

**NATURAL GAS STORAGE LICENCE**

**GRANTED TO**

**[MARATHON OIL IRELAND LIMITED]**

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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 by Section 16(1)(c) of the Gas (Interim) (Regulation) Act 2002 (hereinafter referred to as "the Act of 2002") hereby grants to Marathon Oil Ireland Limited and any permitted assignee (hereinafter referred to as the "Licensee") a licence to operate a natural gas storage facility for the purposes of a storage business (both terms as defined hereafter) in at the locations 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 2002 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 [ ● ] and, unless revoked in accordance with the provisions of Schedule 2, shall continue in full force and effect until determined by not less than 5 years' notice in writing given by the Commission to the Licensee, with such notice not to be served earlier than the 5<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 [ ● ].

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 1937 applied to them; and
  - (b) references to an enactment shall include, without limitation, 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:

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

**“the Act of 2002”** means the Gas (Interim) (Regulation) Act, 2002;

**“Environmental Laws”** means those European Union and Irish 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 to 2005 and all legislation relating to the assessment of environmental impacts, and the protection of air, land and waters.

**“Holding Company”** means a holding company within the meaning of Section 155 of the Companies Act, 1963;

**“Information”** shall include, without limitation, 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;

<b>“Levy Order”</b>	means an order made pursuant to paragraphs 16 and 17 of the Schedule to the Act of 1999 as amended by Section 22 of the Act of 2002
<b>“Licensee”</b>	means Marathon Oil Ireland Limited;
<b>“Modification”</b>	includes, without limitation, addition, omission, amendment and substitution, and cognate expressions shall be construed accordingly;
<b>“Natural Gas Legislation”</b>	means any or all of the Gas Acts 1976 to 2002 (as relevant in the context);
<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.201 of 1992);
<b>“Relevant Authority”</b>	means the Minister for Communications, Marine and Natural Resources (or any successor thereof) or any other authority designated by the Commission for the purposes of this Condition and notified to the Licensee by the Commission;
<b>“Relevant Safety Requirements”</b>	means the requirements relevant to the safe operation of the Storage Business set by any relevant authority; and
<b>“Separate Business”</b>	means each of the businesses of supply, storage, distribution and transmission of natural gas 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;

Notwithstanding the foregoing, none of the following activities shall constitute a Separate Business for the purpose of this licence:

- (i) the production of natural gas
- (ii) Processing of natural gas for 3<sup>rd</sup> parties
- (iii) the purchase of natural gas for storage and subsequent resale.
- (iv) the shipping of natural gas
- (v) the supply of wholesale customers

**“Storage Business”**

means the injection, storage and withdrawal of natural gas from any source on behalf of customers, using the Storage Facility in accordance with the terms of the Standard Storage Agreement.

**“Standard Storage Agreement”**

means the agreement setting out the terms and conditions (excluding commercial terms) under which the Licensee and its customers will contract for the provision of a natural gas storage service, as provided for in Condition 3 of this licence

**“Transporter”**

means a person who operates one or more transmission or distribution pipelines.

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, without limitation, 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.

**Condition 2: General Duties of Licensee**

1. The Licensee shall comply with the following obligations as required by Section 16 (13) of the Act of 2002 as amended by Regulation 10 of S.I. No. 452 of 2004.
  - (a) operate, maintain and develop under economic conditions such secure reliable and efficient facilities or systems as required for the purpose of operating the Storage Facility with due regard to the environment and public safety,
  - (b) not discriminate between system users or classes of system users particularly in favour of related undertakings,
  - (c) provide any natural gas undertaking to whose system its Storage Facility is connected with sufficient information to ensure that transport or storage of natural gas may take place in a manner compatible with the safe, secure and efficient operation of the natural gas system,
  - (d) without prejudice to any legal obligation to disclose information, preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business,
  - (e) provide all documents, records, accounts, estimates and other information, whether oral or written, requested from time to time by the Commission, in the form and at the times specified by the Commission, for the purpose of verifying that the holder of the license is complying with the Conditions of the licence, or as may be required by the Commission in the performance of its duties or functions,
  - (f) provide system users with the information they need for efficient access to the Storage Facility.

### **Condition 3: Access to and use of the Storage Facility**

1. The Licensee shall, if requested by the Commission after this licence has come into force, prepare and submit to the Commission generic contract conditions (the "Standard Storage Agreement") and any such request will take account of the fact that the Commission has already concluded that access to the Storage Facility specified at schedule 1 does not satisfy the 'technically and / or economically necessary' test provided for in Article 19.1 of Directive 2003/55/EC as transposed into Irish law by S.I no. 320 of 2005 and is not, therefore, subject to the provisions on third party access described therein. The Commission may issue directions from time to time in relation to these generic contract conditions, acting reasonably and taking into account the Commission's earlier conclusions that the Storage Facility does not satisfy the "technically and/or economically necessary test", and the Licensee shall comply with such directions. Any such direction shall be without prejudice to the contractual rights and obligations of the Licensee and its customers prevailing at the date of the direction.
2. In order to ensure openness in the market for energy supply, the Licensee shall not contract with any one party for access to the Storage Facility for a period longer than three years without the prior approval of the Commission.
3. The Licensee shall not contract with any one party for access to more than 75 percent of the capacity of the Storage Facility without the prior approval of the Commission. The remaining 25 percent of the Storage Capacity may be made available to other parties including, subject to the prior approval of the Commission, a party already contracted for some or all of the 75 percent. In this latter event, any Commission approval shall not extend to a contract period exceeding 12 months. This Condition will not operate to prevent the Licensee from contracting with any one party for access to 100 percent of the capacity for the gas year 2006/07.

**Condition 4: Interaction with other natural gas undertakings**

1. The Licensee shall:

- (a) furnish to other natural gas undertakings to whose systems its Storage Facility is connected, 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 the Storage Facility and such systems; and
- (b) negotiate in good faith with other natural gas undertakings to whose systems its Storage Facility is connected, with a view to entering into such agreements as are required and perform such other acts as are required, and in the time periods required, to ensure the safe, secure and efficient operation, co-ordinated development and inter-operability of the Storage Facility and such systems.

**Condition 5: Confidentiality and restriction on use of certain information**

1. Without prejudice to any legal duty to disclose information, the Licensee shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business.
2. The Licensee shall not abuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the Storage Facility.
3. Without prejudice to the generality of paragraphs 1 and 2 of this Condition, the Licensee shall ensure that no information relating to, or derived from, the Storage Business is disclosed for the benefit of, or used for the purposes of, any other Separate Business. This paragraph 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 with the relevant person to whose affairs such information relates;
  - (c) The information is in the public domain (otherwise than as a 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; or
    - (iii) the information is disclosed pursuant to any judicial or other arbitral process or tribunal of competent jurisdiction.
4. The Licensee shall provide the Commission with any information or access to information the Commission may reasonably deem necessary in relation to the compliance by the Licensee with this Condition.
5. 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 reasonably considers appropriate to secure compliance with this Condition.

**Condition 6: Provision of information to the Commission, records and reporting**

1. The Licensee shall keep records of its operation of the Storage Business and, in such form as may be directed by the Commission 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 or reports relating to the operation of the storage business.
3. The Commission acknowledges its duty to act reasonably in issuing directions or requests for information pursuant to this Condition.

**Condition 7: Separate accounts**

1. The Licensee shall comply with the accounting and reporting requirements provided for in Section 17 of the Act of 2002, as amended by Regulation 11 of S.I. No. 452 of 2004 relating in particular to the preparation and keeping of internal accounts for the Storage Business and showing the financial affairs of the Storage Business.
2. The Licensee shall deliver to the Commission a copy of the audited accounts and the accounting statements as soon as reasonably practicable, and in any event not later than six months after the end of the financial year to which they relate.

### **Condition 8: Safety Framework**

1. Without prejudice to the obligations of the Licensee under or pursuant to any relevant safety requirement, the Licensee shall, at a time decided by the Commission after this licence has come into force and taking account of future changes in legislation with regard to responsibility for safety of offshore storage facilities, produce and thereafter maintain, in a form approved by the Commission, a document to be known as the Safety Framework.
2. The Safety Framework shall set out the Licensee's criteria, systems and procedures for ensuring that, so far as applicable to the Licensee in carrying out the Storage Business the Licensee applies the practices applied by, and achieves the standards achieved by, a prudent natural gas undertaking.
3. The Licensee's obligations under this Condition shall include, without limitation:
  - (a) compliance with all applicable laws and regulatory consents, and directions given or conditions imposed under and/or pursuant to such applicable laws or regulatory consents including, without limitation the natural gas legislation, the Foreshore Act 1933, the Petroleum and Other Minerals Development Act 1960 and the Continental Shelf Act 1968 and any regulatory consents or approvals granted under and/or pursuant to those Acts; and
  - (b) the application and observance of all relevant and applicable practices and standards, whether deriving from the recommendations or requirements of a relevant authority or from best practice in the natural gas industry.

**Condition 9: Environment**

1. The Licensee shall comply with:
  - (a) its duties and obligations under all applicable Environmental Laws;
  - (b) in the case of offshore storage facilities, the requirements of any regulatory consents or conditions imposed under and/or pursuant to such regulatory consents including, without limitation any regulatory consents or approvals granted under and/or pursuant to the natural gas legislation, the Foreshore Act 1933, the Petroleum and Other Minerals Development Act 1960 and the Continental Shelf Act 1968; and
  - (c) 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.

**Condition 10: Competition Law**

1. The Licensee shall ensure that the Storage Business is operated at all times in compliance with EU and Irish competition law.

**Condition 11: 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 12: Assignment and change of control**

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 the Storage 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, without limitation, 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 the Storage Business may be subject to the transferee being granted or holding a natural gas licence to operate the Storage Facility and may be subject to compliance by the Licensee or transferee with any conditions imposed by the Commission, including, without limitation, 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 the Storage 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.
6. The Licensee shall, as soon as practicable following it becoming aware of the relevant circumstances, notify the Commission of any change in control of the Licensee.
7. For the purposes of paragraph 6 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: Storage Facility which the Licensee is authorised to operate under the licence**

Those parts of the Kinsale facilities (including the Southwest Kinsale reservoir and wells, offshore platforms, pipelines, compression, processing plant and the shore terminal) used from time to time to inject, store and withdraw natural gas.

## **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 of 2002, 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 of 2002;
  - (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 18 (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 18 (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.