such representations,and unless 28 days have elapsed since the said report was furnished without the Authority having given the licensee a direction requiring that the modification be not made.
3. Subject to paragraph 4, the licensee shall in each calendar year furnish the Authority with a report on the application of the charging methodology during the 12 months preceding 1st October in that year including a statement as to -
  - (a) the extent to which, in the licensee’s opinion, the relevant methodology objectives have been achieved during the period to which it relates;
  - (b) whether those objectives could more closely be achieved by modification of the charging methodology; and

- (c) if so, the modifications which should be made for that purpose.
4. As respects the calendar year in which this licence came into force:
- (a) if it came into force on or after 1st October in that year, paragraph 3 shall not apply; or
  - (b) if it came into force before that date, paragraph 3 shall have effect as if for the reference to the 12 months preceding that date there were substituted a reference to the period preceding that date beginning with the date on which the licence came into force.
5. In paragraphs 1 and 3 “the relevant methodology objectives” means, subject to paragraph 6, the following objectives -
- (a) that compliance with the charging methodology results in charges which reflect the costs incurred by the licensee in its transportation business;
  - (b) that, so far as is consistent with sub-paragraph (a), the charging methodology properly takes account of developments in the transportation business; and
  - (c) that, so far as is so consistent, compliance with the charging methodology facilitates effective competition between gas shippers and between gas suppliers.
6. Where -
- (a) the charging methodology results in charges which, or the revenue derived from which, are, in the main, not controlled or limited in pursuance of any standard condition of this licence other than standard condition 4 (Charging of Gas Shippers – General) ; and
  - (b) the Authority has not accepted that, for a specified period, this paragraph should not apply or has so accepted subject to standard conditions which are not satisfied,

“the relevant methodology objectives” shall include the following objective, namely, that the charging methodology results in charges which, taking one charge with another and one year with another, permit the licensee to make a reasonable profit, and no more, from its transportation

business so, however, that, for the purposes of this paragraph, there shall be disregarded -

- (i) costs incurred for the purposes of that business in connection with the construction of pipe-lines for the benefit of an area for the time being designated for the purposes of standard condition 4C (Charging of Gas Shippers – Supplemental Connection Charges);
- (ii) revenue derived from that business by way of charges (within the meaning of standard condition 4B (Connection Charges etc)) to which any provisions of that standard condition have effect and which are in respect of premises within an area for the time being so designated;
- (iii) revenue derived from that business by way of supplemental charges (within the meaning of standard condition 4C (Charging of Gas Shippers – Supplemental Connection Charges));
- (iv) revenue derived from that business by way of charges established under paragraph 2 of standard licence condition 4AA (Charging of Gas Shippers – Relative Price Control); and
- (v) any payments made by the licensee in connection with the proposed development of an area for the time being not so designated to a person who has an interest in land in that area, other than by way of reasonable consideration for an interest in land or for goods or services with which the licensee is provided,

and, for the purposes of this paragraph, “costs” and “revenue” mean costs and revenue determined on an accrual basis.

7. The licensee shall comply with any direction given from time to time by the Authority requiring the licensee -

- (a) subject to paragraphs 8 and 9 to publish such information as may be specified or described in the direction-
  - (i) as to any of the costs incurred by the licensee in its transportation business, or
  - (ii) relating to the charging methodology as modified from time to time in accordance with paragraph 1; and

- (b) to do so in such form and manner and with such frequency as may be so specified.
- 8. The licensee shall not be required by paragraph 7 to publish any information or any document -
  - (a) which it could not be compelled to give in evidence or produce in civil proceedings before the court; or
  - (b) so far as it comprises information relating to costs incurred in connection with the construction of pipe-lines for the benefit of an area for the time being designated for the purposes of standard condition 4C (Charging of Gas Shippers – Supplemental Connection Charges) or so incurred in preparation for the area becoming so designated.
- 9. In publishing any information in pursuance of paragraph 7 the licensee shall have regard to the need for excluding, so far as is practicable, any matter which relates to the affairs of any person where the publication of that matter would or might seriously and prejudicially affect his interests.
- 10. Any question arising under paragraph 9, as to whether the publication of some matter which relate to the affairs of a person would or might seriously and prejudicially affect his interests, shall be determined by the Authority.
- 11. In this condition “transportation business” includes activities connected with the storage of gas in pursuance of storage arrangements which relate to the utilisation of -
  - (a) an offshore gas storage installation;
  - (b) storage cavities in natural strata; or
  - (c) containers for the storage of gas in a liquid state.
- 12. If the Authority, having regard, in particular, to any representations made to it by the licensee and other persons as to the extent to which there is competition in relation to the storage of gas in particular categories of the facilities mentioned in paragraph 11(a), (b) or (c) and its view on that question, considers it appropriate that paragraph 11 should be modified by the omission of sub-paragraph (a), (b) or (c), then the sub-paragraph in

question shall be omitted with effect from a date specified in a notice relating thereto published by the Authority for the purposes of this condition generally; and, if all three sub-paragraphs come to be omitted, paragraph 11 and the reference thereto in the definition of “transportation business” in standard condition 1 (Definitions and Interpretation ) shall cease to have effect.

## ***Condition 4AA. Charging of Gas Shippers – Relative Price Control***

1. Subject to paragraph 2, where the licensee makes charges as are mentioned in paragraph 1 (a) of standard condition 4 (Charging of Gas Shippers – General) after the 31 December 2003 and where,
  - (a) the licensee provides transportation arrangements to a premises,
  - (b) the premises are not defined as legacy sites as defined in paragraph 3 (2) of this condition; and
  - (c) charges, or revenues derived from them, are, in the main, not controlled or limited in pursuance of any condition of this licence other than standard condition 4 (Charging of Gas Shippers – General), standard condition 4AA (Charging of Gas Shippers – Relative Price Control) or standard condition 4C (Charging of Gas Shippers – Supplemental Connection Charges).

then paragraph 5 of standard condition 4 (Charging of Gas Shippers – General) shall cease to have effect in relation to those premises under 1 (a) (b) and (c).

2.
  - (1) For charges mentioned in paragraph 1 (a) of standard condition 4 (Charging of Gas Shippers - General) and for all premises subject to paragraph 1 or paragraph 3 (1) (a) of this condition the licensee shall for each premises, unless the Authority consents otherwise, charge no more than:

$$TC_t = TC_{t-1} \times wSSP_r$$

except where  $t = 1$  when,

$$TC_t = SSP - CSEP$$

where:



- (i)  $TC_t$  means the maximum charge the licensee may charge for premises in pursuance of transportation arrangements as mentioned in paragraph 1 (a) of standard condition 4 (Charging of Gas Shippers – General) in the year ‘t’ from the Entry-point as defined in 2 (7) of this condition;
- (ii)  $TC_{t-1}$  means the maximum charge the licensee may charge a premises in pursuance of transportation arrangements as mentioned in paragraph 1 (a) of standard condition 4 (Charging of Gas Shippers – General) in the year preceding year ‘t’ or part thereof;
- (iii)  $wSSP_r$  is the change in the average single supply point charge from year t-1 to year t for each Network region r. Network regions r comprise: Scotland, comprising LDZ exit zones SC; North and Yorkshire, comprising LDZ exit zones NO, NE; North West, comprising LDZ exit zones NW; East England, comprising LDZ exit zones EM, EA; West Midlands, comprising LDZ exist zones WM; Wales and South West, comprising LDZ exit zones WA, SW; North London, comprising LDZ exit zones NT; and South and South East, comprising LDZ exit zones SO, SE. The values for  $wSSP_r$  in respect of each region shall be published in October of each year by the Authority.
- (iv) The licensee shall adjust the charges in accordance with paragraph 2 (1) above on the 1 January each year, excepting those premises where t = 1 in the immediately preceding period 1 October to 31 December.
- (v) SSP means Transco’s single supply point charges for premises calculated at the prevailing charge in accordance with the prevailing methodology statement for Network region r at the Entry-point excepting charges for metering arrangements, meter reading and NTS entry capacity charges where determined by auction, or other charges determined by auction; and
- (vi) CSEP means Transco’s connected system exit point charges calculated at the prevailing charge in accordance with the prevailing methodology statement for Network region r at Entry-point excepting charges for metering arrangements, meter reading and NTS entry capacity charges where determined by auction, or other charges determined by auction.

(2)

For determining the level of charge in accordance with paragraph 2 (1) above the licensee shall apply the following measures of Annual Quantity (AQ):

- (i) For new build domestic premises Annual Quantity shall be determined in accordance with standard AQs accepted as such by the Authority; and
- (ii) For other premises the Annual Quantity as reasonably estimated, having regard to relevant meter readings, and agreed between the licensee and any relevant shipper, unless the Authority directs otherwise.

(3)

The charges in respect of  $TC_t$  where  $t=1$  shall have a maximum and minimum value as follows:

$$(i) \quad TC_t^{\max} = TC_t \times (1 + 0.05) = C_t$$

$$(ii) \quad TC_t^{\min} = TC_t \times (1 - 0.05) = F_t$$

where  $C_t$  is the charge ceiling and  $F_t$  the charge floor.

Otherwise, if  $t$  is not equal to 1, charges in respect of  $TC_t$  shall have a maximum and minimum value of:

$$(iii) \quad C_t = C_{t-1} \times \left(1 - \frac{\Delta_r}{100}\right) \times \left(1 + \frac{RPI}{100}\right)$$

$$(iv) \quad F_t = F_{t-1} \times \left(1 - \frac{\Delta_r}{100}\right) \times \left(1 + \frac{RPI}{100}\right)$$

where:

$\Delta_r$  means the annual percentage change in respect of the Network region in which the premises are located, and has a value according to the schedule below:

| Region                      | Annual percentage change |
|-----------------------------|--------------------------|
| Scotland, $r_1$             | 0.49                     |
| North and Yorkshire, $r_2$  | 1.19                     |
| North West, $r_3$           | 1.46                     |
| East England, $r_4$         | 1.69                     |
| West Midlands, $r_5$        | 1.62                     |
| Wales and South West, $r_6$ | 0.43                     |
| North London, $r_7$         | 1.29                     |
| South and South East, $r_8$ | 1.56                     |

RPI means the percentage change (whether of a positive or a negative value) in the arithmetic average of the retail price index determined in respect of April to

October (both inclusive) of the year t-1 and the arithmetic average of the retail price index determined with respect to April to October of the year t-2. These values shall be published in October of each year by the Authority.

(4)

Charges under paragraph 2 (1) of this condition made to premises meeting the requirements of paragraph 1 of this condition and which have an Entry-point before 2 January 2014, or 10 years from implementation of this licence condition, whichever is later, shall continue to charge premises on the terms set out in (1), (2), and (3) above for a period of at least 10 years from Entry-point.

(5)

Any review of the basis of this condition shall have regard to previous efficiently incurred capital expenditure made by the licensee in the course of operating its transportation business.

(6)

Entry-point is the date at which the charge in accordance with (1) above is equal to  $t = 1$  and shall be determined as either:

- (a) the date of connection of a premises to the licensee's transportation system; or
- (b) the date of binding contractual agreement to provide a gas connection with the person requiring the connection.

The licensee shall have 60 days from the date of binding contractual agreement in (b) above to choose the method, (a) or (b) above, to be used to determine the Entry-point unless the Authority directs otherwise.

**3.** (1)

- (a) For premises meeting the definition of legacy sites the licensee shall be required to notify the Authority within 60 days of 1 January 2004 of the date by which all such premises shall be charged according to paragraph 2 above excepting that the charges shall be determined as if such premises had an Entry-point of 1 January 2004.
- (b) At the date referred to in (a), or at a date directed by the Authority charges mentioned in paragraph 1 (a), determined in accordance with paragraph 5, of standard condition 4 (Charging of Gas

Shippers - General) shall cease to have effect and charges made under a methodology accepted under standard condition 4C (Charging of Gas Shippers – Supplemental Connection Charges) paragraph 4 shall cease to have effect.

- (c) The date referred to in (a) above shall be calculated on a revenue neutral basis and include all necessary information for the Authority to determine the reasonableness of such calculation. On receipt of the date in (a) above and all necessary information the Authority may, within six months, direct a date on which the licensee shall charge according to (a) and (b) above if that date differs from the date notified by the licensee.

(2)

Legacy sites include all premises where:

- (a) the licensee has had a methodology accepted by the Authority pursuant to paragraph 4 of standard condition 4C (Charging of Gas Shippers – Supplemental Connection Charges); or
- (b) the licensee makes, or shall make, charges to shippers under standard condition 4 (Charging of Gas Shippers – General) and at least one premises that forms part of the same clearly identifiable site or project was connected to the licensee's transportation system and gas had entered the premises' service pipe before 1 January 2004.

4. The Authority may, on written application by the licensee within 60 days of this condition being implemented, consent to charging arrangements other than those required by paragraphs 1, 2 and 3 of this condition. Such consent, if granted, must be made in writing by the Authority and may contain such terms and conditions as the Authority determines necessary.
5. Charges made in accordance with paragraph 2, or where charges, or revenues derived from them, are, in the main, controlled or limited in pursuance of any condition of this licence other than standard condition 4 (Charging of Gas Shippers – General) or standard condition 4C (Charging

of Gas Shippers – Supplemental Connection Charges), may include a surcharge of a maximum of 0.34 pence per kWh of gas transported and for a maximum duration of 20 years from when charges to a relevant shipper first fall due, subject to the following conditions:

- (a) the surcharge may only apply to existing domestic premises which have not previously received a supply of gas;
- (b) the licensee has, on request to provide a connection by the owner or occupier of the premises, extended a gas main to specifically connect the premises;
- (c) the licensee must notify the Authority of the specified amount and specified duration 150 days prior to any such charge falling due; and
- (d) the Authority may direct the licensee not to make the surcharge within 60 days of the notification in (c) above.

**6. (1)**

The licensee shall furnish the Authority with a statement of charges determined in respect of paragraphs 2 (1) and (3) in a form approved by the Authority. The statement should be in such a form and contain such detail as shall be necessary to enable any person to determine the level of existing and on-going charges and shall -

- (a) publish a statement, or revision or amendment of a statement, furnished, or notice given, under paragraph 2 (1) and (3) in such manner as will, in its reasonable opinion, secure adequate publicity for it; and
- (b) send a copy of any such statement, revision, amendment or notice so published to any person who asks for one.

**(2)**

The licensee shall furnish the Authority with specified information in respect of its charges in a specified form as requested from time to time

**7. References in paragraphs 2 of standard condition 4AA (Charging of Gas Shippers - Relative Price Control) to charges do not include references to -**

- (a) charges related to the acquisition or disposal of gas for purposes connected with the balancing of the licensee's pipe-line system; or
  - (b) to the extent (if any) to which the Authority has accepted that they should, as respects certain matters, be so determined, to charges determined by reference to provisions in that behalf set out in the Network Code.
- 8.** The charging arrangements in paragraph 2 shall apply so long as this licence continues in force but shall cease to have effect in such circumstances and at such times as are described in paragraph 9.
- 9.** Pursuant to paragraph 8, a licensee, in whose licence this condition has effect, may make a disapplication request in writing to the Authority. The disapplication request shall specify the paragraphs of this condition (or any part or parts thereof) to which the request relates and shall state the date (the "disapplication date", being a date not less than 18 months after the date of delivery of the request or more than three years from the date this condition has effect within this licence) from which the licensee wishes the Authority to consent that the specified paragraphs (or the specified parts or parts thereof) shall cease to have effect.
- 10.** The disapplication request may be withdrawn by the licensee at any time prior to the disapplication date.
- 11.** The condition (or any part or parts thereof) to which the request relates shall cease to have effect from the date specified in the disapplication request or such later date as may be agreed, if the Authority agrees in writing to the disapplication request.
- 12.** If the Authority has not made a reference to the Competition Commission under section 24 of the Act relating to the modification of this licence by the removal of the paragraphs (or any part or parts thereof) specified in the disapplication request before the beginning of 12 months which will end with the disapplication date and the licensee has not withdrawn the disapplication

request, the licensee may deliver a termination notice to the Authority. Following the service of a termination notice, with effect from the disapplication date or such later date as may be specified in the termination notice such of the paragraphs (or any part or parts thereof) as are specified in the disapplication request shall cease to have effect in this licence.

- 13.** If the Competition Commission makes a report on a reference in respect of this licence made by the Authority relating to the modifications of this licence by the removal of the paragraphs (or any part or parts thereof) specified in the disapplication request and such report does not include a conclusion that the removal of such paragraphs (or any part or parts thereof) operates or may be expected to operate against the public interest, the licensee may within 30 days after the publication of the report by the Authority in accordance with section 25 of the Act deliver to the Authority a termination notice. With effect from the disapplication date or such later date as may be specified in the termination notice such paragraphs (or any part or parts thereof) as are specified in the disapplication request and in respect of which the Competition Commission report does not include the aforementioned conclusion shall cease to have effect in this licence.

**Definitions:**

“Single supply point” (SSP) is an individual transportation system exit point at which gas is off-taken for the purpose of supply directly to a particular premises

“Connected system exit point” (CSEP) means the point at which Transco’s distribution system is connected to a distribution system operated by the licensee and where this connection is governed by a Network Exit Agreement between Transco and the licensee

“Transco” means the licensed Gas Transporter Transco including any of its network regions or distribution networks or any successors

“Networks regions” r comprise: Scotland, comprising LDZ exit zones SC; North and Yorkshire, comprising LDZ exit zones NO, NE; North West, comprising LDZ exit zones NW; East England, comprising LDZ exit zones EM, EA; West

Midlands, comprising LDZ exist zones WM; Wales and South West, comprising LDZ exit zones WA, SW; North London, comprising LDZ exit zones NT; and South and South East, comprising LDZ exit zones SO, SE. Where LDZ exit zones has the meaning given in Transco's Network Code



***Condition 4C. Charging of Gas Shippers –  
Supplemental Connection Charges***

1. This condition shall apply in relation to an area designated for the purposes hereof by the Authority on the application of the licensee (“a designated area”) as one in the case of which -
  - (a) it appears to the Authority that gas has not previously, or has not within the previous 3 years, been conveyed through pipes to any premises therein other than ones which had been supplied with gas at a rate in excess of 2,196,000 kilowatt hours a year; and
  - (b) it appears to the Authority that, taking into account both any existing premises and probable developments in the area, it is likely that the area will contain premises of which more than a half will not be within 23 metres of a relevant main, whether of the licensee or of any other gas transporter, which was in existence before the designation of the area.
2. The designation of an area shall subsist only for the period specified in the designation on the application of the licensee unless, before the expiry of that period, it is extended by the Authority on such an application.
3. This condition shall apply if, and only if:
  - (a) the charges to be made of gas shippers by the licensee in pursuance of transportation arrangements include an element referable in whole or in part to the laying of pipes for the purpose of conveying gas to premises in a designated area and any such element is hereinafter referred to as a “supplemental charge”; and
  - (b) the application by the licensee for a designated area pursuant to paragraph 1 has been received by the Authority no later than 31 December 2003
4. The licensee -
  - (a) shall, in the case of each designated area, establish a methodology which has been accepted by the Authority (whether before or after the area becoming designated) setting out the provisions in

- accordance with which supplemental charges are to be determined, so, however, that, if and to the extent that the methodology so provides, it may be changed from time to time subject to the acceptance by the Authority of the changed methodology; and
- (b) shall ensure that each supplemental charge made conforms to the methodology as in force immediately before the charge fell due.
5. The licensee shall, in the case of each designated area, prepare a statement of the methodology, or changed methodology, from time to time established under paragraph 4, and shall-
- (a) publish, in such manner as will secure adequate publicity for it, either the statement or a summary thereof which the licensee is satisfied is sufficient to meet the reasonable interests of gas shippers and gas suppliers in the statement; and
- (b) send a copy of any such statement or summary so published to anyone who asks for one.
6. If and so long as the charges made by the licensee for the conveyance of gas to premises in a designated area include supplemental charges, the licensee shall prepare and keep up to date a statement in respect of that area which shall specify the period for which supplemental charges will be made, the current amount thereof or the means whereby that amount may be ascertained and the circumstances in which they will be made, and shall -
- (a) publish that statement at appropriate intervals, in such manner as will secure adequate publicity for it; and
- (b) send a copy of any statement so published to anyone who asks for one
7. In any other standard condition of this licence which limits, or has the effect of limiting, the charges which may be made in pursuance of transportation arrangements or the revenue which may be derived therefrom, references to such charges or revenue shall not include supplemental charges or revenue derived from such charges.

8. Where a person has applied for a licence or an extension under section 7 of the Act, any application made by that person in contemplation of the grant of that licence or extension which is conditional on such grant shall, if the licence or extension is granted, be treated, for the purposes of this condition, as an application made by the person to whom the licence or extension has been granted.
9. An acceptance of a methodology by the Authority for the purposes of paragraph 4 may be given subject to such standard conditions, relating to such charges as are mentioned in paragraph 3 of standard condition 4B (Connection Charges etc), as may be agreed between the Authority and the licensee.

***Condition XX. (formerly 43). Restriction on Activity and Financial Ring-Fencing***

1. Subject to paragraphs 3 and 4, the licensee shall not conduct any business or carry on any activity other than the transportation business, unless the Authority consents otherwise.
2. The licensee shall not, without the prior written consent of the Authority, hold or acquire shares or other investments of any kind except -
  - (a) shares or other investments in a body corporate the sole activity of which is to carry on business for a permitted purpose;
  - (b) shares or other investments in a body corporate which is a subsidiary of the licensee and incorporated by it solely for the purpose of raising finance for the transportation business; or
  - (c) investments acquired in the usual and ordinary course of the licensee's treasury management operations, subject to the licensee maintaining in force, in relation to those operations, a system of internal controls which complies with best corporate governance practice as required (or in the absence of any such requirement recommended) from time to time for listed companies in the United Kingdom.
3. Subject to the provisions of paragraph 2 nothing in this condition shall prevent:
  - (a) any affiliate in which the licensee does not hold shares or other investments or related undertaking from conducting any business or carrying on any activity;
  - (b) the licensee from holding shares as, or performing the supervisory or management functions of, an investor in respect of any body corporate in which it holds an interest consistently with the provisions of this licence;
  - (c) the licensee from performing the supervisory or management functions of a holding company in respect of any subsidiary; or

- (d) the licensee from carrying on any business or conducting any activity to which the Authority has given its consent in writing.
4. Nothing in this condition shall prevent the licensee conducting de-minimis business as defined in this paragraph so long as the limitations specified in this paragraph are complied with.
- (a) For the purpose of this paragraph “ de-minimis business” means any business or activity carried on by the licensee other than the transportation business.
  - (b) The licensee may carry on de-minimis business provided that neither of the following limitations is exceeded, namely:
    - (i) the aggregate turnover of all the de-minimis business of the licensee does not in any period of twelve months commencing on 1 April of any year exceed 2½ % of the aggregate turnover of the transportation business as shown by its most recent audited accounting statements produced under paragraphs 2(b)(i) and (c) of standard condition 30 (Regulatory Accounts); and
    - (ii) the aggregate amount (determined in accordance with sub-paragraph (d) below) of all investments made by the licensee in all its de-minimis business does not at any time after the date when this condition takes effect in this licence exceed 2½ % of the sum of share capital in issue, share premium and consolidated reserves of the licensee as shown by its most recent audited historical cost financial statements then available.
  - (c) For the purpose of sub-paragraph (b) of this paragraph, “investment” means any form of financial support or assistance given by or on behalf of the licensee for the de-minimis business whether on a temporary or permanent basis including (without limiting the generality of the foregoing) any commitment to provide any such support or assistance in the future.

- (d) At any relevant time, the amount of an investment shall be the sum of
- (i) the value at which such investment was included in the audited historical cost balance sheet of the licensee as at its latest accounting reference date to have occurred prior to the date when this condition takes effect in this licence (or, where the investment was not so included, zero),
  - (ii) the aggregate gross amount of all expenditure (whether of a capital or revenue nature) howsoever incurred by the licensee in respect of such investment in all completed accounting reference periods since such accounting reference date and
  - (iii) all commitments and liabilities (whether actual or contingent) of the licensee relating to such investment outstanding at the end of the most recently completed accounting reference period.

***Condition XX (formerly 44.) Availability of Resources***

1. The licensee, unless the Authority consents otherwise, shall at all times act in a manner calculated to secure that it has sufficient management resources, financial resources and financial facilities to enable it -
  - (a) to carry on the transportation business; and
  - (a) to comply with its obligations under this licence and such of its obligations under the Act as apply to the transportation business.
  
2. The licensee, unless the Authority consents otherwise, shall submit a certificate addressed to the Authority, approved by a resolution of the board of directors of the licensee and signed by a director of the licensee pursuant to that resolution. Such certificate shall be submitted in June of each year. Each certificate shall be in one of the following terms:
  - (a) "After making enquiries, the directors of the licensee have a reasonable expectation that the licensee will have available to it, after taking into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid, sufficient financial resources and financial facilities to enable the licensee to carry on the transportation business for a period of 12 months from the date of this certificate."
  - (b) "After making enquiries, the directors of the licensee have a reasonable expectation, subject to the factors set out below, that the licensee will have available to it, after taking into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid, sufficient financial resources and financial facilities to enable the licensee to carry on the transportation business for a period of 12 months from the date of this certificate. However, they would like to draw attention to the following factors which may cast doubt on the ability of the licensee to carry on the transportation business..."

- (c) "In the opinion of the directors of the licensee, the licensee will not have available to it sufficient financial resources and financial facilities to enable the licensee to carry on the transportation business for a period of 12 months from the date of this certificate."
3. The licensee shall submit to the Authority with that certificate a statement of the main factors which the directors of the licensee have taken into account in giving that certificate.
  4. The licensee shall inform the Authority in writing immediately if the directors of the licensee become aware of any circumstance which causes them no longer to have the reasonable expectation expressed in the then most recent certificate given under paragraph 2.
  5. The licensee shall use its best endeavours to obtain and submit to the Authority with each certificate provided for in paragraph 2 a report prepared by its Auditors and addressed to the Authority stating whether or not the Auditors are aware of any inconsistencies between, on the one hand, that certificate and the statement submitted with it and, on the other hand, any information which they obtained during their audit work.
  6. The directors of the licensee shall not declare or recommend a dividend, nor shall the licensee make any other form of distribution within the meaning of section 263 of the Companies Act 1985, unless prior to the declaration, recommendation or making of the distribution (as the case may be) the licensee shall have issued to the Authority a certificate complying with the following requirements of this paragraph.
    - (a) The certificate shall be in the following form:

"After making enquiries, the directors of the licensee are satisfied:

      - (i) that the licensee is in compliance in all material respects with all obligations imposed on it by standard condition 24 (Provision of Information to the Authority), standard condition 43 (Restriction on Activity and Financial Ring-fencing), standard condition 44 (Availability of Resources), standard condition 45 (Undertaking from Ultimate



Controller), standard condition 46 (Credit Rating of Licensee) and paragraph 1 of standard condition 47 (Indebtedness) of the licence; and

- (ii) that the making of a distribution of [amount] on [date] will not, either alone or when taken together with other circumstances reasonably foreseeable at the date of this certificate, cause the licensee to be in breach to a material extent of any of these obligations in the future”.
- (b) The certificate shall be signed by a director of the licensee and approved by a resolution of the board of directors of the licensee passed not more than 14 days before the date on which the declaration, recommendation or payment will be made.
- (c) Where the certificate has been issued in respect of the declaration or recommendation of a dividend, the licensee shall be under no obligation to issue a further certificate prior to payment of that dividend where such payment is made within six months of that certificate.

## ***Condition XX (formerly 45.) Undertaking from Ultimate Controller***

1. The licensee shall, unless the Authority consents otherwise, procure from each company or other person which is at any time an ultimate controller of the licensee a legally enforceable undertaking in favour of the licensee in the form specified by the Authority that that ultimate controller (“the covenantor”) will refrain from any action, and will procure that any person (including, without limitation, a corporate body) which is a subsidiary of or controlled by, the covenantor (other than the licensee and its subsidiaries) will refrain from any action, which would then be likely to cause the licensee to breach any of its obligations under the Act or this licence. Such undertaking shall be obtained within 7 days of the company or other person in question becoming an ultimate controller and shall remain in force for as long as the licensee remains the holder of this licence and the covenantor remains an ultimate controller of the licensee.
  
2. The licensee shall:
  - (a) deliver to the Authority evidence (including a copy of each such undertaking) that the licensee has complied with its obligation to procure undertakings pursuant to paragraph 1;
  
  - (b) inform the Authority immediately in writing if the directors of the licensee become aware that any such undertaking has ceased to be legally enforceable or that its terms have been breached; and
  
  - (c) comply with any direction from the Authority to enforce any such undertaking;

and shall not, save with the consent in writing of the Authority, enter (directly or indirectly) into any agreement or arrangement with any ultimate controller of the licensee or any of the subsidiaries of any such corporate ultimate controller (other than the subsidiaries of the licensee) at a time when –

- (i) an undertaking complying with paragraph 1 is not in place in relation to that ultimate controller; or
- (ii) there is an unremedied breach of such undertaking; or
- (iii) the licensee is in breach of the terms of any direction issued by the Authority under paragraph 2 of this condition.

***Condition XX (formerly 46.) Credit Rating of Licensee***

1. Unless the Authority consents otherwise the licensee shall use all reasonable endeavours to ensure that the licensee maintains at all times an investment grade issuer credit rating.
2. In this condition:  
“investment grade issuer credit rating” means –
  - (a) a rating of not less than BBB- by Standard & Poor’s Ratings Group or any of its subsidiaries or not less than Baa3 by Moody’s Investors Service, Inc. or any of its subsidiaries or such higher rating as shall be specified by either of them from time to time as the lowest investment grade credit rating; or
  - (b) an equivalent rating from any other reputable credit rating agency which, in the opinion of the Authority, has comparable standing in the United Kingdom and the United States of America.

***Condition XX (formerly 47.) Indebtedness***

1. In addition to the requirements of standard condition 29 (Disposal of Assets), the licensee shall not, without the prior written consent of the Authority (following the disclosure by the licensee of all material facts) -
  - (a) create or continue or permit to remain in effect 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 or 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 standard condition 29 (Disposal of Assets)) in accordance with that standard condition;
  - (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) a dividend or other distribution out of distributable reserves;
    - (ii) repayment of capital;
    - (iii) payment properly due for any goods, services or assets provided on an arm's length basis and on normal commercial terms;
    - (iv) a transfer, lease, licence or loan of any sum or sums, asset, right or benefit on an arm's length basis, on normal commercial terms and made in compliance with the payment condition;
    - (v) repayment of or payment of interest on a loan not prohibited by sub-paragraph (a);
    - (vi) payments for group corporation tax relief or for the surrender of Advance Corporation Tax calculated on a basis not exceeding the value of the benefit received; or
    - (vii) an acquisition of shares or other investments in conformity with paragraph 2 of standard condition 43 (Restriction on Activity and

Financial Ring-Fencing) made on an arm's length basis and on normal commercial terms;

- (c) enter into an agreement or incur a commitment incorporating a cross-default obligation; or
- (d) continue or permit to remain in effect any agreement or commitment incorporating a cross-default obligation subsisting at the date when this condition takes effect in this licence save that the licensee may permit any cross-default obligation in existence at that date to remain in effect for a period not exceeding twelve months from that date, provided that the cross-default obligation is solely referable to an instrument relating to the provision of a loan or other financial facilities granted prior to that date and the terms on which those facilities have been made available as subsisting on that date are not varied or otherwise made more onerous.
- (e) the provisions of sub-paragraphs (c) and (d) shall not prevent the licensee from giving any guarantee permitted by and compliant with the requirements of sub-paragraph (a).
- (f) the payment condition referred to in sub-paragraph (b) is that the consideration due in respect of the transaction in question is paid in full when the transaction is entered into unless either:
  - (i) the counter-party to the transaction has and maintains until payment is made in full an investment grade credit rating; or
  - (ii) the obligations of the counter-party to the transaction are fully and unconditionally guaranteed throughout the period during which any part of the consideration remains outstanding by a guarantor which has and maintains an investment grade issuer credit rating.

2. In this condition:

“cross-default obligation” means a term of any agreement or arrangement whereby the licensee's liability to pay or repay any debt or other sum arises or is increased or accelerated or is capable of arising, increasing or of acceleration by reason of a default

(howsoever such default may be described or defined) by any person other than the licensee, unless:

- (i) that liability can arise only as the result of a default by a subsidiary of the licensee;
- (ii) the licensee holds a majority of the voting rights in that subsidiary and has the right to appoint or remove a majority of its board of directors; and
- (iii) that subsidiary carries on business only for a purpose within paragraph (a) of the definition of permitted purpose.