

Standard Special Condition A39. Indebtedness

1. In addition to the requirements of Standard Special Condition A27 (Disposal of Assets), the licensee shall not without the prior written consent of the Authority (following the disclosure by the licensee of all material facts):
 - (a) create or continue or permit to remain in effect any mortgage, charge, pledge, lien or other form of security or encumbrance whatsoever, undertake any indebtedness to any other person or enter into any guarantee or any obligation otherwise than:
 - (i) on an arm's length basis;
 - (ii) on normal commercial terms;
 - (iii) for a permitted purpose; and
 - (iv) (if the transaction is within the ambit of Standard Special Condition A27 (Disposal of 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 referred to in paragraph 2;
 - (v) repayment of or payment of interest on a loan not prohibited by sub-paragraph (a);
 - (vi) payments for group corporation tax relief or for the surrender of Advance Corporation Tax calculated on a basis not exceeding the value of the benefit received ; or

- (vii) an acquisition of shares or other investments in conformity with paragraph 2 of Standard Special Condition A36 (Restriction on Activity and Financial Ring-Fencing) made on an arm's length basis and on normal commercial terms;

provided however that the provisions of paragraph 3 below shall prevail in any of the circumstances described or referred to therein.

- (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 13 December 1999, 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;

provided however that the provisions of sub-paragraphs (c) and (d) shall not prevent the licensee from giving any guarantee permitted by and compliant with the requirements of sub-paragraph (a).

2. The payment condition referred to in sub-paragraph (b)(iv) of paragraph 1 is that the consideration due in respect of the transaction in question is paid in full when the transaction is entered into unless either:

- (a) the counter-party to the transaction has and maintains until payment is made in full an investment grade issuer credit rating, or
- (b) 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.

3. Except with the prior consent of the Authority, the licensee shall not enter into or complete any transaction of a type referred to or described in sub-paragraph (b) of paragraph 1 save in accordance with paragraph 4, if:

- (a) the licensee does not hold an investment grade issuer credit rating; or
- (b) where the licensee holds more than one issuer credit rating, one or more of the ratings so held is not investment grade;
- (c) any issuer credit rating held by the licensee is BBB- by Standard & Poor's Ratings Group or Fitch Ratings Ltd or Baa3 by Moody's Investors Service, Inc. or such higher issuer credit rating as may be specified by any of these credit rating agencies from time to time as the lowest investment grade credit rating; or an equivalent rating from another agency that has been notified to the licensee by the Authority as of comparable standing for the purposes of Standard Special Condition A38 (Credit Rating of the Licensee) and:
 - (i) is on review for possible downgrade; or
 - (ii) is on Credit Watch or Rating Watch with a negative designation; or where neither (i) nor (ii) applies;
 - (iii) the rating outlook of the licensee as specified by any credit rating agency referred to in sub-paragraph (c) which at the relevant time has assigned the lower or lowest investment grade issuer credit rating held by the licensee has been changed from stable or positive to negative.

4. Where paragraph 3 applies, the licensee may not without the prior written consent of the Authority (following disclosure of all material facts) transfer, lease, license or lend any sum or sums, asset, right or benefit to any affiliate or related undertaking of the licensee as described or referred to in sub-paragraph (b) of paragraph 1, otherwise than by way of:

- (a) payment properly due for any goods, services or assets in relation to commitments entered into prior the date on which the circumstances described in paragraph 3 arise, and which are provided on an arm's length basis and on normal commercial terms;
- (b) 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 where the value of the

consideration due in respect of the transaction in question is payable wholly in cash and is paid in full when the transaction is entered into;

- (c) repayment of or payment of interest on a loan not prohibited by sub-paragraph (a) of paragraph 1 and which was contracted prior to the date on which the circumstances in paragraph 3 arise, provided that such payment is not made earlier than the original due date for payment in accordance with its terms; or
- (d) 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, provided that the payments are not made before the date on which the amounts of tax thereby relieved would otherwise have been due.

5. 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 being accelerated 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 set out in Standard Special Condition A32 (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.

“investment grade” has the meaning given in paragraph 2 of Standard Special Condition A38 (Credit Rating of the Licensee)

“issuer credit rating” has the meaning given in paragraph 2 of Standard Special Condition A38 (Credit Rating of the Licensee)

6. Where the holder of this licence also holds, in the same legal entity, one or more other gas transporter licences for relevant gas transporters, references in this condition to “licensee” shall mean this legal entity.

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