

# Reference Service Agreement

[Approved by AER Final Decision 26 May 2016]

ActewAGL's gas distribution network

1 July 2016 – 30 June 2021

Varied [June] 2019 for gas day harmonisation

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**Agreement dated**

**20**

**Parties**                      **ActewAGL Distribution** ABN 76 670 568 688 a partnership between **Jemena Networks (ACT) Pty Limited** ABN 24 008 552 663 and **Icon Distribution Investments Limited** ABN 83 073 025 224 (**ActewAGL**); and

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

## **Background**

ActewAGL 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;

**ActewAGL** means ActewAGL Distribution, or its successors or assigns;

**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 2.1, 2.2, 2.3, 2.4, 2.5, 7 and 8 of the Access Arrangement;
- (c) Schedule 3 of the Access Arrangement (the Initial Reference Tariff Schedule); and
- (d) Schedule 7 of the Access Arrangement (the Operational Schedule),

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
- (b) clause 11.4; or
- (c) the date on which a Delivery Point was most recently assigned to its current Tariff Category by ActewAGL, 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 ActewAGL, 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;

**Bulk Transfer** has the meaning given to that term in clause 11.4(a);

**Bulk Transfer Date** has the meaning given to that term in clause 11.4(c)(i);

**Bulk Transfer Delivery Point** has the meaning given to that term in clause 11.4(c)(ii);

**Business Day** means any day which is not a Saturday, Sunday or a public holiday in New South Wales or the Australian Capital Territory;

**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 6m<sup>3</sup>/Hour;

**Change in Law** means:

- (a) the introduction of a new law; or
- (b) an amendment to, or repeal of, an existing Gas Law; or
- (c) a new or changed interpretation (which is binding on ActewAGL) of an existing Gas 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; and
- (d) for the avoidance of doubt, an event which has the effect that a short term trading market pursuant to Part 20 of the National Gas Rules commences to apply to the Network, or any part of the Network.

**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 ActewAGL under clause 19.1 of this Agreement and includes any compensation arising under the Queuing Policy in the Access Arrangement;

**Commencement Date** means:

- (a) the date of this Agreement in respect of a Delivery Point added to the Relevant Customer List pursuant to clause 11.4; 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 ActewAGL 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 ActewAGL;

**Confirmed Nomination** has the meaning given to that term in the Gas Balancing Annexure;

**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 :

- (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

but excluding, for the avoidance of doubt, loss or damage arising directly as a result of any breach of this Agreement, negligent act or omission or breach of duty (statutory or otherwise) such as loss or damage to property or personal injury;

**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 ActewAGL 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 ActewAGL;

**Default Tariff Category** has the meaning given to that term in clause 11.4(c)(iii);

**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;
- (c) the assigned Tariff Category;
- (d) the Commencement Date;

- (e) the Chargeable Demand;
- (f) the Maximum Daily Quantity;
- (g) the Maximum Hourly Quantity;
- (h) the Assignment Date;
- (i) the Demand Reset Date; and
- (j) the ELMS Data.

**Demand Reset Date** means, for a Delivery Point, the date determined in accordance with clause 4.6(d), 4.6(e), 4.7(f), 11.4(c)(vii), 11.4(c)(viii) and 11.4(c)(ix), (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 Category 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 ActewAGL;

**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 ActewAGL (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.

**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 3.2(b) of Annexure 3;

**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 Law** means:

- (a) any statute, regulation, order, rule, subordinate legislation including the *Utilities Act 2000* (ACT), the *Utilities (Technical Regulation) Act 2014*, the *Gas Safety Act 2000* (ACT), the *National Gas (ACT) Act 2008* (ACT), the *National Gas (New South Wales) Act 2008* (NSW), the Minimum Network Standards, the *Gas Supply Act 1996* (NSW), the National Energy Retail Law and National Energy Retail Rules, and
- (b) any 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 ActewAGL and, if it holds one, the Retailer Authorisation held by the User and any licence issued under the *Utilities Act 2000* (ACT), the *Utilities (Technical Regulation) Act 2014* or the *Gas Supply Act 1996* (NSW),

that applies to the relevant part of the Network, or any Delivery Point or Receipt Station, and in accordance with clause 32.11 of this Agreement.



**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;

**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 ActewAGL, 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 Schedule;

**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 Schedule 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 ActewAGL 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 ActewAGL 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 ActewAGL;

**Minimum Network Standards** means the Minimum Service Standards under the Utilities (Consumer Protection Code) Determination 2012, or any determination replacing that determination or if that determination is repealed and not replaced, ActewAGL Distribution's Minimum Standards for Network Operation adopted by ActewAGL in compliance with its licence requirements in the Australian Capital Territory and New South Wales, in force from time to time;

**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) or the *National Energy Retail Law* adopted under the *National Energy Retail Law (Adoption) Act 2012* (ACT) as applicable;

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

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

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

**Network** means ActewAGL's distribution system in the ACT, Queanbeyan, and Palerang, consisting of a system of pipes and associated facilities including any Receipt Station components, Delivery Station components and Measuring Equipment owned by ActewAGL;

**Network Code** means the ActewAGL Network Code for Full Retail Competition, as amended from time to time, which ActewAGL is required to adopt under the conditions of its authorisation under the Gas Supply Act;

**Network Section** means a part of its Network that ActewAGL has designated as a Network Section, and if none have been designated then it means the Network;

**Network Users** means any parties that enter into a service agreement with ActewAGL 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 ActewAGL and a Customer or between ActewAGL 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 Schedule** means the Operational Schedule 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 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;

**Palerang** means the area known as Palerang Local Government Area by proclamation under the *Local Government Act 1993* (NSW) formerly the City of Queanbeyan and Tallaganda Shire.

**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;

**Queanbeyan** means the area known as Queanbeyan City Council by proclamation under the *Local Government Act 1993* (NSW), formerly the City of Queanbeyan and Yarrowlumla Shire.

**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 12 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 5 of the Access Arrangement;

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

**Reference Tariff Schedule** means the Initial 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 ActewAGL;

**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;

**Relevant Region** means New South Wales or the Australian Capital Territory as applicable;

**Request** means a request for a Service using a request for service form set out in Schedule 2 to the Access Arrangement or such other request for service form as ActewAGL 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 or ACT 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 ActewAGL under the *Gas Supply (Safety and Network Management) Regulation 2013* (NSW), or prepared by ActewAGL under the *Gas Safety and Operating Code 2000* (ACT), as amended from time to time;

**Safety Regulator** means any person having any investigatory or regulatory function under the Gas Law;

**SCADA System** means the system of Supervisory Control and Data Acquisition operated by ActewAGL;

**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 ActewAGL agrees (in its discretion acting reasonably), a parent company guarantee; or
- (c) such other form of security as agreed between the User and ActewAGL,

which must be in a form satisfactory to ActewAGL;

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

**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;

**Sunset Date** has the meaning given to that term in clause 11.4(a);

**Tariff Category** means the Tariff Category 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 ActewAGL 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 (m<sup>3</sup>) at actual conditions converted to Standard Conditions using either a flow corrector forming part of the Measuring Equipment or an algorithm determined by ActewAGL acting reasonably;

**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 ActewAGL) 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 Category and Assignment Date;
- (c) where the User requires and the MHQ is in excess of 6 m<sup>3</sup>/hour, its MHQ;

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

**Volume Tariff** means a Tariff Category designated as a Volume Tariff in the Reference Tariff Schedule;

**2010 Access Arrangement** means the ActewAGL 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 23 September 2010;

**2010 Service** means a service that was a reference service pursuant to the terms of the 2010 Access Arrangement;

**2010 Service Delivery Point** means a delivery point which, on the last Day the 2010 Access Arrangement was in effect, was, pursuant to a Gas Transport Services Agreement, the subject of a 2010 Service; and

**2016 Access Arrangement** means the Access Arrangement commencing on the later of 1 July 2016 and the date on which the Regulator's approval of the Access Arrangement takes effect under the National Gas Law.

## 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 2.6 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) ActewAGL 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 ActewAGL's reasonable satisfaction that it is not able to comply with this timeframe in which case ActewAGL will grant a reasonable extension.

## 1.3 Amendments to this Agreement due to Change of Law

- (a) ActewAGL and the User may seek to amend the terms and conditions set out in this Agreement to accommodate a Change in Law in accordance with clauses 1.3(a)-(e).

- (b) The Party seeking to amend the terms and conditions set out in this Agreement (in this clause 1.3, the **First Party**) will provide notice to the other Party (**Second Party**) of any such amendments, along with an explanation of why the amendments are required.
- (c) The First Party and the Second Party will negotiate in good faith in respect of the amendments the First Party proposes to make to the terms and conditions set out in this Agreement and each Party will take into account any reasonable comments made by the other Party.
- (d) If the Parties reach agreement on the changes to the Agreement, ActewAGL will amend this Agreement accordingly and provide a copy to the User.
- (e) If the Parties do not reach agreement within 2 months of the First Party providing notice to the Second Party under clause 1.3(b), or such other time agreed between the Parties, either Party may issue notice of dispute under clause 30 to the other Party.

#### **1.4 Precedence**

- (a) If there is any inconsistency between clauses 7 and 8 of the Access Arrangement or the Reference Tariff Schedule and any other provisions of this Agreement, then unless otherwise provided, clauses 7 and 8 of the Access Arrangement or the Reference Tariff Schedule (as applicable) takes precedence.
- (b) If there is any inconsistency between clauses 7 and 8 of the Access Arrangement and the Reference Tariff Schedule, unless otherwise provided, clauses 7 and 8 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 7 and 8 of the Access Arrangement (Variations to Reference Tariffs) 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.

## **1.7 Change to definition of "gas day" in National Gas Rules**

If the definition of "gas day" in the National Gas Rules is amended to commence from 6:00am, then from the commencement of that rule change, the references to "06:30h" in the definitions of "Calendar Month", "Calendar Year", "Day" and "Hour" in clause 1.1 will be replaced with "06:00h".

## **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 ActewAGL, ActewAGL must provide the Haulage Reference Service in accordance with this Agreement.

### **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 ActewAGL 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. ActewAGL 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 ActewAGL 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),  
  
ActewAGL 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) ActewAGL 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 6 apply as between ActewAGL and the User.

### **3.5 Minimum Network Standards**

ActewAGL and the User must comply with their respective obligations under the Minimum Network Standards.

## **4. MDQ, MHQ and Chargeable Demand**

### **4.1 Application**

This clause 4 applies where ActewAGL 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 6m<sup>3</sup>/hour.
- (c) In any Request in respect of a Delivery Point with Hourly demand greater than 6m<sup>3</sup>/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 ActewAGL (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) ActewAGL'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 ActewAGL 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 ActewAGL 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**

ActewAGL 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) ActewAGL 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) ActewAGL has sufficient capacity available in the Network to provide the Service to the proposed Delivery Point;
- (d) the User accepts ActewAGL'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) ActewAGL will calculate the Demand Charge for a Delivery Point using the Chargeable Demand applicable to that Delivery Point as determined by ActewAGL and as varied from time to time in accordance with clauses 4.5(c), 4.6, 4.7 or the Reference Tariff Schedule.
- (c) 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.

#### **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, ActewAGL 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, ActewAGL 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 ActewAGL 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) ActewAGL 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). The increase will take effect on the date reasonably determined by ActewAGL 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 ActewAGL 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 ActewAGL 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 ActewAGL 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 ActewAGL in the 6 months immediately preceding the date of the Reduction Request;
  - (iv) ActewAGL 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 ActewAGL's reasonable satisfaction.
- (c) ActewAGL 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, ActewAGL may take into account in addition to the information provided as part of the Reduction Request, any other factors ActewAGL 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 ActewAGL's ability to recover any capital expenditure ActewAGL has incurred in relation to the Delivery Point (including whether ActewAGL 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 ActewAGL consents to a Reduction Request, ActewAGL 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) ActewAGL increases the Chargeable Demand pursuant to clause 4.5 or 4.6 after the date of receipt of a Reduction Request,

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

## **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**

ActewAGL may in its discretion, acting reasonably agree to transport and deliver an Overrun.

### **5.3 Authorised Overruns**

An Overrun agreed to by ActewAGL 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 ActewAGL 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 ActewAGL 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 ActewAGL 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 ActewAGL 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.

ActewAGL 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) ActewAGL 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 ActewAGL 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 ActewAGL whether it accepts the lesser Quantity:

(i) within 2 hours from receipt of such a notice from ActewAGL 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 ActewAGL has approved an Authorised Overrun for a Specified Period, ActewAGL 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 ActewAGL's reasonable opinion, the capacity in the Network is insufficient to allow ActewAGL to transport the Authorised Overrun Quantity. ActewAGL 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 ActewAGL may at any time revoke an approved Authorised Overrun at short notice.

(c) ActewAGL will not be liable for any and all Damages or claims in connection with or arising as a result of the revocation by ActewAGL 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 ActewAGL caused that Damage or claim.

## **5.7 ActewAGL's obligation on Authorised Overrun Day**

(a) Subject to clause 5.6, where a Quantity is agreed to by ActewAGL under clause 5.5(a)(i) or accepted by the User under clause 5.5(b) (**Authorised Overrun Quantity**), on each relevant Day, ActewAGL 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 ActewAGL in writing, an agreement by ActewAGL 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 ActewAGL in accordance with this Agreement before it occurs is an unauthorised Overrun (**Unauthorised Overrun**).
- (b) If an Unauthorised Overrun occurs, ActewAGL has the right, at the User's cost, to install flow control mechanisms on the Measuring Equipment at the relevant Delivery Point, allowing ActewAGL 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, ActewAGL is not liable for, and the User will indemnify and hold ActewAGL 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 ActewAGL caused that Damage or claim.

## **7. Nomination And Balancing**

### **7.1 Nomination and Gas Balancing**

- (a) The User and ActewAGL must comply with the Gas Balancing Annexure.
- (b) The User warrants that each nomination made under this Agreement will be made in accordance with the Gas Balancing Annexure.

## **7.2 User to provide ActewAGL with forecast of withdrawals**

- (a) The User must provide ActewAGL with its Forecast Withdrawals for each Network Section for each of the next three Days in accordance with ActewAGL's instructions (acting reasonably) from time to time:
  - (i) on each Day the User receives Services under this Agreement and any other agreement for the transportation of Gas between ActewAGL and the User; and
  - (ii) for each Receipt Point at which that Gas is received into the Network Section.
- (b) Where requested by ActewAGL for operational purposes, the User must provide its Forecast Withdrawals for a Network Section for each of the next seven Days.
- (c) 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 ActewAGL 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 ActewAGL, the forecast withdrawal at designated Delivery Points, in such manner and in relation to such times as the User and ActewAGL agree.

## **7.3 Network Section Deliveries**

- (a) The User must comply with each of User's Confirmed Nominations.
- (b) 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 ActewAGL or other share of aggregate needs for a Network Section to ensure safe and reliable supply.
- (c) When determining an allocation of the total change in linepack for a Network Section between the User and other Network Users, ActewAGL will seek to apply a methodology which reflects the linepack requirements of the Services which were provided to the User. If ActewAGL considers that a more direct method of allocation is not available, ActewAGL may pro rata total change in linepack based on each Network User's typical aggregate Capacity Entitlement for all Services.

#### **7.4 Liability for failing to deliver sufficient quantities of gas into the Network**

- (a) ActewAGL is not obliged to provide a Service if the User does not comply with this clause 7, where such non-compliance negatively affects the ability of a prudent service provider, acting reasonably, to provide a Service.
- (b) ActewAGL will not be liable for, and the User will indemnify and hold ActewAGL harmless from and against, any and all Damages or claims in connection with or arising as a result of User's breach of clause 7, unless and to the extent that the negligent act or omission or wilful misconduct of ActewAGL caused that Damage or claim.

### **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 ActewAGL 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 ActewAGL custody and control over any Quantity of Gas the subject of a Haulage Reference Service so as to allow ActewAGL 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 ActewAGL'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**

ActewAGL 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 ActewAGL at the Receipt Station at that Receipt Point; and
- (b) delivered by ActewAGL to or for the User at a Delivery Point passes from ActewAGL 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) ActewAGL 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 ActewAGL at a time and on the terms determined by ActewAGL in its discretion, acting reasonably.
- (b) ActewAGL will not be liable for, and the User will indemnify and hold ActewAGL harmless from and against, any and all Damages or claims in connection with anything which may arise with respect to Gas prior to the receipt of Gas by ActewAGL at a Receipt Station or after its delivery at a Delivery Station at a Delivery Point.

#### **9.5 Unaccounted for Gas**

- (a) Notwithstanding any other provision of this Agreement, ActewAGL's obligation under this Agreement to purchase a Quantity of UAG is subject to and only applies to the extent that ActewAGL has timely access to verified and sufficiently accurate data at each Receipt Point to be able to calculate the LG Quantity.
- (b) ActewAGL will calculate an LG Quantity on the basis of the available data at the time.
- (c) ActewAGL may update the LG Quantity at any time to reflect updated data for an LG Period. However, ActewAGL 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) ActewAGL will purchase UAG equal to:
  - (i) ActewAGL's forward estimate of the LG Quantity for an LG Period; less
  - (ii) the difference between the Quantities of UAG ActewAGL has previously purchased for any earlier LG Period and the LG Quantity for that LG Period.
- (e) ActewAGL will purchase UAG on a competitive commercial basis. This basis will be determined by ActewAGL, acting reasonably, and may include utilising a competitive open tender for the supply and/or haulage of Gas over any period, as reasonably determined by ActewAGL.
- (f) ActewAGL will recover all costs of purchasing UAG through the Reference Tariffs in accordance with the provisions of the Access Arrangement.

- (g) ActewAGL 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 ActewAGL assume the responsibility to purchase UAG in relation to the Network. Such termination may be subject to conditions reasonably required by ActewAGL and will not prejudice the right of ActewAGL to recover the cost of UAG in accordance with the Access Arrangement.

## **10. Gas quality**

### **10.1 Specification Gas**

- (a) As between ActewAGL 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 Gas Law applicable to Receipt Points in New South Wales for any period during this Agreement, which extends to any such Gas;
  - (ii) where the Gas 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 relevant Gas Law, the initial specification set out in Annexure 2, as amended from time to time by ActewAGL in response to a change of circumstances where the change is of a type reasonably likely to impact on ActewAGL's ability to ensure the continued quality, safety, reliability and security of supply of Gas;
  - (iii) where any Safety Regulator (for avoidance of doubt, including the Director General) issues an exemption to ActewAGL in relation to the specification of Gas (for avoidance of doubt, including under the requirements of the *Gas Supply (Safety and Network Management) Regulation 2013 (NSW)*), 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 ActewAGL 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) ActewAGL 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) ActewAGL will not be liable for, and the User will indemnify and hold ActewAGL harmless from and against, any and all Damages or claims in connection with or arising as a result of the delivery of Gas by or 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 ActewAGL caused that Damage or claim.

## **10.2 ActewAGL's rights in relation to Out-of-Specification Gas at Receipt Point**

If ActewAGL 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 ActewAGL 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 ActewAGL 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 ActewAGL 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 ActewAGL 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) ActewAGL will not be liable for, and the User will indemnify and hold ActewAGL 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 ActewAGL caused that Damage or claim.

#### **10.4 User to satisfy ActewAGL**

The User must, if requested by ActewAGL:

- (a) provide evidence to the satisfaction of ActewAGL 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 ActewAGL 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 ActewAGL, must satisfy ActewAGL 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 ActewAGL must deliver Gas to Specification**

Provided that all Gas received by ActewAGL 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 ActewAGL's service agreements with other Network Users have been complied with by those Network Users (such that ActewAGL is able, taking into account clause 9.2, to receive and deliver Gas that complies with the Specification), ActewAGL must ensure that Gas delivered by it at the Delivery Point meets the Specification.

#### **10.7 Amendment of Specification**

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

## **10.8 Gas Source**

- (a) The User must notify ActewAGL in writing or ensure that ActewAGL 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 ActewAGL 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 ActewAGL 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 ActewAGL'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 any Safety Regulator (for avoidance of doubt, including the Director General) on request and at no cost to the Safety Regulator; and
  - (ii) to ActewAGL on request and at no cost to ActewAGL; 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 ActewAGL's Safety and Operating Plan in respect of which ActewAGL will:
  - (i) make a copy available to the User upon request; and
  - (ii) provide reasonable notice to the User of relevant changes made by ActewAGL to the Safety and Operating Plan.

- (e) The User must make available (or cause to be made available) to ActewAGL all records relating to the maintenance of the testing equipment on ActewAGL's request.
- (f) The User must notify (or must cause the person conducting the tests to notify) the relevant Safety Regulator (for avoidance of doubt, where relevant the Director General) and ActewAGL 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 relevant Safety Regulator (for avoidance of doubt, where relevant the Director General) and ActewAGL by telephone, facsimile or email pursuant to clause 10.10(f), the User must send notice (or cause such notice to be sent) to that Safety Regulator and ActewAGL.
- (h) Without limiting any of clauses 10.10(a)-(g), the User must make available or cause to be made available to ActewAGL 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 ActewAGL to add a new delivery point to the Relevant Customer List in accordance with clause 11.3.

### **11.2 Deemed Request**

- (a) ActewAGL will deem the final notification by AEMO to ActewAGL 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 ActewAGL 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 ActewAGL 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 6m<sup>3</sup>/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 ActewAGL of the DPI of that delivery point and the date on which the proposed transfer will occur; and

- (B) obtained ActewAGL's written confirmation that the delivery point is subject to a Haulage Reference Service provided by ActewAGL to the relevant Network User.
- (b) ActewAGL may choose to waive any one or more of the requirements set out in clause 11.2(a), in which case ActewAGL must add the relevant delivery point to the Relevant Customer List if those requirements which have not been waived have been met.
- (c) ActewAGL 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 ActewAGL adds a Delivery Point pursuant to clause 11.2(a):
  - (i) the assigned Tariff Category for the Delivery Point, and the Assignment Date will be the same as the assigned Tariff Category and Assignment Date for that Delivery Point under the Haulage Reference Service previously provided by ActewAGL 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 ActewAGL 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, ActewAGL 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) ActewAGL 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, ActewAGL has sufficient capacity available in the Network to provide the Service to the delivery point;

- (d) ActewAGL, acting reasonably, is satisfied that it has sufficient information to assign the delivery point to a Tariff Category, and if necessary for a Tariff Category to be able to be assigned, the User and ActewAGL agree on the assigned Tariff Category;
- (e) ActewAGL is provided with evidence that the Customer at the delivery point has been notified that the Charges payable under this Agreement in respect of the delivery point are applicable to the delivery point regardless of the identity of the supplier;
- (f) the User accepts ActewAGL's offer to provide the Haulage Reference Service to the delivery point;
- (g) the User has provided to ActewAGL 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 ActewAGL'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 ActewAGL, acting reasonably); and
  - (ii) ActewAGL 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 ActewAGL 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 ActewAGL'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) ActewAGL 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

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

#### 11.4 Transfer of 2010 Service Delivery Points at commencement of 2016 Access Arrangement

- (a) The User may by written notice to ActewAGL add all 2010 Service Delivery Points to the Relevant Customer List as Delivery Points under this Agreement (**Bulk Transfer**), provided:
  - (i) this Agreement is executed by the User on or before the date which is 2 weeks after the date the 2016 Access Arrangement came into effect (**Sunset Date**); and
  - (ii) the User issues a notice under this Agreement formally seeking the Bulk Transfer within 3 Business Days after the execution of this Agreement.
- (b) This clause 11.4 ceases to have effect 4 Business Days after the Sunset Date if the User does not sign this Agreement and give a notice under clause 11.4(a).
- (c) Where the User issues a notice of a Bulk Transfer under clause 11.4(a):
  - (i) the Bulk Transfer will occur at the start of the following month after the date of that notice (**Bulk Transfer Date**);
  - (ii) the total charges payable by the User under this Agreement and any Gas Transport Service Agreement for all Delivery Points, the subject of a Bulk Transfer under this Agreement (**Bulk Transfer Delivery Points**) will not exceed the amount that would have been payable had all such Delivery Points been subject to this Agreement as from the first Day the 2016 Access Arrangement came into effect;
  - (iii) subject to clause 11.4(c)(iv) and 11.4(c)(vi), from the Bulk Transfer Date, each Bulk Transfer Delivery Point will be assigned to a Tariff Category (**Default Tariff Category**) depending on the type of service provided to that Delivery Point immediately prior to the Bulk Transfer Date as follows:

2010 Service provided to the Bulk Transfer Delivery Point immediately prior to the Bulk Transfer Date	Tariff Category applicable to that Delivery Point under this Agreement
Tariff Service	VRI
Throughput Service	DBT
Capacity Reservation Service or Managed	DBT

<b>2010 Service provided to the Bulk Transfer Delivery Point immediately prior to the Bulk Transfer Date</b>	<b>Tariff Category applicable to that Delivery Point under this Agreement</b>
Capacity Service, and a Capped Charge applied to the Delivery Point	
Capacity Reservation Service or Managed Capacity Service other than as described above	DBC

- (iv) where a Delivery Point qualifies for assignment to the DBG, VBS, VBM, VRH, VRB or VRG Tariff Categories in accordance with the Access Arrangement, the User may elect that such Delivery Point is assigned at the Bulk Transfer Date to that Tariff Category instead of the Default Tariff Category assigned to it by the table in clause 11.4(c)(iii);
- (v) the Assignment Date for the assignment of each Bulk Transfer Delivery Point to a Tariff Category pursuant to clause 11.4(c)(iii) or clause 11.4(c)(iv) will be deemed to be 1 July 2016 provided, in relation to clause 11.4(c)(iv) at the time of giving notice of a Bulk Transfer under clause 11.4(a) the User provides ActewAGL in a schedule to that notice:
  - (A) a list of the Delivery Points to be assigned to a different Tariff Category to the Default Tariff Category;
  - (B) the requested Tariff Category for each Delivery Point; and
  - (C) where applicable, information to demonstrate eligibility to the requested Tariff Category for each Delivery Point in accordance with the Access Arrangement;
- (vi) the MHQ, MDQ and ELMS Data for a Bulk Transfer Delivery Point will be equivalent to any MHQ, MDQ and ELMS Data applicable to that Delivery Point immediately prior to the Bulk Transfer Date;
- (vii) subject to clauses 11.4(c)(viii) and 11.4(c)(ix), for each Demand Customer Delivery Point the Chargeable Demand will be equal to the ninth-highest Quantity of Gas withdrawn from that Delivery Point in a Day in the period 1 July 2015 to 30 June 2016 and the MDQ will be reduced to equal the Chargeable Demand. 1 July 2016 will be the “Demand Reset Date” for that Delivery Point with respect to that Chargeable Demand;
- (viii) the User may elect to maintain the MDQ and the Chargeable Demand for any Bulk Transfer Delivery Point at the same level as applied to the MDQ immediately prior to the Bulk Transfer Date. 1 July 2015 will be the “Demand

Reset Date” for that Delivery Point with respect to that Chargeable Demand;  
and

- (ix) if there is any pre-existing agreement between ActewAGL and the User to maintain a certain level of MDQ for a minimum time which ActewAGL has relied upon when making capital expenditure in relation to a service to the Delivery Point, the initial Chargeable Demand will be that agreed level of MDQ. 1 July 2015 will be the “Demand Reset Date” for that Delivery Point with respect to that Chargeable Demand.
- (d) In the event that any Bulk Transfer Delivery Points are the subject of a service under a Gas Transport Service Agreement immediately prior to the Bulk Transfer Date which is not equivalent to a Reference Service, the User and ActewAGL will consult together to agree either:
  - (i) how to accommodate the transfer of the Delivery Point to this Agreement, without disadvantaging the reasonable commercial and technical interests of both the User and ActewAGL; or
  - (ii) to provide the service as a negotiated service and to commence good faith negotiations to finalise such agreement as soon as reasonably possible.
- (e) Any subsequent changes to the MDQ, MHQ, Tariff Category, Chargeable Demand, Load Shedding Priority or any other information in the Relevant Customer List will be made in accordance with the terms of this Agreement.
- (f) ActewAGL and the User agree that any Gas Transport Service Agreements between them are terminated and will have no further effect as at the Bulk Transfer Date, and neither of them will have any obligation to the other under those terminated agreements, other than an obligation which has accrued prior to the date of termination, or which is expressed to continue after termination.
- (g) For avoidance of doubt, clause 8.5 of the Access Arrangement applies to a Delivery Point assigned to a Tariff Category in respect of a Bulk Transfer such that if a Delivery Point is assigned to a Tariff Category to which it is not eligible, ActewAGL may:
  - (i) by notice in writing to the User re-assign the Delivery Point to the Default Tariff Category with retrospective effect to the Assignment Date; and
  - (ii) adjust the Charges and recover the adjusted Charges from the User, except to the extent that the Gas Law prevents the User from recovering such adjusted Charges from the relevant Customer.

## **11.5 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 11.5(a)(iii) and 11.5(a)(iv)), then the User must request that ActewAGL 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 11.5(b) to a Relevant Customer List in accordance with clause 11.3 or if ActewAGL refuses to add the relevant delivery point to a Relevant Customer List in accordance with clause 11.3:
  - (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 ActewAGL may assign the delivery point to a Tariff Category 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 Category.

## **11.6 Charges Payable for Additional Delivery Points**

Where the User wishes to add a delivery point to the Relevant Customer List under this clause 11, ActewAGL 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 from the date agreed between ActewAGL and the User (both acting reasonably) subject to the following:

- (i) ActewAGL's obligations to provide the relevant 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 it is deleted from the Relevant Customer List (but without extinguishing or otherwise affecting any rights or obligations in respect of Services provided prior to the date of deletion or the Charges payable for those Services); and
  - (ii) subject to the requirements of the Retail Market Procedures, ActewAGL 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 ActewAGL, until such time as:
    - (A) another Network User enters into a service agreement with ActewAGL 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 ActewAGL may obtain access to each delivery station and to the Measuring Equipment.
- (b) Subject to the User complying with any relevant Gas Law, the User may at any time give to ActewAGL:
- (i) at least 3 Business Days' notice to delete a Volume Customer Delivery Point classified by ActewAGL as a Large Customer; and
  - (ii) at least 30 Business Days' notice to delete a Demand Customer Delivery Point,
- and ActewAGL 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 ActewAGL receives notification from AEMO that a Delivery Point has been transferred to another Network User in accordance with the Retail Market Procedures, ActewAGL 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) ActewAGL will have no further obligations in respect of that Delivery Point under this Agreement.

### **13. Change of Receipt Point or Delivery Point**

- (a) The User may not change a Receipt Point or Delivery Point without ActewAGL'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 ActewAGL would not receive at least the same amount of revenue relative to the amount it would have received before the change.
- (b) ActewAGL 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 ActewAGL to consider the request. If at the time the request is made, the User informs ActewAGL in writing that due to hardship, the User requires an urgent reply to its request, ActewAGL 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 ActewAGL 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 ActewAGL, 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 ActewAGL.
- (b) The User must not install a Receipt Station unless and until ActewAGL 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**

ActewAGL may require each User of a new Receipt Point, to pay a proportion of the reasonable costs incurred by ActewAGL, as reasonably determined by ActewAGL, 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 ActewAGL has not recovered from the person who established the Receipt Point or from Network Users. Where reasonably practicable, ActewAGL 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 ActewAGL, the User or a third party.

#### **14.6 Equipment at a Receipt Station**

Except to the extent to which ActewAGL has agreed to provide them under this Agreement, ActewAGL 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 ActewAGL reasonably requires, a Gas Quality Measurement System.

#### **14.7 ActewAGL may operate the Flow and Pressure Control System**

Notwithstanding anything in this Agreement, the User must procure that ActewAGL 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 ActewAGL; 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 ActewAGL, is necessary to ensure that all Receipt Stations comply with such modified requirements.

#### **14.8 Alterations and Additional Equipment**

- (a) ActewAGL 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 ActewAGL owns any Receipt Station components which are to be replaced or altered under clause 14.8(a), ActewAGL must undertake the work itself at ActewAGL's expense.
- (c) Where ActewAGL does not own the components, ActewAGL 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 ActewAGL, ActewAGL may carry out such alterations or install such equipment at the reasonable cost of the User.

#### **14.9 Pressure at Receipt Point**

- (a) ActewAGL 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 ActewAGL 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. ActewAGL shall only amend Annexure 5 in response to a change of circumstances where the changes are of a type reasonably likely to impact on ActewAGL's ability to ensure the continued quality, safety, reliability and security of supply of Gas.
- (b) ActewAGL is not liable for, and the User will indemnify and hold ActewAGL 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 ActewAGL caused that Damage or claim.

## **15. Delivery Points and Delivery Stations**

### **15.1 Network connections under Part 12A National Gas Rules**

Where ActewAGL 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 ActewAGL 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 ActewAGL prior to installation.

Delivery Stations which were in physical operation prior to the date of this Agreement must comply with ActewAGL'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 ActewAGL.

### **15.3 Responsibility for Delivery Station Components**

ActewAGL 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) in accordance with the ACT Gas Network Boundary Code and ACT Gas Service and Installation Rules Code, except to the extent they expressly agree otherwise in writing.

#### **15.4 Provision of Basic Metering Equipment**

ActewAGL 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 ActewAGL 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 ActewAGL.
- (c) If the User does not finish the alterations or installations within the period of time specified by ActewAGL pursuant to clause 15.5(b), ActewAGL 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 ActewAGL owns or otherwise has responsibility for, if:
  - (i) ActewAGL, 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 ActewAGL 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),

ActewAGL must or must cause its authorised contractors to alter, move or install these components.

- (e) ActewAGL 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) ActewAGL 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 ActewAGL, reasonable costs incurred by ActewAGL for upgrading the Basic Metering Equipment must be borne by the User.

**15.7 Basic Metering Equipment Downgrade at existing Delivery Station**

- (a) ActewAGL 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 ActewAGL downgrades Basic Metering Equipment as a result of a change in load or pattern of usage by the User's Customer, if ActewAGL 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 ActewAGL agrees to install an additional Delivery Station in accordance with clause 15.8(b).
- (b) ActewAGL may at the request of the User agree to install an additional Delivery Station at a Demand Customer Delivery Point and if required by ActewAGL, the User must pay ActewAGL's reasonable charges (as notified by ActewAGL).
- (c) If a Demand Customer Delivery Point contained more than one delivery station prior to the Commencement Date, then ActewAGL must continue to transport Gas to them.

**15.9 Disconnection, Decommissioning and Meter Removal**

- (a) ActewAGL must, at the request of the User:
  - (i) disconnect supply of Gas to a Delivery Point (by such means as ActewAGL in its discretion, acting reasonably, determines); or
  - (ii) decommission a Delivery Point by removal of meters, regulators and filters from a Delivery Station,unless ActewAGL reasonably considers that the obligations under relevant Gas Law 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.



- (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 Gas Law relating to arranging for the disconnection of the premises served by a Delivery Point or the decommission a Delivery Point (as applicable);
  - (ii) provide ActewAGL with sufficient information to enable ActewAGL to determine the appropriate method of disconnection or decommissioning, including the reasons for disconnection; and
  - (iii) pay the applicable Ancillary Charge.
- (c) Where ActewAGL's costs exceed the applicable Ancillary Charge for the disconnection or decommissioning of a Demand Customer Delivery Point, ActewAGL 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) ActewAGL 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 ActewAGL is responsible for maintenance of the Basic Metering Equipment and provided that the User procures the co-operation of the User's Customer, ActewAGL 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**

ActewAGL 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 ActewAGL 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 ActewAGL 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 Gas Law, standards (including ActewAGL'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 ActewAGL, 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 ActewAGL considers that clause 16.1(c) applies, it will provide the User with notice stating the reasons why it considers clause 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 ActewAGL's power of entry**

ActewAGL and the User must cooperate, and the User must give all reasonable assistance to procure, that ActewAGL and ActewAGL'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 ActewAGL by law,

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

### **16.3 Consequences of no access**

If ActewAGL is unable to safely access a Delivery Point for any of the purposes of clause 16.2, then ActewAGL 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 ActewAGL'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 Days' notice where access is required for safety issues, and 5 Business Days' notice for all other issues, replicate at a location accessible to ActewAGL, 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 ActewAGL or ActewAGL'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 the ACT Gas Network Boundary Code and ACT Gas Service and Installation Rules Code as they relate to Delivery Station Components,

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 ActewAGL of tampering or inaccuracy**

The User must notify ActewAGL 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 ActewAGL, upon becoming aware of any such circumstances, ActewAGL 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 ActewAGL 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 ActewAGL:
  - (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**

ActewAGL has the right at its discretion, acting reasonably, and at the User's cost:

- (a) to install flow control mechanisms on the Measuring Equipment at any Delivery Point, allowing ActewAGL 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 ActewAGL 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, ActewAGL 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 ActewAGL will take action at the User's cost.

## **17. Meter reading and data**

### **17.1 Meter reading and data**

- (a) ActewAGL must:
  - (i) read or where permitted under this Agreement or applicable Gas 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 ActewAGL provides Daily Meter Reading Facilities but does not provide Communications Facilities, then the Quantities passing through that Measuring Equipment must be recorded by ActewAGL Daily.
- (c) Where ActewAGL provides Daily Meter Reading Facilities and Communications Facilities, then the Quantities passing through that Measuring Equipment must be recorded and telemetered by ActewAGL Daily.
- (d) Subject to clause 17.1(e), where ActewAGL does not provide Daily Meter Reading Facilities, ActewAGL must read the Measuring Equipment monthly in accordance with the meter reading cycle adopted by ActewAGL 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, ActewAGL 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 ActewAGL 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) ActewAGL 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 ActewAGL, 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 Gas 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 ActewAGL,

in such format as ActewAGL from time to time nominates after giving reasonable notice of any change in format. ActewAGL will take into consideration all reasonable concerns raised by a User regarding changes to the format, if these are received by ActewAGL 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 ActewAGL;
  - (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 ActewAGL 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 ActewAGL of this in writing as soon as reasonably practicable, stating the reasons for the User's belief. ActewAGL undertakes to investigate the matter and advise the User of its findings without delay. Except for circumstances beyond its control, ActewAGL 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 ActewAGL.

- (c) If no such methodologies or processes are established in accordance with clause 18(b) ActewAGL 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;
- (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 paid directly to ActewAGL by a Customer in accordance with Rule 119O of the National Gas Rules); and
- (e) any compensation arising under the Queuing Policy in the Access Arrangement.

### **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 Part 12A 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 ActewAGL 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, ActewAGL has invoiced a User with incorrect Charges in respect of a Delivery Point, ActewAGL 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 ActewAGL'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 Retailer for a Customer or Customers at one or more Delivery Points:

- (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.

#### **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 ActewAGL to issue invoice**

- (a) ActewAGL will render invoices at regular intervals but not less frequently than monthly.
- (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, ActewAGL may send a copy of the invoice to the User by electronic mail or facsimile on the date the invoice is generated.

### **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.

### **20.5 Method of Payment**

- (a) Unless otherwise agreed by ActewAGL, payment of invoices must be made by unendorsed bank cheque, telegraphic transfer or electronic funds transfer to an account nominated by ActewAGL.
- (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 ActewAGL'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 ActewAGL, pay ActewAGL 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 which is equal to the aggregate of:
  - (i) 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, the rate which in the opinion of the Bank is equivalent to such rate in respect of similar overdraft accommodation) expressed as a percentage; plus
  - (ii) 2 per cent per annum.

## **20.7 Disputed payments**

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

- (a) the User must, within 10 days after receipt of the invoice, notify ActewAGL 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) in accordance with clause 20.5 and if the User fails to do so, ActewAGL may require the User to pay interest on the amount outstanding (excluding any amount which is manifestly wrong) in accordance with clause 20.6.

## **20.8 Payment on resolution of dispute**

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

## **20.9 Overcharging and undercharging**

- (a) Where ActewAGL 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 Gas Law 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) ActewAGL 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, ActewAGL 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

ActewAGL (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 ActewAGL furnish that information to ActewAGL within 3 Business Days after the end of the relevant Billing Period. If the User fails to furnish the information, ActewAGL is entitled to render an invoice based on ActewAGL'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 ActewAGL 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 Gas Law relating to arranging for the suspension of Gas to each of those Delivery Points.
- (b) ActewAGL 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 ActewAGL considers relevant Gas Law 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 ActewAGL is able to provide it to that Delivery Point.
- (c) If requested by ActewAGL, a representative of the User must be present when ActewAGL stops or suspends the delivery of Gas to the Delivery Point.
- (d) ActewAGL is entitled to charge the User the applicable Ancillary Charge for costs reasonably incurred by ActewAGL for stopping or suspending the delivery of Gas at the User's request.

### **22.2 Suspension by ActewAGL**

- (a) ActewAGL may suspend the delivery of Gas to any Delivery Point and is not obliged to provide the Service where:
  - (i) ActewAGL 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 ActewAGL has not received sufficient Gas at a Relevant Receipt Point to meet Gas withdrawals from the part of the Network servicing that Delivery Point;
  - (ii) AEMO has instructed ActewAGL to suspend the delivery of Gas to the Delivery Point; or
  - (iii) the User is not a Registered Participant.

- (b) ActewAGL is entitled to charge the User for costs reasonably incurred by ActewAGL 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) ActewAGL 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 ActewAGL caused that Damage or claim. The User will indemnify and hold ActewAGL 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 ActewAGL 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 ActewAGL or the User's contractual obligations or physical arrangements at or upstream of any Receipt Point.

### **23.2 Scheduled Interruptions**

- (a) ActewAGL 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) ActewAGL 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 ActewAGL intends to interrupt or reduce the Services in accordance with clause 23.2(b), ActewAGL 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 ActewAGL 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 ActewAGL; or
  - (ii) the taking of Gas at any Delivery Points or class of Delivery Points nominated by ActewAGL,
- in accordance with the directions of ActewAGL.

### **23.3 Emergency Interruptions**

- (a) ActewAGL 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 ActewAGL reasonably believes is necessary.
- (b) ActewAGL must, as soon as reasonably practical, 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.

### **23.4 Load Shedding**

- (a) If at any time for any reason there is, or ActewAGL reasonably believes or anticipates that there may be, a failure of supply or shortfall in supply in or to any part of the Network, ActewAGL 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 ActewAGL will determine whether to request a reduction or cessation of Load in accordance with the Load Shedding principles set out in the Operational Schedule.
- (c) If ActewAGL 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 ActewAGL.

- (d) At the same time as or following notification to the User under clause 23.4(c), ActewAGL will 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 ActewAGL).
- (e) ActewAGL may at any time 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.
- (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), ActewAGL 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 ActewAGL.
- (g) ActewAGL may instruct those Customers whose ELMS Data shows Load Types at Load Shedding Priorities up to and including the Load Shedding Priority nominated by ActewAGL 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 ActewAGL.
- (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 ActewAGL to cease or reduce Load under this clause 23.4.
- (i) Unless otherwise directed by ActewAGL, the User must comply with, and must use best endeavours to ensure that the Customer complies with, any Curtailment Plan provided to ActewAGL.
- (j) If a Customer fails to comply with any instruction it receives from ActewAGL or User under this clause 23.4 and 23.5(b) ActewAGL 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 ActewAGL, 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.

### **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, ActewAGL 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 ActewAGL's obligations to keep ELMS Data confidential, ActewAGL 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 ActewAGL is not able to confirm that it has written consent to disclose that ELMS Data, ActewAGL 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 ActewAGL to update the ELMS Data for Delivery Points under this Agreement at any time. ActewAGL is obliged to make such a change only if the User provides evidence to ActewAGL's reasonable satisfaction justifying any changes requested.
- (f) ActewAGL 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 ActewAGL's reasonable satisfaction justifying the ELMS Data provided.
- (g) The User must comply with a request from ActewAGL 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 ActewAGL is accurate and complete. The User must advise ActewAGL as soon as practicable after becoming aware that any ELMS Data it has provided to ActewAGL is no longer accurate or complete.
- (i) If, in the course of implementing Load Shedding, or a simulation of Load Shedding, ActewAGL determines that contact information contained in the ELMS Data for a Delivery Point is inaccurate, ActewAGL may update the ELMS Data for that Delivery Point in accordance with information provided by a Customer. ActewAGL 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) ActewAGL reasonably believes that ELMS Data provided by the User is incomplete or inaccurate,

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

### **23.7 ActewAGL not liable**

(a) If ActewAGL:

- (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, ActewAGL 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 ActewAGL caused that Damage or claim. The User will indemnify and hold ActewAGL 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) ActewAGL 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) ActewAGL 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), ActewAGL is not liable for, and the User will indemnify and hold ActewAGL 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 ActewAGL or the User under clause 23.4.

### **23.8 Reduction of Demand Charge**

If ActewAGL 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) ActewAGL 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 ActewAGL'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 ActewAGL occurs and prevents ActewAGL from performing its obligations to the User in respect of a Demand Customer Delivery Point, the Demand Charge for any Delivery Point to which ActewAGL was unable to deliver Gas to the MDQ for that Delivery Point will, for any period during which ActewAGL 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 ActewAGL pursuant to this Agreement.

#### **24.7 Prolonged Force Majeure**

ActewAGL 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 ActewAGL 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 ActewAGL to terminate**

- (a) Subject to clause 25.2(b), ActewAGL 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 ActewAGL (acting reasonably), the commercial position of ActewAGL under this Agreement is materially adversely affected.
- (b) ActewAGL may only exercise its right to terminate under clause 25.2(a)(ii) if ActewAGL 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.

### **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 ActewAGL may, at ActewAGL's sole discretion, 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.

### **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, ActewAGL'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 ActewAGL'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 ActewAGL 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, ActewAGL'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 ActewAGL's right to call on the Security;
  - (ii) continue to accrue after the time of the cessation including, without limitation, ActewAGL'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 ActewAGL to recommence provision of Services once ActewAGL 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 ActewAGL in relation to any Damage or claim, and subject to this clause 26, the User must indemnify and hold ActewAGL and its directors, officers, employees, agents and contractors harmless from and against any and all Damage suffered or incurred by ActewAGL 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 ActewAGL 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, ActewAGL 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 ActewAGL 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, ActewAGL 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 ActewAGL, or ActewAGL'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 ActewAGL, or ActewAGL's directors, officers, employees, agents or contractors; or
- (iii) any breach of the provisions of this Agreement (including any warranty given by ActewAGL 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 ActewAGL.

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

- (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), 26.4(b) and 26.5, 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 ActewAGL 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 ActewAGL's policies of insurance; and
  - (ii) any uninsured retentions (such as deductibles or excesses).

### 26.4 Exclusion of Consequential Damage

- (a) Subject to clauses 26.4(b) and 26.5, 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) Clause 26.4(a) does not limit a Party's liability in respect of a liability for Consequential Damage, to the extent that, ignoring the application of that clause, the Party is indemnified for that liability under a policy of insurance.

### 26.5 Circumstances in which limitations and exclusions do not apply

- (a) 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 ActewAGL's loss of revenue or ActewAGL's Damage relating to the interruption of Services (including Damage associated with cessation of Services, purging relevant parts of the Network and re-commencing Services) arising as a result of:

- (i) delivery of Gas by or on behalf of the User into the Network which does not meet the Specification;
  - (ii) User's breach of clause 7 including without limitation User failing to comply with each of User's Confirmed Nominations; or
  - (iii) delivery of Gas by or on behalf of the User to a Receipt Point at a pressure which is not within the minimum and maximum pressure specifications for that Receipt Point set out in Annexure 5.
- (b) The limitations of liability referred to in clauses 26.3(a) and 26.4 do not apply in respect of ActewAGL's liability for any loss of revenue by the User 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 ActewAGL.

## **26.6 Contribution to loss or damage**

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.

## **26.7 Civil Liability Act**

- (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.

## **26.8 User's supply arrangements**

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 ActewAGL (whether under this Agreement or otherwise).

## **27. Transfer**

### **27.1 ActewAGL may transfer**

ActewAGL 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. ActewAGL 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 ActewAGL'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 ActewAGL'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, ActewAGL under this Agreement are (subject to clause 27.3(a)(ii)) unaffected by the transfer; but
  - (ii) the User must immediately give notice to ActewAGL 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 ActewAGL'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. ActewAGL 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 ActewAGL as set out in clause 27.3(d) below. An example of a reasonable ground would be, if ActewAGL would not receive at least the same amount of revenue after the transfer than it would have received before the transfer was requested.
- (c) ActewAGL must reply to a request from the User for ActewAGL'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 ActewAGL to consider the request. If at the time the request is made, the User informs ActewAGL in writing that due to hardship, the User requires an urgent reply to its request, ActewAGL will use reasonable endeavours to respond to the request within 2 Business Days of receiving the request.

- (d) If ActewAGL receives a request from the User for ActewAGL's consent to a transfer or assignment under clause 27.3(b), ActewAGL may require the User to provide to ActewAGL a Deed of Covenant executed by each of the User and the third party (in a form reasonably required by ActewAGL) in favour of ActewAGL 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 ActewAGL 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 ActewAGL where reasonably necessary, the User must provide Security to ActewAGL for an amount reasonably determined by ActewAGL to be:
  - (i) the sum of the previous two invoices from ActewAGL to the User, at the time the Security is requested; or
  - (ii) the average total Charges payable by the User to ActewAGL under this Agreement over two consecutive Billing Periods for each Delivery Point,

whichever is greater.

- (c) ActewAGL 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 ActewAGL'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 ActewAGL under this Agreement over two consecutive Billing Periods for each Delivery Point.
- (d) Any interest earned on the Security may be retained by ActewAGL and form part of the Security. Nothing in this Agreement is to be taken as imposing any obligation on ActewAGL to maximise or obtain any return on amounts deposited.
- (e) If requested by ActewAGL 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 ActewAGL for the purpose of assessing the User's credit worthiness.
- (f) The information requested by ActewAGL 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 ActewAGL and provide it to ActewAGL 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 ActewAGL 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) ActewAGL may release the Security at any time.
- (j) ActewAGL 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 ActewAGL have been paid in full.

## 29. Confidentiality

- (a) Unless otherwise provided in this clause 29, ActewAGL 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 ActewAGL, 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 ActewAGL 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 ActewAGL (or the User provides any other form of evidence that the Customer consents to such disclosure reasonably acceptable to ActewAGL).
- (d) The User consents to the disclosure by ActewAGL 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 ActewAGL 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 ActewAGL 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 ActewAGL 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 ActewAGL; or
  - (ii) supplies to ActewAGL,including, in respect of Customer's Personal Information that the User supplies to ActewAGL, 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) ActewAGL 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 ActewAGL 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 the ACT. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the ACT.

### **32.11 Application of Gas Law**

In circumstances where a Gas Law applicable in one Relevant Region applies a higher standard than the Gas Law which is applicable in the other Relevant Region, the higher standard will apply in both Regions where ActewAGL after consulting with Users, considers, acting reasonably, that such different standards cannot practically, safely or efficiently be applied to the different Regions. Where such a higher standard is to apply ActewAGL will advise Users by notice in writing.

**Executed** as an agreement.

**Executed** by **ActewAGL Distribution** ABN 76 670 568 688 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

<b>ActewAGL</b>	
Address	Level 14, 99 Walker Street, North Sydney, NSW, 2060 PO Box 1220, North Sydney, 2059
Attention	Contracts Manager
Phone	
Fax	
Email	
<b>User</b>	
Address	
Attention	
Phone	
Fax	
Email	

## Annexure 2 — Gas Specification

Parameter	Specification Limit
1 Wobbe Index <sup>1</sup>	Min. 46.0 MJ/m <sup>3</sup> Max 52.0 MJ/m <sup>3</sup>
2 Oxygen <sup>1</sup>	Max. 0.2 mol%
3 Hydrogen Sulphide <sup>1</sup>	Max. 5.7 mg/m <sup>3</sup>
4 Total Sulphur <sup>1,2</sup>	Max. 50 mg/m <sup>3</sup>
5 Water Content <sup>1</sup>	Max. Dew Point 0°C at maximum transmission pressure upstream of receipt point, but in any case no more than 112.0 mg/m <sup>3</sup>
6 Hydrocarbon Dewpoint <sup>1</sup>	Max. 2° at 3,500 kPaG
7 Total Inert Gases <sup>1</sup>	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 ActewAGL. Level of odorant to be 12 milligrams per cubic metre or such other level as ActewAGL may require.

<sup>1</sup> 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)

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



## Annexure 3 — Gas Balancing

### 1. Introduction

- (a) This Annexure will govern the Gas Balancing of the Network Sections as specified by clause 7 of the Agreement.
- (b) This Annexure provides for the following Gas Balancing mechanisms:
  - (i) Gas Balancing with an Operational Balancing Agreement with Pipeline Operators: clause 3 of this Annexure;
  - (ii) Gas Balancing with Pipeline Shippers: clause 4 of this Annexure; and
  - (iii) Gas Balancing with no Operational Balancing Agreement in place: clause 5 of this Annexure.
- (c) ActewAGL and the User must comply with this Annexure and the relevant gas balancing provisions in the Retail Market Procedures.
- (d) Notwithstanding the provisions set out in this Annexure, if an alternative arrangement for Gas Balancing is provided for by AEMO or under an equivalent scheme which ActewAGL is a participant in, and ActewAGL approves the alternative arrangements, then clauses 3, 4, and 5 of this Annexure will cease to operate and that alternative arrangement will apply.

### 2. Definitions

In this Annexure 3, unless otherwise stated:

- (a) **Confirmed Nomination** has the meaning given to that term in clause 3.2(d);
- (b) **Forecast Requirements** has the meaning given to that term in clause 3.2(a);
- (c) **Forecast Withdrawal** has the meaning given to that term in clause 3.2(a);
- (d) **Input** has the meaning given to that term in clause 5.3(b);
- (e) **Nomination** means the Quantities of Gas required to be delivered at a Delivery Point or a Receipt Point to or for the account of the User for each Day of a specified period.
- (f) **Nomination Day** has the meaning given to that term in clause 3.2(a);
- (g) **Operational Balancing Cost** has the meaning given to that term in clause 5.4(b);

- (h) **Participant Balancing Amount** means the Quantity of Gas which the User nominates to rectify part or all of the participant imbalance for the Network caused by differences between the total of Inputs and any operational balancing gas allocated to the User in accordance with clause 5.4(b), and Withdrawal Quantities on any Day;
- (i) **Proposed Nomination** has the meaning given to that term in clause 3.2(c);
- (j) **Reconciliation Amount** means the Quantity of Gas which User nominates to rectify part or all of the imbalance caused by the reconciliation of withdrawals between the quantity determined by data estimation and the quantity withdrawn as measured by meter on any Day.
- (k) **Shipper** means a person contracted to supply Gas to the Receipt Point for or on behalf of the User or on behalf of the person from which the User purchases Gas at that Receipt Point.
- (l) **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 for that Receipt Point; and
- (m) **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 ActewAGL for each Network Section in proportion to the Quantities nominated by all Network Users for the Network Section under clause 3.2(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 clause 3.2(a)(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. SECTION A: GAS BALANCING WITH OPERATIONAL BALANCING AGREEMENT WITH PIPELINE OPERATORS

#### 3.1 Introduction

- (a) An Operational Balancing Agreement under this clause is an agreement between pipeline and network owners to cooperate in the management of the pipeline and network interfaces and is structured to minimise the impact of local physical variations on network transportation arrangements.
- (b) Under the Operational Balancing Agreements, the Nominations of Network Users and Shippers in the pipelines are deemed to flow into the Network for the purposes of Network imbalance calculation and pipeline delivery invoicing and balancing. User imbalances will exist in the Network. These imbalances will reflect the difference between the aggregate of each Network User's Confirmed Nomination and the aggregate of each Network User's Withdrawal Quantity from the Network. Network User imbalances are corrected through Nominations, through the nomination process or through settlement between individual participants and the Network.
- (c) The operational imbalances between the Network and Pipelines and Network User imbalances will normally be reduced by the action of the Network Users. The Network Users are required to correct their individual imbalances through the nomination process set out in this clause.

#### 3.2 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 ActewAGL and the User, the User must inform ActewAGL of its Gas requirements (**Forecast Requirements**) for the next Day (**Nomination 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 clause 3.2(b) and itemising the following amounts:
    - (A) forecast Gas requirement for Non Daily Metered Volume Delivery Points (which will not include any Reconciliation Amount); and
    - (B) when required in advance of any Day by ActewAGL, the forecast withdrawal at designated Delivery Points, in such manner and in relation to such times as the User and ActewAGL agree;
  - (ii) the total Quantity of Gas which the User intends to deliver or have delivered into the Network or otherwise intends to receive at each Receipt Point from each Shipper, calculated in accordance with clause 3.2(b); and

- (iii) the Reconciliation Amount determined in accordance with the Retail Market Procedures, provided ActewAGL is not required to accept the Reconciliation Amount as part of the Forecast Requirement unless the total of all Reconciliation Amounts for all Network Users on a Day in the Network equals zero.
- (b) The User must make Nominations of the components of Forecast Requirements in good faith so that:
  - (i) the Forecast Withdrawal under clause 3.2(a)(i) for all Receipt Points serving the Network is the aggregate amount which the User intends to withdraw from the Network on the Nomination Day under all transportation agreements; and
  - (ii) the total and Shipper Quantities nominated under clause 3.2(a)(ii) are consistent with the Quantities of Gas which the User is entitled to have delivered to the Receipt Point on the Nomination Day,

and the Forecast Requirements take into account ActewAGL's Guidance to Users on the Network Minimum Quantity Requirements (described in Annexure 5).
- (c) For each Day, ActewAGL must advise the User of the Quantity of Gas which the User should plan to deliver or have delivered into the Network at each Receipt Point on a Day in order to enable ActewAGL to:
  - (i) satisfy the User's Forecast Requirement; and
  - (ii) satisfy any other aggregate needs for the Network (including adjustment for the User's change in share of linepack) to ensure safe and reliable supply of gas,

**(Proposed Nomination).**
- (d) Where the User has more than one Shipper at the Receipt Point, the User will apportion the Proposed Nomination between its Shippers and for each Day, the User must advise ActewAGL of the Quantity of Gas which the User intends to deliver or have delivered into the Network or otherwise intends to receive at each Receipt Point from each Shipper (**Confirmed Nomination**), which total Quantity must equal the quantity advised by ActewAGL under clause 3.2(c).
- (e) Where the User has only a single Shipper at the Receipt Point, the Proposed Nomination is the User's Confirmed Nomination.
- (f) ActewAGL will advise each relevant Shipper of the User's Confirmed Nomination and each relevant Shipper and Pipeline operator of the aggregate Nomination for the Shipper and Pipeline operator for that Receipt Point.
- (g) If the User fails to provide ActewAGL with a valid Forecast Requirement and/or Confirmed Nomination, ActewAGL will determine the User's Confirmed Nomination based on the User's Forecast Withdrawal (adjusted for any Reconciliation Amount) 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) Each of the obligations set out in this clause will be completed in accordance with a timetable (if relevant):
  - (i) determined through consultation between ActewAGL, the operators of the Pipelines, and any established gas industry governance body; and
  - (ii) published from time to time in the Retail Market Procedures.

### **3.3 Cessation of the Operational Balancing Agreement**

- (a) The Operational Balancing Agreement and the opportunities it provides for the market rely on the participation of ActewAGL and infrastructure owners directly upstream remaining parties to the Agreement.
- (b) If the Operational Balancing Agreement ceases to be effective in the opinion of ActewAGL, the provisions in clause 5 of this Annexure “Gas Balancing with no Operational Balancing Agreement” will apply unless a Gas Balancing with Operational Balancing Arrangement with Pipeline Shippers as described in clause 4 of this Annexure is executed, in which case, that agreement will apply.

## **4. SECTION B: GAS BALANCING WITH OPERATIONAL BALANCING AGREEMENT WITH PIPELINE SHIPPERS**

### **4.1 Introduction**

- (a) An Operational Balancing Agreement under this clause is an agreement between pipeline shippers and network owners to cooperate in the management of the network imbalances and is structured to minimise the impact of local physical variations on network transportation arrangements.
- (b) Under the Operational Balancing Agreements, the Nominations of Network Users are deemed to flow into the Network for the purposes of Network imbalance calculation and pipeline shipper delivery invoicing and balancing. Network User imbalances will exist in the Network. These imbalances will reflect the difference between the aggregate of each Network User’s Confirmed Nomination and the aggregate of each Network User’s Withdrawal Quantity from the Network. Network User imbalances are corrected through Nominations, through the Nomination process or through settlement between individual participants and the Network.
- (c) The operational imbalances between the Network and Pipelines and Network User imbalances will normally be reduced by the action of the Network Users. The Network Users are required to correct their individual imbalances through the Nomination process set out in this clause.

- (d) Under this balancing arrangement, all Network Users will arrange delivery only from pipeline shippers who are a party to the corresponding Operational Balancing Agreement.

## **4.2 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 ActewAGL and the User, the User must inform ActewAGL of its Forecast Requirements for the Nomination Day under all such transportation agreements as follows:
  - (i) Forecast Withdrawals calculated in accordance with clause 4.2(b) and itemising the following amounts:
    - (A) forecast Gas requirement for Non Daily Metered Volume Delivery Points (which will not include any Reconciliation Amount); and
    - (B) when required in advance of any Day by ActewAGL, the forecast withdrawal at designated Delivery Points, in such manner and in relation to such times as the User and ActewAGL agree;
  - (ii) the total quantity of Gas which the User intends to deliver or have delivered into the Network or otherwise intends to receive at each Receipt Point from each Shipper, calculated in accordance with clause 4.2(b); and
  - (iii) the Reconciliation Amount determined in accordance with the Retail Market Procedures, provided ActewAGL is not required to accept the Reconciliation Amount as part of the Forecast Requirement unless the total of all Reconciliation Amounts for all Network Users on a Day in the Network equals zero.
- (b) The User must make Nominations of the components of Forecast Requirements in good faith so that:
  - (i) the Forecast Withdrawal under clause 4.2(a)(i) for all Receipt Points serving the Network is the aggregate amount which the User intends to withdraw from the Network on the Nomination Day under all transportation agreements; and
  - (ii) the total and Shipper quantities nominated under clause 4.2(a)(ii) are consistent with the quantities of Gas which the User is entitled to have delivered to the Receipt Point on the Nomination Day,and the Forecast Requirements take into account ActewAGL's Guidance to Users on the Network Minimum Quantity Requirements (described in Annexure 5).
- (c) For each Day, ActewAGL must advise the User of the Proposed Nomination.
- (d) Where the User has more than one Shipper at the Receipt Point, the User will apportion the Proposed Nomination between its Shippers and for each Day, must advise ActewAGL of its

Confirmed Nomination, which total Quantity must equal the Quantity advised by ActewAGL under clause 4.2(c).

- (e) Where the User has only a single Shipper at the Receipt Point, the Proposed Nomination is the User's Confirmed Nomination.
- (f) ActewAGL will advise each relevant Shipper of the User's Confirmed Nomination and each relevant Shipper and Pipeline operator of the aggregate Nomination for the Shipper and Pipeline operator for that Receipt Point.
- (g) If the User fails to provide ActewAGL with a valid Forecast Requirement and/or Confirmed Nomination, ActewAGL will determine the User's Confirmed Nomination based on the User's Forecast Withdrawal (adjusted for any Reconciliation Amount) 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) Each of the obligations set out in this clause will be completed in accordance with a timetable (if relevant):
  - (i) determined through consultation between ActewAGL, the operators of the Pipelines, and any established gas industry governance body; and
  - (ii) published from time to time in the Retail Market Procedures.

#### **4.3 Cessation of the Operational Balancing Agreement**

- (a) The Operational Balancing Agreement and the opportunities it provides for the market rely on the participation of ActewAGL and infrastructure owners directly upstream remaining parties to the Agreement.
- (b) If the Operational Balancing Agreement ceases to be effective in the opinion of ActewAGL, the provisions in clause 5 of this Annexure "Gas Balancing with no Operational Balancing Agreement" will apply unless a Gas Balancing with Operational Balancing Arrangement with Pipeline Operators as described in clause 3 of this Annexure is executed, in which case, that agreement will apply.

### **5. SECTION C: GAS BALANCING WITH NO OPERATIONAL BALANCING AGREEMENT**

#### **5.1 Introduction**

- (a) Whenever there is no Operational Balancing Agreement in effect, this clause 5 will apply.
- (b) If any of the following circumstances cease to apply, or if ActewAGL reasonably considers it can no longer ensure the continued quality, safety, reliability and security of supply of Gas, ActewAGL 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 ActewAGL and User will comply with such notice:

- (i) there will only be one pressured 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 Watson from the Moomba Sydney Pipeline is pressure controlled; and
  - (iv) UAG is supplied by ActewAGL.
- (c) In this clause 5,

**Confirmed Nomination** has the meaning given to that term in clause 5.2(c); and

**Proposed Nomination** has the meaning given to that term in clause 5.2(b).

## 5.2 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 ActewAGL and the User, the User must inform ActewAGL of its Forecast Requirements for the Nomination Day under all such transportation agreements as follows:
- (i) Forecast Withdrawals calculated in accordance with clause 5.2(b) 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 ActewAGL, the forecast withdrawal at designated Delivery Points, in such manner and in relation to such times as the User and ActewAGL agree; and
  - (ii) the Reconciliation Amount determined in accordance with the Retail Market Procedures, provided ActewAGL is not required to accept the Reconciliation Amount as part of the Forecast Requirement unless the total of all Reconciliation Amounts for all Network Users on a Day in the Network equals zero; and
  - (iii) the Participant Balancing Amount determined in accordance with the Retail Market Procedures, provided ActewAGL is not required to accept the Participant Balancing Amount as part of the Forecast Requirement unless the



total of all Participant Balancing Amounts for all Network Users on a Day in the Network equals zero.

- (iv) The User must make Nominations of its Forecast Withdrawals in good faith so that the Forecast Withdrawals under clause 5.2(a) for all Receipt Points serving the Network is the aggregate amount which the User intends to withdraw from the Network on the Day under all transportation agreements and the Forecast Requirements take into account ActewAGL's Guidance to Users on the Network Minimum Quantity Requirements (described in Annexure 5).
- (b) For each Day, ActewAGL must advise the User of the Quantity of Gas which the User should plan to deliver or have delivered into the Network at each Receipt Point on that Day in order to enable ActewAGL to:
  - (i) satisfy the User's Forecast Requirement; and
  - (ii) satisfy any other aggregate needs for the Network (including adjustment for the User's change in share of linepack) to ensure the safe and reliable supply of gas,  
**(Proposed Nomination)**.
- (c) For each Day, the User must advise ActewAGL of the Quantity of Gas which the User intends to deliver or have delivered into the Network or otherwise intends to receive at each Receipt Point on that Day **(Confirmed Nomination)** and which Quantity must equal the Quantity advised by ActewAGL under clause 5.2(b).
- (d) If the User fails to provide ActewAGL with valid Forecast Withdrawals and/or valid Confirmed Nomination, ActewAGL 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).
- (e) Each of the obligations set out in this clause will be completed in accordance with a timetable (if relevant):
  - (i) determined through consultation between ActewAGL and the User; and
  - (ii) published from time to time in the Retail Market Procedures.

### 5.3 User's Input

- (a) ActewAGL carries out Gas Balancing between the Receipt Point at which Gas intended for a Delivery Point first enters the Network, and that Delivery Point.

- (b) In this clause 5, ActewAGL 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 ActewAGL.
  - (ii) where two or more Network Users receive Gas at the EGP Hoskinstown Receipt Point, the User's Input will be the metered Quantity at the Receipt Point net of UAG purchased by ActewAGL allocated to the User and Network Users in proportion to their Confirmed Nominations for the Day; and
  - (iii) where two or more Network Users receive Gas at the Watson Receipt Point, then the total Quantity metered at that Receipt Point on the Day net of UAG purchased by ActewAGL will be allocated among those Network Users in proportion to their Confirmed Nominations for the Day and that allocation will be the User's Input.
- (c) ActewAGL has the discretion, acting reasonably, to adjust the User's Input, as determined in accordance with clauses 5.3(b), for the User or for any Network User in order to take account of:
  - (i) any Quantity of Gas that the User receives from any Network User as agreed to by ActewAGL (at its sole discretion); or
  - (ii) any Quantity of Gas that the User transfers to any Network User as agreed to by ActewAGL (at its sole discretion).

#### **5.4 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 the Network, is equal to:
  - (i) the aggregate quantity of gas delivered to or for the account of the User to Delivery Points within the Network; plus
  - (ii) any change in linepack in the Network allocated to the User by ActewAGL or other share of aggregate needs for the Network to ensure safe and reliable supply.
- (b) Where the total Quantity metered at the Watson Receipt Point on a Day net of UAG purchased by ActewAGL exceeds the aggregate of each Network User's Confirmed Nominations at the Watson Receipt Point for that Day, ActewAGL will purchase a Quantity of operational balancing gas equal to the difference between the total Quantity metered at the Watson Receipt Point on that Day net of UAG purchased by ActewAGL and the aggregate of each Network User's Confirmed Nominations at the Watson Receipt Point for that Day. The cost of purchasing the operational balancing gas is the Operational Balancing Cost.

- (c) Each Network User with a negative User's Daily Imbalance will be allocated a portion of the Operational Balancing Cost in proportion to their contribution to the operational balancing gas.
- (d) When determining an allocation of the total change in linepack for the Network between the User and other Network Users, ActewAGL will seek to apply a methodology which reflects the linepack requirements of the services which were provided to the User. If ActewAGL considers that a more direct method of allocation is not available, ActewAGL may pro rata total change in linepack based on each Network Users' typical aggregate capacity entitlement for all network services.
- (e) ActewAGL shall be entitled to publish (and disclose to the public) the User's Daily Imbalance by Receipt Point at ActewAGL's sole discretion, acting reasonably.
- (f) ActewAGL and the User must comply with the provisions dealing with participant balancing or incentive mechanisms for participants:
  - (i) in the Network Code, or
  - (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 ActewAGL consents, qualities other than the Gas Outlet Temperature may be measured at a location other than the Receipt Point. ActewAGL 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 ActewAGL has consented to any quality being measured at a location other than the Receipt Point, ActewAGL 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 ActewAGL.

## 2.3 Calibration and testing of equipment

- (a) ActewAGL may at any time require the User to test or calibrate the Gas Quality Measurement System.
- (b) ActewAGL is entitled to be present at a test or calibration of equipment and to receive copies of all test results.
- (c) ActewAGL 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 ActewAGL 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 ActewAGL of the timing of such testing or calibration;
  - (ii) ActewAGL is entitled to attend such testing or calibration; and
  - (iii) promptly after receiving the results of such testing or calibration, the User must provide ActewAGL 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 Quality 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) ActewAGL may at any time require the User to test or calibrate the Gas Quantity Measurement System.
- (d) ActewAGL is entitled to be present at a test or calibration and to receive copies of all test results.
- (e) ActewAGL 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 ActewAGL 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 ActewAGL of the timing of such testing or calibration;
  - (ii) ActewAGL is entitled to attend such testing or calibration; and
  - (iii) promptly after receiving the results of such testing or calibration, the User shall provide ActewAGL 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 and Guidance to Users on the Network Minimum Quantity Requirements

**Table 5.1 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)	Areas of Network downstream of Receipt Point
Watson	2,400 kPa	6,895 kPa	The Network except Bungendore
Hoskinstown	8,000 kPa	14,895 kPa	The Network

The minimum and maximum receipt pressures shown are based on a typical combination of supply from Watson and Hoskinstown during a winter peak period. Any significant change to the load, or share of load, supplied through each Receipt Point may require a revision to the pressures specified above.

ActewAGL will notify Users of any updates to Table 5.1 and publish an updated Table 5.1 on its website.

**Table 5.2 Guidance to Users on the Network Minimum Quantity Requirements**

<b>Where the aggregate needs for the Network on any Day is:</b>	<b>Minimum Quantity of Gas which may be required through Hoskinstown on that Day (as at 30.06.15):</b>
40TJ	5TJ over the Day
50TJ	10TJ over the Day
60TJ	16TJ over the Day
70TJ	28TJ over the Day

To ensure the continued quality, safety, reliability and security of supply of Gas through the Network when the Watson Receipt Point is operating at a minimum pressure of 2,400kPa during autumn and winter, guidance is provided to Network Users in Table 5.2 on the minimum Quantity of Gas which should be delivered by all Network Users through the Hoskinstown Receipt Point.

ActewAGL may notify Users of updates to the Table 5.2, and may publish the updated Table 5.2 on its website.



## **Annexure 6 – 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 ActewAGL 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 ActewAGL 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 ActewAGL 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 ActewAGL will not be liable for and the User indemnifies ActewAGL in relation to any Damage suffered by or claims against ActewAGL 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 ActewAGL to new residential centralised hot water systems where ActewAGL 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.