**Block 3 Outputs – 3 confidentiality**

**Appendix 1 – Proposed GTAC amendments**

1. **general and legal**

**Notices**

* 1. Subject to *section* *20.2*,all legal notices to be provided under this Code or any TSA (excluding all operational notifications required to be provided via OATIS, except where First Gas declares that OATIS is not operational) must be in writing and shall be deemed served if personally delivered (including via courier) or sent by registered mail or email to:
		1. in the case of First Gas, the contact set out below (or other contact First Gas may notify in writing):

Transmission Manager – Commercial
First Gas Limited
Level 6, Midland Chambers

45 Johnston Street
PO Box 865
Wellington 6011,

Email: [ ]@firstgas.co.nz; and

* + 1. in the case of a Shipper, the contact set out in its TSA (or other contact the Shipper may subsequently notify to First Gas in writing).
	1. Any legal notice sent:
		1. via OATIS; or
		2. by email shall expressly and prominently state that it is a formal notice for the purposes of this *section 20* (unless the sender receives an automatic response stating that the recipient’s email address does not exist or the email has not been successfully sent):
			1. if sent prior to 1600 on any Business Day, be deemed served on that Business Day; or
			2. if sent after 1600 on any Business Day, shall be deemed served on the next Business Day; or
		3. by registered mail shall be deemed served on the earlier of the date of receipt or on the second Business Day after the same was committed to post.

A notice concerning breach of this Code or any TSA must be sent by email.

**Confidential Information**

* 1. Confidential Information means:
		1. information provided by Shippers to First Gas (or vice versa) for the purposes of setting prudential requirements under *section 14*;
		2. a Shipper’s bids for Priority Rights prior to a PR Auction;
		3. a Shipper’s Transmission Charges, including the information used to calculate them;
		4. the substance, but not the fact or existence, of any dispute between a Shipper and First Gas where the substance relates to Confidential Information or the Parties agree in writing that it is confidential;
		5. documents or other information made available by a Party during a dispute resolution process;
		6. information provided by a Shipper in response to a First Gas tender for Gas;
		7. advice which is protected by legal professional privilege;
		8. information provided by a Shipper in relation to a customer or potential customer of that Shipper, including in relation to the availability of or provision of transmission capacity, that could be of value to any of the Shipper’s competitors; and
		9. any other material a Party wishes to disclose to the other Party on the basis that it is commercially sensitive confidential information and which the first-mentioned Party identifies in writing prior to actual disclosure of the information to the other Party is commercially sensitive confidential information (it being acknowledged that any such identification must relate to specific information provided to the other Party rather than general categories or types of information).
	2. First Gas shall have suitable procedures, protocols and systems in place at all times to ensure that Confidential Information it holds at any time is securely stored and available only to those First Gas employees who need access to it for or in connection with the operation or use of the Transmission System, and is not otherwise disclosed to third parties other than as permitted pursuant to this Code. Each Shipper shall ensure that Confidential Information it holds at any time is securely stored and available only to those of its employees who need access to it for or in connection with the operation or use of the Transmission System, and is not otherwise disclosed to third parties other than as permitted pursuant to this Code.
	3. Where disclosure of Confidential Information is made by the relevant Party to any third party pursuant to *section 20.10(c) or (i)*, the relevant Party is to ensure that appropriate steps are taken prior to any such disclosure to protect the confidentiality of any disclosed information consistent with the requirements of this *section 20*, including such third party entering into an appropriate form of confidentiality agreement or undertaking or otherwise being bound by appropriate professional obligations as to confidentiality.
	4. Any Shipper with a valid TSA or Interconnected Party with a valid ICA may appoint a reputable international firm of auditors, independent of themselves and First Gas, to carry out an independent audit of First Gas’ operating procedures if it reasonably believes First Gas has disclosed Confidential Information other than in accordance with the requirements of this Code. First Gas will allow such auditor access to First Gas’ records for this purpose, provided that:
		1. prior to conducting the audit, the auditor shall sign a confidentiality undertaking in a form reasonably acceptable to First Gas; and
		2. the person appointing the auditor shall pay all costs and expenses of the auditor and the audit.
	5. The results of any audit carried out pursuant to *section 20.6* shall be provided to the person appointing the auditor and to First Gas at the same time by way of a draft report (which shall include a summary section). The auditor shall have due regard to any comments provided by First Gas in relation to the findings of the audit and as soon as reasonably practicable thereafter issue its final report to the appointing person and First Gas. First Gas shall publish the summary section of the final report on OATIS as soon as reasonably practicable thereafter.
	6. First Gas, acting as a Reasonable and Prudent Operator, shall consider, and where appropriate use its reasonable endeavours to implement, any recommendations made in the final report provided by the auditor.
	7. The existence and terms of a TSA are not Confidential Information. Notwithstanding anything in this Code to the contrary, no Party shall be required to disclose information that it is precluded from disclosing by law or third party contractual confidentiality obligations.
	8. First Gas or the relevant Shipper (as applicable) may use or disclose Confidential Information to the extent that:
		1. the information is in the public domain, other than by a breach of this Code by First Gas or the relevant Shipper (as applicable);
		2. the information was already known to First Gas or the relevant Shipper (as applicable) and was not then subject to any obligation of confidentiality;
		3. disclosure to a professional advisor(s) or consultant(s) on a need to know basis is required, including for the purposes of analysing any request relating to the availability or provision of transmission services;
		4. disclosure is necessary to maintain the safety and reliability of the Transmission System, or is required to give effect to the relevant TSA, a Supplementary Agreement, Existing Supplementary Agreement, Interconnection Agreement or an Existing Interconnection Agreement to which the Confidential Information relates;
		5. the Code, any Interconnection Agreement or any Existing Interconnection Agreement contemplates or requires the disclosure or provision of information (or information or analysis derived from such information) on OATIS or otherwise contemplates or requires the disclosure of such information;
		6. use or disclosure is required by law (including information disclosure requirements and/or the listing rules of a recognised stock exchange) or any order of a competent court;
		7. the other Party has consented in writing to the use or disclosure;
		8. the information is obtained from a third party, whom First Gas or the relevant Shipper (as applicable) believes, in good faith, to be under no obligation of confidentiality;
		9. disclosure is to the auditors of First Gas or the relevant Shipper (as applicable); or
		10. disclosure is required pursuant to the resolution of any dispute under this Code.

**Information on OATIS**

* 1. First Gas will provide each Shipper and Interconnected Party with the required permissions they need to access OATIS for any purpose relating to this Code. Every party who accesses OATIS shall agree to the terms and conditions of access to and use of OATIS, as set out on OATIS.
	2. Each Shipper is solely responsible for ensuring it has the required information technology to access OATIS.
	3. First Gas will use OATIS to publish operational and other information required under this Code. Schedule Two is a summary of the information, as at the date of this Code, that First Gas will publish on OATIS. The Parties acknowledge and agree that:
		1. Schedule Two is not necessarily an exclusive list of the information First Gas may publish;
		2. First Gas will be under no obligation to continue to publish information that (in its reasonable opinion) is no longer relevant, useful or necessary but will give all Shippers and Interconnected Parties 10 Business Days’ before discontinuing publication of any information;
		3. First Gas may amend Schedule Two at any time to reflect changes in the Code, without the need for a Change Request, provided it notifies all Shippers and Interconnected Parties; and
		4. to the extent a Shipper fails to comply with its obligations under this Code as a direct result of First Gas not publishing information that the Shipper needs in order to do so (excluding any information not generated by First Gas itself and which is not made available to First Gas to publish) then, to the extent of that failure, the Shipper shall be relieved of liability.

**Waiver**

* 1. No failure, delay or indulgence by a Party in exercising any power or right conferred on that Party by a TSA will operate as a waiver of that power or right.

**Entire Agreement**

* 1. Each TSA constitutes the entire agreement between the Parties from the Commencement Date in relation to the subject matter of that TSA and supersedes all prior negotiations, representations and agreements between the Parties in relation to its subject matter.

**Exclusion of Implied Terms**

* 1. All terms and conditions relating to a TSA that are implied by law or custom are excluded to the maximum extent permitted by law.

**Severability**

* 1. If any section or provision of this Code is held to be illegal or unenforceable by any judgment of any Court or tribunal having competent jurisdiction, that judgment shall not affect the remaining provisions of this Code, which shall remain in full force and effect as if that illegal or unenforceable section or provision had not been included in this Code, but only if severance does not materially affect the purpose of, or frustrate, this Code, in which case the severed section or provision shall be modified to the extent necessary to render it legal, valid and enforceable and to reflect the economic and operational effect of the severed section or provision to the maximum extent practicable.

**Exclusion of Consumer Legislation**

* 1. The Parties acknowledge and agree that, in relation to a TSA:
		1. the Parties are in trade and agree to contract out of the provisions of the Consumer Guarantees Act 1993, and it is fair and reasonable to do so; and
		2. the provisions of sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 shall not apply to the obligations of the Parties, and that it is fair and reasonable that the Parties contract out of those provisions.

**Contractual Privity**

* 1. A TSA shall not, and is not intended to, confer any benefit on, or create any obligation enforceable at the suit of, any person who is not a Party to that TSA.

**Assignment**

* 1. A Shipper must not assign or transfer any of its rights or obligations under a TSA unless it has obtained First Gas’ prior written consent, which must not be unreasonably withheld or delayed.
	2. First Gas must not assign or transfer any of its rights or obligations under any TSA, unless it can reasonably demonstrate that the assignee is capable of meeting First Gas’ obligations under that TSA.
	3. Where a Party (*Assignor*) assigns or transfers a TSA, the Assignor shall remain liable to the other Party to the TSA for the due performance of all obligations arising under that TSA prior to the date of assignment as primary obligor and not merely as surety or guarantor only, unless that other Party has given its prior written consent to the release of the Assignor from its obligations.
	4. Prior to any assignment or transfer of a TSA, the Assignor must obtain execution by the assignee of a deed of covenant, in favour of the other Party to that TSA, binding the assignee to perform all the Assignor’s obligations under that TSA.
	5. Notwithstanding any assignment, the assignor shall remain liable for any amounts payable by it under the TSA up to the end of the Month during which the assignment takes effect.

**Governing Law**

* 1. Each TSA shall be construed and interpreted in accordance with the law of New Zealand and the Parties submit to the non-exclusive jurisdiction of the New Zealand courts.