



Draft decision
Jemena Gas Networks (NSW) Ltd
Access arrangement 2015–20

Attachment 12 – Non-tariff components

November 2014

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Note

This attachment forms part of the AER's draft decision on Jemena Gas Networks 2015–20 access arrangement. It should be read with other parts of the draft decision.

The draft decision includes the following documents:

Overview

Attachment 1 – services covered by the access arrangement

Attachment 2 – capital base

Attachment 3 – rate of return

Attachment 4 – value of imputation credits

Attachment 5 – regulatory depreciation

Attachment 6 – capital expenditure

Attachment 7 – operating expenditure

Attachment 8 – corporate income tax

Attachment 9 – efficiency carryover mechanism

Attachment 10 – reference tariff setting

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Attachment 12 – non-tariff components

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Shortened forms

Shortened form	Extended form
2010–15 access arrangement	Access arrangement for JGN effective from 1 July 2010 to 30 June 2015 inclusive
2010–15 access arrangement period	1 July 2010 to 30 June 2015 inclusive
2015–20 access arrangement	Access arrangement for JGN effective from 1 July 2015 to 30 June 2020 inclusive
2015–20 access arrangement period	1 July 2015 to 30 June 2020 inclusive
Access arrangement information	Jemena Gas Networks (NSW) Ltd, <i>Access Arrangement Information 2015–20</i> , 30 June 2014
Access arrangement proposal	Jemena Gas Networks (NSW) Ltd, <i>Access arrangement, JGN's NSW gas distribution networks, 1 July 2015 – 30 June 2020</i> , 30 June 2014
AER	Australian Energy Regulator
capex	capital expenditure
CAPM	capital asset pricing model
CCP	Consumer Challenge Panel
Code	National Third Party Access Code for Natural Gas Pipeline Systems
CPI	consumer price index
DRP	debt risk premium
ERP	equity risk premium
JGN	Jemena Gas Networks (NSW) Ltd (CAN 003 004 322)
MRP	market risk premium
NGL	national gas law
NGO	national gas objective
NGR	national gas rules

opex	operating expenditure
PPI	partial performance indicators
PTRM	post-tax revenue model
RAB	regulatory asset base
RBA	Reserve Bank of Australia
Reference service agreement proposal	Jemena Gas Networks (NSW) Ltd, <i>Reference Service Agreement, JGN's NSW gas distribution networks</i> , 30 June 2014
RFM	roll forward model
RIN	regulatory information notice
RPP	revenue and pricing principles
SLCAPM	Sharpe-Lintner capital asset pricing model
WACC	weighted average cost of capital

12 Non-tariff components

JGN's Reference Service Agreement (RSA) forms part of its 2015 access arrangement proposal. The RSA sets out terms and conditions upon which JGN offers to supply the Haulage Reference Service. These are not directly related to the nature or level of tariffs that users pay. JGN's access arrangement also contains additional terms and conditions governing the relationship between JGN and users. These are:

- queuing requirements—a process or mechanism for establishing an order of priority between prospective users of spare and / or developable capacity
- extension and expansion requirements—the method for determining whether an extension or expansion is a part of the covered pipeline and the effect this will have on tariffs. These requirements are relevant when identifying the covered pipeline and pipeline services which will be regulated through the access arrangement
- capacity trading requirements—how users may assign contracted capacity and change delivery and receipt points
- changing receipt and delivery points—the process or mechanism for changing a User's receipt or delivery point

Together we refer to these as the non-tariff components of the access arrangement. Our assessment of each non-tariff component is set out below.

12.1 Terms and Conditions

Rule 48(d)(ii) of the NGR requires an access arrangement to specify the terms and conditions on which each reference service will be provided.

The terms and conditions specified in an access arrangement do not exhaustively set out the contractual arrangements between a service provider and a user for access to a pipeline service. Many aspects of these contractual arrangements are negotiated commercially between the parties. The NGL permits both the service provider and the user to negotiate and enter into an agreement on terms and conditions that differ to those specified in the applicable access arrangement.¹

12.1.1 AER draft decision

We do not approve JGN's Proposed RSA. We require JGN to make the revisions specified in section 12.7 below and in Appendix A in order for us to accept the

¹ With the exception that a service provider must comply with the queuing requirements in an applicable access arrangement: NGL, ss 135 and 322.

Proposed RSA. In our view these amendments will make the Proposed RSA consistent with the NGL and the applicable criteria.²

12.1.2 JGN's proposal

The RSA that JGN included as part of its access arrangement revises some parts of JGN's previous RSA that formed part of its 2010–15 access arrangement. In summary, the revisions to the terms and conditions fall into the following categories:³

- changes to accommodate the introduction of the National Energy Customer Framework (NECF) in NSW
- changes to metering provisions
- changes to liability, indemnity and warranty provisions
- minor changes made to improve and refine the terms and conditions in light of changes in the market, the law and to remove duplicative or redundant provisions.

12.1.3 AER's assessment approach

The NGR require us to assess the terms and conditions in the Proposed RSA for consistency against the NGO and the relevant procedures in force.⁴ The NGO states that the objective of the NGL is to promote efficient investment in and efficient operation and use of natural gas pipeline services for the long term interest of consumers. The relevant procedures include the Retail Market Procedures applicable in New South Wales.⁵

This is an area in which we have full discretion. This means that we are able to withhold our approval of any aspect of the Proposed RSA if, in our opinion, a preferable alternative exists that complies with the requirements of the NGL and is consistent with the applicable criteria.⁶

We have adopted the approach of assessing each term and condition in the Proposed RSA for consistency against the NGO and the relevant procedures and to take into account the submissions we have received from stakeholders.⁷ In so doing

² NGR, r 40(3).

³ JGN, *2015–20 Access arrangement information*, 30 June 2014, Appendix 1.1, p. 1.

⁴ NGR, r. 100.

⁵ AEMO, *Retail Market Procedures (NSW and ACT)*, version 13, 1 July 2014.

⁶ NGR, r. 40(3).

⁷ AGL, *Jemena Gas Networks (NSW) Access Arrangement 2015-20*, submission to the Australian Energy Regulator, 25 August 2014, (AGL Submission); EnergyAustralia, *2014 Jemena Gas Access Arrangement Review*, 25 August 2014, (EA Submission); Origin Energy, *Response to Jemena Gas Networks Access Arrangement - Initial Proposal 2015-20*, August 2014, (Origin Energy Submission); Lumo Energy, *Re: Jemena Gas Networks (NSW) Access Arrangement 2015–2020*, 28 August 2014 (Lumo Energy Submission).

we have balanced the competing interests of JGN, Users and consumers by considering whether the terms and conditions:

- appropriately allocate risk between JGN, Users and consumers
- are clear and legally certain
- are consistent with the relevant requirements in the NGL, NGR, the National Energy Retail Law (NERL), the National Energy Retail Rules (NERR) and the relevant procedures in force.

The terms and conditions should allocate risk to the party that is best able to control or manage that risk. Importantly, that party has the ability to control or manage the likelihood of the risk occurring and the consequences of the risk if it occurs. The incentive to mitigate that risk is therefore best placed with that party. Effective risk mitigation is likely to reduce the total costs of providing reference services to consumers in the long-term, and is therefore consistent with the NGO.

The terms and conditions also need to be clear and legally certain. This is because the terms and conditions would be used in resolving any access dispute and in making any access determination.⁸ Further, these terms and conditions are likely to form the starting point for commercial negotiations between JGN, retailers and other users.

Many aspects of JGN's terms and conditions are best left to be dealt with commercially by the parties. In some cases, greater prescription or intervention on our part in determining these terms and conditions may impede competitive market outcomes and be inefficient.⁹ There are two reasons for this. First, our lower level of information than that of JGN and users. Second, the user specific nature of many issues. Many aspects of the submissions we have received from stakeholders raise issues about particular terms and conditions which reflect their individual dealings with JGN.¹⁰ These are issues which are not necessarily common to all users who seek access to JGN's network. They are best dealt with by these stakeholders individually negotiating with JGN.

⁸ NGL, s 189.

⁹ See: Application by WA Gas Networks Pty Ltd (No 3) [2012] ACompT 12 at [261]-[278]; and Australian Competition and Consumer Tribunal v Telstra Corporation [2009] FCAFC 68.

¹⁰ For example, issues concerning the assignment of new receipt points to a retailer: see AGL Submission, p 18; the timing of meter reads and the provision of metering data: see AGL Submission, pp. 20 and 21, EA Submission, pp. 21 and 22; aspects of bills between JGN and retailers: see EA Submission, p 23; AGL Submission, p 22, OE Submission, p 16; acknowledgments about the use of gas delivered to delivery points: see OE Submission, p 14; conditions for quotes: see OE Submission, p 14; the verification of meters: OE Submission, p 18; coverage and communications equipment: OE Submission, p 18; implementation of the forthcoming B2B processes: OE Submission, pp. 18 and 19, LE Submission, p 10; attendance of retailer representatives: OE Submission, p 19; the changing of receipt points: OE Submission, p 21; the requirement to forecast withdrawals: OE Submission, p 21; the involvement of third parties in flow control pipeline functions: OE Submission, p 21; the initiation of new supply points: OE Submission, p 21.

With this in mind, there are a number of areas of the Proposed RSA that affect all users that we focus on in the sections below. These are:

- the accommodation of the National Energy Customer Framework (NECF)
- indemnities and liabilities
- warranties.

12.1.4 Reasons for draft decision

This section discusses the reasons for our draft decision. It addresses each of the areas identified above that we focus on. It also explains how we have taken into account JGN's explanation of its Proposed RSA (RSA Explanation) and the submissions we have received from stakeholders.

Accommodating the National Energy Customer Framework

The NECF governs the relationship between service providers and users (including retailers) in respect of their shared customers. The requirements of the NECF are spread between the NERL, the NERR and Parts 12A and 21 of the NGR. In addition there are also certain obligations specific to retailers and distributors operating in NSW that apply.¹¹ At a high level, these requirements have the following implications for JGN and the current RSA:

- As JGN states, under the NERL it now has a direct relationship with customers in addition to retailers.¹² This is reflected in the deemed standard connection contract (DSCC) that takes effect automatically between JGN and a customer upon the customer re-energising a premises or commencing to take supply of gas.¹³
- The process for establishing new physical connections or the alteration of existing connections is now set out in Part 12A of the NGR. A Part 12A connection contract forms part of a DSCC upon energisation and the appointment of a retailer.¹⁴
- The retail support obligations, which set out the process for charging and invoicing customers for JGN's distribution services, are now set out in Part 21 of the NGR.

¹¹ See the National Energy Retail Law (Adoption) Act 2013 (NSW) and National Energy Retail Law (Adoption) Regulation 2013 (NSW).

¹² RSA Explanation, p 3.

¹³ NERL, s 70(3).

¹⁴ NERL, s 70(2)(b).

We agree with JGN that the RSA must be consistent with the requirements of the NECF.¹⁵ However, we are not satisfied that all of the provisions in the Proposed RSA are consistent with the requirements of the NERL, the NERR and Parts 12A and 21 of the NGR.¹⁶ The provisions that we are not satisfied with overlap with some of the issues raised by stakeholders in their submissions. These issues are:

1. whether there is a risk JGN might have to energise a delivery point in circumstances where the customer has not yet appointed a retailer to enter into an RSA in respect of that delivery point¹⁷
2. whether JGN must remove a small customer, who has been de-energised at the request of their retailer and does not satisfy the requirements to be reconnected within 10 business days, from the customer list in a user's RSA¹⁸
3. whether the NERL contemplates JGN providing a temporary disconnection service, which stops the delivery of gas to a particular delivery point (customer) but does not remove that customer from the customer list in the RSA between JGN and the user¹⁹
4. inconsistencies between provisions in the Proposed RSA and rules in Part 21 of the NGR.²⁰

We deal with each of these, in turn, below.

As to the first issue, this risk appears to arise from what the NERL deems to occur when a new customer starts to take supply through an existing connection.²¹ Firstly, the NERL deems a DSCC between JGN and a customer to take effect upon a customer taking supply of gas.²² Secondly, in circumstances where the customer has not entered into a contract with a chosen retailer, the NERL deems that a deemed customer retail arrangement (between the customer and the designated retailer) also takes effect at that same time.²³ However, the NERL does not specify whether the RSA, being the contract between JGN and the designated retailer, should include that customer at that same time. It appears to us that this is what

¹⁵ Although rule 100 of the NGR does not expressly require us to ensure that the Proposed RSA is consistent with the NECF, the revenue and pricing principles in the NGL provide that a service provider should be provided with a reasonable opportunity to recover at least the efficient costs it incurs in complying with a regulatory obligation or requirement. A regulatory obligation or requirement includes the NERL and the NERR. In our view, given the reference service cannot practically be provided without the non-tariff components of an access arrangement, providing a service provider with a reasonable opportunity to recover at least its efficient costs involves ensuring that the access arrangement is consistent with the requirements of the NECF.

¹⁶ Specifically, clauses 11.3, 11.4, 12, 15, 16, 19, 20, 22, 23 and 28 of the Proposed RSA.

¹⁷ Proposed RSA, cl 11.4; RSA Explanation, pp. 4 and 5; AGL Submission, p 17; EA Submission, p 17; LE Submission, p 8.

¹⁸ RSA Explanation, p 5; OE Submission, p 10; LE Submission, p 9; EA Submission pp. 18–20.

¹⁹ AGL Submission, p 20; EA Submission, p 24;

²⁰ RSA Explanation, p 8; OE Submission, p 10; LE Submission, p 10; AGL Submission, p 18; EA Submission pp. 19, 20 and 23.

²¹ We note that some stakeholders raised the issue of 119XX of the NGR: LE Submission, p 8; EA Submission, p 17. Rule 119XX deals with new and not existing connections.

²² NERL, s 70(3)(b); RSA Explanation, p 3.

²³ NERL, s 54(2).

JGN's proposed clause 11.4 deals with. Clause 11.4 operates to automatically include a customer in the designated retailer's RSA with JGN when that customer starts taking supply of gas, but has not entered into a contract with a chosen retailer: that is, at the same time the NERL deems that both the DSCC and a deemed customer retail contract takes effect for that customer. In our view, this facilitates the operation of the RSA in light of the relevant requirements in the NERL. On this basis, we disagree with the submission of some stakeholders that clause 11.4 is inconsistent with the requirements of the NERL.²⁴ Clause 11.4 facilitates the operation of the RSA alongside the relevant requirements of the NERL. We therefore have no concerns with clause 11.4 of the Proposed RSA.

As to the second issue, even if JGN was required to terminate a DSCC in the circumstances described, the NGR, NERL, NERR and the relevant procedures do not necessarily require JGN to remove that customer from the customer list in the RSA between JGN and the relevant user.

We therefore do not accept the amendments JGN have made to those terms and conditions in the Proposed RSA that are solely premised on this view.

The third issue is the removal of temporary disconnection services. JGN considers that the NERL does not contemplate JGN providing a temporary disconnection service.²⁵ We do not necessarily agree with this view. As noted above, the manner in which requests for de-energisation and re-energisation are made between JGN and retailers are not dealt with in the NERL and NERR. However, the question for us is whether we are satisfied that removal of temporary disconnection services is consistent with the NGO.

Combining the previous permanent and temporary disconnection services into a single disconnection service simplifies and reduces connection charges. At the same time, we understand that this single disconnection service will still provide for a user to arrange for disconnection and subsequent reconnection of the same customer in a short period of time. Accordingly we are satisfied that the proposed removal of the temporary connection service is consistent with the NGO.

The final issue concerns a number of inconsistencies that stakeholders have identified between Part 21 of the NGR (retail support obligations between distributors and retailers) and certain provisions in the Proposed RSA. These are:

²⁴ AGL Submission, p 18; EA Submission, pp. 17, 20 and 21.

²⁵ RSA Explanation, p 8.

- clause 20.4 of the Proposed RSA provides that due date for payment is 14 calendar days, whereas rule 502 of the NGR defines the 'due date for payment' as being 10 business days from the date a statement of charges is issued²⁶
- clause 20.6(b) of the Proposed RSA provides that in calculating the interest rate for late outstanding amounts, the corporate overdraft reference rate applied by the Commonwealth Bank of Australia is to be used, whereas the term interest rate, as it is used in the NGR, is defined as the most recent one month Bank Bill Swap Reference Rate mid-rate determined by the Australian Financial Markets Association²⁷
- clause 20.3(a) of the Proposed RSA provides that JGN is to render invoices at intervals at least monthly, whereas rule 506(1) refers to that invoice being rendered no later than 10 business days of the relevant retail billing period.²⁸

In each case, we require revisions to JGN's Proposed RSA to address these inconsistencies.

Indemnity and liability provisions

The indemnity and liability provisions in the Proposed RSA:

- require the user to specifically indemnify JGN against liability in certain circumstances²⁹
- exclude JGN's liability in certain circumstances³⁰
- require JGN and the user to mutually indemnify each other against liability in respect of damages suffered or incurred by either party as a result of personal injury, death or property damage arising from one party's negligence or wilful misconduct or breach of the Proposed RSA³¹
- mutually exclude liability for a party where the liability arises due to negligence or wilful misconduct of that party³²
- limit the user's liability to direct damages, except in certain circumstances where the user is liable for both direct damages and consequential damages³³
- limit JGN's liability to direct damages, except in the circumstance where the delivery of off-specification gas to a delivery point is caused by JGN's negligence

²⁶ AGL Submission, pp. 22 and 23; EA Submission, p 23; OE Submission, p 15; LE Submission, p 10.

²⁷ AGL Submission, pp. 22 and 23; OE Submission, p 15; NGR, r 3.

²⁸ OE Submission, p 15.

²⁹ Proposed RSA, cll 6.2, 9.4(b), 10.1(d), 10.3(c), 14.9(b), 22.1, 22.2, 23.7 and Annexure 7, cl (d).

³⁰ Proposed RSA, cll 5.6(c), 6.2, 9.4(b), 10.1(d), 10.3(c), 14.9(b), 15.13, 22.1, 22.2, 23.7 and Annexure 7, cl (d).

³¹ Proposed RSA, cl 26.1.

³² Proposed RSA, cl 26.1.

³³ Proposed RSA, cll 26.3–26.5.

or wilful misconduct, in which case JGN is liable for both direct damages and consequential damages³⁴

- provide for a consumer guarantee liability limitation in accordance with the Competition and Consumer Act 2010.³⁵

Mutual indemnities

We do not have concerns with the provisions that require JGN and the user to mutually indemnify each other. Nor do we have any concerns with the provisions that mutually exclude the liability of both parties arising from negligence or wilful misconduct and the consumer guarantee liability limitation. These provisions appear appropriate to us because they allocate the risks equally between JGN and the user. We cannot see any justification for the risks to be allocated in any other way. In our view, this is consistent with the NGO.

User-specific indemnities and JGN liability exclusions

We do not have concerns about specific user indemnities and JGN liability exclusions but we do have concerns about a user being liable for both direct and consequential damages.

Firstly, there are seven user indemnities in the Proposed RSA. These indemnities specifically require the user to indemnify JGN against liability arising from, and exclude JGN's liability for:

- a user making a withdrawal in excess of their contractual capacity entitlement without prior authorisation from JGN (an unauthorised overrun)³⁶
- gas prior to its receipt into or after its delivery from JGN's network³⁷
- a user's delivery of off-specification gas into JGN's network³⁸
- a user's delivery of gas which does not meet the pressure specifications into JGN's network³⁹
- the suspension of gas delivery at User's request⁴⁰ or the suspension of gas as required by JGN because of a threat of injury or damage, insufficient capacity to meet withdrawals, AEMO has requested the suspension or the user is not a registered participant.⁴¹

³⁴ Proposed RSA, cl 26.5(b).

³⁵ Proposed RSA, cl 26.2.

³⁶ Proposed RSA, cl 6.2.

³⁷ Proposed RSA, cl 9.4(b).

³⁸ Proposed RSA, cl 10.1(d) and 10.3(c).

³⁹ Proposed RSA, cl 14.9(b).

⁴⁰ Proposed RSA, cl 22.1.

⁴¹ Proposed RSA, cl 22.2.

- interruption, curtailment and load shedding⁴²
- energy production, distribution, supply or resale by User (after gas is delivered to User's Delivery Point).⁴³

Secondly, the Proposed RSA also specifies two circumstances which exclude JGN's liability but do not require a user indemnity. These are:

- the revocation of approval of a user making a withdrawal in excess of their contractual capacity entitlement with prior authorisation from JGN (an authorised overrun)⁴⁴
- the decommissioning of a delivery station or the disconnection of supply at the user's request.⁴⁵

As to the specific user indemnities (and the corresponding liability exclusions for JGN), JGN submits that the circumstances covered by each indemnity are those which the user is directly responsible for.⁴⁶

Thirdly, the Proposed RSA limits a user's liability to direct damages, except in the following circumstances where the user is liable for both direct damages and consequential damages:⁴⁷

- an unauthorised overrun
- gas prior to its receipt into or after its delivery from JGN's network
- a user's delivery of off-specification gas
- a user's delivery of gas which does not meet the pressure specifications into JGN's network.

In our view, the user-specific indemnities and the liability exclusions for JGN do correctly allocate the relevant risks between JGN and the user. The circumstances the subject of these indemnities and exclusions are circumstances which JGN has no control over. They are also circumstances in which the user is best placed to manage the risks that may arise. This is the case for an unauthorised overrun or a user's request to suspend gas delivery. Both are at the behest of the user and within its control. For different reasons, the same is true for the circumstances and risks associated with gas prior to its receipt into or after its delivery from JGN's network, off-specification gas, gas that does not meet the pressure requirements, energy

⁴² Proposed RSA, cl 23.7.
⁴³ Proposed RSA, Annexure 7, cl (d).
⁴⁴ Proposed RSA, cl 5.6(c).
⁴⁵ Proposed RSA, cl 15.13.
⁴⁶ RSA Explanation, pp. 32 and 33.
⁴⁷ Proposed RSA, cl 26.5.

production, distribution, supply or resale and interruption and curtailment or load shedding.⁴⁸ In these circumstances, the risks that may arise can be managed through a user's contractual arrangements with its upstream suppliers or downstream customers or by obtaining appropriate insurance coverage. JGN does not have the benefit of these contractual arrangements. Nor is it likely to be reasonable for JGN to obtain appropriate insurance coverage for each of its 1.2 million customers.

As to the two circumstances which exclude JGN's liability but do not require a user indemnity, JGN submits that it has not sought a user indemnity in these circumstances because it does not expect that risks will arise for other users.⁴⁹ In the case of revoking an authorised overrun, JGN submits that this is a matter specific to JGN, the user and its customer.⁵⁰ JGN submits that this is also the case with the decommissioning of a delivery station or the disconnection of supply at the user's request.⁵¹ For these reasons we consider that it is appropriate that no user indemnity is required. As to excluding JGN's liability, we recognise that authorised overruns are provided on an "as available" basis and on condition that they can be revoked at short notice.⁵² We also recognise that a user requesting decommissioning or disconnection is a matter within the user's control.

For the reasons discussed above, we consider it appropriate to exclude JGN's liability in these circumstances.

Direct and consequential damages

As to the circumstances in which a user is liable for both direct damages and consequential damages, JGN submits that:

- it has no control over the gas that it enters into its network
- the consequences for customers are very significant
- each user's potential exposure in the event of a breach is significantly more limited than JGN's, and therefore each user is well placed to cost effectively insure against that exposure.⁵³

⁴⁸ As a related issue, Origin Energy submits that clause (c) of Annexure 7 should be removed on the basis that the relevant approvals and authorisations required to on-sell energy are the responsibility of the user and not JGN: see OE Submission, p 14. We recognise that it is the user's responsibility in these circumstances which, in our view, supports the user providing JGN with an indemnity in this regard. We do not, however, agree that clause (c) should be removed, as that would be inconsistent with the basis upon which we consider the indemnity is appropriate. Further, we do not consider the requirement to acknowledge and agree that the user has all the relevant approvals and authorisations is unreasonable.

⁴⁹ RSA Explanation, pp. 28 and 30.

⁵⁰ RSA Explanation, pp. 28 and 30.

⁵¹ RSA Explanation, p 30.

⁵² RSA Explanation, p 28.

⁵³ RSA Explanation, p 32.

In support of limiting its liability to direct damages only, JGN submits that if a significant incident were to occur, its exposure is potentially significant because it has over 1.2 million customers. The NSW statutory liability caps operate to limit JGN's liability to customers, not users or retailers, when there are gas supply failures.⁵⁴

The expression 'consequential damage' is defined in the Proposed RSA. Among other things, it includes damages arising from loss of revenue, reputation and profit.⁵⁵ The expression 'direct damage' is defined as meaning 'any damage other than consequential damage'.⁵⁶ The expression 'damage' is defined as including consequential damages and direct damages.⁵⁷ What actually constitutes direct damage and consequential damage under the Proposed RSA needs to be assessed on case-by-case basis. However, for our assessment, we have asked ourselves whether it is appropriate for any compensation to cover economic losses such as loss of revenue.

Some stakeholders raised issues with users being liable for consequential damages under the Proposed RSA.⁵⁸ For example, Origin Energy submits:

Origin questions the basis for these limitations on reciprocity, being that they are of "particular importance". Envestra has a comprehensive limitation on liability in its South Australian Access Arrangement Terms and Conditions, and this limitation is reciprocal in all cases. Envestra faces comparable risks to Jemena as the operator of a large gas distribution network.

We agree with Origin Energy. On the information available to us, we are not satisfied that it is appropriate that the user should be liable for both direct and consequential damages in certain circumstances. We also agree with Origin Energy that Envestra's network in South Australia is in some ways comparable to JGN's network. Like JGN's network, Envestra's network is a large contract-carriage distribution network.⁵⁹ Under Envestra's access arrangement, the liability of both the service provider and a user is limited to direct damages only.

In our view, there is nothing that would distinguish JGN from Envestra to justify making a user liable for consequential damages. Nor would it be consistent with the NGO.

Firstly, the risks associated with JGN not having control over the gas that enters its network are addressed by the specific user indemnities that JGN requires over these circumstances.

⁵⁴ RSA Explanation, pp. 33 and 34.

⁵⁵ Proposed RSA, cl 1.1.

⁵⁶ Proposed RSA, cl 1.1.

⁵⁷ Proposed RSA, cl 1.1. We note that both AGL and Origin Energy submitted that this definition should not be on a full indemnity basis. However, we do not see why nor have we been provided with any reasons as to why this should be the case: AGL Submission, p 15; Origin Energy Submission, p 11.

⁵⁸ AGL Submission, pp. 16, 17, 18, 23; LE Submission, p 8; EA Submission, p 16; Origin Energy Submission, p 11.

⁵⁹ This is unlike the distribution network in Victoria which we do not consider is comparable given the AEMO's role there.

Secondly, although the consequences for consumers may be significant, they can be mitigated either through the user's contractual arrangements with upstream suppliers or by obtaining adequate insurance.

Thirdly, we are not convinced of the JGN's submission that it faces a potential exposure greater than that of an individual user justifies the inclusion of consequential damages. This submission goes to the question of who is better placed to insure against that exposure. But it assumes that consequential damages are appropriate in the first place. In itself it does not support the case for the user being liable for consequential damages.

Finally, these are all issues which Envestra faces in South Australia as well.

We therefore see no reason why JGN should differ to that of Envestra in respect of consequential damages.⁶⁰

Other revisions to indemnity and liability provisions

Finally, we have the following concerns about clauses 9.4(b), 10.1(d) and 26.1(e):

- Clause 9.4(b) concerns a user indemnifying JGN against risks associated with gas before it enters and after it leaves JGN's network. In particular, clause 9.4(b) refers to damages or claims in connection with "or arising as a result of any matter or thing which may be done, happen or arise with respect to" gas before it enters and after it leaves JGN's network. These words in clause 9.4(b) do not appear in other similar provisions that require user-specific indemnities.

Whilst we accept the merit of this provision, we consider that the current drafting of clause 9.4(b) is unnecessarily broad. In particular, it introduces a level of uncertainty about what type of events a user is precisely indemnifying JGN for. In our view, this is neither clear or legally certain. as for consistency with the NGO, a preferable alternative would be to exclude these words.

- Clause 10.1(d) concerns a user indemnifying JGN against risks associated with out-of-specification gas. AGL and Origin Energy both suggested that the indemnity here should only apply to out-of-specification gas delivered 'on behalf of the User'.⁶¹ EnergyAustralia raised a similar concern, specifically submitting that the indemnity should not apply where a user injects gas because one user cannot control the actions of another user. EnergyAustralia also suggests that the

⁶⁰ We note that AGL also suggested the removal of clause 26.4(b): AGL Submission, p 23. Given our view that consequential damages is not appropriate, clause 26.4(b) is now redundant.

⁶¹ AGL Submission, p 16; Origin Energy Submission, p 11.

reference to 'Relevant Receipt Point' elsewhere in clause 10.1 should be prefaced with the words 'on behalf of the User'.⁶²

We agree with AGL's suggestion. Although we recognise that it may be difficult to practically identify which user should be responsible for any out-of-specification gas in the network at a given point in time, in our view it is preferable that clause 10.1(d) recognises that there is in fact a responsible user.

- Clause 26.1(e) provides that each party must take reasonable steps to mitigate any damage the subject of an indemnity. The broader clause 26.1 concerns the requirement for both JGN and the user to mutually indemnify each other against liability in respect of damages as a result of personal injury, death or property damage arising from negligence or wilful misconduct or breach of the Proposed RSA. However, it is not clear whether sub-clause 26.1(e) applies to each of the specific indemnities a user is required to provide JGN with.

In our view, it should. The sub-clause should be clarified accordingly. We note that both AGL and Origin Energy raise a similar point.⁶³

Warranty provisions

The Proposed RSA specifies two mutual warranties given by JGN and the user to each other, and six user-specific warranties.

The two mutual warranties concern:

- GST registration and ABN validity⁶⁴
- the power to enter into and validly execute the agreement.⁶⁵

The user specific warranties concern the following categories of information:

- if the STTM stops operating, each nomination of gas being delivered into JGN's network will be made by the user in accordance with the gas balancing annexure (annexure 3)⁶⁶
- the legal entitlement of the user to purchase and deliver gas⁶⁷
- the accuracy of the user's load shedding data⁶⁸
- the accuracy of the last financial report the user provided to JGN⁶⁹

⁶² Energy Australia Submission, p 16.

⁶³ AGL Submission, p 23; Origin Energy Submission, p 11.

⁶⁴ Proposed RSA, cl 21.7.

⁶⁵ Proposed RSA, cl 32.6.

⁶⁶ Proposed RSA, cl 7.5.

⁶⁷ Proposed RSA, cl 9.1(a) and (b).

⁶⁸ Proposed RSA, cl 23.6(h).

- if resupplying energy, the user has given relevant information to its customers and end-customers as the relevant delivery point.⁷⁰

To safely, securely and reliably operate its network, JGN relies heavily on users providing it with accurate, complete and timely information. The provision of inaccurate, incomplete or untimely information has the potential to put safety and security of the network at risk and to adversely affect the interests of JGN's users. In our view, it is therefore appropriate that JGN require users to warrant that certain types of information they provide to JGN is accurate and complete. In turn, requiring such warranties is consistent with the NGO. The question that remains is whether a particular type of information is so crucial that it would be consistent with the NGO to make it subject to a warranty.

JGN submits that each specific user warranty covers information that is wholly within the user's control. Further, in the absence of the warranties, the user would have no corresponding legal obligation or contractual obligation.⁷¹

We agree with JGN. We also consider that each specific warranty concerns information of the type that is crucial to JGN being able to safely and reliably operate its network. This is clearly the case for information about the nomination of gas and load shedding. It is also the case for information about a user's legal entitlement to purchase and deliver gas and the user's last financial report: these are matters that go to JGN being able to operate its network on a day to day basis. Finally, we also consider this to be the case for information provided to end-users, given the relationship JGN now has with customers under the NECF.

Other revisions

This section discusses the other revisions that we require JGN to make in order for us to accept the Proposed RSA. These revisions concern:

- provisions that give JGN a level of discretion in decisions to be made
- miscellaneous revisions to the definitions in clause 1.1

JGN discretion

The level of discretion that JGN is provided goes to questions of whether particular provisions in the Proposed RSA are clear and certain for both JGN and users. In making some decisions, it may be appropriate to allow JGN a broad level of discretion or to act unilaterally. However, this is not always the case. In some decisions, allowing JGN a broad level of discretion or to act unilaterally, simply

⁶⁹ Proposed RSA, cl 28(h).

⁷⁰ Proposed RSA, Annexure 7, cl (b).

⁷¹ RSA Explanation, p 24.

increases the uncertainty, inappropriately, that a user faces. In our view, it is preferable, for consistency with the NGO, that certain decisions JGN must make do not create an inappropriate level of uncertainty for a user.

An example of this is clause 11.3. Clause 11.3 concerns the addition of new delivery points to the RSA at a User's request. Origin Energy submitted that it was concerned that this provision affords JGN a broad scope to require information from a User, and that its experience has been that JGN has sometimes requested unnecessary information. Origin Energy suggested that JGN should be required to act reasonably in exercising its discretion under clause 11.3.⁷² AGL has made the same suggestion.⁷³ Notably, the same issue also arises in other provisions that provide for JGN to make a decision by itself.⁷⁴ Many of these provisions employ the expression "absolute discretion" or "sole discretion".

In our view, there is merit in subjecting provisions that afford JGN discretion to a requirement to act reasonably. A requirement to act reasonably is an appropriate balance between the interests of JGN and a user. Some stakeholders have raised the same issue about clause 14.2(b), with which we agree.⁷⁵

Another example of this issue is in clause 1.3. This provision allows JGN (but not the user) to amend the RSA to accommodate a change in law. A change in law is defined as including the introduction of or changes to law and a new or changed interpretation from a decision that is binding on JGN.⁷⁶ Notably, clause 1.3 requires JGN to consult with a user before it is able to amend the RSA. However, the decision to amend the RSA ultimately lies with JGN.

In our view, a requirement for JGN to consult with a user is not enough. It should not only be JGN that is able to initiate these sorts of negotiations. A user should also be able to initiate these negotiations on the same terms that JGN is able to. Some stakeholders also raised the same issue in respect of clause 1.3, with which we agree.⁷⁷

⁷² Origin Energy Submission, p 2.

⁷³ AGL Submission, p 16.

⁷⁴ We have identified that this issue arises in the definitions of "Country Distance", "Security and "Volume" in clause 1.1, 5.2, 9.4(a), 11.3(d), 11.3(i), 11.4(c), 15.9(a), 16.1(c), 16.8, 20.7(c), 22.2(a), 4(c) and 5(c) of Annexure 3.

⁷⁵ AGL Submission, pp. 15, 16, 22 and 23; OE Submission, pp. 17 and 18. Origin Energy raises the issue that there should be a reasonableness limit limitation on JGN in clause 14.2(b). Clause 14.2(b) states that the user must ensure that a new receipt point meets all the relevant industry specifications and specifications required by JGN. We do not agree with this on the basis that we do not consider to be unreasonable: OE Submission, p 20.

⁷⁶ Proposed RSA, cl 1.1.

⁷⁷ Lumo Energy Submission, p 11; AGL Submission p 15.

Miscellaneous revisions

We have identified a number of miscellaneous amendments that we consider will clarify the Proposed RSA. These amendments that we require to be made are:⁷⁸

- as raised by AGL, the definition of "Agreement" in clause 1.1 should also refer to "clause 2 (Services Policy)"⁷⁹
- as raised by AGL, the reference to "in accordance with this clause 3 and other relevant provisions of this Agreement" in clause 3.1 should be replaced with "this Agreement"⁸⁰
- typographical errors in clauses 1.2⁸¹ and 26.2
- clarification of clauses 19.1 and 23.3.

12.2 Queuing requirements

Queuing can be used to determine access to a pipeline that is fully, or close to being fully, utilised. Queuing requirements establish the priority that a prospective user has, compared to other prospective users, to obtain access to spare and developable capacity on a covered pipeline.⁸² Queuing requirements establish a process or mechanism for establishing an order of priority between prospective users of spare and/or developable capacity.

A distribution pipeline can typically accommodate new users. This is because, unlike transmission pipelines, distribution networks tend not to operate close to full capacity. Also, if use at one point in the network is nearing capacity, the service provider will normally undertake augmentation of the network to meet the needs of prospective users.

12.2.1 Draft decision

We approve JGN's proposed queuing requirements for the 2015-20 access arrangement period.

12.2.2 JGN's proposal

For this 2015-20 access arrangement period, we required JGN to provide details of its queuing arrangements in its access arrangement proposal.⁸³

⁷⁸ As to the other suggestions made by stakeholders, we have not agreed to require JGN to make them on the basis that in our view they are not material or are in our view, not justified.

⁷⁹ AGL Submission, p 15.

⁸⁰ AGL Submission, p 16.

⁸¹ AGL Submission, p 15.

⁸² NGR, r. 103(3).

⁸³ The AER notified JGN that its access arrangement proposal must provide details of its queuing arrangements (Schedule 1 clause 10.9 of the Regulation Information Notice issued by the AER on 31 March 2014)

JGN's proposed queuing requirements for the 2015–20 access arrangement period have changed from those in the 2010-15 access arrangement. These changes include:

- clarifying that requests will take positions in the queue on a 'first in, first served' basis⁸⁴
- clarifying the meaning of 'prudential requirements' by referring to the Reference Service Agreement⁸⁵
- replacing '30 days' with '20 business days' in relation to the procedure of making offers of capacity to users in the queue⁸⁶
- replacing '30 days' with '20 business days' in relation to a user holding up the queue by not taking an offer of capacity⁸⁷
- adding a new clause which states that when administering a queue, JGN may take into account a connection contract that it has entered into, under the NGR⁸⁸, with a retail customer in determining that customer's priority in any queue.⁸⁹

JGN proposes to maintain the same terms and conditions for the 2015-20 access arrangement period that were in the 2010-15 access arrangement. These include:

- if there is insufficient capacity to satisfy a request for a service, a queue will be formed⁹⁰
- where a user made a request and JGN has made an offer to provide a service, that request will take priority to a request where no offer has been made⁹¹
- capacity will be offered to queued prospective users in order of priority, notwithstanding that the capacity may not be sufficient to meet that user's needs⁹²
- if the offer of capacity meets the prospective user's need in part only, the user can take the partial offer or the user's position in the queue will be held until its need is met in full by available capacity⁹³
- requests for services of less than one TJ of gas per annum will have priority over requests for services of more than one TJ per annum⁹⁴

⁸⁴ JGN, *Access Arrangement 2015-2020*, 30 June 2014, clause 7.1(b)(ii), p. 24.

⁸⁵ JGN, *Access Arrangement 2015-2020*, 30 June 2014, clause 7.2(d) and (e), p. 25.

⁸⁶ JGN, *Access Arrangement 2015-2020*, 30 June 2014, clause 7.3(c), p. 25.

⁸⁷ JGN, *Access Arrangement 2015-2020*, 30 June 2014, clause 7.5(a), p. 25.

⁸⁸ Part 12A of the NGR, referring to gas connections for retail customers.

⁸⁹ JGN, *Access Arrangement 2015-2020*, 30 June 2014, clause 7.6 (c), p. 26.

⁹⁰ JGN, *Access Arrangement 2015-2020*, 30 June 2014, clause 7.1(a), p. 24.

⁹¹ JGN, *Access Arrangement 2015-2020*, 30 June 2014, clause 7.1(b)(ii), p. 24.

⁹² JGN, *Access Arrangement 2015-2020*, 30 June 2014, clause 7.3(b), p. 25.

⁹³ JGN, *Access Arrangement 2015-2020*, 30 June 2014, clause 7.3(c)(ii), p. 25.

- requests for reference services will have priority over requests for negotiated services.⁹⁵

12.2.3 AER's assessment approach

The NGR require us to assess JGN's proposed queuing requirements for consistency against the NGO and rule 103 of the NGR.

Rule 103 of the NGR has specific provisions on queuing requirements and provides that:⁹⁶

- queuing requirements must be included in an access arrangement for a gas distribution pipeline where the AER notifies the service provider that the access arrangement must contain queuing arrangements⁹⁷
- queuing requirements must establish a process or mechanism for establishing an order of priority between prospective users of spare or developable capacity in which all prospective users are treated on a fair and equal basis
- queuing requirements must be sufficiently detailed to enable prospective users to understand the basis of determining the order of priority and the prospective user's position in the queue.

12.2.4 Reasons for draft decision

We have assessed JGN's proposed queuing requirements for the 2015-20 period. These are largely the same as those we approved in the 2010-15 access arrangement period.

We have reviewed JGN's queuing requirements set out in the 2015-20 access arrangement proposal and note that:

- clause 7.1 sets out how a queue is formed and how users are advised of their position in the queue, in accordance with r. 103(3)–(5) of the NGR
- clause 7.2 sets out the conditions applicable to a queue. This satisfies the requirements of r. 103(3) and r. 103(5) of the NGR.
- clause 7.3 sets out the procedure when capacity can be made available. This satisfies the requirements of r. 103(4)–(5) of the NGR.

⁹⁴ JGN, *Access Arrangement 2015-2020*, 30 June 2014, clause 7.4 (c), p. 26.

⁹⁵ JGN, *Access Arrangement 2015-2020*, 30 June 2014, clause 7.4 (d), p. 26.

⁹⁶ NGR, r. 103.

⁹⁷ NGR, r. 103(2). The AER notified JGN that its access arrangement proposal must provide details of its queuing arrangements (Schedule 1 clause 10.9 of the AER's Regulation Information Notice dated 31 March 2014).

- clause 7.4 sets out the priority of prospective users in accordance with r. 103(4) of the NGR
- clause 7.5 sets out the compensation (if any) from the user for holding capacity, and
- clause 7.6 sets out general terms. These include the treatment of requests in the event of a dispute, and the ability of prospective users to get access to gas supply at the time JGN's haulage service is to be provided.

As stated above, JGN's proposed changes to the 2010-15 access arrangement include clarifications that requests will take positions in the queue on a 'first in, first served' basis⁹⁸, and that the meaning of 'prudential requirements' refers to clause 28 of the proposed Reference Service Agreement.⁹⁹ We accept that these clarifications provide more clarity and certainty to users. Providing more clarity and certainty to users will promote the efficient operation and use of JGN's network, and is therefore consistent with the NGO.

We accept the substitution of '20 business days' for 30 calendar days. These are equivalent time periods for practical purposes and the proposed change does not disadvantage users. The proposed change will improve the clarity of the clause. For the reasons above, we also consider that this is consistent with the NGO.

A substantive change is the addition of a new clause. It states that, when administering a queue, JGN may take into account a connection contract it has entered. This included a connection contract under Part 12A of the NGR with a retail customer.¹⁰⁰ In these circumstances, a request from a user with an existing connection contract will receive priority over a request from other users in the queue.¹⁰¹ The AER accepts this proposed clause and considers this clause will improve the operation of the access arrangement. It provides further detail to the proposed access arrangement to enable prospective users to understand the basis on which an order of priority between them will be determined.

⁹⁸ JGN, *Access Arrangement 2015-2020*, 30 June 2014, clause 7.1(b)(ii), p. 24.

⁹⁹ JGN, *Access Arrangement 2015-2020*, 30 June 2014, clause 7.2(d) and (e), p. 25.

¹⁰⁰ Part 12A of the NGR refers to gas connections for retail customers.

¹⁰¹ JGN, *Access Arrangement 2015-2020*, 30 June 2014, clause 7.6 (c), p. 26.

12.3 Extension and expansion requirements

All access arrangements must include requirements relating to extensions of, and expansions to, a pipeline.¹⁰² An extension relates to extending the pipeline to receive or deliver gas to or from new locations. An expansion relates to augmenting the pipeline's capacity which enhances its capacity to deliver an increased volume of gas to users.¹⁰³

12.3.1 Draft decision

We do not approve JGN's proposed extension and expansion requirements as drafted. We require JGN to revise clause 8.2(c) of its proposed 2015-20 access arrangement in accordance with Revision 12.5 below. In our view, this amendment is a preferable alternative to JGN's proposal, and is more consistent with the NGO and the requirements of rule 104 of the NGR.

12.3.2 JGN's proposal

JGN's proposed extension and expansion requirements for the 2015-20 period are largely the same as the requirements for the 2010-15 period, except for two changes:

- JGN re-drafted clause 7 of the 2010-15 access arrangement (now clause 8 of the proposed access arrangement) to align the terminology used with that used in r. 104 of the NGR¹⁰⁴
- JGN removed from clause 7(d) of the 2010-15 access arrangement (now clause 8.2(c) of the proposed access arrangement) the notification requirements for surcharges to be levied on users of incremental services, in cases where the access agreement will not apply to the incremental services.¹⁰⁵

12.3.3 AER's assessment approach

The AER has assessed JGN's extension and expansion requirements for consistency against the NGO and rule 104 of the NGR.

Rule 104 of the NGR specifies the extension and expansion requirements and provides that:¹⁰⁶

¹⁰² Rule 48(1)(g) for full access arrangements, r. 45(1)(f) for limited access arrangements for light regulation services, r. 129(1)(f) for international pipelines, and r. 24(2)(c)(v) for CTP access arrangements.

¹⁰³ AER, *Access Arrangement Guideline*, March 2009, p. 47.

¹⁰⁴ Clause 8 of the proposed 2015-20 access arrangement.

¹⁰⁵ JGN, *Access Arrangement 2015-2020*, 30 June 2014, clause 8.2(c), p. 28.

¹⁰⁶ NGR, r. 104.

- the requirements may state whether the access arrangement will apply to incremental services to be provided as a result of a particular extension to, or expansion of the capacity of, the pipeline, or outline how this may be dealt with at a later time¹⁰⁷
- if an access arrangement is to apply to incremental services, the requirements must deal with the effect of the extension or expansion on tariffs
- the requirements cannot require the service provider to provide funds for extension/expansion works unless the service provider agrees.

The AER has full discretion to withhold its approval of this element of an access arrangement proposal if, in the AER's opinion, a preferable alternative exists that complies with the requirements of the NGL and is consistent with applicable criteria prescribed by the NGL.¹⁰⁸

12.3.4 Reasons for draft decision

Except for clause 8.2(c) of the proposed access arrangement, we accept JGN's proposed drafting changes to the 2010-15 access arrangement relating to extension and expansion requirements. Aligning the wording of the clauses¹⁰⁹ more closely with the terminology used in r. 104 of the NGR provides more clarity and certainty to access users and promotes the NGO.

We do not accept clause 8.2(c) of the proposed access arrangement.

Clause 7(d) of the 2010-15 access arrangement (now clause 8.2(c) of the proposed access arrangement) provided that:

The service provider will notify the AER of any proposed surcharge to be levied on users of incremental services and designed to recover non-conforming capital expenditure or a specified portion of non-conforming capital expenditure (non-conforming capital expenditure which is recovered by means of a surcharge will not be rolled into the capital base).¹¹⁰

This clause addressed the potential situations where the access arrangement will not apply to incremental services to be provided by the new network section.

Under JGN's extension and expansion requirements, these are the cases where the access arrangement will apply to incremental services:¹¹¹

¹⁰⁸ NGR, r. 40(3).

¹⁰⁹ JGN, *Access Arrangement 2015-2020*, 30 June 2014, clauses 8.1 and 8.2, pp. 27-28.

¹¹⁰ JGN, *Access Arrangement 2010-2015*, 30 June 2010, clause 7(d), p. 29.

¹¹¹ See for example, AER, Final decision, Jemena Gas Networks, *Access arrangement proposal for the NSW gas networks 1 July 2010–30 June 2015*, June 2010, pp. 432-437; AER, Final decision, Envestra Ltd, *Access arrangement proposal for the SA gas network 1 July 2011–30 June 2016*, June 2011, pp. 145-148; AER, *Access arrangement final decision, SPI Networks (Gas) Pty Ltd 2013-17 Part 2: Attachments*, March 2013, pp. 216-219.

- to be provided by the new network section – an extension to low or medium pressure pipeline
- to be provided by the new network section – an expansion to low or medium pressure pipeline
- to be provided by the new network section – where the AER has considered the service provider’s application and decided that the new network section forms part of the covered pipeline
- to be provided by the new network section – where the new network section’s cost has already been included in calculating the reference tariffs
- to be provided by extensions or expansions that are not new network sections within the meaning of clause 8.1(b).¹¹²

If the access arrangement is to apply to incremental services, the extension and expansion requirements must deal with their effect on tariffs. JGN proposes in clause 8.2(c) of the proposed access arrangement that:

The Service Provider will offer the Reference Service in respect of any extensions or expansions to which this Access Arrangement applies at the Reference Tariffs.¹¹³

We are satisfied that this meets the requirements of r. 104(2) of the NGR.

However, JGN has drafted clause 8.2(c) of the proposed access arrangement whilst removing the surcharge notification under clause 7(d) of the 2010-15 access arrangement. Instead, JGN has included these notification requirements in the proposed access arrangement’s clause relating to speculative capital expenditure and investment.¹¹⁴ The effect of this is, if the access arrangement will not apply to incremental services,¹¹⁵ clause 8 of the proposed access arrangement, as currently drafted, is now silent on the effect on pricing of the services. We consider that JGN has not provided clarity to the users on whether it will impose charges on a user of incremental services resulting from the extension or expansion, and on the nature of these charges.

We consider that providing clarity and certainty to the users will promote the efficient operation and use of JGN's network, and is therefore consistent with the NGO. To achieve this, JGN should include the surcharge notification requirements in clause 8 of the proposed access arrangement referring to extension and expansion requirements.

¹¹² JGN, *Access Arrangement 2015-2020*, 30 June 2014, clauses 8.2(a), p. 27.

¹¹³ JGN, *Access Arrangement 2015-2020*, 30 June 2014, clauses 8.2(c), p. 28.

¹¹⁴ JGN, *Access Arrangement 2015-2020*, 30 June 2014, clause 6.1(a)(ii), p. 23.

¹¹⁵ For example, for expansions to high pressure pipelines or for new network sections where the AER decides the access arrangement will not apply to incremental services provided by the expansion or network section.

12.4 Capacity trading requirements

The capacity trading requirements of an access arrangement may allow a user to transfer, by way of a subcontract, all or any of the user's contracted capacity to another user.¹¹⁶ In doing so, it may enable a secondary market with more efficient price signals and levels of usage.

12.4.1 Draft decision

We approve JGN's proposed capacity trading requirements.

12.4.2 JGN's proposal

JGN's proposed 2015-20 access arrangement does not amend, for the most part, the capacity trading requirements under the 2010-15 access arrangement.¹¹⁷

However, JGN's proposed 2015-20 RSA does not contain a clause that refers to capacity transfers – if the service provider is a registered participant in a particular gas market – in accordance with the rules or procedures of that gas market.¹¹⁸

12.4.3 AER's assessment approach

We have assessed JGN's capacity trading requirements for consistency with the NGO and r. 105 of the NGR.

Rule 105 has specific provisions on capacity trading requirements and, at a high level, provides that:

- the requirements must provide for capacity transfers in accordance with the rules or procedures of the relevant gas market, if the service provider is registered as a participant in a particular gas market
- a user may transfer all or part of its contracted capacity without the service provider's consent, with particular consequences
- a user may transfer all or part of its contracted capacity with the service provider's consent, with particular consequences
- a service provider must not withhold its consent unless it has reasonable grounds, based on technical or commercial considerations, for doing so
- the requirements may specify in advance the conditions under which consent will or will not be given.

¹¹⁶ NGR, r. 105(2).

¹¹⁷ JGN, *Access Arrangement 2015-2020*, 30 June 2014, clause 9, p. 29.

¹¹⁸ In contrast, this clause was in the RSA for the 2010-15 access arrangement (clause 29.3). This addressed the requirement in r. 105(1)(a).

The AER assessed and has no concerns with clause 9 of the proposed access arrangement and clauses 11, 12, 13 and 27 of the Proposed RSA which set out the capacity trading requirements under JGN's proposed access arrangement.¹¹⁹

12.4.4 Reasons for draft decision

JGN is a registered participant in the NSW and ACT gas market as a network operator, and in the short term trading market as a network operator.¹²⁰ The NGR require that capacity trading requirements in an access arrangement must provide for transfer of capacity, if the service provider is registered as a participant in a particular gas market, in accordance with rules or procedures governing the relevant gas market.¹²¹

We had previously assessed and approved the capacity trading requirements in JGN's 2010-15 access arrangement. The RSA in the 2010-15 access arrangement included a clause that provided for capacity trading requirements where Retail Market Procedures apply because JGN was (and continues to be) a registered participant in a gas market.¹²² Under that clause, JGN, in transferring contracted capacity, will add or delete a delivery point in accordance with the RSA provisions, which reflected the rules and procedures of the relevant gas markets.

The proposed RSA for the 2015-20 access arrangement does not contain a similar clause that provides for capacity trading requirements where Retail Market Procedures apply.¹²³ However, we recognise that the requirements on the addition or deletion of delivery points resulting from capacity transfers are contained elsewhere in the proposed RSA – specifically, in clauses 11, 12 and 13 of the proposed RSA¹²⁴ – and that the Retail Market Procedures do apply to capacity transfers under JGN's proposed RSA. Subject to the amendments we require to clauses 11.3 and 11.4 that we discussed above in section 12.1, we are satisfied that capacity trading requirements provided in clauses 11, 12, 13 and 27 of the proposed RSA and clause 9 of the proposed access arrangement provide clarity and certainty to users. This promotes the efficient operation and use of JGN's network and is consistent with the the NGO.

¹¹⁹ JGN, Access Arrangement 2015-2020, 30 June 2014, clause 9, p. 29; Jemena Gas Networks (NSW) Ltd, *Access Arrangement 2015-2020 - Reference Service Agreement*, 30 June 2014, clause 11, pp. 36-40; clause 12, pp. 40-41; clause 13, p. 41; clause 27, pp. 76-78.

¹²⁰ www.aemo.org.au/Gas/Registration. JGN (NSW) Ltd is the registered participant.

¹²¹ NGR, r. 105(a).

¹²² cl. 29.3 of the JGN's 2010-15 Reference Services Agreement.

¹²³ whereas in the 2010-15 RSA, clause 29.3 referred to transfers in accordance with the Retail Market Procedures.

¹²⁴ in Clause 11 Addition of Delivery Points, clause 12 Deletion of Delivery Points, and clause 13 Change of Receipt Point or Delivery Point of the proposed 2015-20 RSA.

12.5 Changing receipt or delivery points

A receipt or delivery point is a point on a pipeline at which a service provider takes delivery of natural gas, or delivers natural gas.¹²⁵ A user may wish to change the point at which they receive or take delivery of natural gas.

12.5.1 Draft decision

We approve JGN's proposed terms and conditions for changing receipt or delivery points.

12.5.2 JGN's proposal

JGN's proposal for the 2015-20 access arrangement period retains the provisions in the 2010-15 access arrangement and Reference Service Agreement relating to changing receipt or delivery points.

In addition, JGN proposes an additional clause in the access arrangement, which provides that JGN cannot unreasonably withhold its consent to any request made by a user unless it has reasonable grounds, based on technical or commercial considerations, for doing so.¹²⁶

The proposed RSA includes an example of a ground for JGN to withhold its consent.¹²⁷

12.5.3 AER's assessment approach

We have assessed JGN's terms and conditions for changing receipt or delivery points against the NGO and rule 106 of the NGR.

Rule 106 of the NGR has specific provisions on the change of receipt or delivery point by user and provides, at a high level, that:

- a user may change its receipt or delivery point with the service provider's consent
- the service provider must not withhold consent unless it has reasonable grounds, based on technical or commercial considerations, for doing so
- the access arrangement may specify in advance conditions under which consent will or will not be given.

¹²⁵ NGR, r. 3.

¹²⁶ JGN, *Access Arrangement 2015-2020*, 30 June 2014, clause 10, p. 30.

¹²⁷ JGN, *Reference Services Agreement 2015-2020*, 30 June 2014, clause 13(b), p. 41.

12.5.4 Reasons for draft decision

We had previously assessed and approved the terms and conditions for changing receipt or delivery points in JGN's access arrangement for the period 2010-2015.

The only change from JGN's 2010-15 access arrangement is a proposed additional clause. This clause provides that JGN must not withhold its consent unless it has reasonable grounds, based on technical or commercial considerations, for doing so.¹²⁸ As the clause mirrors r. 106(1)(b) of the NGR, we propose to accept it.

Further, we recognise that clause 13(b) of the proposed RSA includes an example of a ground for withholding consent:

An example of a reasonable ground for withholding consent is where the Service Provider would not receive at least the same amount of revenue relative to the amount it would have received before the change.¹²⁹

We accept that the service provider should be given a reason to recover at least the efficient cost it incurs in providing a service. This includes the cost incurred in changing a receipt point or delivery point as a result of the user's request.¹³⁰ The inclusion of an example will provide greater certainty to users and will accordingly promote the NGO. The NGR does not set out examples of things that would be reasonable for the purposes of changing receipt or delivery points, but does permit for examples to be given.¹³¹

¹²⁸ JGN, *Access Arrangement 2015-2020*, 30 June 2014, clause 10, p. 30.

¹²⁹ JGN, *Reference Services Agreement 2015-2020*, 30 June 2014, clause 13(b), p. 41.

¹³⁰ NGL, s 24(2).

¹³¹ NGR, r. 106(2).

12.6 Review submission date and revision commencement date

Rule 49(1) of the NGR requires that a full access arrangement that is not voluntary must contain a review submission date and a revision commencement date and must not contain an expiry date.

Rule 50(1) of the NGR provides that, as a general rule:

- a review submission date will fall 4 years after the access arrangement took effect or the last revision commencement date; and
- a revision commencement date will fall 5 years after the access arrangement took effect or the last revision commencement date.¹³²

12.6.1 Draft decision

We do not approve the provision concerning JGN's proposed review submission date. We require JGN to amend the provision in accordance with revision 1.6.

We approve JGN's proposed revision commencement date.

12.6.2 JGN's proposal

JGN proposed a review submission date of 30 June 2019, or such later date as provided for by the AER pursuant to the NGR.¹³³

For the revision commencement date, JGN proposed the date as 1 July 2020.¹³⁴

12.6.3 AER's assessment approach

We have assessed JGN's review submission date and revision commencement date against the NGO and rules 49 to 52 of the NGR.

We are required to accept a service provider's proposed review submission and commencement dates if these are made in accordance with the general rule in r. 50(1).

We may also approve dates that do not conform to the general rule if we are satisfied that the dates are consistent with the NGO and the RPP.¹³⁵

¹³² NGR, r. 50(1).

¹³³ JGN, *Access Arrangement 2015-2020*, 30 June 2014, clause1.3, p. 2.

¹³⁴ JGN, *Access Arrangement 2015-2020*, 30 June 2014, clause1.4, p. 2.

12.6.4 Reasons for draft decision

JGN's proposed review submission date in clause 1.3 of its proposed access arrangement states:

The review submission date is 30 June 2019, or such later date as provided for by the AER pursuant to the National Gas Rules.¹³⁶

The date of 30 June 2019 will fall four years after the 2015-20 access arrangement takes effect, that is, four years after 1 July 2015. This part of clause 1.3 satisfies the requirement of r. 50(1)(a).

However, we do not approve that part of clause 1.3 that states "or such later date as provided for by the AER pursuant to the National Gas Rules". This is because this expression does not fall within what we are permitted to approve under rule 50 of the NGR. (See revision 12.6.)

In relation to the revision commencement date, JGN's proposed revision commencement date of 1 July 2020 will fall five years after the 2015-20 access arrangement takes effect. This satisfies the requirement of r. 50(1)(b).¹³⁷

12.7 Revisions

We require the following revisions to make the access arrangement proposal acceptable.

Revision 12.1: Amend clauses 11.4(c), 12(a), 15.9(a), 20.1(a)(i), 20.3(a), 20.4 and 20.6(b) in accordance with the revisions [A.1]–[A.7] as specified in Appendix A.

Revision 12.2: Amend clauses 9.4(b), 10.1(d), 26.1, 26.4(a), 26.4(b) and 26.5 in accordance with the revisions [B.1]–[B.6] as specified in Appendix A.

Revision 12.3: Amend the definitions of "Country Distance", "Security" and "Volume" in clause 1.1, clauses 1.3, 5.2, 9.4(a), 11.3(d), 11.3(i), 11.4(c)(ii), 15.9(a)(i), 16.1(c), 16.8, 20.7(c), 22.2(a), 23.4(d), 23.4(e), 23.5(b), 25.2(b), 25.3 and clauses 4(c) and 5(c) of Annexure 3 in accordance with the revisions [C.1]–[C.21] as specified in Appendix A.

Revision 12.4: Amend the definition of "Agreement", clauses 1.2(d), 3.1, 19.1(d), 20.1, 23.3 and 26.2 in accordance with the revisions [D.1]–[D.7] as specified in Appendix A.

Revision 12.5: Amend clause 8.2(c) of the access arrangement revision proposal as follows:

¹³⁶ JGN, Access Arrangement 2015-2020, 30 June 2014, clause 1.3, p. 2.

¹³⁷ JGN, Access Arrangement 2015-2020, 30 June 2014, clause 1.4, p. 2

Add text to clause 8.2(c) by inserting this sentence after the first sentence:

"The Service Provider will notify the AER of any proposed surcharge to be levied on users of incremental services and designed to recover non-conforming capital expenditure or a specified portion of non-conforming capital expenditure (non-conforming capital expenditure which is recovered by means of a surcharge will not be rolled into the capital base."

Revision 12.6: Amend clause 1.3 of the access arrangement revision proposal as follows:

Delete this part of the clause:

"or such later date as provided for by the AER pursuant to the National Gas Rules"

so that the final clause will read:

1.3 The review submission date is 30 June 2019.

A Reference Service Agreement

APPENDIX A

Reference Service Agreement

(JGN version)

JGN's NSW gas distribution networks

1 July 2015 – 30 June 2020

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Agreement dated

20

Parties **Jemena Gas Networks (NSW) Ltd** ACN 003 004 322 of 321 Ferntree Gully Road, Mt Waverley, Victoria 3149 (**Service Provider**); and

 [insert name] ACN [insert ACN] of [insert address] (**User**).

Background

The Service Provider has agreed to provide and the User has agreed to receive the Haulage Reference Service on the terms and conditions set out in this Agreement.

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, unless otherwise indicated:

Access Arrangement means the current access arrangement in relation to the Network approved by the Regulator, for the purposes of and in accordance with the National Gas Law;

ACDC means the Australian Commercial Dispute Centre;

AEMC means the Australian Energy Market Commission;

Agreement means this Agreement, the Annexures, and any document, or part of a document, incorporated into this Agreement by reference, including (without limitation):

- (a) the Relevant Customer List;
- (b) clauses 2, 3 and 4 of the Access Arrangement;
- (c) the Reference Tariff Schedule; and
- (d) the Operational Schedules,

each as amended or replaced from time to time;

Ancillary Charge means an ancillary charge specified in the Reference Tariff Schedule;

Annexure means an annexure to this Agreement;

Assignment Date means the date determined in accordance with:

- (a) clause 11.2(d)(i); or

[D.1]

- (b) the date on which a Delivery Point was most recently assigned to its current Tariff Class by the Service Provider, as set out in the Relevant Customer List;

Australian Energy Market Operator or AEMO means Australian Energy Market Operator Limited (ACN 072 010 327);

Australian Standard AS ISO 1000-1998 means *'The International System of Units (SI) and its Application'*, the Commonwealth *'Weights Measures (National Standards) Act 1960 - 1965'* and Regulations thereunder, and AS/NZ1376:1996 Conversion Factors;

Authorised Overrun has the meaning given to that term in clause 5.3;

Authorised Overrun Quantity has the meaning given to that term in clause 5.7;

Basic Metering Equipment means the meter set at the Delivery Station comprising of Gas meter, filter, pipework and isolation valves and may further include, where required by the Service Provider, pressure regulators, safety valves, pressure and temperature measurement instruments and flow calculation equipment;

Billing Period means the period between the dates on which a meter is read for a Non-Daily Metered Delivery Point, or one Calendar Month for a Daily Metered Delivery Point;

Business Day means any day which is not a Saturday, Sunday, or gazetted public holiday in Sydney, New South Wales;

Calendar Month means the period beginning at 06:30h on the first Day of a calendar month and ending at 06:30h on the first Day of the next succeeding calendar month;

Calendar Year means the period commencing at 06:30h on 1 January and terminating at 06:30h on 1 January of the following year;

Capacity Entitlement means:

- (a) in respect of a Demand Customer Delivery Point, on a Day, the MDQ specified in Demand Customer List for that Delivery Point, as varied from time to time pursuant to clauses 4.2(h), 4.3 and 4.4;
- (b) in respect of a Demand Customer Delivery Point, in an Hour, the MHQ specified in Demand Customer List in respect of that Delivery Point, as varied from time to time pursuant to clauses 4.2(h), 4.3 and 4.4;
- (c) if there is an MHQ specified in the Volume Customer List in respect of a Volume Customer Delivery Point, in an Hour, the MHQ specified in the Volume Customer List in respect of that Delivery Point, as varied from time to time pursuant to clause 4.3; or
- (d) if there is no MHQ specified in the Volume Customer List in respect of a Volume Customer Delivery Point, the Quantity of Gas withdrawn by the User from the Delivery Point in an Hour, up to a maximum Quantity of 6m³/Hour;

Change in Law means:

- (a) the introduction of a new Law; or
- (b) an amendment to, or repeal of, an existing Law; or
- (c) a new or changed interpretation (which is binding on the Service Provider) of an existing Law resulting from a decision of:
 - (i) a court;
 - (ii) a tribunal;
 - (iii) an arbitrator;
 - (iv) a Government or regulatory department, body, instrumentality, minister, commissioner, officer, agency or other authority; or
 - (v) a person or body which is the successor to the administrative responsibilities of any person or body described in paragraph (c)(iv) above;

Chargeable Demand means, for a Demand Customer Delivery Point, the Quantity of Gas determined in accordance with this Agreement which is used to determine the Demand Charge under the Reference Tariff Schedule;

Charges means the charges payable by the User to the Service Provider under clause 19.1 of this Agreement;

Commencement Date means:

- (a) the commencement date specified in a Relevant Customer List, in respect of a Delivery Point listed in a Relevant Customer List immediately prior to the most recent amendment to this Agreement under clause 1.2; or
- (b) the date on which a change of user transaction under the Retail Market Procedures takes effect such that the User becomes the current user (as that term is used in the Retail Market Procedures) for the Delivery Point, in respect of a Delivery Point which is added to a Relevant Customer List pursuant to clause 11.2; or
- (c) the date specified by the Service Provider in respect of a Delivery Point added to the Relevant Customer List pursuant to clause 11.1;

Communications Facilities means equipment used to communicate electronically Daily metering data from Daily Meter Reading Facilities at a Delivery Station to the Service Provider;

Confidential Information means all information which either Party discloses to the other under or in connection with the performance of any obligations under this Agreement, whether that disclosure is made orally, in writing, electronically or by any other means;

Consequential Damage means any of the following, however caused or arising whether under common law, equity, contract, any fiduciary duty, tort (including negligence) or delict as a consequence of breach of any duty (statutory or otherwise) or under any other legal doctrine or principle whatsoever, irrespective of whether recoverable in law or equity and whether the same arise directly or indirectly:

- (a) loss of revenue, reputation or profit;
- (b) cost, loss, liability, penalty, expense or damage associated with business interruption (including overheads incurred during business interruption);
- (c) punitive or exemplary damages;
- (d) cost, loss, liability, penalty, expense or damage incurred, or liquidated or pre-estimated damages or penalties of any kind whatsoever, borne or payable under any contract for the sale, exchange, transportation, processing, storage or other disposal of Gas (other than this Agreement);
- (e) cost, loss, liability, penalty, expense or damage arising in connection with a Third Party Claim;
- (f) loss of bargain, contract, expectation or opportunity; and
- (g) any indirect or consequential loss or damage;

Country Distance means, in respect of a Delivery Point in a Country Network Section, the straight line distance (in kilometres) from the Relevant Receipt Point, rounded up to the nearest 0.5 km as determined reasonably by the Service Provider and as shown in the Relevant Customer List;

[C.1]

Country Network Section means a Network Section other than the Wilton Network Section;

Curtailed Plan means a written procedure, which is reasonably acceptable to the Service Provider, that describes the timing and steps to be taken by a Customer to reduce and maintain Hourly Gas withdrawals at the Delivery Point to pre-quantified levels which correspond to the Load Shedding Priorities set out in the ELMS Data for the Delivery Point;

Customer has the meaning given to that term in the Access Arrangement;

Customer Connection Contract in force at a Delivery Point means a customer connection contract, as defined in the NERL, which has taken effect as between the Service Provider and a Customer in respect of supply of Gas at that Delivery Point, in accordance with the NERL;

Customer's Personal Information means Personal Information in respect of a Customer;

Daily Meter Reading Facilities means equipment at a Delivery Station necessary to enable a Customer's Daily consumption of Gas to be recorded and measured;

Daily Metered Delivery Point means a Delivery Point where Gas consumption is recorded on a Daily basis;

Damage includes any costs (including legal costs on a full indemnity basis), liabilities, losses, penalties, expenses or damage of whatsoever nature or description suffered or incurred by a person including Consequential Damage and Direct Damage;

Day means a period of 24 consecutive Hours beginning at 06:30h and **Daily** has a corresponding meaning;

Declared Heating Value of Gas for a Day means the Heating Value of Gas applicable to the Delivery Point for the Day as determined by the Service Provider;

Delivery Point means a point at which Gas is withdrawn from the Network listed from time to time in the Relevant Customer List;

Delivery Station means facilities (including Measuring Equipment) installed at a Delivery Point to enable the delivery of Gas from the Network and which regulate the delivery, and measure the Quantity, of Gas withdrawn at that Delivery Point;

Demand Charge means the annual charge calculated by multiplying the Demand Capacity Rate (or other charge component set out in the Reference Tariff Schedule that is expressed in units of \$/(GJ of Chargeable Demand) per annum) by the Chargeable Demand;

Demand Customer Delivery Point means a Delivery Point which has been assigned to a Demand Tariff or a Volume Tariff which includes a Demand Charge and as set out in the Demand Customer List;

Demand Customer List means a list in electronic form which sets out the following items for each Demand Customer Delivery Point:

- (a) the Delivery Point station ID;
- (b) the Receipt Point (where the Delivery Point is in the Wilton Network Section then the Receipt Point shall be taken to refer individually or collectively to any Receipt Point in the Wilton Network Section);
- (c) the assigned Tariff;
- (d) the Commencement Date;
- (e) the Chargeable Demand;
- (f) the Maximum Daily Quantity;

- (g) the Maximum Hourly Quantity;
- (h) if the Delivery Point is located within a Country Network Section, the Country Distance;
- (i) the Assignment Date;
- (j) the Demand Reset Date; and
- (k) the ELMS Data.

Demand Reset Date means, for a Delivery Point, the date determined in accordance with clause 4.6(d), 4.6(e) or 4.7(f) (as applicable), and set out in the Demand Customer List, being the date on which the Chargeable Demand was last changed (or was deemed to have been last changed);

Demand Tariff means a Tariff Class designated as a Demand Tariff in the Reference Tariff Schedule;

Direct Damage means any Damage other than Consequential Damage;

Director General means the Director General referred to in the *Gas Supply (Safety and Network Management) Regulation 2013* (NSW);

Disclosing Party has the meaning given to that term in clause 29(b);

Dispute has the meaning given to that term in clause 30.2;

DPI means the numeric identifier assigned to a Delivery Point by the Service Provider;

Due Date has the meaning given to that term in clause 20.4(a);

EGP means the Eastern Gas Pipeline constructed from Victoria to New South Wales and delivering Gas to the Network;

ELMS Data means information held by the Service Provider (including such information as may be requested from time to time) for the purposes of facilitating emergency Load Shedding including, but not limited to, for each Delivery Point:

- (a) Load Type;
- (b) the corresponding Quantity of Load for each Load Type; and
- (c) 24-hour, seven day a week User and Customer contact details,

and includes any Curtailment Plan provided by a User in respect of a Delivery Point;

End Customer means any person who is supplied with and consumes Energy as a result of Gas being delivered under this Agreement to a Delivery Point;

Energy means energy (or an energy source) in any form and includes natural gas, electricity or thermal energy in any form (for example steam or hot water and whether used for heating, cooling or some other purpose);

Filtration and Liquid Separation System has the meaning given to that term in Annexure 4;

Financial Report has the meaning given to that term in the *Corporations Act 2001* (Cth);

Financially Responsible Retailer for premises means the retailer who is responsible for settling the account for Gas withdrawn from the delivery point (however described) associated with the premises under the Retail Market Procedures;

Flow and Pressure Control System has the meaning given to that term in Annexure 4;

Force Majeure Event has the meaning given to that term in clause 24.1;

Forecast Withdrawal has the meaning given to that term in clause 7.2(e);

Gas means natural gas;

Gas Balancing means operational Gas balancing carried out to ensure safe and reliable supply of Gas;

Gas Balancing Adjustments means adjustments to the Quantity of Gas transported for a User made pursuant to the relevant operational Gas requirements at the time (including in relation to Gas Balancing and the maintenance of linepack in the Network);

Gas Balancing Annexure means Annexure 3;

Gas Quality Measurement System has the meaning given to that term in Annexure 4;

Gas Quantity Measurement System has the meaning given to that term in Annexure 4;

Gas Supply Act means *Gas Supply Act 1996* (NSW);

GJ means one gigajoule and is equal to one thousand MJ;

GST means goods and services tax or similar value added tax levied or imposed in the Commonwealth of Australia pursuant to the GST law;

GST law has the meaning given to such term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or a successor Act;

Haulage Reference Service has the meaning given to that term in the Access Arrangement;

Heating Value is the number of megajoules liberated when one cubic metre of Gas at Standard Conditions, is completely burnt in air, with all water formed by the combustion

process condensed to the liquid state, and with all products of combustion at Standard Conditions;

Hour means any period of 60 consecutive minutes, the first Hour in a Day starting at 06:30h, and **Hourly** has a corresponding meaning;

Hourly Charge means the Ancillary Charge described as an hourly charge in the Reference Tariff Schedule;

Joule or **J** means a unit of energy as defined in Australian Standard AS ISO 1000-1998;

kPa means one kilopascal and is equal to one thousand pascals as defined in Australian Standards AS ISO 1000-1998, and unless otherwise specified, refers to a gauge pressure in excess of the prevailing atmospheric pressure;

Large Customer has the meaning given to that term in the National Energy Retail Law;

Law means any:

- (a) statute, regulation, order, rule, subordinate legislation; or
- (b) other document enforceable under any statute, regulation, rule or subordinate legislation, including but not limited to, the Access Arrangement, Retail Market Procedures, any procedures or rules made or enacted by the Australian Energy Market Operator, the Regulator or the AEMC, and/or the Network Code, applying to the Delivery Points the subject of this Agreement, any other codes, guidelines, orders in council, licences, proclamations, directions or standards, the reticulator's authorisation held by the Service Provider and, if it holds one, the Retailer Authorisation held by the User;

LG Period means a period of time over which an LG Quantity is calculated, being a period of not less than 12 Calendar Months;

LG Quantity means the Quantity of Gas that is calculated as follows:

- (a) the aggregate of the measured Quantities of Gas received into the Network at all Receipt Points; less
- (b) the aggregate of measured Quantities of Gas Delivered on behalf of all Network Users to Delivery Points; less
- (c) any increase (or plus any decrease) in linepack in the Network (as determined by the Service Provider, acting reasonably),

over an LG Period, as calculated at least 6 Calendar Months after the end of that LG Period;

Load means the taking or withdrawal of Gas from the Network by or on behalf of a User or a User's Customer;

Load Shedding means the process of reducing or ceasing the withdrawal or taking of Gas from the Network in accordance with clause 23.4;

Load Shedding Priority means a load shedding priority as set out and described in the Operational Schedules;

Load Type means, in respect of each Delivery Point, the uses to which Gas withdrawn or taken from the Network at that Delivery Point is put, as described in the Operational Schedules in respect of each Load Shedding Priority;

Local Area Retailer for premises means the retailer nominated as the local area retailer for the premises (or for the geographical area in which the premises is located) under the NERL;

Maximum Daily Quantity or **MDQ** means that maximum Quantity of Gas which the Service Provider is obliged to transport and delivery to a Delivery Point on behalf of the User on any Day as specified in the Relevant Customer List and, if applicable, as varied from time to time by clauses 4.2(h), 4.3, and 4.4;

Maximum Hourly Quantity or **MHQ** means the maximum Quantity of Gas which the Service Provider is obliged to transport and deliver to a Delivery Point on behalf of the User in any Hour as specified in the Relevant Customer List and, if applicable, as varied from time to time by clauses 4.2(h), 4.3, and 4.4;

Measuring Equipment means all the equipment and facilities (including Basic Metering Equipment, Communications Facilities and Daily Meter Reading Facilities) forming part of a Delivery Station or a Receipt Station required to measure the Quantity delivered to or at the Delivery Point or Receipt Point;

Minimum Charge means the minimum charge payable over a period of time for:

- (a) a Service or for a component of a Reference Tariff, as described by the Reference Tariff Schedule; or
- (b) a Delivery Point as agreed with the Service Provider;

MJ means one megajoule and is equal to one million Joules;

National Energy Retail Law or NERL means the *National Energy Retail Law* adopted under the *National Energy Retail Law (Adoption) Act 2012* (NSW);

National Energy Retail Rules or NERR means the *National Energy Retail Rules* adopted under the *National Energy Retail Law (Adoption) Act 2012* (NSW);

National Gas Law means the *National Gas Law* adopted under the *National Gas (New South Wales) Act 2008* (NSW);

National Gas Rules means the *National Gas Rules* adopted under the *National Gas (New South Wales) Act 2008* (NSW);

Network means the Service Provider's distribution system in New South Wales, consisting of a system of pipes and associated facilities including any Receipt Station components, Delivery Station components and Measuring Equipment owned by the Service Provider;

Network Code means the Jemena Gas Networks (NSW) Ltd Network Code for Full Retail Competition, as amended from time to time, which the Service Provider is required to adopt under the conditions of its authorisation under the Gas Supply Act;

Network Section means (as the case may be) the Wilton-Newcastle Network Section, the Wilton-Wollongong Network Section, or a country sub-network served by a particular Receipt Point;

Network Users means any parties that enter into a service agreement with the Service Provider for the use of the Network or a Network Section;

NGR Part 12A Connection Contract for a delivery point means a connection contract under Part 12A of the National Gas Rules between the Service Provider and a Customer or between the Service Provider and the User or another person on behalf of a Customer for the provision of a connection service to the premises serviced by the delivery point;

Non Daily Metered Delivery Point means a Delivery Point where Gas consumption is recorded at Reading Intervals;

Operational Schedules means the Operational Schedules set out in Schedule 7 of the Access Arrangement;

Out-of -Specification Gas has the meaning given to that term in clause 10.2;

Overrun means, in respect of a Haulage Reference Service, the withdrawal by or on behalf of the User at a Delivery Point of a Quantity of Gas exceeding the MHQ in any Hour or the MDQ on any Day for that Delivery Point;

Party means a party to this Agreement;

Personal Information has the meaning given in the applicable Privacy Laws;

Pipelines means the Moomba-Sydney Pipeline, the EGP, the Camden Gas Pipeline and any other Gas works connecting to the Network upstream of any Receipt Point;

PJ means one petajoule and is equal to one thousand TJ;

POTS means packaged off-take station;

Primary Measurement means the direct or inferential measurement of a mass or volumetric flow at Network conditions;

Privacy Laws means the *Privacy Act 1988* (Cth) and any other applicable laws, including codes or other instruments made, approved or issued under such laws governing the handling of Personal Information;

Provision of Basic Metering Equipment Charge means an annual charge specified in the Reference Tariff Schedule of the Access Arrangement;

Quantity or **Quantity of Gas** means, quantity of Gas, expressed in GJ, calculated as the product of the Declared Heating Value and the Volume of Gas, subject to clause 8.2 in respect of Gas delivered at a Delivery Station;

Queue means a queue of Network Users and prospective Network Users formed in accordance with the Queuing Policy;

Queuing Policy means the queuing policy set out in clause 7 of the Access Arrangement;

Reading Interval in respect of meter reading, means monthly, every two months or every three months;

Receipt Point means any point at which Gas is received into the Network;

Receipt Station means the facilities described in Annexure 4 at which Gas is received into the Network;

Reference Service Agreement means the agreement set out in Schedule 4 of the Access Arrangement;

Reference Tariff means a tariff which relates to the Haulage Reference Service;

Reference Tariff Schedule means the Reference Tariff Schedule currently in place, as approved by the Regulator and amended from time to time in accordance with the terms of the Access Arrangement;

Register has the meaning given to that term in clause 10.10(a);

Registered Participant means a person who is registered under the National Gas Law as a registered participant in their capacity as a user or a self-contracting user in accordance with rule 135AE of the National Gas Rules;

Regulator means the Australian Energy Regulator;

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth);

Relevant Customer List means:

(a) in respect of a Demand Customer Delivery Point, the Demand Customer List;
and

(b) in respect of a Volume Customer Delivery Point, the Volume Customer List;

as amended from time to time by the Service Provider;

Relevant Receipt Point means, in relation to a Delivery Point, any Receipt Point connected (directly or indirectly) to the part of the Network in which that Delivery Point is located;

Request means a request for a Service using a request for service form set out in Schedule 6 to the Access Arrangement or such other request for service form as the Service Provider may determine and **Requesting** and **Requested** have a corresponding meaning;

Retail Market Procedures means the Retail Market Procedures (NSW and ACT) or such other procedures for the operation of the retail market for Gas in New South Wales as are approved by AEMO;

Retailer means a person who is the holder of a retailer authorisation issued under the National Energy Retail Law in respect of the sale of Gas;

Retailer Authorisation has the meaning given to that term in National Energy Retail Law;

Safety and Operating Plan means a safety and operating plan lodged by the Service Provider under the *Gas Supply (Safety and Network Management) Regulation 2013* (NSW), as amended from time to time;

SCADA System means the system of Supervisory Control and Data Acquisition operated by the Service Provider;

Secondary Measurement means any measurement of the quality of the Gas or of the flowing Network conditions (such as pressure or temperature) used to convert the Primary Measurement to Quantity;

Security means, at the User's option, one or a combination of the following:

- (a) a refundable deposit, or bank guarantee;
- (b) if the Service Provider agrees (in its discretion, acting reasonably), a parent company guarantee; or
- (c) such other form of security as agreed between the User and the Service Provider,

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[C.2]

which must be in a form satisfactory to the Service Provider;

Service means the service(s) to be provided by the Service Provider to the User under this Agreement;

Service Provider means Jemena Gas Networks (NSW) Ltd, or its successors or assigns;

Short Term Trading Market or **STTM** has the meaning given to such term in the National Gas Law;

Small Customer has the meaning given to that term in the National Energy Retail Law;

Small Volume Customer Delivery Point means a Volume Customer Delivery Point at which the Customer consuming Gas at the premises serviced by the Delivery Point is a Small Customer;

Specification means the specifications described in clause 10.1(a);

Specified Period has the meaning given to that term in clause 5.4(b);

Standard Conditions means a temperature of 15°C and an absolute pressure of 101.325 kPa;

Tariff Class means the Tariff Class set out in the Reference Tariff Schedule to which a Delivery Point is assigned in accordance with the Access Arrangement;

Third Party Claims means a demand, claim, action or proceeding made or brought by or against a person by a third party, however arising and whether present, unascertained, immediate, future or contingent;

TJ means one terajoule and is equal to one thousand GJ;

Transportation Quantity has the meaning given to that term in clause 3.4(b)(iii);

TRS means trunk receiving station;

Unaccounted for Gas or **UAG** means Gas purchased by the Service Provider to make up for Gas unaccounted for in the Network;

Unauthorised Overrun has the meaning given to that term in clause 6.1;

Volume means volume of Gas measured in cubic metres (m³) at actual conditions converted to Standard Conditions using either a flow corrector forming part of the Measuring Equipment or an algorithm determined by the Service Provider, acting reasonably;

[C.3]

Volume Customer Delivery Point means a Delivery Point assigned to a Volume Tariff (except a Volume Tariff which includes a Demand Charge) and as set out in the Volume Customer List;

Volume Customer List means a list in electronic form (or such other form determined by the Service Provider) which sets out the following items for a Volume Customer Delivery Point:

- (a) the DPI and the address of the delivery point;
- (b) the Tariff Class and Assignment Date;
- (c) where the User requires and the MHQ is in excess of 6 m³/hour, its MHQ;

- (d) its Commencement Date; and
- (e) the Receipt Point to be used for balancing purposes;

Volume Tariff means a Tariff Class designated as a Volume Tariff in the Reference Tariff Schedule;

Wilton Network Section means the Wilton-Newcastle Network Section and the Wilton-Wollongong Network section;

Wilton-Newcastle Network Section means the Wilton-Newcastle Trunk Section and those parts of the Network supplied from the Wilton-Newcastle Trunk Section;

Wilton-Newcastle Trunk Section means the pipeline being that part of the Network being the pipe system which extends from Wilton to the TRS at Kooragang Island in Newcastle and supplying TRSs at Appin, Campbelltown, West Hoxton, Horsley Park, Eastern Creek, Plumpton, Windsor, Gosford, Wyong and Hexham, and POTS at Appin, Maroota, Warnervale, Wyee, Morisset and Minmi, and custody transfer station at Munmorah and such other TRSs and POTS and custody transfer stations as may be installed from time to time;

Wilton-Wollongong Network Section means the Wilton-Wollongong Trunk Section and that part of the Network supplied from the Wilton-Wollongong Trunk Section;

Wilton-Wollongong Trunk Section means the pipeline being that part of the Network being the pipe system which extends from Wilton to the TRS at Mount Keira and then to Cordeaux Heights in Wollongong;

2005 Access Arrangement means the AGL Gas Networks Ltd Access Arrangement approved by the Independent Pricing and Regulatory Tribunal on 29 April 2005, and designated as a '2005 Access Arrangement' under Schedule 3 of the National Gas Law; and

2010 Access Arrangement means the Jemena Gas Networks (NSW) Limited access arrangement that commenced on 1 July 2010, as approved by the Regulator under the National Gas Law and amended by order of the Australian Competition Tribunal on 30 June 2011, and further amended on 26 September 2011.

1.2 Amendments to this Agreement approved by relevant authority

Where:

- (a) the Regulator has approved amendments to the Reference Service Agreement in accordance with clause 2.3(b) of the Access Arrangement or in connection with the approval by the Regulator of a revised or new access arrangement; or
- (b) where amendments to the Reference Service Agreement are made pursuant to any orders made by any Court, or made or ordered by the Australian

Competition Tribunal (**Tribunal**), in connection with any judgement by a Court, or determination by the Tribunal, in relation to a revised or new access arrangement,

then:

- (c) the Service Provider will provide notice to the User; and
- (d) the Parties each agree that such amendments will vary the terms of this Agreement, effective 10 Business Days from the date of the notice, unless the User can demonstrate to the Service Provider's reasonable satisfaction that it is not able to comply with this timeframe in which case the Service Provider ~~will~~ grant a reasonable extension.

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[D.2]

1.3 Amendments to this Agreement due to Change of Law

- (a) The Service Provider ~~and the User~~ may ~~seek to~~ amend the terms and conditions set out in this Agreement to accommodate a Change in Law.

[C.4]

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- (b) The ~~Party seeking to amend the terms and conditions set out in this Agreement to accommodate a Change in Law (in this clause 1.3, the First Party)~~ will consult the ~~other Party (in this clause 1.3, the Second Party)~~ in respect of the amendments the ~~First Party~~ proposes to make to the terms and conditions set out in this Agreement and will take into account any reasonable comments made by the ~~Second Party~~.

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- (c) The ~~First Party~~ will provide notice to the ~~Second Party~~ of any such amendments, along with an explanation of why the amendments are required and an analysis of their impact on the Agreement.

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[C.4]

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- (d) The ~~Second Party~~ agrees ~~(with such agreement not to be unreasonably withheld)~~ that such amendments will vary the terms of this Agreement, effective 20 Business Days from the date of the notice or such later date as agreed between the Parties, unless the ~~Second Party~~ gives a notice of dispute under clause 30.2 before that date, in which case the provisions of clause 30 will apply.

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[C.4]

1.4 Precedence

- (a) If there is any inconsistency between clauses 3 and 4 of the Access Arrangement or the Reference Tariff Schedule and any other provisions of this Agreement, then unless otherwise provided, clauses 3 and 4 of the Access Arrangement or the Reference Tariff Schedule (as applicable) takes precedence.
- (b) If there is any inconsistency between clauses 3 and 4 of the Access Arrangement and the Reference Tariff Schedule, unless otherwise provided, clauses 3 and 4 of the Access Arrangement takes precedence.

1.5 Construction

In the construction of this Agreement, unless the context otherwise requires:

- (a) a reference to a clause or an annexure is to a clause in, or an annexure to, this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) references to any Laws shall be deemed to be references to the Laws as from time to time amended, consolidated, re-enacted or replaced including substituted provisions or instruments that substantially correspond to those referred to;
- (d) references to any agreement, deed, instrument, or publication shall be deemed to be references to the agreement, deed, instrument or publication as from time to time amended, supplemented, novated or replaced;
- (e) clause headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (f) expressions referring to writing will be construed as including references to words printed, type-written, telexed, lithographed, facsimiled or otherwise traced, copied or reproduced;
- (g) references to **dollars** and **\$** are references to Australian dollars;
- (h) a reference to a Party includes a reference to its successors in title and permitted assigns;
- (i) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally or if given in favour of two or more persons may be enjoyed by them jointly or severally or jointly and severally;
- (j) where a term is not defined in this Agreement it shall, unless the contrary intention is expressed, bear that same meaning in clauses 3 and 4 of the Access Arrangement (Reference Tariffs and Reference Tariff variations) and the Reference Tariff Schedule;
- (k) references to time are Eastern Standard Time (EST) unless specified otherwise except references to time in clauses 5.4 and 5.5 are, where applicable, to Eastern Summer Time;
- (l) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual;
- (m) when referring to a particular Day, the date of the Day shall be the date on which that Day begins; and

- (n) a reference to any firm, body corporate, partnership, unincorporated body or association or government agency (that is not a Party to this Agreement) shall, if it ceases to exist or is reconstituted, renamed or replaced or its powers or functions are transferred to any other firm, body corporate, partnership, unincorporated body or association or government agency, be deemed to refer respectively to the firm, body corporate, partnership, unincorporated body or association or government agency established or constituted in lieu thereof or as nearly as may be succeeding to the powers or function thereof.

1.6 References to User's Customer where User is the Customer

In this Agreement, where the User is a Customer at premises serviced by a Delivery Point, a reference in this Agreement to a "Customer", a "relevant Customer", the "User's Customer" and the "User's relevant Customer" in relation to that Delivery Point is to be interpreted as a reference to the User.

2. Commencement and Expiry of the Haulage Reference Service

The Haulage Reference Service for a Delivery Point:

- (a) commences on the Commencement Date for that Service; and
- (b) expires on the earlier of:
 - (i) the deletion of that Delivery Point from the Relevant Customer List; and
 - (ii) termination of this Agreement.

3. Haulage Reference Service

3.1 Requests for Service

If the User requests a Haulage Reference Service in respect of the Network, and relevant requirements of the Access Arrangement are met by the User and the Service Provider, the Service Provider must provide the Haulage Reference Service in accordance with this Agreement.

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3.2 Addition and Deletion of Delivery Points

The Parties agree that delivery points may be added to the Relevant Customer List in accordance with clause 11 and Delivery Points may be deleted from the Relevant Customer List in accordance with clause 12.

3.3 Relevant Customer Lists

The Parties agree and acknowledge that a certificate signed by the Service Provider as to the information contained in the Relevant Customer List on a particular Day (including, without limitation, all information relating to the Delivery Points listed in that list) is conclusive evidence of the matters to which the information refers except in the case of manifest error or if the User provides evidence that the certificate is incorrect. The Service Provider must provide a certificate within a reasonable time of receiving a request to do so from the User.

3.4 Description of Haulage Reference Service

- (a) This clause 3.4 applies where the Service Provider must provide a Haulage Reference Service pursuant to clause 3.1 as at the date of this Agreement or as at a subsequent date.
- (b) Subject to:
 - (i) clause 3.4(c) and the other terms of this Agreement; and
 - (ii) the aggregate deliveries from the User and all Network Users on a Day to a Network Section being equal to the aggregate withdrawals by the User and all Network Users on that Day from that Network Section (unless any imbalance between the two would not affect the ability of a prudent service provider acting reasonably to provide the Service under the Haulage Reference Service),

the Service Provider must, in respect of each Delivery Point:
 - (iii) receive a Quantity of Gas into the Network from or for the account of the User at each Receipt Point for delivery to the Delivery Point (**Transportation Quantity**); and
 - (iv) taking into account Gas Balancing Adjustments, deliver a Quantity of Gas thermally equivalent to the Transportation Quantity to or for the account of the User through the Network to that Delivery Point.
- (c) The Service Provider is not obliged to transport or deliver a Quantity of Gas through the Network to the User at a Delivery Point which is greater than the Capacity Entitlement plus Authorised Overruns.
- (d) Where any Gas delivered to a Delivery Point under a Haulage Reference Service under this Agreement is used in connection with the supply of Energy to, or the consumption of Energy by, the Customer as well as one or more End Customers, then the additional terms and conditions set out in Annexure 7 apply as between the Service Provider and the User.

4. MDQ, MHQ and Chargeable Demand

4.1 Application

This clause 4 applies where the Service Provider must provide a Haulage Reference Service pursuant to clause 3 as at the date of this Agreement or as at a subsequent date.

4.2 MDQ and MHQ

- (a) Each Demand Customer Delivery Point and its MHQ and MDQ for the Haulage Reference Service is set out in the Demand Customer List.
- (b) Each Volume Customer Delivery Point and its MHQ for the Haulage Reference Service is set out in the Volume Customer List. Where there is no MHQ in the Volume Customer List, the MHQ for the Haulage Reference Service for a Volume Customer Delivery Point will be the Quantity of Gas actually withdrawn at that Delivery Point in any Hour, up to a maximum of 6m³/hour.
- (c) In any Request in respect of a Delivery Point with Hourly demand greater than 6m³/Hour, the User must specify a MHQ that fairly and reasonably reflects the maximum Hourly requirements at that Delivery Point and is based on prior consumption data (where available and where applicable).
- (d) In any Request for a Demand Customer Delivery Point, the User must also specify a MDQ that fairly and reasonably reflects the maximum Daily requirements at that Delivery Point and is based on prior consumption data (where available and where applicable) or, where such data is not available or applicable, is an estimate made by the User and acceptable to the Service Provider (acting reasonably).
- (e) The MDQ and MHQ for a Delivery Point can only be changed as provided in clauses 4.2(h), 4.3 and 4.4.
- (f) The Service Provider's maximum obligation to deliver Gas to the User under the Haulage Reference Service is the MHQ in any Hour and the MDQ on any Day (if applicable) (plus Authorised Overruns).
- (g) The User must not, at any Delivery Point, take in any Hour more than the MHQ for that Delivery Point or take in any Day more than the MDQ (if applicable) (plus Authorised Overruns) for that Delivery Point.
- (h) The User must notify the Service Provider promptly upon becoming aware if the MHQ or MDQ requirement for a Demand Customer Delivery Point decreases, in which case the MHQ or MDQ for that Delivery Point may be reduced by the Service Provider to accord with those requirements.

4.3 Increase in MDQ or MHQ requirements

The User must follow the Request for service procedures set out in the Access Arrangement if the User requires an increase in the MDQ or MHQ for any Delivery Point.

4.4 Procedure for Requests to increase MHQ or MDQ requirements

The Service Provider must agree to an increase in the MDQ or MHQ for any Demand Customer Delivery Point, and include the new MDQ or MHQ (as the case may be) in the Demand Customer List if:

- (a) the User complies with the provisions of the Access Arrangement and National Gas Law relating to Requests, including payment of the costs of processing that Request as set out in the Access Arrangement;
- (b) the Service Provider is able to satisfy its obligations to observe any Queue established under the Access Arrangement and there is no Queue or the User's Request for Service is at the head of the Queue;
- (c) the Service Provider has sufficient capacity available in the Network to provide the Service to the proposed Delivery Point;
- (d) the User accepts the Service Provider's offer to change the MDQ or MHQ (as the case may be) at the Delivery Point; and
- (e) the User has updated and completed the ELMS Data for the Delivery Point in accordance with clause 23.6.

4.5 Chargeable Demand

- (a) This clause 4.5 applies where the Delivery Point is a Demand Customer Delivery Point.
- (b) The Service Provider will calculate the Demand Charge for a Delivery Point using the Chargeable Demand applicable to that Delivery Point as determined by the Service Provider and as varied from time to time in accordance with clauses 4.5(c), 4.5(d), 4.6, 4.7 or the Reference Tariff Schedule.
- (c) Subject to clause 4.5(d), the Chargeable Demand for a Delivery Point for any Day must be greater than the larger of:
 - (i) the MDQ for that Delivery Point; and
 - (ii) ten times the MHQ for that Delivery Point.
- (d) Where:
 - (i) a Delivery Point has had:

- (A) a reference service, for a delivery point consuming more than 10TJ of Gas per annum, provided to it continuously from 1 July 2005 to 30 June 2010 under the 2005 Access Arrangement; and
 - (B) a Haulage Reference Service for a Demand Customer Delivery Point provided to it continuously from 1 July 2010 to 30 June 2015 under the 2010 Access Arrangement; and
- (ii) there have been no changes to the MHQ for that Delivery Point since 1 July 2005,

the Chargeable Demand for that Delivery Point must be greater than the MDQ for that Delivery Point but may be less than ten times the MHQ for that Delivery Point.

4.6 Increases in Chargeable Demand

- (a) This clause 4.6 applies where the Delivery Point is a Demand Customer Delivery Point.
- (b) Where a Delivery Point is equipped with Daily Meter Reading Facilities, the Service Provider may increase the Chargeable Demand applicable to that Delivery Point to equal the ninth-highest actual Quantity of Gas withdrawn at that Delivery Point in any one Day over any 12 month period (or if data from the Daily Meter Reading Facilities is not available for a 12 month period, any lesser period of time for which such information is available).
- (c) Where a Delivery Point is not equipped with Daily Meter Reading Facilities, the Service Provider may increase the Chargeable Demand applicable to that Delivery Point to equal the average Quantity of Gas withdrawn at that Delivery Point in a Day, such average to be calculated by using the Quantity of Gas withdrawn from that Delivery Point over any Calendar Month.
- (d) Where the Service Provider increases the Chargeable Demand for a Delivery Point pursuant to clauses 4.6(b) or 4.6(c), the increase shall take effect from the first Day of the Calendar Month immediately following the Calendar Month in which the Daily or monthly consumption (as applicable) occurred that was used to calculate the increased Chargeable Demand. The first Day of the Calendar Month from which the increase applied will be the “**Demand Reset Date**” for that Delivery Point with respect to that Chargeable Demand.
- (e) The Service Provider may increase the Chargeable Demand for a Delivery Point where necessary (but only to the extent necessary) for the Chargeable Demand to meet the requirements of clause 4.5(c) or 4.5(d). The increase will take effect on the date reasonably determined by the Service Provider which must be on or after the date on which the MHQ or MDQ (as applicable to the increase in

Chargeable Demand) first applied. The date so determined by the Service Provider will be the “**Demand Reset Date**” for that Delivery Point with respect to that Chargeable Demand.

4.7 Decreases in Chargeable Demand

- (a) This clause 4.7 applies where the Delivery Point is a Demand Customer Delivery Point.
- (b) Where a Customer has experienced a permanent and material reduction in its requirements for Gas supply, the User may make a written request to the Service Provider requesting a reduction in the Chargeable Demand for the relevant Delivery Point from which the Gas for that Customer is withdrawn (**Reduction Request**), provided that:
 - (i) the proposed reduction in Chargeable Demand is nominated in the Reduction Request;
 - (ii) the Reduction Request is received by the Service Provider no less than 12 months after the Demand Reset Date in respect of the current Chargeable Demand for the relevant Delivery Point;
 - (iii) no other requests to reduce the Chargeable Demand for the relevant Delivery Point have been rejected by the Service Provider in the 6 months immediately preceding the date of the Reduction Request;
 - (iv) the Service Provider has not accepted a request to reduce the Chargeable Demand for the relevant Delivery Point in the 13 month period immediately preceding the date of the Reduction Request;
 - (v) the requested Chargeable Demand is less than 90% of the existing Chargeable Demand for the relevant Delivery Point; and
 - (vi) the User provides a letter from the User's relevant Customer setting out the reasons for its reduction in Gas requirements and demonstrating why that reduction is a permanent one, to the Service Provider's reasonable satisfaction.
- (c) The Service Provider will provide its reasons in writing and advise whether or not it will consent to a Reduction Request within one month of the date on which it receives such Reduction Request from the User, such consent not to be unreasonably withheld.

- (d) In considering a Reduction Request, the Service Provider may take into account in addition to the information provided as part of the Reduction Request, any other factors the Service Provider considers relevant, including but not limited to:
- (i) past patterns of actual Gas consumption at the Delivery Point and reasoned forecasts of expected future demand for Gas at the Delivery Point;
 - (ii) any previous requests to reduce the Chargeable Demand or increase or decrease the MHQ or MDQ at the Delivery Point; and
 - (iii) whether, and if so the extent to which, the proposed reduction will compromise the Service Provider's ability to recover any capital expenditure the Service Provider has incurred in relation to the Delivery Point (including whether the Service Provider incurred such capital expenditure in reliance on an undertaking to maintain a certain level of MDQ or Chargeable Demand for a minimum period of time).
- (e) If the Service Provider consents to a Reduction Request, the Service Provider will reduce the Chargeable Demand for the relevant Delivery Point to either:
- (i) the reduced Chargeable Demand nominated in the Reduction Request; or
 - (ii) the ninth-highest Quantity of Gas withdrawn at that Delivery Point in any one Day in the 12 month period immediately preceding receipt of the Reduction Request (if the Delivery Point is equipped with Daily Meter Reading Facilities),
- whichever is the greater, but subject to clause 4.5(c).
- (f) A reduction in Chargeable Demand pursuant to clause 4.7(e) will take effect from the first Day of the Calendar Month immediately following the date of receipt of the complete Reduction Request.
- (g) If:
- (i) the Quantity of Gas calculated in clause 4.7(e)(ii) is greater than 90% of the current Chargeable Demand; or
 - (ii) the Service Provider increases the Chargeable Demand pursuant to clause 4.5 or 4.6 after the date of receipt of a Reduction Request,

then notwithstanding the Service Provider's previous consent to the Reduction Request, the relevant Reduction Request will be deemed to have been rejected by the Service Provider.

5. Overruns

5.1 General

This clause 5 does not vary the MDQ and/or the MHQ for a Delivery Point.

5.2 Gas exceeding MHQ or MDQ

The Service Provider may in its discretion, ~~acting reasonably~~, agree to transport and deliver an Overrun.

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[C.5]

5.3 Authorised Overruns

An Overrun agreed to by the Service Provider in accordance with this Agreement before it occurs is an authorised Overrun (**Authorised Overrun**).

5.4 Procedure for authorisation of Overruns

If the User wishes the Service Provider to provide a Service to a Delivery Point for a Quantity of Gas in excess of the MDQ for any Day or the MHQ for any Hour, the User:

- (a) must notify the Service Provider of the expected Overrun and the Quantity required in excess of the MDQ or MHQ, as the case may be, by no later than 4:00pm on the Business Day which immediately precedes the Day on which the Overrun is required or expected to occur; or
- (b) must:
 - (i) notify the Service Provider of expected Overruns and the Quantities required in excess of the MDQ or MHQ, as the case may be, by no later than 4:00pm on the Business Day which immediately precedes the Day on which the first of those Overruns is required or expected to occur; and
 - (ii) request that the Service Provider approve those Overruns where such approval will have effect over a specified period (**Specified Period**), so that the Overruns may occur at any time within the Specified Period at the discretion of the User.

The Service Provider may charge the User for processing any notice or request made under this clause 5.4 at the Hourly Charge rate (based on a minimum of two Hours of work). That charge will be payable irrespective of whether the request is authorised or refused, or is authorised but later revoked.

5.5 Notification of acceptance of Overrun as authorised

- (a) The Service Provider must notify the User within 2 hours from receipt of the notice or request under clause 5.4 (if the notice is received on the Business Day preceding the expected Overrun) or within 24 hours from receipt (if the notice is received prior to that Business Day) whether:
- (i) it agrees to provide the Service for the excess Quantity requested by the User; or
 - (ii) it agrees to provide the Service for a lesser Quantity than that requested by the User; or
 - (iii) it is unable to provide the Service,

for that Day or during the Specified Period.

- (b) Where the Service Provider notifies the User under clause 5.5(a)(ii) that it agrees to provide the Service for a lesser Quantity than that requested by the User, the User must notify the Service Provider whether it accepts the lesser Quantity:
- (i) within 2 hours from receipt of such a notice from the Service Provider where the request for the authorisation of the Overrun relates to a specific Day; or
 - (ii) prior to the commencement of the relevant Specified Period where the request for the authorisation of the Overrun relates to a Specified Period,

and if no such notification is made by the User in accordance with this clause 5.5(b), the Overrun will not be an Authorised Overrun and clause 6 will apply in respect of that Overrun.

5.6 Revocation of authorisation

- (a) Where the Service Provider has approved an Authorised Overrun for a Specified Period, the Service Provider may by notice to the User revoke such approval (in whole or in part) at any time and for any length of time if, in the Service Provider's reasonable opinion, the capacity in the Network is insufficient to allow the Service Provider to transport the Authorised Overrun Quantity. The Service Provider will use reasonable endeavours to provide the User with as much notice of such revocation as is possible in the circumstances.
- (b) The User acknowledges and agrees that it will take all necessary steps to inform the Customer at the Delivery Point that the Service Provider may at any time revoke an approved Authorised Overrun at short notice.

- (c) The Service Provider will not be liable for any and all Damages or claims in connection with or arising as a result of the revocation by the Service Provider of an approval (in whole or in part) of an Authorised Overrun pursuant to clause 5.6(a) unless and to the extent that the negligent act or omission or wilful misconduct of the Service Provider caused that Damage or claim.

5.7 Service Provider's obligation on Authorised Overrun Day

- (a) Subject to clause 5.6, where a Quantity is agreed to by the Service Provider under clause 5.5(a)(i) or accepted by the User under clause 5.5(b) (**Authorised Overrun Quantity**), on each relevant Day, the Service Provider must provide the Service to the Delivery Point for a Quantity equal to the MDQ or MHQ, as the case may be, plus the Authorised Overrun Quantity for that Day or Hour.
- (b) Unless expressly agreed by the Service Provider in writing, an agreement by the Service Provider to transport and deliver Gas in excess of the MDQ is not an agreement to transport and deliver Gas in excess of the MHQ in any Hour.

5.8 Delivery Point with multiple services

If an Overrun occurs at a Delivery Point served by more than one service then, regardless of whether those services are provided under this Agreement or one or more other service agreement(s), an Overrun will be deemed to have occurred for each of those services.

6. Unauthorised Overruns

6.1 Unauthorised Overruns

- (a) An Overrun which is not agreed to by the Service Provider in accordance with this Agreement before it occurs is an unauthorised Overrun (**Unauthorised Overrun**).
- (b) If an Unauthorised Overrun occurs, the Service Provider has the right, at the User's cost, to install flow control mechanisms on the Measuring Equipment at the relevant Delivery Point, allowing the Service Provider to control the amount of Gas taken by the User at that Delivery Point so as to restrict the Quantity of Gas taken to a Quantity equal to the Capacity Entitlement for that Delivery Point for any Hour or Day and/or ensure operational security or safety.

6.2 Liability for Damages arising from Unauthorised Overruns

If an Unauthorised Overrun occurs, the Service Provider is not liable for, and the User will indemnify and hold the Service Provider harmless from and against, any and all Damages or claims in connection with or arising as a result of that Unauthorised Overrun unless and

to the extent that the negligent act or omission or wilful misconduct of the Service Provider caused that Damage or claim.

7. Nomination And Balancing

7.1 Gas Balancing under the STTM

If the STTM provides a mechanism for Gas Balancing of Network Sections, then while that mechanism remains operative and has legal effect:

- (a) the mechanism under the STTM will operate to govern the Gas Balancing of Network Sections;
- (b) the Gas Balancing Annexure will not apply;
- (c) the User must comply with the requirements of the mechanism under the STTM; and
- (d) the User and the Service Provider must comply with clauses 7.2, 7.3 and 7.4 below.

7.2 User to provide Service Provider with forecast of withdrawals

- (a) This clause 7.2 applies only if the STTM provides a mechanism for Gas Balancing of Network Sections and clauses 7.2(c) - 7.2(f) only apply insofar as the mechanism does not set out a timetable for the User to provide Forecast Withdrawals as required under this clause 7.2.
- (b) The Service Provider may notify the User and all Network Users that Forecast Withdrawals are not required for a Network Section for a designated period.
- (c) Subject to clause 7.2(a), unless notification has been provided under clause 7.2(b) and such notification has not been rescinded, then:
 - (i) on each Day that the User receives Services under this Agreement and any other agreement for the transportation of Gas between the Service Provider and the User; and
 - (ii) for each Receipt Point at which that Gas is received into the Network Section (where information by Receipt Point is available to the User and where not available, the aggregate of the Receipt Points within the Wilton Network Section),

the User must provide the Service Provider with its Forecast Withdrawals, for each Network Section for each of the next three Days.

- (d) Where requested by the Service Provider for operational purposes, the User must provide its Forecast Withdrawals for a Network Section for each of the next seven Days.
- (e) In this clause 7.2, a forecast withdrawal for a Day is a forecast of the aggregate Quantity of Gas which the User intends to withdraw from a Network Section on the relevant Day under all agreements between the Service Provider and the User for the transportation of Gas. A forecast withdrawal must be made on a reasonable basis, in good faith and itemise:
 - (i) the forecast Gas requirement for Non Daily Metered Delivery Points; and
 - (ii) when required in advance of the relevant Day by the Service Provider, the forecast withdrawal at designated Delivery Points, in such manner and in relation to such times as the User and the Service Provider agree,

(Forecast Withdrawal).
- (f) Following consultation with the User, the Service Provider will (acting reasonably) determine a timetable for the User to provide the Forecast Withdrawals required under this clause 7.2. The User must comply with this timetable.

7.3 Network Section Deliveries

- (a) For the avoidance of doubt, the User is responsible for ensuring that the aggregate Quantity of Gas delivered by or for the account of the User, through the Receipt Point(s) for a Network Section, is equal to:
 - (i) the aggregate quantity of Gas delivered to or for the account of the User to Delivery Points within that Network Section; plus
 - (ii) any change in linepack in the Network Section allocated to the User by the Service Provider or other share of aggregate needs for a Network Section to ensure safe and reliable supply.
- (b) When determining an allocation of the total change in linepack for a Network Section between the User and other Network Users, the Service Provider will seek to apply a methodology which reflects the linepack requirements of the Services which were provided to the User. If the Service Provider considers that a more direct method of allocation is not available, the Service Provider may pro rata total change in linepack based on each Network User's typical aggregate Capacity Entitlement for all Services.

7.4 Country Network Sections

In Country Networks, each User will be deemed to be in balance within the Network Section.

7.5 Gas Balancing after cessation of STTM Gas Balancing mechanism

- (a) If the mechanism for Gas Balancing of Network Sections provided for under the STTM ceases to operate or to have legal effect, the Service Provider may notify all Network Users that the Gas Balancing mechanism under the STTM will cease to apply for the purpose of this Agreement and the date on which that cessation will take effect.
- (b) If the Service Provider gives notice under clause 7.5(a), then on and from the date of cessation specified in that notice:
 - (i) the Gas Balancing of Network Sections will be governed by, and the User and the Service Provider must comply with, the Gas Balancing Annexure; and
 - (ii) the User warrants that each nomination made under this Agreement will be made in accordance with the Gas Balancing Annexure.

8. Determination Of Quantity Delivered At Delivery Points

8.1 Quantity of Gas delivered at a Delivery Point

The Parties agree that the Quantity of Gas delivered at a Delivery Point is the Quantity of Gas measured by each Delivery Station in accordance with clause 8.2 or estimated by the Service Provider under clauses 16.3(a) or 16.7.

8.2 Quantity of Gas delivered at a Delivery Station

Subject to clause 16.7, the Quantity of Gas delivered at a Delivery Station is:

- (a) if the Delivery Station is equipped with Daily Meter Reading Facilities and Communication Facilities and with on-site Heating Value measurement, for each Day the product of the Heating Value of Gas for that Day and the Volume of Gas (as measured at the Delivery Station on that Day);
- (b) if the Delivery Station is equipped with Daily Meter Reading Facilities and Communication Facilities but not with on-site Heating Value measurement, for each Day the product of the Declared Heating Value of Gas for that Day and the Volume of Gas (as measured at the Delivery Station on that Day); or

- (c) if the Delivery Station is not equipped with Daily Meter Reading Facilities and Communication Facilities, the product of the Volume of Gas (measured at the Delivery Station for the period between meter readings) and the average of the Declared Heating Values of Gas for all Days in the period between meter readings, or as otherwise agreed.

9. Commingling, custody, control, responsibility and warranty

9.1 Warranty

- (a) The User warrants that as at the date of this Agreement and at any time during the term of this Agreement, it has all necessary authorisations and the legal right and full power and capacity to participate in the retail Gas market and to:
 - (i) inject (or procure the injection of) Gas into the Network at the Receipt Points;
 - (ii) buy and sell Gas; and
 - (iii) grant to the Service Provider custody and control over any Quantity of Gas the subject of a Haulage Reference Service so as to allow the Service Provider to lawfully transport that Quantity of Gas through the Network, commingle Gas and deliver that Quantity of Gas to the Delivery Points,

free and clear of liens, encumbrances and claims of any nature inconsistent with the Service Provider's operation of the Network and its rights and obligations under this Agreement.

- (b) The User warrants that on any Day (or any shorter period if Gas Balancing Adjustments occur in a shorter period than a Day) it has the legal right and full power and capacity to deliver in aggregate a Quantity of Gas to a Network Section equal to the aggregate withdrawals of Gas by the User (including any Gas Balancing Adjustments) on that Day (or shorter period, if applicable) from that Network Section.

9.2 Right to commingle

The Service Provider has the right to:

- (a) commingle the Gas delivered to any Receipt Point with other Gas in the Network; and
- (b) deliver Gas in a commingled state to a Delivery Point.

9.3 Custody and control of Gas

The custody and control of Gas:

- (a) delivered at a Receipt Point passes to the Service Provider at the Receipt Station at that Receipt Point; and
- (b) delivered by the Service Provider to or for the User at a Delivery Point passes from the Service Provider to the User or the User's nominee, agent or transferee at the Delivery Station at the Delivery Point.

9.4 Responsibility for Gas

- (a) The Service Provider is responsible for Gas in its custody and control between the Receipt Stations and the Delivery Station at each Delivery Point and must replace (by way of commercial purchase of UAG in accordance with clause 9.5(d) and 9.5(e)) any Gas lost whilst in the care and control of the Service Provider at a time and on the terms determined by the Service Provider in its discretion, ~~acting reasonably.~~
- (b) The Service Provider will not be liable for ~~any and all Damages or claims in connection with or arising as a result of any matter or thing which may be done, happen or arise with respect to Gas prior to the receipt of Gas by the Service Provider at a Receipt Station or after its delivery at a Delivery Station at a Delivery Point.~~

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9.5 Unaccounted for Gas

- (a) Notwithstanding any other provision of this Agreement, the Service Provider's obligation under this Agreement to purchase a Quantity of UAG is subject to and only applies to the extent that the Service Provider has timely access to verified and sufficiently accurate data at each Receipt Point to be able to calculate the LG Quantity.
- (b) The Service Provider will calculate an LG Quantity on the basis of the available data at the time.
- (c) The Service Provider may update the LG Quantity at any time to reflect updated data for an LG Period. However, the Service Provider is not obliged to recalculate the LG Quantity for a LG Period once 12 months have elapsed since the end of that LG Period.
- (d) The Service Provider will purchase UAG equal to:
 - (i) the Service Provider's forward estimate of the LG Quantity for an LG Period; less

- (ii) the difference between the Quantities of UAG the Service Provider has previously purchased for any earlier LG Period and the LG Quantity for that LG Period.
 - (e) The Service Provider will purchase UAG on a competitive commercial basis. This basis will be determined by the Service Provider, acting reasonably, and may include (without limitation) any one or a combination of the following:
 - (i) utilising a competitive open tender for the supply and/or haulage of Gas over any period, as reasonably determined by the Service Provider; and
 - (ii) sourcing Gas directly from the Short Term Trading Market.
 - (f) The Service Provider will recover all costs of purchasing UAG through the Reference Tariffs in accordance with the provisions of the Access Arrangement.
 - (g) The Service Provider may, by notice, terminate its obligations under clause 9.4(a) and this clause 9.5 with effect from the date that parties other than the Service Provider assume the responsibility to purchase UAG in relation to the Network. Such termination may be subject to conditions reasonably required by the Service Provider and will not prejudice the right of the Service Provider to recover the cost of UAG in accordance with the Access Arrangement.
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10. Gas quality

10.1 Specification Gas

- (a) As between the Service Provider and the User, the User must ensure and procure that Gas delivered to each Relevant Receipt Point complies with the following requirements (**the Specification**):
 - (i) the specification prescribed by any New South Wales law, including but not limited to any regulation made under the Gas Supply Act, applying during this Agreement that extends to any such Gas;
 - (ii) where the law referred to in clause 10.1(a)(i) does not prescribe anything for a parameter set out in Annexure 2, or for any period during this Agreement in which there is no such law, the initial specification set out in Annexure 2, as amended from time to time by the Service Provider in response to a change of circumstances where the change is of a type reasonably likely to impact on the Service Provider's ability to ensure the continued quality, safety, reliability and security of supply of Gas;
 - (iii) where the Director-General issues an exemption to the Service Provider in relation to the requirements of the *Gas Supply (Safety and*

Network Management) Regulation 2013 (NSW) related to the specification of Gas, then the specification under clause 10.1(a)(i) or clause 10.1(a)(ii) (as the case may be) is modified (for the period during which the exemption applies) to the extent necessary to accord with the terms of that exemption; and

- (iv) where the Service Provider reasonably believes that the conveyance of the Gas is necessary to ensure the safety of the public or the security of the Network and the Gas is conveyed in accordance with regulation 24(2)(a) of the *Gas Supply (Safety and Network Management) Regulation 2013 (NSW)*, then the specification of the Gas so conveyed in the Network or delivered to Delivery Points is deemed to be the Specification for the purpose of this Agreement to the extent the Gas is delivered in accordance with regulation 24(2).
- (b) The Service Provider is not obliged to provide a Service if the Gas delivered at a Receipt Point does not comply with the Specification.
- (c) The User acknowledges that Gas delivered to a Receipt Point will enter into the Network in close proximity to and will be available for use by a large number of persons, and that Gas delivered at any Receipt Point which does not meet the Specification may result in those persons suffering damage.
- (d) The Service Provider will not be liable for, and the User will indemnify and hold the Service Provider harmless from and against, any and all Damages or claims in connection with or arising as a result of the delivery of Gas on behalf of the User at any Receipt Point which does not meet the Specification unless and to the extent that the negligent act or omission or wilful misconduct of the Service Provider caused that Damage or claim.

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10.2 Service Provider's rights in relation to Out-of-Specification Gas at Receipt Point

If the Service Provider reasonably believes that Gas which does not comply with the Specification (**Out-Of-Specification Gas**) is being or may be delivered to any Receipt Point, whether the Out-Of-Specification Gas is being delivered by or on behalf of the User or otherwise, then the Service Provider may:

- (a) direct the User or any other person to cease or cause the cessation of the delivery of Gas to the Receipt Point or to cease or cause the cessation of the delivery of Gas to any pipe or system of pipes through which Gas is delivered to the Receipt Point; and/or
- (b) without prior notice to the User, cease to accept all or any portion of Gas being delivered to that Receipt Point and notify the User as soon as reasonably practicable thereafter of its actions.

10.3 Consequences of the Service Provider exercising rights under clause 10.2

- (a) On receipt of a direction under clause 10.2(a), the User must immediately cease or cause the cessation of the delivery of Gas to the Receipt Point or the delivery of Gas to any pipe or system of pipes through which Gas is delivered by or on behalf of the User to the Receipt Point.
- (b) If the Service Provider issues a direction under clause 10.2(a) or ceases to accept Gas under clause 10.2(b), then:
 - (i) if Gas delivered to any Receipt Point was Out-Of-Specification Gas, the User will not be relieved of its obligation to pay any Charges under this Agreement; or
 - (ii) if Gas delivered to all Relevant Receipt Points did meet the Specification, then to the extent that the Service Provider was unable to deliver a Quantity of Gas equal to the MDQ at a particular Demand Customer Delivery Point for any period in excess of one Day, the Demand Charge for that Delivery Point for that period will be calculated by reference to the actual amount withdrawn at the Delivery Point on each Day during that period, rather than by reference to the Chargeable Demand for that Delivery Point.
- (c) The Service Provider will not be liable for, and the User will indemnify and hold the Service Provider harmless against, any and all Damages or claims in connection with or arising as a result of the giving of direction or the cessation of Gas delivery under clause 10.2 or any failure of the User to comply with a direction issued under clause 10.2 unless and to the extent that the negligent act or omission or wilful misconduct of the Service Provider caused that Damage or claim.

10.4 User to satisfy the Service Provider

The User must, if requested by the Service Provider:

- (a) provide evidence to the satisfaction of the Service Provider that facilities and management plans exist to enable satisfactory measurement of the quality of Gas at each Receipt Point or any point where Gas is introduced into a pipe or system of pipes through which Gas is delivered to a Receipt Point;
- (b) provide facilities to enable the Service Provider to monitor continuously the quality of Gas at the points referred to in clause 10.4(a);
- (c) provide evidence that Gas quality measurement equipment at the points described in clause 10.4(a) is maintained and calibrated in accordance with good industry practice and appropriate Australian and internationally recognised standards; and

- (d) provide access to maintenance records for any Gas quality measurement equipment at the points described in clause 10.4(a).

10.5 User's preventative measures

The User must have, and upon request by the Service Provider, must satisfy the Service Provider that the User has the contractual or other legal rights and management procedures in place to prevent Out-Of-Specification Gas being delivered to the Receipt Points.

10.6 Service Provider must deliver Gas to Specification

Provided that all Gas received by the Service Provider at all Receipt Points meets the Specification, the User complies with the provisions of this clause 10 and that any provisions to a similar or equivalent effect in the Service Providers' service agreements with other Network Users have been complied with by those Network Users (such that the Service Provider is able, taking into account clause 9.2, to receive and deliver Gas that complies with the Specification), the Service Provider must ensure that Gas delivered by it at the Delivery Point meets the Specification.

10.7 Amendment of Specification

The Service Provider must use reasonable endeavours to notify the User prior to any change to the Specification by the Service Provider pursuant to clause 10.1(a)(ii).

10.8 Gas Source

- (a) The User must notify the Service Provider in writing or ensure that the Service Provider is properly notified of the contractual source and all the possible physical sources of the Gas prior to its entry into the Network, and must notify the Service Provider in writing prior to any change or anticipated change in the source or sources of the Gas.
- (b) Prior to a change in the contractual or physical source or sources of the Gas, the User must comply with its obligations to provide evidence and information to the Service Provider under clauses 10.4 and 10.5 with respect to the Gas from the new source or sources.

10.9 User responsible for Gas Testing

The User must:

- (a) test the Gas; or
- (b) cause the Gas to be tested,

in accordance with the Service Provider's Safety and Operating Plan.

10.10 Gas Testing by User

- (a) The User must keep a register or cause a register (**Register**) to be kept containing copies of all Gas test results including raw measurements used to determine derived values such as Wobbe index values.
- (b) The Register must be kept at the User's main office or at the main office of the person conducting the tests.
- (c) The User must ensure (or cause the person conducting the tests to ensure) that the Register is open for public inspection during all business hours and copies are to be made available:
 - (i) to the Director General on request and at no cost to the Director General; and
 - (ii) to the Service Provider on request and at no cost to the Service Provider; and
 - (iii) to any other person upon request and on payment of a reasonable fee.
- (d) The User must maintain (or cause to be maintained) all testing equipment in accordance with the Service Provider's Safety and Operating Plan in respect of which the Service Provider will:
 - (i) make a copy available to the User upon request; and
 - (ii) provide reasonable notice to the User of relevant changes made by the Service Provider to the Safety and Operating Plan.
- (e) The User must make available (or cause to be made available) to the Service Provider all records relating to the maintenance of the testing equipment on the Service Provider's request.
- (f) The User must notify (or must cause the person conducting the tests to notify) the Director General and the Service Provider without delay by telephone, facsimile or email if it becomes aware of any test result that shows that the Gas to be delivered to a Receipt Point is Out-Of-Specification Gas.
- (g) Within 7 days of notifying the Director General and the Service Provider by telephone, facsimile or email pursuant to clause 10.10(f), the User must send notice (or cause such notice to be sent) to the Director General and the Service Provider.
- (h) Without limiting any of clauses 10.10(a)-(g), the User must make available or cause to be made available to the Service Provider any information relating to the testing of Gas, whether or not any Gas meets the Specification, test

equipment, test results or notifications to any person in relation to whether or not Gas meets the Specification.

11. Addition of Delivery Points

11.1 Addition by Request

The User may at any time Request the Service Provider to add a new delivery point to the Relevant Customer List in accordance with clause 11.3.

11.2 Deemed Request

- (a) The Service Provider will deem the final notification by AEMO to the Service Provider that transfer of a delivery point from another Network User to the User has been completed in accordance with the Retail Market Procedures to be a Request and the Service Provider must add the relevant delivery point to the Relevant Customer List, provided that, subject to clause 11.2(b):
- (i) the delivery point is already subject to a Haulage Reference Service provided by the Service Provider to the relevant Network User;
 - (ii) where the delivery point is to be added to the Volume Customer List, the MHQ required at that delivery point is less than or equal to 6m³/Hour;
 - (iii) where the delivery point is to be added to the Demand Customer List, the User has prior to initiating the transfer of the delivery point under the Retail Market Procedures:
 - (A) advised the Service Provider of the DPI of that delivery point and the date on which the proposed transfer will occur; and
 - (B) obtained the Service Provider's written confirmation that the delivery point is subject to a Haulage Reference Service provided by the Service Provider to the relevant Network User.
- (b) The Service Provider may choose to waive any one or more of the requirements set out in clause 11.2(a), in which case the Service Provider must add the relevant delivery point to the Relevant Customer List if those requirements which have not been waived have been met.

- (c) The Service Provider must use reasonable endeavours to provide the written confirmation required under clause 11.2(a)(iii)(B) within 2 Business Days of receipt of advice pursuant to clause 11.2(a)(iii)(A).
- (d) Where the Service Provider adds a Delivery Point pursuant to clause 11.2(a):
 - (i) the assigned Tariff Class for the Delivery Point, and the Assignment Date will be the same as the assigned Tariff Class and Assignment Date for that Delivery Point under the Haulage Reference Service previously provided by the Service Provider to the transferring Network User;
 - (ii) if the Delivery Point is a Demand Customer Delivery Point, as at the date of the transfer of the Delivery Point, the MDQ, MHQ, Load Shedding Priority or Load Shedding Priorities, Chargeable Demand, Demand Reset Date and ELMS Data for that Delivery Point under this Agreement will be the same as applied to that Delivery Point under the Haulage Reference Service previously provided by the Service Provider to the transferring Network User; and
 - (iii) any subsequent changes to the MDQ, MHQ, Load Shedding Priority, Chargeable Demand, Demand Reset Date and ELMS Data for that Delivery Point will be made in accordance with the terms of this Agreement.

11.3 Procedure To Add a Delivery Point By Request

Where requested by the User, the Service Provider must agree to the addition of a new delivery point to, and include the new delivery point in, the Relevant Customer List if:

- (a) the User complies with the provisions of the Access Arrangement relating to Requests, including payment of the costs of processing that Request as set out in the Access Arrangement;
- (b) the Service Provider is able to satisfy its obligations to observe any Queue established under the Access Arrangement and there is no Queue or the User's Request for Service is at the head of the Queue;
- (c) if applicable to that Request, the Service Provider has sufficient capacity available in the Network to provide the Service to the delivery point;
- (d) the Service Provider, acting reasonably, is satisfied that it has sufficient information to assign the delivery point to a Tariff Class, and if necessary for a Tariff Class to be able to be assigned, the User and the Service Provider agree on the assigned Tariff Class;
- (e) the Service Provider is provided with evidence that the Customer at the delivery point has been notified that the Charges payable under this Agreement in

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respect of the delivery point are applicable to the delivery point regardless of the identity of the supplier;

- (f) the User accepts the Service Provider's offer to provide the Haulage Reference Service to the delivery point;
- (g) the User has provided to the Service Provider all of the details required to complete the Relevant Customer List and set out in clause 23.6 for the delivery point;
- (h) the delivery point is served by Network facilities having a maximum allowable operating pressure of:
 - (i) less than or equal to 1,050 kPa, where the delivery point is reasonably expected to consume more than or equal to 10TJ per annum; or
 - (ii) less than or equal to 500 kPa, where the delivery point is reasonably expected to consume less than 10 TJ per annum;
- (i) except where clause 11.3(j) applies, where the delivery point requires connection to those Network facilities:
 - (i) in the Service Provider's reasonable opinion, it is technically and economically feasible to connect the delivery point to those Network facilities (in which case, such connection will be subject to such charges and conditions as determined by the Service Provider, acting reasonably); and
 - (ii) the Service Provider and the User agree on the requirements (if any) for the installation of a Delivery Station, the connection charges (or other capital contribution) and any other charges payable in respect of the delivery point, the MHQ and (where applicable) the MDQ; and
- (j) where the Service Provider has entered into an NGR Part 12A Connection Contract for the delivery point:
 - (i) a delivery station has been satisfactorily installed and the counterparty's obligations under that contract have been met to the Service Provider's reasonable satisfaction;
 - (ii) the User is either the Customer at the delivery point or a retailer who has a contract for the sale of gas at the delivery point with that Customer;
 - (iii) the Service Provider and the User agree on the MDQ and (where applicable) the MHQ, for the purposes of the Service to be provided under this Agreement; and

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- (iv) the delivery station installed for the delivery point is technically capable of servicing that agreed MHQ and (where applicable) MDQ to the Service Provider's reasonable satisfaction.

11.4 Energisation under National Energy Retail Law

(a) If the User:

- (i) is the Financially Responsible Retailer for a Small Customer; or
- (ii) is the Local Area Retailer (and there is no Financially Responsible Retailer) for a Small Customer,

for premises with an existing connection to the Network at a delivery point:

- (iii) from which Gas is being withdrawn; and
- (iv) which is not already a Delivery Point under this Agreement or under a current service agreement with any other Network User,

then that delivery point will be taken as added to the Relevant Customer List under this Agreement upon and from the commencement of the withdrawal of Gas from that delivery point.

(b) If the User is the Financially Responsible Retailer entitled under section 64 of the National Energy Retail Law to charge a Large Customer situated at premises of the kind referred to in clauses 11.4(a)(iii) and 11.4(a)(iv)), then the User must request that the Service Provider add the delivery point for those premises to a Relevant Customer List and the provisions of clause 11.3 will apply to that request.

(c) Pending any addition of a delivery point referred to in clause 11.4(b) to a Relevant Customer List in accordance with clause 11.3, or if the Service Provider refuses to add the relevant delivery point to a Relevant Customer List in accordance with clause 11.3:

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- (i) the User will not be entitled to the provision of any Service under this Agreement in respect of that delivery point; and
- (ii) for any Gas that is withdrawn at the delivery point the Service Provider may assign the delivery point to a Tariff Class that is reasonable, having regard to the characteristics and capacity of the delivery station and Network facilities servicing the delivery point and the quantity of Gas being withdrawn, and charge the User for the withdrawal of that gas in accordance with that Tariff Class.

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[C.9]

11.5 Charges Payable for Additional Delivery Points

Where the User wishes to add a delivery point to the Relevant Customer List under this clause 11, the Service Provider may, in addition to any other Charges payable under this Agreement, require the payment of a surcharge in accordance with rule 83 of the National Gas Rules.

12. Deletion of Delivery Points

(a) Where the supply of gas to a Small Volume Customer Delivery Point is disconnected under this Agreement or under the terms of a Customer Connection Contract in force at the Delivery Point, it will be deleted from the Relevant Customer List, subject to the following:

- (i) the Service Provider's obligations to provide Services for that Delivery Point and the User's obligation to pay Charges in respect of those Services will cease with effect from the date of disconnection (but without extinguishing or otherwise affecting any rights or obligations in respect of Services provided prior to the date of disconnection or the Charges payable for those Services); and
- (ii) subject to the requirements of the Retail Market Procedures, the Service Provider will be entitled to take all steps necessary to facilitate the User remaining registered as the user for that Delivery Point under the Retail Market Procedures and the User must provide all assistance and co-operation reasonably required by the Service Provider, until such time as:
 - (A) another Network User enters into a service agreement with the Service Provider for that Delivery Point; or
 - (B) the Delivery Point is transferred to another Network User in accordance with the Retail Market Procedures;
- (iii) the User will still be entitled to ask for decommissioning under clause 15.9 despite the removal of the Delivery Point from the Volume Customer List; and
- (iv) notwithstanding the removal of the Delivery Point from the Volume Customer List, the Parties will co-operate and the User will continue to provide reasonable assistance so that the Service Provider may obtain access to each delivery station and to the Measuring Equipment.

Deleted: upon the expiry of 10 Business Days following disconnection (or any longer period as agreed with the User)

(b) Subject to the User complying with any relevant Law, the User may at any time give to the Service Provider:

- (i) at least 3 Business Days' notice to delete a Volume Customer Delivery Point classified by the Service Provider as a Large Customer; and
- (ii) at least 30 Business Days' notice to delete a Demand Customer Delivery Point,

and the Service Provider must disconnect the Delivery Point in accordance with such notice and clause 15.9 and delete that Delivery Point from the Relevant Customer List from the date of disconnection.

- (c) If the Service Provider receives notification from AEMO that a Delivery Point has been transferred to another Network User in accordance with the Retail Market Procedures, the Service Provider must delete that Delivery Point from the Relevant Customer List on the date on which the Delivery Point is added to the other Network User's service agreement.
- (d) From the time a Delivery Point is deleted from a Relevant Customer List in accordance with this clause 12:
 - (i) the User's entitlement to information concerning that Delivery Point will cease; and
 - (ii) the Service Provider will have no further obligations in respect of that Delivery Point under this Agreement.

13. Change of Receipt Point or Delivery Point

- (a) This clause 13 does not apply to any Delivery Point in a Network Section which has more than one Receipt Point where all of those Receipt Points are recognised as the same Short Term Trading Market hub.
- (b) The User may not change a Receipt Point or Delivery Point without the Service Provider's prior written consent, which shall only be withheld on reasonable commercial or technical grounds, and which may be given subject to reasonable commercial and technical conditions. An example of a reasonable ground for withholding consent is where the Service Provider would not receive at least the same amount of revenue relative to the amount it would have received before the change.
- (c) The Service Provider must reply to a request from the User to change a Receipt Point or a Delivery Point within 14 Business Days of receiving the User's request accompanied by all information reasonably necessary to enable the Service Provider to consider the request. If at the time the request is made, the User informs the Service Provider in writing that due to hardship, the User requires an urgent reply to its request, the Service Provider will use reasonable endeavours to respond to the request within 2 Business Days of receiving the request.

14. Receipt Points and Receipt Stations

14.1 Application

- (a) Clauses 14.5, 14.6, 14.7, 14.8 and 14.9 of this clause 14 apply to all Receipt Points.
- (b) Clauses 14.2, 14.3 and 14.4 of this clause 14 only apply to Receipt Points established after the date of this Agreement.

14.2 New Receipt Points

- (a) The User must ensure that, prior to establishing, taking Gas at or using any Relevant Receipt Point, there is a Receipt Station at each Relevant Receipt Point that:
 - (i) is in physical operation at the Receipt Point; and
 - (ii) is immediately upstream of any connection to the Network; and
 - (iii) meets the requirements of this clause 14.
- (b) The User must ensure that a Receipt Station referred to in clause 14.2(a):
 - (i) complies with specifications approved by the Service Provider from time to time; and
 - (ii) conforms with the technical requirements for such facilities set out in Annexure 4 or as published from time to time by the Service Provider, which requirements will be in accordance with good industry practice for this type of facility and conform to appropriate Australian and internationally recognised standards and codes (including AS2885).

14.3 Approval of Receipt Station Specifications for new Receipt Points

- (a) The User must, at least 20 Business Days prior to installation of a Receipt Station, submit Receipt Station specifications comprising design, operation and maintenance principles to the Service Provider.
- (b) The User must not install a Receipt Station unless and until the Service Provider gives written approval (which must not be unreasonably withheld or delayed) to the specifications submitted to it by the User pursuant to clause 14.3(a).

14.4 Additional Costs of new Receipt Points

The Service Provider may require each User of a new Receipt Point, to pay a proportion of the reasonable costs incurred by the Service Provider, as reasonably determined by the Service Provider, in:

- (a) modifying any part of its Network; and/or
- (b) installing any systems required to enable the new Receipt Point to be established and integrated into the operation of the Network,

which the Service Provider has not recovered from the person who established the Receipt Point or from Network Users. Where reasonably practicable, the Service Provider must use reasonable endeavours to provide the User with an estimate of the User's proportion of costs.

14.5 Ownership of Receipt Station Components at Receipt Point

The Parties acknowledge that the ownership of the Receipt Station components will vary as between Receipt Points and such components may be owned by the Service Provider, the User or a third party.

14.6 Equipment at a Receipt Station

Except to the extent to which the Service Provider has agreed to provide them under this Agreement, the Service Provider may require the User to provide any or all of the following systems at a Receipt Station:

- (a) a Filtration and Liquid Separation System;
- (b) a Gas Quantity Measurement System;
- (c) a Flow and Pressure Control System; and
- (d) if the Service Provider reasonably requires, a Gas Quality Measurement System.

14.7 Service Provider may operate the Flow and Pressure Control System

Notwithstanding anything in this Agreement, the User must procure that the Service Provider may on giving reasonable notice to the User:

- (a) operate at the cost (such costs to be reasonable) of the User the Flow and Pressure Control System of any Receipt Station which is not owned by the Service Provider; and/or
- (b) modify the extent of the flow and pressure control requirements listed in paragraph 4 of Annexure 4 applicable to any existing and proposed Receipt

Stations and require the User to undertake such work as, in the reasonable opinion of the Service Provider, is necessary to ensure that all Receipt Stations comply with such modified requirements.

14.8 Alterations and Additional Equipment

- (a) The Service Provider may (acting reasonably) require alterations to equipment, movement of equipment or the installation of additional equipment at a Receipt Station including alterations to equipment or installation of additional equipment to achieve upgraded measurement performance, or to accommodate changes in Gas demand characteristics.
- (b) Where the Service Provider owns any Receipt Station components which are to be replaced or altered under clause 14.8(a), the Service Provider must undertake the work itself at the Service Provider's expense.
- (c) Where the Service Provider does not own the components, the Service Provider must notify the User of the alterations required under clause 14.8(a) and the User must promptly carry out such works or the User must procure the owner of the components to carry out such works and, if the User (or, if applicable, the owner of the components) does not complete the works within a reasonable period specified by the Service Provider, the Service Provider may carry out such alterations or install such equipment at the reasonable cost of the User.

14.9 Pressure at Receipt Point

- (a) The Service Provider is not obliged to provide a Service if the pressure at which Gas is received at the Relevant Receipt Point is not within the range of the minimum and maximum pressure specifications for that Receipt Point, as notified from time to time by the Service Provider and set out in Annexure 5 and this is such as to negatively affect the ability of a prudent service provider acting reasonably to provide a Service. The Service Provider shall only amend Annexure 5 in response to a change of circumstances where the changes are of a type reasonably likely to impact on the Service Provider's ability to ensure the continued quality, safety, reliability and security of supply of Gas.
- (b) The Service Provider is not liable for, and the User will indemnify and hold the Service Provider harmless from and against, any and all Damages or claims in connection with or arising as a result of Gas being delivered to or through any Relevant Receipt Point which is not within the range of the minimum and maximum pressure specifications in accordance with this clause 14 unless and to the extent that the negligent act or omission or wilful misconduct of the Service Provider caused that Damage or claim.

15. Delivery Points and Delivery Stations

15.1 Network connections under Part 12A National Gas Rules

Where the Service Provider has entered into an NGR Part 12A Connection Contract for a delivery point to the Network, then this clause 15:

- (a) will apply subject to the terms of that contract; and
- (b) will otherwise apply in full.

15.2 Requirements for a Delivery Station

- (a) The Parties acknowledge and agree that, prior to the Commencement Date for the Haulage Reference Service, there must be a Delivery Station that has been commissioned and is in physical operation at each Delivery Point.
- (b) Except to the extent to which the Service Provider has responsibility for Delivery Station components under this Agreement, the User must ensure that the requirements of this clause 15 are met for each Delivery Station.
- (c) Each Delivery Station must be located as close to the Network as practicable, and designed, maintained, tested and calibrated in accordance with good engineering practice and industry standards, and in accordance with specifications approved by the Service Provider prior to installation.

Delivery Stations which were in physical operation prior to the date of this Agreement must comply with the Service Provider's specifications for Delivery Stations, as applicable at the time the relevant Delivery Station was commissioned.

- (d) The User must not take or permit any person to take Gas through a Delivery Station which was not in physical operation as at the date of this Agreement until the Delivery Station has been purged and commissioned by or to the satisfaction of the Service Provider.

15.3 Responsibility for Delivery Station Components

The Service Provider and the User are responsible for Delivery Station components (and must comply with their respective obligations in relation to the design, ownership, operation and maintenance of them) as set out in Annexure 6, except to the extent they expressly agree otherwise in writing.

15.4 Provision of Basic Metering Equipment

The Service Provider must provide Basic Metering Equipment at the first Delivery Station at each Delivery Point.

15.5 Alterations and Additional Equipment at existing Delivery Station

- (a) In respect of Delivery Station components that the User has responsibility for under this Agreement, the User must (at its own expense) alter equipment, move equipment or install additional equipment at that Delivery Station, where reasonably requested in writing by the Service Provider for reasons that may include, but are not limited to, alterations to equipment or installation of additional equipment to achieve upgraded measurement performance.
- (b) The User must carry out the alterations or installations referred to in clause 15.5(a) within such reasonable period of time specified by the Service Provider.
- (c) If the User does not finish the alterations or installations within the period of time specified by the Service Provider pursuant to clause 15.5(b), the Service Provider or its authorised contractors may carry out the alterations or installations at the cost of the User, provided such cost is reasonable.
- (d) In respect of Delivery Station components that the Service Provider owns or otherwise has responsibility for, if:
 - (i) the Service Provider, acting reasonably, considers that it is necessary to alter equipment, move equipment or install additional equipment;
or
 - (ii) the User requires alterations or additions to be made to a Delivery Station and the Service Provider agrees to make such alterations or additions (such agreement not to be unreasonably withheld if the alteration or addition is necessary and reasonable for the continued safe operation of the Network),the Service Provider must or must cause its authorised contractors to alter, move or install these components.
- (e) The Service Provider will bear the cost of any works required under clause 15.5(d)(i), except where:
 - (i) the Delivery Station components are to be altered, moved or installed for safety or operational reasons resulting from the acts or omissions of the User or the User's Customer(s), in which case the User must bear the cost); or
 - (ii) the works fall within clauses 15.6 or 15.7, and the User is required to bear the cost under the applicable clause.

- (f) Any works required under clause 15.5(d)(ii) will be carried out at the cost of the User.

15.6 Basic Metering Equipment Upgrade at existing Delivery Station

- (a) The Service Provider must, or must cause its authorised contractors to, upgrade Basic Metering Equipment at a Delivery Station if it requires upgrading in order to accept the MDQ and/or the MHQ (as the case may be) for that Delivery Point.
- (b) If required by the Service Provider, reasonable costs incurred by the Service Provider for upgrading the Basic Metering Equipment must be borne by the User.

15.7 Basic Metering Equipment Downgrade at existing Delivery Station

- (a) The Service Provider may downgrade Basic Metering Equipment at its own discretion subject to the requirement that it must consult with the User to determine whether the User's Customer intends to increase load and/or change the User's Customer's pattern of usage such that a downgrade is no longer required.
- (b) Where the Service Provider downgrades Basic Metering Equipment as a result of a change in load or pattern of usage by the User's Customer, if the Service Provider requires the User to pay the reasonable costs of such a downgrade, it must advise the User in writing of such costs prior to the downgrade and the User must pay the full costs of such a downgrade.

15.8 Additional Delivery Stations at Delivery Points

- (a) Subject to clause 15.8(c), a Delivery Point will contain only one Delivery Station unless the Service Provider agrees to install an additional Delivery Station in accordance with clause 15.8(b).
- (b) The Service Provider may at the request of the User agree to install an additional Delivery Station at a Demand Customer Delivery Point and if required by the Service Provider, the User must pay the Service Provider's reasonable charges (as notified by the Service Provider).
- (c) If a Demand Customer Delivery Point contained more than one delivery station prior to the Commencement Date, then the Service Provider must continue to transport Gas to them.

15.9 Disconnection, Decommissioning and Meter Removal

- (a) The Service Provider must, at the request of the User:

(i) disconnect supply of Gas to a Delivery Point (by such means as the Service Provider in its discretion, acting reasonably, determines); or

[C.10]

(ii) decommission a Delivery Point by removal of meters, regulators and filters from a Delivery Station,

unless the Service Provider reasonably considers that obligations under relevant Laws or under the relevant Customer Connection Contract relating to the disconnection of premises served by a Delivery Point or the decommissioning of the Delivery Point have not been met.

[A.3]

(b) The User must:

(i) prior to making a request under clause 15.9(a) above, have complied with all obligations placed on the User under relevant Laws relating to arranging for the disconnection of the premises served by a Delivery Point or the decommission a Delivery Point (as applicable);

(ii) provide the Service Provider with sufficient information to enable the Service Provider to determine the appropriate method of disconnection or decommissioning, including the reasons for disconnection; and

(iii) pay the applicable Ancillary Charge.

(c) Where the Service Provider's costs exceed the applicable Ancillary Charge for the disconnection or decommissioning of a Demand Customer Delivery Point, the Service Provider may recover from the User its additional costs reasonably incurred in disconnecting or decommissioning the Delivery Point.

15.10 Ownership of Network

(a) The User does not acquire any right to, title to, or interest in the Network or any part thereof.

(b) The Service Provider does not dedicate any particular portion of facilities forming part of the Network to the Services provided to the User.

15.11 Maintenance of Basic Metering Equipment

Where the Service Provider is responsible for maintenance of the Basic Metering Equipment and provided that the User procures the co-operation of the User's Customer, the Service Provider must or must cause its authorised contractors to carry out necessary repairs of the Basic Metering Equipment within a reasonable time of:

(a) becoming aware of the need to do so; and

(b) securing access to the Delivery Station.

15.12 No liability for disconnection

The Service Provider is not liable for any and all Damages or claims in connection with or arising as a result of:

- (a) the decommissioning of a Delivery Station or the disconnection of supply pursuant to clause 15.9; or
- (b) the resulting cessation of delivery of Gas at a Delivery Station,

unless and to the extent that the negligent act or omission or wilful misconduct of the Service Provider caused that Damage or claim.

16. Measuring Equipment – access, safety and estimation

16.1 Safe Access to Measuring Equipment

- (a) The User must provide reasonable assistance so that the Service Provider may obtain clear and safe access to each Delivery Station and to the Measuring Equipment at each Delivery Point.
- (b) The User must use reasonable endeavours to ensure that:
 - (i) any area surrounding the Measuring Equipment (including any enclosure or building surrounding the Measuring Equipment) is safe (including for access to the Measuring Equipment); and
 - (ii) no activities occur involving, or in the vicinity of, the Measuring Equipment that cause such equipment to become non-compliant with applicable Laws, standards (including the Service Provider's standards, policies and procedures and Australian standards) and applicable gas-fitting rules.
- (c) If any area surrounding the Measuring Equipment (including any enclosure or building surrounding the Measuring Equipment) becomes unsuitable for the safe and continuous operation (including access to the Measuring Equipment) of the Network, then the Service Provider, acting reasonably, may alter Measuring Equipment, move Measuring Equipment or install additional Measuring Equipment for the purposes of the safe and continuous operation of the Network, at the User's cost. An area will be considered unsuitable if it cannot be accessed without risk of personal injury or the state of the area is such that it is reasonably foreseeable that Measuring Equipment will sustain damage.
- (d) Except where immediate access is required for safety reasons or in an emergency, where the Service Provider considers that clause 16.1(c) applies, it will provide the User with notice stating the reasons why it considers clause

[C.11]

16.1(c) applies and provide the User with a reasonable period of time within which to remedy the matters before taking action under clause 16.1(c).

16.2 Service Provider's power of entry

The Service Provider and the User must cooperate, and the User must give all reasonable assistance to procure, that the Service Provider and the Service Provider's authorised contractors may, at all reasonable times, and without giving prior notice to the User or the User's Customer, enter and have access to any Delivery Point:

- (a) to obtain access to any Measuring Equipment;
- (b) for any purpose associated with this Agreement; or
- (c) for the purpose of exercising any right or obligation conferred on the Service Provider by Law,

free of any charge or hindrance from any person or other obstruction.

16.3 Consequences of no access

If the Service Provider is unable to safely access a Delivery Point for any of the purposes of clause 16.2, then the Service Provider may at its option do any or all of the following:

- (a) estimate the Quantity of Gas delivered to that Delivery Point, by having regard to Gas consumption patterns for that Delivery Point, and render an invoice based on such estimate; and/or
- (b) without limiting the Service Provider's rights to curtailment, reduction or interruption of the Services in accordance with clauses 22 or 23, after providing the User with 6 Business Days' notice, cease providing the Service in respect of such Delivery Point; and/or
- (c) after giving the User 1 Business Day's notice where access is required for safety issues, and 5 Business Days' notice for all other issues, replicate at a location accessible to the Service Provider, and at the User's reasonable cost, the Measuring Equipment at the Delivery Point.

16.4 Presence at tests

Subject to clause 16.2, each Party may have a representative present during the erection or alteration of Receipt Stations or Delivery Stations, and at any reading, inspection, testing, calibration, repairing or maintenance of Measuring Equipment and if the User is not the person who consumes Gas at the Delivery Point, a representative of that person may also be present during the testing or measurement of the Measuring Equipment at that Delivery Point.

16.5 No tampering with Measuring Equipment

- (a) The User must not tamper with, adjust, disconnect, by-pass, interfere with or otherwise damage or render inoperable or inaccurate the Measuring Equipment or take or attempt to take Gas from any part of the Network before it passes the Measuring Equipment at the Delivery Point.
- (b) The User must use its best endeavours to ensure that no other person (except for the Service Provider or the Service Provider's authorised contractors) does or attempts to do anything described in clause 16.5(a).
- (c) Clause 16.5(a) does not prevent the User from performing:
 - (i) alterations or additions in accordance with clause 15.5(a); or
 - (ii) maintenance of equipment in accordance with Annexure 6,provided that such actions do not otherwise damage or render inoperable or inaccurate any other part of the Measuring Equipment.

16.6 User to notify Service Provider of tampering or inaccuracy

The User must notify the Service Provider promptly upon becoming aware of any circumstances which might reasonably be expected to affect the accuracy or security of the Measuring Equipment. If the User has not already notified the Service Provider, upon becoming aware of any such circumstances, the Service Provider will promptly notify the User.

16.7 Quantity of Gas if Measuring Equipment fails

- (a) If the Measuring Equipment at a Delivery Point or Receipt Point fails to operate or register accurately for any period of time, then the Quantity of Gas delivered to that Delivery Point or Receipt Point for that period will be the amount estimated by the Service Provider in accordance with clause 16.7(b), unless otherwise agreed between the Parties.
- (b) When estimating a Quantity of Gas for the purposes of clause 16.7(a), the amount will be determined by the Service Provider:
 - (i) by using the registration of any installed check meter which is accurately registering or, if that is not possible, then;
 - (ii) if the percentage of error can be determined by calibration, tests or mathematical calculation, by varying the Quantity recorded during the period since the Measuring Equipment was previously tested by one half of the error; or

- (iii) if neither of the options in clauses 16.7(b)(i) or 16.7(b)(ii) are possible, then by having regard to Gas consumption patterns for that Delivery Point.

16.8 Right to alter Measuring Equipment

The Service Provider has the right at its discretion, ~~acting reasonably,~~ and at the User's cost:

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- (a) to install flow control mechanisms on the Measuring Equipment at any Delivery Point, allowing the Service Provider to control the amount of Gas withdrawn by the User at that Delivery Point; and
- (b) alter or make additions to the Measuring Equipment installed at any Delivery Point,

where this is required by the Service Provider for the safe and reliable operation of the Network, for the protection of the Network or to ensure the User's compliance with the provisions of this Agreement. Where the safe and reliable operation or the protection of the Network does not necessitate immediate action, the Service Provider will notify the User of any issue coming within the scope of this clause 16.8 and outline its concern and, where the issue relates to the User's compliance with the provisions of this Agreement, state a reasonable period of time within which the User may rectify the issue before the Service Provider will take action at the User's cost.

17. Meter reading and data

17.1 Meter reading and data

- (a) The Service Provider must:
 - (i) read or where permitted under this Agreement or applicable Law, estimate the meter reading at the relevant Delivery Points; and
 - (ii) provide on-site data and communication equipment where economically and technically feasible, at the Delivery Point.
- (b) Where the Service Provider provides Daily Meter Reading Facilities but does not provide Communications Facilities, then the Quantities passing through that Measuring Equipment must be recorded by the Service Provider Daily.
- (c) Where the Service Provider provides Daily Meter Reading Facilities and Communications Facilities, then the Quantities passing through that Measuring Equipment must be recorded and telemetered by the Service Provider Daily.

- (d) Subject to clause 17.1(e), where the Service Provider does not provide Daily Meter Reading Facilities, the Service Provider must read the Measuring Equipment monthly in accordance with the meter reading cycle adopted by the Service Provider for the locality and class of the Delivery Station.
- (e) Where the Quantity of Gas delivered to the Delivery Point is expected to be less than 1 TJ in any 12 month period, the Service Provider must read the Measuring Equipment every 91 Days (plus or minus 4 Days).
- (f) On payment of the relevant Ancillary Charge by the User, the User may request a special meter read of the Measuring Equipment outside the monthly meter reading cycle adopted by the Service Provider for the locality and class of the Delivery Station pursuant to clause 17.1(d), or the date of a reading of a meter pursuant to clause 17.1(e).
- (g) The Service Provider must:
 - (i) advise the User of the Quantity of Gas taken at each Delivery Point where there are no Daily Meter Reading Facilities or Communications Facilities available within 2 Business Days of validated monthly meter data being available to the Service Provider, the date of a reading of a meter pursuant to clause 17.1(e), or the date of a special meter read pursuant to clause 17.1(f) (or such further period as provided for under Law); and
 - (ii) for each Day advise the User of the Quantity of Gas taken at each Delivery Point that has Daily Meter Reading Facilities and Communication Facilities available within 1 Business Day of the meter data being available to the Service Provider,

in such format as the Service Provider from time to time nominates after giving reasonable notice of any change in format. The Service Provider will take into consideration all reasonable concerns raised by a User regarding changes to the format, if these are received by the Service Provider within two business days following the User's receipt of a notice advising of a change of format.

- (h) If the User requests more immediate or real time access to meter data at a Delivery Point than the Daily access provided under clause 17.1(f), the User may obtain that access:
 - (i) with the consent of the Service Provider;
 - (ii) directly from the Measuring Equipment by connection established at the cost of the User;
 - (iii) using equipment, established by and at the cost of the User, to electronically communicate data on a more immediate basis or real time basis; and

- (iv) if the connections and equipment referred to in clauses 17.1(h)(ii) and 17.1(h)(iii) respectively:
 - (A) are made in accordance with the manufacturer's specification for the Measuring Equipment and all applicable laws, regulations and standards; and
 - (B) do not interfere with or disrupt the operation of the Measuring Equipment owned and operated by the Service Provider or corrupt any meter data.

17.2 Notice

In the event that the User reasonably forms the view that meter data information or a meter reading is incorrect, it shall notify the Service Provider of this in writing as soon as reasonably practicable, stating the reasons for the User's belief. The Service Provider undertakes to investigate the matter and advise the User of its findings without delay. Except for circumstances beyond its control, the Service Provider remains liable for the accuracy of the information provided by it.

18. Allocation

- (a) At any time, Gas may be transported and delivered to a Volume Customer Delivery Point on behalf of one Network User only.
- (b) Where Gas is delivered to a Demand Customer Delivery Point for more than one Network User, the User and the other relevant Network Users must, prior to the Commencement Date for the Service to that Delivery Point, establish allocation methodologies and notification processes reasonably acceptable to the Service Provider.
- (c) If no such methodologies or processes are established in accordance with clause 18(b) the Service Provider may, at its option, commence the Service and adopt a reasonable methodology such as pro-rating based on the MDQ.

19. Charges

19.1 Applicable Charges

During the term of this Agreement, the User must pay the following Charges in connection with the provision of the Services to each Delivery Point (and in relation to delivery of Gas withdrawn from a delivery point referred to in clause 11.4):

- (a) the applicable Reference Tariffs set out in the Reference Tariff Schedule (including as may be subject to a Minimum Charge);

- (b) any applicable Ancillary Charge;
- (c) any other amounts payable by the User under the terms of this Agreement; and
- (d) any charges payable from time to time under any NGR Part 12A Connection Contract or connection application for a Delivery Point or under any Customer Connection Contract in force at a Delivery Point, such payment to be made for and on behalf of any Customer who is a party to any such agreement (unless that contract provides for the charges to be paid directly to the Service Provider by a Customer).

[D.4]

19.2 Charges based on Access Arrangement

The User acknowledges that:

- (a) the Charges payable under clause 19.1(a) to 19.1(c) have been calculated in accordance with and on the basis of the Access Arrangement as amended from time to time; and
- (b) the Charges payable under clause 19.1(d) are payable in accordance with the NERL and Part12A of the National Gas Rules.

19.3 Provision of Basic Metering Equipment Charge

Where a Delivery Point is or becomes served under more than one service agreement, the Provision of Basic Metering Equipment Charge will be allocated by the Service Provider among those service agreements in proportion to the MDQs or MHQs specified in each service agreement.

19.4 Calculation of invoiced instalments of periodic charges

Instalments of any Charges for a Delivery Point which are expressed with respect to time (e.g. monthly or annual charges) to be specified in an invoice issued in accordance with clause 20 must be calculated for the relevant Billing Period on a Daily pro rata basis based on the number of days in the period of time over which the Charges for the Delivery Point relate.

19.5 Theft Of Gas

- (a) If, due to theft of Gas, the Service Provider has invoiced a User with incorrect Charges in respect of a Delivery Point, the Service Provider may:
 - (i) reasonably determine what should have been the correct Charges in respect of that Delivery Point;
 - (ii) upon request by the User, provide the User with a copy of the Service Provider's calculation of the amount specified in clause 19.5(a)(i); and

- (iii) invoice that User for the difference between what was invoiced for that Delivery Point and the amount specified clause 19.5(a)(i).
- (b) The User must pay the amount of any difference referred to in clause 19.5(a)(iii) in accordance with clause 20.

20. Invoicing and payments

20.1 Invoicing and Payment under Part 21 NGR where the User is a Retailer

Where the User is the ~~R~~etailer for a Customer or Customers at one or more Delivery Points:

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- (a) all Charges for each of those Delivery Points will be invoiced and paid in accordance with:
 - (i) the provisions set out in Divisions 2 and 3 of Part 21 of the National Gas Rules, which will be deemed to be incorporated into this Agreement; and
 - (ii) clauses 20.5, 20.9 - 20.14, to the extent that they are not inconsistent with Divisions 2 and 3 of Part 21 of the National Gas Rules; and
- (b) the rest of this clause 20 will not apply in respect of any such Delivery Points.

[A.4]

20.2 Invoicing and Payment for all other Users under this clause 20

Where the User is not a retailer for a Customer or Customers at one or more Delivery Points, then this clause 20 (other than clause 20.1) will apply in respect of all Charges for each of those Delivery Points.

20.3 Service Provider to issue invoice

- (a) The Service Provider will render invoices at regular intervals in accordance with rule 506(1) of the National Gas Rules.
- (b) Each invoice will specify the amounts due for all Charges payable under this Agreement in the most recently completed Billing Period. Where relevant, such amounts will be calculated using the meter data or estimated meter data from all relevant Delivery Points.
- (c) Any adjustments or outstanding amounts in respect of any previous Billing Period must be included in the invoice.
- (d) If the User requests, the Service Provider may send a copy of the invoice to the User by electronic mail or facsimile on the date the invoice is generated.

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[A.5]

20.4 Due Date for payment

- (a) The User must pay the aggregate amount stated in each invoice within ~~10~~ Business Days of the date of the invoice (**Due Date**).
- (b) The User must nominate in writing the recipient of invoices if different to the party specified in Annexure 1.

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20.5 Method of Payment

- (a) Unless otherwise agreed by the Service Provider, payment of invoices must be made by unendorsed bank cheque, telegraphic transfer or electronic funds transfer to an account nominated by the Service Provider.
- (b) If payment is made by telegraphic transfer or electronic funds transfer, the funds must be immediately available and payment will be deemed to be made only when the funds are credited to the Service Provider's account.

20.6 Interest on overdue payments

- (a) If the User fails to pay an invoice by the Due Date, the User must, if required by the Service Provider, pay the Service Provider interest on any amount outstanding.
- (b) Interest will be calculated from the Due Date to the actual date of payment (both inclusive) at an annual percentage rate equal to ~~2 per cent above:~~
 - (i) ~~the most recent 1 month Bank Bill Swap Reference Rate mid rate determined by the Australian Financial Markets Association, as identified by AEMO on its website; or~~
 - (ii) ~~if the above rate ceases to exist, or that rate becomes, in AEMO's reasonable opinion, inappropriate, the interest rate determined and published by AEMO on its website.~~

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Deleted: the corporate overdraft reference rate (monthly charging cycle) applied by the Commonwealth Bank of Australia (**Bank**) as at the Due Date (or if the Bank ceases to quote such a rate, then the rate which in the opinion of the Bank is equivalent to such rate in respect of similar overdraft accommodation) expressed as a percentage

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20.7 Disputed payments

If the User disputes part or all of an invoice given by the Service Provider to the User under clause 20.3:

- (a) the User must, within 10 days after receipt of the invoice, notify the Service Provider in writing specifying the amount in dispute and the reasons for the dispute;
- (b) the Parties must comply with the dispute resolution process set out in clause 30; and

- (c) the User must pay the full aggregate amount of the invoice (except any amount which is manifestly wrong or is disputed by the User acting reasonably) in accordance with clause 20.5 and if the User fails to do so, the Service Provider may require the User to pay interest on the amount outstanding (excluding any amount which is manifestly wrong) in accordance with clause 20.6.

[C.13]

20.8 Payment on resolution of dispute

If as a result of resolution of a dispute referred to in clause 20.7 the Service Provider is obliged to pay an amount to the User, then the Service Provider must credit the amount payable by it in the next invoice. If the User so requires, the Service Provider must pay interest on the amount payable from the date of payment by the User to the date of payment by the Service Provider (both inclusive), calculated in accordance with clause 20.6.

20.9 Overcharging and undercharging

- (a) Where the Service Provider has:
- (i) undercharged or not charged a User, the User is not obliged to pay the correct amount pursuant to clause 20.9(b) to the extent the User is precluded by law from recovering those charges from its customers provided that the User has complied with the requirements of all applicable Laws and any relevant contracts and has used reasonable endeavours to recover the relevant charges in accordance with its rights at Law or under a relevant contract;
 - (ii) overcharged a User, the User may seek to recover the correct amount to the extent permitted by law and pass those charges through to its customers.
- (b) If the User has been overcharged or undercharged under this Agreement and the User has paid an invoice containing the overcharge or the undercharge, then the Parties must agree on the correct amount payable and either:
- (i) the Service Provider will credit or debit that difference to the User in the next invoice as appropriate; or
 - (ii) within 5 Business Days of the Parties agreeing on the correct amount payable, the Service Provider will refund the User or the User must pay the difference as appropriate.
- (c) If the Party to whom the amount is owed so requires, the amount will include interest in accordance with clause 20.6 from the date of payment by the User or the date of invoice by the Service Provider (whichever is applicable), to the date of payment or refund under this clause 20.9 (whichever is applicable) (both inclusive).

- (d) A Party may not claim from the other Party any amount overcharged or undercharged if more than 2 Calendar Years have elapsed since the date of the relevant invoice.

20.10 User to provide information

If information necessary for billing purposes is in the control of the User, the User must on request from the Service Provider furnish that information to the Service Provider within 3 Business Days after the end of the relevant Billing Period. If the User fails to furnish the information, the Service Provider is entitled to render an invoice based on the Service Provider's reasonable estimate.

20.11 Justification of calculations

Each Party is entitled to require the other Party to provide sufficient evidence to establish the accuracy of any statement, charge or computation made by the other Party under this Agreement.

20.12 Set-off

Either Party is entitled, without prejudice to any other rights or remedies it may have, to withhold and set-off payment of any moneys not under dispute that are due or owing under this Agreement to the other Party against any amounts not under dispute that are due or owing under this Agreement by the other Party.

20.13 Calculation of Charges for broken periods

If a Charge is calculated on a monthly basis, and the first or last month is not a full Calendar Month, the charge will be calculated on a pro-rata Daily basis. The amount will be calculated by dividing the number of Days during which the Service has been provided by the total number of Days in that Calendar Month.

20.14 Payment free of deduction or withholding

The User must pay amounts payable under this Agreement free and clear of any deductions or withholding except if required by law to deduct or withhold.

21. Goods and Services Tax

21.1 Definitions

For the purposes of this clause 21, terms defined in the GST law have the same meaning when used in this clause 21.

21.2 GST exclusive consideration

Unless otherwise stated, all amounts payable or the value of other consideration provided in respect of supplies made in relation to this Agreement are exclusive of GST (if any). If GST is levied or imposed on any supply made (or deemed to have been made) under or in accordance with this Agreement, the amounts payable or the value of the consideration provided for that supply (or deemed supply) (**Payment**) shall be increased by such amount as is necessary to ensure that the amount of the Payment net of GST is the same as it would have been prior to the imposition of GST.

21.3 Reimbursements

Where any amount is payable to a Party as a reimbursement, indemnification or similar payment calculated by reference to a loss, cost, expense or other amount incurred by that Party, then such amount will be reduced by the amount of any input tax credit available to that Party and, if a taxable supply, will be increased by an amount equal to the GST payable in relation to that supply.

21.4 Payment of amount of GST

Subject to the issue of a tax invoice in accordance with clause 21.5, any additional amount payable pursuant to clauses 21.2 or 21.3 must be paid at the time any payment to which it relates is payable. Where an additional amount payable is not referable to an actual payment, then it will be payable within 10 days of a tax invoice being issued by the Party making the supply.

21.5 Tax Invoice

Where in relation to this Agreement a Party makes a taxable supply, that Party will provide a tax invoice in respect of that supply before the additional amount payable in respect of that supply becomes due.

21.6 Adjustments

If the GST payable in relation to a supply made under or in accordance with this Agreement varies from the additional amount paid by the Party acquiring that supply (**Recipient**) under clause 21.2, then the Party making that supply (**Supplier**) will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 21.6 is deemed to be a payment, credit or refund of the additional amount payable under clause 21.2. Where there is an adjustment event, the Supplier must issue an adjustment note to the Recipient as soon as the Supplier becomes aware of the adjustment event.

21.7 ABN and GST Warranty

Each Party warrants that it is GST registered and has a valid Australian Business Number.

22. Suspension of Service

22.1 Suspension at User's Request – Temporary Disconnection

- (a) The User may request the Service Provider to stop or suspend the delivery of Gas to one or more Delivery Points (other than to a Small Volume Customer Delivery Point) on payment of the relevant Ancillary Charge by the User and subject to the User having first complied with all obligations placed on the User under relevant Laws relating to arranging for the suspension of Gas to each of those Delivery Points.
- (b) The Service Provider must at the later of:
- (i) the earliest reasonably practical date after receipt of notice from the User; and
 - (ii) the date requested by the User,
- stop or suspend the delivery of Gas to each Delivery Point nominated in a notice duly issued under clause 22.1(a), unless the Service Provider considers relevant Laws relating to the disconnection of premises served by a Delivery Point have not been met. Any such stoppage or suspension will not relieve the User from its obligations under this Agreement to pay for the relevant Service if the Service Provider is able to provide it to that Delivery Point.
- (c) If requested by the Service Provider, a representative of the User must be present when the Service Provider stops or suspends the delivery of Gas to the Delivery Point.
- (d) The Service Provider is entitled to charge the User the applicable Ancillary Charge for costs reasonably incurred by the Service Provider for stopping or suspending the delivery of Gas at the User's request.

22.2 Suspension by Service Provider

- (a) The Service Provider may suspend the delivery of Gas to any Delivery Point (at the Service Provider's discretion, ~~acting reasonably~~) and is not obliged to provide the Service where:
- (i) the Service Provider considers that a Delivery Point or the Network poses an immediate threat of injury or material damage to any person, property or the Network, including where the Service Provider has not received sufficient Gas at a Relevant Receipt Point to meet Gas withdrawals from the part of the Network servicing that Delivery Point;

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- (ii) AEMO has instructed the Service Provider to suspend the delivery of Gas to the Delivery Point; or
 - (iii) the User is not a Registered Participant.
- (b) The Service Provider is entitled to charge the User for costs reasonably incurred by the Service Provider for stopping or suspending the delivery of Gas in the circumstances set out in clause 22.2(a)(ii) and 22.2(a)(iii).

22.3 No Liability

- (a) The Service Provider is not liable for any and all Damages or claims in connection with or arising as a result of the suspension of the delivery of Gas unless and to the extent that the negligent act or omission or wilful misconduct of the Service Provider caused that Damage or claim. The User will indemnify and hold the Service Provider harmless from and against any such Damages or claims where delivery of Gas is suspended at the request of the User under clause 22.1, unless and to the extent that the negligent act or omission or wilful misconduct of the Service Provider caused the Damage or claim.
- (b) The User acknowledges that suspension of delivery of Gas under this clause 22 does not reduce the User's obligation to pay Charges under this Agreement.

23. Interruptions and curtailments

23.1 Application

This clause 23 applies to the User irrespective of any Receipt Point where Gas is received by the Service Provider or the User's contractual obligations or physical arrangements at or upstream of any Receipt Point.

23.2 Scheduled Interruptions

- (a) The Service Provider may, without being in breach of this Agreement, effect any repairs, testing, maintenance, replacement, upgrading or any other works related to the Network which are reasonably required.
- (b) The Service Provider may interrupt or reduce the Services during the work referred to in clause 23.2(a) to the extent necessary to enable that work to proceed.
- (c) If the Service Provider intends to interrupt or reduce the Services in accordance with clause 23.2(b), the Service Provider will:
 - (i) notify the User and the relevant Customer as early as reasonably practicable (and provide not less than 4 Business Days' notice) prior

to the interruption or reduction of Services of its intention to interrupt or reduce the Services;

- (ii) use reasonable endeavours to agree with the User the timing of the intended interruption or reduction; and
 - (iii) use best endeavours to minimise the period during which the Services are interrupted or reduced.
- (d) If the Service Provider notifies the User that it intends to interrupt or reduce the Services in accordance with clause 23.2(b), the User will use best endeavours to ensure that there is a cessation or reduction of:
- (i) the delivery of Gas to any Receipt Points nominated by the Service Provider; or
 - (ii) the taking of Gas at any Delivery Points or class of Delivery Points nominated by the Service Provider,
- in accordance with the directions of the Service Provider.

23.3 Emergency Interruptions

- (a) The Service Provider may, without being in breach of this Agreement, interrupt or reduce the Services (including by suspending or interrupting supply to any Delivery Points, ceasing to accept Gas at any Receipt Point, or any other measure) in cases of emergency or risk of injury or damage to any person or property (including the Network) for such period as the Service Provider reasonably believes is necessary.
- (b) The Service Provider must, as soon as reasonably practicable, make information about an emergency interruption or reduction of Services, (including the nature of the emergency interruption or reduction of Services and of the likely duration of such interruption or reduction) available to the User on a 24 hour telephone information service.

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23.4 Load Shedding

- (a) If at any time for any reason there is, or the Service Provider reasonably believes or anticipates that there may be, a failure of supply or shortfall in supply in or to any part of the Network, the Service Provider is entitled to curtail or interrupt the receipt, transportation or delivery of Gas and is entitled to implement Load Shedding.
- (b) The User acknowledges that the Service Provider will determine whether to request a reduction or cessation of Load in accordance with the Load Shedding principles set out in the Operational Schedules.

- (c) If the Service Provider notifies (including, for the purposes of this clause 23.4, notice given verbally) the User that:
- (i) there has been a failure of sufficient supply in or to any part of the Network; or
 - (ii) that it has reasonable grounds to believe or anticipate that there may be a failure of sufficient supply in or to any part of the Network,

the User will use best endeavours to ensure that there is a cessation or reduction of Load at the User's Delivery Points in the affected Network Section in accordance with the directions of the Service Provider.

- (d) At the same time as or following notification to the User under clause 23.4(c), the Service Provider at its discretion will, ~~acting reasonably~~, determine the Load Shedding Priority up to which Load must be reduced or cease and notify the User as soon as practicable of the Load Shedding Priority and Load Types that must be reduced or cease (at the direction of the Service Provider).

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- (e) The Service Provider may at any time and at its discretion, ~~acting reasonably~~, change the Load Shedding Priority up to which Load must be reduced or cease and notify the User as soon as practicable of any such change.

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- (f) The User acknowledges and agrees that immediately after notifying the User of the applicable Load Shedding Priority in accordance with clauses 23.4(d) or 23.4(e), the Service Provider is entitled to contact the User's Customers at Delivery Points with relevant Load Types and direct those Customers to cease or reduce their consumption of Gas in accordance with the directions of the Service Provider.

- (g) The Service Provider may instruct those Customers whose ELMS Data shows Load Types at Load Shedding Priorities up to and including the Load Shedding Priority nominated by the Service Provider under clause 23.4(d) or 23.4(e) to cease withdrawing, taking or using Gas for each of those Load Types or reduce Loads to a lesser Quantity of Gas specified by the Service Provider.

- (h) The User must use best endeavours to ensure that each of its Customers complies with any direction given to it by the User or the Service Provider to cease or reduce Load under this clause 23.4.

- (i) Unless otherwise directed by the Service Provider, the User must comply with, and must use best endeavours to ensure that the Customer complies with, any Curtailment Plan provided to the Service Provider.

- (j) If a Customer fails to comply with any instruction it receives from the Service Provider or User under this clause 23.4 and 23.5(b) the Service Provider may physically curtail, suspend, reduce or interrupt Gas supply to that Customer using whatever means at its disposal.

23.5 Load Shedding Priority

- (a) All Load at each Volume Customer Delivery Point will have a Load Shedding Priority of 10.
- (b) The Parties agree that for each Demand Customer Delivery Point for which no ELMS Data has been provided the Service Provider, acting reasonably, is entitled to curtail delivery of Gas to that Delivery Point or request that a User or Customer cease withdrawing, taking or using Gas at that Delivery Point at any level or to any Quantity it deems appropriate in its discretion and without taking into account the Load available to be reduced or cease at any Load Shedding Priority at any other Delivery Point.

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23.6 Provision of ELMS Data

- (a) The User must provide ELMS Data for each Demand Customer Delivery Point.
- (b) If the User is required to provide ELMS Data for a Delivery Point and has not done so, the Service Provider may (acting reasonably) determine a Load Type or Load Types for that Delivery Point or any Quantity of Gas at that Delivery Point.
- (c) The User may request a copy of its ELMS Data for the Delivery Points under this Agreement at any time. Any such request must be in writing.
- (d) Subject to the Service Provider's obligations to keep ELMS Data confidential, the Service Provider must provide the User with a copy of ELMS Data it has in respect of the User's Delivery Points (or if it does not have ELMS Data for those Delivery Points, notify the User accordingly) within a reasonable time of receiving the User's request pursuant to clause 23.6(c). If ELMS Data is confidential to a third party (including another Network User) and the Service Provider is not able to confirm that it has written consent to disclose that ELMS Data, the Service Provider is not obliged to disclose that ELMS Data to the User, but must notify the User that it is unable to disclose that information.
- (e) The User may ask the Service Provider to update the ELMS Data for Delivery Points under this Agreement at any time. The Service Provider is obliged to make such a change only if the User provides evidence to the Service Provider's reasonable satisfaction justifying any changes requested.
- (f) The Service Provider may ask the User to:
 - (i) confirm and/or update the ELMS Data for that User's Delivery Points at any time; and
 - (ii) provide evidence to the Service Provider's reasonable satisfaction justifying the ELMS Data provided.

- (g) The User must comply with a request from the Service Provider pursuant to clause 23.6(f) within 20 Business Days of receiving that request.
- (h) The User warrants that all ELMS Data it provides to the Service Provider is accurate and complete. The User must advise the Service Provider as soon as practicable after becoming aware that any ELMS Data it has provided to the Service Provider is no longer accurate or complete.
- (i) If, in the course of implementing Load Shedding, or a simulation of Load Shedding, the Service Provider determines that contact information contained in the ELMS Data for a Delivery Point is inaccurate, the Service Provider may update the ELMS Data for that Delivery Point in accordance with information provided by a Customer. The Service Provider may (but is not obliged to) request the User to confirm that ELMS Data in accordance with clause 23.6(f).
- (j) The User acknowledges that where the Tariff Class for a Delivery Point has in part been determined according to its Load Type. If the User:
 - (i) fails to comply with its obligations under clause 23.6(g); or
 - (ii) the Service Provider reasonably believes that ELMS Data provided by the User is incomplete or inaccurate,

the Service Provider may alter the Tariff Class assigned to a Delivery Point, in accordance with the Access Arrangement.

23.7 Service Provider not liable

- (a) If the Service Provider:
 - (i) interrupts, curtails or reduces Services;
 - (ii) implements Load Shedding; or
 - (iii) requires a reduction or cessation of Load from any User or Customer,

in accordance with this clause 23, the Service Provider will not be liable for any and all Damage or claims in connection with or arising as a result of that Load Shedding, interruption, curtailment, reduction, cessation or requirement (including any reduction in supply to Customers as a result) unless and to the extent that the negligent act or omission or wilful misconduct of the Service Provider caused that Damage or claim. The User will indemnify and hold the Service Provider harmless against any such Damages or claims to the extent that the User's negligent act or omission, wilful misconduct or breach of this clause 23 has caused the Damage or claim.

- (b) The Service Provider may not rely on clause 23.7(a) to the extent that the Damage was caused by:
 - (i) an interruption, curtailment or reduction in Services which occurred solely as a result of a scheduled interruption under clause 23.2; and
 - (ii) the Service Provider has failed to notify the User at least 4 Business Days prior to the interruption, curtailment, cessation or reduction of Services.
- (c) Without limiting clause 23.7(a), the Service Provider is not liable for, and the User will indemnify and hold the Service Provider harmless from and against, any and all Damages or claims in connection with or arising as a result of:
 - (i) the User's failure to comply with clause 23; or
 - (ii) a failure by a User's Customer to act in accordance with the instructions or requests received from the Service Provider or the User under clause 23.4.

23.8 Reduction of Demand Charge

If the Service Provider is unable to deliver the MDQ to a Demand Customer Delivery Point for any period in excess of one Day as the result of:

- (a) an event occurring wholly within the Network (and not due to any event, action or circumstance upstream of a Receipt Point); and
- (b) either:
 - (i) the Service Provider carrying out work pursuant to clauses 23.2 or 23.3; or
 - (ii) curtailment or interruption of supply under clause 23.4 arising from circumstances solely within the Service Provider's control,

the Demand Charge for that Delivery Point will be reduced during the period of reduced service so that the Demand Charge in that period is calculated by reference to the actual amount withdrawn at the Delivery Point each Day during that period, rather than by reference to the Chargeable Demand specified in Relevant Customer List.

24. Force Majeure

24.1 Definition

- (a) In this clause 24, and subject to clause 24.1(b), **Force Majeure Event** means any event, circumstance or cause not within the control of a Party and which by the exercise of due diligence that Party is not reasonably able to prevent or overcome, including (without limitation):
- (i) acts of God including, without limitation, earthquakes, floods, washouts, landslides, lightning and storms;
 - (ii) strikes, lockouts, bans, slowdowns or other industrial disturbances;
 - (iii) acts of enemy, wars, invasions, blockades or insurrections, riots and civil disturbances, arrest and restraint of rulers and peoples;
 - (iv) fire or explosion;
 - (v) epidemic or quarantine;
 - (vi) order of any court or tribunal or the order, act, or omission or failure to act of any government or governmental authority having jurisdiction, or failure to obtain any necessary governmental consent or approval;
 - (vii) equipment breakdown, breakages or accident to machinery, the Network or Pipelines, the necessity for making repairs and/or alterations in machinery, the Network or Pipelines (other than routine maintenance for which notice has not been given), freezing of wells or failure of reserves; or
 - (viii) native title claims.
- (b) It is acknowledged by the Parties that:
- (i) lack of funds by any Party;
 - (ii) changes in market conditions for transportation and/or the purchase and sale of Gas (except where these affect the operation of the Network);
 - (iii) the inability of any Party to obtain a supply of Gas; or
 - (iv) if the User is not the person consuming Gas at the Delivery Point, the inability of that person to take Gas due to any event or circumstance within the control of that person,

will under no circumstances constitute or cause a Force Majeure Event.

- (c) The User is responsible for establishing that a person's inability to take Gas as mentioned in clause 24.1(b)(iv) arises from an event or circumstance which is not within that person's control.

24.2 Consequences of Force Majeure

Subject to clauses 24.4, 24.5 and 24.6, if by reason of a Force Majeure Event a Party (**Affected Party**) is affected in the performance of any obligation or clause under this Agreement:

- (a) that Party will be excused during the time, and to the extent that, such performance is so affected; and
- (b) that Party will not, to that extent, be liable to the other Party for any Damage of any kind arising out of, or in any way connected with, that non-performance.

24.3 Notification and Diligence

Upon the occurrence of a Force Majeure Event, the Affected Party must:

- (a) as soon as possible notify the other Party in writing, giving:
 - (i) full particulars of the Force Majeure Event;
 - (ii) the date of commencement of the Force Majeure Event and an estimate of the period of time required to enable it to resume full performance of its obligations; and
 - (iii) where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event and the effects of the Force Majeure Event;
- (b) use all reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event and the effects of the Force Majeure Event as expeditiously as possible. However, nothing in this clause 24 will require a Party to settle a strike, lockout, ban, slowdown or other industrial disturbance, civil disobedience or native title claim against its judgment, and it is acknowledged that settlement of any such disturbance is entirely within the discretion of the Party affected;
- (c) resume performance as expeditiously as possible after termination of the Force Majeure Event or after the Force Majeure Event has abated to an extent which permits resumption of performance;
- (d) notify the other Party in writing when the Force Majeure Event has terminated or abated to an extent which permits resumption of performance to occur; and

- (e) notify the other Party in writing when resumption of performance has occurred.

24.4 Liability Not Relieved

A Force Majeure Event which affects a Party's performance under this Agreement will not relieve that Party of liability in the event, and to the extent, that its negligence caused or contributed to its failure to perform under this Agreement. A Party will not be relieved from a breach of an obligation or liability to the extent that it arises from the failure of that Party to comply with clause 24.3.

24.5 Demand Charge for delivery of less than MDQ

If a Force Majeure Event affecting the Service Provider occurs and prevents the Service Provider from performing its obligations to the User in respect of a Demand Customer Delivery Point, the Demand Charge for any Delivery Point to which the Service Provider was unable to deliver Gas to the MDQ for that Delivery Point will, for any period during which the Service Provider is unable to deliver Gas to the MDQ, be calculated by reference to the actual amount withdrawn each Day at that Delivery Point.

24.6 Force Majeure does not affect obligations to pay

Subject to clause 24.5 and clause 24.7, the occurrence of a Force Majeure Event does not relieve the User from any obligation to pay any amounts owing by the User to the Service Provider pursuant to this Agreement.

24.7 Prolonged Force Majeure

The Service Provider and the User must consult in good faith to decide what action should be taken to carry out the intentions of this Agreement if, as a result of a Force Majeure Event, a Party is affected in the performance of any obligation or clause under this Agreement for a period of 12 Calendar Months. If after a further 1 Calendar Month the Parties are unable to agree upon a means to resolve or otherwise overcome the relevant impact of the Force Majeure Event, then:

- (a) if the Force Majeure Event wholly prevents the performance of this Agreement, either Party may terminate this Agreement by giving to the other Party not less than 30 Days' prior notice to that effect; or
- (b) if the Force Majeure Event prevents delivery of Gas to some but not all of the Delivery Points, either Party may elect to have those Delivery Points deleted from the Relevant Customer List by giving to the other Party not less than 3 Business Days' notice, and the Service Provider must delete those Delivery Points accordingly,

and thereafter neither Party will be under any further obligation to the other in respect of this Agreement or the deleted Delivery Points as the case may be, but each Party will remain responsible for the performance of obligations under this Agreement arising prior to

the date of termination, and after that date for the performance of obligations in respect of any Delivery Points which are not deleted.

25. Termination or cessation

25.1 Grounds for termination or cessation of Services

Without limiting clause 25.2, 25.3 or 24.7, if a Party (the **First Party**):

- (a) materially defaults in the performance of any of the material covenants or obligations imposed upon it by this Agreement (other than the User's obligation to pay) and, where the default is capable of remedy, fails to remedy the default within 20 Business Days from the receipt of notice from the other Party requiring it to remedy the default;
- (b) suffers a resolution passed or an order is made by the Court for its winding up except for the purposes of a solvent reconstruction or amalgamation;
- (c) is placed in liquidation or is placed under external administration; or
- (d) makes or enters into or endeavours to make or enter into any composition, assignment or other arrangement with or for the benefit of its creditors,

then the other Party may by notice in writing, either:

- (e) terminate this Agreement; or
- (f) if the First Party is the User:
 - (i) cease to provide the Services; or
 - (ii) cease to provide the Services to the User to those Delivery Points the subject of the relevant default,

such termination or cessation to take effect 48 Hours after delivery of the notice or after such longer period as specified in the notice.

25.2 Right of Service Provider to terminate

- (a) Subject to clause 25.2(b), the Service Provider may terminate this Agreement by 30 Days' notice if, as a result of a Change in Law after the date of this Agreement:
 - (i) the Haulage Reference Service provided under this Agreement is no longer available to the User under the Access Arrangement as a reference service; or

(ii) in the opinion of the Service Provider (acting reasonably), the commercial position of the Service Provider under this Agreement is materially adversely affected.

(b) The Service Provider may only exercise its right to terminate under clause 25.2(a)(ii) if the Service Provider and the User, negotiating in good faith, have been unable to agree to amend this Agreement in accordance with clause 1.3 to deal with the impact of the relevant Change in Law.

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25.3 Failure to pay

If the User defaults in payment of any moneys payable under this Agreement, excluding payments disputed under clause 20.7, for a period of 5 Business Days after notification of the default then the Service Provider may, at the Service Provider's discretion, acting reasonably, call on the Security and/or either terminate this Agreement or cease to provide Services to the User under this Agreement in respect of any one or more Delivery Points by notice in writing, such termination or cessation to take effect 48 Hours after delivery of the notice or after such longer period as specified in the notice.

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25.4 Preservation of rights after termination

Termination of this Agreement for any reason will not extinguish or otherwise affect any rights of either Party against the other which:

- (a) accrued prior to the time of the termination including, without limitation, the Service Provider's right to payment by the User in respect of amounts owing prior to termination or amounts payable for Services for which no invoice has been rendered at the date of termination or the Service Provider's right to call on the Security; or
- (b) otherwise relate to or may arise at any future time from any breach or non-observance of obligations under this Agreement which arose prior to the time of the termination,

but subject to the Parties' respective rights and obligations under the Agreement as in force prior to its termination.

25.5 Preservation of rights after cessation of Services

(a) Cessation of Services by the Service Provider for any reason will not extinguish or otherwise affect any rights of either Party against the other which:

- (i) accrued prior to the time of the cessation including, without limitation, the Service Provider's right to payment by the User in respect of amounts owing prior to the cessation of Services or amounts payable for Services for which no invoice has been rendered at the date of cessation or the Service Provider's right to call on the Security;

- (ii) continue to accrue after the time of the cessation including, without limitation, the Service Provider's right to payment by the User of any Minimum Charge; or
 - (iii) otherwise relate to or may arise at any future time from any breach or non-observance of obligations under this Agreement which arose prior to the time of the cessation.
- (b) Nothing in this Agreement requires the Service Provider to recommence provision of Services once the Service Provider ceases to provide services to any delivery point deleted from the Relevant Customer List under clause 24.7, 25.1 or 25.3.

25.6 Survival

Clauses 26.1, 27, 28, 29, 30, 31, 32, this clause 25.6 and so much of clause 1 as is necessary to give effect to any of those clauses survive the termination of this Agreement.

26. Liability

26.1 Indemnity

- (a) Except where the User is required under any other express provision in this Agreement to indemnify the Service Provider in relation to any Damage or claim, and subject to this clause 26, the User must indemnify and hold the Service Provider and its directors, officers, employees, agents and contractors harmless from and against any and all Damage suffered or incurred by the Service Provider or any of its directors, officers, employees, agents or contractors, in connection with or arising as a result of:
- (i) any personal injury or death caused by the negligent acts or omissions or wilful misconduct of the User or the User's directors, officers, employees, agents or contractors
 - (ii) any damage to the property of the Service Provider caused by the negligent acts or omissions or wilful misconduct of the User, or the User's directors, officers, employees, agents or contractors; or
 - (iii) any breach of the provisions of this Agreement (including any warranty given by the User under this Agreement),

and the persons referred to in this clause 26.1(a) are entitled to the benefit of this clause 26.1(a) and it is enforceable at the suit of any of these persons. In addition, the Service Provider is entitled to enforce this clause on behalf of any of those persons. However, the consent of those persons is not required to any variation, amendment or discharge of this clause 26.1(a).

- (b) Except where the Service Provider is required under any other express provisions in this Agreement to indemnify the User in relation to any Damages or claim, and subject to this clause 26, the Service Provider must indemnify and hold the User and its directors, officers, employees, agents and contractors harmless from and against any and all Damage suffered or incurred by the User or any of its directors, officers, employees, agents or contractors in connection with or arising as a result of:
 - (i) any personal injury or death caused by the negligent acts or omissions or wilful misconduct of the Service Provider, or the Service Provider's directors, officers, employees, agents or contractors;
 - (ii) any damage to the property of the User caused by the negligent acts or omissions or wilful misconduct of the Service Provider, or the Service Provider's directors, officers, employees, agents or contractors; or
 - (iii) any breach of the provisions of this Agreement (including any warranty given by the Service Provider under this Agreement),

and the persons referred to in this clause 26.1(b) are entitled to the benefit of this clause 26.1(a) and it is enforceable at the suit of any of these persons. In addition, the User is entitled to enforce this clause on behalf of any of those persons. However, the consent of those persons is not required to any variation, amendment or discharge of this clause 26.1(b).

- (c) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the Parties, and survives termination, completion or expiration of this Agreement.
- (d) It is not necessary for a Party to incur expense or make any payment before enforcing a right of indemnity conferred by this Agreement.

- (e) ~~Each Party must take reasonable steps to mitigate any Damage the subject of an indemnity:~~
 - (i) referred to in clauses 26.1(a) and 26.1(b); and
 - (ii) under an express provision in this Agreement where the User is required to indemnify the Service Provider.

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26.2 Exclusion of warranties

All express or implied warranties, representations or covenants which are not contained in this Agreement are excluded to the maximum extent permitted by law. If a statutory guarantee imposed under the ~~Competition and Consumer Act 2010~~ (Cth) or any equivalent State or Territory legislation applies in respect of the Service, then the Service Provider's

Deleted: Consumer and

liability to the User under such guarantee is limited, so far as the law permits, (at the Service Provider's option) to:

[D.7]

- (a) the re-supply of the relevant service under this Agreement; or
- (b) an amount equivalent to the payment to have the relevant service re-supplied.

26.3 Scope of Liability

- (a) Subject to clauses 26.3(b), 0 and 0, the liability of a Party (in this clause 26, the **First Party**) to the other Party (in this clause 26, the **Second Party**) (whether under this Agreement (including under an indemnity) or, to the extent permitted by law, otherwise) is limited to Direct Damage arising from:
 - (i) personal injury or death caused by the negligent acts or omissions or wilful misconduct of the First Party or the First Party's directors, officers, employees, agents or contractors;
 - (ii) any damage to the property of the Second Party or to property for which the Second Party is responsible under this Agreement which is caused by the negligent acts or omissions or wilful misconduct of the First Party or of the First Party's directors, officers, employees, agents or contractors; or
 - (iii) any breach of the provisions of this Agreement (including any warranty) by the First Party, including where caused by or arising out of the First Party's negligence.
- (b) The aggregate liability of the Service Provider to the User, its directors, officers, employees, agents and contractors, whether under contract (including by way of indemnity), by statute (to the extent that it is possible to limit or exclude such liability), in tort (for negligence or otherwise) or on any other basis at law or in equity is limited to the sum of:
 - (i) the amount which, but for this clause 26, is recoverable and which, in fact, is recovered under the Service Provider's policies of insurance; and
 - (ii) any uninsured retentions (such as deductibles or excesses).

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Deleted: Clause 26.4(a) does not limit a Party's liability in respect of liability for Consequential Damage, to the extent that, ignoring the application of those clauses, the Party is indemnified for that liability under a policy of insurance.

Deleted: ¶
Circumstances in which limitations and exclusions do not apply

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The limitations of liability referred to in clauses 26.3(a) and 26.4 do not apply in respect of the User's liability for the Damage in connection with or arising as a result of:

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an Unauthorised Overrun;

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delivery of Gas into the Network which does not meet the Specification;

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delivery of Gas to a Receipt Point which does not comply with the minimum and maximum pressure specifications for that Receipt Point set out in Annexure 5;

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the failure by the User to ensure the cessation of the delivery of Gas to a Receipt Point as required under this Agreement;

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(b) The limitations of liability referred to in clauses 26.3(a) and 26.4 do not apply in respect of the Service Provider's liability for Damage caused by the delivery to a Delivery Point of Gas which does not meet the Specification, to the extent that the delivery was caused by the negligence or wilful default of the Service Provider.

26.4 Exclusion of Consequential Damage

The First Party is not liable for, and does not indemnify the Second Party in respect of, any Consequential Damage howsoever caused (including by the negligence of the First Party), suffered by the Second Party in connection with this Agreement.

[B.5]

26.5 Contribution to loss or damage [B.6]

The liability of a Party for Damage, howsoever caused (including, but not limited to, by the negligence of that Party), suffered by the other Party in connection with this Agreement is reduced to the extent that the negligent act or omission or wilful misconduct of the other Party caused that Damage.

26.6 Civil Liability Act [B.6]

- (a) To the extent permitted by law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any other equivalent statutory provisions in any other state or territory) is excluded from applying to any right, obligation or liability of either Party under this Agreement whether such a right, obligation or liability is sought to be enforced as a breach of contract, a claim in tort or otherwise in an action for damages.
- (b) All other rights, obligations and liabilities (including those relating to proportionate liability) of each Party are preserved and are as specified in or by this Agreement whether in contract, tort or otherwise in an action for damages.

26.7 User's supply arrangements [B.6]

The User must include in all its supply arrangements with Customers who are not Small Customers, a provision that limits or excludes the User's liability to those persons, to the extent reasonably practicable, and in particular in relation to transportation of Gas, arising from or in connection with the operation of the Network and any Services provided by the Service Provider (whether under this Agreement or otherwise).

27. Transfer

27.1 Service Provider may transfer

The Service Provider may assign, transfer or novate this Agreement or transfer any or all of its rights under this Agreement without the User's prior written consent. The Service Provider must notify the User in writing of any such assignment, transfer or novation.

27.2 No assignment without consent

The User may not assign, transfer or novate this Agreement without the Service Provider's prior written consent. The User must request any assignment in writing.

27.3 Transfers where the Retail Market Procedures do not apply

- (a) Where there are no relevant Retail Market Procedures governing transfer of capacity, the User may, without the Service Provider's consent, transfer, by way

of subcontract, all or any of the User's contracted capacity to another person (the **third party**) with the following consequences:

- (i) the User's rights against, and obligations to, the Service Provider under this Agreement are (subject to clause 27.3(a)(ii)) unaffected by the transfer; but
 - (ii) the User must immediately give notice to the Service Provider of:
 - (A) the subcontract and its likely duration;
 - (B) the identity of the third party; and
 - (C) the amount of the contracted capacity transferred.
- (b) The User may, with the Service Provider's consent, transfer all or any of the User's contracted capacity to another party (the **third party**) as outlined in rule 105(3) of the National Gas Rules. The Service Provider must not withhold its consent unless it has reasonable grounds, based on technical or commercial considerations, for doing so and where the third party executes a deed of covenant in favour of the Service Provider as set out in clause (d) below. An example of a reasonable ground would be, if the Service Provider would not receive at least the same amount of revenue after the transfer than it would have received before the transfer was requested.
- (c) The Service Provider must reply to a request from the User for the Service Provider's consent to a transfer or assignment under clause 27.3(b) within 14 Business Days of receiving the request accompanied by all information reasonably necessary to enable the Service Provider to consider the request. If at the time the request is made, the User informs the Service Provider in writing that due to hardship, the User requires an urgent reply to its request, the Service Provider will use reasonable endeavours to respond to the request within 2 Business Days of receiving the request.
- (d) If the Service Provider receives a request from the User for the Service Provider's consent to a transfer or assignment under clause 27.3(b), the Service Provider may require the User to provide to the Service Provider a Deed of Covenant executed by each of the User and the third party (in a form reasonably required by the Service Provider) in favour of the Service Provider and of each other, under which:
- (i) the User assigns all of its rights under this Agreement to the third party and the third party accepts that assignment;
 - (ii) the third party agrees to assume all of the User's rights and obligations under this Agreement and to accordingly comply with all of the User's obligations and assume all of the User's liabilities under the Agreement; and

- (iii) the User agrees to the assumption of those rights and obligations by the third party.
- (iv) the User consents to the Service Provider providing the third party with the details (including all details contained in the Relevant Customer List such as the MDQ and Demand Charge) regarding any Delivery Point.
- (e) Unless otherwise agreed, any transfer made under clause 27.3(b) by the User will be effective only on the first Day of the Calendar Month following execution of any deed of covenant under clause 27.3(d)(iv).

28. Security and Financial Standing

- (a) Where the User is the Retailer for a Customer or Customers at one or more Delivery Points:
 - (i) the User must provide security for Charges payable or which may become payable under this Agreement for those Delivery Points in accordance with the requirements set out in Division 4 of Part 21 of the National Gas Rules, which will be deemed to be incorporated into this Agreement; and
 - (ii) the rest of this clause 28, with the exception of clauses 28(e), 28(f) and 28(g) below, will not apply to the User.

In all other cases, the User must comply with clauses 28(b) to 28(j) below.

- (b) If requested by the Service Provider where reasonably necessary, the User must provide Security to the Service Provider for an amount reasonably determined by the Service Provider to be:
 - (i) the sum of the previous two invoices from the Service Provider to the User, at the time the Security is requested; or
 - (ii) the average total Charges payable by the User to the Service Provider under this Agreement over two consecutive Billing Periods for each Delivery Point,

whichever is greater.

- (c) The Service Provider may review the amount of the Security where reasonably necessary and may require the User to increase (or decrease, as the case may be) the amount of Security where, in the Service Provider's reasonable opinion, the amount of the Security is less (or more) than the greater of:
- (i) the sum of the User's previous two invoices at the time the Security is requested; and
 - (ii) the average total Charges payable by the User to the Service Provider under this Agreement over two consecutive Billing Periods for each Delivery Point.
- (d) Any interest earned on the Security may be retained by the Service Provider and form part of the Security. Nothing in this Agreement is to be taken as imposing any obligation on the Service Provider to maximise or obtain any return on amounts deposited.
- (e) If requested by the Service Provider where reasonably necessary, the User must, in a timely manner:
- (i) demonstrate its ability to meet all financial obligations under this Agreement; and
 - (ii) provide all information reasonably required by the Service Provider for the purpose of assessing the User's credit worthiness.
- (f) The information requested by the Service Provider under clause 28(e) may include the User's most recent Financial Report or, where the User is not required under the *Corporations Act 2001* (Cth) to produce a financial report, the User must create a report equivalent to a Financial Report in accordance with the reasonable requirements of the Service Provider and provide it to the Service Provider within 30 days of the request.
- (g) The User represents and warrants that:
- (i) any Financial Report provided by it under clause 28(f) was prepared in accordance with the *Corporations Act 2001* (Cth) requirements for Financial Reports for a financial year or (where no such report is required under the *Corporations Act 2001* (Cth)) that any equivalent report provided under that clause gives a true and fair view of the financial position and performance of the User; and
 - (ii) there has been no change in the state of its affairs since the end of the financial year to which the most recent Financial Report (or equivalent report) provided to the Service Provider in accordance with clause 28(f) relates which might have a material adverse effect upon the User's ability to perform any of its obligations under this Agreement or upon the business or operations of the User.

- (h) The User repeats the representation and warranties in clause 28(g) on the Commencement Date for the Haulage Reference Service provided to each Delivery Point.
- (i) The Service Provider may release the Security at any time.
- (j) The Service Provider must release the Security within 10 Business Days of the date which is the later of the termination of this Agreement and the date on which all amounts which are owing or payable or remaining unpaid, whether present, unascertained, immediate, future or contingent, by the User to the Service Provider have been paid in full.

29. Confidentiality

- (a) Unless otherwise provided in this clause 29, the Service Provider must not disclose any Confidential Information under this Agreement except where permitted by the National Gas Law.
- (b) Neither Party may disclose Confidential Information under this Agreement without the prior written consent of the other Party except to the extent that the disclosure:
 - (i) is required by applicable laws or by requirements of any government or government agency having jurisdiction over the disclosing Party (**Disclosing Party**);
 - (ii) is required by any securities commission having jurisdiction over the Disclosing Party or a Related Body Corporate of the Disclosing Party, or by the rules of any stock exchange on which are listed the shares in the capital of the Disclosing Party or a Related Body Corporate of the Disclosing Party;
 - (iii) is to the Disclosing Party's employees, directors, consultants, contractors, advisers or agents, or those of a Related Body Corporate of the Disclosing Party;
 - (iv) relates to information that is at the time of disclosure lawfully generally available to the public, other than as a result of a breach of this Agreement;
 - (v) is to a bona fide purchaser of substantially all of the Disclosing Party's assets or, in the case of the Service Provider, of any or all of its Network;
 - (vi) is required by an order of a court of competent jurisdiction;

- (vii) is to a bank or other financial institution in connection with the Disclosing Party's financial affairs; or
- (viii) is required to enable the Disclosing Party to comply with its obligations under any law including, but not limited to:
 - (A) the Retail Market Procedures;
 - (B) laws and rules governing the Short Term Trading Market; and
 - (C) the Disclosing Party's Gas reticulator's or Retailer Authorisation.

(c) The User consents to the disclosure by the Service Provider to third parties of:

- (i) information relating to Quantities of Gas historically delivered to (or estimated to have been delivered to) a Delivery Point;
- (ii) Load profile and information relating to Load Types and appliances installed at the premises supplied by the Delivery Point;
- (iii) current Charges applicable to the Service(s) provided to a Delivery Point; and
- (iv) any other information regarding that Delivery Point, including but not limited to, the MDQ, MHQ, Chargeable Demand And Tariff Class for a Delivery Point,

where the Customer at the relevant Delivery Point has provided its written consent to the Service Provider (or the User provides any other form of evidence that the Customer consents to such disclosure reasonably acceptable to the Service Provider).

(d) The User consents to the disclosure by the Service Provider to another Network User of:

- (i) information relating to Quantities of Gas historically delivered to a Delivery Point;
- (ii) Load profile and information relating to Load Types and appliances installed at the premises supplied by the Delivery Point;
- (iii) current Charges applicable to the Service(s) provided to a Delivery Point; and
- (iv) any other information regarding that Delivery Point, including but not limited to, the MDQ, MHQ, Chargeable Demand and Tariff Class for a Delivery Point,

where the relevant Delivery Point has been or has been requested to be transferred to the other Network User.

- (e) Where the Service Provider offers to add a new Delivery Point or increase the MHQ or MDQ of a Demand Customer Delivery Point in response to a Request from the User, the User consents to the Service Provider disclosing the existence and terms of the offer to any Customer at that Delivery Point or other third party which has a direct financial interest in the terms of the offer.
- (f) The User acknowledges and agrees that the aggregated consumption data of a group of Customers (such that the individual consumption of each Customer is not reasonably ascertainable) or a Network Section is not Confidential Information and that the Service Provider may disclose such data to the market at its discretion.

30. Dispute resolution

30.1 Application

- (a) The Parties acknowledge and agree that this clause 30 does not, and is not intended to, limit or exclude in any way the provisions in the National Gas Law in relation to dispute resolution.
- (b) The Parties agree that where a Party refers any matter in connection with this Agreement or its performance to be dealt with in accordance with the dispute resolution provisions set out in the National Gas Law:
 - (i) if an access determination is made by the dispute resolution body in respect of the access dispute, the Parties must comply with that access determination;
 - (ii) neither Party can subsequently utilise this clause 30 in respect of the same dispute.

30.2 Notification of Dispute

If a Party claims that there exists:

- (a) any dispute or difference of opinion between the Parties; or
- (b) the absence of agreement by the Parties,

about a matter which arises out of or relates to this Agreement, or the breach, termination, validity or subject matter thereof, or as to any related claim in restitution or at law, in equity or pursuant to any statute (**Dispute**), then that Party must notify the other Party of the Dispute.

30.3 Nomination of Representative

As soon as practicable after a notice is given under clause 30.2, each Party must nominate in writing a representative authorised to settle the Dispute on its behalf.

30.4 Good Faith Discussions

Each Party must enter into discussions in good faith, to resolve the Dispute or to agree on a process to resolve all or part of the Dispute. Unless the Parties otherwise agree, discussions between the Parties' representatives under this clause 30.4 must continue for 7 Business Days after notice of the Dispute was given under clause 30.2.

30.5 Mediation

- (a) In the event that discussions under clause 30.4 fail to resolve the Dispute, each Party expressly agrees to endeavour to settle the Dispute by mediation administered by the Australian Commercial Disputes Centre (**ACDC**) before having recourse to arbitration or litigation.
- (b) The mediation shall be conducted in accordance with the ACDC Guidelines for Commercial Mediation (**Guidelines**) which are operating at the time the matter is referred to ACDC.
- (c) The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- (d) The terms of the Guidelines are hereby deemed incorporated into this Agreement.
- (e) Clause 30 shall survive termination of this Agreement.

30.6 Urgent relief

Nothing in this clause 30 will prevent a Party from seeking urgent declaratory or injunctive relief.

30.7 Information confidential

Any information or documents disclosed by a representative during the course of the discussions or any mediation in relation to the Dispute under this clause 30:

- (a) must be kept confidential; and
- (b) may not be used except to attempt to settle the Dispute.

30.8 Without Prejudice Discussions

Any discussions which take place as contemplated by this clause 30 will be without prejudice to the respective rights and obligations of the Parties in relation to the subject matter of the Dispute.

30.9 Continue to perform Agreement

Notwithstanding the existence of a Dispute, or the undertaking of any Dispute resolution in accordance with this clause 30, each Party must continue to perform its obligations under this Agreement.

31. Notices

31.1 Notice in Writing

A Party giving notice or notifying under this Agreement must do so in writing and direct it to the recipient's address specified in Annexure 1, as varied by any notice provided by one Party to the other.

31.2 Receipt of Notice

A notice given in accordance with clause 31.1 is regarded as being given by the sender and received by the addressee:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, 3 Business Days from and including the date of postage;
- (c) if sent by facsimile transmission, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within 1 Business Day after that transmission, the recipient informs the sender that it has not received the entire notice; or
- (d) if sent by email, when the sender receives an email message from its addressee acknowledging its receipt.

32. General

32.1 Privacy

- (a) The User must comply at all times with all applicable Privacy Laws in relation to Customer's Personal Information that it:
 - (i) receives from the Service Provider; or

(ii) supplies to the Service Provider,

including, in respect of Customer's Personal Information that the User supplies to the Service Provider, taking all reasonable steps to provide required notification statements and obtain required consents in respect of any disclosure or use of Customer's Personal Information.

(b) The Service Provider must comply at all times with all applicable Privacy Laws in relation to Customer's Personal Information that it:

(i) receives from the User; or

(ii) supplies to the User.

including, in respect of Customer's Personal Information that the Service Provider supplies to the User, taking all reasonable steps to provide required notification statements and obtain required consents in respect of any disclosure or use of Customer's Personal Information.

(c) The Parties must take reasonable steps and co-operate with each other (to the extent reasonably required by each other) to enable each of them to comply with Privacy Laws.

(d) Where a Party so requests, the other Party must use reasonable endeavours to provide the original Party with:

(i) information about the policies and procedures it has in place to ensure compliance with applicable Privacy Laws in relation to Customer's Personal Information; and

(ii) details of any notifications or consents provided to or obtained from a particular Customer in respect of that Customer's Personal Information.

(e) A Party must comply with any reasonable request made by the other Party for the purpose of complying with this clause.

32.2 Entire agreement

This Agreement:

(a) constitutes the entire agreement between the Parties as to its subject matter; and

(b) in relation to that subject matter, supersedes any prior understanding or agreement between the Parties and any prior clause, warranty, indemnity or representation imposed, given or made by a Party.

32.3 Severability

- (a) The Parties agree that a construction of this Agreement that results in all provisions being enforceable is to be preferred to a construction that does not so result.
- (b) If, despite the application of clause 32.3(a), a provision of this Agreement is illegal or unenforceable:
 - (i) if the provision would not be illegal or unenforceable if a word or words were omitted without changing the primary intent of the provision, that word or those words are severed; and
 - (ii) in any other case, the whole provision is severed,and the remainder of this Agreement continues in force.

32.4 Waiver

A waiver of any provision of or right under this Agreement:

- (a) must be in writing signed by the Party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

32.5 Relationship between Parties

This Agreement does not create a relationship of employment, agency or partnership between the Parties.

32.6 Enforceability

Each Party warrants that it has all necessary power and authority and holds all authorisations required by any Law to enter into and perform its obligations under this Agreement and that this Agreement is binding on that Party and enforceable against it in accordance with its terms.

32.7 Further assurances

Each Party must sign all such documents and do all such things as shall be necessary or desirable to give full effect to this Agreement.

32.8 Inurement

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

32.9 Counterparts

This Agreement may be executed in counterparts and the counterparts taken together constitute one and the same instrument.

32.10 Governing law and jurisdiction

This Agreement is governed by the law applicable in New South Wales. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

Executed as an agreement.

**Executed by Jemena Gas Networks (NSW) Ltd
ACN 003 004 322** by its duly authorised
representative, in the presence of:

Signature of Witness

Signature of Authorised Signatory

Name of Witness

Name of Authorised Signatory

Executed by **[insert] ACN [insert]** by its duly
authorised representative, in the presence of:

Signature of Witness

Signature of Authorised Signatory

Name of Witness

Name of Authorised Signatory

Annexure 1 — Addresses of Parties for Notices

Service Provider	
Address	Level 20, 111 Pacific Highway, North Sydney, NSW, 2060 PO Box 1220, North Sydney, 2059
Attention	Contracts Manager
Phone	+61 2 9455 1520
Fax	+61 2 9455 1673
Email	[]
User	
Address	
Attention	
Phone	
Fax	
Email	

Annexure 2 — Gas Specification

Parameter	Specification Limit
1 Wobbe Index ¹	Min. 46.0 MJ/m ³ Max 52.0 MJ/m ³
2 Oxygen ¹	Max. 0.2 mol%
3 Hydrogen Sulphide ¹	Max. 5.7 mg/m ³
4 Total Sulphur ^{1,2}	Max. 50 mg/m ³
5 Water Content ¹	Max. Dew Point 0°C at maximum transmission pressure upstream of receipt point, but in any case no more than 112.0 mg/m ³
6 Hydrocarbon Dewpoint ¹	Max. 2° at 3,500 kPaG
7 Total Inert Gases ¹	Max. 7.0 mol %
8 Solid Matter and Liquids	Nil Permitted
9 Temperature at Receipt Point	-5°C to 50°C
10 Odorant	Odorant to be of a type approved by the Service Provider. Level of odorant to be 12 milligrams per cubic metre or such other level as the Service Provider may require.

¹ The standard testing clauses for all Gas properties are

Temperature 15°C

Absolute Pressure 101.325 kPa

With the natural gas dry (that is, completely free of water vapour)

² Including odorant, or an allowance for odorant in cases where odorant is injected downstream of test points.

Annexure 3 — Gas Balancing Where STTM Ceases To Apply

1. General Qualifications

- (a) This Annexure will govern the Gas Balancing of Network Sections at times as specified by clause 7 of the Agreement.

For example, following the commencement of the Short Term Trading Market, if at any time the Short Term Trading Market ceases to operate, this Annexure will take effect.

- (b) In Country Networks, each User will be deemed to be in balance within the Network Section; that is, the User's Input will be deemed to be equal to the Withdrawal Quantity of that User on a Day.
- (c) Should any of the following circumstances cease to apply, the Service Provider will notify the User of the actions that it reasonably considers necessary to take account of the changed circumstances and to ensure the continued quality, safety, reliability and security of supply of Gas and the Service Provider and User will comply with such notice:
- (i) each Network Section has only one pressure controlled Receipt Point, all other Receipt Points will be flow controlled;
 - (ii) the operator of a pipeline for flow controlled Receipt Points will aim to input a Quantity of Gas each Day at each Receipt Point equal to the Confirmed Nominations of Network Users served by it through that Receipt Point;
 - (iii) the Receipt Point at Wilton from the Moomba Sydney Pipeline is pressure controlled; and
 - (iv) UAG is supplied by the Service Provider.

2. Definitions

In this Annexure 3:

- (a) **Forecast Withdrawal** has the meaning given to that term in paragraph 3(b);
- (b) **Input** means the User's input determined under paragraph 4;
- (c) **Proposed Nomination** has the meaning given to that term in paragraph 3(d);

- (d) **User's Confirmed Nomination** means the Quantity determined under paragraph 3(f);
- (e) **User's Daily Imbalance** for a Receipt Point means the Quantity of Gas calculated by subtracting the User's Withdrawal Quantity for a Receipt Point from that User's Input Quantity for that Receipt Point; and
- (f) **Withdrawal Quantity** of a User at a Receipt Point on a Day means the total of:
 - (i) Demand Customer Delivery Point Withdrawals, being the total Quantity of Gas withdrawn on the Day at all of the User's Demand Customer Delivery Points, as determined by measurement or as otherwise agreed under the Agreement; and
 - (ii) Volume Customer Delivery Point Withdrawals, being:
 - (A) the total Quantity of Gas withdrawn on the Day at all of the User's Volume Customer Delivery Points which are Non Daily Metered Delivery Points, calculated, and allocated to the User, in accordance with the Network Code, the Retail Market Procedures or the National Gas Law (whichever is applicable). Where there are no applicable regulatory requirements, the Quantity withdrawn will be the Quantity calculated and allocated by the Service Provider for each Network Section in proportion to the Quantities nominated by all Users of that Network Section under paragraph 3(b)(i) and allocated to the Receipt Point used by the User in supplying Volume Customer Delivery Points in proportion to the User's Forecast Withdrawal requirement for Non-Daily Metered Delivery Points (which are Volume Customer Delivery Points) for that Receipt Point under paragraph 3(b)(i)(B); plus
 - (B) the total Quantity of Gas withdrawn on the Day at all of the User's Volume Customer Delivery Points which are Daily Metered Delivery Points.

3. Daily Forecasts and Nominations

- (a) Each Day, and for each Receipt Point at which the User receives Gas under this Agreement and any other agreement for the transportation of Gas between the Service Provider and the User, the User must provide the Service Provider with its forecast of withdrawals from the relevant Network Section for each of the following three Days (or seven Days when requested for operational reasons).
- (b) Each Day, and for each Receipt Point at which the User receives Gas under this Agreement and any other agreement for the transportation of gas between the Service Provider and the user, the User must inform the Service Provider of its

Gas requirements for the Day under all such transportation agreements as follows:

- (i) forecast of Gas to be withdrawn from the Network in total (**Forecast Withdrawals**) calculated in accordance with paragraph 3(d) and itemising the following amounts:
 - (A) forecast Gas requirement for non-daily metered Volume Delivery Points; and
 - (B) when required in advance of any Day by the Service Provider, the forecast withdrawal at designated Delivery Points, in such manner and in relation to such times as the User and the Service Provider agree

(Forecast Withdrawal).

- (c) The User must satisfy the requirements of paragraph 3(b) for all Delivery Points other than a Delivery Point at which an automatic feedback control system is used to establish a direct relationship between input at a flow controlled Receipt Point and the quantity actually withdrawn at the Delivery Point.
- (d) The User must make nominations of its Forecast Withdrawals in good faith so that the Forecast Withdrawals under paragraph 3(b) for all Receipt Points serving the Network Section is the aggregate amount which the User intends to withdraw from the Network Section on the Day under all transportation agreements.
- (e) For each Day, the Service Provider must advise the User of the Quantity of Gas which the User should plan to deliver or have delivered into the Network Section at each Receipt Point on that Day in order to enable the Service Provider to satisfy the User's Forecast Withdrawals and any other aggregate needs for the relevant Network Section (including adjustment for the User's change in share of linepack) to ensure safe and reliable supply (**Proposed Nomination**).
- (f) For each Day, the User must advise the Service Provider of the Quantity of Gas which the User intends to deliver or have delivered into the Network Section or otherwise intends to receive at each Receipt Point on that Day (**User's Confirmed Nomination**) and which Quantity must equal the Quantity advised by the Service Provider under paragraph 3(d).
- (g) If the User fails to provide the Service Provider with valid Forecast Withdrawals and/or valid User's Confirmed Nomination, the Service Provider must determine the User's Confirmed Nomination on the basis of the Quantity which was the User's Forecast Withdrawals for the same Day in the prior week (or where such Day is a public holiday, based on the same Day in the week two weeks prior).

- (h) The User and the Service Provider must complete each of their obligations set out in paragraphs 3(a) to 3(g) in accordance with a timetable determined through consultation between the Service Provider and User.

4. User's Input

- (a) The Service Provider carries out Gas Balancing between the Receipt Point or Receipt Points for the Wilton Network Section at which Gas intended for a Delivery Point first enters the Network Section, and that Delivery Point.
- (b) In this Annexure 3, the Service Provider must determine the User's Input as follows:
 - (i) where there is only one Network User at the Receipt Point the User's Input will be the metered Quantity at the Receipt Point net of UAG purchased by the Service Provider.
 - (ii) where two or more Network Users receive Gas at the EGP Horsley Park Receipt Point, or at the EGP Port Kembla Receipt Point, the User's Input will be:
 - (A) subject to paragraph 4(b)(ii)(B), the metered Quantity at the Receipt Point net of UAG purchased by the Service Provider allocated to the User and Network Users in proportion to their Users' Confirmed Nominations for the Day; and
 - (B) in respect of a User at a Delivery Point at which an automatic feedback flow control system is used to establish a direct relationship between input at an EGP Receipt Point and the Quantity actually withdrawn at the Delivery Point, the difference between the metered Quantity at the Receipt Point net of UAG purchased by the Service Provider, and the total of the Users' Confirmed Nominations for all Network Users plus the User's Confirmed Nomination for its other Delivery Points;
 - (iii) where two or more Network Users receive Gas at the Wilton Receipt Point, then the total Quantity metered at that Receipt Point on the Day net of UAG purchased by the Service Provider will be allocated among those Network Users in proportion to their Network Users' Confirmed Nominations for the Day and that allocation will be the User's Input; and
 - (iv) where two or more Network Users receive Gas at a Receipt Point in the Wilton Network Section that is not referred to in paragraphs (i) or (ii) above, the Service Provider will (acting reasonably and taking into account the technical and commercial arrangements at that Receipt

Point) advise the Network Users receiving Gas at that Receipt Point of the method by which their Input will be calculated.

- (c) The Service Provider has the discretion, acting reasonably, to adjust the User's Input for a Network Section, as determined in accordance with paragraphs 4(b)(i) to 4(b)(iii), for the User or for any Network User in order to take account of:

[C.20]

- (i) any Quantity of Gas that the User receives in that Network Section from any Network User as agreed to by the Service Provider (at the Service Provider's discretion, acting reasonably); or
- (ii) any Quantity of Gas that the User transfers to any Network User in that Network Section as agreed to by the Service Provider (at the Service Provider's discretion, acting reasonably).

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5. Gas Balancing

- (a) For the avoidance of doubt, the User is responsible for ensuring that the aggregate Quantity of Gas delivered by or for the account of the User, through the Receipt Point(s) for a Network Section, is equal to:
- (i) the aggregate quantity of gas delivered to or for the account of the User to Delivery Points within that Network Section; plus
- (ii) any change in linepack in the Network Section allocated to the User by the Service Provider or other share of aggregate needs for a Network Section to ensure safe and reliable supply.
- (b) When determining an allocation of the total change in linepack for a Network Section between the User and other Network Users, the Service Provider will seek to apply a methodology which reflects the linepack requirements of the services which were provided to the User. If the Service Provider considers that a more direct method of allocation is not available, the Service Provider may pro rata total change in linepack based on each Network Users' typical aggregate capacity entitlement for all network services.
- (c) The Service Provider shall be entitled to publish (and disclose to the public) the User's Daily Imbalance by Receipt Point at the Service Provider's discretion, acting reasonably.
- (d) The Service Provider and the User must comply with the provisions dealing with participant balancing or incentive mechanisms for participants:
- (i) in the Network Code, or

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- (ii) where they replace the relevant provisions in the Network Code, in the National Gas Law and Retail Market Procedures.

Annexure 4 —Receipt Stations

1. Filtration and Liquid Separation System

The Receipt Station shall include a filtration and liquid separation system (**Filtration and Liquid Separation System**) which meets the following requirements:

- (a) the filter and separator shall not be fitted with a bypass;
- (b) a minimum of 2 parallel filter and separator runs are to be installed, each capable of treating the MHQ of the Receipt Station at the lowest inlet pressure;
- (c) the Gas filter shall be capable of removing all solid particles greater than 1 micrometre in diameter;
- (d) the liquid separator shall remove all liquids travelling in the Gas stream; and
- (e) the filter differential pressures and the liquid level of the separator holding vessel shall be continuously measured and the signals telemetered to the SCADA System.

2. Gas Quality Measurement System

2.1 Requirements of Gas Quality Measurement System

The Receipt Station shall include a Gas quality measurement system (**Gas Quality Measurement System**) which enables the following measures of quality to be determined continuously and telemetered in real time to the SCADA System:

- (a) Gas Outlet Temperature;
- (b) Gas Relative Density;
- (c) Gas Heating Value;
- (d) Gas Water Dew Point;
- (e) Gas Carbon Dioxide Content;
- (f) Gas Hydrocarbon Dew Point;
- (g) Gas Oxygen Content;
- (h) Gas Total Sulphur Content;
- (i) Gas Hydrogen Sulphide Content; and

- (j) Gas Odorant Content.

2.2 Measurement other than at a Receipt Station

- (a) If the Service Provider consents, qualities other than the Gas Outlet Temperature may be measured at a location other than the Receipt Point. The Service Provider shall be entitled to withhold its consent if it reasonably believes that measurement at such other location will not give a true indication of the quality of Gas being delivered at the Receipt Point.
- (b) If the Service Provider has consented to any quality being measured at a location other than the Receipt Point, the Service Provider may at any later time withdraw that consent and require the quality to be measured at the Receipt Point if it believes that measurement at such other location is not giving a true indication of the quality of Gas being delivered at the Receipt Point.
- (c) If measured other than at a Receipt Station, all equipment used for measuring the qualities of Gas shall be designed, maintained and calibrated in accordance with good engineering practice and industry standards as agreed by the Service Provider.

2.3 Calibration and testing of equipment

- (a) The Service Provider may at any time require the User to test or calibrate the Gas Quality Measurement System.
- (b) The Service Provider is entitled to be present at a test or calibration of equipment and to receive copies of all test results.
- (c) The Service Provider shall bear the costs of a test or calibration if the test or calibration results show that the Gas Quality Measurement System was accurate within the tolerances agreed between the Service Provider and the User.
- (d) If the Gas Quality Measurement System is being tested or calibrated other than under paragraph 2.3(a):
 - (i) the User shall notify the Service Provider of the timing of such testing or calibration;
 - (ii) the Service Provider is entitled to attend such testing or calibration; and
 - (iii) promptly after receiving the results of such testing or calibration, the User must provide the Service Provider with a copy of those results.

3. Gas Quantity Measurement System

- (a) A Receipt Station shall include a Gas quantity measurement system (**Gas Quantity Measurement System**) which ensures that continuous measurement is maintained in the event of routine calibration, equipment maintenance, individual equipment malfunction, loss of external electricity supplies or loss of telemetry signals.
- (b) The Gas Quantity Measurement System must be such that the Primary Measurement elements and all Secondary Measurements required to convert the Primary Measurement to Standard Conditions and to calculate the Quantity of Gas are duplicated. The individual Primary and Secondary Measurements as well as the calculated Quantity of Gas shall be telemetered in real time to the SCADA System.
- (c) The Service Provider may at any time require the User to test or calibrate the Gas Quantity Measurement System.
- (d) The Service Provider is entitled to be present at a test or calibration and to receive copies of all test results.
- (e) The Service Provider shall bear the costs of a test or calibration if the test or calibration results show that the Gas Quantity Measurement System was accurate to within the tolerances agreed between the Service Provider and the User.
- (f) If the Gas Quantity Measurement System is being tested or calibrated other than under paragraph 3(c);
 - (i) the User shall notify the Service Provider of the timing of such testing or calibration;
 - (ii) the Service Provider is entitled to attend such testing or calibration; and
 - (iii) promptly after receiving the results of such testing or calibration, the User shall provide the Service Provider with a copy of those results.

4. Flow and Pressure Control System

The Receipt Station flow and pressure control system (**Flow and Pressure Control System**) shall be designed to:

- (a) prevent over-pressure of the Network;
- (b) provide control of the Network pressures and inflows;

- (c) prevent backward flow through the Receipt Station;
- (d) enable the operation and balancing of a particular part of the Network when more than one Receipt Station supplies that part; and
- (e) enable the immediate termination of supply.

Annexure 5 — Gas Pressure at Receipt Points

Receipt Point	Min. Delivery Pressure at outlet of Custody Transfer Station (kPa)	Max. Delivery Pressure at outlet of Custody Transfer Station(kPa)
Wilton Network Section		
Horsley Park	3,600+	4,500^^
Rosalind Park	3,800+	4,500^^
Port Kembla	2,600+	3,500
Wilton	3,800+	6,895
Albion Park	3,000+	14,895
Hexham (proposed)	2,200+	5,000%
Country Networks		
Bargo	1,750	6,895
Bathurst	1,750	10,000
Blayney	1,750	10,000
Boorowa	1,750	6,895
Bowral	1,750	6,895
Coolamon	1,750	6,895*
Cootamundra	1,750	10,000
Cowra	1,750	10,000
Dubbo	1,750	10,000
Dubbo West	1,750	10,000
Forbes	1,750	10,000
Ganmain	1,750	6,895*
Goulburn	1,750	6,895
Junee	1,750	10,000
Leeton	1,750	6,895*
Lithgow	1,750	10,000
Marulan	1,750	6,895
Millthorpe	1,750	10,000
Moss Vale	1,750	6,895
Murrami	1,750	6,895*
Narrandera	1,750	6,895*
Narromine	1,750	10,000
Oberon	1,750	10,000
Orange	1,750	10,000
Parkes	1,750	10,000
Rockdale	1,750	6,895*

Receipt Point	Min. Delivery Pressure at outlet of Custody Transfer Station (kPa)	Max. Delivery Pressure at outlet of Custody Transfer Station(kPa)
Sally's Corner	1,750	6,895
Wallerawang	1,750	10,000
West Wyalong	1,750	6,895
Yass	1,750	6,895
Yoogali (Griffith)	1,750	6,895*
Young	1,750	10,000

If marked "+" then the Minimum Delivery Pressure may be subject to future increase to the Maximum Delivery Pressure

If marked "**" Upgrades to the Service Provider's facilities are required to accommodate 10,000 kPa.

If marked ^ 4500 kPa Maximum Delivery Pressure limitation is in place to satisfy technical code & license requirements due to third party activity. Maximum Delivery Pressures will be reinstated to 6,895 kPa when code and license requirements allow.

If marked % upgrades to the Service Provider's facilities are required to accommodate 6,895 kPa.

The Service Provider will notify Users of any updates to this Annexure and publish the updated Annexure on its website.

Annexure 6 —Responsibility for Delivery Station Components

1. Responsibility for Delivery Station Components where Delivery Point not served by Medium or Low Pressure Distribution Network and Delivery Station did not exist at 1 August 1997

Where the Delivery Point is served other than by the Medium or Low Pressure Distribution Network and where the Delivery Station was not in physical operation as at 1 August 1997:

(a) the Service Provider does not own, and the User is responsible to operate and maintain and, if applicable, design the following Delivery Station components:

- (i) concrete pads, security fencing, safety and firefighting equipment;
- (ii) power supply;
- (iii) stormwater and other services required by any local authority; and
- (iv) noise mitigation facilities,

such that the design, operation and maintenance of these components conforms to good engineering practice and industry standards as required by the Service Provider;

(b) subject to agreement to the contrary with the User, the Service Provider must own, operate and maintain and, if applicable, design the following Delivery Station components and, if required by the Service Provider, the User must pay the Service Provider's reasonable charges in connection with installing the following Delivery Station components:

- (i) Gas meters;
- (ii) pressure regulators and safety valves;
- (iii) filters;
- (iv) pressure and temperature measurement instrumentation;
- (v) flow calculation equipment;
- (vi) remote telemetry equipment and links and any additional equipment used for Gas quantity measurement, or for recording or transmitting data;
- (vii) meter set pipe spools;

- (viii) meter set valves; and
- (ix) over pressure protection; and
- (c) the User is responsible to operate and maintain the pipe from the point 225 millimetres outside the boundary of the site to the meter control valve so that the operation and maintenance of the pipe conforms to good engineering practice and industry standards as required by the Service Provider; and
- (d) where the Service Provider provides, operates and/or maintains any of the Delivery Station components listed in paragraph 1(a) or 1(c), the User must pay the reasonable costs of providing, operating and/or maintaining those components.

2. Responsibility for Delivery Station Components where Delivery Point not served by Medium or Low Pressure Distribution Network and Delivery Station existed at 1 August 1997

Where the Delivery Point is served other than by the Medium or Low Pressure Distribution Network and where the Delivery Station was in physical operation as at 1 August 1997:

- (a) the Service Provider does not own, and the User shall be responsible to operate and maintain the following Delivery Station components:
 - (i) meter set pipe spools;
 - (ii) meter set valves;
 - (iii) concrete pads, security fencing, safety and firefighting equipment;
 - (iv) power supply;
 - (v) stormwater and other services required by any local authority; and
 - (vi) noise mitigation facilities,such that the operation and maintenance of these components conforms to good engineering practice and industry standards as required by the Service Provider;
- (b) the Service Provider owns, and is responsible to operate and maintain at its own cost, the following Delivery Station components:
 - (i) Gas meters;
 - (ii) pressure regulators and safety valves;
 - (iii) filters;

- (iv) pressure and temperature measurement instrumentation;
 - (v) flow calculation equipment;
 - (vi) remote telemetry equipment and links; and
 - (vii) any additional equipment used for Gas Quantity measurement, or for recording or transmitting data; and
 - (viii) over pressure protection;
- (c) the User is responsible to operate and maintain the pipe from the point 225 millimetres outside the boundary of the site to the meter control valve so that the operation and maintenance of the pipe conforms to good engineering practice and industry standards as required by the Service Provider; and
- (d) where the Service Provider operates and/or maintains any of the Delivery Station components listed in paragraph 2(a) or 2(c), the User must pay the reasonable costs of operating and/or maintaining those components.

3. Responsibility for Delivery Station Components where Delivery Point is served by Medium or Low Pressure Distribution Network

Where the Delivery Point is served by the Medium or Low Pressure Distribution Network:

- (a) the Service Provider does not own and the User is responsible to maintain any facilities required at the Delivery Point which are not usually required for Delivery Points of that type (such as noise mitigation facilities, fencing required by any local council or other authority), such that the maintenance of these components conforms to good engineering practice and industry standards as agreed by the Service Provider;
- (b) subject to agreement to the contrary with the User, the Service Provider must own, operate and maintain and may design the following Delivery Station components:
- (i) Gas meter;
 - (ii) pressure regulator;
 - (iii) filter; and
 - (iv) over pressure protection; and
- (c) the User is responsible to operate and maintain the pipe from the point 225 millimetres outside the boundary of the site to the meter control valve so that the

operation and maintenance of the pipe conforms to good engineering practice and industry standards as required by the Service Provider; and

- (d) where the Service Provider operates and/or maintains any of the Delivery Station components listed in paragraph 3(a) or 3(c), the User shall pay the reasonable costs of operating and/or maintaining those components.

Annexure 7 – Additional terms and conditions applicable where Energy used by more than one Customer

Where any Gas delivered to a Delivery Point under a Haulage Reference Service under this Agreement is used in connection with the supply of Energy to, or the consumption of Energy by, the Customer as well as one or more End Customers, then the User:

- (a) acknowledges that the Service Provider makes no warranty or representation in relation to the suitability or reliability of the Gas delivery for use in any cogeneration facilities or other facilities used to convert natural gas into any other forms of Energy;
- (b) acknowledges and agrees that Gas delivery to the Delivery Point may be suspended, interrupted or curtailed from time to time in accordance with this Agreement and warrants and represents to the Service Provider that the User has informed its Customer:
 - (i) that Gas delivery to the Delivery Point can be so suspended, interrupted or curtailed from time to time and that the Service Provider disclaims any duty of care to the Customer or to any End Customer in relation to such suspension, interruption or curtailment;
 - (ii) that the standard Load Shedding provisions in this Agreement will be applied to the Delivery Point; and
 - (iii) that the Customer should familiarise and satisfy itself with risks associated with Gas supply;
- (c) acknowledges and agrees that the User must ensure that all necessary approvals and authorisations are obtained and all statutory obligations, laws and other legal requirements are satisfied with respect to any Energy production, distribution, supply or resale at the premises served by the Delivery Point;
- (d) acknowledges and agrees that the Service Provider will not be liable for and the User indemnifies the Service Provider in relation to any Damage suffered by or claims against the Service Provider in connection with or arising as a result of any Energy production, distribution, supply or resale at the premises served by the Delivery Point including defects in the supply of Energy at the premises;
- (e) acknowledges that where any Gas delivered to the Delivery Point is used in connection with the supply of hot water to residential units through a centralised gas fired hot water system, the End Customers at those units will not have the benefit of the standard design controls applied by the Service Provider to new residential centralised hot water systems where the Service Provider provides Measuring Equipment for each residential unit. Without limiting or restricting condition (c) above, the User is responsible for satisfying all laws and customer

expectations concerning the supply of hot water to End Customers at the premises;

- (f) agrees that all of the above conditions apply as long as Gas is delivered to the Delivery Point under this Agreement; and
- (g) agrees that any terms or conditions of this Annexure that are inconsistent with any other terms or conditions appearing elsewhere in the Agreement will prevail over those other terms and conditions to the extent of any inconsistency.