

**DATED**

*12<sup>th</sup> October*

**2000**

**PREMIER TRANSMISSION LIMITED**

and

**PHOENIX NATURAL GAS LIMITED**

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**BELFAST METERING  
DEED OF AGREEMENT**

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**THIS DEED OF AGREEMENT** is made the 12<sup>th</sup> day of October 2000

**BETWEEN:**

- (1) **PREMIER TRANSMISSION LIMITED** a company registered in Northern Ireland with registered number N.I.26421 having its registered office at Ballylumford Power Station, Islandmagee, Larne, Co. Antrim BT40 3RS ("**Premier Transmission**"); and
- (2) **PHOENIX NATURAL GAS LIMITED** a company incorporated in Northern Ireland with registered number N.I. 26420 having its registered office at 19 Clarendon Road, Clarendon Dock, Belfast BT1 3BG ("**Phoenix**")

**WHEREAS**

- (A) Premier Transmission owns and operates a gas pipeline system connecting Twynholm in Scotland (from where Premier Transmission has rights to capacity in a pipeline owned by Bord Gais connecting the national gas transmission system at Moffat) to, inter alia, Ballylumford in Northern Ireland (the "**Premier Transmission System**"). Premier Transmission is required by its Licence to Convey Gas to provide transportation services in relation to the Premier Transmission System upon the terms of a transportation code (the "**Transportation Code**").
- (B) Phoenix owns and operates a gas transmission pipeline connecting the Premier Transmission System at Ballylumford to a distribution system in Belfast (the "**Belfast Transmission Pipeline**").
- (C) There is no meter at the point at which the Premier Transmission System connects to the Belfast Transmission Pipeline (the "**Connection Point**"). Phoenix owns and operates meters downstream of the Connection Point at the exit points to the Belfast Transmission Pipeline at Larne, Torytown and Knocknagoney (collectively the "**Phoenix Meters**" and separately a "**Phoenix Meter**"). Phoenix owns (or leases) and operates certain related equipment (as is more particularly described in the Schedule to this agreement) the purpose of which is to read the Phoenix Meters remotely (the "**Metering Reading Equipment**").
- (D) There is no exit point from the Belfast Transmission Pipeline between the Connection Point and the Phoenix Meters. Premier Transmission wishes to use the Metering Reading Equipment for the purposes of reading the Phoenix Meters to determine the quantity of gas which has been offtaken from the Premier Transmission System at the Connection Point for the purposes of the Transportation Code.

- (E) Phoenix agrees that Premier Transmission may use the Metering Reading Equipment for the purposes of reading the Phoenix Meters upon the terms set out below.

## **IT IS AGREED**

### **1. Definitions and Interpretation**

- 1.1 In this Agreement words and expressions shall have the following meanings:

<b>“Belfast Transmission Pipeline”</b>	has the meaning set out in recital B;
<b>“Connection Point”</b>	has the meaning set out in recital C;
<b>“Exit Point Registration”</b>	has the meaning given to it in the Transportation Code;
<b>"gas"</b>	means any hydrocarbons or mixture of hydrocarbons and all associated gases consisting primarily of methane which at 15 <sup>0</sup> C and at atmospheric pressure is (or are) predominantly in a gaseous state;
<b>"Gas Year"</b>	shall mean the period of time beginning at 06:00 hours from 1 October in any calendar year to 06:00 hours on 1 October in the next succeeding calendar year;
<b>“Metering Reading Equipment”</b>	has the meaning set out in recital C;
<b>"party"</b>	means either Premier Transmission or a Shipper and <b>“parties”</b> means Premier Transmission and a Shipper or Shippers;
<b>"Permitted Range”</b>	means any uncertainty in the Phoenix Meters which in all steady-state flow conditions does not exceed 1.1 per cent over the range of 20-100 per cent of the maximum flow rate for which the metering equipment is designed calculated using the method specified in ISO 5167/5168 for the determination of uncertainties of the measurement of those volume flow rates which are used to compute flow rates;

**“Phoenix Meters”**  
and a **“Phoenix Meter”** have the meaning set out in recital C;

**“Premier Transmission System”** have the meaning set out in recital A;

**"Reasonable and Prudent Operator"** means a person acting in good faith with the intention of performing its contractual obligations under this agreement and who in so doing and in the general conduct of its undertaking, exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced operator complying with applicable law and engaged in the same type of undertaking and under the same or similar circumstances and conditions;

**"Shipper"** means a person other than Premier Transmission who, for the time being, has acceded to and is bound by the Transportation Code;

**"Transportation Code"** has the meaning set out in recital A

**“validate”** means to determine by checking tolerances the validity of the reading of a meter.

1.2 Unless the context otherwise requires, any reference in this Agreement to:

1.2.1 **"business day"** shall be construed as a reference to a day (other than a Saturday or Sunday) on which banks are generally open for business in London, England; *and Belfast Northern Ireland*

1.2.2 a person shall be construed as a reference to any person, firm, company, corporation, government or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing;

1.2.3 the singular shall include the plural and vice versa; and

1.2.4 clauses and schedules are to clauses and schedules of this agreement.

1.3 Where a word or expression is defined in this agreement, cognate words and expressions shall be construed accordingly.

1.4 Headings in this Agreement are for ease of reference only and shall not affect its construction.

## **2. Effective date**

This agreement shall come into force upon the date of its execution by the parties.

## **3. Reading the Phoenix Meters**

3.1 Phoenix shall provide Premier Transmission with access to and make available to Premier Transmission the Meter Reading Equipment and the metering signals given by such equipment for the purposes of enabling Premier Transmission to read the Phoenix Meters.

3.2 Phoenix shall provide such access and availability at all times for the duration of this agreement.

## **4. Validation of the Phoenix Meters**

4.1 Phoenix shall, subject to clause 4.2, validate the Phoenix Meters once each Gas Year at its own cost and expense or at such more frequent intervals as Phoenix shall determine.

4.2 Phoenix shall, as soon as reasonably practicable after, and in any event within 20 business days of, being requested by Premier Transmission, from time to time, to do so, validate any of the Phoenix Meters.

4.3 The costs and expenses incurred in connection with any validation in accordance with clause 4.2 (but, for the avoidance of doubt, not clause 4.1), shall, if it is found that the accuracy of the Phoenix Meter which was validated:

4.3.1 is beyond the Permitted Range, be borne by Phoenix; and

4.3.2 is within the Permitted Range, be borne by Premier Transmission to the extent that such costs and expenses were reasonably and properly incurred.

4.4 If a validation in accordance with this clause 4 determines that any Phoenix Meter is registering beyond the Permitted Range Phoenix shall calibrate or replace the Phoenix Meter (as Phoenix shall, acting as a Reasonable and Prudent Operator, determine is appropriate) so that it registers within the Permitted Range and centrally and accurately where this is technically possible with the existing equipment at its own cost and expense.

- 4.5 Phoenix shall provide Premier Transmission with a report of the validation within 5 business days of its completion setting out the methodology and results of the validation. Either party may provide any of its shippers with a copy of the report of the validation. Such validation shall be binding on Phoenix and Premier Transmission for the purposes of clause 4.3 unless Phoenix or Premier Transmission disputes the accuracy of the validation within 15 business days after its completion. If such dispute is not resolved within a further 15 business days Phoenix or Premier Transmission may refer the matter to an expert in accordance with clause 15.3 for the expert's determination of such matter.

## **5. Access to the Phoenix Meters and Meter Reading Equipment**

- 5.1 Phoenix shall provide Premier Transmission and any Shipper which has an Exit Point Registration in respect of the Belfast Exit Point with access to any of the Phoenix Meters and Meter Reading Equipment, from time to time, at any reasonable time, on Premier Transmission giving reasonable notice to Phoenix. Such access shall be for the purposes of witnessing any validation, maintenance of or the opening of any seals on the Phoenix Meters or the Meter Reading Equipment or otherwise.
- 5.2 Phoenix shall provide Premier Transmission with, as much notice as is reasonably practicable, and in any event not less than 5 business days notice, of any validation or maintenance of any of the Phoenix Meters or the Meter Reading Equipment which it intends to carry out so that Premier Transmission can determine whether it wishes witness such validation or maintenance.

## **6. Operation and maintenance of the Phoenix Meters and Meter Reading Equipment**

- 6.1 Phoenix shall, at all times, operate and maintain the Phoenix Meters and the Meter Reading Equipment to the standard of a Reasonable and Prudent Operator.
- 6.2 Without prejudice to the generality of clause 6.1, Phoenix shall:
- 6.2.1 not prevent the operation of, nor disconnect, any of the Phoenix Meters or the Meter Reading Equipment other than to the extent required for the purposes of maintenance in accordance with clause 6.1; and
  - 6.2.2 ensure that all of its obligations under any lease to which it is a party in respect of any leased Metering Reading Equipment are met and complied with and that on the expiry of any such lease that suitable alternative equipment is so made available.
- 6.3 Phoenix shall, subject to clause 4.3.2, carry out such operations and maintenance at its own cost and expense. Phoenix shall bear the cost and expense of the replacement of the Phoenix Meters and the Meter Reading

Equipment from time to time.

- 6.4 Any replacement of any of the Phoenix Meters and the Meter Reading Equipment shall be built to meet ISO5167.
- 6.5 If Premier Transmission believes that any gas has been lost between the Connection Point and the Phoenix Meters, other than in connection with the Phoenix Meters, the parties will use their reasonable endeavours to agree the amount of such lost gas including the period of loss. There shall be allocated to Phoenix, for the purposes of the Transportation Code, an additional amount of gas equal to such lost gas. In the absence of agreement between the parties as to the amount of such lost gas Phoenix or Premier Transmission may refer the matter to an expert in accordance with clause 15.3 for the expert's determination of such amount.

## **7. Other exit points to the Belfast Transmission Pipeline**

- 7.1 Phoenix shall:
  - 7.1.1 not, until the expiration of the notice period referred to in clause 7.2, build any exit point or otherwise offtake gas between the Connection Point and the Phoenix Meters; unless,
  - 7.1.2 where it wishes to do so, arrange to install a meter at the new point of offtake. The new meter shall be designed, built and operated to the same standards laid down in this agreement and Phoenix shall afford Premier Transmission the same rights it has over the meters defined in this agreement to the new meter and make such amendments as are needed to this agreement to reflect this and subject to this clause 7 Premier Transmission shall agree to the new connection and the amendments required to this agreement..
- 7.2 If Phoenix and Premier Transmission shall fail to reach such agreement within 30 business days of them first endeavouring to do so Phoenix may terminate this agreement upon giving Premier Transmission not less than 12 months written notice.

## **8. Additional metering information**

- 8.1 Phoenix shall, if requested by Premier Transmission, provide Premier Transmission with the following data from any of the Phoenix Meters in respect of any gas offtaken from the Belfast Transmission Pipeline at the relevant meter, as soon as it is reasonably available:
  - 8.1.1 the instantaneous flow rate;
  - 8.1.2 the cumulative volume;

- 8.1.3 the instantaneous energy rate;
  - 8.1.4 the cumulative energy; and
  - 8.1.5 the calorific value.
- 8.2 Premier Transmission will reimburse Phoenix for the reasonable costs of providing such information.

## **9. Termination**

- 9.1 This agreement shall, subject to this clause 9, terminate on the earlier of:
- 9.1.1 Premier Transmission having given Phoenix not less than 12 months written notice; or
  - 9.1.2 Phoenix having given Premier Transmission not less than 12 months written notice in accordance with clause 7.2;
- 9.2 Either party shall have the right to terminate this agreement forthwith by notice in writing to the other party if the other party commits a material breach of this agreement and fails to remedy the breach within 30 days of receipt of written notification of such breach.
- 9.3 Either party shall have the right to terminate this agreement forthwith by notice in writing to the other party if the other party:
- 9.3.1 ceases (or threatens to cease) to carry on business;
  - 9.3.2 makes any composition with its creditors;
  - 9.3.3 the other party has a receiver appointed over the whole or any part of its assets or undertaking;
  - 9.3.4 an order is made or a notice is issued convening a meeting of shareholders to consider the passing of a resolution for, or a resolution shall be passed for, its winding up (other than voluntarily for the purpose of amalgamation or reconstruction); or
  - 9.3.5 shall take, or suffer, any similar action in consequence of debt.
- 9.4 If this agreement is terminated by either party under this clause 9 then it shall be without prejudice to the rights of either party in respect of any other breach of this agreement.

## **10. Notices**

Any notice or other communication given or made by a party under this agreement shall be:

- 10.1 in writing and may be delivered by hand to the addressee, sent by first class prepaid letter to the address of the addressee, or sent by fax to the addressee's fax transmission number specified in writing by the addressee (or to such other address or number as may be notified by a party to the other from time to time in writing for this purpose); and
- 10.2 deemed to have been given or made and delivered, if by delivery by hand, when left at the relevant address, if by letter, on the second day after posting, and if by fax transmission between the hours of 09:00 and 17:00, at the time of receipt by the sender of confirmation of transmission and otherwise at 09:00 on the next day after transmission.

## **11. Entire Agreement**

- 11.1 This agreement contains the entire agreement between the parties and supersedes all previous agreements or understandings with respect to its subject matter.
- 11.2 Phoenix acknowledges that any rights which it may have in relation to the use to which Premier Transmission puts the information which Premier Transmission obtains from the Metering Reading Equipment shall be governed exclusively by the Transportation Code.

## **12. Third party rights**

A person who is not a party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement notwithstanding that any such term may purport to confer or may be construed as conferring a benefit on such third party. The provisions of this section 12 shall not affect any right or remedy of such third party which exists or is available apart from the Act.

## **13. Disclosure of agreement**

Phoenix acknowledges that Premier Transmission may disclose this agreement to its Shippers, any prospective Shippers and any regulatory authority including the Director General of Gas for Northern Ireland.

## **14. Amendment of agreement**

The parties agree to amend this agreement, from time to time, in such terms as is necessary in order that it remains consistent and compatible with the terms of the Transportation Code or as the Director General of Gas for Northern Ireland may direct.

## **15. Governing law and dispute resolution**

- 15.1 This agreement will be governed by and construed in accordance with the laws of England and Wales.
- 15.2 The parties agree that, subject to clause 15.3, the English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this agreement.
- 15.3 The provisions of this clause 15.3 shall apply to any dispute arising under clause 4.5 or 6.5.
- 15.3.1 A party seeking the referral of such matter to an expert shall give notice to the other party that it wishes an expert to be appointed setting out details of the matter which it proposes shall be resolved by the expert and the proposed terms of reference.
- 15.3.2 If within 21 business days from the service of such notice the parties have failed to agree upon the identity of the expert and/or the terms of reference then the matter may be referred by either party to the President of the Institute of Gas Engineers who shall be requested to select the expert and, if willing to do so, settle the terms of reference of such expert within 30 business days.
- 15.3.3 Upon an expert being so agreed or selected and/or his terms of reference being so settled either party shall forthwith notify such expert of his selection and of the proposed terms of his appointment and shall request him, within 14 business days, to confirm to the parties whether or not he is willing and able to accept the appointment on the terms proposed.
- 15.3.4 If the expert shall be either unwilling or unable to accept the appointment or shall not have confirmed his willingness and ability to accept such appointment within such period then (unless the parties are able to agree on the appointment of another expert) the matter may be referred by either party to the President of the Institute of Gas Engineers who shall be requested to make a further selection and the process shall be repeated until an expert is found who accepts the appointment in accordance with the proposed terms.
- 15.3.5 The expert shall be deemed not to be an arbitrator but shall render his determination as an expert and the provisions of the Arbitration Act 1996 (as amended from time to time) and the law relating to arbitration shall not apply to such expert or his determination or the procedure by which he reaches his determination.

15.3.6 The determination of the expert shall be final and binding upon the parties save in the event of fraud or manifest error.

15.3.7 Each party shall bear its own costs arising in connection with an expert's determination. The expert shall determine which of the parties shall bear his or her costs or the proportions thereof.

## **THE SCHEDULE**

### **METERING READING EQUIPMENT**

#### **Metering Reading Equipment at Larne**

Transmitter and fibre optic link (to a programmable logic controller at Ballylumford which connects with a SCADA system at Hinckley both of which are owned by Premier Transmission).

#### **Metering Reading Equipment at Torytown**

Transmitter and programmable logic controller. Phoenix lease a high integrity line and own back up links connecting the programmable logic controller at Torytown with Premier Transmission's SCADA system at Hinckley.

#### **Metering Reading Equipment at Knocknagoney**

Transmitter and programmable logic controller. Phoenix lease a high integrity line and own back up links connecting the programmable logic controller at Knocknagoney with Premier Transmission's SCADA system at Hinckley.

**IN WITNESS WHEREOF** this agreement has been duly executed as a deed on behalf of the parties on the day and year first above written.

**SIGNED AS A DEED** for and on behalf of  
**PREMIER TRANSMISSION LIMITED**

By: 

Name: *Stephen Ellis*


A Director:

By: 

Name: *C. P. NIXON*

~~A Director:~~ The Secretary

**SIGNED AS A DEED** for and on behalf of  
**PHOENIX NATURAL GAS LIMITED**

By: 

Name: *MR P V NIXON*

A Director

By: 

Name: *C. P. NIXON*

~~A Director:~~ The Secretary