

Financial ring-fencing for new and existing independent gas transporters

Initial proposals

November 2004

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Summary

This document sets out initial proposals for the introduction of financial ring-fencing provisions to the licences of new and existing independent gas transporters (IGTs). It follows Ofgem's earlier proposals set out in the July 2003 document¹ on the new charging arrangements for IGTs. These initial proposals are consistent with both the existing arrangements for independent electricity distribution network operators (IDNOs) and Transco's existing obligations under its Gas Transporter (GT) licence.

The initial proposals are to:

- ◆ introduce financial ring fencing provisions for all IGTs;
- ◆ introduce an investment grade credit rating obligation for all IGTs with more than a specified number of connected customers;
- ◆ allow for alternative arrangements to an investment grade credit rating for all IGTs with less than the specified number of connected customers; and
- ◆ consider granting derogations from certain financial ring-fencing conditions for existing IGTs for a limited period of time in order to facilitate compliance with the new obligations.

It is also proposed that:

- ◆ the threshold number of connected customers that would trigger an investment grade credit rating should be in a range between 300,000 and 500,000;
- ◆ the alternative financial arrangements to an investment grade credit rating would mirror those currently effective for IDNOs.

Views are invited on all aspects of these initial proposals and in particular on:

- ◆ whether a threshold for an investment grade credit rating obligation is appropriate;
- ◆ what specific threshold within the proposed range of 300,000 to 500,000 connected customers should be adopted;

¹ *The Regulation of Independent Gas Transporter Charging. Final Proposals*, Ofgem, July 2003.

- ◆ whether the alternative arrangements to investment grade credit rating adopted for IDNOs should be extended to IGTs; and
- ◆ whether it is appropriate to grant derogations to certain financial ring-fencing conditions for a limited period of time to existing IGTs in order to facilitate their compliance with the new obligations.

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1. Introduction

Purpose of this document

- 1.1. This document sets out initial proposals to introduce financial ring-fencing provisions into the licences of new and existing independent gas transporters (IGTs). It also outlines a possible timetable for implementation of the proposed arrangements.

Background

- 1.2. Financial ring-fencing of monopoly businesses provides important safeguards for the financial stability of licensed companies. In particular, it provides protection from certain events that may otherwise lead to the insolvency of the licensee and possible disruption to consumers. It also allows a licensee to retain access to financial markets on reasonable terms, thus facilitating the funding of future investment.
- 1.3. Financial ring-fencing obligations are included in the licence of National Grid Company (NGC), Transco, electricity distribution network operators (DNOs) and independent electricity distribution network operators (IDNOs). At present, IGTs are the only network operators that are not required to comply with such provisions as part of their licence obligations.
- 1.4. There are currently fourteen IGT licence holders with about 575,000 customers connected to their networks. Some groups of companies have more than one IGT licence, resulting in eight groups holding IGT licences.
- 1.5. In July 2003, Ofgem published final proposals for the introduction of new charging arrangements for IGTs and initial proposals for IGTs to financially ring-fence their transportation activities. These arrangements are described in chapter 5.
- 1.6. As with other licence obligations, financial ring-fencing conditions may evolve over time to reflect changes in the circumstances of regulated companies or changes to legislative and regulatory requirements. To the extent that ring-fencing provisions are modified for any licensed company, it may be necessary

for Ofgem to consider whether it is appropriate to extend these changes to other licensed companies. Any such changes would be subject to the normal licence modification process.

Other relevant documents

- 1.7. In July 2004, Ofgem initiated a consultation² on the appropriate long term regulatory regime for IDNOs. As part of this paper, Ofgem sought views in relation to certain aspects of the existing financial ring-fencing provisions. In particular, Ofgem invited views on the most appropriate arrangements that could be used by IDNOs as an alternative to maintaining an investment grade credit rating.
- 1.8. In June 2004, Ofgem published a consultation document³ setting out the changes to the Gas and Electricity Application Regulations that Ofgem proposes to make following the commencement of the Energy Act 2004. This paper expresses the view that the regulatory framework for the gas and electricity sectors should be aligned as far as practicable.
- 1.9. In April 2003, the DTI published a consultation paper on Proposal for a Special Administrator regime for Energy Network Companies. These DTI proposals aimed at strengthening the protection offered to consumers if a network operator, including an IGT, were to go into administration. These proposals were incorporated in the Energy Act.

Structure of this document

- 1.10. This paper contains the following chapters:
 - ◆ Chapter 2 discusses the rationale for these initial proposals and whether they require a formal impact assessment;
 - ◆ Chapter 3 describes the legal and regulatory framework;
 - ◆ Chapter 4 describes financial ring-fencing arrangements;

² *Regulation of Independent Distribution Network Operators. Consultation paper, Ofgem, July 2004.*

³ *Proposal for the Amendments for the Licensing Applications Regulation. Consultation document, Ofgem, June 2004.*

- ◆ Chapter 5 provides background information on recent developments, including the new arrangements for IGT charging and financial ring-fencing of IDNOs.
 - ◆ Chapter 6 outlines Ofgem's current proposals to introduce financial ring-fencing provisions for IGTs; and
 - ◆ Chapter 7 sets out the proposed timetable.
- 1.11. This paper also includes two appendices. Appendix 1 provides the full text of the versions of the financial ring-fencing provisions currently included in Transco's GT licence and in the licences of new IDNOs. Appendix 2 provides the template for keep well agreements.

Views invited

- 1.12. Views are invited from interested parties on the issues discussed in this paper and any other matters that respondents consider relevant to the introduction of financial ring-fencing obligations for IGTs.
- 1.13. Responses to this consultation should be received by **10 December 2004** and sent to:
- Samanta Padalino
Senior manager
Gas distribution regulation
Ofgem
9 Millbank
London
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Tel: 020 7901 7033
Fax: 020 7901 7478
- 1.14. Electronic responses could be sent to Samanta.Padalino@ofgem.gov.uk.
- 1.15. All responses will be held electronically in Ofgem's Research and Information Centre. Non-confidential responses will be published on the Ofgem website. Where possible, respondents should put any confidential material in appendices to their responses.

2. Impact assessment

- 2.1. This chapter discusses the rationale for these initial proposals and whether a formal impact assessment (IA) is required.
- 2.2. In September 2003, Ofgem published its *Guidance on impact assessments*. This document indicated that section 5A of the Utilities Act requires Ofgem to carry out an IA for policy proposals where it appears that such proposals are 'important'. A proposal can be considered important⁴ where its implementation would be likely to:
- ◆ involve a major change in the activities carried out by the Authority; or
 - ◆ have a significant impact on the gas and electricity sectors, the general public in Great Britain or the environment.
- 2.3. Ofgem also indicated that when a proposal was not regarded as important, it would nonetheless set out a summary of the impacts of the proposals and the reasons why Ofgem considers that a full IA would not be required.
- 2.4. The initial proposals to introduce financial ring-fencing for IGTs are not important in the meaning set out above. In particular, these initial proposals:
- ◆ are consistent with an established Ofgem policy of financially ring-fencing gas and electricity network operators; and
 - ◆ are not expected to impose significant costs or have a significant impact on participants in the gas and electricity sectors, the general public or the environment.
- 2.5. Therefore, this chapter provides only a summary of the impacts, costs and benefits, risks, and enforcement issues associated with these initial proposals.
- 2.6. The relevant regulatory background, including the form of existing financial ring-fencing obligations and Ofgem's initial proposals, is provided in chapters 3, 4 and 6.

⁴ A thorough discussion of the criteria for determining importance is provided in Ofgem's *Guidance on impact assessments*, September 2004.

Issues

2.7. Currently, IGTs are the only network operators in the gas and electricity industry that are not required to comply with financial ring-fencing obligations. Financial ring-fencing provides safeguards for the financial stability of licensed companies and protect the licensee against financial distress that might arise elsewhere in its group. There are two main advantages for consumers of these arrangements:

- ◆ they provide protection from certain events that might otherwise lead to the insolvency of the licensee, thereby protecting consumers from the associated uncertainty and disruption; and
- ◆ they allow the licensee to retain access to financial markets on reasonable terms, thereby facilitating the funding of future investment programmes.

2.8. In the case of GTs, financial ring-fencing licence conditions⁵ require a licensee:

- ◆ to procure an undertaking from its ultimate controller that it will refrain from taking any action which would be likely to cause the licensee to breach its obligations under the Gas Act or the GT licence;
- ◆ not to incur any indebtedness nor create any security, nor guarantee any liability of another person, other than on certain specified terms and for a permitted purpose, or otherwise with consent of the Authority;
- ◆ not to conduct any business other than its core business, subject to certain exceptions and specific limitations on the turnover and investment of permitted non-core activities;
- ◆ to ensure that the licensee has sufficient resources to carry on its transportation business and to submit a report to the Authority each year confirming availability of financial resources;
- ◆ to maintain an investment grade credit rating; and

⁵ Standard Licence Conditions 43 to 47 in section C of the IGT licences. Similar obligations apply to NGC, DNOs and IDNOs.

- ◆ not to enter into an agreement incorporating a cross-default obligation without consent of the Authority.

Objective and policy options

- 2.9. The Authority's principal objective under section 4AA (1) of the Gas Act is to protect the interest of the consumers in relation to gas conveyed through pipes, by promoting effective competition wherever appropriate. When exercising this duty, the Authority must have regard to ensuring that licence holders are able to finance those activities which are the subject of Gas Act or licence obligations.
- 2.10. In the light of these duties and the issues set out above, this document describes initial proposals for the introduction of financial ring-fencing obligations in the licence of IGTs. This should ensure a better level of protection and certainty of transportation services for customers connected to IGT networks.
- 2.11. There appear to be two broad policy options in relation to financial ring-fencing:
- ◆ **Option 1 – Status quo**
The licences of IGTs are not modified to include financial ring-fencing obligations; and
 - ◆ **Option 2 – Introduction of financial ring-fencing provisions**
Financial ring-fencing provisions are included in the licences of IGTs.

Impact on relevant areas

- 2.12. In assessing these initial proposals, Ofgem has considered their impact on competition in relevant markets, environment, security of supply, health and safety, as well as their potential distributional effects between and within groups of consumers. Ofgem has concluded that these initial proposals would have no or minimal impact on all of these areas.

Costs and benefits

Option 1

- 2.13. Under option 1, IGTs would not be required to incur any of the costs associated with financial ring-fencing obligations. On the other hand, consumers connected to IGT networks would not enjoy the protection offered by financial ring-fencing. For instance, if an IGT were to become insolvent, its consumers could face the disruption associated with any insolvency procedure. Continuity and certainty of service might be jeopardised.

Option 2

- 2.14. Under option 2, IGTs would be likely to incur some implementation and compliance costs. These could include the costs of obtaining an investment grade credit rating, management and reporting costs, and costs associated with any necessary corporate restructuring. More specifically,
- ◆ complying with an investment grade credit rating obligation would require a company to be large enough to be considered by credit rating agencies and the payment of agency fees;
 - ◆ to the extent that a company has entered into agreements incorporating cross-default obligations or holds any form of security that would not be allowed under financial ring-fencing provisions, it may need to buy-back those rights from third parties; and
 - ◆ to the extent that a company has engaged in non-core business, it may need to divest those activities or transfer them to an affiliated company.
- 2.15. It is likely that such costs would be larger for existing rather than new IGTs, since an existing IGT could be required to introduce some changes to its established corporate structure in order to comply with the new obligations.
- 2.16. Nonetheless, as explained in chapter 6, these implementation costs would be mitigated by the introduction of a threshold (in terms of number of customers) which an IGT would have to reach to be required to comply with specific financial ring-fencing conditions. In addition, derogations to certain conditions

could be granted to existing IGTs for a limited period of time to facilitate compliance with these new obligations and reduce any implementation costs.

- 2.17. In terms of benefits, option 2 would allow consumers to enjoy broadly similar benefits that financial ring-fencing provisions currently provide to customers connected to Transco and electricity distribution companies. These benefits include protection from events that could lead to the insolvency of an IGT and consequent disruptions for its costumers. They also include allowing IGTs to retain access to financial markets on reasonable terms, thereby facilitating the funding of future investment programmes.

Risks and uncertainties

- 2.18. There is some uncertainty as regards the actual costs that existing IGTs might face in meeting the new financial ring-fencing obligations and it is likely that these costs may differ across IGTs, depending on their existing corporate and financial structures. For these reasons, it would be prudent to consider the individual circumstances of each existing IGTs when introducing the new obligations.

Enforcement

- 2.19. The enforcement of financial ring-fencing conditions in GT and transmission licences has not been unduly onerous. As regards the possibility of granting limited derogations to specific financial ring-fencing obligations to existing IGTs, Ofgem considers that it would be necessary for the IGTs requesting a derogation to demonstrate that they would not expose consumers to significant additional risk, and that any derogation is necessary for them to comply with the new conditions in a proportionate manner.

3. Legal and regulatory framework

- 3.1. This chapter summarises the legislation relevant to the regulation of the electricity and gas industry and, in particular, of both IGTs and IDNOs. It outlines the statutory duties of the Authority. It also summarises the provisions for financial ring-fencing that are currently in place for regulated gas and electricity companies. Appendix 1 includes financial ring-fencing conditions that apply to Transco and the IDNOs.

Relevant legislation

- 3.2. The Gas Act 1986 (as amended) provides for the regulation of the onshore gas sector and for the separate licensing of transportation, shipping and supply. The Gas Act sets out the duties of each GT in connecting premises and charging for transportation services.
- 3.3. In 1995 the Gas Act 1986 was amended to allow for the creation of IGTs which develop, operate and maintain local gas distribution networks. IGT networks are connected directly to Transco's system via a connected system exit point (CSEP) or indirectly to Transco's system via another IGT. There are around 21 million consumers who are directly connected to Transco's network, while around 575,000 consumers are connected to IGT networks.

Gas Transporters obligations

- 3.4. GTs are subject to obligations arising from the Gas Act and to specific conditions within their licences. The majority of licence conditions are standard conditions, which apply to all GTs. However, some specific standard conditions, including section C of part II of the GT licence, do not apply to IGTs. Further, Transco and a number of IGTs are subject to specific amended standard conditions and special conditions.
- 3.5. A GT has a duty, under section 9 of the Gas Act, to develop and maintain an efficient and economical pipeline system for the conveyance of gas and, so far as it is economical to do so, to comply with any reasonable request to connect to that system and convey gas by means of that system to any premises.

- 3.6. A GT has a further duty, under section 9 of the Gas Act, to avoid any undue preference or discrimination in the connection of premises to any pipeline system operated by it, or in the terms on which it undertakes the conveyance of gas by means of such a system.

The Authority's statutory duties

- 3.7. The Authority is subject to a number of statutory duties and objectives which guide the manner in which it exercises its functions. These duties arise from the Gas Act and the social and environmental guidance issued by the Secretary of State. The Authority's principal objective under section 4AA(1) of the Gas Act is to 'protect the interests of consumers in relation to gas conveyed through pipes, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas so conveyed'.
- 3.8. When exercising this duty, the Authority must have regard to a number of other factors as set out under section 4AA (2), (3) and (5) of the Gas Act. The most relevant duties for these initial proposals are:
- ◆ ensuring licence holders are able to finance those activities which are the subject of Gas Act or licence obligations; and
 - ◆ promoting efficiency and economy by licensees and the efficient use of gas.
- 3.9. In addition to the duties arising from the Act, Ofgem has received additional guidance from the Secretary of State on social and environmental issues. This guidance focuses on the Governments' targets for reducing fuel poverty and greenhouse gas emissions.

4. Financial ring-fencing arrangements

- 4.1. This chapter describes the financial ring-fencing arrangements that apply to other regulated gas and electricity companies.
- 4.2. Financial ring-fencing provisions provide important safeguards for the financial stability of these licensed companies and protect the licensee against financial pressures that might arise elsewhere in its group. There are two main advantages for consumers in these arrangements:
- ◆ they provide protection from certain events that might otherwise lead to the insolvency of the licensee, thereby protecting consumers from the associated uncertainty and disruption; and
 - ◆ they allow the licensee to retain access to financial markets on reasonable terms, thereby facilitating the funding of future investment programmes.
- 4.3. Financial ring-fencing generally requires a licensee:
- ◆ to procure an undertaking from its ultimate controller that it will refrain from taking any action which would be likely to cause the licensee to breach its obligations under the Gas/Electricity Act or its GT licence;
 - ◆ not to incur any indebtedness nor create any security, nor guarantee any liability of another person, other than on certain specified terms and for a permitted purpose, or otherwise with consent of the Authority;
 - ◆ not to conduct any business other than its core business, subject to certain exceptions and specific limitations on the turnover and investment of permitted non-core activities;
 - ◆ to ensure that the licensee has sufficient resources to carry on its licensed business and to submit a report to the Authority each year confirming availability of financial resources;
 - ◆ to maintain an investment grade credit rating; and

- ◆ not to enter into an agreement incorporating a cross-default obligation without consent of the Authority.

Transco

4.4. Currently, Transco is obliged to comply with financial ring-fencing provisions under its GT licence. These provisions are included in Part II (Section C) and Part IV of Transco's GT licence. They are:

- ◆ Amended standard condition 45 – Undertaking from ultimate controller;
- ◆ Amended standard condition 47 – Indebtedness;
- ◆ Special condition 2 – Restriction of activity and financial ring-fencing;
- ◆ Special condition 3 – Availability of resources;
- ◆ Special condition 4 - Credit rating of licensee; and
- ◆ Special licence condition 5 – Cross-default obligations;

4.5. These conditions are summarised below and are set out in full in Appendix 1.

Amended standard condition 45 – Undertaking from ultimate controller

4.6. This condition requires the licensee to procure a legally enforceable undertaking from its ultimate controller that the ultimate controller will refrain from any action, and will procure that any person which is a subsidiary of or controlled by the ultimate controller will refrain from any action, which would be likely to cause the licensee to breach any of its obligations under the Gas Act or the GT licence.

4.7. The ultimate controller is defined under standard condition 1 of Transco's GT licence. It includes any person in a position to control or exercise significant influence over the policy of the licensee by virtue of rights granted to it through contracts or ownership.

Amended standard condition 47 – Indebtedness

- 4.8. This condition restricts Transco's ability to borrow money and to create mortgages, charges or other forms of securities other than on certain specified terms and for a permitted purpose without prior written consent of the Authority. It also restricts Transco's freedom to enter into transactions with affiliated companies except on specified terms.

Special condition 2 – Restriction of activity and financial ring-fencing

- 4.9. This condition prohibits the licensee, subject to certain exceptions, from conducting any business or carrying on any activity other than the transportation business. Transportation business includes transportation, liquefied natural gas (LNG) storage activities, metering and meter reading businesses.
- 4.10. It also prevents the licensee, without written consent of the Authority, from holding or acquiring shares or other investment except for:
- ◆ shares or other investment in a body corporate the sole activity of which is to carry on business for a permitted purpose;
 - ◆ shares or other investments in a body corporate which is a subsidiary of the licensee and incorporates by it solely for the purpose of raising finance for the Transco business; and
 - ◆ investment acquired in the usual and ordinary course of the licensee's treasury managements operations, subject to the licensee maintaining in force a system of internal controls which complies with best corporate governance practice.
- 4.11. Nevertheless, the licensee is allowed to undertake de-minimis activities provided that limitations on the turnover and investment of these activities are not exceeded.

Special condition 3 – Availability of resources

- 4.12. This condition requires Transco to act at all times in a manner calculated to secure that it has sufficient management resources, financial resources and financial facilities to enable it:

- ◆ to carry on properly and efficiently the transportation and LNG storage business; and
 - ◆ to comply with its obligations under its licence and the Gas Act as applied to those businesses.
- 4.13. The licensee must also submit an approved certificate to the Authority each year, which confirms that the directors have a reasonable expectation that the licensee will have sufficient financial resources and financial facilities to carry on the transportation business for the following year.
- 4.14. As part of this condition, the licensee is prevented from paying dividends or making other forms of distribution without first issuing a certificate to the Authority that confirms that the licensee is in compliance with standard conditions 24, 45 and 47 and special conditions 2, 3, 4 and 5 and the making of such distribution will not cause it to breach any of these obligations in the future.

Special condition 4 – Credit rating of licensee

- 4.15. This condition requires the licensee to use all reasonable endeavours to ensure that it maintains at all times an investment grade issuer credit rating. This is defined as a rating of not less than BBB- by Standard & Poor's Rating Group or not less than Baa3 by Moody's Investors Service, Inc. or an equivalent rating from any other reputable credit rating agency.

Special licence condition 5 – Cross-default obligations

- 4.16. This condition prevents the licensee, without prior written consent of the Authority, to enter into an agreement or incur a commitment incorporating a cross-default obligation. It also requires the licensee, subject to certain exceptions, not to continue or permit to remain in effect any pre-existing agreements incorporating a cross-default obligation.
- 4.17. For the purpose of this condition, a cross default obligation is defined as any agreements whereby the licensee's ability to pay any debt or other sums, or to do anything pursuant to a term of any agreements to which the licensee is a party, arises or is affected by any person other than the licensee. Exceptions are

allowed when such liability can arise only as a result of a default by a subsidiary of the licensee, 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 that subsidiary carries on business only within the permitted purpose.

- 4.18. This condition does not prevent the licensee from giving any guarantee permitted by the requirements of amended standard condition 47.

Electricity distribution companies

- 4.19. The distribution licence for existing electricity distribution companies (DNOs) is split into three sections:

- ◆ Section A – Interpretation, Application and Payments;
- ◆ Section B – General; and
- ◆ Section C – Distribution Services Obligations.

- 4.20. Section C includes the following standard licence conditions on financial ring-fencing:

- ◆ Condition 43 – Restriction on activity and financial ring-fencing;
- ◆ Condition 44 – Availability of resources;
- ◆ Condition 45 – Undertaking from ultimate controller;
- ◆ Condition 46 – Credit rating of licensee; and
- ◆ Condition 47 – Indebtedness.

- 4.21. The conditions in Section C do not apply to IDNOs. In April 2003⁶, Ofgem consulted on modifications to the standard licence conditions for IDNOs. These modifications included extending a modified version of the existing financial ring-fencing obligations for DNOs to IDNOs. As a result, financial ring-fencing provisions are now included under section B of the distribution licences for

IDNOs in the form of amendments to the standard distribution licence conditions.

- 4.22. In extending the existing obligations for DNOs to IDNOs, it was recognised that smaller distribution companies could face difficulties in complying with condition 46. Therefore, this condition was amended to allow for alternative financial arrangements to be adopted instead of an investment grade credit rating, subject to the Authority's consent.
- 4.23. With the exception of the investment grade credit rating obligation, the financial ring-fencing provisions for IDNOs broadly reflect those applied to Transco. Cross-default obligations, which are treated separately in Transco's GT licence, are included under condition 47 of the licence of IDNOs. These obligations are provided in Appendix 1.

Independent electricity distribution companies

- 4.24. Currently there are three IDNOs. Ofgem is also reviewing one further application for electricity distribution network operator's licences.
- 4.25. As explained above, IDNOs are allowed, subject to the Authority's consent, to adopt alternative financial arrangements for compliance with the investment grade credit rating requirement. These alternative arrangements include the following:
- ◆ For licensees with less than 500,000 connected supply points:
 - a keep well agreement⁷ with the parent company of the licensee with an investment grade credit rating; or
 - a keep well agreement with the parent company of the licensee (regardless of credit rating) and cash in escrow or an on-demand bond issued from a third party with an investment grade credit rating of a value of no less than six months operating costs and six months asset replacement expenditure.

⁶ Ofgem's open letter on the *Regulation of new distribution licence holders*, 16 April 2003.

⁷ A template for a keep well agreement is provided in appendix 2.

- ◆ For licensees with more than 500,000 connected supply points
 - an investment grade credit rating; or
 - a keep well agreement with an entity with an investment grade credit rating.
- 4.26. Under these arrangements, operating costs include all such costs necessary to run the IDNO's business for a period of six months. The IDNO is able to use the money held in the escrow account or secured by the bond in the event that its parent company does not fulfil its obligations under the keep well agreement. If the account or bond is drawn upon then the keep well agreement requires the parent company to reinstate the monies. If the parent company does not do so, then it is required to sell the IDNO or its network.
- 4.27. Although these alternative arrangements go a significant way to fulfilling the same protection afforded by an investment grade credit rating, there may be alternative arrangements that could better achieve the level of protection comparable to an investment grade credit rating requirement. Therefore, following its July 2004 consultation on the regulation of IDNOs, Ofgem is currently reviewing the respondents' views on whether these constitute suitable arrangements to be allowed as an alternative to an investment grade credit rating.

Independent Gas Transporters

- 4.28. Currently, financial ring-fencing conditions similar to those applying to Transco and electricity network operators are included in Section C of the IGTs' licences. These are conditions 43 to 47.
- 4.29. However, licence conditions included in section C of the IGTs' licences do not have effect at present. In order for these conditions to be applied to IGTs, it would be necessary for the Authority to issue a direction pursuant to paragraph 4 of standard condition 2 of IGTs' licences. This direction would be subject to the consent of the relevant licensees. This process is explained in chapter 6.

5. Recent developments

- 5.1. This chapter outlines the proposals previously put forward by Ofgem for financially ring-fencing IGTs. It also describes the background to these proposals by describing the new charging arrangements for IGTs and the rationale underlying the small company premium allowed to IGTs as part of these arrangements.
- 5.2. The chapter also discusses the financial ring-fencing for IDNOs, the new special administration procedure that has been introduced by the Energy Act 2004 and the potential sale of National Grid Transco's (NGT) gas distribution networks.

Arrangements for IGTs

Financial ring-fencing IGTs

- 5.3. In its July 2003 document on the regulation of IGTs, Ofgem set out proposals to financially ring-fence IGTs' transportation activities. It was proposed that the conditions currently included in section C of the IGTs' licences should be moved into section B and made effective.
- 5.4. In order to take account of the potential regulatory burden that these conditions might have on smaller IGTs, it was proposed that financial ring fencing provisions would only apply for licensees serving more than 30,000 consumers. It was also proposed that the requirement for an investment grade credit rating would only be triggered when a licensee serves more than 300,000 consumers. These thresholds would have applied to the total number of consumers served by a group of companies, regardless of the number of GT licences it held.
- 5.5. These proposals followed the precedent set in the water industry, where the credit rating conditions did not apply to smaller companies. Ofgem also stated that it was not its intention to apply these thresholds to new licensees.
- 5.6. It was also considered that transitional arrangements could be established to allow some time for existing IGTs to comply with the new obligations. This included granting specific derogations with respect to particular conditions for a defined period of time. Ofgem made clear that it would only grant derogations

if it could be demonstrated that they would not expose consumers to significant additional risk, and were necessary for existing IGTs to comply with the conditions in a proportionate manner.

- 5.7. In October 2003, following responses to its final proposals for IGT regulation, Ofgem proposed a number of modifications to GT licences that were necessary to implement the new charging arrangements. Ofgem expressed its intention to take forward financial ring-fencing of IGTs separately and as soon as practicable after the introduction of the new charging regime.
- 5.8. The main reason for de-coupling the financial ring-fencing conditions from the charging arrangements was that resolving the remaining issues relating to financial ring-fencing conditions might have prevented a timely introduction of the new charging regime. The charging arrangements came into effect on 1 January 2004.

Relative Price Control

- 5.9. In the July 2003 document, Ofgem set out final proposals for the introduction of a Relative Price Control (RPC) regime which came into effect on 1 January 2004 for all new properties connecting to an IGT network.
- 5.10. The RPC requires that IGT transportation charges to new properties, including domestic and industrial and commercial (I&Cs) properties, should be capped at a level broadly consistent with the Transco-equivalent charge. For those sites that pre-date the new arrangements (legacy sites), IGTs will continue to charge under the legacy arrangements until a migration date agreed with the Authority.
- 5.11. RPC should protect the interest of consumers, create incentives for IGTs to operate efficiently and provide for transparent and readily verifiable charging arrangements. This should, in turn, encourage competition in the supply and connection markets.

Reasonable profit assessment for legacy sites

- 5.12. As explained above, the RPC applies to new properties only. There are a significant number of sites under the legacy charging arrangements (until they migrate into the RPC). IGTs can transfer their portfolio of legacy sites into RPC

arrangements either on a voluntary basis or at a date agreed with Ofgem.

Migration dates have been calculated on a revenue neutral basis⁸.

- 5.13. The legacy transportation charges are based on the application of standard licence conditions (SLCs) 4 and 4C of IGTs' licences. Ofgem has introduced arrangements for the regulation of both SLC 4 and 4C charges. A description of these arrangements is available in Ofgem's July 2003 final proposal document.
- 5.14. For legacy sites falling under SLC 4, Ofgem has issued a number of guidance letters in relation to the interpretation of this condition and of the associated 'reasonable profit' requirement under SLC 4A. These letters are available from Ofgem's website under the area of work entitled IGT regulation.
- 5.15. In particular, it was determined that SLC 4 charges should result in a real pre-tax cost of capital not higher than 7.7 per cent. This excludes the small company premium discussed below.

Small company premium

- 5.16. The IGTs are relatively small enterprises. In its February 2002 document⁹, Ofgem considered that where an IGT is financially and operationally ring-fenced from a parent company, a small company premium could apply to the cost of equity. However, Ofgem considered that where IGTs continue to operate without such restrictions it would not necessarily be appropriate to apply such a premium. Ofgem indicated that for properties charged under SLC4, the real pre-tax cost of capital should not exceed 7.7 per cent plus a possible small company premium of 0.8 per cent.
- 5.17. The small company premium was based on a determination by the Competition Commission. In its August 2000 report, the Competition Commission identified a small business equity risk premium of around 0.8 per cent applicable to water companies. This related to the higher transaction costs associated with dealing in shares of smaller companies, where market liquidity tends to be relatively low.

⁸ See Ofgem's July 2003 final proposal document on the regulation of IGTs and the open letter *Guidance for the revenue neutral migration of legacy sites*, issued on 3 September 2003.

⁹ *Independent gas transporter charges and cost of capital. Consultation*, Ofgem, February 2002. Financial ring-fencing for new and existing independent gas transporters. Initial proposals.

- 5.18. In its July 2003 document, Ofgem expressed the view that, in the light of its proposal to introduce financial ring-fencing obligations for IGTs, the small company premium should be allowed in the rate of return of IGTs when assessing their compliance with the reasonable profit requirements under SLC 4A. In addition, the small company premium was used in the migration modelling used to determine the appropriate date for IGTs to migrate to RPC.

Special administration procedure

- 5.19. The Energy Act 2004 introduces a special insolvency regime for licensed operators of electricity transmission and electricity and gas distribution networks, including IGTs. This special administration regime strengthens the protection offered to consumers if an IGT were to go into administration by placing a primary duty on an appointed special administrator to continue operations during the restructuring or transfer of the business. This regime therefore ensures that essential services continue to be delivered when a company becomes insolvent.
- 5.20. These are complementary rather than alternative arrangements to financial ring-fencing provisions. The special administration procedure does not help prevent an operator from becoming insolvent (nor prevents consumers from facing the costs and disruption of insolvency). Financial ring-fencing aims at reducing the likelihood that licensed gas transporters become insolvent by ensuring that they are not exposed to inappropriate risks and that their financial resources are not divested to other purposes.

Potential sale of NGT's gas distribution networks

- 5.21. Financial ring-fencing provisions currently apply to Transco, including its distribution network businesses (DNs). Ofgem is currently consulting on the potential sale of up to four of Transco's DNs and it is expected that all DNs will have financial ring-fencing conditions for their transportation activities.

6. Ofgem's proposals

- 6.1. This chapter summarises Ofgem's initial proposals for financial ring-fencing for IGTs.
- 6.2. Financial ring-fencing of IGTs would provide a better level of protection and continuity of service for consumers connected to IGTs' networks. Extending financial ring-fencing provisions to IGTs would also improve consistency in the regulation of network operators in both the gas and electricity sectors. For these reasons it is proposed that financial ring-fencing obligations are introduced in the licences of IGTs.
- 6.3. Since the July 2003 document, Ofgem has developed a framework for financially ring-fencing IDNOs, as outlined in chapter 4. In particular, this framework takes account of the difficulties that smaller electricity companies face in fulfilling a credit rating requirement.
- 6.4. The current proposals build upon the July 2003 proposals, but take account of subsequent analysis and developments in the electricity industry.
- 6.5. In introducing financial ring-fencing obligations for IGTs, it is important that the costs of complying with these conditions are proportionate to the benefits they deliver to consumers. In particular, small companies could find it more difficult to fulfil some of the obligations currently placed on Transco, including the investment grade credit rating requirement.
- 6.6. Chapter 2 discusses the implementation costs that IGTs may face. These costs could be larger for existing IGTs, since existing IGTs could be required to introduce changes to their established corporate structure in order to comply with the new obligations.
- 6.7. For these reasons, it is proposed that a threshold in terms of number of connected customers is introduced to trigger the requirement to maintain an investment grade credit rating. Also, while financial ring-fencing obligations would be immediately effective for new IGTs, derogations to certain ring-fencing conditions may be granted to existing IGTs for a limited period of time.

Current proposals

6.8. It is proposed to:

- ◆ introduce financial ring-fencing provisions for all new and existing IGTs;
- ◆ introduce an investment grade credit rating obligation for new and existing IGTs with *more than* a specified number of connected customers; and
- ◆ allow for alternative financial arrangements to an investment grade credit rating for new and existing IGTs with *less than* the specified number of connected customers.

It is also proposed that:

- ◆ the threshold number of connected customers that would trigger an investment grade credit rating should be in a range between 300,000 and 500,000; and
- ◆ the alternative financial arrangements to an investment grade credit rating would mirror those currently effective for IDNOs (as described in chapter 4 and further discussed below).

6.9. The previous proposals for IGTs and the thresholds introduced for IDNOs suggest that the range for the specified number of connected customers that would trigger a credit rating obligation should be between 300,000 to 500,000 connected customers. This threshold would apply to the total number of consumers served by a group of companies, regardless of the number of GT licences it held. This threshold would also apply consistently to both new and existing IGTs.

6.10. The threshold would be defined as a single number within the proposed range as part of Ofgem's final proposals and following the outcome of the consultation on these initial proposals.

6.11. For IGTs with less than the specified number of consumers, Ofgem proposes to allow for the adoption of alternative financial arrangements, which can be acceptable in lieu of an investment grade credit rating. This approach would be consistent with the existing regulatory framework for IDNOs.

6.12. Ofgem's initial proposals are to extend to IGTs the alternative financial arrangements that are currently effective for IDNOs. Specifically, Ofgem's initial view is that the following financial arrangements could be allowed in alternative to an investment grade credit rating:

- ◆ For IGTs with less than the specified number of connected customers
 - a keep well agreement with the parent company of the licensee if the parent company has an investment grade credit rating; or
 - if the parent company does not have an investment grade credit rating, a keep well agreement with the parent company of the licensee and cash in escrow or an on-demand bond issued from a third party with an investment grade credit rating of a value of no less than six months operating costs and six months asset replacement expenditure.
- ◆ For IGTs with more than the specified number of connected customers
 - an investment grade credit rating; or
 - a keep well agreement with an entity with an investment grade credit rating.

6.13. Operating costs would include all those costs necessary to run the IGTs' business for a period of six months. An IGT would be able to use the money held in the escrow account or secured by the bond in the event that its parent company did not fulfil its obligations under the keep well agreement. If the account or bond were to be drawn upon, then the keep well agreement would require the parent company to reinstate the monies. If the parent company did not do so, then it would be required to sell the IGT or its network.

6.14. The form of these alternative financial arrangements, while currently effective for IDNOs, is also part of a larger consultation initiated by Ofgem in July 2004. In finalising our proposals to financially ring-fence IGTs, Ofgem will also take into account the outcome of that consultation.

Transitional arrangements for existing IGTs

- 6.15. The same proposals outlined above should apply to both new and existing IGTs. However, it may be appropriate to establish transitional arrangements for existing IGTs to facilitate implementation of financial ring-fencing provisions. In particular, derogations from particular conditions could be granted to existing IGTs for a limited period of time in order to allow sufficient time for existing IGTs to take those steps necessary to implement financial ring-fencing.
- 6.16. Derogations would be considered on a case by case basis, having regard to the circumstances of each individual IGT and the specific licence conditions they would be required for. Derogations would be granted only for a limited period of time.
- 6.17. In order to obtain a derogation from one or more financial ring-fencing conditions, it would be necessary for each IGT requesting a derogation from a particular obligation to demonstrate how they intend to fulfil such obligation and that:
- ◆ it would not expose consumers to significant additional risk;
 - ◆ it would face substantial costs of compliance if the derogation were not granted; and
 - ◆ such costs would not be proportionate to the benefits that the relevant financial ring-fencing condition would bring to consumers.

Implementation of new arrangements

- 6.18. Financial ring-fencing provisions are currently included in standard conditions 43 to 47 in section C of the IGT licences. These conditions mirror those currently effective for Transco. However, at present, all licence conditions in section C of IGTs licences are switched-off.
- 6.19. Under paragraph 4 of standard condition 2 of the IGTs' licences, the Authority may, with the consent of the licensee, issue a direction to switch on all or part of the conditions included in section C. In order to implement proposals to financially ring-fence IGTs, the existing standard conditions 43 to 47 would need

to be made effective for IGTs by switching them on pursuant to standard condition 2 of the IGTs' licences. This direction by the Authority would require the consent of all the relevant licensed companies.

- 6.20. The current drafting of conditions 43 to 45 does not reflect elements of the proposals, such as allowing alternative financial arrangements to an investment grade credit rating, introducing a threshold number for the credit rating requirement, and the possibility of temporary derogations. Therefore, concurrently with the switching on of the relevant conditions, Ofgem would initiate the statutory process required to modify licence conditions 43 to 47 pursuant to section 23 of the Gas Act to reflect the fully developed proposals for financially ring-fencing IGTs.
- 6.21. If Ofgem were unable to proceed with the implementation of its final proposals because the licensees either do not consent to switching on the relevant conditions or do not agree with the proposed licence modifications, then the Authority would consider whether to make a reference to the Competition Commission pursuant to section 24 of the Gas Act.

Issues for consideration

- 6.22. Views are invited on all aspects of these proposals and in particular on:
- ◆ whether the proposed threshold that would trigger an investment grade credit rating is appropriate;
 - ◆ what specific threshold within the proposed range of 300,000 to 500,000 connected customers should be adopted;
 - ◆ whether the alternative financial arrangements to an investment grade credit rating adopted for IDNOs could be extended to IGTs; and
 - ◆ whether it is appropriate to grant derogations to certain conditions for a limited period of time to existing IGTs in order to facilitate their compliance with the new financial ring-fencing obligations.

7. Timetable

7.1. This chapter sets out a proposed timetable for the development of final proposals to introduce financial ring-fencing provisions in the licence of IGTs. Ofgem will consider all responses to this paper in developing final proposals.

7.2. The proposed timetable for developing and implementing final proposals is set out below.

- ◆ March 2005: publication of final proposals;
- ◆ March 2005: subject to the consent of the IGTs, Ofgem to issue a direction to switch on the relevant licence conditions pursuant to standard condition 2 of their GT licences;
- ◆ April 2005: Ofgem publishes a statutory notice pursuant to section 23 of the Gas Act proposing to modify the licences according to its final proposals and initiate the statutory process necessary to allow the modification of IGT licences; and
- ◆ May 2005: target date for introduction of financial ring-fencing provisions.

Appendix 1 Existing licence conditions

Financial ring-fencing provisions applied to Transco

Amended standard condition 45. Undertaking from ultimate controller

1. The licensee shall 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 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 **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.

Amended standard condition 47. Indebtedness

1. In addition to the requirements of standard condition 29 (Disposal of Assets) **and Special Condition 5 (Cross-Default Obligations), except where the Authority has consented prior to the Relevant Date (as defined in Special Condition 1)**, the licensee shall not, without the prior written consent of the Authority (following **full** disclosure **by the licensee** of all material facts), **after the Relevant Date –**
 - (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 **purposes within sub-paragraphs (a), (b), (c), (d) or (f) of the definition of** permitted purpose; **or**
 - (iv) (if the transaction is within the ambit of standard condition 29 (Disposal of Assets)) in accordance with that condition;
 - (b) transfer, lease, license or lend any 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) 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;
 - (vii) ***a transfer for the purpose of satisfying paragraph 3A of Special Condition 2 (Restriction on Activity and Financial Ring-Fencing);*** or
 - (viii) an acquisition of shares or other investments in conformity with ***paragraph 2 of special condition 2 (Restriction on Activity and Financial Ring-Fencing)***, made on an arm's length basis and on normal commercial terms.
- (c) the payment condition referred to in sub-paragraph (b)(iv) 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 issuer 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:

"indebtedness"

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 therewith.

Special condition 2. Restriction of activity and financial ring-fencing

1. Save as provided by paragraphs 3, 3A, 4 and 5, the licensee shall not conduct any business or carry on any activity other than the Transco Business.
2. The licensee shall not, without the 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; or
 - 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 Transco Business;
 - c. shares acquired in a body corporate to which is transferred an activity that ceases, or is to cease, to be for a purpose within sub-paragraphs (a) (b), (c), (d) or (e) of the definition of permitted purpose; or
 - d. 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 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 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 consistent 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.
- 3A. The licensee shall use reasonable endeavours to cease to conduct or carry on any such business or activity prohibited by paragraph 1 which it was conducting or carrying on at the Relevant Date and shall submit to the Authority by 31 March in each calendar year a report setting out details of the endeavours it has made to cease to conduct or carry on such business or activity in the period of twelve months ending on the preceding 31 December, provided that for so long as the licensee is making such reasonable endeavours, it may continue to conduct any such business or carry on any such activity.
- 4. Nothing in this condition shall prevent the licensee or an affiliate or related undertaking of the licensee in which the licensee holds shares or other investments (a 'relevant associate') conducting de-minimis business as defined in this paragraph so long as the limitations 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 or a relevant associate or relevant associates other than: the businesses or activities falling within sub-paragraph (a), (b), (c) or (e) of the definition of permitted purpose: and other business activity to which the Authority has given its consent in writing in accordance with paragraph 3(d).
 - (b) The licensee or a relevant associate may carry on de-minimis business provided that the relevant associate carries on no other business except activities of the businesses or activities falling within sub-paragraph (a), (b), (c) or (e) of the definition of permitted purpose and activities authorised by the Authority under paragraph 3(d), and neither of the following limitations is exceeded, namely –
 - (i) the aggregate turnover of all the de-minimis business carried on by the licensee and all its relevant associates does not in any financial year exceed 2.5% of the aggregate turnover of the Transportation and LNG Storage Business, the Metering Business and the Meter Reading Business (excluding the turnover on transactions which each of those businesses make with each other) as shown by the most recent audited accounting

statements of the licensee produced under paragraph 2(b)(i) and (c) of standard condition 30 (Regulatory Accounts);

- (ii) the aggregate amount (determined in accordance with sub-paragraph (d) below) of all investments made by the licensee and all its relevant associates in their de-minimis business or de-minimis businesses does not at any time after the date when this condition takes effect in this licence exceed 2.5% 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 or a relevant associate 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 or a relevant associate as at its latest accounting reference date to have occurred prior to the date 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 or a relevant associate 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 or a relevant associate relating to such investment outstanding at the end of the most recently completed accounting reference period,

less the sum of the aggregate gross amount of all income (whether of a capital or revenue nature) howsoever received by the licensee in respect

of such investment in all completed accounting reference periods since such accounting reference date.

5. 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 LNG Storage Facilities and its view on that question, considers it appropriate that this condition should be construed as if the definition of “the Transco Business” made no reference to the “LNG Storage Business” then for the purpose of this condition, the effect from the date specified in a notice published by the Authority for that purpose, the definition of “the Transco Business” shall be so construed and shall be treated as modified accordingly.

Special condition 3. Availability of resources

1. The licensee shall at all times act in a manner calculated to secure that it has available to it all such resources, including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licenses, consents and facilities on such terms and with all such rights as shall ensure that it is at all times able:
 - (a) to properly and efficiently carry on the Transportation and LNG Storage Business; and
 - (b) to comply in all respects with its obligations under this licence and such of its obligations under the Act as apply to those businesses including, without limitation, its duty to develop and maintain an efficient and economical system of gas transportation.
2. The licensee shall submit a certificate as to the adequacy (or otherwise) of its management resources and financial resources and facilities for the period of 12 months commencing on the date of the 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 on 30 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 management resources and financial resources and financial facilities to enable the licensee to carry on the activities authorised by the licence in accordance with its obligations under the Act and under the licence 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 management resources and financial resources and financial facilities to enable the licensee to carry on the activities authorised by the licence in accordance with its obligations under the Act and under the licence 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 activities authorised by the licence as aforesaid.”
 - (c) “In the opinion of the directors of the licensee, the licensee will not have available to it sufficient management resources and financial resources and financial facilities to enable the licensee to carry on the activities authorised by the licence in accordance with its obligations under the Act and under the licence 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 that causes them no longer to have the reasonable expectation expressed in the then most recent certificate given under paragraph 2.

5. Save in so far as they relate to management resources, 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 paragraphs (2), (3) and (4) of standard condition 24 (Provision of Information to the Authority), **standard condition 45 (Undertaking from Ultimate Controller)**, and paragraph 1 of standard condition 47 (Indebtedness), Special Condition 2 (Restriction on Activity and Financial Ring-fencing), Special Condition 3 (Availability of Resources), Special Condition 4 (Credit Rating of Licensee), paragraph 1 of Special Condition 5 (Cross-Default Obligations) 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.
- 7. 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 LNG Storage Facilities and its view on that question, considers it appropriate that this condition should be construed as if the definition of “the Transco Business” made no reference to the “LNG Storage Business” then for the purpose of this amended standard condition, with effect from the date specified in a notice published by the Authority for that purpose, the definition of “the Transco Business” shall be so construed and shall be treated as modified accordingly.

Special condition 4. Investment Grade Credit Rating as Issuer of Corporate Debt

- 1. 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 and in amended standard condition 47 and special condition 5: “corporate debt” means any unsecured and unsubordinated borrowing of money having an initial maturity of five years or more; and

“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 notified in writing to the licensee, has comparable standing in the United Kingdom and the United States of America.

Special licence condition 5. Cross-default obligations

1. In addition to the requirements of standard condition 29 (Disposal of Assets) and amended standard condition 47 (Indebtedness), except where the Authority has consented prior to the Relevant Date, the licensee shall not, without the prior written consent of the Authority (following full disclosure by the licensee of all material facts), after the Relevant Date –
 - (a) enter into an agreement or incur a commitment incorporating a cross-default obligation, or
 - (b) continue or permit to remain in effect any agreement or arrangement incorporating a cross-default obligation subsisting on the Relevant Date save that the licensee may permit any cross-default obligation in existence at that date may remain in effect for so long as and provided that:
 - (i) the cross-default obligation is solely referable to
 - (aa) an instrument relating to the provision of a loan or other financial facilities granted, or
 - (bb) an arrangement or agreement entered into prior to that date and the terms on which that loan or those facilities have been made available or of that agreement or arrangement as subsisting on that date are not materially varied to the detriment of the licensee or otherwise made more onerous or where there is a material change in terms, such change is outside the licensee's effective control;
 - (ii) the licensee shall no later than three months from the Relevant Date procure that affiliate of the licensee shall indemnify the licensee in respect of its liabilities and potential liabilities under the cross-default obligation on terms approved in writing by the Authority which terms shall include an obligation that the person granting the indemnity shall maintain, at all relevant times, an investment grade credit rating; and
 - (iii) the licensee shall enforce the terms of the indemnity if so directed in writing by the Authority.

- (c) the provisions of sub-paragraph (a) and (b) shall not prevent the licensee from giving any guarantee permitted by and compliant with the requirements of amended standard condition 47 (Indebtedness).
- (d) this sub-paragraph applies where the licensee, with the consent of the Authority pursuant to this paragraph, enters into any agreement or arrangement incorporating a cross-default obligation. In those circumstances, unless the Authority otherwise consents, the licensee shall:
 - (i) procure that affiliate of the licensee shall indemnify the licensee in respect of its liabilities and potential liabilities under the cross-default obligation on terms approved in writing by the Authority;
 - (ii) procure that the terms of that indemnity shall include an obligation that the person granting the indemnity shall maintain, at all relevant times, an investment grade credit rating; and
 - (iii) enforce the terms of the indemnity if so directed in writing by the Authority.

2. In this condition:

“cross-default obligation” means a term of any agreement or arrangement whereby the licensee’s liability to

- (i) pay or repay any debt or other sum, or
- (ii) to do any thing pursuant to a term of any agreement or arrangement to which the licensee is a party

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, and
- (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 paragraphs (a), (b), (c) and (d) of the definition of permitted purpose.

Financial ring-fencing provisions for new electricity distribution companies

Standard Condition BA2: Restriction on Activity and Financial Ring Fencing

1. Save as provided by paragraphs 3 and 4, the licensee shall not conduct any business or carry on any activity other than the distribution business.
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; or
 - (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 distribution 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 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 consistent 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 or an affiliate or related undertaking of the licensee in which the licensee holds shares or other investments (a 'relevant associate') 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 or a relevant associate or relevant associates other than:
 - (i) the distribution business; and
 - (ii) any other business activity to which the Authority has given its consent in writing in accordance with paragraph 3(d).
 - (b) The licensee or a relevant associate may carry on de-minimis business provided that the relevant associate carries on no other business except activities of the distribution business and business activities authorised by the Authority under paragraph 3(d), and neither of the following limitations is exceeded, namely:
 - (i) the aggregate turnover of all the de-minimis business carried on by the licensee and all its relevant associates does not in any period of twelve months commencing on 1 April of any year exceed 2½% of the aggregate turnover of the distribution

business as shown by the most recent audited accounting statements of the licensee; and

- (ii) the aggregate amount (determined in accordance with sub-paragraph (d) below) of all investments made by the licensee and all its relevant associates in their de-minimis business or de-minimis businesses does not at any time after the date 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 or a relevant associate 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 or a relevant associate as at its latest accounting reference date to have occurred prior to the date 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 or a relevant associate 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 or a relevant associate relating to such investment outstanding at the end of the most recently completed accounting reference period.

5. In this condition :

"permitted purpose"	<p>means the purpose of all or any of the following:</p> <ul style="list-style-type: none">(a) the licensee's distribution business or any other business or activity within the limits of paragraph 4;(b) any business or activity to which the Authority has given its consent in writing in accordance with paragraph 3 (d); and(c) without prejudice to the generality of sub-paragraph (a), any payment or transaction lawfully made or undertaken by the licensee for a purpose within sub-paragraphs 1(b)(i) to (vii) of standard condition BA6.
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Standard Condition BA3: Availability of Resources

1. The licensee shall at all times act in a manner calculated to secure that it has available to it all such resources, including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents and facilities on such terms and with all such rights as shall ensure that it is at all times able:
 - (a) to properly and efficiently carry on the distribution business; and
 - (b) to comply in all respects with its obligations under this licence and such obligations under the Act as apply to the distribution business including,

without limitation, its duty to develop and maintain an efficient, co-ordinated and economical system of electricity distribution.

2. The licensee shall submit a certificate 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 forms:
 - (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 distribution 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 what is said 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 distribution 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 distribution 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 distribution 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 BA2 (Restriction on Activity and Financial Ring-fencing), standard condition BA3 (Availability of Resources), standard condition BA4 (Undertaking from Ultimate Controller), standard condition BA5 (Credit Rating) and paragraph 1 of standard condition BA6 (Indebtedness) of the licence; and
 - (ii) that the making of a distribution of [] on [] 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 provided such payment is made within six months of that certificate.

Standard Condition BA4: Undertaking from Ultimate Controller

1. The licensee shall procure from each company or other person which the licensee knows or reasonably should know 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 is 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 of 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.

Standard Condition BA5: Credit Rating of Licensee

1. The licensee shall use all reasonable endeavours to ensure that the licensee maintains at all times an investment grade issuer credit rating, or with the prior written permission of the Authority, any such arrangements as the Authority considers appropriate.
2. In this condition:
 - “investment grade issuer credit rating” means:
 - (a) an issuer rating of not less than BBB- by Standard & Poor’s Ratings Group or any of its subsidiaries or a corporate rating of 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, notified in writing to the licensee, has comparable standing in the United Kingdom and the United States of America.

Standard Condition BA6: Indebtedness

1. In addition to the requirements of standard condition 29 (Disposal of Relevant 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 Relevant Assets)) in accordance with that 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 subparagraph (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 BA2 (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 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) of this paragraph 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)(iv) 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 issuer 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.

“indebtedness”

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 therewith.

Appendix 2 Template for keep well agreement

KEEPWELL AGREEMENT

This Deed is dated [day][month][year] between

- PARTIES**
1. [company A name] [company number] whose registered office is at
 2. [company B name] [company number.....] whose registered office is at

BACKGROUND

- A.** The Gas and Electricity Markets Authority (“the Authority”) has granted a distribution licence under Section 6(1)(c) of the Electricity Act 1989 (“the Act”) to [company A name]
- B.** [relationship between the two companies]
- C.** The distribution licence is conditional in part upon the continued financial security of the licensee, namely [company A name]. [company B name] has entered into this Deed as its commitment to provide all necessary funding to ensure that [company A name] meets its obligations under, and the requirements of the distribution licence as modified under Section 8(A) of the Act, (and in particular standard conditions BA3 and BA5).

AGREEMENT

1. [company B name] acknowledges to [company A name] that it is fully aware of the obligations and activities of [company A name] under the distribution licence in relation to the distribution of electricity through [company A name]’s distribution system, including (without prejudice to

the foregoing generality) those relating to providing connections to or the use of such system. These obligations and activities include those set out in standard conditions BA3 and BA5 of **[company A name]**'s distribution licence.

2. In consideration of the commercial benefit being derived by **[company B name]** and **[company A name]** as a result of **[company A name]** being granted the distribution licence **[company B name]** hereby irrevocably undertakes to **[company A name]** that, for so long as **[company A name]** is the holder of the distribution licence, **[company B name]** will immediately and on demand make available or will procure that there are made available to **[company A name]** all such resources, including management and financial resources, personnel, fixed and moveable assets, rights, licences, consents and facilities, on such terms and with all such rights as shall ensure that **[company A name]** is at all times able to properly and efficiently carry on its distribution business (as defined in the distribution licence) and authorised activities and is at all times able to comply in all respects with its obligations under, and the requirements of, the distribution licence and the Electricity Act 1989 as apply to **[company A name]** including without limitation, **[company A name]**'s duty to maintain an efficient, co-ordinated and economical system of electricity distribution.

3. In consideration of the said commercial benefit, and in discharge of **[company A name]**'s obligations under its licence **[company A name]**, further undertakes that in the event [the escrow account] [bond] set up pursuant to an Agreement between **[company A name]** and a third party **[company C name]** dated — 2004 is drawn upon to notify the Authority and **[company B name]** in writing within 24 (twenty four) hours of the

event and immediately thereafter arrange with **[company B name]** for full reinstatement by **[company B name]** of the monies [in the escrow account] [secured by the bond] failing which **[company B name]** undertakes to invite offers for the purchase of **[company A name]**'s distribution network/assets and **[company B name]** shall within 3 months of the date of the invitation accept the best offer made.

4. **[Company B name]** gives its commitments to **[Company A name]** under this Deed as legally enforceable obligations. This Deed shall be governed and interpreted by and in accordance with English law and the parties submit to the non-exclusive jurisdiction of the English courts. This Deed confers no rights to any third party, whether under Contracts (Rights of Third Parties) Act 1999 or otherwise. **[Company B name]** acknowledges that, notwithstanding the provisions of this paragraph, the Authority may, in exercise of its powers, direct **[Company A name]** to enforce its rights under this Deed against **[Company B name]**.
5. **[Company B name]** shall use reasonable endeavours to ensure that it maintains at all times an investment grade issuer credit rating (as that term is defined in the distribution licence).

EXECUTED as a deed by **[Company B name]** under its company seal

Director

Director/Company Secretary

EXECUTED as a deed by [*Company A name*] under its company seal

Director

Director/Company Secretary