



Isle of Man
Government

Keilley Ellan Vannin

DATED

24 April

2015

OFFICE OF FAIR TRADING

and

TREASURY

and

DEPARTMENT OF ECONOMIC DEVELOPMENT

and

MANX GAS LIMITED

AGREEMENT FOR THE
REGULATION OF THE GAS MARKET IN THE ISLE OF MAN

IN COMMERCIAL CONFIDENCE

TABLE OF CONTENTS

1. DEFINITIONS AND INTERPRETATION	1
2. COMMENCEMENT AND DURATION	4
3. MANX GAS OBLIGATIONS.....	4
4. OFT OBLIGATIONS	5
5. TREASURY OBLIGATIONS.....	5
6. DED OBLIGATIONS	5
7. PARTY REPRESENTATIVES	5
8. CHANGE PROCESS PROCEDURE	6
9. OPEN BOOK CALCULATION.....	6
10. TRADEMARKS AND TRADE NAMES	6
11. COMPLIANCE.....	6
12. CONFIDENTIALITY AND NON-DISCLOSURE	7
13. ASSIGNMENT AND NOVATION	8
14. REPRESENTATIONS AND WARRANTIES	8
15. TERMINATION.....	9
16. SURVIVAL	10
17. DISPUTE RESOLUTION.....	10
18. FORCE MAJEURE.....	11
19. BRIBERY	12
20. MODIFIED ASSET VALUE	13
21. NOTICES.....	13
22. NON WAIVER	14
23. WHOLE AGREEMENT.....	14
24. INDEPENDENT CONTRACTORS	14
25. COUNTERPARTS	15
26. SEVERABILITY	15
27. THIRD PARTY RIGHTS	15
28. GOVERNING LAW	15

SCHEDULES

- SCHEDULE 1 – CHANGE CONTROL PROCEDURE
- SCHEDULE 2 – REQUIRED INFORMATION AND TIMETABLE
- SCHEDULE 3 – COST OF CAPITAL MODEL
- SCHEDULE 4 – CALCULATION OF RETURN

AGREEMENT FOR THE REGULATION OF THE GAS MARKET IN THE ISLE OF MAN

DATED 24 April 2015

PARTIES

- (1) The **Office of Fair Trading** (a statutory board of Tynwald) of Lord Street, Douglas, Isle of Man, IM1 1LE (the "**OFT**"); and
- (2) The **Treasury** (a department of the Isle of Man Government) of Government Offices, Bucks Road, Douglas, Isle of Man, IM1 3PZ (the "**Treasury**"); and
- (3) The **Department of Economic Development** (a department of the Isle of Man Government) of St George's Court, Upper Church Street, Douglas, Isle of Man, IM1 1EX (the "**DED**"); and
- (4) **Manx Gas Limited** (a company registered in the Isle of Man with company registration number 000721V) whose registered office is situate at Murdoch House, South Quay, Douglas, Isle of Man, IM1 5PA ("**Manx Gas**").

RECITALS

- (A) Manx Gas is currently the sole retail provider of gas in the Isle of Man (the "**Island**").
- (B) The OFT undertook investigations under section 19 and 19A of the Fair Trading Act 1996 into the prices charged for gas in the Island which raised the question of the potential for regulation of the gas market.
- (C) The Council of Ministers ("**Council**") has authorised both the OFT and the Treasury to negotiate with Manx Gas a voluntary regulatory regime for gas supplies and this Agreement sets out the details agreed between the parties hereto with reference to this voluntary regulatory regime.

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

The following expressions shall have the meanings set opposite them below and cognate expressions shall bear corresponding meanings:

"Actual Cost"

means the actual cost incurred by Manx Gas in providing domestic and commercial gas and associated services in the Isle of Man. Those costs shall be net of all discounts, rebates and taxes which can be recovered by Manx Gas which actual cost is to be ascertained on an open book basis in accordance with sub-Clauses 9.1 to 9.3;

"Agreement"

means this agreement and all schedules and appendices hereto;

"Calculation"

means the calculation of ROCE further described by the Calculation of Return document attached at Schedule 4 to this Agreement;

"Change Process Procedure"

means the change process procedure set out in Schedule 1 to this Agreement;

"Confidential Information"

means the, all financial, commercial, technical, operational, organisational, staff, legal, management and other information, data and know-how relating, respectively, to the disclosing Party including details of the disclosing Party's products, assets, networks and data-networks, stakeholders, customers, suppliers and employees which may be supplied orally or in writing or in any other form by the disclosing Party. Save that this Agreement but excluding the Schedules hereto (which contain commercially sensitive information) shall not be treated as Confidential Information and may be disclosed upon execution by the Parties;

"Contract Documents"

means this Agreement, any Change Process amendments entered into in accordance with the Change Process Procedure and any other documents that may be agreed between the Parties from time to time;

"Control"

means the power (directly or indirectly) whether by holding of securities, voting control, contract or otherwise, to appoint or remove a majority of the directors of a company and includes the power to appoint or remove a majority of the directors of a company if exercisable through any number of intermediate bodies corporate prior to its possible exercise over the company in question;

"Gas Distribution Network"

means the system of gas supply developed from time to time by Manx Gas Limited pursuant to its duty as a public gas supplier under section 1 of the Gas Regulation Act 1995.

"Intellectual Property Rights"

means any rights subsisting in any patent, petty patent, trade mark, service mark, design right, registered or unregistered design including any applications for the foregoing, present and future copyrights, moral rights,

databases, know-how and other trade secret rights, rights of confidence, trade or business names and other industrial or intellectual property rights subsisting anywhere in the world;

"Net Promoter Score System"

means an index ranging from -100 to 100 that measures the willingness of customers to recommend a company's product or services to others. It is used as a proxy for gauging the customer's overall satisfaction with a company's product or service and the customer's loyalty to the brand;

"Parties"

means the OFT, the Treasury, the DED and Manx Gas and "Party" means any one or more of them as appropriate;

"Prices"

means Standing Charges and Tariffs collectively;

"Required Information"

means that information listed in Schedule 2 to this Agreement which is to be provided by Manx Gas to the OFT at the periods stated;

"ROCE"

means Return On Capital Employed utilising the Cost of Capital model described at Schedule 3;

"RPI or Retail Price Index"

means the Isle of Man General Index of Retail Prices;

"Standing Charges"

means the fixed element of a gas price, applied by Manx Gas to cover the fixed costs of operating and maintaining the Gas Distribution Network;

"Tariff"

means the variable element of the price charged to a consumer, a per unit charge on the volume of gas consumed by a consumer;

"Term"

has the meaning given to it in Clause 2 (COMMENCEMENT AND DURATION) of this Agreement;

"Third Party Material"

means any data, content, software or other materials in respect of which Manx Gas does not own all of the worldwide Intellectual Property Rights; and

"Timetable"

means the timetable set out in Schedule 2 to this Agreement.

1.2. Interpretation

This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The clause headings in this Agreement are for reference purposes only and shall not be used in the interpretation thereof.
- (b) Expressions which denote any reference to one gender shall include the other and any reference to the singular includes the plural and vice versa.
- (c) References to a "person" shall be construed as including references to an individual, firm, company, corporation, partnership, association, unincorporated body of persons, trust, a state or any governmental authority or any other entity whether acting in an individual, financing or other capacity and to such person's permitted successors.
- (d) References to a "business day" shall mean any day which is not a Saturday or a Sunday or any public holiday or bank holiday recognised in the Isle of Man.
- (e) References to clause(s), schedule(s) or appendix/appendices shall refer to clauses, schedules or the appendices of and to this Agreement.
- (f) All references to this Agreement shall include references to all Schedules and Appendices to this Agreement which Schedules and Appendices shall form an integral part of this Agreement.
- (g) An expression defined in this Agreement shall bear the same meaning in the Appendices.

2. COMMENCEMENT AND DURATION

This Agreement shall be effective from and including the 1st day of January 2015 and shall continue until it is terminated in accordance with Clause 15 (TERMINATION) of this Agreement (the "**Term**").

3. MANX GAS OBLIGATIONS

Manx Gas hereby agrees to:

- 3.1. set Prices at a level intended to achieve an annual ROCE set at nine point nine nine percent (9.99%) such percentage having been set in accordance with the cost of capital model (and associated category descriptions) attached at Schedule 3 to this agreement. The ROCE calculations are to be performed in accordance with the Calculation methodology attached at Schedule 4 to this agreement;

- 3.2. provide written notice (the "**Notice**") to the OFT not less than eight (8) weeks prior to any change in the Tariff or Standing Charges. The Notice must contain an explanation of the way in which the change in Tariff or Standing Charge will ensure that Manx Gas complies with its obligation under sub-Clause 3.1 of this Agreement together with such information as the OFT shall reasonably require to validate the calculations used by Manx Gas;
- 3.3. have regard to any representations that the OFT may make in respect of any Notice served pursuant to sub-Clause 3.2 of this Agreement within a period of not less than four (4) weeks from the date of the said Notice;
- 3.4. use its reasonable endeavours to purchase gas in a manner which provides a balance between best price and the need for stable prices over an annual buying cycle;
- 3.5. use its reasonable endeavours to operate its business with appropriate standards of customer service which will be measured using the Net Promoter Score System or such other system as may be agreed between the OFT and Manx Gas;
- 3.6. provide the Required Information within the timescales set out in the Timetable.

4. OFT OBLIGATIONS

The OFT hereby agrees that during the Term (but excluding the period of any notice given by any party) pursuant to clause 15 of this Agreement the OFT will not:

- 4.1. seek to bring into force any legislation to regulate or control prices within the gas market; and
- 4.2. undertake any investigation into gas prices pursuant to section 19 of the Fair Trading Act 1996.

5. TREASURY OBLIGATIONS

The Treasury hereby agrees that during the Term pursuant to clause 15 of this Agreement (but excluding the period of any notice given by any party) the Treasury will not seek to bring into force legislation to regulate or control prices within the gas market.

6. DED OBLIGATIONS

The DED hereby agrees that during the Term pursuant to clause 15 of this Agreement (but excluding the period of any notice given by any party) the DED will not seek to bring into force any legislation to regulate or control prices within the gas market.

7. PARTY REPRESENTATIVES

- 7.1. Throughout the Term, the Parties shall each nominate and maintain a representative as the single point of contact between the Parties. Such a representative may be changed by the Party appointing him or her by giving written notice to the other Parties. The representatives shall meet as regularly as may be agreed between the Parties.

- 7.2. Throughout the Term the Parties shall attend such meetings at such frequency and location as the OFT shall reasonably require.

8. CHANGE PROCESS PROCEDURE

From time to time during the Term, any of the parties may propose changes in or additions to aspects of this Agreement. The Parties shall follow the Change Process Procedure in respect of all such changes unless otherwise agreed in writing between the Parties.

9. OPEN BOOK CALCULATION

9.1. Open book recording of costs

Manx Gas will keep detailed records of the Actual Cost incurred on an "open book" basis, i.e. on the basis that the records of Actual Cost are maintained in a properly auditable manner and are made available on a strictly confidential basis to the OFT, or the Treasury whenever reasonably required for the purposes of verification in connection with Clause 3 (MANX GAS OBLIGATIONS) of this Agreement.

9.2. Required Information

Manx Gas will provide the OFT and Treasury with the Required Information together with any additional information reasonably requested.

9.3. Objection to Actual Cost

The OFT or the Treasury may (acting reasonably) object to any Actual Cost incurred by Manx Gas on the basis that the cost has not been correctly calculated or properly incurred. In the event of any objection, the OFT and/or Treasury (whichever has objected) and Manx Gas will seek to agree the amount of the Actual Cost and will, if considered appropriate, meet to discuss any differences between them. Any failure to reach agreement regarding the Actual Cost will be resolved in accordance with Clause 17 (DISPUTE RESOLUTION) of this Agreement.

10. TRADEMARKS AND TRADE NAMES

- 10.1. Manx Gas may not, without the prior written consent of the OFT, the Treasury and DED use the names, service marks, trademarks, logos or other corporate identifications of any Isle of Man Government department, statutory board or other Isle of Man Government body.

- 10.2. The OFT, the Treasury and DED may not, without the prior written consent of Manx Gas, use the names, service marks, trademarks, logos or other corporate identifications of Manx Gas.

11. COMPLIANCE

The Parties shall, in the performance of their obligations under the Contract Documents, comply with all applicable statutes, regulations and orders and, in particular, shall comply

with the requirements of the Official Secrets Acts (an Act of Parliament) as they are extended and applied to the Isle of Man by Order in Council and the Data Protection Act 2002 and all regulations and orders made thereunder and the Isle of Man Government policies on confidentiality and security and shall obtain and maintain in force all applicable notifications and licences under such legislation.

12. CONFIDENTIALITY AND NON-DISCLOSURE

- 12.1. For the purpose of this Clause 12 (CONFIDENTIALITY AND NON-DISCLOSURE) of this agreement "**receiving party**" shall mean each of the Parties receiving the other's Confidential Information and "**disclosing party**" shall mean that Party disclosing its Confidential Information to the other(s).
- 12.2. The receiving party may disclose Confidential Information of the disclosing party only to its officers and employees which for the avoidance of doubt shall include: (i) in the case of the OFT, Treasury and DED ("the Government Bodies") the employees, Ministers, Department Members, Board Members, contractors and temporary staff of each or any of the Government Bodies; and (ii) in the case of Manx Gas the contractors and temporary staff of Manx Gas but then only such officers and employees to whom such disclosure is reasonably necessary, provided that such officers and employees agree in writing or through their contracts of employment or of appointment as the case may be to be bound by the terms and conditions of this Clause 12 (CONFIDENTIALITY AND NON-DISCLOSURE) of this Agreement prior to such disclosure.
- 12.3. The receiving party agrees:
- (a) not to disclose Confidential Information of the disclosing party to any third party for any reason or purpose whatsoever without the prior written consent of the disclosing party, save in accordance with the provisions of this Clause 12 (CONFIDENTIALITY AND NON-DISCLOSURE) of this Agreement;
 - (b) not to utilise, employ, exploit or in any other manner whatsoever use Confidential Information of the disclosing party for any purpose whatsoever other than strictly in relation to this Agreement; and
 - (c) that the unauthorised or unlawful use or disclosure of Confidential Information of the disclosing party may cause irreparable loss, harm and damage to the disclosing party.
- 12.4. The receiving party agrees to protect the Confidential Information by using at least the same standard of care used to safeguard its own information of a confidential nature and by taking all reasonable steps to prevent any unauthorised disclosure of Confidential Information of the disclosing party.
- 12.5. The obligations of the receiving party pursuant to this Clause 12 (CONFIDENTIALITY AND NON-DISCLOSURE) of this Agreement shall not apply to any information that is:

- (a) known to or in the possession of the receiving party prior to disclosure thereof by the disclosing party from another source and which the disclosing party is otherwise free to disclose;
- (b) or becomes publicly known, otherwise than pursuant to a breach of this Agreement by the receiving party;
- (c) acquired or developed independently of the disclosing party by the receiving party in circumstances that do not amount to a breach of the provisions of this Agreement;
- (d) disclosed by the receiving party to satisfy the order of a court in the Island or another country or to comply with provisions of any law or regulation in force from time to time, provided that in these circumstances, the receiving party shall, where legally permissible, advise the disclosing party in writing prior to such disclosure to enable the disclosing party to take whatever steps it deems necessary to protect its interest in this regard: Provided further that the receiving party will disclose only that portion of the information which it is legally required to disclose and the receiving party will use its reasonable endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances; or
- (e) disclosed to a third party pursuant to the prior written authorisation from the disclosing party.

13. ASSIGNMENT AND NOVATION

The Parties may not assign or novate this Agreement or any part of it **SAVE** that any Party may with the prior written consent of the other Parties such consent not to be unreasonably withheld or delayed assign the benefit of this Agreement in its entirety to an assignee first approved by the other Parties and any of the other Parties may in giving such approval require the provision of such references as may be reasonably necessary to ensure the assignee's ability to comply with the assigning Parties' obligations under this Agreement.

14. REPRESENTATIONS AND WARRANTIES

14.1. Manx Gas represents and warrants that:

- (a) it is a corporation validly organised and existing under the laws of the jurisdiction in which it is registered;
- (b) it has full power and authority under its constitutional documents and the laws of the jurisdiction in which it is registered to execute and deliver this Agreement and to perform its obligations hereunder;
- (c) it has by proper action duly authorised the execution and delivery of this Agreement and when validly executed and delivered this Agreement shall constitute a legal, valid and binding agreement of Manx Gas enforceable in accordance with its terms; and

- (d) the execution and delivery of the Agreement and the consummation of the transaction herein contemplated does not conflict in any material respect with or constitute a material breach or material default under its constitutional documents or under the terms and conditions of any documents, agreements or other writings to which it is a party.

14.2. The OFT, Treasury and the DED each warrant:

- (a) they each have full power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
- (b) they each have by proper action duly authorised the execution and delivery of this Agreement and when validly executed and delivered this Agreement shall constitute a legal, valid and binding agreement of the OFT, Treasury and DED enforceable in accordance with its terms; and
- (c) the execution and delivery of the Agreement and the consummation of the transaction herein contemplated does not conflict in any material respect with or constitute a material breach or material default under the terms and conditions of any documents, agreements or other writings to which it is a party

15. TERMINATION

This Agreement may be terminated under the provisions of sub-Clause 15.1 or if there shall be a Manx Gas Event of Default pursuant to sub-Clauses 15.2 to 15.3 as follows:

15.1. After the expiry of four (4) years from and including the 1st January 2015, any Party may terminate this Agreement at any time thereafter by giving six (6) months' notice in writing to the other Parties and at the expiration of such notice period the Agreement will be terminated between all Parties.

15.2. All of the following shall be a "**Manx Gas Event of Default**":

- (a) any compromise or attempt to compromise the debts owing by Manx Gas to its creditors generally;
- (b) an order placing Manx Gas under judicial management or for its final or provisional liquidation is granted or the proposing of any resolution for voluntary winding-up, other than for reasons of a bona fide restructuring;
- (c) any material breach of any term of this Agreement (whether such a breach has occurred to be determined in accordance with the Dispute Resolution Process at paragraph 17 below) which is not thereafter remedied to the OFT's reasonable satisfaction within thirty (30) days of receipt of written notice from the OFT requiring Manx Gas to do so.

15.3. If Manx Gas commits a Manx Gas Event of Default during the Term the OFT, Treasury and DED (the "Terminating Parties") may serve notice (the "Notice") on Manx Gas terminating this Agreement immediately or within such further period,

not exceeding thirty (30) days, as the Terminating Parties may provide for in the Notice

16. SURVIVAL

The following Clauses of this Agreement shall survive the termination of this Agreement for whatsoever reason:

- (a) Clause 1 – Definitions and Interpretation;
- (b) Clause 8 – Change Process Procedure;
- (c) Clause 10 – Trademarks and Trade Names;
- (d) Clause 11 – Compliance;
- (e) Clause 12 – Confidentiality and Non-Disclosure;
- (f) Clause 17 – Dispute Resolution;
- (g) Clause 20 – Notices;
- (h) Clause 27 – Third Party Rights; and
- (i) Clause 28 – Governing Law.

17. DISPUTE RESOLUTION

- 17.1. Should any dispute, disagreement or claim arise between any Parties (hereinafter referred to as the "**dispute**") concerning the Contract Documents or the interpretation of this Agreement or its termination, the relevant Parties shall attempt to resolve the dispute by negotiation. In such event and as and when the dispute arises, one Party may invite the other(s) in writing to meet and to attempt to resolve the dispute within fourteen (14) calendar days from the date of the written invitation.
- 17.2. Should the procedure as described in sub-Clause 17.1 above fail and the dispute remains unresolved within fourteen (14) calendar days of the date of either Party's written invitation to meet pursuant to sub-Clause 17.1 above, then in such event the matter shall be referred to Manx Gas's Managing Director and the OFT's Chief Officer, the Treasury's Financial Controller and the DED's Chief Executive (or other suitable senior executives) and a meeting shall take place between such persons with a view to resolving the dispute. Each of the relevant Parties shall use their best endeavours to arrange such a meeting within seven (7) calendar days after the expiry of the aforementioned fourteen (14) day period.
- 17.3. Should the procedure as described in sub-Clause 17.2 above fail or should for any reason the dispute remain unresolved after the period of seven (7) calendar days after the said written invitation, the Parties may agree as follows:
- (a) If the dispute arises in connection with this Agreement with respect to any matter within the expertise of a technical expert:

- i. such dispute, at the instance of either Party may be referred to an expert agreed between the relevant Parties;
 - ii. if the relevant Parties are unable to agree on a technical expert within twenty-one (21) calendar days of any Party serving details of a suggested expert on the other(s), any Party shall then be entitled to request the President of the Law Society to choose a new expert who has not already been rejected by the parties;
 - iii. the expert would be required to prepare a written decision and give notice (including a copy) of the decision to the relevant Parties within a maximum of three (3) months of the matter being referred to the expert; and
 - iv. the relevant Parties would be entitled to make submissions to the expert including oral submissions and will provide (or procure that others provide) the expert with such assistance and documents as the expert reasonably requires for the purpose of reaching a decision.
- (b) In case of any other dispute the Parties agree to submit the dispute for determination to the President of the Isle of Man Law Society who shall determine the dispute or nominate such person to determine as he or she thinks fit.

17.4. Where the Parties do not agree to arbitration, the dispute shall be resolved in accordance with Clause 28 (GOVERNING LAW) below.

17.5. Each Party shall bear its own costs in respect of dispute resolution and arbitration save that where arbitration takes place, the arbitrator may order otherwise.

18. FORCE MAJEURE

18.1. Notwithstanding any other provisions of this Agreement, if due performance of this Agreement by a Party is affected in whole or in part by reason of any event, omission, accident or other matter beyond the reasonable control of the Party claiming the benefit of this Clause 18 (FORCE MAJEURE), the Party claiming the benefit of this Clause 18 (FORCE MAJEURE) shall give prompt notice to the other Party and thereafter shall be under no liability for any loss, damage, injury or expense of whatever kind and howsoever caused, suffered by the other Party to the extent due to the said event, omission, accident or other matter. The Party claiming the benefit of this Clause 18 (FORCE MAJEURE) shall use all reasonable efforts to avoid or overcome the causes affecting performance as soon as it able to do so. The force majeure events shall not include events, omissions, accidents or other matters caused by the act, neglect or omission of the Party claiming the benefit of this Clause 18 (FORCE MAJEURE) or its representatives, employees, partners or agents. Furthermore, for the purposes of this Clause 18 (FORCE MAJEURE), force majeure events shall include but not be limited to an act of God, war, fire, flood, explosion, failure of public utilities or civil commotion, or other circumstances beyond a Party's reasonable control.

- 18.2. The Party otherwise in default shall take and continue to take all reasonable steps to circumvent and mitigate the effect of such event and to reduce any delay in the performance of such obligation.
- 18.3. If performance of the obligations under this Agreement is substantially prevented for a continuous period of two (2) months by virtue of a force majeure event referred to in sub-Clause 18.1, then either Party may terminate this Agreement with immediate effect by written notice.

19. BRIBERY

- 19.1. The Parties warrant that they have not offered or given, or agreed to give, to any employee, agent, servant or representative of Manx Gas, the OFT, the Treasury or the DED (or of any other Isle of Man Government department, statutory board or other Isle of Man Government body) any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Agreement or any other agreement with Manx Gas, the OFT, the Treasury and the DED, or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any such agreement. Attention is drawn to the criminal offences under the Bribery Act 2013 and the Parties' obligations thereunder, including as described in the guidelines issued by the Department of Home Affairs (a department of the Isle of Man Government).
- 19.2. Where Manx Gas or their employees, servants, , agents or anyone acting on their behalf, has breached sub-Clause 19.1 above or is convicted of any offence whatsoever under the Bribery Act 2013 (or equivalent legislation elsewhere including the Bribery Act 2010 (of Parliament)), the OFT, the Treasury and the DED shall have the right to:
- (a) terminate this Agreement and, as appropriate, recover from the offending party the amount of any loss suffered by the affected party resulting from the termination; and
 - (b) recover in full from the offending party any other loss sustained by the affected party in consequence of any breach of this Clause 19 (BRIBERY), whether or not this Agreement has been terminated.
- 19.3. Where OFT or the Treasury or the DED or their employees, servants, , agents or anyone acting on their behalf, have breached sub-Clause 19.1 above or are convicted of any offence whatsoever under the Bribery Act 2013 (or equivalent legislation elsewhere including the Bribery Act 2010 (of Parliament)), Manx Gas shall have the right to:
- (a) terminate this Agreement and, as appropriate, recover from the offending party the amount of any loss suffered by the affected party resulting from the termination; and

- (b) recover in full from the offending party any other loss sustained by the affected party in consequence of any breach of this Clause 19 (BRIBERY), whether or not this Agreement has been terminated.

20. MODIFIED ASSET VALUE

The Parties hereby agree that this Agreement has zero monetary value and cannot be included in the modified asset value (MAV).

21. NOTICES

21.1. Any notice or other communication to be given under this Agreement shall be in writing, in English and signed by or on behalf of the Party giving it (or its representative) and shall be delivered by hand, sent by prepaid recorded delivery or registered post to the address, given in sub-Clause 21.2 below (or such other address as the receiving Party has specified to the sending Party on at least ten (10) business days' notice).

21.2. The addresses and numbers of the Parties for the purposes of sub-Clause 21.1 are:

(a) The OFT:

Address: Government Building,
Lord Street,
Douglas,
IM1 1LE

Tel: 01624 686500

Attention: Mike Ball (Chief Officer)

(b) The Treasury:

Address: Government Offices,
Bucks Road,
Douglas,
IM1 3PZ

Tel: 01624 685666

Attention: Caldric Randall (Treasury Financial Controller)

(c) The DED:

Address: St George's Court,
Upper Church Street,
Douglas,
IM1 1EX

Tel: 01624 685572

Attention: Chris Corlett (Chief Executive)

(d) Manx Gas:

Address: Murdoch House,
South Quay,
Douglas,
IM1 5PA

Tel: 01624 644434

Attention: Tony Nicholls (Managing Director)
cc: Callin Wild Advocates attn. Jonathan Wild

21.3. Any notice or other communication given or made under this Agreement shall, in the absence of earlier receipt, be deemed to have been received as follows:

- (a) if delivered by hand, at the time of actual delivery; or
- (b) if posted, on the second clear business day or following the day on which it was dispatched by pre-paid post.

provided that a notice given in accordance with the above but received on a day which is not a business day, or after normal business hours in the place of receipt, shall be deemed to have been received on the next business day at the commencement of normal business hours in the place of receipt.

22. NON WAIVER

No waiver or abandonment by any Party of any of its rights imposed by this Agreement or the other Contract Documents, shall be binding on that Party, unless such waiver or abandonment is in writing and signed by the waiving Party, and any such waiver or abandonment shall be effective only in the specific instance and for the purpose given. Subject to the foregoing sentence, any failure or delay by any Party hereto in exercising any right, power or privilege hereunder shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

23. WHOLE AGREEMENT

This Agreement constitutes the whole and entire agreement between the Parties with regard to the subject matter hereof and there has not been and there are no agreements, representations or warranties between the Parties other than those specifically set forth in those documents.

24. INDEPENDENT CONTRACTORS

The Parties shall act as independent contractors for all purposes under this Agreement. Nothing contained herein shall be deemed to constitute any Party as an agent or representative of any other Party, or the Parties as joint venturers or partners for any purpose. Save as expressly stated herein to the contrary, no Party shall be responsible for the acts or omissions of any other Party, and no Party will have authority to speak for,

represent or obligate the other Party in any way without the prior written approval of all the other Parties.

25. COUNTERPARTS

This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart of this Agreement shall constitute an original of the relevant document, but together the counterparts shall constitute one document.

26. SEVERABILITY

If any provision of this Agreement shall be held illegal or unenforceable, such provision shall be deemed separate and divisible from and shall in no way affect or impair the validity or enforceability of, the remaining provisions.

27. THIRD PARTY RIGHTS

Unless otherwise expressly provided, this Agreement does not, by virtue of the Contracts (Rights of Third Parties) Act 2001 or otherwise, confer any rights or benefits on any person or class of persons existing now or in the future, who is not a party to this Agreement except that a Party's assignee or successor will be deemed to be a Party to this Agreement. In any event, this Agreement may be varied or rescinded by agreement of the Parties without the consent of any third parties.

28. GOVERNING LAW

This Agreement will be governed and construed in accordance with the laws of the Isle of Man and each Party irrevocably agrees to submit to the non-exclusive jurisdiction of the Manx courts.

AS WITNESS the hands of the Parties or their duly authorised representatives on the date first stated above.

SCHEDULE 1

CHANGE PROCESS PROCEDURE

1. PRINCIPLES

- 1.1 Where a Party perceives a need to change the terms of this Agreement, any of the Parties may at any time request, such change in accordance with the following Change Process Procedure.
- 1.2 All Parties shall conduct discussions relating to proposed changes in good faith and shall in all matters relating to a change or a proposed change (including without limitation in respect of the specification for the change itself) at all times act reasonably. The Parties shall not unreasonably withhold their agreement to any requested change.
- 1.3 Until such time as a change is agreed in accordance with the Change Process Procedure, the terms of this Agreement shall continue to apply as if the request or recommendation had not been made.
- 1.4 Any discussions which may take place between the Parties in connection with a request or recommendation before an agreement is reached to a resultant change to this Agreement shall be treated as being held on a subject to contract basis.

2. PROCEDURES

- 2.1 All Parties shall respond to any request from another party to change the Agreement terms as soon as possible and in any event within ten (10) working days of the request to do so.
- 2.2 If agreement is reached in relation to a proposed change Manx Gas will prepare a change process note for signature by the Parties.

3. FURTHER PROCEDURE

Once a change process note has been entered into, it shall constitute a binding agreement between the Parties and this Agreement shall then be regarded as incorporating the provisions of such change process note.

4. ALTERNATIVE TO FORMAL CHANGE PROCESS PROCEDURE

The provisions of this Schedule 1 are without prejudice to the ability of the Parties to agree to changes to this Agreement in another manner provided always that such agreement is recorded in writing.

SCHEDULE 2
REQUIRED INFORMATION AND TIMETABLE

INFORMATION	PERIOD	DUE DATE (in each year of the Term)
Audited Statutory Accounts	Annual	30 th June
Report with calculation of annualised ROCE and sufficient supporting information to enable validation of the calculations	Annual	31 st January
Management accounts	Quarterly	30 th April 31 st July 31 st October 31 st January
Details of committed forward gas purchase & prices	Quarterly	30 th April 31 st July 31 st October 31 st January
Projected and actual sales of gas by type	Quarterly	30 th April 31 st July 31 st October 31 st January
Asset management plan covering future capital and operating expenditure	Annual	To accompany statutory accounts
Customer service report through net promoter score	Annual	30 th April

SCHEDULE 3
COST OF CAPITAL MODEL

Cost of Capital Parameters			
Parameter	Lower bound	Central case	Upper bound
Real risk free rate	2.0%		2.5%
Inflation	2.5%		3.5%
Nominal risk free rate	4.5%		6.1%
Debt premium	2.9%		2.9%
Cost of debt	7.5%	8.2%	9.0%
Equity risk premium	5.3%		6.1%
Equity beta	0.7		1.3
Small company premium	0.8%		1.5%
Cost of equity	9.1%	12.4%	15.8%
Gearing	50.0%	50.0%	50.0%
Cost of capital	8.3%	10.3%	12.4%
Manx Gas Voluntary Reduction		-0.31%	
Agreed Target ROCE W.E.F. 01/01/15		9.99%	

Following negotiations with the OFT and Treasury, Manx Gas agreed to accept a 0.31% reduction from the mid-point of the acceptable return on capital employed (ROCE) range.

The intention of the parties is that Agreed Target ROCE will be reviewed at 5 yearly intervals.

DEFINITIONS

Agreed Target ROCE: The rate calculated in accordance with the above table; 9.99% WEF 01/01/15.

Risk Free Rate: The rate required by investors when there is no risk of financial loss.

Inflation: The Isle of Man retail prices index (RPI).

Nominal Risk Free Rate: The sum of the risk free rate plus inflation.

Debt Premium: The actual interest rate payable on existing debt.

Cost of Debt: The sum of the risk free rate plus the debt premium.

Equity Risk Premium: The additional expected return required (above the risk free rate) in order for shareholders to invest.

Equity Beta: The asset beta adjusted upwards to take account of the additional risks faced by a geared firm.

Small Company Premium: Small companies can be considered a higher risk than larger companies, sometimes requiring a greater return for investors.

Cost of Equity: The sum of the risk free rate and the small company premium, plus the equity beta, multiplied by the equity risk premium.

Gearing: The extent to which a company is funded by debt.

Cost of Capital: A weighted average cost of debt and equity.

SCHEDULE 4

CALCULATION OF RETURN

INTRODUCTION

This Schedule provides an overview of the calculations used to determine the operating profits of Manx Gas under the Agreement. The application of the defined items herein is modelled in and should be considered in conjunction with the supporting Excel File. This profit calculation is to be used once per annum, based upon the audited accounts forwarded to the OFT under Schedule 2 of the Agreement. It also forms the basis, using actual figures, the revisions to the standing charges and tariffs; and their validation.

DEFINITIONS

A (Adjustment)

This figure is calculated by dividing V_n by three.

EBIT Actual (Earnings Before Interest and Tax)

This figure is calculated annually based on Manx Gas's audited annual accounts for the most recently completed fiscal year. It is the operating profit of the company before interest and tax and does not take into account, any unrealised gains or losses in respect of any derivative transactions and any gains or losses on the disposal or revaluation of assets deriving from all elements of its gas supply business. It therefore excludes profits arising through any non-gas supply related business.

EBIT Adjusted

This figure is calculated as EBIT Actual minus any over or under earning recovered or repaid, respectively, during the most recently completed fiscal year.

EBIT Target

This figure is calculated annually and reflects the level of operating profits which should have been generated to achieve the Agreed Target $ROCE_n$ against the MAV_n outlined in the Agreement.

$$EBIT\ Target_n = MAV_n * ROCE_n$$

Excel File

This refers to the excel file entitled "IEG – Manx Regulation – Schedule 4.xls".

MAV (Modified Asset Value)

This figure is calculated annually based on Manx Gas's audited annual accounts for the most recently completed fiscal year. It is the net book value of the assets which are deployed in

the gas supply business only. It therefore excludes the value of assets employed in any non-gas supply related business.

$$MAV_n = \text{Fixed Assets}_n + (\text{Current Assets}_n - \text{Current Liabilities}_n)$$

ROCE (Return On Capital Employed)

The ROCE is equal to the target $ROCE_n$, in a given fiscal year, as set out in the Agreement.

V (Variance)

This figure is calculated annually and is equal to the difference between $EBIT\ Target_n$ and $EBIT\ Adjusted_n$. The following determines the amount that needs to be recovered or repaid in order for Manx Gas to achieve the Agreed Target $ROCE_n$.

- If V_n is positive, $EBIT\ Target_n$ is greater than $EBIT\ Adjusted_n$ and would result in Manx Gas recovering the variance through increasing the standing charge.
- If V_n is negative, $EBIT\ Target_n$ is less than $EBIT\ Adjusted_n$ and would result in Manx Gas repaying the variance through reducing the standing charge.

UNDER AND OVER RECOVERY

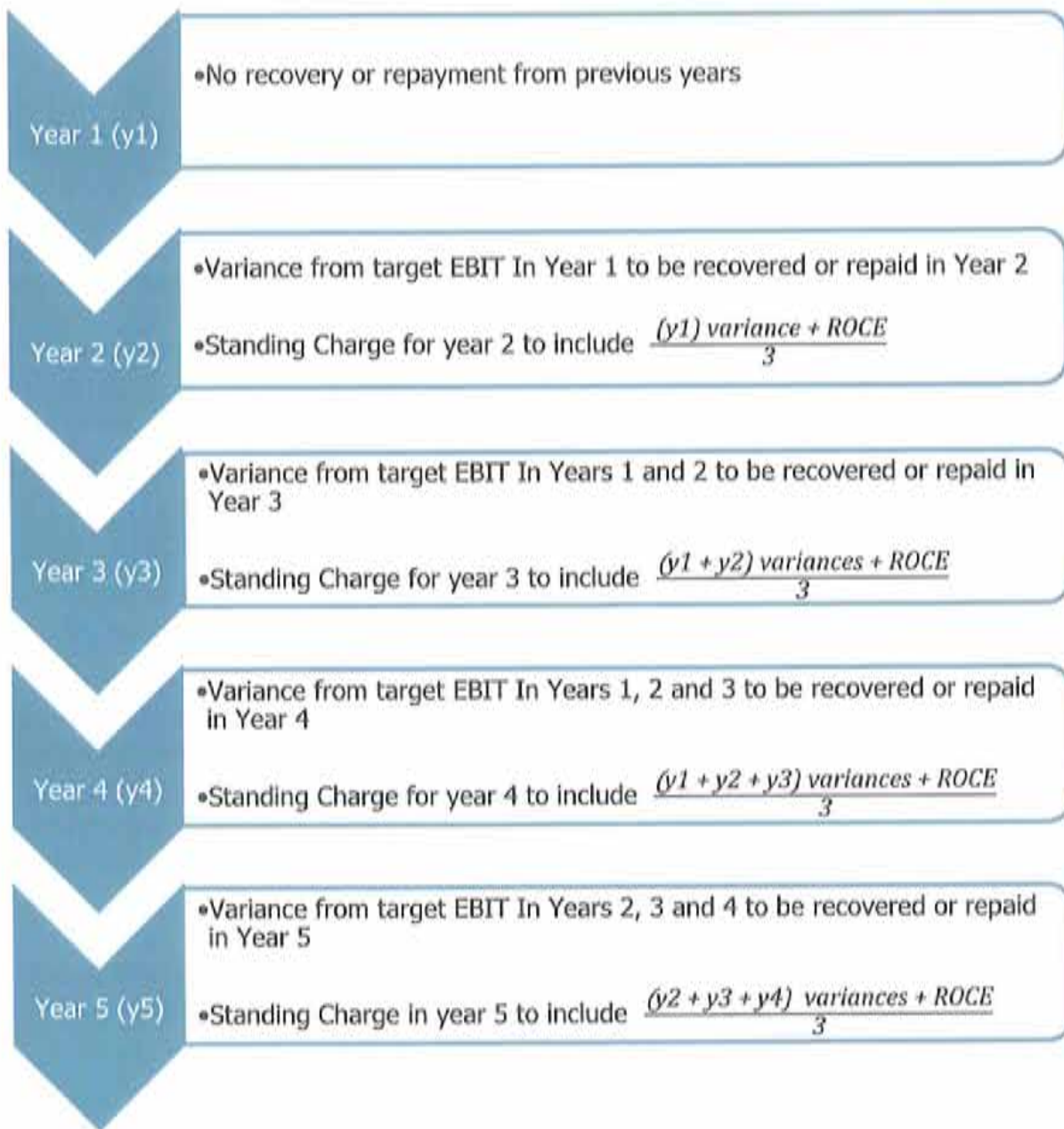
Whilst the aim in setting tariffs is to always achieve a level of operating profits which is equal to the $EBIT\ Target$, the reality is that there are many variables outside of Manx Gas's control (notably international market prices for gas and sales levels, which are weather influenced) which will have an impact on actual performance. It necessarily follows that in any fiscal year Manx Gas will be at, above or below the $ROCE_n$ set out in the Agreement and, as such, $EBIT\ Adjusted$ may not be equal to $EBIT\ Target$. This paragraph deals with the under and over recovery mechanism in the Agreement.

In order to (i) reduce the risk of fluctuating tariffs and charges and (ii) to provide market stability, V_n is recovered equally over the next three years by adjusting the Standing Charges by the variance.


This variance is allocated across Manx Gas's customer base. The variance bears interest at the Target ROCE for the year in which it is calculated and is not adjusted for inflation. The interest element is to account for either consumers or Manx Gas having overpaid in a particular year. The above process is repeated each fiscal year, with further adjustments to correct profitability to keep in line with the Agreement.

The variance is created in period 1. In period 2, one third of the variance from period 1 will be repaid at the agreed ROCE rate of interest. In period 3, one third of the variance from period 1 will be repaid at the agreed ROCE rate of interest, but compounded by 2. In period 4, one third of the variance from period 1 will be repaid at the agreed ROCE rate of interest, but compounded by 3. The compounding reflects the forgone use of that income to the

consumer or Manx Gas, for a period of 3 years in total. This calculation will be repeated going forward for subsequent period variances.



SIGNED on behalf of the OFT by an authorised signatory for the Office of Fair Trading in the presence of:-


:

Witness Signature: Kolobovsk : Print name: MICHAEL JOHN BALL

Witness Full Name: KATY LAUREN COLLIER : Position: CHIEF OFFICER

Witness Address: OFFICE OF FAIR TRADING :

LORD STREET, DOUGLAS, ISLE OF MAN :

Witness Occupation: CIVIL SERVANT :

SIGNED on behalf of the Treasury by the Minister or a person duly authorised by the Minister for Treasury in the presence of:-


:

Witness Signature: Nickla : Print name: MALCOLM COLCH

Witness Full Name: NICKLA MAENING : Position: CHIEF FINANCIAL OFFICER

Witness Address: THE TREASURY, GOVERNMENT :

OFFICE, DOUGLAS, ISLE OF MAN, IM1-3PU :

Witness Occupation: Civil Servant :

SIGNED on behalf of the DED by the Minister or a person duly authorised by the Minister for Economic Development in the presence of:-


:

Witness Signature: MAH : Print name: C.L. CORLETT


Witness Full Name: ZAHED AHMED MAH : Position: CEO

Witness Address: OFFICE OF FAIR TRADING :

LORD STREET, DOUGLAS, ISLE OF MAN, IM2 1LE :

Witness Occupation: CIVIL SERVANT :

SIGNED by Manx Gas
acting by:-



:
Director
: *Print name:* A R NICHOLLS



:
Director/Company Secretary
: *Print name:*
ROBERT S. GARDNER