

Jemena Gas Networks (NSW) Ltd

2015-20 Access Arrangement Information

Appendix 1.2

Explanation of JGN's Reference Service Agreement

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GLOSSARY

2015-20 AA period	2015 Access Arrangement (AA) Proposal Submitted to the Australian Energy Regulator (AER) for the Period 1 July 2015 to 30 June 2020
AA	Access Arrangement
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
DSCC	Deemed Standard Connection Contract
FRR	Financially Responsible Retailer
JGN	Jemena Gas Networks (NSW) Limited
NECF	National Energy Customer Framework
NERL	National Energy Retail Law
NERR	National Energy Retail Rules
NGL	National Gas Law
NGO	National Gas Objective
NGR	National Gas Rules
RSA	Reference Service Agreement
STTM	Short Term Trading Market

1. BACKGROUND

1.1 PURPOSE OF THIS DOCUMENT

1. The purpose of this document is to explain:
 1. the principal changes proposed by Jemena Gas Networks (NSW) Limited (**JGN**) in relation to its Reference Service Agreement (**RSA**), which is attached to and forms part of the 2015 access arrangement (**AA**) proposal submitted to the Australian Energy Regulator (**AER**) for the period 1 July 2015 to 30 June 2020 (**2015-20 AA period**)
 2. the contractual position set out in some specific RSA provisions for which the AER has requested JGN provide further information. These explanations also include a discussion of changes proposed in these RSA provisions to apply from the commencement of the 2015-20 AA period.
2. In particular, the changes proposed by JGN seek to:
 - accommodate the 1 July 2015 commencement of the full operation of the National Energy Customer Framework (**NECF**) for gas distributors in NSW, without the current NSW transitional arrangements
 - address the principles outlined in section 1.3 below, consistent with the National Gas Objective (**NGO**) as set out in the National Gas Law (**NGL**).

1.2 STRUCTURE AND INTERPRETATION

3. The principal changes are discussed in **sections 2 to 5** of this document.
4. Explanations of the provisions for which the AER has sought further information can be found in **sections 6 to 12**.
5. Terms used in this document which are defined in the RSA have the same meaning in this document.
6. In this document, references to “former” clauses and sub-clauses are to clauses and sub-clauses in JGN’s current RSA (i.e. the RSA that is schedule 3 to the 2010 AA).

1.3 KEY PRINCIPLES RELEVANT TO JGN’S PROPOSED RSA

7. Rule 100 of the National Gas Rules (**NGR**) provides that the provisions of an access arrangement must be consistent with the NGO which is stated in section 23 of the NGL as follows:

“The objective of this Law is to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.”

8. In seeking to apply the NGO in recent assessments of access arrangements for other gas distributors, the AER has emphasised the importance of:

1. achieving an appropriate allocation of risk between service providers, network users and customers
 2. avoiding a prescriptive approach on commercial matters in the access arrangement.¹
9. In relation to the allocation of risk, the AER has indicated that risk should be borne by the party best able to manage it, and that this promotes the NGO by “providing the opportunity to minimise the risk, which can lead to greater efficiency and lower prices”.² This is an important principle which JGN seeks to reflect in the version of the RSA that is proposed to apply from the commencement of the 2015-20 AA period.
10. In addition to seeking to accommodate the full introduction of NECF, the position set out in JGN's RSA, including its proposed changes, seeks to address the specific commercial and operational circumstances which apply to JGN's gas distribution network and to efficiently allocate risk as between JGN and the User having regard to these. Specifically, the JGN gas network has the following significant distinguishing characteristics:
- it is the main gas distribution network operating in NSW, connecting over 1.2 million customers, which is significantly more than any other individual gas network in the Australian gas market
 - the JGN distribution network is regulated by the NSW State Government, in relation to its technical and operational aspects as well as in relation to the quality and reliability of gas supplied through it
 - however, this State-based regulation, while placing substantial regulatory responsibility on JGN at the distribution network level, does not apply at the production level for the great majority of the gas brought into JGN's network, because this gas is sourced from other States and therefore is beyond the scope of NSW regulatory jurisdiction. Accordingly, there is in effect no corresponding regulation applicable to producers and Users in respect of the gas as produced, sold, purchased and injected by them into upstream transmission pipelines outside of NSW, which connect to JGN's distribution network within NSW
 - supply and transportation of gas from the source of production, through transmission pipelines and to JGN's distribution network is conducted through a chain of bi-lateral contractual arrangements between owners of gas and the pipelines transporting it. The control of gas flows through Eastern Australia is conducted in accordance with these commercial arrangements. Consistent with this market approach, JGN relies on its contractual relationship with Users to procure the upstream supply outcomes needed to ensure the safe and reliable supply of gas to customers and to satisfy NSW gas quality regulations. This is different to the approach of managing the physical market in Victoria where the Australian Energy Market Operator (**AEMO**) assumes responsibilities for control of supply and demand, gas quality and other physical operations of the system.

¹ See page 433 of the AER's Access Arrangement Draft Decision for Envestra (Victoria) 2013-2017

² See page 433 of the AER's Access Arrangement Draft Decision for Envestra (Victoria) 2013-2017

2. RSA CHANGES TO ACCOMMODATE THE INTRODUCTION OF THE NECF

11. On 1 July 2015, when JGN's 2015 AA and RSA are scheduled to commence, NECF will be in full operation in NSW, without any NSW transitional arrangements, for the first time.
12. NECF essentially comprises:
 - *the National Energy Retail Law (NERL) and the National Energy Retail Rules (NERR)*—among other things, the NERL and NERR operates so that a Deemed Standard Connection Contract (**DSCC**) will automatically apply between JGN and retail customers connected to JGN's network, for the ongoing connection and supply of gas³
 - *Part 12A of the NGR (Gas connection for retail customers)*—Part 12A sets out a process for establishing physical customer connections to JGN's network and for alterations to existing connections initiated by retail customers. Once a Part 12A connection contract is on foot with a customer, then under the NERL it effectively becomes part of the DSCC with that customer once energisation of the connection occurs⁴
 - *Part 21 of the NGR (Retail support obligations between distributors and retail customers)*—Part 21 largely governs the charging and invoicing of Retailers for JGN's distribution service charges (i.e. reference tariffs and charges under JGN's AA) for "shared customers" (i.e. customers of the Retailer whose premises are connected to JGN's network) and the Retailer credit support requirements for these charges.
13. From JGN's perspective, the key high level change introduced through the NECF package is the creation of direct rights and obligations as between the distributor and the customers that connect and take gas from the network. Before NECF, a "linear" relationship existed, with customers buying energy from Retailers and then Retailers engaging JGN to transport gas through its network to the customers. Under that model, the primary relationship JGN had was with the retailer, and its contracting arrangements in the RSA reflected that.
14. NECF establishes a "triangular" relationship, so that customers maintain a relationship with their Retailer, and JGN maintains a relationship with Retailers, but customers also now have rights and obligations as between themselves and JGN, their gas distributor.
15. During the period in which transitional NECF has been in force in NSW, the impacts of this change have been relatively limited, given transitional NECF effectively contemplates that customers' rights and obligations, as between them and their distributor, must be exercised and discharged on their behalf by their Retailers—thereby preserving many previously applicable arrangements for the transitional period. However, this falls away with effect from the commencement of the 2015-20 AA period.
16. As a result, JGN's current RSA requires a number of changes to accommodate and operate effectively alongside the new NECF regulatory arrangements described above. For example:
 1. *for Users who are Retailers*—the RSA rights and obligations (as between JGN and the User/Retailer) for delivery of gas to the User/Retailer's Customers' Delivery Points, need to accommodate and work consistently with:

³ The DSCC applies automatically to retail customers connected to JGN's network, unless a separate negotiated customer connection contract or an AER approved customer connection contract for large customers applies. As a practical matter, the substantial majority of customers connected to JGN's network will be subject to JGN's DSCC.

⁴ Section 70(2) NERL. The terms of the mandated form of DSCC set out in Schedule 2 of the NERR are primarily focussed on the ongoing energisation and supply of gas through a customer's connection. Section 70(2) NERL contemplates that a new physical connection or connection alteration be separately addressed under a physical connection contract formed under a Part 12A NGR, which automatically become part of the DSCC (as additional terms) once it is formed.

2 — RSA CHANGES TO ACCOMMODATE THE INTRODUCTION OF THE NECF

- a) the connection of the User/Retailer's Customers under the DSCC and any Part 12A NGR connection contract in place (as between JGN and the Customer)
 - b) the payment and credit support obligations for JGN's reference tariffs and charges (as between JGN and the User/Retailer) under Part 21 NGR.
2. *for self-contracting Users (i.e. Customers who do not have a Retailer)*—Part 12A and Part 21 NGR and the DSCC do not apply. So for self-contracting Users, the RSA still needs to continue to address arrangements for new delivery point connections, as well as arrangements for payment, invoicing and credit support requirements for JGN's reference tariffs and charges.
17. Details of the changes made to the RSA to accommodate the above NECF arrangements are outlined in the following sections.

2.1 ADDITION OF NEW DELIVERY POINTS TO THE RSA AT THE USER'S REQUEST (CLAUSE 11.3)

18. Clause 11.3 covers how a User can add a new delivery point to the User's RSA, at their request.
19. Former sub-clauses 11.3(h) and (i) effectively addressed (among other things) the specific requirements for the addition to the RSA of new delivery points which are yet to be connected to JGN's network. Those clauses provided a regime for connection works, terms and charges to be agreed between JGN and the User, so that the connection works could be undertaken and the delivery point added to the RSA.
20. This clause has now been amended to accommodate circumstances in which new delivery points requiring connection to JGN's network are requested to be added to the RSA by either:
1. *Users who are Retailers*—where the Retailer's Customer has separately entered into an NGR Part 12A connection contract directly with JGN (this approach is now covered through insertion of a new clause 11.3(j))
 2. *Users who are self-contracting Users*—who rely on the RSA to provide scope for agreed terms and charges for connection works with JGN (through the existing clauses 11.3(h) and (i), which have been consequentially amended to accommodate the new clause 11.3(j) and to simplify the drafting).
21. Under both scenarios, it is a requirement that before a newly connected delivery point can be added to the RSA (entitling the User to the provision of a service to that delivery point under the RSA), the basic requirements for the service to operate under the RSA must be in place. For example, the contracted gas capacity entitlement (MHQ and/or MDQ) to be delivered to the delivery point must be agreed and a delivery station capable of meeting that contracted capacity entitlement installed (in a number of respects, these matters are relevant to both the physical connection under Part 12A, as well as the provision of a service under the AA and RSA—i.e. it does not follow if these requirements are dealt with in a Part 12A connection contract that they are not relevant to the service under the AA/RSA—in fact, the opposite applies). Clauses 11.3(h), (i) and (j) seek to address these common requirements for each of the above scenarios.

2.2 ENERGISATION UNDER THE NERL (NEW CLAUSE 11.4)

22. New clause 11.4 has been included to cover the risk of energisation of a delivery point occurring automatically under the mandated DSCC under the NERL, in circumstances where there is no RSA in place in respect of that delivery point. For example, circumstances may arise in which the physical connection of a delivery point to JGN's network may be established under a Part 12A connection offer (with the DSCC commencing on

- acceptance of that offer), in circumstances where a customer has not yet appointed a Retailer to enter into an RSA with JGN.
23. The risk here is that JGN may be obliged to supply gas to a customer at a delivery point under the DSCC when there is no RSA in place at the delivery point and therefore no User is contractually responsible for delivery of gas and payment of delivery service charges in accordance with the RSA. The NECF laws operate to deem a Retailer to have responsibility for that delivery point, however they do not go so far as to deem that delivery point as included on a particular Retailer's RSA. Hence, new clause 11.4 is required.
 24. Clause 11.4 seeks to address this issue by providing for the addition of a delivery point to a User's RSA, where:
 - gas is being withdrawn at a delivery point and that delivery point has not been added to the RSA of any other Network User
 - the User is (or can readily become) either the customer's Retailer or is entitled to charge the customer for gas withdrawn at the delivery point by a customer under the NERL.
 25. The situations arising under the NERL, where new clause 11.4 provides for the addition of a delivery point to the User's RSA, are as follows:
 1. for a Small Customer, where the User is either:
 - a) the Financially Responsible Retailer (**FRR**) for the Small Customer, or
 - b) the Local Area Retailer (and there is no Financially Responsible Retailer)then the Small Customer's delivery point will be automatically added to the User's RSA. (clause 11.4(a)).
 2. for a Large Customer, where the User is the Financially Responsible Retailer entitled under section 64 of the NERL to charge the Large Customer situated at the delivery point, the User must request that the Service Provider add the delivery point to the User's RSA (clauses 11.4(b)). If the User/Financially Responsible Retailer fails to do so, then the Service Provider may assign the delivery point to the relevant Tariff under the AA and charge the User for the withdrawal of gas at that Tariff (clauses 11.4(c)).

2.3 DELETION OF SMALL CUSTOMER DELIVERY POINTS (CLAUSE 12)

26. Clause 12 has been amended to provide consistency between the deletion of Delivery Points from the RSA and the disconnection and reconnection obligations under the DSCC and NERR.
27. Under the DSCC and NERR, if a Small Customer is disconnected and subsequently satisfies the requirements to be reconnected, and a request for reconnection is made within 10 Business Days after the disconnection, JGN must reconnect the Delivery Point. If these conditions have not been satisfied within 10 Business Days after the disconnection, the customer's DSCC with JGN terminates and for Small Customers, their gas sales agreement with their Retailer terminates.
28. Clause 12 has therefore been amended to reflect the following:
 1. where a Small Customer's Delivery Point is disconnected, the Delivery Point will not be deleted from the Volume Customer List under the relevant User's RSA until 10 Business Days after the disconnection to provide time for a reconnection request under the NERL
 2. once 10 Business Days after the disconnection has passed without a reconnection request:

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- a) the Delivery Point will be deleted (consistent with the termination date of the DSCC) and JGN will cease charging network charges under the RSA from the disconnection date
 - b) subject to Retail Market Procedures, JGN will be entitled to take steps to facilitate the User remaining registered as the "User" under the Retail Market Procedures for that Delivery Point until another Network User becomes so registered as the User under the Procedures.
29. The changes described in item 2(b) above creates the means (subject to Retail Market Procedures) to ensure there is a FRR under the NERL for a Delivery Point who is entitled to obtain payment from any Small Customer who withdraws gas at the Delivery Point before having first engaged a Retailer under the NERL. Additionally, clause 11.4 ensures the same FRR will have that Delivery Point added to its RSA with JGN and be entitled to services and be responsible for payments under the RSA for that Delivery Point.
30. If there is no User registered under the Retail Market for a Delivery Point and a Small Customer (new or old) starts withdrawing gas from that Delivery Point before engaging a Retailer:
1. there will be no FRR for that Delivery Point under the NERL and no Retailer will be entitled to exercise the rights of the FRR under the NERL in relation to that customer; but
 2. the customer will nevertheless be entitled to a supply of gas from JGN under the DSCC (which will automatically apply once the customer starts withdrawing gas from the Delivery Point under the NERL), without being obliged to pay any Retailer for the gas, including the network charges for the delivery of the gas.
31. The changes to clause 12 align with JGN's proposal to simplify its disconnection charges (see Chapter 3 of JGN's 2015-20 Access Arrangement Information) and engagement with Retailers on procedure changes so that all disconnected Delivery Points of Small Customers remain active in the Retail Market (currently only temporary disconnections remain active in the Retail Market).
32. The arrangements for the deletion of Large Customers will remain essentially the same as the existing RSA.

2.4 DELIVERY POINTS AND DELIVERY STATIONS (CLAUSE 15)

33. The commencement of NGR Part 12A, which regulates the establishment of new connections (physical connection, not energisation) and connection alterations, has necessitated a number of changes to this clause. In particular, clause 15 has been amended so as to:
1. continue to address requirements for Delivery Stations and related equipment for the purposes of the gas delivery and capacity entitlement service for Users (as between JGN and Users under their respective RSAs)
 2. at the same time recognise the existence of any connection contracts made under Part 12A NGR (which may also deal with the installation of Delivery Stations and related equipment at Delivery Points, as between JGN and a retail Customer) and expressly give priority to these, to the extent of any inconsistency with the terms of clause 15.
34. Many requirements relating to Delivery Stations and related equipment, in addition to being relevant to the establishment of a new physical connection for retail Customers (under NGR Part 12A, the subject of a connection contract between the Customer and JGN) are also an essential part of the gas delivery and capacity entitlement service that JGN provides to Users under the AA and the RSA (as between JGN and Users—both Retailer Users and self-contracting Users). Hence, it is necessary for clause 15 to continue (albeit in modified form) despite the commencement of NGR Part 12A, and connection contracts being put in place between JGN and Customers.

35. For example, matters such as MHQ and MDQ are relevant to both the physical connection as well as to determining the capacity entitlement and scope of the delivery service under the AA and RSA. So rights and obligations relating to these matters as between JGN and Users (as distinct from JGN and retail Customers) also need to be addressed here in the RSA.
36. In addition, even with a Part 12A connection contract in place, there are various things of relevance to Delivery Stations that potentially fall outside such contracts. For example, where usage characteristics of a Delivery Point change and there needs to be a corresponding change to the Reference Tariff under the AA, JGN will need to downgrade equipment at a Delivery Point to give effect to this as part of the Service. This is an RSA matter not a Part 12A connection contract matter, and accordingly will be addressed through clause 15.
37. Also, as indicated above, the RSA also needs to fully provide for all relevant aspects of connection for self-contracting Users, who are not retail Customers under Part 12A NGR and who therefore cannot obtain connection under Part 12A.
38. The key changes made to clause 15 having regard to the matters outlined above are as follows:
 1. a new clause 15.1 has been added to specify that where there is a NGR Part 12A Connection Contract in place for a Delivery Point, then clause 15 applies subject to the terms of that contract
 2. the wording of clause 15.2 has been clarified, although the effect has not been altered
 3. clause 15.3 has been amended to provide that the parties may agree to alter their respective obligations in relation to Delivery Station components from what is set out in Annexure 6
 4. clause 15.5(a) has been amended so that it applies to Delivery Station components for which the User has responsibility, rather than owns. It states that JGN must notify the User in writing if it wishes the User to alter, move or install such equipment
 5. the drafting of clause 15.5(d) has been amalgamated with clause 15.13 for ease of understanding. The position has been clarified in respect of which party must pay the costs in each scenario where JGN is carrying out the alteration works. The User must pay the costs of altering, moving or installing equipment: when such action is required for operational or safety reasons as a result of the acts or omissions of the User or the User's Customer; where the User requires the action; or where it is specified elsewhere in clause 15 that the User must pay such costs
 6. clause 15.7(b) which stated that the User may not require JGN to downgrade Basic Metering Equipment has been deleted as it is considered to be potentially confusing and could potentially be interpreted in a manner that is inconsistent with NECF
 7. clause 15.8(b) has been amended to clarify that where the User requests JGN to install an additional Delivery Station, the User must pay JGN's reasonable charges, and the additional requirements that were set out have now been deleted. The Meter Data Service reference has also been deleted from this clause
 8. former clause 15.8 (temporary disconnections) has been deleted and former clause 15.9 dealing with permanent disconnections (now clause 15.8) has been amended as discussed further in section 2.5 below
 9. clause 15.11 has been amended to replace the requirement for the User to ensure JGN has access to a Delivery Station with an obligation for JGN to carry out repair of metering equipment provided the User procures the cooperation of the User's Customers to allow JGN access.
 10. clause 15.12 has been amended to delete the User indemnity wording and streamline the overlapping liability provisions, so that it is clear that JGN is not liable for Damages or claims in connection with Decommissioning of a Delivery Station or disconnection of supply unless the negligent act or omission, or wilful misconduct, of JGN caused it.

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2.5 PERMANENT DISCONNECTION, DECOMMISSIONING AND METER REMOVAL (CLAUSE 15.9, FORMERLY CLAUSE 15.8)

39. New clause 15.9 (formerly clause 15.8) has been amended to:
1. ensure that JGN cannot be required by the User under the RSA to disconnect or decommission a Delivery Point, unless JGN is satisfied that all relevant Laws, including the requirements under the NERL, NERR and JGN's DSCC with the relevant Customer have been complied with (by both the User and JGN)
 2. replace "Permanent Disconnection" with disconnection in line with JGN's proposed simplification of disconnection charges.

2.6 TEMPORARY DISCONNECTION BY THE USER (FORMERLY CLAUSE 15.9)

40. Former clause 15.9 (dealing with the accreditation of Users to perform temporary disconnections) has been removed as:
1. the obligations and risks for carrying out disconnections under the NERL sit with the distributor
 2. the NERL does not contemplate temporary disconnections
 3. disconnection results in the termination of the DSCC between JGN and the Customer which would also be the result if disconnected by the User.

2.7 ACCESS TO METERING EQUIPMENT (CLAUSE 16.3(b) & (c))

41. The notice requirement for JGN to exercise its rights to cease providing a Service where it is unable to safely access metering equipment has been amended from 6 Hours to 6 Business Days, to align with the equivalent notice requirements under the NERR and JGN's DSCC.

2.8 CHARGES (CLAUSE 19.1, FORMERLY CLAUSE 20.1)

42. The NECF laws contemplate that JGN's connection charges will continue to be billed to Retailers rather than direct to the Customer (unless JGN and the relevant Customer agree otherwise), despite the existence of the DSCC and NGR Part 12A connection contracts between JGN and the Customer. To recognise that costs may be incurred as between JGN and the Customer, but those costs are billed by JGN to the relevant Retailer, new paragraphs (b) and (d) have been included in clause 19.1. This is the contractual means for JGN to oblige a User to pay to JGN connection charges under Part 12A Connection Contracts on behalf of the User's Customer to enable JGN to comply with Part 12A NGR. These charges are payable in accordance with Part 12A of the NGR and the NERL.

2.9 INVOICING AND PAYMENT (CLAUSE 20.1, FORMERLY CLAUSE 22)

43. As required by NGR rule 501(b), clause 20.1 provides that where the User is a Retailer, all Charges will be invoiced and payable in accordance with Part 21 NGR and clauses 20.5, 20.9 to 20.14 (which are not fully addressed by Part 21 NGR) will also continue to apply, but the remainder of clause 20 will not apply.

44. Where the User is not a Retailer (i.e. self-contracting Users) and NECF does not apply, clause 20.2 provides that the remainder of clause 20 will continue to apply as it does at present.

2.10 SUSPENSION OF GAS SUPPLY (CLAUSES 22.1 AND 22.2, FORMERLY CLAUSE 24)

45. JGN's obligation to suspend (temporary disconnection) the supply of gas at the User's request in clause 22.1 has been made subject to JGN's satisfaction that all applicable laws have been complied with. This protects JGN from being required by the User to suspend gas supply to one of the User's Customers where JGN may be exposed to a breach of the NERL/DSCC if it does so. For example, JGN may be exposed to a breach under the NERL/DSCC where the User seeks a temporary disconnection and the User's Customer has made a complaint to the Ombudsman, which is still unresolved, regarding the User's reasons for seeking the temporary disconnection.
46. Temporary disconnections are no longer available for Small Customers as NECF only contemplates Small Customer disconnections (rather than distinguishing between permanent and temporary disconnections) as addressed in sections 2.3, 2.5 and 2.6 above.
47. The concept of temporary disconnection has been maintained in clause 22.1 of the RSA for Large Customers for the following reasons:
1. JGN's obligation to transport gas to a Large Customer Delivery Point is defined by the contracted capacity (MHQ and/or MDQ) requested by the Retailer and reserved for that Service. The contracted capacity is used to describe contractual rights and obligations under the RSA
 2. when a Delivery Point is deleted from the RSA:
 - a) these contractual rights and obligations cease and the User (and the User's Customer) lose the right to utilise that capacity (i.e. the contracted capacity ceases to be reserved for the Service to the Delivery Point and another customer, through their Retailer, can seek to reserve that capacity)
 - b) if the User requires that capacity again for the Delivery Point, the User will need to lodge a new Request to seek a new Service for that capacity and there is no assurance the capacity will be available. (This situation does not apply for Small Customers who can reconnect through standardised processes without a review of available network capacity.)
 3. accordingly, to facilitate a means for Retailers to temporarily disconnect supply of gas to a Large Customer Delivery Point (for example, due to an outstanding debt from the Large Customer) and avoid forfeiting the contracted capacity entitlement for the Large Customer Delivery Point, the RSA allows a Retailer to seek a temporary disconnection for a Large Customer Delivery Point while continuing to reserve that capacity on the network for the Large Customer Delivery Point.
48. The wording of JGN's right to suspend supply and provision of the Services on its own initiative in clause 22.2 (formerly clause 24.2) has been reviewed to streamline drafting, align with the NERL and the DSCC, and to focus these provisions on areas where such contractual remedies are not dealt with elsewhere in the RSA. The circumstances contemplated in clause 22.2 are all matters within the control of the User and for which a practical response of suspending services is appropriate. These circumstances are all contemplated in the current RSA.

2.11 INTERRUPTIONS AND CURTAILMENTS OF SUPPLY (CLAUSE 23, FORMERLY CLAUSE 25)

49. The circumstances under which JGN can interrupt supply and the notification timing requirements in clause 23 have been amended to align with the NERL.

2.12 SECURITY AND FINANCIAL STANDING (CLAUSE 28, FORMERLY CLAUSE 30)

50. Clause 28(a) of the RSA provides that where the User is a Retailer, any security sought will be in accordance with Part 21 NGR and clauses 28(e) to (g) which cover financial reporting requirements will also continue to apply. The remainder of clause 28 will not apply in that case.
51. Clause 28 in full will apply to a self-contracting User (that is, Users who are not Retailers).

3. RSA CHANGES TO METERING PROVISIONS

52. The RSA clauses dealing with the provision of meters, meter reading and meter data have been amended to take into account:
- changes under JGN's 2015 AA proposal which effectively combine the previous Meter Data Service with the Haulage Reference Service, as a single Reference Service encompassing transportation, basic meter provision and meter reading (resulting in the deletion of most of current RSA clause 17, and all of clause 18)
 - changes in the clauses covering Delivery Station requirements (which include Measuring Equipment requirements), as a result of NECF related changes – the majority of these changes are to subclauses in clause 15 as described in section 2.4 above
 - consequential drafting changes.
53. We summarise the amended meter-related provisions in section 6 below, with some additional explanatory comments.

4. RSA CHANGES TO LIABILITIES AND INDEMNITIES

54. The liability and indemnity provisions of the RSA have also been amended.
55. JGN has carefully examined the liability and indemnity provisions in its current RSA, and has made a number of changes. We summarise the approach taken in section 12 below.

5. OTHER CHANGES TO THE RSA

56. There are a number of other changes made to the RSA. Most of these are minor drafting or formatting changes or changes to clarify the intended meaning of existing provisions of the RSA.
57. Some changes JGN considers worth mentioning specifically (in addition to those already outlined above) are described further below.

5.1 AGREEMENT AMENDMENT DUE TO CHANGE IN LAW (NEW CLAUSE 1.4)

58. A new clause 1.4 has been inserted in the RSA to enable each individual Agreement actually signed with a User (in the form of the RSA) to be amended to accommodate a Change in Law.
59. The following points should be noted about this clause:
1. it does not (and cannot) operate as an amendment to the form of the RSA itself, as attached to the AA, for all Users. So it does not (and cannot) operate as a mechanism for amending the AA itself. Rather, the clause operates as a term (included in the form of the RSA, forming part of the AA) which enables each individual Agreement signed with a User (on the terms of the RSA) to be separately amended with each User in accordance with the process set out in the clause. As such, the AER is not being asked to approve a self-executing mechanism for JGN to amend the AA itself, which the NGR would not permit
 2. given the five year term of the AA and RSA and the ever changing regulatory environment in which JGN and Users operate, it is important to have a fair and reasonable mechanism which enables JGN to seek to amend individual Agreements signed with Users (on the terms of the RSA) should this become necessary to accommodate a Change in Law arising during the term of each individual Agreement
 3. the Change of Law mechanism proposed in clause 1.4 is a fair and reasonable one in that:
 - a) it relates only to an objective change in the Law which needs to be accommodated by the Agreement
 - b) it requires JGN to consult with the User on the proposed amendment to the Agreement, and provide the User with notice of (and an explanation for) the proposed amendment. The User then has 20 Business days from receiving that notice to refer the matter to dispute resolution in accordance with clause 30.2, in which case the amendment will not apply until the dispute is resolved.

5.2 USERS ACTING AS ENERGY RESELLERS (NEW CLAUSE 3.4(d) AND ANNEXURE 7)

60. The AA has been amended (through the new Reference Tariffs in AA Schedule 2) to effectively allow Users to obtain a Reference Service enabling them to take delivery of gas at a Delivery Point which is then used in connection with the supply of any form of "Energy" to a Customer plus one or more additional End Customers. One example of this could be delivery of gas to a cogeneration power plant operator situated at a Delivery Point who then generates electricity and thermal energy (for use in connection with heating, air-conditioning and/or hot water supply) to a wide range of business and residential End Customers at the premises served by the Delivery Point.⁵

⁵ Under JGN's existing AA and RSA, such a user would not have been entitled to a Reference Service and would have had to seek a Negotiated Service, with Negotiated Tariffs.

5 — OTHER CHANGES TO THE RSA

61. New clause 3.4(d) and Annexure 7 have been added to the RSA to accommodate specific provisions which will apply to such a User. The definition of Customer has also been changed, and there is a new definition of “End Customer”.
62. The provisions of Annexure 7 largely concern ensuring that the User accepts responsibility for and complies with all relevant laws relating to the supply of Energy by the User to their Customer and End Customers (i.e. for activities downstream of the Delivery Point). JGN can and does accept responsibility for delivery of Gas to the Delivery Point itself, but precisely what form of Energy it is being converted to, what the specific energy needs of End Customers might be and the extent to which the User (or another person contractually responsible for Energy supply at the premises) is complying with the extensive regulatory and consumer protection requirements relevant to downstream energy resale, are all matters well beyond the control of JGN.
63. Accordingly, if the User wishes JGN to provide a Reference Service for delivery of gas to a delivery Point to be used for the purposes of Energy supply or resale downstream of the Delivery Point by the User (or by someone with whom the User has contracted), then the User who wants that service must accept all responsibility and liability for that supply and resale. Clause 3.4(d)—which enlivens Annexure 7—and Annexure 7 itself, reflect this position.

5.3 ALLOCATION OF TARIFF CLASSES (FORMERLY CLAUSE 21)

64. This clause has been removed from the RSA as it is wholly dealt with in AA sections which are incorporated by reference in the RSA (through the definition of Agreement in clause 1.1 of the RSA).

5.4 TRANSFER OF PRE STTM DELIVERY POINTS (FORMERLY CLAUSE 11.4)

65. Clause 11.4 of the 2010 RSA was a transitional clause to describe how Delivery Points would be transferred from User's existing contracts to an RSA at the commencement of the 2010-15 AA period. A similar transitional clause is not required between the 2010-15 and 2015-20 AA periods because existing RSAs will be amended rather than replaced.

5.5 NOMINATION AND BALANCING (CLAUSE 7)

66. Clause 7 has been amended to reflect gas balancing arrangements following the commencement of the short term trading market (**STTM**). The RSA retains a gas balancing mechanism in the event the STTM ceases to operate. Formerly clause 7 covered the gas balancing arrangements prior to and after the commencement of the STTM.

6. METERING PROVISIONS

6.1 THE METERING PROVISIONS IN OUTLINE

67. The meter provision and meter reading requirements of the RSA are now essentially covered by the following provisions:
1. *gas quantity measurement principles*—applicable for different types of metering equipment present at Delivery Points (clause 8.2, and supporting definitions) – essentially unchanged from current RSA
 2. *Basic Metering Equipment, meter reading and communications equipment*—covering provision, maintenance, upgrade and downgrade by JGN (clauses 15.3 to 15.8, 15.11 and Annexure 6 clauses 1(b)(i), (iv) to (viii), clause 2(b)(i), (iv) to (vii) and clause 3(b)(i)) – amendments have been made to clause 15 for the reasons outlined in section 2.4 above, but Appendix 6 (formerly Appendix 7) retains its current form
 3. *metering accuracy and testing*—covering:
 - a) obligations for JGN to maintain, test, calibrate all Delivery Station Equipment provided by it under the RSA: in accordance with good engineering practice and industry standards. This includes all Measuring Equipment—being all Basic Metering Equipment, meter reading and communications equipment provided by JGN under the RSA (clause 15.2(c)) —minor drafting changes only
 - b) User's right to be present at tests (clause 16.4) —unchanged from current RSA
 4. *access to Measuring Equipment (clauses 16.1 to 16.3)*—minor NECF-related adjustments that emphasise the need for distributor-retailer cooperation where there is a shared Customer
 5. *no tampering with Measuring Equipment (clauses 16.5 and 16.6)*—essentially unchanged from current RSA
 6. *estimation for equipment failure or inaccuracy (clause 16.7 and 16.8)*—unchanged from current RSA
 7. *Meter reading frequency, data access and format (clause 17)*.

6.2 EXPLANATORY COMMENTS

6.2.1 THE RSA METERING PROVISIONS OPERATE ALONGSIDE A DETAILED NSW METERING REGULATORY REGIME

68. In addition to the above RSA provisions, JGN is subject to regulatory requirements governing the accuracy and testing of delivery point meters under NSW legislation, namely:
- schedule 1, Parts 3 and 4 of the *Gas Supply (Customer Safety) Regulation 2012* (NSW)
 - sections 10 and 11 of JGN's Network Code, which apply to JGN under its reticulator's authorisation issued under the *Gas Supply Act 1996* (NSW).
69. Additionally, under the NGL and NGR, AEMO has adopted the *Retail Market Procedures 2014* for NSW and the ACT which require gas distributors, among other things, to:
- allocate delivery point identifiers
 - provide basic metering equipment

6 — METERING PROVISIONS

- comply with specified timelines for collection and dissemination of data that is relevant to the operation of the gas market including daily nominations, consumption data, and information relating to connections, disconnections and transfers.

6.2.2 METER TESTING AND ACCURACY (CLAUSE 15.2(c))

70. As indicated in 6.1(3) above, clause 15.2(c) of the RSA requires JGN to maintain, test and calibrate all Measuring Equipment in accordance with industry standards and these standards need to be consistent with the above regulatory requirements applicable under NSW legislation. Rights and obligations concerning the testing of delivery point meters, including a User's request for testing, are already set out in law. Accordingly, JGN has not included in the RSA an additional specific set of accuracy and testing obligations on JGN under the RSA, as this would:

- duplicate what is already provided for under NSW legislation, imposing additional and unnecessary compliance costs on JGN which is not consistent the NGO
- potentially place JGN at risk of non-compliance with any future changes in NSW regulatory arrangements which are inconsistent with any specific accuracy and testing requirements that might be imposed under the RSA.

6.2.3 METERING ACCESS (CLAUSES 16.1 TO 16.3)

71. Clauses 16.1 and 16.2 have been amended to effectively provide for:

- the User to provide reasonable assistance so that JGN may obtain clear and safe access to measuring equipment at Delivery Points
- the User to use reasonable endeavours to ensure the safety of the area surrounding the measuring equipment at the area to JGN
- JGN and the User to co-operate and for the User to provide all reasonable assistance to procure that JGN and its contractors obtain access to the measuring equipment.

72. These provisions are less onerous than those that apply under the current RSA – reflecting that securing access to a Customer site is a matter on which JGN and the User should be co-operating – they both have a role to play here.

73. Clauses 16.1 and 16.2 (as amended) necessarily recognise that:

1. under the NERL, both the Retailer (who will be a User under the RSA) and JGN as distributor have regulatory and contractual rights and obligations relating to metering, metering data and access to metering at a Customer's premises. For example:
 - a) *for Retailers*—under rules 20, 21 and 113 of the NERR and under clauses 11 and 14.1(c) of the model terms for standard retail contracts (NERR Schedule 1), Retailers have clear rights and obligations relating to obtaining access to meters, arranging regular meter reads (by distributors) and to arrange for disconnection where Customers do not give access to meters
 - b) *for distributors*—under clauses 9 and 12.1 of the model terms and conditions for their DSCCs (NERR Schedule 2), distributors also have rights of access to a Customer's premises to maintain and read meters and to disconnect if those rights of access are breached or if requested to do so by the Customer's Retailer
2. accordingly, Retailer/Users and JGN need to co-operate with each other in the exercise of their respective rights and obligations, vis-à-vis the User's Customers, to ensure that:

- a) they are both able to discharge their respective obligations and exercise their respective rights satisfactorily and consistently in relation to the User's Customer
 - b) JGN is in fact able to gain safe access to measuring equipment (for the benefit of both the Retailer and JGN) so that the all-important metering data on which both of them rely can be accurately read and their respective charges properly billed and collected from the User's Customer by the Retailer
3. as a practical matter (consistent with the intent of the NERL) it is Retailers who have day to day relationships with Customers to arrange retail services, connections and disconnections on their behalf. Customers can of course elect to arrange connection and disconnection directly with the distributor, but that is in essence at the choice of the Customer and in the great majority of cases, consistent with the NERL, the Retailer will manage the day to day Customer relationship. Retailers accordingly have the systems and processes to interact with and update information on their Customers on a day to day basis
 4. accordingly, notwithstanding its rights under NECF, JGN will still need to rely on each Retailer's assistance to ensure that access is gained in a timely manner and to manage the Customer relationship to best facilitate this. In the absence of being able to rely on Retailers for this, JGN would need to substantially replicate the Retailers' systems, processes and resources at significant additional cost, which would need to be passed on to Retailers and their Customers through higher charges.
74. Clause 16.3 has been maintained in its current form, with some changes to make the notice requirements for JGN being entitled to cease delivering gas (where JGN is unable to obtain safe access under 16.2) consistent with the notice requirements for disconnection by JGN under the model terms and conditions for JGN's DSCCs (under NERR schedule 2).

7. GAS QUALITY PROVISIONS

75. Gas quality is regulated in NSW, with gas quality specification obligations imposed on JGN in relation to the gas delivered through its distribution network to Delivery Points – see Part 4 of the *Gas Supply (Safety and Network Management) Regulation 2013* (NSW).
76. However, as indicated previously, most gas supplied into JGN's distribution network is sourced by Users from interstate production basins (principally from the Cooper Basin via the Moomba to Sydney Pipeline, or from the Gippsland Basin via the Eastern Gas Pipeline). Gas producers in those locations are the only parties in the gas supply chain that have the ability to physically control the quality of the gas that is injected into JGN's distribution network via upstream transmission pipelines. Gas producers possess the required equipment to test and control the quality of the gas prior to supplying the gas into the transmission system and Users who contract with those producers (and arrange for the gas to be injected into transmission pipelines) are in the best position to address the quantity, delivery pressure and quality specification requirements of gas they deliver to the network through their upstream contractual arrangements with producers. JGN does not have any contractual relationship with upstream producers.
77. For JGN to ensure it can comply with its regulatory gas specification obligations in NSW for the benefit of all Customers connected to its network, JGN needs to contractually require Users to comply with the NSW gas specification requirements in respect of the gas they bring into JGN's network. A chain of compliance is achieved through Users then passing on these obligations further upstream to the gas producers, mostly located outside of NSW, with whom they contract.
78. JGN has therefore made some changes to clause 10 of the RSA to more clearly align the User's gas quality obligations (for gas the User purchases and arranges to have injected into upstream transmission pipelines) with those which JGN must meet under NSW regulatory requirements.
79. The key obligations placed on Users under clause 10 are as follows:

1. the User must comply with the gas specification prescribed under the *Gas Supply (Safety and Network Management) Regulation 2013* (NSW) (clause 10.1(a)(i)).

[Under the NSW regulatory requirements, JGN must not convey non-compliant gas through its distribution network];

2. where the Regulation does not prescribe a particular matter (such as odourant levels, temperature etc), the User must comply with the default specification set out in Annexure 2 (under clause 10.1(a)(ii)) – Annexure 2 will remain as set out in the current RSA.

[The NSW gas quality specification is based on AS4564 which is a general sales gas specification, but which does not include requirements for safe transportation or distribution of gas. JGN includes additional parameters in the Annexure 2 specification where necessary to maintain the integrity and safety of the network, and to enable JGN to meet its regulatory obligations to ensure safe and reliable supply and that gas contains odour]

3. the User must test or cause the gas to be tested and satisfy JGN that the testing methods and equipment maintenance are adequate, and provide JGN with real time visibility of the test results (clauses 10.4, 10.9 and 10.10).

[Under the NSW regulatory requirements, JGN must test or cause the gas to be tested. As a practical matter, gas quality testing is best performed at gas treatment plants by the producer]

4. the User must have, and upon request must satisfy JGN that the User has, the contractual or other legal rights and management procedures in place to prevent off-specification gas being delivered to the network (clause 10.5).

[Gas quality is most efficiently managed and controlled by the producers prior to injection into pipelines and networks. Accordingly JGN relies principally on the management procedures established by Users with the producers to control gas quality at the point of treatment and sale into the market.]

5. the User must meet various testing requirements under the *Gas Supply (Safety and Network Management) Regulation 2013* (NSW) (clause 10.10).

[As the User is responsible for causing the gas to be tested, they are also responsible for procuring that the testing requirements of NSW regulations are met].

80. In summary, given:

1. the stringent gas quality specification requirements placed on JGN under NSW legislation
2. JGN has no means of controlling the quality of gas delivered into the interconnected gas network upstream of JGN, other than by placing contractual obligations on the Users who contract with upstream producers to deliver that gas upstream
3. the most efficient and practical method of managing gas quality is to test and manage the quality of gas at the gas producers' facilities before gas enters the interconnected network of gas transmission pipelines upstream of JGN
4. the potential for damage to be caused to the network, or for interference with the safe operation of the network by off-specification gas or the presence of contaminants in the gas
5. the potential risk to over 1.2 million Customers connected to JGN's network of being delivered off-specification gas from the network

it is reasonable and appropriate to place these contractual obligations on Users in the RSA, in relation to the gas they arrange to bring into JGN's network.

81. From that point, JGN then accepts responsibility for gas quality meeting the regulated specification under both the regulatory framework (as indicated above) and under its RSA obligations requiring delivery of gas at Delivery Points that meets the specification (subject to the gas which is brought into its network meeting that specification) as set out in clause 10.6 of the RSA.
82. These provisions, taken as a whole, give effect to the principle referred to in section 1.3 above that risks should be allocated to those best placed to manage them, consistent with the NGO principles referred to above.

8. GAS PRESSURE PROVISIONS

83. JGN has made some minor drafting changes to clause 14.9(a) to clarify the intended operation of this clause, which relieves JGN from its obligations to deliver gas (subject to certain qualifications) where the pressure at which gas is received into the network at a Receipt Point is not within the specified range.
84. Additionally, under clause 14.9(b) JGN holds the User responsible for any Damages or claims resulting from gas being delivered into the network at a Receipt Point which does not meet the required pressure specification range (further commentary on this liability and indemnity provision is set out in section 12 below).
85. JGN needs to place responsibility for the pressure at which gas is brought into its network upon Users for the following reasons:
- for JGN to be able to meet its RSA obligation to deliver gas which meets the MHQ and MDQ requirements of all Customers connected to its network at Delivery Points, it is imperative that the gas that Users bring into JGN's network, under their contracts with their transmission pipeline service providers, is brought in at acceptable pressure levels. This is because there are no compressor stations within JGN's network and accordingly, JGN does not have the ability to increase gas pressure within its network. If gas pressure declines, the network's capacity to supply Customers at contracted levels of demand will also decline. If gas pressures are too low at the Receipt Points, there may be insufficient pressure available to push gas through the network to Customers, which could lead to a loss of supply to them
 - for the reasons set out above, the parties best able to manage the pressure of the gas delivered into JGN's network are the transmission pipeline service providers who deliver gas from their pipelines into JGN's distribution network at the Receipt Points. It is Users, rather than JGN, who enter into contracts for the delivery of gas with these transmission pipeline service providers. Accordingly, it is Users who are best placed to contract with their transmission pipeline service providers in relation to the gas pressure requirements for gas delivered into JGN's network.
86. Once the gas is delivered to JGN's network within the required pressure specification and in sufficient quantities to meet Customer demand, JGN is obliged to maintain adequate gas pressure at Delivery Points via:
1. JGN's obligations to Users under clauses 3.4(b)(iii) and (iv) and clause 4.2(f) to deliver the quantity of gas brought into the JGN network by a User to that User's Delivery Points, up to the contracted capacity entitlement (MHQ and/or MDQ) (plus any authorised overruns) specified for each Delivery Point
 2. JGN's contractual obligation with all Customers connected to its network to supply that gas reliably and safely under JGN's DSCC
 3. JGN's NSW regulatory obligations under the *Gas Supply (Safety and Network Management) Regulation 2013* (NSW) which imposes various requirements on JGN's network design to ensure the reliable supply of gas to Customers.
87. In summary, given:
1. the potential risk to over 1.2 million Customers connected to JGN's network of not receiving their contracted quantity of gas supply, if gas outside the pressure specification is delivered into JGN's network by Users and their contracted transmission pipeline service providers
 2. that JGN has no means of controlling the pressure at which gas is delivered into its network by Users and their contracted transmission pipeline service providers or the quantity and timeliness of gas delivered

it is reasonable for JGN to place the contractual onus on Users (under the RSA) to ensure that gas they arrange to bring into JGN's network is delivered in sufficient quantities and within the required pressure range.

88. From that point, JGN then accepts responsibility (under its RSA and DSCC) for delivering contracted quantities of gas to the Delivery Points connected to its network.
89. Again, the above provisions of the RSA, taken as a whole, give effect to the principle referred to in section 1.3 above that risks should be allocated to those best placed to manage them, consistent with the NGO principles referred to above.

9. INSURANCE PROVISIONS

90. Neither the current RSA, nor the RSA changes for the 2015-20 AA period, include any specific insurance requirements for JGN or Users.
91. This is because under the regulatory regime applying in NSW, there are already comprehensive insurance requirements placed on JGN and Users. More specifically:
 1. under the conditions of JGN's reticulator's authorisation issued under the *Gas Supply Act 1996 (NSW)*, JGN is required to maintain workers compensation insurance, public liability insurance and other insurances. JGN is also required to hold insurance under the conditions of its licences under the *Pipelines Act 1967 (NSW)* for its northern and southern trunks.
 2. under clause 46 of the Retail Market Procedures 2014 (NSW and ACT), Users are required to hold a range of insurances to certain minimum levels, and produce satisfactory evidence of such insurance to AEMO.

10. INTERRUPTIONS AND CURTAILMENT PROVISIONS

92. A number of amendments have been made to some of the provisions of clause 23 (formerly clause 25) to reflect the supply interruption and curtailment requirements under the NERL and JGN's DSCC.
93. The limitation on JGN's liability for interrupting or curtailing supply or load shedding under clause 23.7 has been maintained, but the scope of the User indemnity for losses suffered by JGN as a result of these matters (under the same clause 23.7) has been reduced to apply only where Damage or claims result from the User's negligence or breach of clause 23. The liability and indemnity position reflected in this clause (and in the other liability and indemnity provisions of the RSA) is addressed more fully in section 12 below.
94. Notwithstanding the above changes, the subject matter and intent of clause 23 remains materially the same as former clause 25 of the current RSA. The practical ability for JGN to interrupt or curtail supply in circumstances of scheduled interruptions, emergency interruptions and load shedding are all essential for the efficient, safe and reliable operation of the network, and it is reasonable and commercially appropriate for these rights and obligations to be expressed as contractual conditions of the Haulage Reference Service.
95. Note that JGN's ability to implement load shedding depends upon the contractual rights set out in the RSA. This contrasts with the approach in Victoria where AEMO has accountability for system security and issues guidelines for load curtailment under its statutory framework.
96. It is not possible (without substantial changes to network design and operation, including duplication of existing network assets) and it would be unreasonable for JGN to provide the Haulage Reference Service without the ability to interrupt or curtail supply in the circumstances as described in clause 23.

11. WARRANTIES

97. A number of changes have been made to some of the warranty provisions of the RSA, although they remain largely consistent with the current version of the RSA.
98. There are two fairly standard "mutual" warranties given by each of the User and JGN to each other in relation to:
- GST registration and ABN validity (clause 21.7)
 - power to enter the agreement and validity of execution (clause 32.6).

These two warranties remain unchanged.

99. There is also a small number of User specific warranties required to be given by the User. Each of these is briefly described below and address matters which are wholly within the User's control and for which the User (absent these RSA warranty obligations) would have no corresponding legal obligation under law or under contract with JGN.
1. **User warrants daily nominations of gas to be delivered into JGN's network** must comply with nomination requirements set out in Annexure 3, if the STTM stops operating (clause 7.5 and Annexure 3). This only applies if the gas balancing arrangements under the STTM cease operating and this warranty is necessary to enable JGN to meet its delivery obligations under the Agreement and its regulatory obligation to maintain safe and reliable supply of gas for Customers.
 2. **User warrants legal entitlement to purchase and deliver gas** into JGN's network in the quantities required to meet its withdrawals (clauses 9.1(a) and (b)): this is required to ensure that the User is legally entitled to bring gas into the network and to ensure that each User delivers enough gas into the network to meet the demand for gas of their Customers, so that, again, JGN is able to meet its regulatory obligations to maintain safe and reliable supply of gas for all Customers. This warranty remains unchanged from the current RSA.
 3. **User warrants the accuracy of its load shedding data** provided to JGN for its Delivery Points (clause 23.6(h), formerly clause 25.6(h)). JGN is very reliant on the accuracy of this User provided information to ensure the effectiveness of the load shedding procedures set out in RSA clause 23 (formerly clause 25) and Schedule 7 of the AA. Effective load shedding is necessary in order for JGN to respond and meet its regulatory obligation to maintain safe and reliable supply of gas for all Customers. This warranty remains unchanged from the current RSA.
 4. **User warrants the accuracy of its last financial reports provided to JGN** and that there has been no material change to User's affairs since they were provided (clause 28(g) formerly clause 30(g)): for JGN to be able to determine whether a User is obliged to provide security under clause 28, JGN needs to rely on the accuracy of the User's financial reporting information and advice about any material change in its circumstances. This warranty is largely unchanged from that which applies under the current RSA.
 5. **User warrants it has given relevant information to its Customers and End Customers at Delivery Points to whom the User is resupplying energy**, from gas initially delivered by JGN (Annexure 7, clause (b)). This warranty applies where the User is using gas delivered under the RSA to resupply energy at the User's premises (i.e. the Customer is an "intermediary"). It is important that the User be held accountable for information it gives to its Customers and End Customers about the energy it re-supplies to them from the gas supplied by JGN. This is a new obligation, forming part of new Annexure 7, which has been included for the 2015-20 AA, in light of changes to Reference Tariffs being offered by JGN.
100. In summary, it is both reasonable and necessary for JGN to place contractual warranties on Users in relation to the above matters, which are wholly within their control, given:

1. the extent to which JGN needs to rely on Users in relation to these matters, to ensure it can:
 - a) deliver gas safely, reliably and cost effectively to its large number of Customers
 - b) load shed Customers in the correct priority and in accordance with JGN's load shedding procedures (when there is a gas supply shortage or interruption).
 2. the substantial risk to which JGN is exposed if Users are not being held responsible for these matters.
101. As already indicated in the sections above, JGN separately has corresponding obligations (under its RSA with the User) for delivering contracted quantities of gas to the Delivery Points connected to its network. JGN also has extensive regulatory obligations relating to the operation of its network so as to ensure a safe and reliable supply of gas across its network.
102. Again, the above provisions of the RSA as well as the extensive regulatory obligations placed on JGN, taken as a whole, give effect to the principle that risks should be allocated to those best placed to manage them, which is consistent with the NGO.

12. INDEMNITIES AND LIABILITIES

12.1 SUMMARY OF THE KEY PROVISIONS

103. JGN has carefully examined the liability and indemnity provisions in its current RSA, and has made a number of changes, in order to streamline drafting, reflect changes in law (NECF), as well as to properly focus these provisions on areas where such contractual protection is needed (and in circumstances where, as between the User and JGN, the User is best placed to control the subject matter, and therefore should assume the risk).

104. In essence, the key liability limitation and indemnity provisions can be summarised as follows:

1. *specific liability exclusions for JGN*—Six specific JGN liability exclusions have been removed from the RSA for reasons including that the relevant risks are considered to be satisfactorily mitigated in other ways, such as through other RSA provisions or under NECF.

The remaining nine (and one new one in Annexure 7) all provide for the exclusion of JGN liability for specific matters which are the direct responsibility of the User, except to the extent caused by JGN's negligence or wilful misconduct. In section 12.2 below, we provide further details of these specific liability exclusions for JGN. Examples include exclusion of JGN liability for matters such as Unauthorised Overruns by the User and the User delivering off-specification gas to JGN's Network. The new provision relates to downstream issues arising from energy resupply by an energy aggregator or similar intermediary at Delivery Points, after gas has been delivered by JGN.

2. *JGN consumer guarantee liability limitation (clause 26.2)*—a standard *Consumer and Competition Act 2010* (Cth) liability limitation, in respect of the consumer guarantees under that Act, is included and will apply, but only to the extent expressly permitted by the Act.
3. *specific User indemnities in favour of JGN*—the number and scope of specific User indemnities in favour of JGN have been reduced, once again for reasons including that relevant risks are satisfactorily mitigated in other ways. As a result of this rationalisation exercise, eight specific User indemnities have been removed completely from the revised RSA, with two others significantly reduced in scope. Only five of the specific User indemnities from the current RSA are proposed to be maintained in their current form and one new one has been included (corresponding to the new JGN liability exclusion referred to in (1) above). Two others have been reduced in scope.

These eight (in total) User indemnities require the User to indemnify JGN against liability resulting from specific matters which are the direct responsibility of the User, except to the extent caused by JGN negligence or wilful misconduct. They each relate directly to specific contractual obligations in the RSA and accordingly need to be contained within the relevant RSA clause dealing with that specific subject matter.

Examples include User indemnities for JGN liability arising from Unauthorised Overruns by the User, the User delivering off-specification gas to JGN's Network, and energy resupply by the User at Delivery Points (after gas has been delivered by JGN). In section 12.2 below, we provide further details of these specific User indemnities.

Importantly, the User's liability under these indemnities is subject to the provisions described further in (5) and (6) below.

4. *mutual indemnities against negligence, wilful misconduct and breach of Agreement (clause 26.1(a) and (b))*— the revised RSA maintains the existing mutual indemnities under which each party indemnifies the other against Damages suffered or incurred by the other as a result of:

- a) personal injury, death or property damage caused by the indemnifying party's negligence or wilful misconduct; or
- b) breach of the RSA.

Clause 26.1 has, however, been slightly revised so that it is clear that the indemnities in that clause do not apply where a matter is already covered by an express indemnity provision elsewhere in the RSA (such as a User indemnity referred to in (3) above). Also, each party's liability under this mutual indemnity is subject to the liability limitations protecting each party referred to in (5) and (6) below

5. *mutual liability limitation (clause 26.3 and 26.4)*—subject to the exclusions in (6) below, the liability of each party (First Party) to the other under the Agreement and in negligence is limited as follows:
 - a) *exclusion of all liability for Consequential Damage (clause 26.4)*—liability for all Consequential Damage is excluded, except to the extent the loss can be recovered under an insurance policy. Consequential Damage is broadly defined and includes loss of revenue, profit, business interruption liabilities, and indirect or consequential loss
 - b) *limitation of liability to Direct Damage (clause 26.3)*—this being effectively defined as loss or damage other than Consequential Damage, arising from:
 - i) personal injury, death or property damage caused by the negligence or wilful misconduct of the First Party;
 - ii) breach of the RSA.

Additionally, for JGN there is also a cap on its aggregate liability for Direct Damages to amounts recoverable under its insurance policies plus retentions (eg deductibles or excesses). This is required to assist JGN to maintain its overall risk exposure and insurance costs at their current levels.

6. *exclusions from the above mutual liability limitation (clause 26.5)*—the mutual liability limitation referred to in (5) above does not apply to any Damage arising in respect of the following matters:
 - a) *for the User (clause 26.5(a))* —Unauthorised Overruns, delivery of off-specification gas, or gas which does not meet pressure specifications, to JGN's Network or failure to cease delivering gas to JGN's Network as required under the RSA; and
 - b) *for JGN (clause 26.5(b))*—JGN delivering off-specification gas to a Delivery Point, to the extent caused by JGN's negligence or wilful default.

12.2 TABLE OF SPECIFIC JGN LIABILITY EXCLUSIONS AND USER INDEMNITIES

105. In the table below, we summarise the specific JGN liability limitation provisions remaining in the RSA (following our review as part of JGN's 2015 AA submission), indicating for each the extent to which:

1. the User is better placed to manage the risk that is the subject matter of the provision
2. there is a corresponding User indemnity provision

12 — INDEMNITIES AND LIABILITIES

No	Clause	Subject Matter	User's ability to manage the risk	Corresponding User indemnity given in favour of JGN?
1.	Clause 5.6(c)	Risks arising from JGN's revocation of approval for an Authorised Overrun.	<p>Overruns occur where the quantity of gas withdrawn by the User's Customer exceeds the capacity entitlement requested by the User under the AA and RSA for that Delivery Point. Users are able to manage the quantities withdrawn at a Delivery Point through their gas supply contracts with the Customer.</p> <p>Where a Customer and User know in advance that they are going to overrun, they may request an overrun to be authorised as an alternative to permanently increasing their capacity entitlement or withdrawing gas as an unauthorised overrun.</p> <p>JGN's capacity planning does not set aside capacity to cater for overruns, and therefore authorisation of overruns is made on an "as available" basis and on the condition that authorisation can be revoked at short notice if JGN subsequently considers there will be insufficient capacity in the network to accommodate the forecast overrun.</p> <p>As the User is the party that requests the capacity entitlement for the Delivery Point, and that liaises with the Customer about the overrun on capacity entitlement and the authorised overrun request, the User is the party best able to inform the Customer of the potential for the authorisation to be revoked and to mitigate the risks for the Customer and the User which may arise from revocation.</p>	<p>No (liability exclusion only).</p> <p>The revocation of an Authorised Overrun is a matter specific to JGN and the relevant User and its Customer. In this situation, risks are not expected to arise for other Users or other Users' Customers. Therefore no User indemnity is sought.</p>
2.	Clause 6.2	Risks arising from unauthorised overruns by the User where withdrawals at a Delivery Point exceed the contractual capacity entitlement	<p>See explanation of overruns above.</p> <p>JGN uses capacity entitlement of Delivery Points for network capacity planning to ensure efficient network investment and safe and reliable supply for Customers.</p> <p>As between JGN and the User, it is the User that is best able to manage the risk that the withdrawals by the User's Customer remains within the capacity entitlement of that Delivery Point because:</p> <ol style="list-style-type: none"> 1. The User is the party that requests the level of capacity entitlement; 2. Users that are Retailers are able to manage the quantities withdrawn at a Delivery Point and the risks of overruns through their contracts with Customers. Self-contracting Users have an even more direct control over the withdrawals at 	<p>Yes.</p> <p>Risks from unauthorised overruns have the potential to involve other Users and other Customers as well as the User and Customer at the particular Delivery Point. Should this occur, JGN has a potentially significant exposure. As the User is best able to manage the risks arising from unauthorised overruns, it is necessary and appropriate for the transfer of risk to the User to include an</p>

No	Clause	Subject Matter	User's ability to manage the risk	Corresponding User indemnity given in favour of JGN?
			<p>the Delivery Point; and</p> <p>3. JGN's relationship with the Customer under NECF does not deal with the capacity entitlement of the Haulage Reference Service or overruns on capacity entitlement</p>	<p>indemnity in JGN's favour (except where the circumstances are caused by JGN negligence or wilful misconduct).</p>
3.	Clause 9.4(b)	Risks associated with gas prior to its receipt into, or after its delivery from, the JGN Network	Through its contractual arrangements with upstream suppliers and downstream Customers, each User is in a position to contractually address upstream requirements for the gas they purchase and downstream requirements relating to use and responsibility for gas sold to their Customers. JGN does not have equivalent upstream relationships, and as noted previously relies on a chain of compliance via contractual links through Users and pipeliners to producers, to mitigate risks to the network associated with upstream activities.	<p>Yes</p> <p>Upstream events have the potential to result in circumstances that impact JGN and various other parties, including other Users and Customers. As between JGN and the User, it is the User that is best placed to manage such risks. Accordingly it is appropriate for the User to provide this indemnity, except where the circumstances are caused by JGN negligence or wilful misconduct.</p>
4.	Clause 10.1(d)	Risks arising from the User's delivery of off-specification gas to JGN's Network	Users, through their upstream contractual arrangements, are better placed than JGN to manage the quality specification of gas they arrange to deliver into JGN's Network. This is further explained in section 7 above.	<p>Yes.</p> <p>These risks have the potential to involve other Users and Customers. It is therefore necessary and appropriate for the User to indemnify JGN against liability caused by off-specification gas entering the network, except where the circumstances are caused by JGN negligence or wilful misconduct.</p>
5.	Clause 10.3(c)	Risks arising should it be necessary that JGN ceases to take, or directs the User to cease delivering, the User's off-specification gas into	In the event that Users fail to meet their contractual obligation to ensure gas meets the specification, then it is necessary that JGN has contractual remedies not to take off specification gas delivered by the User and to instruct the User to cease delivery. Because these circumstances only arise as a result of a breach of the User's obligations, and because the User is the party best able to contractually manage	<p>Yes.</p> <p>These risks have the potential to involve other Users, Customers and upstream parties. It is therefore necessary and appropriate for the User</p>

12 — INDEMNITIES AND LIABILITIES

No	Clause	Subject Matter	User's ability to manage the risk	Corresponding User indemnity given in favour of JGN?
		JGN's Network	upstream issues, the User is the party best able to manage these risks, including from JGN having to refrain from taking that gas because it is off specification.	to indemnify JGN against liability except where the circumstances are caused by JGN negligence or wilful misconduct.
6.	Clause 14.9(b)	Risks arising from the User's delivery of gas into JGN's Network which does not meet pressure specifications	Again Users, through their upstream contractual arrangements, are better placed to manage delivery of gas to the network at the right pressure. The rationale is essentially the same as that which applies for clauses 9.4 and the gas specification provisions in clause 10. This is further explained in section 8 above.	Yes. These risks have the potential to involve other Users, Customers and upstream parties. It is therefore necessary and appropriate for the User to indemnify JGN against liability except where the circumstances are caused by JGN negligence or wilful misconduct.
7.	Clause 15.13	Risks arising from decommissioning of Delivery Station or the disconnection of supply at User's request	Users are responsible for ensuring that they have the legal right and entitlement to make a request for decommissioning a Delivery Station or disconnection of supply. In the case where a User seeks disconnection of its Customer, as between the User and JGN, the User is clearly best placed to manage the risks arising from disconnection requests which they make.	No (liability exclusion only). Decommissioning of a Delivery Station or disconnection of supply are matters specific to JGN and the relevant User and Customer. In this situation, risks are not expected to arise for other Users or their Customers. Therefore no corresponding indemnity is sought.
8.	Clause 22.3	Risks arising from suspension of gas delivery at User's request or in circumstances set out in clause 22.2	Users are responsible for ensuring they have the legal right and entitlement to request the suspension of gas delivery under clause 22.1, and as between JGN and the User are best placed to manage risks arising from any suspension that they request. With respect to suspension under 22.2, where gas is suspended due to immediate threat of injury or material damage neither JGN nor the User should be liable, and the other circumstances described in clause 22.2 are matters outside the control of and not initiated by JGN.	Yes. This indemnity now applies only where suspension is carried out at the User's request under clause 22.1. Where there is a suspension requested by the User, risks could be expected to arise for the Customer and it is appropriate that the User is responsible for any resulting claims or Damages arising

No	Clause	Subject Matter	User's ability to manage the risk	Corresponding User indemnity given in favour of JGN?
				from such suspension, except in circumstances where the issue is caused by JGN negligence or wilful misconduct.
9.	Clause 23.7	Risks arising from interruption, curtailment or cessation of gas delivery or load shedding in accordance with JGN's rights under clause 23.	The User is best able to manage the risks arising for the User and for the Customer from interruption, curtailment or load shedding through its Customer contracts. JGN's ability to conduct load shedding under clauses 23.4 to 23.6 is essential for the safe operation of the network, and JGN depends on the rights and obligations under the RSA to perform this function. As such, it is necessary that Users reflect these arrangements in their Customer contracts and that Users are held responsible for breaches of their relevant obligations under these clauses.	Yes. Given that the User is best placed to handle the relationship with Customers, it is appropriate that the User indemnify JGN. However, this indemnity now applies only where liability results from the User's negligence or breach of clause 23.4.
10.	Clause (d) of Annexure 7	Energy production, distribution, supply or resale by User (after gas is delivered to User's Delivery Point)	JGN is responsible for delivery of gas to the Delivery Point. Where the User or the User's Customer then uses that gas in connection with the production, supply or resale of energy downstream of the Delivery Point, then that is entirely a matter which the User must accept responsibility for, having regard to the consumer protection requirements imposed under law for energy resale and supply. JGN has no contractual ability to ensure that appropriate responsibility is taken by the User for supply to End Customers other than through the RSA. As the party acting as the energy supply intermediary or contracting to supply gas to the intermediary, the User is the party best placed to ensure that all necessary authorisations and consumer notifications and protections are in place in regard to that supply.	Yes. JGN takes responsibility for delivery of gas to the Delivery Point, but beyond that, the User is best placed to manage any issues with supply arrangements. It is possible that End Customers could seek to pursue JGN in this situation, and therefore the User should provide an indemnity in JGN's favour.

12.3 THE USER'S LIABILITY POSITION UNDER THE RSA

106. As can be seen from the above, that the User's liability position under the revised RSA is essentially as follows:

1. the number of User-specific indemnities under the RSA has essentially been halved, with two of the remaining indemnities having been significantly reduced in scope – JGN has rationalised the indemnity provisions in the RSA. JGN is of the view that where these indemnities are required – they are in circumstances that are reasonable and justifiable, where the indemnities relate only to matters for which the User is directly responsible, and over which JGN has no control at all, or a limited ability to influence only (i.e. the User is best placed to manage any risks). JGN needs to rely on the User to comply with its contractual obligations relating to the subject matter of these indemnities, in circumstances where:
 - a) the User largely has no corresponding regulatory obligations or oversight
 - b) JGN is responsible for operating a complex distribution Network connecting over 1.2 million Customers and must do so in accordance with a comprehensive set of regulatory requirements.

It is therefore both appropriate and reasonable that the more important matters for which the User is directly responsible and on which JGN is reliant to be able to discharge its regulatory obligations and ensure the downstream supply of over those Customers, are made the subject of an indemnity in JGN's favour. Furthermore, JGN considers it important to highlight these obligations by locating them, as has been done in the current RSA, in their separate subject-specific clauses, rather than bundling together in one location.

2. the User's general indemnity in JGN's favour for Damages arising from the User's negligence, wilful misconduct or breach of the Agreement, is a standard and reasonable one and is matched by one from JGN to the User in the same terms (as is the case in the current RSA).
3. the User's liability to JGN under all of the above indemnities, for any other breach of the RSA and for User negligence is:
 - a) excluded to the extent that it is caused by JGN's own negligence or wilful misconduct
 - b) is otherwise subject to a fair and reasonable liability limitation under which (subject to (4) below) the User's liability for Consequential Damages (covering all relevant economic losses, such as loss of profits and business interruption) is excluded and the User's liability is accordingly limited to Direct Damages only.

This reflects a not atypical position often reached in service provider contracts between commercial parties of equal bargaining power. It is commercially a fair and reasonable limitation on the User's potential liability.

4. a small number of specific User responsibilities which are of particular importance to ensure the safe and reliable supply of gas through the Network are excluded from the scope of the User's liability limitation referred to in 3(b) above. These relate to the gas which the User contracts (upstream) to have delivered into JGN's Network meeting the specification and pressure requirements for the Network and complying with JGN's requirement to cease delivery (when required by JGN under the Agreement).

So, in summary, under the revised RSA, the User is only held liable for a small number of User-specific indemnities relating to matters for which the User is directly responsible and over which JGN has no control at all, or a limited ability to influence only (i.e. circumstances where the User is clearly best placed to manage any risks). Additionally, the User's liability under most of these indemnities is limited to liability for Direct Damages only. The exception to this is a discrete subset of specific User indemnities relating to the delivery of gas into the Network by the User. In JGN's view, it is fair and reasonable to exclude these specific matters from the scope of the liability limitation referred to above for the following reasons.

1. as indicated above, it is imperative that Users contract with their upstream suppliers to enable them to meet these requirements, as once the gas is delivered into JGN's Network, JGN has no capacity to alter the composition or pressure of that gas and the consequences for JGN and Customers are very significant
2. also, each individual User's potential exposure to claims resulting from breach of RSA with JGN is significantly more limited in scope than that of JGN and each User is accordingly well placed to readily and cost effectively insure itself against that exposure.

12.4 JGN'S LIABILITY POSITION UNDER THE RSA

107. As can be seen from sections 12.1 and 12.2 above, JGN's liability position under the revised RSA is essentially as follows.

1. the scope of express JGN liability limitation protections has been significantly rationalised. Provisions have been revised to clarify that they cover matters for which the User is directly responsible and over which JGN has no control. Accordingly, it is reasonable that JGN should not be liable for these matters
2. JGN provides the User with a general indemnity against Damages arising from JGN's negligence, wilful misconduct or breach of the Agreement (as provided under the current RSA). As indicated above, this matches the general indemnity by the User in JGN's favour and its terms are standard and reasonable
3. JGN's liability to the User under the above general indemnity, for any other breach of the RSA or for JGN negligence, is limited to the same extent and on the same terms as the liability limitation which applies to the User. So JGN's liability to the User is:
 - a) excluded to the extent that it is caused by the User's own negligence or wilful misconduct
 - b) subject to 4 below, is otherwise subject to a fair and reasonable liability limitation under which JGN's liability for Consequential Damages (covering all relevant economic losses, such as loss of profits and business interruption, for example) is excluded and JGN's liability is accordingly limited to Direct Damages only.

Again, this reflects a not atypical position often reached in service provider contracts between commercial parties of equal bargaining power.

4. for JGN, the delivery of off-specification gas to a Delivery Point, where caused by JGN's negligence or wilful default (for example, that might cause in-specification gas to become off-specification following its injection into the network), is expressly excluded from the above liability limitation.
108. So, in summary, under the revised RSA, JGN can be held liable by the User for all JGN RSA breaches as well as for JGN negligence and wilful misconduct relating to the provision of its services (under the general indemnity referred to above). JGN's scope of liability is limited to only Direct Damages, except in relation to the delivery of off-specification gas to a Delivery Point caused by JGN's negligence or wilful default.
109. In JGN's view it is fair and reasonable to seek to limit JGN's liability exposure to Users under the RSA to Direct Damages and to exclude liability for Consequential Damages (such as loss of profits and other economic losses) for the reasons set out below.
1. as previously noted, JGN has over 1.2 million Customers connected to its distribution Network and all of the major Retailers who sell gas to these Customers contract with JGN for delivery of this gas under JGN's RSA. Should a significant incident occur, there could be a large number of affected parties seeking to pursue JGN, for a wide array of loss types. . As such, JGN's potential exposure could be very substantial

2. to a certain extent, JGN's potential exposure to these claimants is now contained by the statutory liability caps now available to distributors under the NERL, as it now applies in NSW. Under these statutory caps, gas distributors (through the terms of their Customer Connection Contracts) are able to limit their liability to Customers for gas supply failures to a manageable level. However, the NERL affords no statutory protection for gas distributors against negligent supply failure claims by Retailers, except to the extent that the distributor provides for this in a contract with Retailers – such as the RSA. (JGN can provide further explanatory analysis of the operation of the statutory liability caps under the NERL in NSW if required)
3. depending on the nature and extent of an event, the totality of the potential scope of Retailer claims against JGN for RSA breaches is potentially very substantial. Accordingly it is not readily and cost effectively insurable. JGN can provide further information relating to these matters on a commercial in confidence basis, if required.