



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

**DISTRIBUTION**

**SYSTEM OWNER LICENCE**

**GRANTED TO**

**BORD GÁIS ÉIREANN**

**Consultation Paper**

**CER/08/081**

**/ / 2008**

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**PART I: TERMS OF THE LICENCE**

1. The Commission for Energy Regulation (hereinafter referred to as the "Commission"), in exercise of the powers conferred on it by Section 16(1)(f) of the Gas (Interim) (Regulation) Act, 2002 (hereinafter referred to as the "Act") inserted by Regulation 24 of the European Communities (Internal Market in Natural Gas) (BGÉ) Regulations 2005, and taking account of the requirement in Regulation 11 of the European Communities (Internal Market in Natural Gas) (BGÉ) Regulations, 2005 that an independent subsidiary company of Bord Gáis Éireann be given responsibility for operating the BGÉ transportation system hereby grants to Bord Gáis Éireann and any permitted assignee (hereinafter referred to as the "Licensee"), a licence to own the distribution system as specified in Schedule 1, during the period specified in paragraph 3, subject to the Conditions (hereinafter referred to as the "Conditions") set out in Part II.
2. The Conditions are subject to modification or amendment in accordance with their terms or with Section 16(16)(b) of the Act. The licence hereby granted (hereinafter referred to as "this licence") is further subject to the terms as to revocation specified in Schedule 2.
3. This licence shall come into force on ~~xxxxxx~~ 2008 and, unless revoked in accordance with the provisions of Schedule 2, shall continue in full force and effect until determined by not less than 15 years' notice in writing given by the Commission to the Licensee, with such notice not to be served earlier than the 15<sup>th</sup> anniversary of the date which this licence comes into force.
4. For the purposes of paragraph 1, "permitted assignee" means a person to whom this licence has been assigned in accordance with the Conditions (so far as relevant).

Sealed with the common seal of the Commission for Energy Regulation on ~~xxxxxxx~~ 2008.

Member of Commission

Member of staff of Commission

## **PART II: CONDITIONS OF THE LICENCE**

### **Condition 1: Interpretation and construction**

1. Unless the contrary intention appears:
  - (a) words and expressions used in the Conditions or the Schedules shall be construed as if they were in an enactment and the Interpretation Act 2005 applied to them; and
  - (b) references to an enactment shall include primary and subordinate legislation and in both cases any modification or re-enactment thereof and any successor or replacement legislation thereto after the date when this licence comes into force.
2. Any word or expression defined in the Act for the purposes of any provision of the Act shall, unless the contrary intention appears, have the same meaning when used in the Conditions or in the Schedules.
3. In the Conditions and in the Schedules, unless otherwise specified or the context otherwise requires:

**“Act of 1999”** means the Electricity Regulation Act 1999;

**“affiliate”** in relation to any person means a holding company of such person, any subsidiary of such person or any subsidiary of a holding company of such person;

**“BGÉ transportation system”** means the BGÉ transportation system as defined in the Regulations;

**“code of operations”** means the code of operations required to be prepared by the holder of a natural gas licence pursuant to Section 13(1) of the Act, and approved by the Commission, as from time to time revised, amended, supplemented or replaced with the approval or at the direction of the Commission;

<b>“customer”</b>	should unless otherwise stated, be taken to refer to a final customer as defined in the Act;
<b>“distribution system”</b>	means the system made up of distribution pipelines (as specified by the Commission under the Act);
<b>“Distribution System Operator Business”</b>	means the business (if any) of the Licensee and any affiliate or related undertaking of the Licensee consisting of the operation of a distribution system;
<b>“Distribution System Owner Business”</b>	means the business of the Licensee consisting of the ownership of the distribution system as authorised by this licence and includes its functions in respect of the distribution system under the Regulations and the Operating Agreement;
<b>“Distribution System Standards”</b>	means the document of that name required to be prepared by the Distribution System Operator in accordance with its Licence;
<b>“Emergency Response Provider”</b>	means the person or body designated by the Commission as such;
<b>“Environmental Laws”</b>	means those laws which are from time to time in force, whose purpose is the protection of the environment, which includes, but is not limited to, the protection of human health, flora, fauna and the eco-systems on which they depend, and for the avoidance of doubt shall include but shall not be limited to the Environmental Protection Act 1992, the Waste Management Acts 1996 and 2001, the European Communities (Environmental Impact Assessment) Regulations 1989 to 2006 and all other legislation relating to the protection of air, land and waters;

<b>“Gaslink”</b>	means Gaslink Independent System Operator Limited;
<b>“holding company”</b>	means a holding company within the meaning of Section 155 of the Companies Act 1963;
<b>“levy order”</b>	means an order made under paragraph 16 of the Schedule to the Act of 1999, or under Section 21(1) or Section 22(2) of the Act;
<b>“Licensee”</b>	means Bord Gáis Éireann and its permitted assignees;
<b>“metering equipment”</b>	means meters and associated equipment installed on a distribution or transmission system at points of natural gas custody transfer or for other fiscal purposes and meeting the relevant standards of accuracy set by law and/or any relevant regulatory authority;
<b>“modification”</b>	includes addition, omission, amendment and substitution, and cognate expressions shall be construed accordingly;
<b>“National Gas Emergency Manager”</b>	means the person designated as such under Section 19B of the Act by the Commission in its role as such;
<b>“natural gas emergency”</b>	has the meaning given in Section 19B of the Act;
<b>“Natural Gas Emergency Plan”</b>	means the plan prepared by the Transmission System Operator in accordance with Section 19B of the Act;

<b>“natural gas legislation”</b>	means any legislation applicable to natural gas, including but not limited to the Gas Acts, 1976 to 2002 and the Regulations (as relevant in the context);
<b>“network”</b>	means the totality of transmission and distribution pipelines used for the transmission, distribution and supply of natural gas to, from or within the State;
<b>“Network Emergency Manager”</b>	means the person designated as such by the Commission in its role as such;
<b>"Operating Agreement"</b>	means the agreement of that name as approved by the Commission between the Licensee and Gaslink entered into pursuant to Regulation 8 of the Regulations as from time to time varied or replaced pursuant to Regulation 8A of the Regulations;
<b>“Operating Security Standards”</b>	means the document of that name required to be prepared by the Distribution System Operator in accordance with its Licence;
<b>“Regulation 8 Agreements”</b>	means the Operating Agreement and any other agreements made between the Licensee and Gaslink pursuant to Regulation 8 of the Regulations from time to time as from time to time varied, or replaced pursuant to Regulation 8A of the Regulations;
<b>“Regulations”</b>	means the European Communities (Internal Market in Natural Gas) (BGĖ) Regulations 2005 (S.I. No 760 of 2005) as amended by the European Communities (Internal Market in Natural Gas) (BGĖ) (Amendment) Regulations 2007 (S.I. No 377 of 2007);



<b>“related undertaking”</b>	in relation to any person means any undertaking having a participating interest in that person or any undertaking in which that person has a participating interest as defined in Regulation 35 of the European (Companies: Group Accounts) Regulations 1992 (S.I. No. 201 of 1992);
<b>“relevant safety requirements”</b>	means the requirements relevant to the safe operation of the Distribution System Owner Business;
<b>“Section 2(1) order”</b>	means an order made under Section 2(1) of the Gas (Amendment) Act 1987;
<b>“Separate Business”</b>	means each of the Supply, Storage, Distribution System Operator, Distribution System Owner, Transmission System Operator and Transmission System Owner Businesses taken separately from one another and from any other business of the Licensee, but so that where all or any part of such business is carried on by an affiliate or related undertaking of the Licensee such part of the business as is carried on by that affiliate or related undertaking shall be consolidated with any other such business of the Licensee (and of any other affiliate or related undertaking) so as to form a single Separate Business;
<b>“subsidiary”</b>	means a subsidiary within the meaning of Section 155 of the Companies Act 1963;
<b>“supplier”</b>	means a person licensed to engage in the supply of natural gas (and includes shipping);

<b>“transmission pipeline”</b>	means a natural gas pipeline that operates at or above a pressure of 16 bar gauge;
<b>“transmission system”</b>	means a system made up of transmission pipelines and associated equipment and facilities (as specified by the Commission under the Act) or, as the context may require, the transmission system specified in Schedule 1 of this licence;
<b>"Transmission System Operator"</b>	means the entity licensed to operate the transmission system under Section 16(1)(c) of the Act;
<b>“Transmission System Operator Business”</b>	means the business of the Transmission System Operator consisting of the operation of the transmission system as authorised by its licence under Section 16(1)(c) of the Act;
<b>"Transmission System Owner"</b>	means the Licensee;
<b>“Transmission System Owner Business”</b>	means the business of the Transmission System Owner consisting of the ownership of the transmission system as authorised by this licence and includes its functions as such under the Regulations and the Operating Agreement; and
<b>“Transmission Standards”</b>	<b>System</b> means the document of that name required to be prepared by the Transmission System Operator in accordance with its Licence.

4. Unless otherwise specified:
  - (a) any reference to a numbered Condition or to a numbered Schedule is respectively a reference to the Condition or the Schedule being that number in this licence;
  - (b) any reference to a numbered paragraph is a reference to the paragraph bearing that number in the Condition or Schedule in which the reference occurs; and
  - (c) (without prejudice to any provision which restricts such variation, supplement or replacement) any reference to any agreement, licence (other than this licence), code or other instrument shall include a reference to such agreement, licence, code or other instrument as varied, supplemented or replaced from time to time.
5. The heading or title of any Part, Condition, Schedule or paragraph shall not affect the construction thereof.
6. Where any obligation of the Licensee is expressed to require performance within a specified time limit that obligation shall continue to be binding and enforceable after that time limit if the Licensee fails to perform that obligation within that time limit (but without prejudice to all rights and remedies available against the Licensee by reason of the Licensee's failure to perform within the time limit).
7. The provisions of Section 4 of the Act of 1999 shall apply for the purposes of the delivery or service of any document, direction or notice to be delivered or served pursuant to this licence and directions issued by the Commission pursuant to any Condition shall be delivered or served as aforesaid.
8. Unless otherwise specified, where a Condition requires, or makes provision for or reference to:
  - (a) any communication from or by the Commission to the Licensee (including, without limitation, any notification, direction, approval, consent or agreement to be given by the Commission); or
  - (b) any communication from or by the Licensee to the Commission (including, without limitation, any notification, application or provision of information by the Licensee),such communication shall be in writing.

9. A word importing the singular shall be read as also importing the plural, and a word importing the plural shall be read as also importing the singular.

**Condition 2:        Operating Agreement**

- 1 The Licensee shall at all times have in force and comply with the Operating Agreement which provides for the terms on which each of the Licensee and the Distribution System Operator shall fulfil its functions in respect of the distribution system and which may provide for such other terms as agreed between the Licensee and the Distribution System Operator for the purposes of Regulation 8 of the Regulations.
- 2 The Licensee shall, together with the Distribution System Operator, periodically review (including at the request of the Commission) the Operating Agreement and its implementation.
- 3 The Licensee and the Distribution System Operator may agree to vary the Operating Agreement subject to approval from the Commission in accordance with the Regulations.
- 4 The Licensee shall report annually to the Commission on the operation of the Operating Agreement.
- 5 The Licensee shall comply with any variation of the Operating Agreement, approved by the Commission at the request of either party or as directed by the Commission from time to time.

**Condition 3: General Function**

- 1 The Licensee shall carry out its functions under this licence, in accordance with the Act and the Regulations.
1. The Licensee will make the distribution system available to the Distribution System Operator, and carry out work in relation to the distribution system, in accordance with the Operating Agreement.
2. Subject to the Regulations and the Operating Agreement, the Licensee shall neither direct nor give instructions to the Distribution System Operator in relation to any of the functions conferred on the Distribution System Operator by the Act, the Regulations or the Distribution System Operator's licence.
3. The Licensee shall at all times facilitate the discharge by the Distribution System Operator of its functions, and co-operate with the Distribution System Operator in carrying out its functions under the Act, the Regulations or the Distribution System Operator's licence, in the manner provided for in the Operating Agreement.
4. In accordance with the Regulations and the Regulation 8 Agreement the Licensee shall provide the Distribution System Operator with the resources (including financial resources) and services necessary to enable the Distribution System Operator to fulfil its responsibilities with respect to the operation of the distribution system.

**Condition 4:        Efficient procurement of assets and services**

1. The Licensee shall procure such assets and services as may be necessary, having regard to the Operating Agreement, to enable the Licensee to discharge its obligations in relation to the Distribution System Owner Business under natural gas legislation and this licence.
2. In procuring assets and services pursuant to paragraph 1, the Licensee shall procure assets and services from the most economical sources available to it having regard to the quantity, quality and nature of the assets and services required to enable it to discharge its obligations under natural gas legislation and this licence and to the diversity, number, timeliness of delivery, safety and reliability of such assets and services.
3. This Condition shall not extend to prescribing the manner or circumstances in which the Licensee shall at any time call for the delivery of assets and services under any contract or arrangement entered into pursuant to paragraph 1.
4. Any provision of assets or services by or to the Licensee, for the purposes of discharging its functions under this licence, to or from any affiliate, related undertaking or any Separate Business of the Licensee shall be on arm's length commercial terms.

**Condition 5: Relevant assets**

1. The Licensee shall prepare and maintain a register of relevant assets in a form as specified by the Commission from time to time. The Licensee shall provide the Commission with such a register in such form and at such times as the Commission may specify.
2. The Licensee shall not dispose of any relevant asset if the disposal would adversely affect its ability to discharge its obligations under any natural gas legislation, or the carrying on of activities authorised or required by this licence, and any question arising under this Condition shall be determined by the Commission.
3. The Commission shall issue directions from time to time requiring the Licensee to give prior notification to the Commission and the Distribution System Operator of proposed disposals of relevant assets of a specified description and these directions may include a direction that certain categories of such disposals may not take place until either the Commission has expressly agreed to them or a specified time period has elapsed.
4. In this Condition:

**"disposal"**

includes any sale, assignment, gift, lease, licence, transfer, mortgage, charge, restriction on use (whether physical or legal), or the grant of any other encumbrance or the permitting of any encumbrance to subsist or any other disposition to a third party and **"dispose"** shall be construed accordingly;

**"relevant asset"**

means:

- (a) any material asset for the time being forming part of the distribution system;
- (b) any material asset under construction which may, subject to the approval of the Commission, form part of the distribution system;
- (c) any interconnector which may,



subject to the approval of the Commission, form part of the distribution system;

- (d) any control centre for use in conjunction with the distribution system; and
  - (e) any legal or beneficial interest which can be considered material in land and/or premises upon which any of the foregoing is situated and/or used by the Licensee in the discharge of its functions under this licence; and
  - (f) any equipment which can be considered material used by the Licensee in the discharge of its functions under this licence.
5. Any question arising as to the materiality of relevant assets shall be determined by the Commission for the purposes of this Condition.

**Condition 6: Additional use or disposal of relevant assets**

1. If any or all of the relevant assets are being used or disposed of, or if any or all of the relevant assets are proposed to be used or disposed of, by the Licensee (or any Separate Business of the Licensee) for interests other than or in addition to discharging the functions of its Distribution System Owner's Business, the Licensee shall, as soon as is practicable after the date of issue of this licence, notify the Commission and Distribution System Operator of same and provide the Commission and Distribution System Operator with such information as the Commission requires in relation to such usage or disposal.
2. Where the Commission issues directions from time to time requiring the Licensee to give prior notification to the Commission and Distribution System Operator of proposed additional uses or disposals of relevant assets of a specified description (which directions may include a direction that certain categories of such disposals may not take place until either the Commission has expressly agreed to them or a specified time period has elapsed), the Licensee shall comply with such directions.
3. In this Condition:  

<b>"disposal"</b>	has the meaning given in Condition 5 and <b>"disposed"</b> shall be construed accordingly;
<b>"relevant asset"</b>	Has the meaning given in Condition 5.
4. Any question arising as to the materiality of relevant assets shall be determined by the Commission for the purposes of this Condition.

**Condition 7: Revenue Protection**

1. In respect of the distribution system, the Licensee shall (and shall ensure that its agents) take all reasonable steps to detect and prevent:

- (a) the theft of natural gas;
- (b) damage to any natural gas pipeline, metering equipment and ancillary works;
- (c) interference with any metering equipment; and
- (d) meter fault and meter reading or administrative errors.

2. Where the Licensee has reason to believe that:

- (a) the theft of natural gas is taking place or has taken place;
- (b) there has been interference with the metering equipment, or its associated equipment, to alter its register or prevent it from duly registering the quantity of natural gas supplied or produced; or
- (c) there has been a meter fault or meter reading or administrative error,

the Licensee shall, as soon as reasonably practicable, inform the affected supplier, and (to the extent that it is not already aware of the incident) the Distribution System Operator of the incident in question.

3. In the circumstances described in paragraph 2 of this condition the Licensee shall take such further actions as directed by the Distribution System Operator in accordance with its code of practice for revenue protection.

4. The Licensee shall at such time as the Commission may direct, after this licence has come into force, assist the Distribution System Operator to prepare and submit for approval by the Commission a code of practice for revenue protection and shall comply with the relevant provisions of that code.

5. The Licensee shall comply with the relevant provisions of any code of practice for revenue protection drawn up by any other natural gas undertaking and approved by the Commission, a copy of which is provided to the Licensee by the Commission.

6. In this Condition:

**“code of practice for revenue protection”** means the procedures used to ensure the accurate recording of natural gas consumption and production in addition to the procedures to be followed upon the discovery or suspicion of theft of natural gas;

**“theft of natural gas”** means the dishonest use, causing of waste or diversion of natural gas, within the meaning of Section 15 of the Energy (Miscellaneous Provisions) Act 1995.

**Condition 8:        Distribution System Standards**

1.     The Licensee shall at all times comply with the Distribution System Standards, in so far as these are applicable to the Licensee.
2.     The Licensee shall ensure that the personnel carrying out the activities on behalf of the Distribution System Operator are suitably qualified and experienced.

**Condition 9:        Operating Security Standards**

1.     The Licensee shall at all times comply with the Operating Security Standards in so far as these are applicable to the Licensee.
2.     The Licensee shall assist the Distribution System Operator in complying with Condition 13 (Operating Security Standards) of its licence.
3.     The Licensee shall ensure that the personnel carrying out the activities on behalf of the Distribution System Operator are suitably qualified and experienced.

**Condition 10: National Gas Emergency Plan**

1. The Licensee shall comply with the provisions of the Natural Gas Emergency Plan prepared in accordance with Section 19B of the Act (as amended by the European Communities (Security of Natural Gas Supply) Regulations 2007 (S.I. No. 697 of 2007)) in so far as they are applicable to the Licensee.
2. In the event that a National Gas Emergency Manager has not been designated by the Commission, the Licensee shall, in the event of a natural gas emergency, comply with all directions received from the Network Emergency Manager.

**Condition 11:      Safety Case**

1.    The Licensee shall cooperate with and provide all necessary information and advice to Gaslink for the purpose of the production of the Safety Case required by Condition 15 of the Transmission System Operator Licence.
2.    In discharging all its Owner functions, the Licensee shall at all times adhere to the terms of the Safety Case and shall cooperate fully with Gaslink in any review or report to the Commission on compliance with the safety Case.



**Condition 12:      Interaction with other natural gas undertakings**

1.      Subject to the provisions of Condition 17 (Ring-fencing of Distribution System Owner Business and restriction on use of certain information), the Licensee shall furnish to the Distribution System Operator and such other natural gas undertakings which the Commission may specify from time to time in such manner and at such times as may reasonably be required, such information as may be reasonably required by such undertakings in order to ensure the safe, secure and efficient operation, co-ordinated development and inter-operability of transmission and distribution systems.
2.      The Licensee shall have due regard to the need to ensure the safe, secure and efficient operation, co-ordinated development and inter-operability of transmission and distribution systems in relation to the construction and operation of natural gas pipelines.
3.      Where the National Gas Emergency Manager declares a natural gas emergency the Licensee shall accept and comply with directions from the National Gas Emergency Manager for the duration of the emergency.
4.      Without limitation to paragraphs 1 and 2, where the Licensee receives a report of an actual or suspected natural gas escape it shall communicate such information as soon as possible to a person designated under Section 9 of the 1999 Act, the Emergency Response Provider and the relevant system operator.
5.      In accordance with the Operating Agreement the Licensee will provide the Distribution System Operator with all such information and assistance as is reasonably required by the Distribution System Operator in complying with its Licence.
6.      Any difference or dispute arising between the Licensee and any other natural gas undertaking in connection with this Condition or the matters referred to in this Condition shall be decided by the Commission for the purposes of this Condition, and the Licensee shall comply with any direction given by the Commission regarding its decision, as it sees fit, in respect of the matter in dispute.

**Condition 13: Overall standards of performance of the Distribution System Owner Business**

1. The Licensee shall conduct the Distribution System Owner Business in the manner which it reasonably considers is best to achieve such standards of performance based on the requirements of the Operating Agreement and any other criteria as may be determined by the Commission from time to time and notified to the Distribution System Owner.
2. Such standards of performance shall be determined by the Commission based on performance criteria against which the Distribution System Owner Business should be measured. Such criteria shall be submitted by the Licensee for approval by the Commission and shall be amended as required by the Commission from time to time by notice to the Licensee.
3. The Licensee shall periodically review (including at the request of the Commission) the performance criteria.
4. As soon as possible following any review of the performance criteria, the Licensee shall send the Commission:
  - (a) a report of the outcome of such review; and
  - (b) revisions which it proposes to make to the report setting out performance criteria (having regard to the outcome of the review) for the Commission's approval and following its approval shall then revise the report accordingly.
5. The Licensee shall report annually on the performance of the Transmission System Owner Business against the standards determined under paragraph 1.
6. The performance criteria specified as approved by the Commission, the standards of performance determined by the Commission and the report on performance under paragraph 4 shall be published and made available in the format and manner notified to the Licensee by the Commission from time to time.

**Condition 14: Access to land and/or premises**

1. The Licensee shall provide the Distribution System Operator with access to the Licensee's land and/or premises in accordance with the Operating Agreement to enable the Distribution System Operator to discharge its functions under the Act, the Regulations, the Operating Agreement and the Distribution System Operator's licence.
2. The Licensee shall, in consultation with the Distribution System Operator, no later than three months after this Licence comes into force, prepare in accordance with the Operating Agreement and submit to the Commission for its approval a code of practice setting out the principles and procedures the Licensee will follow in respect of any person acting on its behalf who requires access to land and/or premises.
3. The code of practice shall include procedures calculated to ensure that persons referred to in paragraph 1:
  - (a) are fit and proper persons to undertake the duties in question;
  - (b) possess the skills necessary to perform the required duties;
  - (c) may have their identity or authority readily confirmed by members of the public; and
  - (d) are able to inform persons affected on request of a contact point for help and advice they may require in relation to the distribution of natural gas.
4. The Licensee shall periodically review (including at the request of the Commission) this code of practice and any revision of such code of practice shall be subject to the approval of the Commission.
5. The Licensee shall ensure that it complies with the code of practice or any revision to the code or procedure approved by the Commission.

**Condition 15: Preparation, review of and compliance with codes of practice, etc**

1. This Condition applies to any statement, code of practice or procedure required to be prepared by the Licensee.
2. The Licensee shall prepare at the request of the Commission any statement, code of practice or procedure in addition to those referred to elsewhere in this Licence that the Commission considers appropriate.
3. Where the Commission notifies the Licensee that the Commission considers that a statement, code or procedure is not sufficient for the purposes of meeting the requirements of this licence, the Licensee shall make forthwith such changes as the Commission may require.
4. The Licensee shall, whenever requested to do so by the Commission, review such statement, code or procedure and the manner in which it has been operated, with a view to determining whether any modification should be made to it or to the manner of its operation.
5. The Licensee shall submit any revision of such statement, code or procedure which it wishes to make to the Commission for its approval and, following its approval, shall then revise the statement, code or procedure.
6. The Licensee shall:
  - (a) as soon as practicable following the preparation of any statement, code or procedure or any revision made to it, send to the Commission a copy of such statement, code or procedure or (as the case may be) such revision (in each case in the form approved by the Commission);
  - (b) at least once in each year, draw the attention of those customers or users to whom such statement, code or procedure applies to the existence of the statement, code or procedure and of each substantive revision of it and to the means by which they may inspect a copy of it in its latest form; and
  - (c) publish such statements, codes and procedures and make them available on the Licensee's web-site.
7. No changes may be made to any statement, code or procedure otherwise than in accordance with this Condition.

8. The Licensee shall, so far as reasonably practicable, comply with such arrangements as are contained in or described by any statement, code or procedure to which this Condition applies and approved by the Commission or any revision to such statement, code or procedure approved by the Commission.
9. The Licensee may seek from the Commission a derogation relieving the Licensee of its obligations under part (c) of paragraph 6 for reasons of confidentiality or such other reasons as the Commission considers appropriate.

**Condition 16:      Records and reporting**

1.      The Licensee shall keep such records as the Commission may specify from time to time.
2.      The Licensee shall, as required by the Commission in writing from time to time, provide to the Commission the records prepared in accordance with this condition.
3.      The Licensee shall, in accordance with the Operating Agreement, provide such information to the Distribution System Operator as the Distribution System Operator requires to fulfil its Licence obligations.
4.      The Licensee shall, in accordance with the Operating Agreement, provide such assistance to the Distribution System Operator as the Distribution System Operator requires to fulfil its reporting requirements as required by its Licence.
5.      The Licensee shall ensure, in so far as reasonably practicable, the accuracy and reliability of any systems, equipment, data and procedures which the Licensee uses, or is reasonably required to use, to measure or track the provision of any service authorised by, or provided pursuant to, this Licence and for the calculation of related charges.

**Condition 17: Ring-fencing of the Distribution System Owner Business and restriction on use of certain information**

1. The Licensee shall designate a division to exercise the functions of the Distribution System Owner Business.
2. The Licensee shall establish and shall thereafter maintain the full managerial and operational independence of the Distribution System Owner Business from each other business of the Licensee and of its affiliates and related undertakings.
3. Subject to paragraph 4, the Licensee shall ensure that no information relating to, or derived from, the Distribution System Owner Business is disclosed for the benefit of, or used for the purposes of, any other Separate Business.
4. Paragraph 3 shall not apply in so far as:
  - (a) the Commission so consents;
  - (b) the Licensee is expressly permitted or required to disclose that information under the terms of any agreement or arrangement (including any code of operations) with the relevant person to whose affairs such information relates;
  - (c) the information is in the public domain (otherwise than in consequence of a contravention of any Condition of this licence);
  - (d) the information has been published or is to be disclosed:
    - (i) pursuant to any Condition of this licence; or
    - (ii) in compliance with any requirement imposed on the Licensee by or under any natural gas legislation or any other requirement of law;
    - (iii) pursuant to the Operating Agreement; or
  - (e) the information is disclosed pursuant to any judicial or other arbitral process or tribunal of competent jurisdiction.
5. Except in so far as the Commission consents to the Licensee not doing so, the Licensee shall take all steps necessary to ensure compliance with paragraph 2 and all necessary precautions against the risk of failure to comply with paragraph 3 including:

- (a) restrictions on the communication of information to persons engaged in any other Separate Business;
- (b) restrictions on use of or access to (for any purpose whatsoever) any assets of the Distribution System Owner, or recorded information relating to the Distribution System Owner Business, by persons engaged in any other Separate Business, and for the purposes of this paragraph, “asset” shall include (without limitation) any information systems, software, hardware, electronic systems, equipment, materials, resources, intellectual property, telephone numbers or lines, mobile telephones, email systems or addresses, websites or computer services;
- (c) not without the prior approval of the Commission engaging in any capacity whatsoever in the Distribution System Owner Business any person who has worked in any other Separate Business at any time during the previous three months; and
- (d) the prevention (so far as the Licensee can require it) of any person who has ceased to be engaged in the Distribution System Owner Business from being engaged in any other Separate Business until the expiry of three months since he or she ceased to be engaged in the Distribution System Owner Business.

6. Without prejudice to paragraph 5:

- (a) the Licensee shall ensure that, except in so far as the Commission consents, no person engaged in any other Separate Business shall have use of or access to (for any purposes whatsoever) any premises used by the Distribution System Owner Business;
- (b) the Licensee shall procure that, except in so far as the Commission consents, no employee, officer, agent or consultant of the Distribution System Owner Business solicits information from, or discloses or uses information obtained from, any Separate Business where such information may confer a competitive advantage on the Distribution System Owner Business, unless the information is made available to competing undertakings on comparable terms;
- (c) the Licensee shall ensure that, except in so far as the Commission consents, the Distribution System Owner Business



shall not market its services or products in conjunction with any other Separate Business.

7. The Licensee shall no later than three months after this Licence has come into force prepare and publish a statement in a form approved by the Commission setting out the practices, procedures and systems which the Licensee has adopted (or intends to adopt) to ensure its compliance with the obligations set out in this Condition.
8. The Licensee may periodically revise the information set out in and, with the approval of the Commission, alter the form of the statement prepared in accordance with paragraph 7 and shall, at least once in every year during which this Licence is in force, review such statement in order that the information set out therein shall continue to be accurate in all material respects.
9. The Licensee shall send a copy of the statement prepared in accordance with paragraph 7, and of each revision of such statement in accordance with paragraph 8, to the Commission.
10. The Licensee shall provide the Commission with any information or access to information the Commission may deem necessary in relation to the ring-fencing of the Distribution System Owner Business.
11. The Licensee shall (and shall procure that its affiliates and related undertakings shall) comply with any directions as may from time to time be issued by the Commission requiring the Licensee (or its affiliates and related undertakings) to take such steps or desist from such action as the Commission considers appropriate to secure compliance with this Condition.
12. The Licensee may seek from the Commission derogation from any requirements of this condition that would impede the integration of the Distribution System Owner Business with the Distribution System Owner Business.

**Condition 18: Compliance Officer**

1. If so directed by the Commission, the Licensee shall, with the prior approval of the Commission, appoint a competent person (hereafter referred to as “the Compliance Officer”) for the purpose of facilitating compliance by the Licensee with the relevant duties.
2. The role of the Compliance Officer shall be to facilitate compliance by the Licensee with the relevant duties.
3. The Licensee shall procure that the Compliance Officer shall report exclusively to the General Manager and the board of directors of the Licensee on compliance matters.
4. The Licensee shall procure that the Compliance Officer shall hold the position for a minimum period of two years unless otherwise approved by the Commission.
5. 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 its premises, systems, information and documentation,as the Compliance Officer might reasonably expect to require for the fulfilment of the duties and tasks assigned.
6. 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 the relevant duties;
  - (b) recommending and establishing practices, procedures and systems to ensure the Licensee’s compliance with the relevant duties;
  - (c) monitoring the effectiveness of the practices, procedures and systems adopted by the Licensee to ensure its compliance with the relevant duties;
  - (d) investigating any complaint or representation made available to him in accordance with paragraph 7;

- (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 effective implementation of:
    - (i) the practices, procedures and systems adopted by the Licensee to ensure its compliance with the relevant duties;
    - (ii) any remedial action recommended in accordance with sub-paragraph (d); and
  - (g) reporting annually to the board of directors of the Licensee in respect of each year after this Condition comes into force as to the Compliance Officer's activities and the Licensee's compliance with the relevant duties during the period covered by the report.
7. 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 the relevant duties.
8. 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 (which shall include a copy of the report of the Compliance Officer in accordance with paragraph 6(g)); and
  - (b) as to its implementation of the practices, procedures and systems adopted to ensure such compliance.
9. The report produced in accordance with paragraph 8 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 to ensure compliance with the relevant duties; 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.
- 10. The Licensee shall submit to the Commission:
  - (a) a copy of the report produced in accordance with paragraph 8; and
  - (b) a version of the report produced in accordance with paragraph 8 from which commercially sensitive information has been excised and which is fit for publication by the Commission, and shall give or send a copy of that version of the report to any person who requests such a copy.
- 11. Subject to the approval of the Commission the Compliance Officer may simultaneously hold any other role as the Licensee may request.
- 12. In this Condition:
  - “relevant duties”** means:
    - (a) the Licensee’s obligations and duties under this licence; and
    - (b) any other obligation or duty under the Act notified to the Licensee by the Commission for the purposes of this Condition.

**Condition 19: Regulatory accounts**

1. The Licensee shall maintain appropriate accounting records for the Distribution System Owner Business in such a manner as notified by the Commission from time to time.
2. In the event that the Licensee engages in separate businesses the Commission may attach terms and conditions in relation to this Condition.

**Condition 20: Prohibition of cross-subsidies**

1. The Licensee shall ensure that the Distribution System Owner Business does not give any direct or indirect cross-subsidy to, or receive any direct or indirect cross-subsidy from, any other business or part of a business of the Licensee or of any affiliate or related undertaking of the Licensee (whether or not another Separate Business).
2. Where the Commission is satisfied that cross-subsidisation of the type described in paragraph 1 is taking place or has taken place, the Licensee shall take such steps, as directed by the Commission, as are necessary to ensure compliance with paragraph 1.
3. Nothing which the Licensee is required to do or not do pursuant to this licence or any other natural gas licence shall be regarded as a cross-subsidy for the purposes of this Condition.
4. Any question arising as to:
  - (a) what constitutes a cross-subsidy; or
  - (b) what constitutes a business or part of a businessfor the purposes of this Condition shall be determined by the Commission.

**Condition 21:      Duty of non-discrimination**

1.      In carrying on the Distribution System Owner Business the Licensee shall not discriminate unfairly between persons or classes of persons, or between system users or classes of system users, particularly in favour of the Separate Businesses, its subsidiaries, associated or affiliated undertakings, joint ventures or shareholders.
2.      Any question arising under paragraph 1 as to whether or not the Licensee has discriminated unfairly shall be determined by the Commission.

**Condition 22:      Payment of levy**

1.    The Licensee shall pay to the Commission any amounts specified in, or determined under, a levy order, in accordance with the provisions of such levy order.



**Condition 23: Provision of information to the Commission**

1. The Licensee shall procure and furnish to the Commission, in such form and manner and at such times as the Commission may require, such information (including information that will assist the Commission in the preparation of a natural gas capacity statement under Section 19 of the Act), and shall procure and furnish to it such reports, as the Commission may consider necessary or relevant in the light of the Conditions or as it may require in the performance of its duties or the functions under the Act or assigned or transferred to it by the Act and any other relevant legislation.
2. Without prejudice to the generality of paragraph 1, the Commission may call for the furnishing of accounting information which is more extensive than, or differs from, that required to be prepared and supplied to the Commission under Condition 16 (Regulatory accounts).
3. The power of the Commission to call for information under paragraph 1 is without prejudice to the power of the Commission to call for information under or pursuant to any other Condition of this licence or under or pursuant to the Act or any other enactment.
4. In this Condition "**information**" shall include any documents, records, accounts, estimates, returns or reports (whether or not prepared specifically at the request of the Commission) of any description, whether oral or written, and in any format specified by the Commission.
5. The Licensee shall publish information (save for confidential information) in such form and manner and at such times as the Commission may require.
6. Any question arising as to what constitutes confidential information for the purposes of this Condition shall be determined by the Commission.
7. In relation to the Licensee's relevant safety requirements the Licensee shall report in such manner, form and frequency as requested by the Commission.

**Condition 24: Codes of operations**

1. In accordance with the Operating Agreement, the Licensee shall assist the Distribution System Operator in fulfilling its obligation to prepare and publish the Code of Operations for the Distribution System Operator Business so as to comply with any directions given to it by the Commission under Section 13(3) of the Act.
2. Save to the extent specified in directions given by the Commission for the purposes of this Condition, the Licensee shall comply with the provisions of all the codes of operations (whether its own or belonging to another holder of a natural gas licence), insofar as applicable to the Distribution System Operator Business.

**Condition 25: Prohibition of anti-competitive behaviour**

1. In carrying on the Distribution System Owner Business, the Licensee shall not prevent, restrict or distort competition to any appreciable extent in any market relating to the supply, production, distribution, transmission or storage of natural gas.
2. In carrying on the Distribution System Owner Business, the Licensee shall not abuse any dominant position it may have.
3. Any question arising as to what constitutes an appreciable extent for the purposes of paragraph 1 shall be determined by the Commission.
4. Any question arising as to whether the Licensee holds a dominant position for the purposes of paragraph 2 shall be determined by the Commission.

**Condition 26: Environment**

1. The Licensee shall, not later than such date as the Commission may specify and in consultation with the Commission, prepare and from time to time modify a written policy setting out the manner in which the Licensee proposes to comply with:
  - (a) its duties and obligations under all applicable European Union and Irish Environmental Laws; and
  - (b) any direction issued to it for the purposes of this Condition by the Commission or any appropriate body designated by the Commission for these purposes.
2. The Licensee shall report to the Commission on its environmental performance in such form and at such times as the Commission may specify.
3. The written policy in accordance with paragraph 1 shall be of such form and detail as decided by the Commission.

**Condition 27: Assignment of licence and transfer of Distribution System Owner Business**

1. The Licensee shall not, without the prior consent of the Commission, assign this licence to another person (the “**assignee**”).
2. The Licensee shall not, without the prior consent of the Commission, transfer to another person (the “**transferee**”) all or part of its Distribution System Owner’s Business.
3. Any consent of the Commission to assignment of this licence shall be subject to the Commission being satisfied that the assignee will be a fit and proper person to hold this licence, and may be subject to compliance by the Licensee or assignee with any conditions imposed by the Commission, including the modification of this licence where deemed necessary by the Commission.
4. Any consent of the Commission to a transfer of all or part of its Distribution System Owner’s Business may be subject to the transferee being granted or holding a natural gas licence to operate one or more transmission pipelines and may be subject to compliance by the Licensee or transferee with any conditions imposed by the Commission, including the modification of this licence where deemed necessary by the Commission.
5. Nothing in this Condition shall prevent the Licensee transferring all or part of its Distribution System Owner’s Business to an assignee where the Commission has consented to the assignment provided that such transfer is effected as soon as practicable after such consent has been given.

**Condition 28:      Change in control of Licensee**

1.     The Licensee shall, as soon as practicable following its becoming aware of the relevant circumstances, notify the Commission of any change in control of the Licensee.
2.     For the purposes of this Condition there is a change in control of the Licensee whenever a person gains control of the Licensee who did not have control of the Licensee when this licence was granted.

**SCHEDULE 1:      Licence information**

1. The BGÉ transportation system as shall include additional pipelines for which the Distribution System Operator has been issued a Section 2(1) Order or a consent under Section 39A of the Gas Act, 1976, other than pipelines which the Licensee is authorised to own and/or operate under a separate natural gas licence.
2. The extent to which this licence shall apply to pipelines other than those specified in paragraph 1 shall be subject to an agreement between the Licensee and the Distribution System Operator as approved by the Commission.
3. Subject to paragraphs 1 and 2 the distribution system shall consist of all pipelines that are designed to operate below a pressure of 16 bar gauge and operated by the Distribution System Operator.

**SCHEDULE 2: Right of Commission to revoke the licence**

1. The Commission may at any time revoke this licence by not less than 30 days' notice in writing to the Licensee:
  - (a) if the Licensee agrees in writing with the Commission that this licence should be revoked;
  - (b) if any amount payable under a levy order is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Commission has given the Licensee notice in writing that the payment is overdue, provided that no such notice shall be given earlier than the 16th day after the day on which the amount payable became due;
  - (c) if the Licensee fails to comply with a direction under Section 16 of the Act, a direction under Section 24 of the Act of 1999, a determination under Section 25 of the Act of 1999 or an order under Section 26 of the Act of 1999 and (in respect of any of these cases) such failure is not rectified to the satisfaction of the Commission within such period as the Commission may determine, after the Commission has given notice of such failure to the Licensee, provided that in respect of a direction under Section 24 of the Act of 1999, no such notice shall be given by the Commission before the expiration of the period within which representations or objections under Section 24 of the Act of 1999 could be made questioning a direction under Section 24 of the Act of 1999 or before the proceedings relating to any such representations or objections are finally determined;
  - (d) if the Licensee fails to comply with any order made by the Minister under Section 21 of the Act;
  - (e) if the Licensee is, has been, or is likely to be in breach of a relevant safety requirement and the Commission is satisfied that, as a result, the Licensee is no longer a fit and proper person to hold this licence;
  - (f) if the Licensee:
    - (i) is unable to pay its debts (within the meaning of Section 214 of the Companies Act, 1963) or if it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within



such period as may previously have been approved in writing by the Commission); or

- (ii) has a receiver or an examiner within the meaning of Section 1 of the Companies (Amendment) Act, 1990, of the whole or any material part of its assets or undertaking appointed; or
  - (iii) passes any resolution for winding up other than a resolution previously approved in writing by the Commission; or
  - (iv) becomes subject to an order for winding up by a court of competent jurisdiction; or
  - (v) is dissolved, declared bankrupt or being of unsound mind;
- (g) if:
- (i) there is a change in the control of the Licensee for the purposes of Condition 35 (Change in control of Licensee); and
  - (ii) the Commission is satisfied that, as a result of that change in control, the new shareholder does not have adequate technical, financial or managerial strength, taking into account the size of its shareholding in the Licensee; and
  - (iii) the Commission serves notice on the Licensee stating that the Commission proposes to revoke this licence in pursuance of this paragraph unless such further change in control of the Licensee as is specified in the notice takes place within the period of two months beginning with the date of service of the notice; and
  - (iv) that further change does not take place within that period; or
- (h) if the Licensee fails to notify the Commission of a change in control of the Licensee as required by Condition 23 (Change in control of Licensee).

2. For the purposes of paragraph 1(f)(i) of this Schedule, Section 214 of the Companies Act, 1963 shall have effect as if for "€1,269.74" there was substituted "€65,000" or such higher figure as the Commission may from time to time determine by notice in writing to the Licensee.