

REGISTRY SYSTEM DEVELOPMENT AND ESTABLISHMENT AGREEMENT

between

GAS INDUSTRY COMPANY LIMITED

and

JADE SOFTWARE CORPORATION (NZ) LIMITED

dated 1 September 2008

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THIS AGREEMENT

BETWEEN **GAS INDUSTRY COMPANY LIMITED** a company registered under the Companies Act 1993 with its registered office at Level 9, State Insurance Tower, 1 Willis Street, Wellington (**Gas Industry Co**)

AND **JADE SOFTWARE CORPORATION (NZ) LIMITED** a company registered under the Companies Act 1993 with its registered office at 19 Sheffield Crescent, Christchurch (**Service Provider**)

BACKGROUND

- A.** Gas Industry Co has selected the Service Provider as its preferred supplier of the Registry System.
- B.** The Service Provider has agreed to supply a Registry System to Gas Industry Co in accordance with this Agreement and the Rules.

1. DEFINITIONS AND INTERPRETATION**1.1 Definitions**

In this Agreement, unless the context requires otherwise:

Acceptance Certificate means, in respect of the Registry System, a written notice from Gas Industry Co to the Service Provider recording that Gas Industry Co is satisfied that the Acceptance Criteria for the Registry System have been met;

Acceptance Criteria means:

- (a) in respect of a Key Milestone, the following criteria:
 - (i) the relevant Acceptance Tests are passed;
 - (ii) the components of the Registry System being tested materially comply with their Specifications; and
- (b) in respect of final acceptance testing for the Registry System, the following criteria:
 - (i) the Registry System materially complies with the Specifications; and
 - (ii) all warranties set out in clause 17 are true and correct;

Acceptance Tests means the acceptance tests recorded or specified in schedule 5 or as otherwise mutually agreed in writing by the parties;

Acceptance Test Plan means the plan for the Acceptance Tests for the Registry System recorded or specified in schedule 5, or as otherwise mutually agreed in writing by the parties;

Agreement means this agreement and the schedules to this agreement;

Best Industry Practice means, in relation to any activity or service, the best practice or standard (recognised nationally or internationally) for that type of activity or service (in terms of quality, productivity, effectiveness and performance);

Business Day means Monday to Friday, excluding any day which is a public holiday in Wellington for the purposes of the Holidays Act 2003;

Business Hours means between the hours of 08:30 to 17:00 on a Business Day;

Change has the meaning set out in clause 1 of schedule 8;

Change Control Process means the process set out in schedule 8;

Change Request has the meaning set out in clause 2 of schedule 8.

Commencement Date means the date of this Agreement;

Compliance Regulations means the Gas Governance (Compliance) Regulations 2008 published in the New Zealand Gazette on 14 August 2008;

Confidential Information means, in relation to either party, any information (in any form whether written, electronic or otherwise):

- (a) that is confidential to that party and relating to the Deliverables and the Services;
- (b) relating to the business, operations, facilities or Intellectual Property of that party or its suppliers or customers;
- (c) disclosed by that party to the other party on the express basis that such information is confidential
- (d) in relation to the Service Provider, includes information obtained by Gas Industry Co during an audit under clause 10; or
- (e) which might reasonably be expected by that party to be confidential in nature,

and, in relation to Gas Industry Co, includes information (in any form whether written, electronic or otherwise) relating to Participants. Confidential Information does not include information that is:

- (f) at the date of receipt by either party, in the public domain or that subsequently enters the public domain without any breach of this Agreement;
 - (g) at the date of receipt by either party, already known to that party;
 - (h) received in good faith by either party from a third party without an obligation of confidentiality;
 - (i) agreed by either party in writing to be information to which this Agreement does not apply; or
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- (j) independently acquired or developed by either party without breaching their respective obligations under this Agreement;

CPI means the official New Zealand Consumer Price Index;

Data means any information (including information in electronic form or transferred into electronic form by the Service Provider) which the Service Provider:

- (a) held under this Agreement or the Operating Agreement; and
- (b) directly or indirectly received from or provided to gas industry Participants or the Gas Industry Co in relation to this Agreement;

Deliverable means any deliverable to be supplied by the Service Provider to Gas Industry Co under this Agreement, including any specified in schedule 1, and including each item of Software and Documentation;

Detailed Business Requirements Specification means the detailed specification that defines the business requirements that the Software will be delivered to as set out in Part A of Schedule 2;

Detailed Non-Functional Requirements Specification means the detailed specification that defines the non-functional requirements that the Software will be delivered to as set out in Part B of Schedule 2;

Documentation means any document which the Service Provider must prepare and/or deliver to Gas Industry Co in accordance with schedule 1;

Error means, in respect of the Registry System, any failure to comply with the Acceptance Criteria;

Fees mean the fees set out in schedule 7, which are payable by Gas Industry Co to the Service Provider;

Force Majeure means, in relation to either party (the "**Affected Party**"), an event or circumstance which is beyond the reasonable control of the Affected Party, including (without limitation):

- (a) an act of God;
- (b) an act of public enemy, or declared or undeclared war or threat of war;
- (c) a terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration (other than one caused by the Affected Party); and
- (d) a national emergency, pandemic, epidemic and loss of supply of essential services, including electrical power and telecommunication services,

but does not include any event or circumstance which could have been avoided, prevented or circumvented by the Affected Party exercising Best Industry Practice;

Gas Industry Co Documentation means the Specification documentation;

GST means goods and services tax payable under the Goods and Services Tax Act 1985, at the rate prevailing at the time of supply;

Impact Assessment has the meaning set out in clause 3 of schedule 8;

Implementation Plan means the Implementation Plan set out in schedule 4;

Intellectual Property means patents, registered designs, petty patents, utility models, trade marks (including logos and trade dress), domain names, copyright, circuit layouts, rights in computer software and databases, rights in inventions, confidential information, know-how and trade secrets and all other intellectual property, in each case whether registered or unregistered (including applications for the grant of any of the foregoing) and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world;

IP Claim has the meaning set out in clause 14.2;

JADE means a released version of the Service Provider's object orientated software and Documentation, known as JADE™, in which the Software is written including all necessary schemas and any associated documentation and any new JADE release or part thereof provided to the Gas Industry Co by the Service Provider;

JADE Development Environment means the development environment that contains the source code for the Registry System and such runtime applications that are generated from that source code for development, test, acceptance testing and production requirements.

JADE Process means the number of concurrent connections to the JADE object manager. A JADE Process is required for each JADE web service client. Multiple end users can be logged onto a single JADE web service client. The Software will require a certain number of JADE processes for it to initiate and run required background tasks (such as reporting, backups and file processing);

Key Milestone means a milestone for which Acceptance Tests are specified in the Acceptance Test Plan;

Key Person means a person specified as such in schedule 6, or any person appointed as a replacement under clause 4.5;

Law means any rules of common law, statute, regulation, by-law, ordinance or subordinate legislation in force from time to time and, in the case of the Service Provider, includes any applicable industry codes of conduct and any contract or other enforceable obligation of the Service Provider relating to the Deliverables and Services;

Go-Live Date means 1 March 2009, or such earlier date as is mutually agreed to by both parties, or such later date as is agreed to by Gas Industry Co and the Service Provider under Change Control;

Licence has the meaning set out in clause 15.1 and 15.2;

Milestone means a milestone recorded in the Implementation Plan;

Milestone Date means a date by which a Milestone must be achieved, as specified in the Implementation Plan;

Operating Agreement means the Register Operator Service Provider Agreement between the Service Provider and Gas Industry Co, which relates to the operation of the Registry System.

Participant has a similar meaning to the definition in the Rules;

Personnel means:

- (a) in relation to Gas Industry Co, Gas Industry Co's personnel (including its representatives, employees and agents); and
- (b) in relation to the Service Provider, the Service Provider's and each Subcontractor's personnel (including their representatives, employees and agents) used to provide any Deliverables;

Processed Data means Data which has been processed by the Service Provider by the Software or by other means pursuant to this Agreement or the Rules;

Project Delay has the meaning set out in clause 6.3;

Project Manager has the meaning set out in clause 4.2;

Registry means the database facility (including all relevant hardware and software) that meets the requirements set out in rule 38 of the Rules and schedule 2 of this Agreement;

Registry System means the Registry system as described in the Detailed Business Requirements Specification and the Detailed Non-Functional Requirements Specification;

Registry Technical Documentation means the documentation as set out in Part B of Schedule 1;

Registry User Guide means the documentation as set out in Part A of Schedule 1;

Rules mean the Gas (Switching Arrangements) Rules 2008as gazetted by the Minister of Energy on 14 February 2008;

Services mean the implementation, training services, and/or other services provided by the Service Provider under this Agreement from time to time, including those described in schedules 1 and 3;

Service Provider Documentation means any other documentation created in providing the Deliverables and Services other than the Gas Industry Co Documentation. This includes the Registry Technical Documentation and the Registry User Guide;

Site means, in relation to the Deliverables and the Services, the premises for delivery of the relevant Deliverable and/or provision of the relevant Service (as the case may be);

Software means software that is used to operate the Registry System, whether or not it has been specifically developed for that purpose;

Source Materials means the source code for the Software, including the algorithms, and the Documentation;

Specifications means the Detailed Business Requirements Specification and the Detailed Non-Functional Requirements Specification;

Standard Daily Rates means the daily rates for defined roles as set out in Schedule 7;

Subcontractor means any third party appointed by the Service Provider to supply any of the Deliverables and/or perform any of the Services;

Third Party Software means any software belonging to a third party that is used in conjunction with the Software including any software that is set out in Schedule 10;

Warranty Period means in relation to the Software, the 90 calendar day period commencing on the Go-Live Date.

1.2 Interpretation

Capitalised terms: capitalised terms in this Agreement which are not defined in this Agreement but which are defined in the Rules have the meanings given to them in the Rules;

Monetary amounts: all monetary amounts are stated exclusive of GST and in New Zealand dollars;

GST: GST is payable at the same time and in the same manner as is any other amount payable under this Agreement, where that amount is subject to GST under the Goods and Services Act 1985;

Expressions: expressions defined in the main body of this Agreement have the defined meaning in the whole of this Agreement including the background;

Headings: sections, clauses and other headings are for ease of reference only and will not affect the interpretation of this Agreement;

Obligation: any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

Reference to party: references to any "party" are to a party to this Agreement and include that party's successors, executors, administrators and permitted assignees including any person taking over by way of novation (as the case may be);

Reference to person: references to a "person" include an individual, firm, company, corporation or unincorporated body of persons, any public, territorial or regional authority, any government, and any agency of any government or of any such authority;

Singular and plural: the singular includes the plural and vice versa;

Conflict within Agreement: if there is any conflict between the documents which are part of this Agreement, the order of precedence will be as follows:

- (a) the terms of the body of this Agreement;
- (b) the schedules to this Agreement.

References to clauses and schedules: references to clauses and schedules are to clauses in, and the schedules to, this Agreement, and each schedule forms part of this Agreement and, subject to the Conflict provision above, has effect as if set out in the body of this Agreement;

Control: references to one person being "**controlled**" by another person mean that the other person (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) has the power to:

- (a) appoint and/or remove the majority of the members of the governing body of that person;
- (b) appoint a member or members of the governing body of that person, with the power to exercise, or control the exercise of, more than 50% of the maximum number of votes that might be cast at a meeting of the governing body or the members of that person; or
- (c) control, by any other means, the affairs and policies of that person,

and, "**control**" and "**change in control**" have corresponding meanings;

References to documents: references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time;

Statutory provision: references to any statutory provision include any statutory provision which amends or replaces it and any subordinate legislation made under it;

Grammatical forms: other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a meaning corresponding to the meaning of the defined word or phrase;

Including: wherever the words "includes" or "including" (or similar words) are used, they are deemed to be followed by the words "without limitation"; and

Approvals: where there is any reference in this Agreement to something being subject to the approval or consent of a party, unless expressly stated otherwise, such approval or consent will not be unreasonably withheld or delayed.

2. APPOINTMENT

Gas Industry Co appoints the Service Provider, and the Service Provider agrees, to provide the Deliverables and the Services on the terms and conditions set out in this Agreement.

3. PERFORMANCE

- 3.1 **Service Provider obligations:** In providing the Deliverables and/or Services and otherwise complying with its obligations under this Agreement, the Service Provider must:
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- 3.1.1 Comply with the Rules, including undertaking all of the duties and obligations of the Registry Operator under the Rules;
 - 3.1.2 identify and provide all personnel, resources and processes required to provide the Deliverables and the Services in accordance with this Agreement;
 - 3.1.3 act with care, skill and diligence and in accordance with Best Industry Practice;
 - 3.1.4 comply with the timeframes and other requirements set out in this Agreement;
 - 3.1.5 keep Gas Industry Co fully advised of progress and changes or possible changes to the scope or timing of the provision of the Deliverables and Services;
 - 3.1.6 provide such assistance and information to Gas Industry Co as is necessary to enable Gas Industry Co (acting reasonably) to obtain the full benefit of the Deliverables and the Services, taking into account the fact that, because of Gas Industry Co's function, it will benefit from the Registry System working well for those that use the Registry System, even though Gas Industry Co will not, itself, use the Registry System;
 - 3.1.7 at all times deal, and fully co-operate, with Gas Industry Co in good faith, and do such things and sign such documents as are reasonably required for the provision of the Deliverables and the Services;
 - 3.1.8 not damage the reputation or goodwill of Gas Industry Co;
 - 3.1.9 comply with all reasonable directions notified by Gas Industry Co in writing from time to time (to the extent that such directions are not inconsistent with any express provision of this Agreement);
 - 3.1.10 comply with all Law and obtain and maintain, at its cost, all licences, approvals, permits and authorisations required by Law in order for it to provide the Deliverables and the Services and otherwise perform its obligations under this Agreement, provided that, for the purposes of this paragraph 3.1.10, the term "Law" shall not include the Rules; and
 - 3.1.11 promptly notify Gas Industry Co of any breach of the Service Provider's obligations under this Agreement or any matter which may impact on the Service Provider's ability to perform its obligations under this Agreement.
- 3.2 **Gas Industry Co obligations:** Gas Industry Co must:
- 3.2.1 co-operate with the Service Provider and its Personnel in relation to the provision of the Deliverables and the Services;
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- 3.2.2 identify and provide all personnel, resources and processes required to meet the obligations of Gas Industry Co in accordance with this Agreement;
- 3.2.3 at all times deal with the Service Provider in good faith, and do such things and sign such documents as are reasonably required by the Service Provider to enable it to provide the Deliverables and the Services;
- 3.2.4 ensure that in meeting the obligations under clause 3.2.2 that Gas Industry Co acts with care, skill and diligence and in accordance with Best Industry Practice;
- 3.2.5 comply with the timeframes and other requirements set out in this Agreement;
- 3.2.6 keep the Service Provider fully advised of progress and changes or possible changes to the scope or timing of the provision of the Deliverables and Services;
- 3.2.7 promptly notify the Service Provider of any breach of Gas Industry Co's obligations under this Agreement or any matter which may impact on Gas Industry Co's or the Service Provider's ability to perform their obligations under this Agreement;
- 3.2.8 comply with any Software licence terms, provided that they are clearly communicated to it by the Service Provider, including the software licence terms in clause 15;
- 3.2.9 provide such assistance and information to the Service Provider as is reasonably requested and is necessary to enable the Service Provider to perform its obligations under this Agreement;
- 3.2.10 comply with all Law and obtain and maintain, at its cost, all licences, approvals, permits and authorisations required by Law in order for it to be the recipient of the Deliverables and the Services and perform its obligations under this Agreement; and
- 3.2.11 not damage the reputation or goodwill of the Service Provider.

4. PERSONNEL

- 4.1 **Personnel requirements:** Both Parties must:
 - 4.1.1 use an adequate number of Personnel to provide the Deliverables and Services; and
 - 4.1.2 ensure that all of its Personnel are properly educated, trained, skilled, experienced and fully qualified for the obligations they perform.
 - 4.2 **Project Managers:** Each party will, immediately following the Commencement Date, appoint a project manager ("Project Manager") who will:
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- 4.2.1 serve as the primary point of contact with the other party; and
 - 4.2.2 have overall responsibility for the performance of that party's obligations under this Agreement.
- 4.3 **Replacement:** Each party may replace its Project Manager from time to time provided it gives prior written notice of such replacement to the other party.
- 4.4 **Key Person:** The Service Provider shall make reasonable endeavours to ensure that each Key Person is available to perform the relevant functions assigned to him or her and otherwise in accordance with this Agreement.
- 4.5 **Replacement Key Person:** Without limiting clause 4.4, as far as reasonably practicable the Service Provider may replace a Key Person only if:
 - 4.5.1 the Service Provider has given Gas Industry Co reasonable written notice of the proposed replacement, such notice to include full details of the replacement for the Key Person (including an up-to-date curriculum vitae);
 - 4.5.2 Gas Industry Co has approved the replacement for the Key Person (such approval will not be unreasonably withheld or delayed);
 - 4.5.3 the Service Provider bears all costs relating to replacing that Key Person and upskilling the replacement Key Person; and
 - 4.5.4 the Service Provider, if required by Gas Industry Co, agrees on a transition plan with Gas Industry Co for the replacement Key Person and manages the replacement in accordance with such plan.

5. RELATIONSHIP MANAGEMENT

- 5.1 **Meetings:** The Project Managers will meet, at no less than fortnightly intervals via conference calls or if mutually agreed in person, to:
 - 5.1.1 monitor progress of the Service Provider in providing the Deliverables and the Services;
 - 5.1.2 review resource needs and detail timing for upcoming tasks;
 - 5.1.3 as far as they are able, settle and agree any issues arising in the course of providing the Deliverables and/or the Services, and review risks and agree risk management actions; and
 - 5.1.4 monitor compliance by each party of any other of their respective obligations under this Agreement,

provided that Gas Industry Co may, in its reasonable discretion, direct that such meetings be held more or less frequently.

- 5.2 **Reporting:** The Service Provider must provide reports at the frequency, and containing the detail set out in schedule 9.

6. IMPLEMENTATION

- 6.1 **Implementation:** The Service Provider will implement the Registry System in accordance with the Implementation Plan.
- 6.2 **Completion of Milestones:** Each Milestone in the Implementation Plan will be deemed complete when Gas Industry Co agrees, acting reasonably, that it has been successfully completed based on the timelines set out in the Implementation Plan and this Agreement.
- 6.3 **Failure to complete Milestones:** Without limiting any other rights or remedies of Gas Industry Co, if the Service Provider fails to complete a Milestone by the relevant Milestone Date and the failure is not caused by a failure by Gas Industry Co to meet its obligations under this Agreement or by some circumstance outside of the Service Provider's reasonable control (a **Project Delay**):
- 6.3.1 the Service Provider will, immediately following the earlier of the Project Delay occurring or it becoming aware of the Project Delay, provide full details of the Project Delay to Gas Industry Co in writing;
 - 6.3.2 the Service Provider will (at its own cost) immediately take all reasonable steps available to it to avoid and minimise the effects of the Project Delay;
 - 6.3.3 the parties will, if requested by Gas Industry Co, meet to review in good faith the reasons for the Project Delay;
 - 6.3.4 the Service Provider will, if requested by Gas Industry Co, promptly prepare a comprehensive rectification plan setting out how it intends to complete the relevant Milestone, the relevant timeframes for such completion, what action it will take to avoid further Project Delays and any other details reasonably required by Gas Industry Co, and will submit such plan to Gas Industry Co for approval; and
 - 6.3.5 the Service Provider will, if requested by Gas Industry Co, comply with any rectification plan submitted by the Service Provider under clause 6.3.4, together with any reasonable modifications to the rectification plan or other reasonable requirements notified by Gas Industry Co.
- 6.4 **Early Notice:** If the Service Provider becomes aware that it is likely to fail to complete a Milestone by the relevant Milestone Date it shall promptly inform Gas Industry Co of the likely delay.
- 6.5 **Material Breach:** For the avoidance of doubt, the failure to complete a Milestone by the relevant Milestone Date is a material breach of this Agreement for the purposes of clause 13.1.2. if the failure is not caused by a failure by Gas Industry Co to meet its obligations under this Agreement or by some circumstance outside of the Service Provider's reasonable control.
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- 6.6 **Gas Industry Co Delay:** If any, or any anticipated, failure or delay by the Service Provider in performing its obligations under this clause 6 has been caused by a breach or non performance of this Agreement by Gas Industry Co, the Milestones shall be adjusted to take account of the delay caused by such breach or non performance. The parties shall negotiate such adjustments in good faith under the Change Control Process, provided that either party may at any time invoke the dispute resolution process set out in clause 21 and the adjustments shall be determined in accordance with that process.

7. ACCEPTANCE AND TESTING

- 7.1 **Acceptance Tests:** Gas Industry Co will, following notification by the Service Provider that a Key Milestone is complete, or that the implementation of the Registry System is complete, conduct Acceptance Tests in accordance with the Acceptance Test Plan. The Service Provider will provide such assistance as is reasonably required by Gas Industry Co in relation to the Acceptance Tests.
- 7.2 **Successful completion:** If the Acceptance Tests demonstrate to the satisfaction of Gas Industry Co (acting reasonably) that the Acceptance Criteria have been met, Gas Industry Co will complete, sign and provide to the Service Provider an Acceptance Certificate within 5 Business Days. Gas Industry Co will not unreasonably withhold or delay the provision of this Acceptance Certificate.
- 7.3 **Unsuccessful completion:** If the Acceptance Tests carried out under clause 7.1 do not demonstrate to the satisfaction of Gas Industry Co (acting reasonably) that the Acceptance Criteria have been met, Gas Industry Co will promptly notify the Service Provider of the details of such failure and the Service Provider will, as soon as is reasonably practicable, remedy any relevant failures or deficiencies so that the Acceptance Criteria are met.
- 7.4 **Repeat Acceptance Tests:** The Service Provider will immediately notify Gas Industry Co in writing when it has completed the remedial work under clause 7.3 and Gas Industry Co will, promptly after receipt of such notification, repeat the applicable Acceptance Tests.
- 7.5 **Continued Acceptance Tests:** The process set out in clauses 7.3 and 7.4 may, at the request of Gas Industry Co, be repeated, until the Acceptance Tests demonstrate to the satisfaction of Gas Industry Co (acting reasonably) that the Acceptance Criteria have been met.
- 7.6 **Delay:** Any rights and remedies that Gas Industry Co may have under this Agreement or otherwise for any failure or delay by the Service Provider in performing its obligations under this clause 7 will not apply to the extent that such failure or delay is caused by:
- 7.6.1 an action or inaction of Gas Industry Co which results in a breach or non performance of this Agreement by Gas Industry Co;
 - 7.6.2 the performance or not of the telecommunications networks of third party network providers;
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7.6.3 an inherent defect in any third party software of which the Service Provider could not, by using its best endeavours, be expected to be aware.

7.7 **Acceptance Certificate:** The issue by Gas Industry Co of any Acceptance Certificate will not release the Service Provider from its obligations under this Agreement, including the warranties set out in clause 17 and does not prevent Gas Industry Co from claiming at a later date that the Acceptance Criteria have not been met for items that could not have reasonably been identified as requiring testing at time of the Acceptance Tests.

8. LATEST SOFTWARE

8.1 The Service Provider will ensure that the Software is delivered using the latest version of the any of the software components that are in common in use.

9. CHANGE

9.1 **Change Control Process:** If:

9.1.1 Gas Industry Co requires any new deliverables or services that are not within the scope of this Agreement; or

9.1.2 either party proposes any change to the Deliverables and/or the Services (including any changes to the nature or scope of the Deliverables or the Services or to the timing of the delivery of the Deliverables or the Services) and such change cannot be accommodated by another process in this Agreement, ("Change") the parties will comply with the Change Control Process in respect of each such Change.

9.2 **Development:** The Service Provider acknowledges that Gas Industry Co may look to significantly develop the Registry System after the Go-Live Date. Although the Service Provider shall not unreasonably refuse a request for a Change to give effect to such developments, any such developments must comply with the Change Control Process. Such Changes will be completed under the Operating Agreement.

10. DOCUMENTATION, RECORDS AND AUDIT

10.1 **Requirements for Documentation:** The Service Provider will supply Gas Industry Co with the Documentation in accordance with the requirements set out in schedule 1. The Documentation must:

10.1.1 contain sufficient information for the full and efficient operation of the relevant Deliverables and/or Services to which the Documentation relates in the manner contemplated by Gas Industry Co;

10.1.2 correctly represent the attributes of the subject matter to which it relates;

- 10.1.3 provide proper and adequate instructions for its intended purpose; and
 - 10.1.4 be written or delivered in English and at a level appropriate for the intended audience.
 - 10.1.5 For the avoidance of doubt the Documentation is based on the Service Provider's pre-existing Registry Documentation. The Documentation has been enhanced to reflect the requirements as set out in the Detailed Business Requirements Specification and has been reviewed to ensure it is correct.
- 10.2 **Maintenance of records:** The Service Provider will ensure that it, and where appropriate all of its Subcontractors, at all times create and maintain proper and complete records and documentation relating to all elements of the Deliverables and the Services, including those records and Documentation required by this Agreement (as per clause 10.1) to be created and maintained by the Service Provider. The Service Provider must ensure that it and, where appropriate, all of its Subcontractors maintain such records and documentation to a standard and containing sufficient detail to allow an experienced information technology service provider to use the Deliverables and to perform the Services or any similar services in the event the Service Provider ceases to do so in whole or in part.
- 10.3 **Availability of records:** The Service Provider will, immediately upon receipt of a request from Gas Industry Co, provide to Gas Industry Co any relevant records and documentation that the Service Provider or any Subcontractor is required to maintain under clause 10.2.
- 10.4 **Audits:** The Service Provider:
- 10.4.1 must allow Gas Industry Co and its Personnel access to the Service Provider's Personnel and premises during Business Hours; and
 - 10.4.2 must allow Gas Industry Co and its Personnel to inspect and copy the Service Provider's accounts, records and documentation relating to the Deliverables and/or the Services,
- for the purposes of Gas Industry Co auditing the Service Provider's compliance with this Agreement and/or in order for Gas Industry Co to comply with any Law, provided that Gas Industry Co must:
- 10.4.3 provide the Service Provider with reasonable prior written notice of any proposed audit, including the proposed time for the audit, the name of the auditor and how Gas Industry Co intends to conduct the audit;
 - 10.4.4 obtain the Service Provider's agreement (such agreement not to be unreasonably withheld) regarding the date for the audit and how the audit is to be conducted; and,
 - 10.4.5 conduct the audit in a manner and at a frequency that does not unreasonably disrupt the Service Provider's business or Personnel.
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- 10.5 **Assistance:** For the purposes of complying with clause 10.4, the Service Provider will promptly and efficiently give Gas Industry Co and its Personnel such assistance as is reasonably required by Gas Industry Co for the purposes of auditing the Service Provider under clause 10.4.
- 10.6 **Subcontractors:** The Service Provider will ensure that each of its Subcontractors give Gas Industry Co the same rights, and agrees to fulfil the same obligations to Gas Industry Co as set out in clauses 10.1 to 10.4.
- 10.7 **Costs of audit:** Both parties will meet their own costs if an audit is carried out under clause 10.4 for one audit a year. Unless it is proven that the Service Provider is materially non-compliant under clause 10.4 then the Service Provider will be able to charge the Gas Industry Co for any subsequent audits in the same year.

11. FEES

- 11.1 **Fees:** Gas Industry Co must pay the Fees to the Service Provider for the Services and Deliverables in accordance with the payment terms set out in clause 12 and schedule 7.
- 11.2 **Fixed Charges:** Unless specifically referenced in Schedule 7 the Fees are the total amount payable by Gas Industry Co for the relevant Deliverables and/or Services to be provided under this Agreement. All costs and expenses relating to the supply of the Deliverables and the provision of the Services, and the Service Provider's performance of its obligations under this Agreement, are the sole responsibility and expense of the Service Provider unless Gas Industry Co has expressly agreed to pay for them in this Agreement.

12. INVOICING AND PAYMENT

- 12.1 **Invoicing:** The Service Provider must issue an invoice for any instalment of the Fees only upon supply of the Deliverables and/or Services to which that instalment relates based on the payment Milestones set out in Schedule 7.
- 12.2 **General invoicing requirements:** Each invoice submitted to Gas Industry Co under this Agreement, in order to be validly issued for the purposes of this Agreement, must:
- 12.2.1 be in the form of a valid tax invoice for GST purposes;
 - 12.2.2 be delivered by the means of communication requested by Gas Industry Co from time to time;
 - 12.2.3 describe in adequate detail the Deliverables and/or the Services that are the subject of the invoice and the timing of the provision of such Deliverables and/or the Services; and
 - 12.2.4 be in the format specified by written notice given by Gas Industry Co to the Service Provider from time to time.
- 12.3 **Disputed invoices:** Where Gas Industry Co disputes any portion of any amount appearing as payable on an invoice issued by the Service Provider to Gas Industry Co under this Agreement:
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- 12.3.1 Gas Industry Co will notify the Service Provider of such dispute at the earliest reasonable opportunity; and
- 12.3.2 Gas Industry Co must pay the undisputed portion of the invoice on its due date, but will not be obliged to pay the disputed portion of that invoice until the parties' dispute has been resolved by agreement between the parties or, in the absence of such agreement, in accordance with clause 21.
- 12.4 **Payment:** Any valid invoice received by Gas Industry Co from the Service Provider will be payable on the 20th day of the month following the month in which the invoice is received by Gas Industry Co. Gas Industry Co will not be required to pay any invoice which is not valid for the purposes of this Agreement.
- 12.5 **Tax:** Other than GST, the Service Provider will be responsible for all taxes, levies or duties assessed on, or in relation to, the Service Provider's supply of the Deliverables and provision of the Services.

13. TERMINATION

- 13.1 **Termination by Gas Industry Co:** In addition to any other right or remedy conferred on Gas Industry Co under this Agreement or by Law, Gas Industry Co may terminate this Agreement and/or the Licence at any time and with immediate effect by written notice to the Service Provider if:
 - 13.1.1 the Service Provider has failed to comply with an earlier written notice given by Gas Industry Co:
 - (a) specifying a material breach of this Agreement by the Service Provider; and
 - (b) requiring that the Service Provider remedy that breach within 10 Business Days after receipt of that earlier notice;
 - 13.1.2 the Service Provider has committed a material breach of this Agreement which is not reasonably capable of being remedied by the Service Provider within 10 Business Days;
 - 13.1.3 the Service Provider goes into liquidation; has a receiver, administrator or statutory manager appointed in respect of itself or any material part of its assets; becomes unable to pay its debts as they fall due; is presumed under section 287 of the Companies Act 1993 to be unable to pay its debts; is removed from the New Zealand Companies Register; or if any event analogous in nature has occurred in respect of the Service Provider under any other Law of any jurisdiction;
 - 13.1.4 the Service Provider suspends, for 10 Business Days or longer, or ceases its principal business undertaking without Gas Industry Co's prior written consent (such consent not to be unreasonably withheld or delayed);

- 13.1.5 the Service Provider makes any assignment to, or enters into any arrangement for the benefit of, its creditors (other than for the purposes of a solvent restructuring);
 - 13.1.6 any Force Majeure is of such magnitude or will be of such duration that it is, or is reasonably likely to be, impossible or impractical for the Service Provider to comply, to a material extent, with the Service Provider's obligations under this Agreement (taken as a whole) for a period of two consecutive months or longer.
- 13.2 **Termination by Service Provider:** In addition to any other right or remedy conferred on the Service Provider under this Agreement or by Law, the Service Provider may terminate this Agreement and/or the Licence at any time and with immediate effect by written notice to Gas Industry Co if:
- 13.2.1 Gas Industry Co has failed to make any payment to Service Provider in accordance with this Agreement, and has not remedied such failure within 20 Business Days of receiving written notice from the Service Provider of such failure;
 - 13.2.2 Gas Industry Co materially breaches its obligations under clause 3.2.8 and does not remedy such breach within 20 Business Days of receiving written notice from the Service Provider of such failure;
 - 13.2.3 Gas Industry Co materially breaches its obligations under this agreement and does not remedy such breach within 60 Business Days of receiving written notice from the Service Provider of such failure;
 - 13.2.4 Gas Industry Co goes into liquidation; has a receiver, administrator or statutory manager appointed in respect of itself or any material part of its assets; becomes unable to pay its debts as they fall due; is presumed under section 287 of the Companies Act 1993 to be unable to pay its debts; is removed from the New Zealand Companies Register;
 - 13.2.5 Gas Industry Co makes any assignment to, or enters into any arrangement for the benefit of, its creditors (other than for the purposes of a solvent restructuring).
- 13.3 **Consequences of termination:** Without limiting any other rights or remedies of either party:
- 13.3.1 termination will be without prejudice to either party's rights and remedies in respect of any breach of this Agreement by the other party, where the breach occurred before the termination of this Agreement; and
 - 13.3.2 the provisions of clauses 13, 14, 15, 16, 17, 18, 21 and 22 together with those other provisions of this Agreement which are incidental to, and required in order to give effect to those clauses, will remain in full force and effect.
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14. INTELLECTUAL PROPERTY

- 14.1 **Ownership of Intellectual Property:** Unless otherwise agreed between the parties in writing:
- 14.1.1 all Intellectual Property of the Service Provider, including but not limited to the Software, Deliverables and Service Provider Documentation, and its licensors together with all updates, modifications, adaptations and/or additions made to that Intellectual Property whether under this Agreement or otherwise, will be owned exclusively by the Service Provider or the relevant licensors;
 - 14.1.2 all Intellectual Property of Gas Industry Co, including but not limited to the Gas Industry Co Documentation and the Data and its licensors that together with all updates, modifications, adaptations and/or additions made to that Intellectual Property whether under this Agreement or otherwise, will be owned exclusively by Gas Industry Co or the relevant licensors; and
 - 14.1.3 both parties must use all best endeavours to protect the other's Intellectual Property rights and interests from infringement during and after the expiry of this Agreement.
- 14.2 **Intellectual Property Indemnity:** The Service Provider indemnifies Gas Industry Co against all liabilities, damages, expenses and losses (including legal costs) arising from any claim or proceeding brought against Gas Industry Co to the extent that the claim or proceeding is based on an allegation that Gas Industry Co's possession or use of any Deliverable and/or Service supplied or licensed by the Service Provider under this Agreement infringes any third party's Intellectual Property ("IP Claim").
- 14.3 **Conditions Applying to Intellectual Property Indemnity:** The Service Provider's obligations under clause 14.2 are conditional on:
- 14.3.1 Gas Industry Co promptly notifying the Service Provider in writing of any IP Claim;
 - 14.3.2 Gas Industry Co making no admission regarding the IP Claim without the Service Provider's consent;
 - 14.3.3 the Service Provider conducting and/or settling (at its own cost) all negotiations and litigation; and
 - 14.3.4 Gas Industry Co giving the Service Provider all reasonable assistance. The Service Provider must reimburse Gas Industry Co's reasonable costs and expenses associated with providing such assistance.
- 14.4 **Rectifying an IP Claim:** If at any time an IP Claim is made, or in the Service Provider's reasonable opinion is likely to be made, then in defence or settlement of such an IP Claim, the Service Provider must (at its option):
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- 14.4.1 obtain for Gas Industry Co the right to continue using the items which are subject to the IP Claim; or
 - 14.4.2 at the Service Provider's expense, modify, replace or re-perform the items which are the subject of the IP Claim so that they become non-infringing.
- 14.5 **Termination for IP Infringement:** If the remedies in clause 14.4 are exhausted without remedying or settling (to Gas Industry Co's reasonable satisfaction) the IP Claim, Gas Industry Co may terminate this Agreement under clause 13.1.
- 14.6 **Ownership of Data:** The Service Provider shall have no rights to the Data or Processed Data contained in the Registry, or any use of that data beyond that specified in this Agreement.

15. LICENCE

- 15.1 **Software licence:** The Service Provider grants to Gas Industry Co a non-exclusive, non transferable, perpetual licence (the Licence) to use all of the Software (excluding any software owned by a third party and any software owned by Gas Industry Co) and Documentation but only:
 - 15.1.1 to use from the Go-Live Date;
 - 15.1.2 to copy the Documentation; and
 - 15.1.3 for the purpose of facilitating the operation of the Registry System under the Rules.
- 15.2 **Extended Software licence:** From the date on which the Operator Agreement is terminated or expires the Service Provider grants to Gas Industry Co, or their nominated new Service Provider, a non-exclusive, non transferable, perpetual licence (also the **Licence**):
 - 15.2.1 to use, copy and modify the Software (excluding any software owned by a third party, JADE and any software owned by Gas Industry Co) and Documentation; and
 - 15.2.2 to use JADE;

provided that the Software may only be used, copied or modified in accordance with the licence granted in clauses 15.2.1 and 15.2.2 for the purpose of facilitating the operation of the Registry System under the Rules.

- 15.3 **No Licence for Services:** For the avoidance of doubt the Licence granted under Clauses 15.1 and 15.2 confers no rights, other than set out in those clauses, for any software that is provided as part of the Services provider by the Service Provider under this Agreement or the Operating Agreement.
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- 15.4 **Termination of the Licence:** Where either party terminates the Licence under clause 13, Gas Industry Co must immediately cease all use of the Software (excluding any software owned by a third party, and any software owned by Gas Industry Co) and promptly return such Software to the Service Provider or destroy it.
- 15.5 **Termination of this Agreement:** For the avoidance of doubt:
- 15.5.1 where this Agreement expires; or
- 15.5.2 where Gas Industry Co terminates this Agreement under clause 13.1; or
- 15.5.3 where the Operating Agreement has been terminated or if the Operating Agreement expires,
- the Licence granted under Clause 15.1 and 15.2 will continue.
- 15.6 **Escrow for the Registry System:** The Service Provider shall, prior to the Go-Live Date, place the Source Material for the Software (excluding any software owned by a third party, JADE and any software owned by Gas Industry Co) into escrow on the following terms:
- 15.6.1 the escrow agreement will be based on the Service Provider's standard escrow service which must be approved by Gas Industry Co (such agreement not to be unreasonably withheld or delayed);
- 15.6.2 the Service Provider must deposit a current version of the Source Material with the escrow agent and update this version whenever the Source Material is modified; and
- 15.6.3 the Source Material will only be released from escrow if the Operating Agreement is terminated or if the Operating Agreement expires.
- 15.6.4 Costs for any escrow services are to be met by Gas Industry Co.
- 15.7 **Escrow for JADE:** The Service Provider represents and warrants that Gas Industry Co has the ability to join the JADE Community Incorporated Society (the **Society**). The Society has been independently established to provide a level of support in the event that the Service Provider experiences an event as broadly set out in Clause 13.1.3. Gas Industry Co acknowledges that:
- 15.7.1 if it elects not to join the Society then in the event of a company failure of the Service Provider then Gas Industry Co will not have an automatic right to join the Society and it will have no claim over the rights to the Source Material for JADE;
- 15.7.2 if Gas Industry Co joins the Society then its only claim over the Source Materials for JADE is governed by the rules of the Society; and
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15.7.3 Costs for Gas Industry Co to join the Society are to be met by Gas Industry Co.

15.8 **Failure to agree an appropriate escrow arrangement:** Where the parties (acting reasonably and in good faith) are unable to agree on appropriate terms for an escrow arrangement, then any issues of dispute shall be resolved under clause 21 of this Agreement.

15.9 **Third Party Software:** The Service Provider shall use best endeavours to procure a licence for Gas Industry Co to continue to use any software owned by a third party after the date on which the Operating Agreement is terminated.

16. CONFIDENTIALITY

16.1 **Publication of Agreement:** Gas Industry Co is entitled to publish this Agreement.

16.2 **Confidentiality:** The parties must maintain as confidential at all times, and will not at any time, directly or indirectly:

16.2.1 disclose or permit to be disclosed to any person;

16.2.2 use for itself; or

16.2.3 use to the detriment of the other party,

any Confidential Information of the other party except:

16.2.4 as required by Law;

16.2.5 with the prior written consent of the party that owns the Confidential Information;

16.2.6 if necessary for the party to perform its obligations under this Agreement and then only after procuring a commitment from the third party to comply with the confidentiality obligations set out in this clause 16.

16.3 **Announcements:** The Service Provider will not make any announcements or disclosures about the subject matter of this Agreement, except in a form and manner, and at a time previously approved in writing by Gas Industry Co (such approval not to be unreasonably withheld or delayed).

17. WARRANTIES

17.1 **Reciprocal warranties:** Each party warrants to the other that:

17.1.1 it has obtained all authorisations and has done all things necessary in order to enter into this Agreement and to perform its obligations under this Agreement; and

17.1.2 it is not aware of anything which will, or might be reasonably expected to, prevent that party from performing, or impair that

party's performance of, its obligations under this Agreement, in the manner and at the times contemplated by this Agreement.

17.2 **Service Provider warranties:** The Service Provider warrants, undertakes and represents to Gas Industry Co that:

17.2.1 it has the expertise, experience, resources, capacity and ability to, and will, perform and discharge its obligations under this Agreement in a timely manner, efficiently, diligently with due care and skill and in accordance with a high level of industry knowledge and competence;

17.2.2 all information provided by the Service Provider to Gas Industry Co under or in relation to this Agreement is materially true, accurate and not misleading in any respects, and that to the best of its knowledge Gas Industry Co's use of that information will not infringe the Intellectual Property rights of any third person;

17.2.3 the Service Provider has made appropriate checks regarding the honesty and reliability of any Personnel taking account, in particular, of such persons' access to Confidential Information of Gas Industry Co and access to secure parts of the Registry System; and

17.2.4 to the best of its knowledge, Gas Industry Co's use or possession of the Deliverables and/or the Services will not infringe the Intellectual Property rights of any third party.

17.3 **Service Provider warranties on delivery and for the Warranty Period:** The Service Provider warrants, undertakes and represents to Gas Industry Co in respect of each Deliverable that, at the time of delivery to Gas Industry Co:

17.3.1 that Deliverable complies with the relevant Specifications in all material respects;

17.3.2 that Deliverable is free from material defects in design, materials, workmanship, performance and installation;

17.3.3 the Software does not contain any computer viruses, interruptions, logic bombs, Trojan horses or other forms of malicious code or performance impediments;

17.3.4 that Deliverable complies with all applicable Laws affecting it or any of its functions or facilities; and

17.4 **Third party warranties:** The Service Provider will assign to Gas Industry Co or, if it is unable to do so, will hold for the sole benefit of Gas Industry Co, all warranties and guarantees for products provided by third parties to the Service Provider, where those products are embedded in the Service Provider's products, in relation to the Deliverables and/or the Services.

17.5 **Warranty Period:** Without limiting any other rights or remedies of Gas Industry Co, if the Service Provider becomes aware of any Error in the

Software during the Warranty Period, the Service Provider will (at its own expense and without limiting its obligations under the Operating Agreement):

- 17.5.1 remedy the Error in the Software as soon as is reasonably practicable; and
 - 17.5.2 without limiting the effect of clause 17.5.1, if necessary, replace or repair all or any defective part of the Software which has given rise to the Error.
- 17.6 If any component of the Software has an Error during the Warranty Period then the Warranty Period in relation to the replacement Software component that resolves the Error will be deemed to be the period of 90 calendar days from the date of delivery of such replacement Software component.

18. INDEMNITY AND INSURANCE

- 18.1 **Gas Industry Co Indemnity:** The Service Provider indemnifies Gas Industry Co and gas industry Participants at all times against any losses, damages or costs (including enforcement costs, on a solicitor and own client basis) suffered or incurred by Gas Industry Co and gas industry Participants as a direct result of a breach by the Service Provider of any of its obligations or warranties under this Agreement.

- 18.2 **Insurance:** The Service Provider will have in place at the Commencement Date and will maintain:

18.2.1 professional indemnity insurance in an amount not less than \$5 million; and

18.2.2 public liability insurance in an amount of not less than \$10 million;

with reputable insurers, approved by Gas Industry Co, and shall use reasonable endeavours to ensure that such terms are acceptable to Gas Industry Co (acting reasonably). The Service Provider will provide to Gas Industry Co, whenever requested by Gas Industry Co, the most recent certificate of currency provided to it by its insurers and warrants on providing such certificate that the details set out in it remain accurate.

- 18.3 **Gas Industry Co Liability cap:** Gas Industry Co's maximum aggregate liability under or in connection with this Agreement (whether in contract, tort or otherwise), except for liability arising as a result of wilful breach or fraud on the part of Gas Industry Co or from breaches of clauses 14, 15 and 16, is limited to an amount equal to the Fees paid and/or payable under this Agreement for Deliverables and/or Services at the date the relevant cause of action arose provided that this clause will not limit Gas Industry Co's obligation to pay any Fees payable for Deliverables and/or Services which are properly due.

- 18.4 **Service Provider Liability Cap:** The Service Provider's maximum aggregate liability under or in connection with this Agreement (whether in contract, tort or otherwise) for each year of the Term of this Agreement, except for liability arising as a result of wilful breach or fraud on the part
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of the Service Provider or from breaches of clauses 14, 16 and 17, is limited to the Fees payable for that year of the Term of the Agreement, provided that where any breach of this Agreement also constitutes a breach of the Rules then the only remedy shall be that available under the Compliance Regulations.

18.5 **Indirect Loss:** Neither party shall be liable to the other party for any indirect losses, damages or costs incurred or suffered by that other party as a result of a breach of this Agreement.

18.6 **General Liability Cap:** Notwithstanding clauses 18.3 and 18.4 neither party's liability arising under or in connection with this Agreement (whether in contract, tort or otherwise) shall not exceed \$5,000,000 in respect of all events arising in any financial year.

19. FORCE MAJEURE

19.1 **Force Majeure:** Subject to clause 13, if and to the extent either party is unable to carry out any of its obligations under this Agreement because of any event or circumstance which is, in relation to that party, a Force Majeure (such party being referred to in this clause 18 as the "**Non-Performing Party**") the Non-Performing Party will have no liability to the other party in respect of the non-performance by the Non-Performing Party of such obligations, provided that:

19.1.1 the Non-Performing Party must, as soon as reasonably practicable after becoming aware of the Force Majeure, notify the other party in writing describing the event or circumstance of Force Majeure;

19.1.2 neither party will be released from any liability which existed before the commencement of the Force Majeure;

19.1.3 the Non-Performing Party must use its best endeavours to overcome, and to mitigate the effects of, the Force Majeure and to complete the Non-Performing Party's obligations under this Agreement on time;

19.1.4 the Non-Performing Party will, as soon as reasonably practicable after becoming aware of the cessation of the Force Majeure, notify the other party in writing; and

19.1.5 this Agreement will otherwise remain in effect in all respects.

20. ASSIGNMENT

20.1 **Assignment to Energy Commission:** Gas Industry Co may assign all of its rights and obligations under this Agreement to any Energy Commission established under section 43ZZH of the Gas Act 1992 upon reasonable prior written notice to the Service Provider.

20.2 **Any other assignment:** Subject to clause 20.1, neither party will transfer or assign all or any of its rights or obligations under this Agreement to any other person without the other party's prior written approval (such consent not to be unreasonably withheld or delayed).

- 20.3 **Effect of subcontracting:** The Service Provider will use all reasonable endeavours to ensure that its Subcontractors comply with the terms of this Agreement that are applicable to the Service Provider. The entry by the Service Provider into a subcontract will not create a contractual relationship between Gas Industry Co and the relevant Subcontractor and will not relieve the Service Provider from liability for the performance of any obligations under this Agreement. The Service Provider is liable to Gas Industry Co for the acts and omissions of each of its Subcontractors as fully as if they were acts or omissions of the Service Provider.
- 20.4 **Removal of a Subcontractor:** If Gas Industry Co considers the performance of any of the Services by a Subcontractor to be unacceptable or inadequate, Gas Industry Co may, by written notice to the Service Provider, require the Service Provider to, and the Service Provider will, remove that Subcontractor from the performance of the relevant obligations within 10 Business Days of receipt of the notice.

21. DISPUTE RESOLUTION

- 21.1 **Dispute resolution process to apply:** This clause 21 will apply to any dispute between the parties (except where the party seeks urgent interlocutory relief) relating to this Agreement.
- 21.2 **Dispute resolution process:** If either party believes that there is a dispute between the parties concerning this Agreement, that party will give written notice to the other party setting out details of the dispute. If a notice of dispute is given:
- 21.2.1 each party will direct its Project Manager to use his or her reasonable endeavours to resolve the dispute within 10 Business Days of the date of the notice;
 - 21.2.2 if the dispute is not resolved under clause 21.2.1 above, the dispute will be referred to the parties' respective Chief Executive Officers, who will use their reasonable endeavours to resolve the dispute within 10 Business Days from the date the dispute is referred to him or her;
 - 21.2.3 if the dispute is not resolved under clause 21.2.2 above, then either party may (by written notice to the other party) require that the dispute be referred to mediation. The parties will appoint a mediator agreed by the parties, or if there is no agreement, approved by the President for the time being of the New Zealand Law Society or his or her nominee. The mediator will determine the process and timetable for the mediation. The cost of the mediation will be shared equally between the parties; and
 - 21.2.4 if the dispute is not referred to mediation, or is not resolved as a result of a mediation undertaken under clause 21.2.3 above, then either party may (by written notice to the other party) refer the dispute to a sole arbitrator under the Arbitration Act 1996. If the parties are unable to agree on an arbitrator within 10 Business Days of notice being given referring the dispute to
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arbitration, such arbitrator is to be appointed by the President for the time being of the New Zealand Law Society or his or her nominee.

- 21.2.5 **Service Provider to continue providing the Deliverables and Services:** In the event of a dispute between the parties concerning this Agreement, the Service Provider will continue, **in good faith**, to supply the Deliverables and to provide the Services (unless Gas Industry Co requests otherwise).

22. GENERAL

- 22.1 **Entire arrangement:** This Agreement:
- 22.1.1 records the entire arrangement between the parties relating to the matters dealt with in this Agreement; and
 - 22.1.2 supersedes all previous arrangements, understandings or representations whether written, oral or both, relating to these matters.
- 22.2 **Amendment:** Subject to any other provision of this Agreement expressly providing for the updating or amendment of any particular plan or document, no amendment to this Agreement will be valid unless it is in writing and executed by both parties.
- 22.3 **No waiver:** Any waiver by either party of any of its rights or remedies under this Agreement will be effective only if it is recorded in writing, and signed by a duly authorised representative of that party. If the waiver relates to a breach of any provision of this Agreement this will not (unless stated otherwise) operate as a waiver of any other breach of that provision.
- 22.4 **Governing Law and jurisdiction:** This Agreement is governed by New Zealand Law. The parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.
- 22.5 **Severability:** If any provision contained in this Agreement is held to be illegal, invalid or unenforceable, it will be severable, will be deemed to be deleted from the body of this Agreement and will not affect the validity or enforceability of any other provisions in this Agreement.
- 22.6 **Relationship of the parties:** Nothing expressed or implied in this Agreement will constitute either party as the partner, agent, employee or officer of, or as a joint venturer with, the other party. Neither party will make any contrary representation to any other person. The relationship of the Service Provider to Gas Industry Co is that of an independent contractor.
- 22.7 **Counterparts:** This Agreement may be executed in one or more counterpart copies which, read together, will constitute one and the same instrument. Any facsimile copy of this Agreement (including any facsimile copy of any document evidencing either party's execution of this Agreement) may be relied on by the other party as though it were an original copy.
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22.8 **Remedies cumulative:** The rights, powers and remedies provided in this Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by Law.

22.9 **Method of Delivery:** Any written notice required under this Agreement must be signed by a duly authorised senior representative of the party giving that notice and will be deemed validly given if:

22.9.1 delivered by hand to the intended recipient's address as set out below; or

22.9.2 sent by facsimile to the intended recipient's facsimile number as set out below and the sender's facsimile machine confirms transmission to the intended recipient.

Notices to Gas Industry Co:

Contact Name: Bas Walker, Senior Adviser

Fax Number: 04-472-1801

Physical Address: Level 9, State Insurance Tower
1 Willis Street
Wellington

Notices to Service Provider:

Contact Name: Contracts Manager

Fax Number: 03 358 7276

Physical Address: 19 Sheffield Crescent
Bishopdale
Christchurch

For the purposes of this Agreement, any notice transmitted by facsimile or delivered after 5.00 pm New Zealand time on a Business Day, or at any time on a non Business Day, will be deemed received at 9.00 am New Zealand time on the next Business Day (being, in each case, the time of day at the intended place of receipt of that notice).

22.10 **Further Assurances:** Each party will do all things and execute all documents reasonably required in order to give effect to the provisions and intent of this Agreement.

22.11 **Privity:** Only the parties to this Agreement may pursue remedies or redress under this Agreement in the event of the other party breaching this Agreement.

23. CPI

- 23.1 **CPI:** Annually on the 31st day of March starting from 2010 or as soon as practically possible thereafter the Service Provider will review and may at its option increase all or any of the Fees (including, without limitation, the Standard Daily Rates as set out in Schedules 7 to this Agreement) in accordance with the increase in the official New Zealand Consumer Price Index as published on the 31st March in that calendar year for the preceding 12 months.

24. CONSUMER GUARANTEES ACT

- 24.1 The parties acknowledge that the goods and/or services supplied under this Agreement are acquired by Gas Industry Co for the purpose of a business and accordingly (to the extent permitted by law) the Consumer Guarantees Act 1993 shall not apply to the transactions evidenced by this Agreement.
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EXECUTION

SIGNED by **GAS INDUSTRY COMPANY LIMITED** by:

Full name of director/authorised signatory

Signature of director/authorised signatory

Full name of director/authorised signatory

Signature of director/authorised signatory

SIGNED by **JADE SOFTWARE CORPORATION (NZ) LIMITED** by:

Full name of director/authorised signatory

Signature of director/authorised signatory

Full name of director/authorised signatory

Signature of director/authorised signatory

SCHEDULE 1

SERVICES AND DELIVERABLES

The Service Provider will provide Gas Industry Co with the following Services and Deliverables:

Part A

- (a) develop and establish a gas registry comprising the development of the Software for the gas registry and the installation of associated hardware, user testing and acceptance of the registry, and then population of the registry with data supplied from registry participants.
- (b) Development and establishment of the Registry shall be in accordance with;
 - (i) the Specifications set out in schedule 2;
 - (ii) the Implementation Plan set out in schedule 5;
- (c) provide and maintain copies of the following Documentation:
 - (i) *Registry User Guide documentation* – a guide sufficient to enable users of the Registry System to use the Registry System and take full advantage of its functionality;
 - (ii) *Registry Administrator Guide documentation* - a guide sufficient to enable administrators of the Registry System to continue to maintain and operate the Registry System. This will describe how the Registry System delivers each of the functions and meets the operational requirements;
 - (iii) *Updated Specifications* – updated versions of the specifications set out in schedule 2 if any changes to those specifications are agreed by the parties pursuant to clause 9 of this Agreement or otherwise;
 - (iv) *Training Materials* – materials to support the training required in accordance with schedule 3 which are of a standard that could reasonably be expected to facilitate the required training and assist attending trainees in retaining what they have learnt;
 - (v) *File Format documentation* – file format documentation for the Registry System; and
 - (vi) *Client Disaster Recovery Plan* – a copy of the disaster recovery plan, which (without limitation) sets out the processes in place to deal with by the Client in the event of the occurrence of a disaster, both to minimise its impact and to recover any lost data and restore the Registry System as quickly as possible;

Part B

- (a) maintain copies of the following Documentation:
 - (i) *Registry Technical Documentation* –versions, including updates, of the documentation required by the Service Provider to design and develop the Registry System, including design documents, functional
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specification, technical design documents and any changes to those documents that are agreed by the parties pursuant to clause 9 of this Agreement or otherwise; and

- (ii) *Service Provider Disaster Recovery Plan* – a copy of the disaster recovery plan, which (without limitation) sets out the processes in place to deal with the occurrence of a disaster, both to minimise its impact and to recover any lost data and restore the Registry System as quickly as possible. For the avoidance of doubt this document contains Service Provider Confidential Information and will not be made available to Gas Industry Co;

Part C

- (a) provide training services in accordance with schedule 3.

SCHEDULE 2
SPECIFICATIONS

Part A:
DETAILED BUSINESS REQUIREMENTS SPECIFICATION V1.5 dated 22nd July 2008,
and as mutually updated and agreed between the parties

Part B:
DETAILED NON-FUNCTIONAL REQUIREMENTS V1 dated 20th June 2008, and as
mutually updated and agreed between the parties

SCHEDULE 2, PART B

DETAILED NON-FUNCTIONAL REQUIREMENTS

1. Applications Architecture and Operational Requirements

- 1.1 **Industry Standard:** The Registry must be built on an industry standard, robust architecture that is reliable and scaleable in the following areas:
 - 1.1.1 hardware infrastructure;
 - 1.1.2 operating system;
 - 1.1.3 network topology;
 - 1.1.4 application software;
 - 1.1.5 database;
 - 1.1.6 security;
 - 1.1.7 systems deployment and management; and
 - 1.1.8 external security, firewalls, virus protection, etc.
 - 1.2 **Independent Environments:** There must be separate and independent environments for development, user acceptance testing and production. Independence means that activity on the user acceptance testing and development environments must not affect the production environment in any way. The user acceptance testing environment must be available for Participants to perform their own testing and staff training.
 - 1.3 **Current Components:** The architecture must not contain any components that are no longer supported.
 - 1.4 **Scalability:** The Registry must be readily scalable, with the capability to accommodate a minimum 10% per annum growth in users and transactions per annum, without significantly affecting performance and reliability.
 - 1.5 **Upgrades:** There must be agreed procedures and capability in place for the implementation of upgrades to Registry hardware and software. All upgrades must be carefully planned, scheduled, notified to all relevant parties well in advance and implemented efficiently at times that cause minimum disruption to users. The timetable for the implementation of all upgrades must be approved by Gas Industry Co. The vendor must implement all available, proven operating system, database and system software upgrades that are relevant in a timely manner.
 - 1.6 **Flexibility:**
 - 1.6.1 The Registry software must be designed for flexibility to accommodate changes to functions requested as a result of changes to the Rules or to other user requirements. Similarly there must be the capability to add to or subtract from the range
-

of ICP parameters that the Registry contains, and the number and type of Participants.

- 1.6.2 The Registry must be designed to cope with at least 100 concurrent online users and the transaction and reporting requirements outlined elsewhere in this Agreement. Registry Participants must also be able (within reasonable bounds) to purchase (at a reasonable price) additional concurrent user licences, from the Registry Operator. The method for allocating user licences will be determined by Gas Industry Co and administered by the Registry Operator.

1.7 **Interfaces with Participants' Systems:** The Registry system shall provide, at a minimum, two types of interface with Registry users' systems:

- 1.7.1 a Web browser user-interface for updating and viewing information online; and
- 1.7.2 a facility to transfer flat files (CSV) via FTP, to handle multiple and/or batch updates and for requesting and downloading reports.

The Registry must also provide any other interfaces that are specified in the detailed requirements specification.

The provision of interfaces using other mechanisms or formats that may have advantages over the above interfaces should be considered and recommended, if and where appropriate.

1.8 **Data Integrity, Security and Ownership**

- 1.8.1 The Registry shall be capable of enabling:
- (a) maintenance of the data environment and reversal of material errors that are not reasonably reversible by normal user access; and
 - (b) recovery of database integrity and corruption that might occur because of the Registry incorrectly processing information.
- 1.8.2 Systems and facilities are required for daily backup and storage of data and current software. Storage facilities must be secure, flood-proof and fire-proof.
- 1.8.3 For the security and confidentiality of the Registry and its data, the Registry must have a structure for the management of user accounts. User privileges must be able to control access with customizable security profiles.
- 1.8.4 The Registry must have mechanisms that enforce the password standard, account lockout for unsuccessful logon attempts, and session timeouts.
-

1.8.5 Additionally, the system must provide logs of user interactions with the system, and include alerts of repeated unsuccessful logons.

1.8.6 All data collected, calculated and published, as required by the detailed requirements specification, is not the property of the Registry Operator. The Registry Operator must store the data securely and be able to provide it to Gas Industry Co, or to other parties as specified by Gas Industry Co, on request within a reasonable timeframe.

1.9 **Capacity**

1.9.1 The Registry system must be capable of accommodating:

- (a) data storage and maintenance requirements for approximately 250,000 gas ICPs, and 10% annual growth of this number;
- (b) an estimated 30,000 switches per annum, with each switch representing at least four transactions passing through the Registry; and
- (c) expansion in terms of the number of ICP parameters per ICP and the number and type of Participants.

1.9.2 The Registry must have the ability to accommodate reasonable one-off high volume activities on an ad hoc basis, such as a change affecting the Participant with the largest number of ICPs at the time the Registry becomes operational. The Registry must include system management utilities that will measure its own performance and capacity, and be able to show trends to assist with predicting future capacity requirements.

1.10 **Registry availability and performance:**

1.10.1 The Registry must be available to meet the detailed target service levels required by any obligations in the Rules and will otherwise include those service levels negotiated with the Registry Operator and set out elsewhere in this Agreement.

1.10.2 Where possible the Registry Operator should use their best endeavours to achieve 24x7 availability outside of the agreed service levels.

1.11 **Data retention & Audit trails**

1.11.1 The Registry is to retain event history for immediate access, indefinitely. For other recorded information, the minimum retention periods are:

- (a) 30 days for batch files received from and delivered to Participants; and

- (b) seven years for the audit trail of information, acknowledgements, notifications and switch transactions.

1.11.2 After these retention times, the information shall be archived (onto DVD or other such media) and available for retrieval on request.

1.11.3 The Registry must have an audit trail of all data accepted, and all acknowledgements, notifications and other information delivered to other Participants. Audit information shall include time, party, and method.

SCHEDULE 3**TRAINING SERVICES**

The Service Provider will provide Gas Industry Co and users of the Registry System with the following training:

Description	Location	Duration	When
Course Preparation	Christchurch	12 Days	Aug-Feb
High Level Introduction	Auckland	1 Day	Oct 08
Comprehensive Registry Course (Distributors)	Auckland	1 Day	Feb 09
Comprehensive Registry Course (Retailers)	Auckland	1 Day	Feb 09
Comprehensive Registry Course (Meter Owners)	Auckland	1 Day	Feb 09
Comprehensive Registry Course (Distributors)	Wellington	1 Day	Feb 09
Comprehensive Registry Course (Retailers)	Wellington	1 Day	Feb 09
Comprehensive Registry Course (Meter Owners)	Wellington	1 Day	Feb 09
Comprehensive Registry Course (All)	Via Webex	1 Day	Feb 09
Total		20 Days	Feb 09

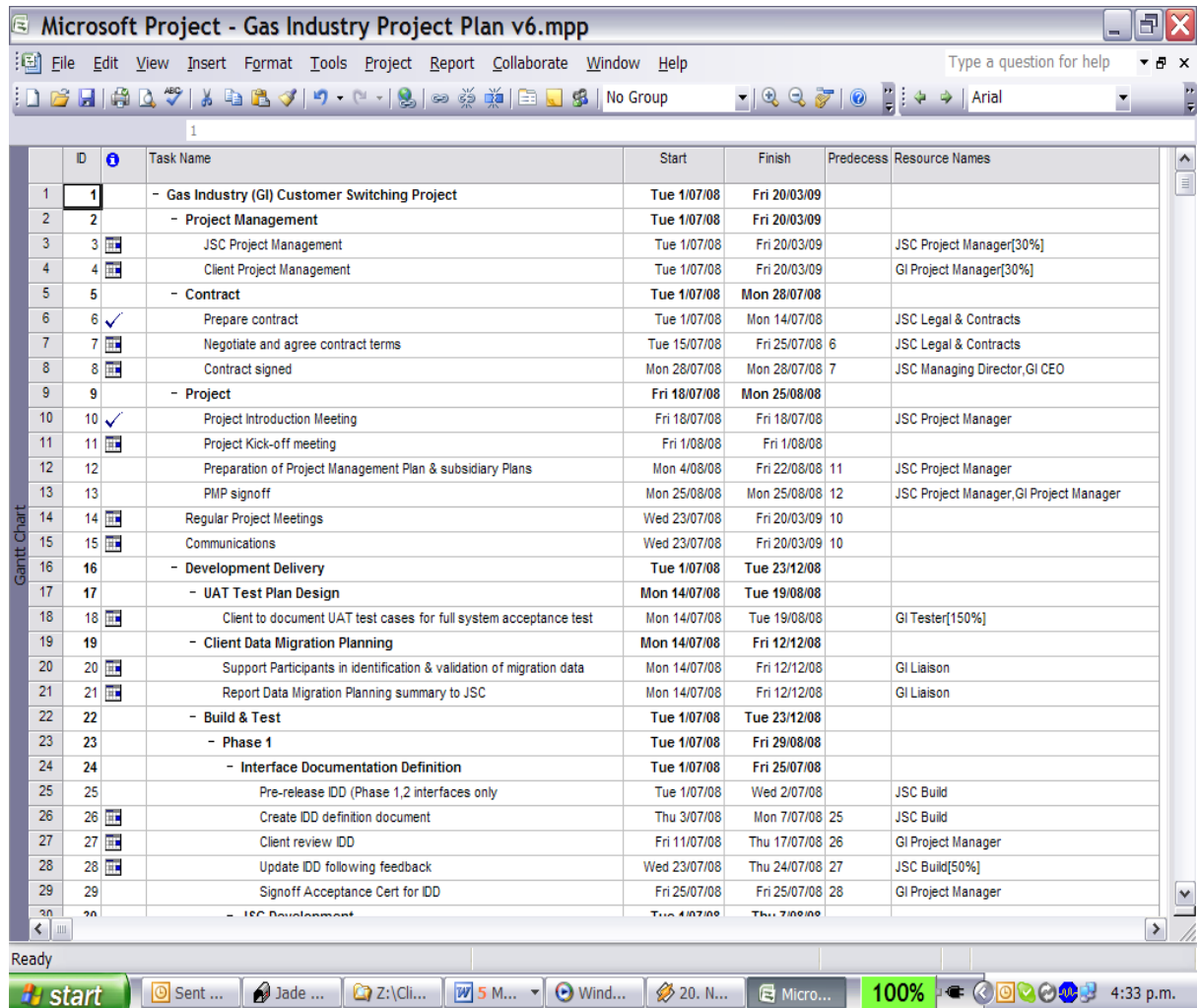
Notes:

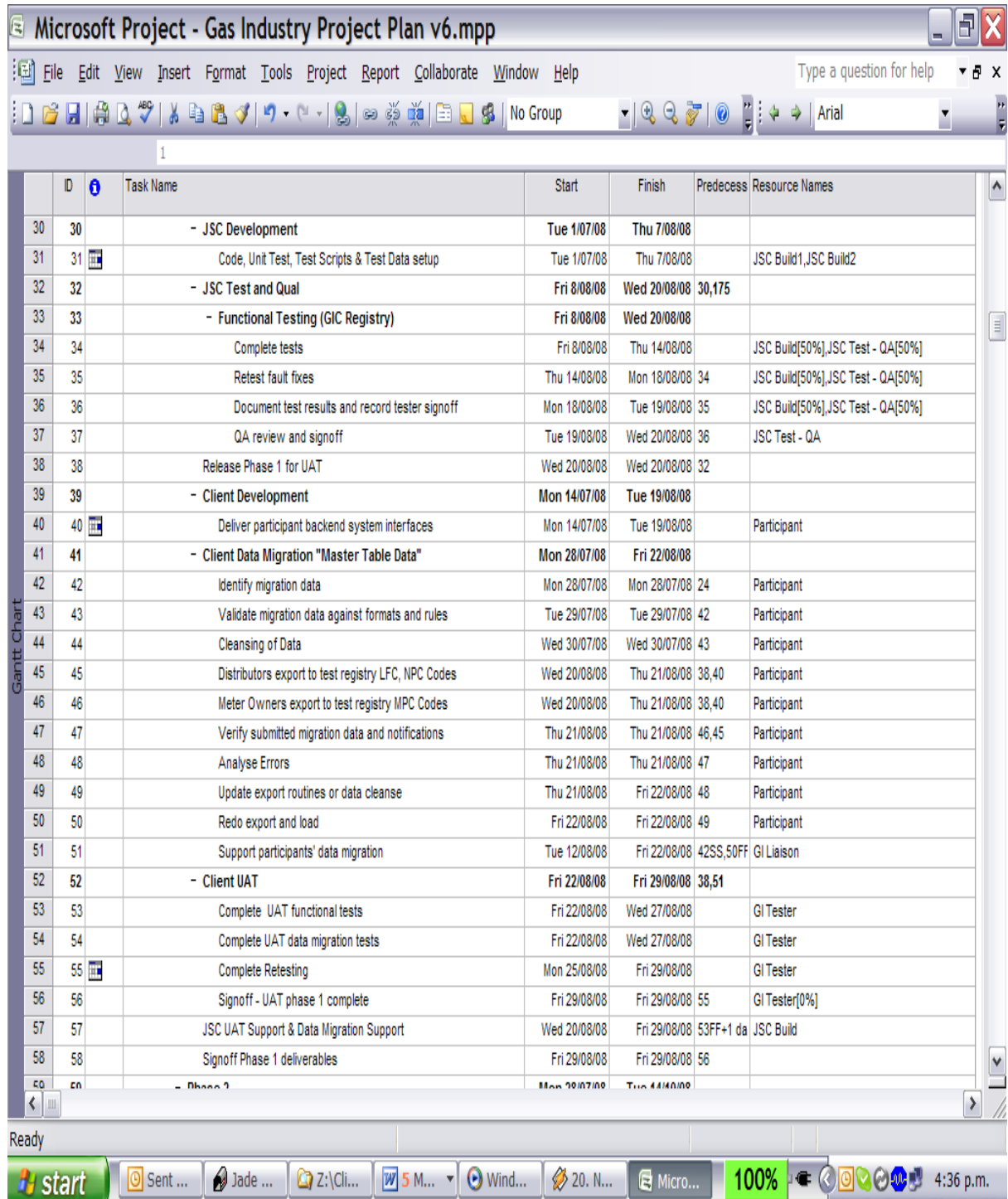
1. Additional training will be charged for at the Service Providers Standard Daily Rates
2. Disbursements for training will be on-charged to Gas Industry Co.

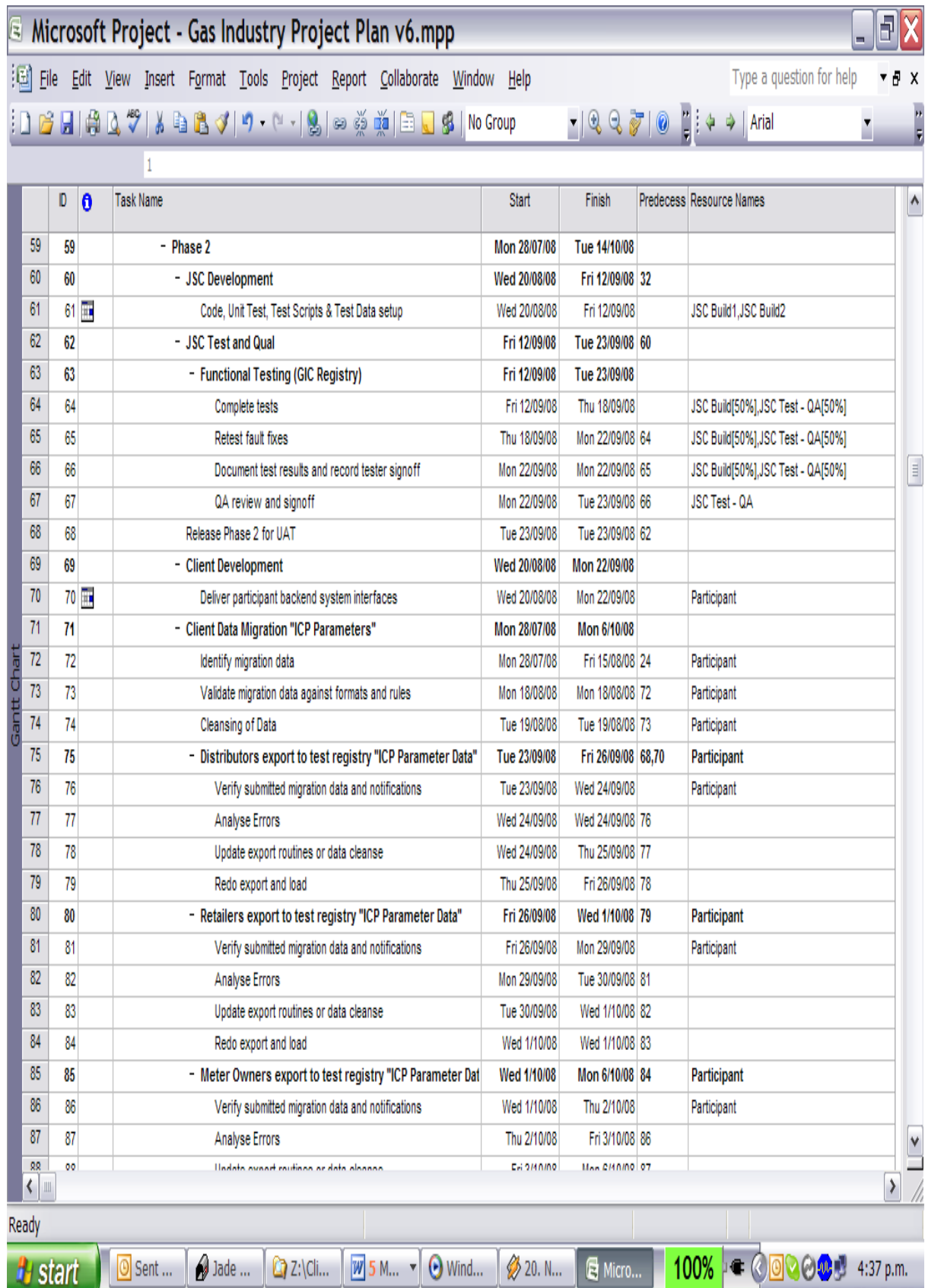
SCHEDULE 4

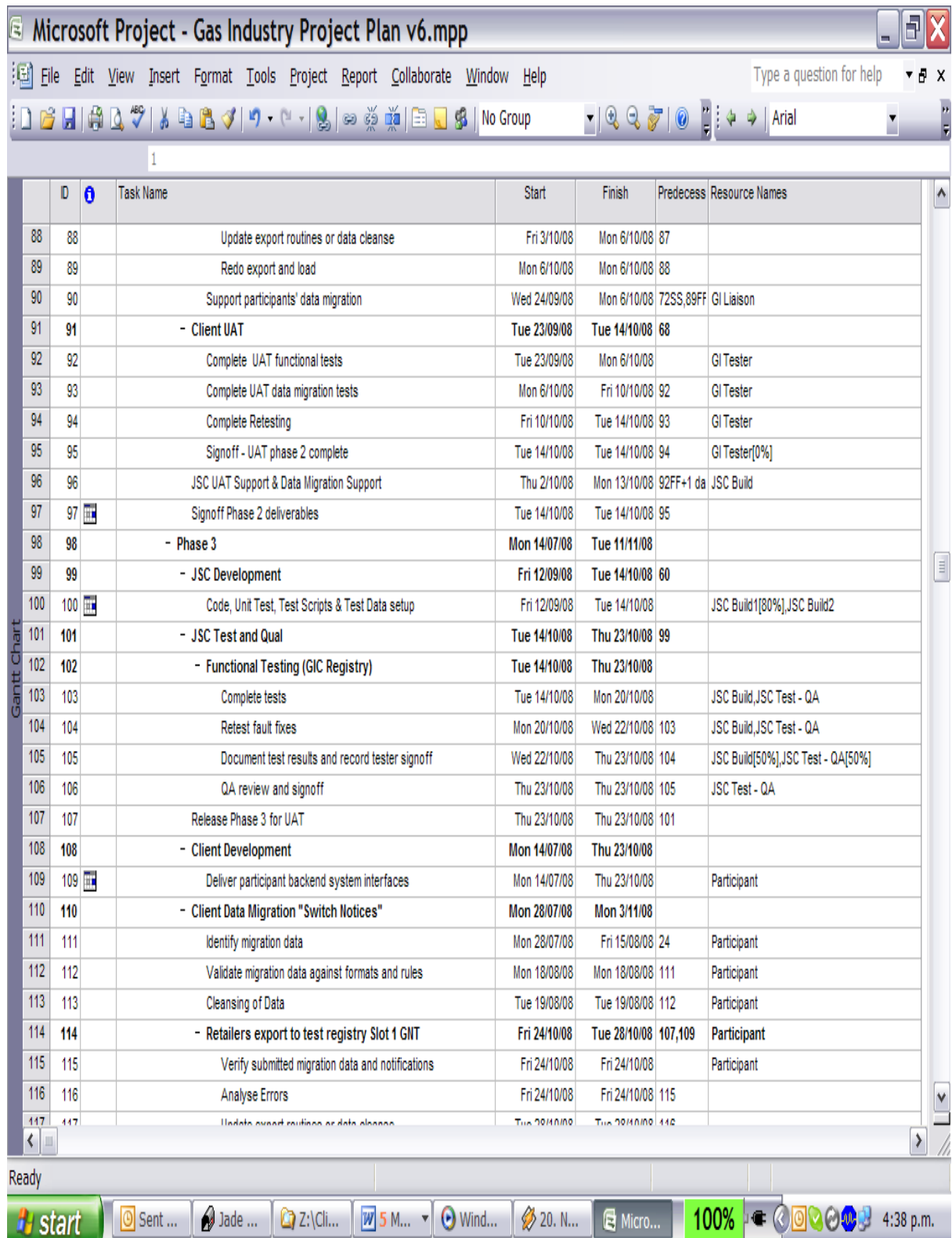
IMPLEMENTATION PLAN

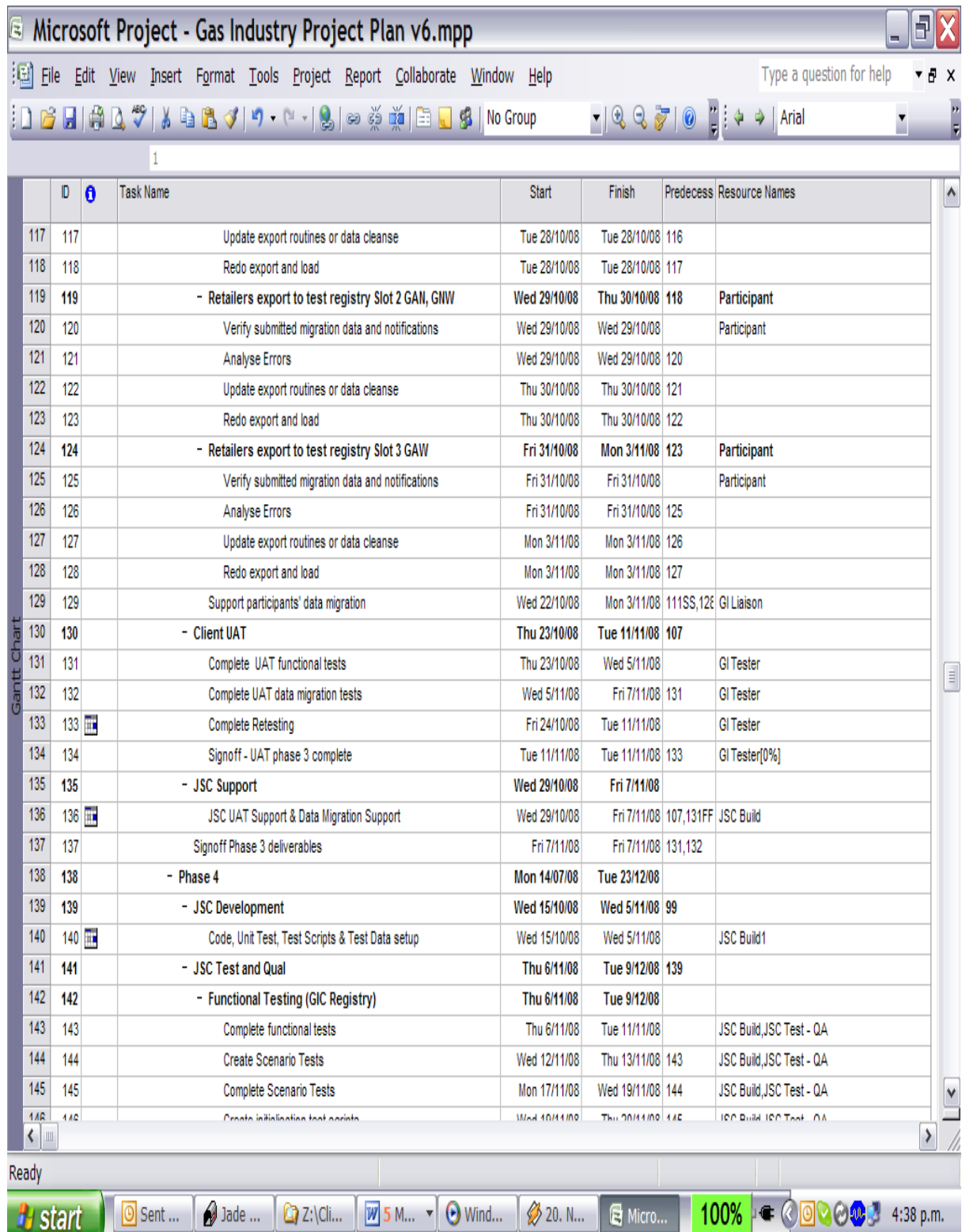
The following table sets out the Implementation Plan for the implementation of the Services and Deliverables and will be updated from time to time based on mutual agreement between the parties:











Microsoft Project - Gas Industry Project Plan v6.mpp

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Type a question for help

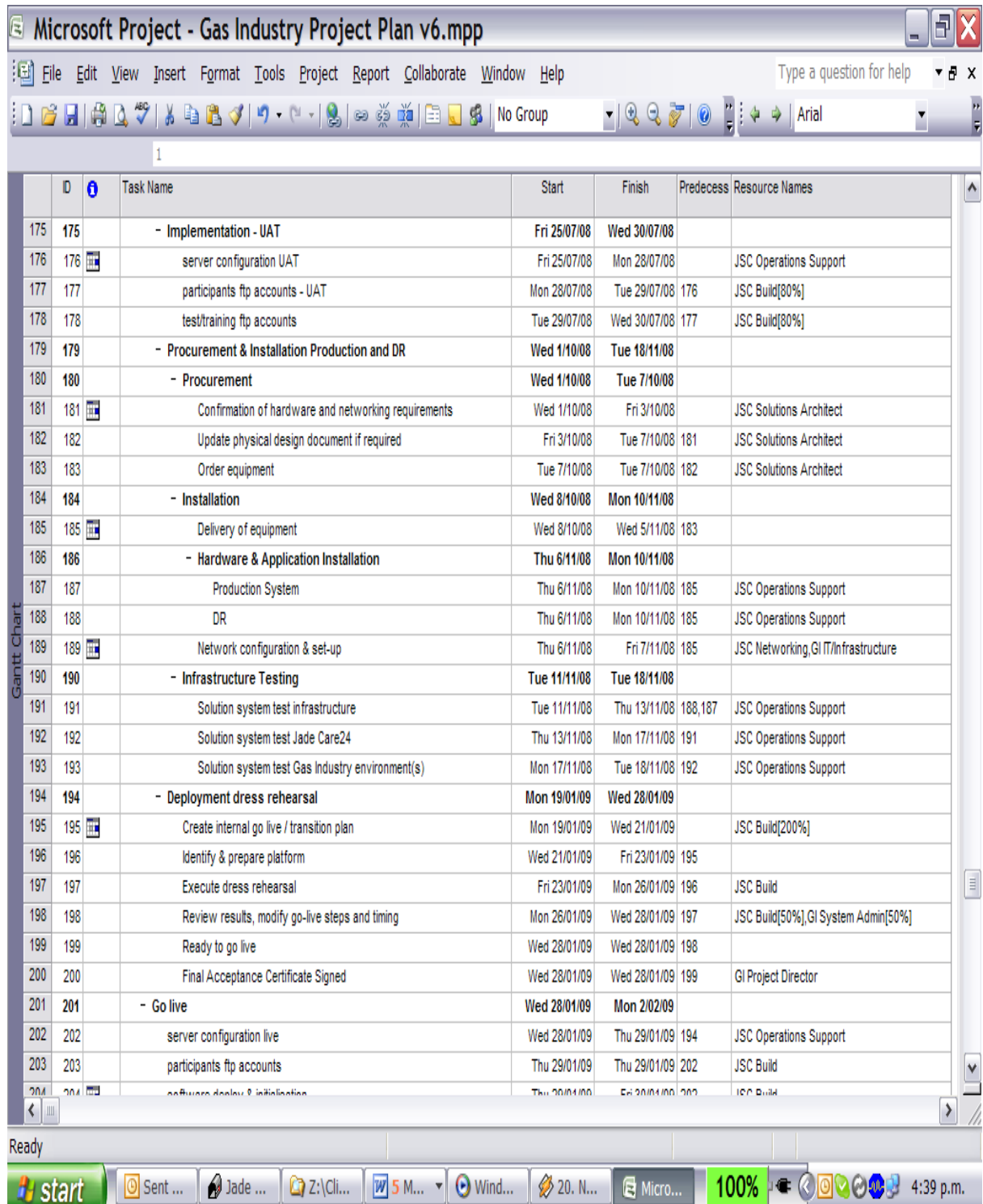
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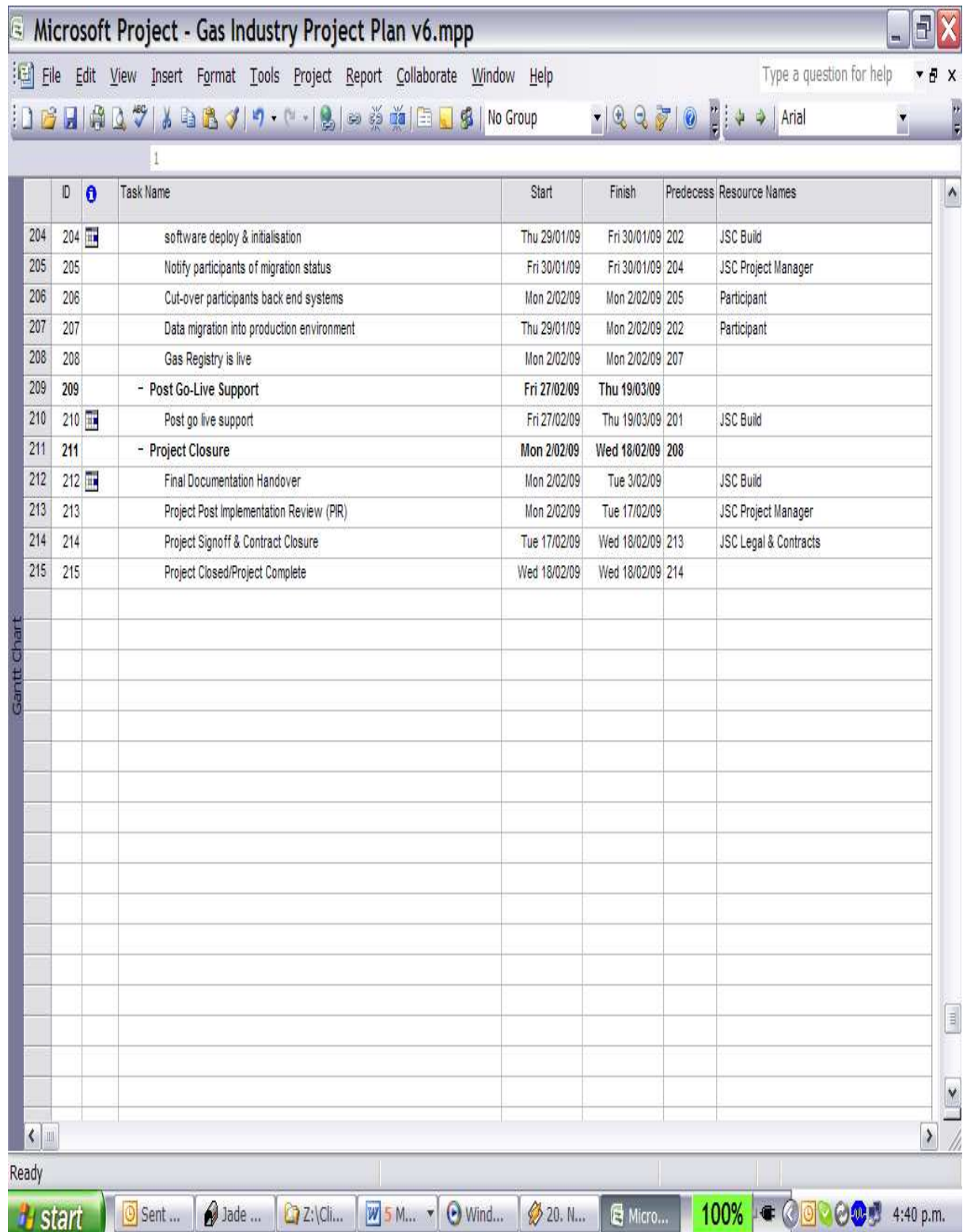
1

ID	Task Name	Start	Finish	Predecessors	Resource Names
146	Create initialisation test scripts	Wed 19/11/08	Thu 20/11/08	145	JSC Build,JSC Test - QA
147	Complete initialisation test scripts	Thu 20/11/08	Fri 21/11/08	146	JSC Build,JSC Test - QA
148	Identify peak load parameters	Fri 21/11/08	Mon 24/11/08	147	JSC Build[50%],JSC Test - QA,JSC JBL[50%]
149	Create load test scripts for web	Mon 24/11/08	Mon 24/11/08	148	JSC Build,JSC Test - QA
150	Complete load test script for web	Mon 24/11/08	Wed 26/11/08	149	JSC Build[50%],JSC Test - QA,JSC JBL[50%]
151	Create load test scripts for ftp	Wed 26/11/08	Thu 27/11/08	150	JSC Build,JSC Test - QA
152	Complete load test script for ftp	Thu 27/11/08	Fri 28/11/08	151	JSC Build[50%],JSC Test - QA,JSC JBL[50%]
153	Create production data test scripts	Fri 28/11/08	Mon 1/12/08	152	JSC Build,JSC Test - QA
154	Complete production data test scripts	Mon 1/12/08	Fri 5/12/08	153	JSC Build[50%],JSC Test - QA[50%],JSC JBL[50%]
155	Retest fault fixes	Fri 5/12/08	Mon 8/12/08	154	JSC Build,JSC Test - QA
156	Document test results and record tester signoff	Mon 8/12/08	Mon 8/12/08	155	JSC Build,JSC Test - QA
157	QA review and signoff	Mon 8/12/08	Tue 9/12/08	156	JSC Test - QA,JSC Build
158	Release Phase 4 for UAT	Tue 9/12/08	Tue 9/12/08	141	
159	- Client Development	Mon 14/07/08	Tue 9/12/08		
160	Deliver participant backend system interfaces	Mon 14/07/08	Tue 9/12/08		Participant
161	- Client UAT	Wed 10/12/08	Mon 22/12/08	158,160	
162	Complete UAT functional tests	Wed 10/12/08	Wed 17/12/08		GI Tester
163	Complete Retesting	Thu 11/12/08	Fri 19/12/08		GI Tester
164	Signoff - UAT phase 4 complete	Mon 22/12/08	Mon 22/12/08	163	GI Tester
165	Gas Industry Testing complete	Mon 22/12/08	Mon 22/12/08	164	
166	- JSC Support	Tue 9/12/08	Tue 23/12/08		
167	JSC UAT Support & Data Migration Support	Tue 9/12/08	Tue 23/12/08	158,162FF	JSC Build
168	Signoff Phase 4 deliverables	Mon 22/12/08	Mon 22/12/08	164	
169	- Training (using "Train the Trainer" concept)	Mon 4/08/08	Mon 9/02/09		
170	Prepare Initial Training course	Mon 4/08/08	Mon 11/08/08		JSC Trainer
171	Prepare Full Training Course	Tue 12/08/08	Mon 25/08/08	170	JSC Trainer
172	Run Initial Training Course	Thu 21/08/08	Thu 21/08/08	170	JSC Trainer
173	Run Full Training Courses	Mon 2/02/09	Mon 9/02/09	170	JSC Trainer
174	- Implementation	Fri 25/07/08	Wed 28/01/09		
175	- Implementation UAT	Fri 25/07/08	Wed 28/01/09		

Ready

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SCHEDULE 5**ACCEPTANCE TESTS**

1. The Acceptance Tests will be based on a pass/fail evaluation based on the description provided for each functional and non functional requirement. The Service Provider will provide such assistance as is reasonably required by Gas Industry Co in relation to the Acceptance Tests.
 2. The Acceptance Tests will be based on the Specifications outlined in Schedule 2. Acceptance Tests will be performed on an agreed environment prior to going live to ensure tests are as accurate as possible with regards to performance and connectivity.
 3. The purpose of the Acceptance Tests is to allow users who have detailed business knowledge to test that the completed Registry System functionality and characteristics are in accordance with the requirements as detailed in the Specifications.
 4. Acceptance Testing will be carried out by Gas Industry Co at the end of successful system acceptance Testing to be completed by the Service Provider for each of the Phases detailed in the Project Plan and will be planned and executed by Gas Industry Co.
 5. The Acceptance Testing scripts will be mutually developed between the parties and completed in accordance with the agreed requirements and will be reviewed and signed off by Gas Industry Co and the Service Provider before testing commences.
 6. Gas Industry Co and the Service Provider will jointly agree entry and exit criteria ("Acceptance Criteria") as part of each plan.
 7. Acceptance Testing will be completed on each phase to identify any Errors. Errors can be opened against each Phase during the Acceptance Testing period for the specific phase.
 8. Acceptance of the Phase shall be deemed to have occurred on whichever is the earliest of:
 - (c) the signing by Gas Industry Co of an Acceptance Certificate for the phase. The signing of the Acceptance Certificate must occur within 5 Business Days of the phase completing Acceptance Testing and meeting Gas Industry Co's Acceptance Criteria; or
 - (d) Gas Industry Co has not completed the Acceptance Testing within 20 Business Days from the Acceptance Testing completion date agreed between the parties, adjusted to reflect any delay caused solely by the Service Provider;
-

SCHEDULE 6
KEY PERSON LIST

Key Person	Role
Robert Barr	Lead Developer
Greg Matthews	Registry Administrator
Alison Hitchcock	Business Manager
Russell Hickin	Project Manager

SCHEDULE 7**FEES**

1. **Fees:** The Fees (exclusive of GST) comprise:
 - (a) the development fee set out in paragraph 2; and
 - (b) the Standard Daily Rates set out in paragraph 3.
2. **Development fee:** The development fee is as outlined below.

Development Fee			
	Development Items Total		\$459,866.00
	70 JADE Process Licences (70 JADE Processes will service 20 Web Service Clients and 50 Registry Background JADE Processes. The recommended number of concurrent users connected to a single Web Service Client is 10)	\$29,760	
	JADE Care24 Implementation	\$19,695	
	Network Implementation	\$2,400	
	Pre Go Live JADE Care24 Charges	No Cost	
	Non Development Items Total		\$51,855.00
	Total Development Fee		\$511,721.00

Pricing Assumptions**Data Migration**

Data Migration is based on the agreed Data Migration Strategy. JSC have allocated **12** days to provide the Data Migration Support. Any additional days will be charged for on a T&M basis.

Training

Training is based on the agreed Training Requirements. JSC have allocated **20** days to training. Any additional days will be charged for on a T&M basis

Disbursements

Disbursements for Training are additional and will be charged on an actual cost basis

User Acceptance Testing

User Acceptance Testing is based on the agreed User Acceptance Testing Strategy. JSC have allocated **35** days for UAT Support. Any additional days will be charged for on a T&M basis.

Project Management

Project Management is provided to deliver the required functionality and services. Project Management does not extend to the management of GIC or participant requirements (such as Data Migration and User Acceptance Testing)

Staged Development/Release

There are four planned stage releases and one final stage release. UAT and sign-off will need to be completed for each stage release.

General

All recurring costs are subject to CPI adjustments on contract anniversary

Any costs associated with any additional services as a result of Jade maintaining close contact with distributors, retailers, and meter owners, and provide additional services and support to ensure that , in the opinion of Gas Industry Co, the Gas Registry remains responsive to and consistent with the needs of the Registry Participants will be subject to change control.

An allowance of one day per month to perform Registry Operations has been made, any requirements additional to this will be charged as agreed.

Development Fee Milestone Payment Schedule			
Milestone	Title	% of Fees	Amount
1	Signing of Contract	20.0%	\$102,344.20
2	Sign-Off of UAT Phase 1 Acceptance Certificate	10.0%	\$51,172.10
3	Sign-Off of UAT Phase 2 Acceptance Certificate	10.0%	\$51,172.10
4	Sign-Off of UAT Phase 3 Acceptance Certificate	10.0%	\$51,172.10
5	Sign-Off of UAT Phase 4 Acceptance Certificate	10.0%	\$51,172.10
6	Sign-Off of Go Live Acceptance Certificate	20.0%	\$102,344.20
7	30 calendar days after Go Live Acceptance Certificate signed	20.0%	\$102,344.20
Total Development Fee Milestone Payments		100.0%	\$511,721.00

3. **Daily Rates:** The Daily Rates are set out in the table below. These Daily Rates rates will only be charged by the Service Provider for work it does preparing Impact Assessments (as set out in schedule 8, paragraph 4), and for services which the Service Provider is not required to carry out under this Agreement, but which Gas Industry Co has requested and agreed will be charged on a time and materials basis.
4. Service Provider's Standard Daily Rates

Resource	Standard Daily Rates under this agreement.
Business Architect	\$2,000.00
Project Manager	\$1,500.00
Jade Architect / Consultant	\$1,500.00
Managed Services Consultant	\$1,500.00
Managed Services Engineer	\$1,300.00
Business / Systems Analyst	\$1,300.00
Developer	\$1,300.00
Network Engineer	\$1,300.00
Interface Engineer	\$1,300.00
Trainer	\$1,300.00

All charges must be pre-approved in writing by Gas Industry Co and Gas Industry Co will only be responsible for disbursements such as travel and accommodation that has been pre-approved in writing.

SCHEDULE 8

CHANGE CONTROL PROCESS

1. **Change Control Process:** The parties will follow the change control process described in this schedule 8 to initiate and consider:
 - (a) changes to the Deliverables or the Services (including any changes to the nature or scope of the Deliverables or the Services or to the timing or the delivery of the Deliverables or the Services) which cannot be accommodated by another process in this Agreement; or
 - (b) new deliverables or services that are not within the scope of this Agreement,each being referred to in this Agreement as a "**Change**".
 2. **Change Request:** If either party wants to initiate a Change that party will describe the details of the Change in a written request to the other party ("**Change Request**").
 3. **Impact Assessment:** The Service Provider will, within 10 Business Days of receiving a Change Request from Gas Industry Co, prepare an impact assessment ("**Impact Assessment**") detailing an explanation of the Change, including how the Change is to be implemented and, to the extent relevant, detailing:
 - (a) the feasibility of the Change;
 - (b) the effect of the Change on the ability of the Service Provider to meet its obligations under this Agreement;
 - (c) any cost implication for either party in relation to the Change, including the cost of the Impact assessment;
 - (d) any consequential material impacts of the Change;
 - (e) where appropriate, suggested acceptance testing procedures and acceptance criteria for the proposed Change; and
 - (f) such other information which is likely to be material to Gas Industry Co.
 4. **Costs for Preparing Impact Assessment:** If the Service Provider, acting reasonably, takes more than three hours to prepare an Impact Assessment, Gas Industry Co will pay the Service Provider at the Standard Daily Rates, or part hourly rates of, as specified in schedule 7 for each full hour reasonably spent preparing the Impact Assessment over and above three hours.
 5. **Notify:** Gas Industry Co will, within 10 Business Days of receiving an Impact Assessment or Change Request, notify the Service Provider of whether it:
 - (a) accepts the Change Request from the Service Provider, or wishes to proceed with a Change following receipt of an Impact Assessment;
-

- (b) wishes to renegotiate any aspect of the implementation of a Change Request, in which case the parties will negotiate in good faith to try and reach agreement on the terms for implementing the Change Request;
- (c) withdraws the Change Request if initiated by Gas Industry Co; or
- (d) does not accept the Change Request.

6. Agreeing a Change Request: If the terms for implementing a Change Request have been:

- (a) accepted under paragraph 5(a) of this schedule;
- (b) agreed under paragraph 5(b) of this schedule; or
- (c) determined under paragraph 7 of this schedule,

Gas Industry Co or the Service Provider (as applicable) will send the other party a variation agreement reflecting those terms. The Service Provider will not undertake any Change until both parties have signed this variation agreement, and Gas Industry Co will not be bound to pay for any Change unless both parties have signed this variation agreement.

7. Dispute Resolution: If the parties cannot agree on a Change Request within 10 Business Days of Gas Industry Co giving notice under paragraph 5(b) of this schedule then the matter will be resolved under clause 20. In determining this matter, the mediator or arbitrator will:

- (a) take into account the matters referred to in paragraph 3 of this schedule;
- (b) ensure that the terms for implementing the Change Request reflect a fair and reasonable allocation of risk; and
- (c) ensure that any changes to the Fees are reasonable, competitive and include a reasonable profit.

8. Not Unreasonably Refusing a Change: Subject to paragraph 9 of this schedule, the Service Provider must not unreasonably refuse (directly or indirectly) any Change Request submitted by Gas Industry Co, including (without limitation) where the Change is necessary to:

- (a) avoid or minimise any risk to the integrity and operation of the Registry System;
- (b) enable Participants to access and use the Registry System in accordance with the Rules.

9. Reasonable Grounds for Refusing a Change: The Service Provider, acting reasonably, may refuse a Change submitted by Gas Industry Co, including (without limitation) where it can demonstrate to Gas Industry Co that:

- (a) the Service Provider does not have the qualified resources needed to undertake the work required to implement the Change;

- (b) the Service Provider cannot meet the proposed timeframe for implementing the Change because of resourcing constraints or other constraints;
- (c) the Change is technically unfeasible;
- (d) the Change will substantially alter the Service Provider's risk profile, for example, by exposing it to greater liability.

10. Pricing Principles: The following pricing principles will apply in respect of a Change:

- (a) the Service Provider will only charge Gas Industry Co for a Change to the extent that the Change is not already covered by the Fees;
- (b) if there is a cost impact associated with implementing the Change then the parties will use genuine efforts to agree a reasonable price for the Change (taking into account the nature and extent of the Change);
- (c) the pricing for any Change will be as set out in the Standard Daily Rates:

11. Truncated Process: Where a Change Request is relatively minor (in terms of cost and impact) and is fairly routine, and the parties agree (such agreement not to be unreasonably withheld), a truncated Change Control Process (acceptable to Gas Industry Co and the Service Provider) may be adopted to deal with that Change Request.

12. Rule Changes: The parties acknowledge that this Agreement has been agreed on the basis of the Rules and that any changes to the Rules after that date will be treated as rule changes. Notwithstanding anything else in this Agreement, any change to the Rules after the date of this Agreement will not affect the Service Provider's obligations or liabilities under this Agreement, except to the extent that such changes to the Rules are treated as a Change Request.

SCHEDULE 9**REPORTING**

1. **Weekly Report:** During the Registry System development phase the Service Provider will provide to Gas Industry Co a weekly project report containing the following information:
 - (a) a management summary;
 - (b) an update on the status of the project during the implementation stage;
 - (c) any work planned over the next two weeks;
 - (d) whether implementation is on schedule during the implementation stage;
and
 - (e) any issues or risks.
-