

[N.B. STANDARD SPECIAL CONDITIONS IN PART A CAN ONLY BE AMENDED IN ACCORDANCE WITH THE “PRIVATE” COLLECTIVE LICENCE MODIFICATION PROCEDURE SET OUT IN STANDARD SPECIAL CONDITION A2. SUCH CHANGES WILL AFFECT ALL NTS AND DN LICENSEES.]

Standard Special Condition A15. Agency

1. The licensee shall, together with the other relevant gas transporters, by the date at which this condition becomes effective (unless the Authority consents otherwise in writing), have entered into an agency services agreement (“**AS agreement**”) with the other relevant gas transporters providing for the common provision of services and systems, including the common provision by the agency (as defined in paragraph 3 below) of such services and systems, the scope of which are set out within the uniform network code.
2. The licensee shall, together with other relevant gas transporters procure, or cause to be procured:
 - (a) that the Authority is provided with a copy of the AS agreement and each amendment thereof; and
 - (b) the publication of the AS agreement as modified from time to time, with the exception of any information agreed in writing as being confidential by the Authority.
3. Where services and systems are sub-contracted to a common service provider (the “**agency**”) by all relevant gas transporters including the licensee (unless the Authority has otherwise consented under paragraph 6), the scope of such sub-contracting arrangements shall be set out in the uniform network code (save in respect of user pays services the scope of which are not an activity performed pursuant to the uniform network code), and the agency and the agreement referenced in paragraph 1 shall, without limitation, be based on the following principles:

- (i) such services and systems shall be established, operated and developed on an economic and efficient basis;
 - (ii) the costs of the agency shall be determined on an activity cost basis such that the services and systems costs associated with each activity, as set out within the uniform network code as being within the scope of the agency, are separately assessed and reported; and
 - (iii) the costs of the agency shall be allocated on a transparent basis.
- 4. Where services and systems are to be provided pursuant to the uniform network code by the agency, the licensee shall, together with other relevant gas transporters, ensure that all such services and systems are provided or otherwise procured (including without limitation on a sub contracted basis) on a common basis pursuant to the AS agreement.
- 5. In respect of the services and systems to be provided by the agency under paragraphs 3 and 4 of this condition, the licensee shall be under an obligation to use or procure the use of such services and systems from the agency and shall not elect either expressly or by its conduct not to use nor to procure the use of the agency as the provider of such services and systems without the prior written consent of the Authority.
- 6. In the event that the licensee requests the consent of the Authority, subject to paragraph 5, such that it is not required to use nor to procure the use of all systems and services to be provided by the agency under paragraphs 3 and 4:
 - (a) the licensee shall:
 - (i) write to the Authority stating its reasons for this request; and
 - (ii) clearly identify whether any of the information provided as part of the statement of reasons for the change is of a confidential nature;

- (b) the Authority, in relation to any information provided under sub-paragraph (a), if applicable:
 - (i) may, if it considers that the information provided is insufficient, request that this information be supplemented with such additional material that it considers appropriate;
 - (ii) shall make public the information (other than any confidential information) supplied by the licensee in any statement made under sub-paragraph (a) and, if applicable, any supplementary information provided to the Authority following its receipt in response to a request under sub-paragraph (i); and
 - (iii) shall consult with all relevant shippers, each other relevant gas transporter and other interested parties on the licensee's request for consent, under the provisions of paragraph 5, for a period of at least twenty-eight (28) days before providing its decision regarding the granting of consent, and any such conditions as the Authority may specify, to such a request.

7. The licensee shall, together with the other relevant gas transporters , by 1 April 2008 (unless the Authority otherwise consents in writing), determine and prepare a joint agency charging statement (“the statement”), approved by the Authority, setting out details of the scope of each user pays service, the methodology for deriving charges for user pays services and the charges associated with the provision of such services by the agency. **[N.B. AS “CORE SERVICES” CONSIST OF EVERYTHING OTHER THAN “USER PAYS” SERVICES, THERE IS NO NEED TO REFER TO THEM.]**8. The licensee shall, together with the other relevant gas transporters, (unless the Authority otherwise consents in writing): **[N.B. OBLIGATIONS IN (a) AND (b) BELOW MOVED TO THIS PARAGRAPH AS ONGOING AND NOT DATE-SPECIFIC (UNLIKE OBLIGATION IN PARA 7).]**

- (a) procure the publication of the statement on the agency’s website and give or send an electronic copy of the statement to any person who asks for one;
 - (b) procure that the agency complies with the statement approved by the Authority and as modified from time to time in accordance with the provisions of this condition; and
 - (c) keep the statement under review and, subject to paragraph 9, from time to time modify it to ensure that the information, methodologies and charges in the statement are up to date and to reflect any changes in scope and nature of user pays services.
9. Except with the consent of the Authority, before making a modification to the statement, the licensee shall, together with the other relevant gas transporters, give a report to the Authority setting out:
- (i) the terms of the proposed modification; and
 - (ii) a timetable for implementing the modification.
10. The licensee shall, together with the other relevant gas transporters make the modification unless, within 28 days of receiving the report under paragraph 9, the Authority has directed the licensee not to make the modification.
11. The charges for the user pays services should, as far as reasonably practicable, reflect the costs in providing the service. In setting the charges for the user pays services the licensee shall not unduly discriminate between or unduly prefer any person or class or classes of persons. **[N.B. NEED TO BE CONSISTENT WITH DEFINED TERMS.]**

[N.B. IT APPEARS THAT THE DEFINITION OF THE SCOPE OF “USER PAYS SERVICES” SHOULD BE LEFT TO THE STATEMENT PREPARED UNDER

PARAGRAPH 7 IN ORDER TO AVOID THE NEED FOR A LICENCE CHANGE AS THE SCOPE OF SUCH SERVICES CHANGES OVER TIME. AN APPROACH WHICH DEFINED THE SCOPE OF THE USER PAYS SERVICES BY REFERENCE TO THE STATEMENT UNDER PARAGRAPH 7 WOULD FACILITATE KEEPING THE DRAFTING OF THIS CONDITION CONSISTENT FOR NTS AND DN LICENSEES (AS IS REQUIRED FOR STANDARD SPECIAL CONDITIONS IN PART A). ADDITIONALLY, IT WOULD APPEAR SENSIBLE AND PRAGMATIC TO DEFINE THE RELEVANT SERVICES WITHIN THE SAME DOCUMENT WHICH SETS OUT THE METHODOLOGY AND CHARGES FOR SUCH SERVICES (AS IS CONTEMPLATED BY PARAGRAPH 8(c) ABOVE). AS A RESULT, WE SUGGEST THAT THE DEFINITION SET OUT BELOW IS USED (IT CAN BE INSERTED IN EITHER STANDARD SPECIAL CONDITION A3 (IF IT WILL BE NEEDED ELSEWHERE) OR AT THE END OF THIS CONDITION).]

“user pays services” means the services set out in the statement prepared in accordance with paragraph 7 of this condition”

Standard Special Condition A19. Provision of Services for specific domestic customer groups

[N.B. WE CONSIDER THAT THE PROVISIONS OF STANDARD SPECIAL CONDITIONS A19-A22 WERE PLACED IN SECTION A IN ERROR AT THE TIME OF NETWORK SALES: FOR PHYSICAL REASONS, IT IS NOT POSSIBLE FOR THE NTS TO HAVE ANY DOMESTIC PROPERTIES CONNECTED TO IT. AS SUCH, THESE PROVISIONS ARE OF NO RELEVANCE TO THE NTS LICENSEE AND SHOULD NOT BIND IT. WE THEREFORE SUGGEST THAT THESE PROVISIONS ARE REMOVED FROM SECTION A AND PLACED IN SECTION D IN ORDER TO TARGET ONLY THE DN OPERATORS FOR WHOM THESE CONDITIONS ARE RELEVANT.]

Customers who are of pensionable age or disabled or chronically sick

Arrangements in respect of meters

1. Where a relevant supplier or a gas supplier who is about to become such a supplier has:
 - (a) transmitted to the licensee a request for the repositioning of a meter owned by the licensee pursuant to paragraph 1(d) of standard condition 26 (Services for specific domestic customer groups) of its licence,; and
 - (b) undertaken to pay the licensee's reasonable expenses in complying with the request,then, so far as it is reasonably practicable and appropriate for it so to do, the licensee shall comply with the request.

Blind, partially sighted, deaf or hearing impaired customers

2. The licensee shall provide facilities on request, free of charge, which shall be designed to enable any domestic customer who is:
 - (a) blind or partially sighted; or
 - (b) deaf or hearing-impaired and in possession of appropriate equipment,

to ask or complain about any service provided by the licensee.

Services for vulnerable domestic customers

3. If a domestic customer who is:

(a) of pensionable age, disabled, or chronically sick; or

(b) blind or partially sighted; or

(c) deaf or hearing-impaired,

asks it to do so, the licensee shall, free of charge, agree a password with that customer that can be used by a representative of the licensee to enable the customer to identify that representative on the next occasion the representative visits the customer's premises.

Provision of information

4. The licensee shall:

(a) prepare a statement that sets out, in plain language, its obligations under this condition;

(b) publish that statement on its website (if it has one) in a manner that makes the statement readily accessible for persons seeking details of those obligations;

(c) use all reasonable endeavours to inform each domestic customer connected to the pipeline system to which this licence relates, at least once each year, of that statement and how to obtain it;

(d) give a copy of the statement free of charge to any person who asks for one.

5. The licensee may prepare and publish the statement prepared under paragraph 4 as a single document with the statement referred to in Standard Special Condition A20 (Arrangements for access to premises).

6. For the purposes of this condition:

“pensionable age” means pensionable age within the meaning given by section 48(2B) of the Act.

Standard Special Condition A20. Arrangements for access to premises

1. The licensee shall use all reasonable endeavours to ensure that each representative who visits a domestic customer's premises on the licensee's behalf:
 - (a) secures compliance with paragraph 28(1) of Schedule 2B (the Gas Code) of the Act;
 - (b) possesses the skills necessary to perform the required function;
 - (c) can be readily identified as a representative of the licensee by a member of the public;
 - (d) uses any password that the licensee has agreed with the domestic customer in accordance with paragraph 3 of Standard Special Condition A19 (Provision of services for specific domestic customer groups);
 - (e) is able to inform the domestic customer, on request, of the gas emergency helpline number; and
 - (f) avoids undue disturbance to owners or occupiers of premises as a result of visits being made to their premises.
2. The licensee shall:
 - (a) prepare a statement that sets out, in plain language, its arrangements for complying with its obligations under paragraph 1;
 - (b) publish that statement on and make it readily accessible from its website (if it has one);
 - (c) use all reasonable endeavours to inform each domestic customer connected to the pipeline system to which this licence relates, at least once each year, of the statement and how to obtain it; and
 - (d) give a copy of the statement free of charge to any person who asks for one.
3. The licensee may prepare and publish the statement prepared under paragraph 4 as a single document with the statement referred to in Standard Special Condition A19 (Provision of services for specific domestic customer groups).

4. In paragraph 1, the reference to entering premises includes a reference to entry under the authority of a warrant obtained under the Rights of Entry (Gas and Electricity Boards) Act 1954.

Standard Special Condition A21. Procedure for dealing with complaints

1. The licensee shall prepare and comply with a procedure for dealing with any complaint made by a domestic customer about any of its activities that relating to the its transportation business. .

2. The licensee shall:
 - (a) prepare the procedure referred to in paragraph 1 in plain language,;

 - (b) publish that procedure on its website (if it has one) in a manner that makes the statement readily accessible for persons seeking details of it;

 - (c) use all reasonable endeavours to inform each domestic customer connected to the pipeline system which this licence related, at least once each year, of the procedure and how to obtain a copy of it; and

 - (d) give a copy of that procedure free of charge to any person who asks for one.

Standard Special Condition A22. Reporting on Performance

1. The licensee shall provide the Authority and the Consumer Council with information specified by the Authority relating to matters that it reasonably considers are relevant to the licensee's dealings with:
 - (a) domestic customers; and
 - (b) customers under the Gas (Standards of Performance) Regulations 2005 (SI 2005/1135) as amended from time to time (the "regulations").
2. The information referred to in paragraph 1 may, in particular, include information about:
 - (a) the number of performance failures by the licensee under the regulations;
 - (b) the number and value of compensation payments made by the licensee under the regulations.

[N.B. WE DO NOT CONSIDER THAT (a) AND (b) SHOULD BE INCLUDED: PLEASE SEE COMMENTS IN THE ACCOMPANYING RESPONSE.]

3. The information provided by the licensee under paragraph 1 must be in the form of a statistical record having such content and being presented in such a format and at such intervals of time as the Authority may from time to time direct following consultation with the licensee and the Consumer Council.
4. The obligations of this condition shall apply in respect of each Distribution Network (as defined in Special Condition E1 (Revenue restriction definitions in respect of the Distribution Network)) operated by the licensee. **[N.B. AS COMMENTED ABOVE, THE NTS HAS NO DOMESTIC CUSTOMERS CONNECTED TO IT. AS SUCH THIS OBLIGATION CAN BE OF NO RELEVANCE TO THE NTS LICENSEE. AS SUGGESTED ABOVE, THIS CONDITION SHOULD BE MOVED FROM SECTION A TO SECTION D OF THE STANDARD SPECIAL CONDITIONS.]**

Standard Special Condition A23. Not Used

Standard Special Condition A24. Not Used

Standard Special Condition A25. Not Used

Standard Special Condition A30. Regulatory Accounts

[N.B. WE SUGGEST THAT REFERENCES TO THE COMPANIES ACTS 1985 AND 1989 THROUGHOUT THIS CONDITION BE UPDATED IN THE LIGHT OF THE COMING TO FORCE OF THE COMPANIES ACT 2006]

Part A: Application and purpose

1. This condition applies for the purpose of ensuring that the licensee maintains (and secures that any affiliate or related undertaking of the licensee maintains) such accounting records, other records and reporting arrangements as are necessary to enable the licensee to prepare and publish regulatory accounts for the following businesses, unless the Authority otherwise consents in writing –
 - (a) the transportation business in respect of each Distribution Network (as defined in Special Condition E1 (Revenue restriction definitions in respect of the Distribution Network)) or the NTS (as defined in Special Condition C8A (Revenue restriction definitions in respect of the NTS transportation owner activity and NTS system operation activity)), where applicable;
 - (b) NOT USED;
 - (c) the metering business, separately identifying services provided pursuant to paragraph 1 of Standard Special Condition A10 (Provision and Return of Meters) with respect to each Distribution Network (as defined in Special Condition E1) as appropriate;
 - (d) the meter reading business;
 - (e) the de minimis business to which this licence relates, separately identifying the allocation and / or apportionment of each de minimis activity to each of the businesses in sub-paragraphs (a) to (d) above, and clearly describing each such de minimis activity;
 - (f) other activities to which this licence relates which the Authority has given its consent in writing in accordance with sub-paragraph 3(d) of Standard Special Condition A36 (Restriction on Activity and Financial Ring Fencing)

separately identifying the apportionment of each of these activities to each of the businesses in sub-paragraphs (a) to (d) above, and clearly describing each service provided;

- (g) the whole business to which this licence relates, as represented by the consolidation of the businesses and activities referred to within sub-paragraphs (a), (b), (c), (d), (e) and (f) where applicable and, in addition, details of any de minimis business carried out by a relevant associate of the holder of the licence.

2 Where the holder of this licence also holds, in the same legal entity, one or more other gas transporter licences for relevant gas transporters, the licensee shall:

- (a) ensure that all businesses of the licence holder that relate to sub-paragraphs (a) to (f) of paragraph 1 as are applicable are reflected in the regulatory accounts submitted in respect of those licences, such that, such regulatory accounts, when consolidated, reflect the total business of the licence holder; and
- (b) include within each set of regulatory accounts, prepared in accordance with those licences, sufficient information to reconcile all sets of regulatory accounts to the statutory accounts of the holder of this licence, prepared under the Companies Act 1985.

Part B: Preparation of accounts

3. For the purposes of this condition, but without prejudice to paragraph 7, the licensee must prepare regulatory accounts for each financial year ending on 31 March.

4. Unless the Authority otherwise consents, the licensee shall:

- (a) keep or cause to be kept for a period approved by the Authority, but not less than the period referred to in section 222(5)(b) of the Companies Act 1985 and in the manner referred to in that section, such accounting records and other records as are necessary so that the revenues, costs, assets, liabilities, reserves, and provisions of, or reasonably attributable to, each of the businesses referred to in paragraph 1 are separately identifiable in the accounting records of the licensee

(and of any affiliate or related undertaking of the licensee) from those of any other business of the licensee; and

- (b) prepare, on a consistent basis from such accounting records in respect of each financial year, regulatory accounts (including notes thereto and statements of the accounting policies adopted) of the licensee comprising, in respect of each of the businesses referred to in paragraph 1:
- (i) a profit and loss account (or, as appropriate, an income statement);
 - (ii) a statement of total recognised gains and losses (or, as appropriate, a statement of changes in equity and if appropriate a statement of recognised income and expense or a statement of comprehensive income);
 - (iii) a balance sheet (or, as appropriate, a statement of financial position);
 - (iv) a cash flow statement (or, as appropriate, a statement of cash flows);
 - (v) a corporate governance statement in respect of the whole business to which this licence relates;
 - (vi) a directors' report in respect of the whole business to which this licence relates;
 - (vii) an operating and financial review in respect of the whole business to which this licence relates; and
 - (viii) a statement showing separately in respect of each of the businesses referred to in paragraph 1 and in appropriate detail the amounts of any revenue, cost, asset, liability, reserve or provision which has either been:
 - (aa) charged from any ultimate controller of the licensee, together with any subsidiary of such ultimate controller (other than the licensee or its subsidiaries) in relation to the provision of goods or services to the licensee;
 - (bb) charged from the licensee together with any subsidiary of the licensee in relation to the provision of goods or services to any

ultimate controller of the licensee together with any subsidiaries of such ultimate controller (other than the licensee or its subsidiaries); or

- (cc) determined by apportionment or allocation between any of the businesses referred to in paragraph 1 or any other business of the licensee or affiliate or related undertaking together with a description of the basis of the apportionment or allocation;

provided that the obligations in (aa), (bb) and (cc) above shall only apply to goods and services received or supplied for the purposes of the businesses referred to in paragraph 1.

5. Unless the Authority so specifies in directions issued for the purposes of this condition, or with the Authority's prior written approval, the licensee shall not in relation to the regulatory accounts in respect of a financial year change the bases of charge or apportionment or allocation referred to in paragraph 4(b)(viii) from those applied in respect of the previous financial year.
6. Where, in relation to the regulatory accounts in respect of a financial year, the licensee has changed such bases of charge or apportionment or allocation or changed any of its accounting policies or the application of those accounting policies from those adopted for the immediately preceding financial year, the licensee shall, if directed by the Authority in writing, in addition to preparing regulatory accounts on those bases which it has adopted, also prepare such regulatory accounts on the bases and the accounting policies and the application of its accounting policies which applied in respect of that immediately preceding financial year.

7. Regulatory accounts and information in respect of a financial year prepared under paragraph 3(b) shall, so far as reasonably practicable and unless otherwise approved by the Authority having regard to the purposes of this condition, have the same content and format as the most recent or concurrent statutory accounts of the licensee prepared under sections 226 and 226A or, where appropriate, section 226B of the Companies Act 1985 and shall comply with all relevant accounting and reporting standards currently in force which have been issued or adopted by the Accounting Standards Board or, if the regulatory accounts and information have been prepared under section 226B of the Companies Act 1985, all relevant accounting and reporting standards currently in force which have been issued by the International Accounting Standards Board and adopted by the European Union **pursuant to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.**[N.B. THIS CHANGE TO ASSIST IN “FUTURE-PROOFING” OF THE OBLIGATIONS.]

Part C: Audit and delivery of accounts

8. Unless the Authority otherwise consents, the licensee must:

- (a) procure, in relation to its regulatory accounts:
 - (i) an audit by an appropriate auditor of such parts of those accounts and the directors’ report and operating and financial review as are specified in the Companies Act 1985 as being required to be so audited as if the licensee were a quoted company and they were the statutory accounts of the licensee prepared under sections 226 and 226A or, as appropriate, section 226B of the Companies Act 1985 drawn up to 31 March, and
 - (ii) a report by that auditor, addressed to the Authority, stating whether in the auditor’s opinion those accounts fairly present the financial position, financial performance and cash flows of or reasonably attributable to each of the businesses referred to in paragraph 1 and the reconciliation information provided under paragraph 2 in accordance with the requirements of this condition; and
- (b) deliver to the Authority those accounts and the auditor’s report referred to in sub-paragraph (a)(ii) as soon as is reasonably practicable, and in any event

prior to their publication under Part D and not later than 31 July following the end of the financial year to which the regulatory accounts relate.

9. For the purposes of paragraph 8, the licensee shall, at its own expense, enter into a contract of appointment with an appropriate auditor which includes a term requiring that the audit of the regulatory accounts of the licensee be conducted by that auditor in accordance with all such relevant auditing standards in force on the last day of the financial year to which the audit relates as would be appropriate for accounts prepared in accordance with either section 226A or 226B of the Companies Act 1985.

Part D: Publication of regulatory accounts

10. Unless the Authority otherwise directs, after consulting the licensee, the licensee must, subject to paragraph 12 below, publish its regulatory accounts and the reconciliation provided under paragraph 2, with the exception of the part of such regulatory accounts which shows separately the amounts charged, apportioned or allocated and describes the bases of charge or apportionment or allocation respectively required under paragraph 4(b)(viii), any information provided under paragraph 1(e), and any other information agreed by the Authority in writing to be confidential:
 - (a) as a stand-alone document in accordance with this condition;
 - (b) by 31 July following the end of the financial year to which the accounts relate;
 - (c) on a website used by the licensee in its ordinary course of business (where the regulatory accounts should be reasonably accessible to any person requiring them); and
 - (d) in any other manner which, in the opinion of the licensee, is necessary to secure adequate publicity for the accounts.
11. A copy of the regulatory accounts must be provided free of charge:

- (a) to the Consumer Council no later than the date on which the accounts are published; and
 - (b) to any person requesting a copy.
12. This condition shall not require the publication of any regulatory accounts for the metering business or the meter reading business where publication would or might seriously and prejudicially affect the interests of the licensee, any ultimate controller of the licensee or any subsidiary of any ultimate controller and for this purpose the licensee shall (except in so far as the Authority consents to the licensee not doing so) refer for determination by the Authority any question as to whether any such publication would or might so affect the interests of the licensee or any ultimate controller of the licensee or any subsidiary of any ultimate controller.

Part E: Interpretation

.[N.B. THIS PARAGRAPH SHOULD BE DELETED AS THE RELEVANT SECTIONS OF THE CA 89 ARE NOW IN FULL FORCE. HOWEVER, AS INDICATED ABOVE, OFGEM SHOULD CONSIDER THE SCHEDULE FOR THE COMING INTO FORCE OF THE RELEVANT SECTIONS OF THE COMPANIES ACT 2006 AND THE NEED TO MAKE CHANGES TO THE CROSS REFERENCES AS A RESULT. WHILE IT WILL BE RECALLED THAT STANDARD SPECIAL CONDITION A3 MAKES GENERAL PROVISION FOR THE REENACTMENT OF ACTS OF PARLIAMENT, IT WOULD BE PREFERABLE FOR ALL THE UP-TO-DATE REFERENCES TO BE IN PLACE BASED ON THE EXTENT TO WHICH THE COMPANIES ACT 2006 WILL BE IN FORCE BY 1 APRIL 2008.]

14. 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 either metering or to meter reading and its view on the subject considers it appropriate that references to either the metering business or to the meter reading business should

be deleted for the purpose of this condition then for the purpose of this condition those references shall cease to have effect from the date or dates specified in a notice published by the Authority for that purpose.

15. A consent under paragraph 4, 5, 8 or 12 may be given in relation to some or all of the requirements of the relevant paragraph and subject to such conditions as the Authority considers appropriate or necessary having regard to the purposes of this condition.

16. In this condition:

(a) references to **“de minimis business”** shall include those businesses or activities that fall within the definition of de minimis business within Standard Special Condition A36 (Restriction on Activity and Financial Ring Fencing), and:

- (i) have been allocated or apportioned to this licence; or
- (ii) are businesses or activities undertaken by a relevant associate or relevant associates of the licence holder with either sub-paragraph (i) or sub-paragraph (ii) applying as the context requires.

(b) **“corporate governance statement”** means a statement which describes how the principles of good corporate governance have been applied to the licensee and which includes such information as a quoted company is required to include in a corporate governance statement prepared pursuant to the Combined Code on Corporate Governance issued under the Financial Services Authority’s listing rules and interpretations on corporate governance (the Combined Code) to the extent that the licensee’s corporate governance arrangements comprise those elements required by the Combined Code.

(c) **“directors’ report”** means a report having the coverage and content of the directors’ report which a quoted company is required to prepare pursuant to section 417 of the Companies

Act 2006 (and, for the purposes of this condition, the requirement for a quoted company to prepare such a report is to be taken as a requirement for the licensee to do so whether or not it is a quoted company).

- (d) **“operating and financial review”** means a review having the coverage and content as specified in Part F of this licence condition
- (e) **“quoted company”** has the meaning attributed to it by the Companies Act 1985.
- (f) **“relevant associate”** is as defined in paragraph 4 of Standard Special Condition A36 (Restriction on Activity and Financial Ring Fencing).

Part F: Operating and financial review

Review objective

17. An operating and financial review must be a balanced and comprehensive analysis, consistent with the size and complexity of the business, of -
- (a) the development and performance of the business of the licensee during the financial year;
 - (b) the position of the licensee at the end of the year;
 - (c) the main trends and factors underlying the development, performance and position of the business of the licensee during the financial year, and
 - (d) the main trends and factors which are likely to affect the licensee's future development, performance and position,
- prepared so as to assist the Authority to assess the strategies adopted by the licensee and the potential for those strategies to succeed.

Other general requirements

18. An operating and financial review shall include:
- (a) a statement of the business, objectives and strategies of the licensee;
 - (b) a description of the resources available to the licensee;
 - (c) a description of the principal risks and uncertainties facing the licensee; and
 - (d) a description of the capital structure, treasury policies and objectives and liquidity of the licensee.

Details of particular matters

19. To the extent necessary to comply with the general requirements of paragraphs 18 and 19, the operating and financial review shall comply with paragraphs 21 to 23. If the operating and financial review does not contain information and analysis of each kind mentioned in paragraphs 22 and 23, it must state which of those kinds of information and analysis it does not contain.
20. The operating and financial review shall include:
- (a) information about environmental matters (including the impact of the business of the licensee on the environment);
 - (b) information about the licensee's employees;
 - (c) information about social and community issues; and
 - (d) information about the policies of the licensee in each of these areas mentioned in and information about the extent to which those policies have been successfully implemented.
21. The operating and financial review shall include information about persons with whom the licensee has contractual or other arrangements which are essential to the business of the licensee.

22. The operating and financial review shall include analysis using financial and, where appropriate, other key performance indicators, including information relating to environmental matters and employee matters. For the purposes of this condition, "key performance indicators" means factors by reference to which the development, performance or position of the business of the licensee can be measured effectively.

Reference to and explanation of regulatory accounts

23. To the extent necessary to comply with the general requirements of paragraphs 18 and 19, the operating and financial review shall, where appropriate, include references to, and additional explanations of, amounts included in the licensee's regulatory accounts.

Compliance with standards

24. The operating and financial review –shall:
- (a) state whether it has been prepared in accordance with relevant reporting standards, and
 - (b) contain particulars of, and reasons for, any departure from such standards.

Standard Special Condition A33. Restriction on Use of Certain Information and Independence of the Transportation Business

[N.B. NO CHANGES ARE MARKED ON THE CONSULTATION DRAFT ISSUED BY OFGEM. WE WOULD THEREFORE SEEK CONFIRMATION FROM OFGEM THAT NO CHANGES TO THIS CONDITION ARE PROPOSED.]

1. In this condition, and in Standard Special Condition A34 (Appointment of Compliance Officer):

“confidential information” means information relating to, or derived from, the transportation business which is not published or otherwise legitimately in the public domain;

“relevant generator” means the holder of an electricity generation licence which is an affiliate or related undertaking of the licensee;

“relevant supplier” means the holder of an electricity or gas supply licence which is an affiliate or related undertaking of the licensee;

“relevant shipper” means a gas shipper which is an affiliate or related undertaking of the licensee;

“trading business” means:

- (a) activities connected with the acquisition and disposal of gas or electricity in Great Britain;
- (b) activities connected with the storage of gas at an offshore storage installation or storage cavities in natural strata; or
- (c) activities connected with arranging with a gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that transporter

other than such activities relating to gas or electricity intended for consumption outside Great Britain as designated for the purposes of this condition by the Authority, and in the case of the licensee's trading business only, also excluding:

- (i) such activities in connection with the supply of transportation services; or
- (ii) such activities as it may engage in with a gas shipper or with a person who benefits from an exemption under section 6A of the Act from the prohibition under section 5(1)(c) of the Act;

“meter-related services business” means the activities of the licensee in connection with the provision of meter-related services as defined in paragraph 1A of Standard Special Condition A10 (Provision and Return of Meters); and

“transportation business” shall have the meaning given in Standard Special Condition A3 (Definitions and Interpretation) but for the purposes of this condition shall also include the licensee's metering business other than its meter-related services business.

2. Unless the Authority otherwise consents in writing, the licensee shall put in place and at all times maintain managerial and operational systems which prevent any relevant supplier, relevant shipper, relevant generator, any trading business, its meter-related services business or its meter reading business from having access to confidential information except and to the extent that such information:
 - (a) is made available on an equal basis to any gas or electricity supplier or gas shipper, electricity generator or any meter asset manager (bearing the meaning

of that expression contained in Standard Special Condition A10 (Provision and Return of Meters)); or

- (b) relates to a customer who at the time to which the information relates was a customer of the relevant supplier.
3. The licensee shall at all times manage and operate the transportation business in a way calculated to ensure that it does not restrict, prevent or distort competition in the supply of electricity or gas, the shipping of gas, the generation of electricity, any trading business, or the supply of meter-related services or of meter reading services.
 4. Unless otherwise directed by the Authority, the licensee shall no later than 1 May 2005 have in place a statement (in this condition “the statement”), approved by the Authority, describing the practices, procedures and systems which the licensee has adopted (or intends to adopt) to secure compliance with paragraphs 2 and 3.
 5. Where the Authority does not indicate otherwise within 60 days of receipt of the statement, the statement shall be deemed to be approved by the Authority.
 6. Unless the Authority otherwise consents in writing, the statement shall in particular (but without prejudice to the generality of paragraphs 2 and 3) set out how the licensee shall:
 - (a) maintain the full managerial and operational independence of the transportation business from any relevant supplier, relevant shipper, relevant generator, any trading business, its meter-related services business and its meter reading business;
 - (b) maintain the branding of the transportation business so that it is fully independent from the branding used by any relevant supplier, relevant shipper, relevant generator, any trading business, its meter-related services business or its meter reading business;
 - (c) secure that any arrangements for the use of or access to:
 - (i) premises or parts of premises occupied by persons engaged in, or in respect of, the management or operation of the transportation business;

- (ii) systems for the recording, processing or storage of data to which persons engaged in, or in respect of, the management or operation of the transportation business also have access;
- (iii) equipment, facilities or property employed for the management or operation of the transportation business; or
- (iv) the services of persons who are (whether or not as their principal occupation) engaged in, or in respect of, the management of operation of the transportation business;

by any relevant supplier, relevant shipper, relevant generator, any trading business, its meter-related services business or its meter reading business or by any person engaged in or in respect of the activities of such a relevant supplier, relevant shipper, relevant generator, any trading business, its meter-related services business or its meter reading business shall be such as to prevent any breach of the requirements of those paragraphs; and

- (d) manage the transfer of employees from the transportation business to any relevant supplier, relevant shipper, relevant generator, any trading business, its meter-related services business or its meter reading business.

7. The licensee shall revise the statement prepared in accordance with paragraph 4 where circumstances change such that the statement prepared in accordance with paragraph 4 no longer secures compliance with paragraphs 2 and 3. Such revision of the statement shall only become effective once the Authority has approved the revised statement in accordance with paragraphs 4 or 5.
8. The licensee shall use its best endeavours to ensure compliance with the terms of the statement as from time to time revised and approved by the Authority.
9. The licensee shall publish a copy of the approved statement prepared in accordance with paragraph 4 (or the latest approved version) on its company's website within fifteen working days of its approval by the Authority.

Standard Special Condition A34. Appointment of Compliance Officer

1. The licensee shall ensure, following consultation with the Authority that a competent person (who shall be known as the “**compliance officer**”) shall be appointed for the purpose of facilitating compliance by the licensee with Standard Special Condition A33 (Restriction on Use of Certain Information and Independence of the Transportation Business) and Standard Special Condition A35 (Prohibition of Cross-Subsidies).
2. The licensee shall at all times ensure that the compliance officer is engaged for the performance of such duties and tasks as the licensee considers it appropriate to assign to him for the purpose specified in paragraph 1, which duties and tasks shall include those set out at paragraph 5.
3. The licensee shall procure that the compliance officer:
 - (a) is provided with such staff, premises, equipment, facilities and other resources; and
 - (b) has such access to the licensee’s premises, systems, information and documentationas, in each case, he might reasonably expect to require for the fulfilment of the duties and tasks assigned to him.
4. The licensee shall make available to the compliance officer a copy of any complaint or representation received by it from any person in respect of a matter arising under or by virtue of Standard Special Condition A33 (Restriction on Use of Certain Information and Independence of the Transportation Business).
5. The duties and tasks assigned to the compliance officer shall include:
 - (a) providing relevant advice and information to the licensee for the purpose of ensuring its compliance with relevant duties;
 - (b) monitoring the effectiveness of the practices, procedures and systems adopted by the licensee in accordance with the statement referred to at paragraph 4 of

Standard Special Condition A33 (Restriction on Use of Certain Information and Independence of the Transportation Business);

- (c) advising whether, to the extent that the implementation of such practices, procedures and systems requires the co-operation of any other person, they are designed so as reasonably to admit the required co-operation;
- (d) investigating any complaint or representation made available to him in accordance with paragraph 4;
- (e) recommending and advising upon the remedial action which any such investigation has demonstrated to be necessary or desirable;
- (f) providing relevant advice and information to the licensee for the purpose of ensuring its implementation of:
 - (i) the practices, procedures and systems adopted in accordance with the statement referred to at paragraph 4 of Standard Special Condition A33 (Restriction on Use of Certain Information and Independence of the Transportation Business); and
 - (ii) any remedial action recommended in accordance with sub-paragraph (e); and
- (g) reporting annually to the directors of the licensee – in respect of each year after this condition comes into force – as to his activities during the period covered by the report, including the fulfilment of the other duties and tasks assigned to him by the licensee.

6. As soon as is reasonably practicable following each annual report of the compliance officer, the licensee shall produce a report:

- (a) as to its compliance during the relevant year with the relevant duties; and
- (b) as to its implementation of the practices, procedures and systems adopted in accordance with the statement referred to at paragraph 4 of Standard Special Condition A33 (Restriction on Use of Certain Information and Independence of the Transportation Business).

7. The report produced in accordance with paragraph 6 shall in particular:
 - (a) detail the activities of the compliance officer during the relevant year;
 - (b) refer to such other matters as are or may be appropriate in relation to the implementation of the practices, procedures and systems adopted in accordance with the statement referred to at paragraph 4 of Standard Special Condition A33 (Restriction on Use of Certain Information and Independence of the Transportation Business); and
 - (c) set out the details of any investigations conducted by the compliance officer, including:
 - (i) the number, type and source of the complaints or representations on which such investigations were based;
 - (ii) the outcome of such investigations; and
 - (iii) any remedial action taken by the licensee following such investigations.
8. The licensee shall submit to the Authority a copy of the report produced in accordance with paragraph 6, and shall publish the report on its website.
9. Paragraphs 1 to 8 shall cease to apply if the Authority so directs, and the licensee may apply to the Authority for such a direction at any time.

Standard Special Condition A35. Prohibition of Cross-Subsidies

1. The licensee shall procure that the transportation business shall not give any cross-subsidy to, or receive any cross-subsidy from, any other business of the licensee or of an affiliate or related undertaking of the licensee.
2. In the event that the holder of this licence also owns one or more relevant gas transporters, the licences for which are held in the same legal entity, such that the holder of this licence is:
 - (a) an NTS operator; and/or
 - (b) a DN operator,the licensee acting as either an NTS operator or a DN operator, as the context requires, shall procure that:
 - (i) it shall neither give any cross-subsidy to, or receive any cross-subsidy from, directly or indirectly, a DN operator or any other business operated by the holder of this licence pursuant to any such other gas transporter licence held by the holder of this licence; and/or
 - (ii) it shall neither give any cross-subsidy to, or receive any cross-subsidy from, directly or indirectly, an NTS operator or any other business operated by the holder of this licence pursuant to any such other gas transporter licence held by the holder of this licence.
3. If applicable, where the licensee is a DN operator that operates more than one Distribution Network (as defined in Special Condition E2A (Revenue Restriction Definitions in respect of the Distribution Network)) no such Distribution Network shall be operated in a manner that gives any cross-subsidy to, or receives any cross-subsidy from, any other such Distribution Network.
4. Unless the Authority otherwise consents, the licensee must procure, for each formula year, a report by an appropriate auditor that documents the procedures, and the results

of those procedures, the scope and objectives of which shall have been established by the licensee and approved by the Authority, carried out by the auditor for the purposes of demonstrating the extent to which the licensee has complied with paragraphs 1 and 2 of this condition. The report shall be delivered to the Authority by 31 July following the end of the formula year to which it relates.

[N.B. THESE CHANGES HAVE BEEN SUGGESTED TO MAKE IT CLEAR THAT THE PROCEDURES TO BE CARRIED OUT MUST BE APPROVED BY THE AUTHORITY PRIOR TO THEIR IMPLEMENTATION. HOWEVER, IT IS NOT CLEAR THAT AUTHORITY APPROVAL IS NECESSARY, SINCE, IF THE POLICIES AND PROCEDURES ARE NOT ADEQUATE, THEN THE AUTHORITY CAN INVESTIGATE WHETHER THE OBLIGATION NOT TO PROVIDE/RECEIVE A CROSS-SUBSIDY HAS BEEN BREACHED.]

5 If the Authority is satisfied that the report referred to in paragraph 4 above demonstrates that the licensee has complied with its obligation to avoid discrimination and cross-subsidies pursuant to this condition,, that report shall be deemed to represent the results of an audit of that obligation. **[N.B. THE DIRECTIVE IS ADDRESSED TO MEMBER STATES, NOT LICENSEES. IT HAS BEEN IMPLEMENTED IN THE UK THROUGH THIS LICENCE CONDITION: AS SUCH, THERE IS NO NEED TO REFER TO THE DIRECTIVE HERE.]**

Standard Special Condition A36. Restriction on Activity and Financial Ring Fencing

[N.B. NO CHANGES ARE MARKED ON THE CONSULTATION DRAFT ISSUED BY OFGEM. WE WOULD THEREFORE SEEK CONFIRMATION FROM OFGEM THAT NO CHANGES TO THIS CONDITION ARE PROPOSED.]

1. Save as provided by paragraphs 3 and 4, the licensee shall not conduct any business or carry on any activity other than any business carried on by the licensee for a purpose within sub-paragraphs (a), (b), and (c) of the definition of “**permitted purpose**” in Standard Special Condition A32 (Definition of Permitted Purpose).

2. The licensee shall not without the prior written consent of the Authority hold or acquire shares or other investments of any kind except:
 - (a) shares or other investments in a body corporate the sole activity of which is to carry on business for a permitted purpose;
 - (b) shares or other investments in a body corporate which is a subsidiary of the licensee and incorporated by it solely for the purpose of raising finance for any purpose falling within sub-paragraphs (a), (b) or (c) of the definition of permitted purpose contained in Standard Special Condition A32 (Definition of Permitted Purpose) of this licence and any other licence held by the licensee in the same legal entity; 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) by the UK listing authority (or a successor body) 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**”) from 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 business or activities falling within sub-paragraph (a), (b), or (c) of the definition of “permitted purpose” contained in Standard Special Condition A32 (Definition of Permitted Purpose); 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 neither of the following limitations is exceeded, namely:
 - (i) the aggregate turnover of all the de minimis business carried on by the licensee and the equity share of the aggregate turnover of all the de minimis business carried on by all its relevant associates does not in any period of twelve months commencing on 1 April of any year exceed 2.5 per cent of the aggregate turnover of the transportation 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 regulatory

accounts of the licensee produced under paragraph 3(b) of Standard Special Condition A30 (Regulatory Accounts); and

- (ii) the aggregate amount (determined in accordance with sub-paragraph (d) below) of all investments made by the licensee in de minimis business, carried on by the licensee and all relevant associates, does not at any time after the date at which this condition takes effect in this licence exceed 2.5 per cent of the sum of the share capital in issue, the share premium and the consolidated reserves (including retained earnings) of the licensee as shown by the most recent audited regulatory accounts of the licensee produced under paragraph 3(b) of Standard Special Condition A30 (Regulatory Accounts) then available.
- (c) For the purpose of sub-paragraph (b) above, “**investment**” means any form of financial support or assistance given by or on behalf of the licensee for the de minimis business whether on a temporary or permanent basis and including (without limiting the generality of the foregoing) any commitment to provide any such support or assistance in the future.
- (d) At any relevant time, the amount of an investment shall be the sum of:
 - (i) the value at which such investment was included in the audited historical cost balance sheet of the licensee as at its latest accounting reference date to have occurred prior to 13 December 1999 (or, where the investment was not so included, zero);
 - (ii) the aggregate gross amount of all expenditure (whether of a capital or revenue nature) howsoever incurred by the licensee in respect of such investment in all completed accounting reference periods since such accounting reference date; and
 - (iii) all commitments and liabilities (whether actual or contingent) of the licensee relating to such investment outstanding at the end of the most recently completed accounting reference period,

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 the accounting reference date referred to in sub-paragraph (d)(i).

- 5 For the purposes of paragraph 4, “**equity share**”, in relation to any shareholding, means the nominal value of the equity shares held by the licensee in a relevant associate, as a percentage of the nominal value of the entire issued equity share capital of that relevant associate.

6. Where the holder of this licence owns one or more relevant gas transporters, the licences for which are held in a single legal entity, references in this condition to “**licensee**” shall mean this legal entity.

Standard Special Condition A37. Availability of Resources

1. The licensee shall at all times act in a manner calculated to secure that it has available to itself 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 transportation business of the licensee; and
 - (b) to comply in all respects with its obligations under this licence and such obligations under the Act as apply to those activities authorised by this licence including, without limitation, its duty to develop and maintain an efficient, co-ordinated and economical system of gas transportation.

2. The licensee shall by 31 July of each year submit to the Authority a certificate, approved by a resolution of the board of directors of the licensee and signed by a director of the licensee pursuant to that resolution, in one of the following forms:
 - (a) “After making enquiries, and having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid by the licensee, the directors of the licensee have a reasonable expectation that the licensee will have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the activities authorised by the licence(s) held in accordance with its obligations under the Act and such licence(s) for a period of 12 months from the date of this certificate.”
 - (b) “After making enquiries, and having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid by the licensee, the directors of the licensee have a reasonable expectation, subject to what is explained below, that the licensee will have sufficient financial resources and financial facilities

available to itself to enable the licensee to carry on the activities authorised by the licence(s) held in accordance with its obligations under the Act and such licence(s) 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(s) held in accordance with its obligation under the Act and such licence(s).”

- (c) “In the opinion of the directors of the licensee, the licensee will not have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the activities authorised by the licence(s) held in accordance with its obligation under the Act and such licence(s) for a period of 12 months from the date of this certificate.”

- 3. The licensee shall submit to the Authority with that certificate:
 - (a) a statement of the main factors which the directors of the licensee have taken into account in giving the certificate, together with a confirmation of the availability of financial facilities; and
 - (b) a cashflow forecast, movement in net debt and analysis of net debt.
- 4. The statement submitted to the Authority in accordance with paragraph 3 shall be approved by a resolution of the board of directors of the licensee and must be signed by a director of the licensee pursuant to that resolution.
- 5. 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 most recent certificate given under paragraph 2.
- 6. The licensee shall require that each certificate provided for in paragraph 2 is accompanied by 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 and the cashflow forecast submitted with it

and, on the other hand, any information which they obtained during their audit work on the regulatory accounts of the licensee prepared pursuant to Standard Special Condition A30 (Regulatory Accounts).

7. The directors of the licensee shall not declare or recommend a dividend, and the licensee shall not make any other form of distribution within the meaning of section 263 of the Companies Act 1985, or redeem or repurchase any share capital of the licensee unless prior to the declaration, recommendation or making of the distribution (as the case may be) the licensee has 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 Special Condition A26 (Provision of Information to the Authority), Standard Special Condition A36 (Restriction on Activity and Financial Ring Fencing), Standard Special Condition A37 (Availability of Resources), Standard Condition 45 (Undertaking from Ultimate Controller), Standard Special Condition A38 (Credit Rating of the Licensee) and Standard Special Condition A39 (Indebtedness) of its 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 those obligations in the future.”
- (b) The certificate shall be signed by a director of the licensee and must have been 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 that such payment is made within six months of the issuing of that certificate.

8. NOT USED

9. Where the holder of this licence owns one or more relevant gas transporters, the licences for which are held in a single legal entity, references in this condition to “**licensee**” shall mean this legal entity.

Standard Special Condition A38. Credit Rating of the Licensee

1. The licensee shall take all appropriate steps to ensure that the licensee maintains at all times an investment grade issuer credit rating.

2. In this condition:

“issuer credit rating” means:

- (a) an issuer rating by Standard & Poor’s Ratings Group or any of its subsidiaries;
- (b) an issuer rating by Moody’s Investors Service Inc. or any of its subsidiaries;
- (c) an issuer default rating by Fitch Ratings Ltd or any of its subsidiaries; or
- (d) a rating which, in the opinion of the Authority, notified in writing to the licensee, is equivalent to those referred to in sub-paragraphs (a), (b) or (c) and issued by:
 - (i) any of the credit rating agencies referred to in sub-paragraphs (a), (b) or (c); or
 - (ii) any other reputable credit rating agency which, in the opinion of the Authority, notified in writing to the licensee, has comparable standing in both the United Kingdom and the United States of America.

In relation to any issuer credit rating, **“investment grade”** means:

- (a) unless sub-paragraph (b) below applies:
 - (i) an issuer rating of not less than BBB- by Standard & Poor’s Ratings Group or any of its subsidiaries;
 - (ii) an issuer rating of not less than Baa3 by Moody’s Investors Service Inc. or any of its subsidiaries;

- (iii) an issuer default rating of not less than BBB- by Fitch Ratings Ltd or any of its subsidiaries; or
 - (iv) a rating which, in the opinion of the Authority, notified in writing to the licensee, is equivalent to those referred to in sub-paragraphs (i), (ii) and (iii) and issued by:
 - (aa) any of the credit rating agencies referred to in sub-paragraphs (i), (ii) or (iii); or
 - (bb) any other reputable credit rating agency which, in the opinion of the Authority, notified in writing to the licensee, has comparable standing in both the United Kingdom and the United States of America.
- (b) such higher rating as may be specified by those agencies from time to time as the lowest investment grade credit rating.

3. Where the holder of this licence owns one or more relevant gas transporters, the licences for which are held in a single legal entity, references in this condition to “licensee” shall mean this legal entity.

Standard Special Condition A39. Indebtedness

[N.B. NO CHANGES ARE MARKED ON THE CONSULTATION DRAFT ISSUED BY OFGEM. WE WOULD THEREFORE SEEK CONFIRMATION FROM OFGEM THAT NO CHANGES TO THIS CONDITION ARE PROPOSED.]

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 paragraph 1(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:

(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 paragraph 1(b) save in accordance with paragraph 4, if:
 - (a) the licensee does not hold an investment grade issuer credit rating;
 - (b) where the licensee holds more than one issuer credit rating, one or more of the ratings so held is not investment grade; or
 - (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 is 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 paragraph 1(b), otherwise than by way of:

- (a) payment properly due for any goods, services or assets in relation to commitments entered into prior to 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 paragraph 1(a) 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; and
- (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, of 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 paragraphs 1(a), 1(b), 1(c) or 1(d) 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 owns one or more relevant gas transporters, the licences for which are held in a single legal entity, references in this condition to “licensee” shall mean this legal entity.

Standard Special Condition A40. Price Control Review Information

[N.B. NO CHANGES ARE MARKED ON THE CONSULTATION DRAFT ISSUED BY OFGEM. WE WOULD THEREFORE SEEK CONFIRMATION FROM OFGEM WHAT CHANGES TO THIS CONDITION ARE PROPOSED.]

Part A: Application and purpose

1. The licensee shall be obliged to comply with this condition from the date specified in a notice in writing issued by the Authority (such date not to be a date preceding the date on which this condition becomes effective in respect of the licensee) for the purposes set out in paragraph 2.
2. Those purposes are:
 - (a) to ensure that the licensee (in respect of the pipe-line system to which this licence relates) maintains (and secures that any affiliate or related undertaking of the licensee maintains) such accounting records, other records, and reporting arrangements as are necessary to enable the licensee to prepare price control review information for submission to the Authority in accordance with the requirements of this condition. For the avoidance of doubt, any licensee who is a DN operator and operates one or more Distribution Networks (as defined in Special Condition E1) in a single legal entity, shall be obliged to comply with the requirements of this condition in respect of each Distribution Network and no consolidation or aggregation shall be permitted and all references to “licensee” in this condition shall be construed on this basis;
 - (b) to establish, by a date specified by the Authority pursuant to paragraph 1, a common set of rules which are to apply to the collection and preparation of price control review information for submission to the Authority by the licensee and every other relevant gas transporter (“**the price control review reporting rules**”);and thereby:

- (c) to facilitate any review or modification by the Authority of the requirements of any of the charge restriction conditions of this licence (“**a price control review**”).

Part B: Preparation of price control review information

- 3. Unless and insofar as the Authority otherwise consents, the licensee must:
 - (a) keep or cause to be kept for a period approved by the Authority, but not less than the period referred to in section 222(5)(b) of the Companies Act 1985 and in the manner referred to in that section, such accounting records and other records as are necessary to ensure that the price control review information of, or reasonably attributable to, each of the businesses referred to in paragraph 1 of Standard Special Condition A30, is separately identifiable in the accounting records of the licensee (and of any affiliate or related undertaking of the licensee); and
 - (b) prepare and submit to the Authority, on a consistent basis from such accounting records, price control review information for such aspects of the licensee’s business, and of the business of each affiliate or related undertaking of the licensee that either directly or indirectly provides goods and services to the licensee or forms part of the licensee’s business, either separately or consolidated, and in such manner as may be required under the price control review reporting rules, and in respect of each financial year (save in the financial year in which the date specified by the Authority pursuant to paragraph 1 occurs, for which only the remaining days of that financial year shall apply for the purposes of this paragraph, and where estimates derived by the licensee may be used as appropriate, if the price control review information required is not available on a reasonable endeavours basis).

Part C: Delivery and review of price control review information

- 4. Unless and insofar as the Authority otherwise consents, the licensee must deliver the price control review information to the Authority as soon as is reasonably practicable,

and in any event not later than 31 July following the end of the financial year to which such information relates.

5. The Authority may, in addition to any audit of the regulatory accounts of the licensee carried out in accordance with Standard Special Condition A30 (Regulatory Accounts), review, or arrange for a person nominated by the Authority (“a reviewer”) to review, matters in the price control review information in respect of which the Authority requires clarification.
6. Subject to paragraph 7, the licensee, in relation to the purposes of any review carried out under paragraph 5:
 - (a) shall give the Authority or (as the case may be) the reviewer all such assistance as it or he may reasonably require; and
 - (b) shall (and must procure, insofar as it is able to do so, that any affiliate or related undertaking of the licensee, any person by whom it procures the performance of any obligation under this condition and any auditor of such person, or of the licensee or any affiliate or related undertaking of the licensee, shall) co-operate fully with the Authority or (as the case may be) with the reviewer so as to enable him to carry out and complete his review for the Authority.
7. Where a reviewer has been nominated in accordance with paragraph 5, the licensee’s performance of its obligations under paragraph 6 in relation to the reviewer is conditional on the reviewer’s having entered into an agreement with the licensee to maintain confidentiality on reasonable terms.

Part D: Establishment of the price control review reporting rules

8. The price control review reporting rules shall be the rules of that name, issued by direction of the Authority in accordance with the provisions of paragraph 9 for the purposes of this condition generally, as from time to time modified by the Authority in accordance with the provisions of Part F of this condition, and with which the licensee and every other relevant gas transporter shall be required to comply for the

purposes of collecting and preparing price control review information for submission to the Authority.

9. Before issuing a direction under paragraph 8, the Authority must have:
 - (a) given notice to all relevant gas transporters:
 - (i) stating that it intends to issue the price control review reporting rules,
 - (ii) setting out the contents of those rules and the date on which it is proposed that the direction should take effect, and
 - (iii) specifying the period (not being less than 28 days from the date of the notice) within which representations or objections with respect to those rules may be made;
 - (b) considered any representations or objections which are duly made and not withdrawn; and
 - (c) given reasons for its decision.
10. The licensee shall take all appropriate steps within its power:
 - (a) in conjunction and co-operation with every other relevant gas transporter; and
 - (b) in accordance with a programme of work and an associated timetable established and directed by the Authority in consultation with all relevant gas transporters,

to develop the price control review reporting rules for implementation pursuant to this condition by a date specified by the Authority pursuant to paragraph 1.

Part E: Content of the price control review reporting rules

11. Subject to paragraphs 12 to 15, the price control review reporting rules may, in relation to any requirement of this condition in respect of the price control review information, specify:

- (a) the meaning to be applied to words and phrases (other than those defined in this or any other condition of this licence) used in connection with such information;
- (b) the methodology for calculating or deriving numbers comprising any part of such information;
- (c) requirements as to the form and manner in which such information must be recorded;
- (d) requirements as to the standards of accuracy and reliability with which such information must be recorded;
- (e) requirements as to the form and the content of such information;
- (f) requirements as to the manner in which such information must be provided to the Authority; and
- (g) requirements as to those parts of such information which may fall to be considered by a reviewer and the nature of that consideration;

and (having particular regard to the provisions of section 105 of the Utilities Act 2000) may also specify which (if any) of the information provided under this condition is to be subject to publication by the Authority.

12. The price control review reporting rules may not:

- (a) exceed what is necessary to achieve the purposes of this condition, having regard in particular to the materiality of the costs likely to be incurred by the licensee in complying therewith; or
- (b) purport to have effect with respect to the interpretation of any other condition of this licence or the fulfilment by the licensee of any obligation imposed in respect of any matter which is the subject of any such condition.

Part F: Modification of the price control review reporting rules

13. The Authority may modify, in whole or in part, any price control review reporting rules established in accordance with Part D of this condition, in accordance with the following provisions of this Part F.
14. Subject to paragraph 15, where the Authority considers that it is necessary to modify the price control review reporting rules in order to provide more accurate, consistent, useful or comparable information for the purposes of a price control review, it may do so by issuing a direction to that effect where it:
 - (a) has first given notice to all relevant gas transporters:
 - (i) stating that it proposes to make the modification,
 - (ii) setting out the text of the modification, the purpose and effect of the modification and the date on which it is proposed to come into effect, and
 - (iii) specifying the period (not being less than 28 days from the date of the notice) within which representations or objections with respect to the proposed modification may be made;
 - (b) has considered any representations or objections which are duly made and not withdrawn; and
 - (c) has given reasons for its decisions.

15. Where a modification of the price control review reporting rules relates to the introduction into those rules of a requirement to provide:
- (a) a new category of price control review information; or
 - (b) an existing category of price control review information to a greater level of detail,

and in either case such information has not previously been collected by the licensee (whether under the provisions of the price control review reporting rules or otherwise), it shall not be a breach of that requirement for the licensee to provide estimates in respect of that category, for the year in which the modification is made and for any preceding year, derived from such other information available to the licensee as may be appropriate for that purpose.

Part G: Interpretation

16. A consent under paragraph 3 or 4 may be given in relation to some or all of the requirements of the relevant paragraph and subject to such conditions as the Authority considers appropriate or necessary having regard to the purposes of this condition.
17. For the purposes of this condition:
- “price control review information” means the information required to be submitted by the licensee pursuant to this condition, and is to be interpreted in accordance with the price control review reporting rules.

