|  |
| --- |
| Gas Transmission Access Code |

**TABLE OF CONTENTS**

[1 definitions and construction 3](#_Toc490149782)

[2 transmission services 19](#_Toc490149783)

[3 transmission products and zones 21](#_Toc490149784)

[4 nominations 25](#_Toc490149785)

[5 energy quantity determination 28](#_Toc490149786)

[6 energy allocations 30](#_Toc490149787)

[7 additional agreements 33](#_Toc490149788)

[8 balancing 38](#_Toc490149789)

[9 curtailment 46](#_Toc490149790)

[10 congestion management 48](#_Toc490149791)

[11 fees and charges 52](#_Toc490149792)

[12 gas quality 60](#_Toc490149793)

[13 odorisation 62](#_Toc490149794)

[14 prudential requirements 63](#_Toc490149795)

[15 force majeure 65](#_Toc490149796)

[16 liabilities 67](#_Toc490149797)

[17 code changes 71](#_Toc490149798)

[18 dispute resolution 74](#_Toc490149799)

[19 term and TERMINATION 75](#_Toc490149800)

[20 general and legal 77](#_Toc490149801)

[schedule one: transmission services agreement 81](#_Toc490149802)

[schedule two: information to be published 84](#_Toc490149803)

[schedule three: requirements of gas transfer agreements 85](#_Toc490149804)

# definitions and construction

## Defined Terms

* 1. In this Code:

*Acceptable Line Pack Limits* means the upper and lower operating limits for Line Pack determined by First Gas and published on [OATIS];

*Accurate* has the meaning set out in the Metering Requirements, and *Accuracy* and *Accurately* shall be construed accordingly;

*Agreed Hourly Profile* means a schedule of consecutive Hourly quantities of Gas that may be injected into, or taken from the Transmission System (as the case may be), for one or more consecutive Days;

*Allocation Agent* means the person appointed to undertake that role under the DRR or an Allocation Agreement;

*Allocation Agreement* means, for a Delivery Point used by more than one Shipper at which Delivery Quantities are not determined under either the DRR or an OBA, an agreement which sets out, among other things, the methodology to be used by the Allocation Agent to apportion the metered quantity of Gas amongst those Shippers to determine their Delivery Quantities;

*Allocation Result* means:

* + 1. for Delivery Points at which Gas is allocated under the DRR, the same as that term in the DRR; and
    2. for Delivery Points used by more than one Shipper at which Gas is not allocated under the DRR or an OBA, the Delivery Quantities determined under the relevant Allocation Agreement;

*Approved NQ* means the NQ approved by First Gas in the most recent nominations cycle (subject to any subsequent curtailment by First Gas);

*Available Operational Capacity* means the amount of Operational Capacity that First Gas determines it can make available as DNC;

*Balancing Gas* means any Gas bought or sold by First Gas to maintain Line Pack within the Acceptable Line Pack Limits;

*Balancing Gas Charge* has the meaning set out in *section 8.8(a)*;

*Balancing Gas Credit* has the meaning set out in *section 8.9(a)*;

*Beneficiary DP* has the meaning set out in *section 10.14*;

*Bi-directional Point* means a station which, at different times, may operate either as a Receipt Point or as a Delivery Point;

*Bill Rate* means, on any Business Day, the 90-Day Rate published by the Reserve Bank of New Zealand for the weekly period in which the Business Day falls;

*Business Day* means any Day (other than a Saturday, Sunday or a public holiday) on which registered banks are open for business in New Plymouth and Wellington;

*Capped Amounts* has the meaning set out in *section 16.5*;

*CCM Regulations* means the Gas Governance (Critical Contingency Management) Regulations 2008;

*Change Request* has the meaning set out in *section 17.9*;

*Changed Provisional NQ* has the meaning set out in *section 4.15*;

*Changed Provisional Nominations Deadline* means the time notified by First Gas [on OATIS], by which a Shipper must submit its Changed Provisional NQs [on OATIS] on the Day before the Day to which such NQs relate;

*Code* means this Gas Transmission Access Code;

*Commencement Date* means the commencement date specified in *clause 2* of Part A of the relevant TSA;

*Congestion* means, in relation to a Delivery Point, a state wherein:

* + 1. Shippers’ aggregate requests for DNC, if approved; or
    2. Shippers’ aggregate current offtake, were it to continue,

would, in First Gas’ reasonable opinion, be likely to exceed Available Operational Capacity at that Delivery Point;

*Congested Delivery Point* means a Delivery Point that First Gas believes may be subject to Congestion;

*Congestion Management* means the various measures that First Gas may initiate to alleviate Congestion, as described in *section 10*;

*Congestion Management Charge* means, under a TSA, the charge to recover First Gas’ costs of Congestion Management, calculated in accordance with *section 11.9*;

*Confidential Information* is information that the relevant parties both agree is such, in accordance with *sections 20.3* to *20.4*;

*CPI Index* means the most recently published consumer price index stipulated in the “All Groups Index SE9A” published by Statistics New Zealand or, if that index ceases to be published or in the opinion of the Government Statistician (or his/her replacement) the basis for it changes significantly, another price index as First Gas considers most closely approximates the purpose and composition of the CPI Index;

*Credit Support* means the credit support arrangements set out in *section 14.1(b)*;

*Critical Contingency* has the meaning set out in the CCM Regulations;

*Critical Contingency Management Plan* means First Gas’ critical contingency management plan approved in accordance with the CCM Regulations (with a copy of the plan being posted on OATIS);

*Critical Contingency Operator* or *CCO* has the meaning set out in the CCM Regulations;

*Daily Nominated Capacity* or *DNC* comprises the quantities defined by MDQ and MHQ respectively, where the amount of a Shipper’s MDQ for a Day is that Shipper’s Approved NQ for that Day;

*Daily Nominated Capacity Fee* or *DNC Fee* means the fee payable by a Shipper for DNC;

*Daily Nominated Capacity Charge* means, under a TSA, the charge for DNC calculated in accordance with *section 11.2*;

*Day* means a period of 24 consecutive hours, beginning at 0000 hours (New Zealand standard time) and *Daily* shall be construed accordingly;

*Dedicated Delivery Point* means a Delivery Point at which a Shipper (or more than one) takes (or may take) Gas for supply to a single End-user;

*Delivery Point* means a station on the Transmission System at which one or more Shippers take (or may take) Gas from the Transmission System or, in the case of an Existing Supplementary Agreement, the delivery point named as that in such agreement;

*Delivery Quantity* or *DQ* means the quantity of Gas taken by a Shipper in a Delivery Zone or at a Delivery Point on a Day, determined in accordance with *section 6*;

*Delivery Zone* means a group of two or more Delivery Points which, for the purposes of *sections 4* and *11* are treated as a single notional delivery point, provided that no such Delivery Zone shall include any Dedicated Delivery Point or Congested Delivery Point;

*Dispute Notice* has the meaning set out in *section 18.1*;

*Distribution Network* means any pipeline system operating at a pressure of less than 20 bar gauge and designed to convey Gas taken at a Delivery Point to more than one End-user;

*Downstream Reconciliation Rules* or *DRR* means the Gas (Downstream Reconciliation) Rules 2008;

*Draft Change Request* has the meaning set out in *section 17.3*;

*Emergency* means a situation, or an event or circumstance (or a series of events or circumstances) which First Gas determines to be an emergency, irrespective of its cause or whoever (including First Gas) may have caused or contributed to that emergency. An Emergency may exist:

* + 1. by reason of any actual or potential failure of, or damage to, any part of the Transmission System;
    2. where in First Gas’ reasonable opinion the safety of the Transmission System or the safe transportation of Gas is significantly at risk, including as a result of circumstances upstream or downstream of the Transmission System;
    3. due to an interruption or disruption to the operations of a pipeline;
    4. where Gas is at such a pressure or of such a quality as to constitute a hazard to persons, property or the environment; or
    5. where First Gas’ ability to maintain safe pressures within a pipeline is affected or threatened by:
       1. an insufficiency of injections of Gas into a pipeline;
       2. any off-take of Gas from a pipeline which exceeds the relevant Maximum Design Flow Rate or exceeds the quantity or offtake rate specified in an Operational Flow Order;

*End-user* means a consumer of Gas;

*Excess Running Mismatch* or *ERM* means that amount of a party’s Running Mismatch that exceeds that party’s Running Mismatch Tolerance;

*Existing Interconnection Agreement* means an interconnection agreement with a commencement date earlier than the Commencement Date, excluding interconnection agreements which terminated automatically on termination of Code replaced by this Code;

*Existing Supplementary Agreement* means a supplementary agreement with a commencement date earlier than the Commencement Date;

*Expiry Date* means the earlier of the expiry date of this Code and the date specified in *clause 3* of Part A of the relevant TSA;

*First Gas* means First Gas Limited at New Plymouth;

*Force Majeure Event* means an event or circumstance beyond the reasonable control of a Party which results in or causes a failure or inability by such Party in the performance of any obligations imposed on it by its TSA and/or (in the case of a Shipper) an inability of that Shipper to inject or take Gas pursuant to that Shipper’s TSA notwithstanding the exercise by such Party of reasonable care and, subject to the foregoing, shall include any such event or circumstance which causes a Critical Contingency to be determined and/or any action or inaction of a Party necessary to comply with the CCM Regulations which causes a failure or inability of the kind described above;

*Gas* means gas that complies with the Gas Specification;

*Gas Market* means a reputable and open electronic market platform controlled and operated by:

* + 1. a party other than First Gas for the purposes of trading Gas; and/or
    2. First Gas, exclusively for the purposes of buying and selling Balancing Gas;

*Gas Specification* means the New Zealand Standard NZS 5442:2008: Specification for Reticulated Natural Gas;

*Gas Transfer Agent* means First Gas in its capacity as a gas transfer agent or its replacement appointed pursuant to *section 6.5* and named as a gas transfer agent in the relevant GTA;

*Gas Transfer Agreement* or *GTA* means a valid and binding agreement between a transferor and transferee of Gas (who may be the same person) and the Gas Transfer Agent, which complies with the requirements of Schedule Three;

*GIC* means the Gas Industry Company Limited:

*GJ* or *Gigajoule* means a gigajoule of Gas, on a “gross calorific value” basis;

*GST* and *GST Amount* mean, respectively, Goods and Services Tax payable pursuant to the Goods and Services Tax Act 1985 and the amount of such tax;

*High Line Pack Notice* means a notice issued by First Gas to all Shippers and Interconnected Parties pursuant to *section 8.13* [on OATIS] indicating that Line Pack is increasing towards the upper Acceptable Line Pack Limit and that, if the trend continues, First Gas may need to take action to manage Line Pack in accordance with *section 8*;

*Hour* means a period of 60 consecutive minutes beginning on the hour and *Hourly* shall be construed accordingly;

*Hourly Overrun Charge* means the charge for exceeding MHQ, that is calculated:

* + 1. under a TSA, in accordance with *section 11.7*;
    2. under a Supplementary Agreement, in accordance with the relevant agreement; and
    3. under an Interruptible Agreement, in accordance with the relevant agreement;

*Inaccurate* means not Accurate;

*Interconnected Party* means a party whose gas producing or gas processing facility, pipeline, Distribution Network or gas consuming facility is physically connected to the Transmission System, irrespective of whether there is an ICA at such point;

*Interconnection Agreement* or *ICA* means an agreement between First Gas and an Interconnected Party, entered into on or after the commencement of this Code and complying with the requirements of *sections 7.13* and *7.14*, which sets out the terms and conditions applicable to that party’s connection to the Transmission System at a Receipt Point, Delivery Point or Bi-directional Point;

*Interconnection Point* means a point identified in an ICA at which the Transmission System is physically connected to an Interconnected Party’s gas producing or exporting facility, pipeline, Distribution Network or gas consuming facility;

*Interruptible Agreement* means an agreement between First Gas and a Shipper that supplements and amends that Shipper’s underlying TSA in accordance with *sections 7.9* and *7.10* for the purposes of the transmission of Gas to a Delivery Point for supply to a specific End-user or site and where the transmission of Gas may be curtailed at First Gas’ sole discretion for any reason at any time;

*Interruptible Capacity* means the Daily amount of transmission capacity First Gas makes available to a Shipper under an Interruptible Agreement;

*Interruptible Load* means Gas offtake (whether taken directly at a Dedicated Delivery Point or indirectly via a Distribution Network) which First Gas may at its discretion curtail under an Interruptible Agreement;

*Intra-Day Cycle* means the period of a Day to which any Intra-Day NQ relates;

*Intra-Day NQ* means an NQ to replace a Changed Provisional NQ, or a new NQ requested by a Shipper during an Intra-Day Cycle that applies to the immediately following Intra-Day Cycle;

*Intra-Day Nomination Deadline* means the time by which a Shipper must notify an Intra-Day NQ during a particular Intra-Day Cycle that applies to the immediately following Intra-Day Cycle, as published by First Gas [on OATIS];

*Liable Party* has the meaning set out in *section 16.1*;

*Liable Third Parties* has the meaning set out in *section 16.6*;

*Line Pack* means the total quantity of Gas contained in the Transmission System (or a defined part of it) at any time;

*Low Line Pack Notice* means a notice issued by First Gas to all Shippers and Interconnected Parties pursuant to *section 8.12* [on OATIS] indicating that Line Pack is decreasing towards the lower Acceptable Line Pack Limit and that, if the trend continues, First Gas may need to take action to manage Line Pack in accordance with *section 8*;

*Loss* means any loss, damage, expense, cost, liability or claim;

*Maintenance* includes any testing, adding to, altering, repairing, replacing, upgrading, inspecting, cleaning, pigging, servicing, decommissioning, removing or abandoning of (including any works preparatory to any such activity, or required to return to service on completion of any such activity) any part of the Transmission System (including any Receipt Point, Delivery Point, Bi-directional Point, compressor or other station, Metering, pipeline or any pipeline equipment including any aerial, bridge or other crossing, culvert, drainage, support or ground retention works);

*Maximum Daily Quantity* or *MDQ* means, in respect of a Day, the maximum quantity of Gas that First Gas is required to receive from a Shipper within a Receipt Zone (or at an individual Receipt Point, as applicable) and simultaneously make available for that Shipper to take in a Delivery Zone or at a Dedicated Delivery Point, which shall be:

* + 1. under a TSA, the Shipper’s DNC;
    2. under a Supplementary Agreement, the MDQ set out in such agreement;
    3. under an Interruptible Agreement, the Interruptible Capacity for a Day made available under such agreement; or
    4. where there is an Agreed Hourly Profile, the sum of the Hourly quantities for the Day;

*Maximum Design Flow Rate* means the maximum flow rate of Gas that a Receipt Point, Delivery Point, Bi-directional Point, or Metering associated with any such point, is designed to have flow through it and, in the case of Metering, Accurately measure;

*Maximum Hourly Quantity* or *MHQ* means, in respect of an Hour, the maximum quantity of Gas that First Gas is required to receive from a Shipper within a Receipt Zone (or at an individual Receipt Point, as applicable) and simultaneously make available for that Shipper to take in a Delivery Zone or at a Dedicated Delivery Point, which shall be:

* + 1. under a TSA, 1/16th of the relevant MDQ;
    2. under a Supplementary Capacity, the MHQ set out in the relevant Supplementary Agreement;
    3. under a Interruptible Capacity, the amount or amounts set out in the relevant Interruptible Agreement; or
    4. where there is an Agreed Hourly Profile, as defined therein;

*Metering* means the equipment, complying with the Metering Requirements, installed at or near a Receipt Point, Delivery Point or Bi-directional Point which measures the quantities of Gas injected into or taken from the Transmission System at such point;

*Metering Owner*means the party who owns the Metering;

*Metering Requirements* means the document of that name published [on OATIS];

*Minimum Design Flow Rate* means the minimum flow rate of Gas that the relevant Receipt Point, Delivery Point, Bi-directional Point or Metering is designed to have flow through it and, in the case of the Metering, Accurately measure;

*Mismatch* means, for each Day and:

* + 1. a Shipper, the aggregate of that Shipper’s Receipt Quantities minus the aggregate of its Delivery Quantities, where:
       1. aggregate receipts greater than aggregate deliveries is positive Mismatch; and
       2. aggregate receipts less than aggregate deliveries is negative Mismatch;
    2. an OBA Party, the difference between the Scheduled Quantity and the metered quantity (i.e. the actual quantity of Gas injected at a Receipt Point or taken at a Delivery Point), where:
       1. over-injection or under-take relative to the Scheduled Quantity are each a positive Mismatch; and
       2. under-injection or over-take relative to the Scheduled Quantity are each a negative Mismatch; and
    3. First Gas, the aggregate of Gas purchased by First Gas for operational purposes minus the aggregate of Gas used by First Gas for operational purposes, where:
       1. aggregate purchases greater than aggregate usage is positive Mismatch; and
       2. aggregate purchases less than aggregate usage is negative Mismatch.

For the purposes of this part (c), includes Gas purchased to correct for UFG but excludes Balancing Gas;

*Month* means the period beginning at 0000 hours on the first Day of a calendar month and ending at 0000 hours on the first Day of the next calendar month, and *Monthly* shall be read accordingly;

*Nomination Day* means the Day on which the provisional nominations process for the following Week takes place, being the last Business Day of each Week;

*Nominated Quantity* or *NQ* means, in respect of a Day:

* + 1. for a Receipt Point, the quantity of its Gas that a Shipper wishes to inject (or have injected on its behalf) into the Transmission System; and
    2. for a Delivery Zone or Dedicated Delivery Point, the amount of DNC a Shipper wishes First Gas to make available to it;

*Non-Specification Gas* means gas that does not comply with the Gas Specification;

*Non-standard Transmission Charges* means the transmission charges payable under any Existing Supplementary Agreement, Supplementary Agreement or Interruptible Agreement;

*[OATIS]* means First Gas’ internet-based open access transmission information system, whose homepage is located at [<http://www.oatis.co.nz>] (or such other homepages as First Gas may notify to Shippers and Interconnected Parties in writing), or any replacement system;

*Operational Balancing Agreement* or *OBA* means an agreement forming part of the Interconnected Party’s Interconnection Agreement at a Receipt Point or Delivery Point, under which:

* + 1. Mismatch is determined at the relevant Receipt Point or Dedicated Delivery Point and is the responsibility of the OBA Party; and
    2. to the extent that it has Running Mismatch, the OBA Party must take steps to move that Running Mismatch towards zero in the shortest practicable time; and
    3. the Receipt Quantity or Delivery Quantity of any Shipper using the relevant point is equal to its Approved NQ,

provided also that an OBA may cover more than one Receipt Point or Delivery Point;

*OBA Party* means the Interconnected Party at a Receipt Point or Delivery Point where an OBA applies;

*Operational Capacity* means, in relation to a Delivery Point, the total transmission capacity that First Gas, in its sole discretion determines it can provide without either exceeding the capacity of that Delivery Point or breaching its Security Standard;

*Operational Flow Order* means a notice issued pursuant to *section 9.3*, requiring a Shipper to immediately curtail its injection of Gas at a Receipt Point and/or its take of Gas at a Delivery Point (as the case may be) or, where the Shipper is not able to directly control the flow of Gas, use its best endeavours to procure that the party who is able to exert such control does so;

*Other Party* has the meaning set out in *section 16.1*;

*Overrun Charge* means the charge payable:

* + 1. under a TSA, for exceeding DNC, calculated in accordance with *section 11.6(a)*;
    2. under a Supplementary Agreement, for exceeding MDQ calculated in accordance with the relevant agreement; and
    3. under an Interruptible Agreement, for exceeding MDQ, calculated in accordance with the relevant agreement;

*Party* means each of First Gas and the other party to a TSA and *Parties* means both of them;

*Primary Balancing Obligation* has the meaning set out in *sections 8.2* to *8.4*;

*Priority Right* or *PR* has the meaning set out in *section 3.7*;

*Priority Rights Charge* means the charge payable by a Shipper for its PRs, calculated in accordance with *sections 11.4* and *11.5*;

*Proposed Scheduled Quantity* has the meaning set out in *section 4.18*;

*Provisional NQ* has the meaning set out in *section 4.14*;

*Provisional Nominations Deadline* means the time on the Nomination Day, as notified by First Gas [on OATIS], by which a Shipper must notify First Gas of its Provisional NQs;

*PR Allocation Day* has the meaning set out in *section 3.12;*

*PR Auction* has the meaning set out in *section 3.11;*

*PR Term* has the meaning set out in *section 3.15*;

*Reasonable and Prudent Operator* means, in relation to the performance of obligations under a TSA:

* + 1. for First Gas, an operator of a high pressure gas transmission system whose standard of performance is equal to or better than good high pressure gas transmission system operating practice as determined by reference to proper and prudent practices recognised internationally as applying to the operation of such systems; and
    2. for a Shipper, a shipper of gas whose standard of performance is equal to or better than good gas shipping practice as determined by reference to proper and prudent practice recognised internationally as applying to shippers of gas;

*Receipt Point* means a station on the Transmission System at which one or more Shippers inject (or may be) injected into the Transmission System;

*Receipt Quantity* means, in respect of a Day and a Shipper, the quantity of Gas received by First Gas at a Receipt Point, as determined in accordance with *section 6*;

*Receipt Zone* means a zone comprising one or more Receipt Points, defined by First Gas in accordance with *section 3.3* and published [on OATIS];

*Regional Critical Contingency* has the meaning set out in the CCM Regulations;

*Reserve Price* means the price (in $/Priority Right) set by First Gas to recover its reasonable costs in administering auctions for Priority Rights;

*Retailer* has the meaning set out in the CCM Regulations;

*Running Mismatch* means, in relation to a Day and:

* + 1. a Shipper:
       1. the sum of the Shipper’s Mismatch on that Day and all previous Days (as calculated at the end of each Day); plus
       2. any quantity of Gas purchased by the Shipper on any previous Day, including pursuant to section 8.8(b)(i) and/or 8.15(b); minus
       3. any quantity of Gas sold by the Shipper on any previous Day, including pursuant to section 8.9(b)(i) and/or 8.16(b); plus and/or minus
       4. any applicable Wash-ups;
    2. an OBA Party:
       1. the sum of that OBA Party’s Mismatch on that Day and all previous Days (as calculated at the end of each Day); plus
       2. any quantity of Gas purchased by that OBA Party on any previous Day, including pursuant to section 8.8(b)(ii) and/or 8.15(b); minus
       3. any quantity of Gas sold by that OBA Party on any previous Day, including pursuant to section 8.9(b)(ii) and/or 8.16(b); plus and/or minus
       4. any applicable Wash-ups; and
    3. First Gas:
       1. the sum of First Gas’ Mismatch on that Day and all previous Days (as calculated at the end of each Day); plus
       2. any quantity of Gas purchased by First Gas on any previous Day, including pursuant to sections 8.8(b)(iii) and/or 8.15(b); minus
       3. any quantity of Gas sold by First Gas on any previous Day, including pursuant to sections 8.9(b)(iii) or 8.16(b); plus and/or minus
       4. any applicable Wash-ups,

where Running Mismatch may be either Positive or Negative;

*Running Mismatch Tolerance* means, for each Day:

* + 1. for each Shipper, an amount that is the lesser of:
       1. PS × ∑DQS; and
       2. RMS ÷ RMALL × TR,

where:

*PS* is the percentage, which may be different for Positive or Negative Running Mismatch, determined by First Gas and published [on OATIS];

*∑DQS* is the aggregate of the Shipper’s Delivery Quantities;

*RMS* is the Shipper’s positive or negative Running Mismatch at 2400 on that Day;

*RMALL* is the aggregate of all parties’ positive Running Mismatches or negative Running Mismatches at 2400 on that Day; and

*TR* is an amount of Line Pack (GJ), which may be different for the aggregate of all parties’ positive and negative Running Mismatches, determined by First Gas and published [on OATIS];

* + 1. for each OBA Party, an amount that is the lesser of:
       1. PI × SQ; and
       2. RMI ÷ RMALL × TR,

where:

*PI* is a percentage,which may be different for Positive and Negative Running Mismatch, determined by First Gas for each Receipt and Delivery Point where an OBA applies and published on [OATIS];

*SQ* is the Scheduled Quantity;

*RMI* is the OBA Party’s positive or negative Running Mismatch at 2400 on that Day;

*RMALL* and *TR* each has the meaning set out in (a) above; and

* + 1. for First Gas, an amount that is the lesser of:
       1. PF × Use; and
       2. RMF ÷ RMALL × TR,

where:

*PF* is the percentage (or percentages) referred in part (a);

*Use* is the First Gas’ aggregate operational gas usage, including Gas purchased to correct for UFG but excluding Balancing Gas;

*RMF* is First Gas’ positive or negative Running Mismatch at 2400 on that Day; and

*RMALL* and *TR* each has the meaning set out in part (a);

*SCADA* means First Gas’ “System Control and Data Acquisition” system;

*Scheduled Maintenance* means Maintenance planned and scheduled ahead of time;

*Scheduled Quantity* has the meaning set out in *section 4.18*;

*scm* means “standard cubic meter”, namely a cubic meter of gas at standard conditions of temperature and pressure, i.e. 15 degrees Celsius and 1.01325 bar absolute;

*Security Standard Criteria* means physical parameters defined by First Gas to indicate that Operational Capacity may be about to be, or has been, exceeded, including minimum permissible pressures at various points on the Transmission System (*PMIN*) and the projected minimum time to reach any such a pressure (*TMIN*);

*Shipper* means a person named as a shipper in a TSA with First Gas, including to the extent that such TSA is supplemented and amended by a Supplementary Agreement or Existing Supplementary Agreement;

*Supplementary Agreement* means an agreement between First Gas and a Shipper, entered into on or after the Commencement Date, that amends the Shipper’s TSA in accordance with *sections 7.4* and *7.5* for the purposes of the transmission of Gas to a Delivery Point for supply to a specific End-user or site;

*Supplementary Capacity* means the transmission capacity First Gas makes available under a Supplementary Agreement;

*Tax* has the meaning set out in *section 11.22*;

*Throughput Charge* means the charge calculated in accordance with *section 11.3*;

*TOU Meter* means a gas measurement system, meeting or exceeding the requirements of NZS 5259:2008, that measures all gas taken by an End-user and which incorporates an electronic pressure-and-temperature correcting instrument with electronic data storage that records (amongst other things) the actual and pressure-and-temperature corrected volumes of gas that pass through the meter Hourly together with the pressure and temperature of gas measured Hourly at the meter;

*TPA* or *Transmission Pricing Agreement* means an agreement between First Gas and an End-user which sets out (amongst other things) the transmission capacity available to any Shipper supplying Gas to that End-user, and the transmission fees applicable to that capacity, for a defined term, and requires the End-user to use Gas for that term and procure that its Gas supplier (a Shipper) at any time during that term is party to a Supplementary Agreement which reflects the terms and conditions of the TPA;

*Transmission Charges* means each of the Daily Nominated Capacity Charge, Throughput Charge, Overrun Charge, Underrun Charge and Hourly Overrun Charge;

*Transmission Fees* means each of the Daily Nominated Capacity Fee and Throughput Fee;

*Transmission Services Agreement* or *TSA* means an agreement between First Gas and a Shipper:

* + 1. in the form set out in Schedule One that has a Commencement Date on or after the date of this Code (including to the extent such agreement may be amended by a Supplementary Agreement or Interruptible Agreement); or
    2. which is deemed to apply by virtue of an Existing Supplementary Agreement;

*Transmission System* means the pipeline system for the transmission of Gas owned and operated by First Gas, including those parts which normally operate at pressures less than 20 bar g;

*Unaccounted-For-Gas* or *UFG* means, for a defined period of time, the quantity of Gas equal to:

Receipts - Deliveries + Line Packstart – Line Packend – Fuel – Gas Vented

where, in respect of that period:

*Receipts* means the aggregate of all relevant Receipt Quantities;

*Deliveries* means the aggregate of all relevant Delivery Quantities;

*Line Packstart*means the Line Pack at the start;

*Line Packend* means the Line Pack at the end;

*Fuel* means the aggregate quantity of Gas used by First Gas’ equipment; and

*Gas Vented* means the aggregate quantity of Gas estimated to have been vented (deliberately or otherwise), if any;

*Underrun Charge* means the charge payable under a TSA for using less capacity on a Day than DNC, calculated in accordance with *section 11.6(b)*;

*Wash-up* means, as the context requires:

* + 1. any adjustments to previously determined Delivery Quantities, determined by the Allocation Agent in accordance with the DRR and applied to Running Mismatches in the manner agreed by First Gas and Shippers or, failing such agreement, in the manner determined by First Gas, and includes adjustments arising from “interim allocations” and “final allocations” (as such terms are defined in the DRR);
    2. any adjustments required to correct previously determined Receipt or Delivery Quantities arising from Metering errors or the miscalculation of energy quantities, as determined by First Gas and applied to Running Mismatches in the manner agreed by First Gas and Shippers or, failing such agreement, in the manner determined by First Gas; and
    3. any monetary adjustments (credits or debits) corresponding to the Receipt and Delivery Quantity adjustments referred to in (a) and (b) above;

*Week* means a period of 7 Days beginning at 0000 hours (New Zealand standard time) on Monday; and

*Year* means a period of 365 (or 366 in a leap Year) consecutive Days commencing at 0000 hours on the 1st Day of October in each Year and ending at 2400 hours on the 30th Day of September in the following Year provided that the first Year shall be the broken period from 0000 hours on the Commencement Date (if not 1 October) to 2400 hours on 30th September immediately following the Commencement Date.

## Construction

* 1. In this Code and each TSA, unless the context otherwise requires:
     1. “inject” includes to cause or allow Gas to flow into the Transmission System at a Receipt Point, and other grammatical forms of “inject” shall be construed accordingly;
     2. “curtail” includes to reduce either partly or to zero and to shut or close down;
     3. “take” includes to cause or allow Gas to flow from the Transmission System at a Delivery Point, either for use or for transfer to another Shipper, and other grammatical forms of “take” shall be construed accordingly;
     4. a reference to any enactment, regulation, New Zealand Standard or any section of the Code, is a reference to that enactment, regulation, New Zealand Standard or section as amended or substituted;
     5. references to a document includes all amendments of, supplements to or replacements of such document;
     6. *sections 1* (excluding the definition of Non-Specification Gas), *2* to *11*, *13* to *20* and the schedules of the relevant TSA apply to Non‑Specification Gas as if it were Gas;
     7. headings appear as a matter of convenience and do not affect the interpretation of this Code;
     8. all of the annexed schedules form part of this Code;
     9. a reference to a section is to a section of this Code, a reference to Part A is to Part A of the relevant TSA, a reference to a schedule is to a schedule attached to this Code, a reference to a clause is to a clause in Part A of a TSA, and a reference in any schedule to a paragraph is a reference to a paragraph in that schedule;
     10. the singular includes the plural and vice versa;
     11. any derivation of a defined term or word shall have a corresponding meaning;
     12. any reference to any person doing any specific thing includes that party doing (or having the right or ability to do that thing) from time to time, unless specified otherwise;
     13. in interpreting any provision of this Code, each TSA shall be deemed to be between First Gas and the Shipper named in that TSA;
     14. nothing in this Code shall apply to, amend or be deemed to amend an Existing Supplementary Agreement unless, and only to the extent that such Existing Supplementary Agreement provides for such application or amendment;
     15. for the purposes of interpreting a TSA, unless the context requires otherwise, any reference to a Shipper shall be the shipper stated in that TSA;
     16. references to a Party or a Shipper includes its respective successors and permitted assignees;
     17. references to persons shall be deemed to include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, states or agencies of state, government departments and local and municipal authorities in each case whether or not having separate legal personality;
     18. any reference to a prohibition against doing something is to be regarded as including a reference to not permitting, suffering or causing that thing to be done;
     19. the rule of construction known as the contra proferentem rule does not apply to this Code;
     20. any reference to “includes”, “including” or similar shall imply no limitation;
     21. any reference to a "quantity of Gas” is a reference to the energy equivalent of Gas (expressed in GJ) unless otherwise stated;
     22. any reference to a “customer” in connection with a Shipper is a reference to an End-user supplied by that Shipper;
     23. any reference to a range of sections is inclusive of the first and last sections referenced;
     24. all references to any time of the Day shall, unless expressly referring to New Zealand standard time (that is, GMT + 1200 hours), be references to New Zealand statutory time (that is, including adjustments for New Zealand daylight savings time;
     25. any reference to “law” includes all statutes, regulations, codes of practice and local authority rules; and
     26. all references to monetary values shall refer to New Zealand currency.

# transmission services

## Gas Transmission Capacity

* 1. This Code sets out the terms and conditions on which First Gas’ makes Gas transmission capacity available to Shippers.
  2. First Gas shall provide Gas transmission capacity only to Shippers, in accordance with:
     1. a TSA;
     2. one or more Supplementary Agreements; and/or
     3. one or more Interruptible Agreements.
  3. First Gas will use all reasonable endeavours to provide Gas transmission capacity up to the prevailing Operational Capacity and, subject to the terms of this Code, will operate the Transmission System in such manner as it may determine in order to do so.
  4. Subject to the terms of this Code, First Gas shall at all times be able to receive Gas from a Shipper and, simultaneously, be able to make available equivalent Gas for that Shipper to take, up to limits of that Shipper’s DNC and/or Supplementary Capacity and/or Interruptible Capacity. First Gas will be deemed to have delivered a Shipper’s Gas to it when that Shipper takes an equivalent quantity of Gas at a Delivery Point (or more than one).
  5. First Gas shall have the right to co-mingle a Shipper’s Gas with other Gas in the Transmission System and shall not be obliged to deliver the same Gas it receives from a Shipper at a Receipt Point to that Shipper at any Delivery Point.
  6. First Gas will have control and possession of, and risk in, all Gas present in the Transmission System at any time.
  7. First Gas will deal with all Shippers on an arms’ length basis and not prefer or give any priority to any Shipper except as expressly provided for in this Code.

## Target Taranaki Pressure

* 1. Subject to *section 2.9*, First Gas will use reasonable endeavours to maintain the pressure at or near the Bertrand Road offtake from the Transmission System (the *Target Taranaki Pressure*), as measured by First Gas, within the range 42 to 48 bar gauge, except to the extent that:
     1. a Critical Contingency, Force Majeure Event, Emergency or Maintenance; or
     2. Shippers’ positive or negative Running Mismatch,

renders doing so impractical.

* 1. First Gas may change the Target Taranaki Pressure on expiry of not less than 12 months’ notice to all Shippers and Interconnected Parties in the Receipt Zone.

## Uneconomic Transmission Services

* 1. First Gas shall be under no obligation to enter into a TSA, or provide additional transmission services under an existing TSA where that would require material new assets and, in First Gas’ reasonable opinion:
     1. it would not be economic or prudent for First Gas to construct such new assets; and/or
     2. it would not be in the best interests of users of the Transmission System generally,

taking into account the likely incremental transmission revenue and the business and technical risks.

* 1. Subject to *section 2.12*, First Gas may, on the expiry of 12 months’ prior written notice to all Shippers, discontinue providing transmission services to any Delivery Point from which First Gas’ revenue from DNC Charges and Throughput Charges over the preceding 12 months is less than its reasonable estimate of the average annual operating and maintenance costs of that Delivery Point.
  2. Notwithstanding *section 2.11*, where:
     1. no Shipper requests DNC at a Delivery Point; or
     2. no Gas is taken at a Delivery Point,

for a continuous period of 12 months, First Gas may discontinue providing transmission services to such Delivery Point immediately and will notify all Shippers that such services are no longer available as soon as practicable [via OATIS].

## Reasonable and Prudent Operator

* 1. First Gas shall act as a Reasonable and Prudent Operator when exercising any of its rights, powers, obligations and duties under a TSA or this Code.
  2. Each Shipper shall act as a Reasonable and Prudent Operator when exercising any of its rights, powers, obligations and duties under its TSA or this Code.

# transmission products and zones

## Daily Nominated Capacity

* 1. DNC is First Gas’ standard capacity product and is intended to be the principal means by which Shippers obtain Gas transmission capacity from a Receipt Zone or Receipt Point to a Delivery Zone or Delivery Point.
  2. DNC:
     1. is obtainable only via the nomination processes set out in *section 4*;
     2. cannot be transferred or traded;
     3. may be curtailed by First Gas in the circumstances described in *sections 9* and (subject to Priority Rights, if any) *section* *10*; and
     4. cannot be used in conjunction with Supplementary or Interruptible Capacity.

## Receipt Zone

* 1. First Gas will publish [on OATIS] the Receipt Zones in effect at any time. First Gas may add or exclude any Receipt Point from a Receipt Zone, or define additional receipt zones, including where:
     1. Gas injected at a Receipt Point must be odorised and cannot be allowed to flow into an unodorised pipeline;
     2. First Gas elects to commence operating different parts of a Receipt Zone at different pressures, and/or Gas will no longer able to flow freely between different Receipt Points in that Receipt Zone; or
     3. First Gas considers that the location of any Receipt Point within the Receipt Zone is having a detrimental effect on the Operational Capacity.

## Delivery Zones

* 1. Prior to each Year, First Gas will define the Delivery Zones to apply in that Year, and notify Shippers of such as part of its notification of Transmission Fees for that Year pursuant to *section 11.12*. In determining Delivery Zones First Gas will have regard to:
     1. the Operational Capacity available within a Delivery Zone;
     2. geographical location and other similarities and commonalities;
     3. any information known concerning likely material changes in offtake;
     4. avoiding where practicable large differences in offtake amongst the constituent Delivery Points; and
     5. the merits of the various Delivery Points in a Delivery Zone having the same Transmission Fees;
  2. If any Delivery Point within a Delivery Zone becomes a Congested Delivery Point during a Year, First Gas will use reasonable endeavours to notify Shippers of such event not later than the date referred to in *section 3.11(a)*, and:
     1. will manage the Congestion in accordance with the relevant provisions of *section 10*; and
     2. may exclude that Delivery Point from the Delivery Zone on the expiry of not less than 5 Business Days’ notice to all Shippers.
  3. If any Congested Delivery Point ceases to be such during a Year, First Gas may include that Delivery Point in a Delivery Zone on the expiry of not less than 5 Business Days’ notice to all Shippers.

## Priority Rights

* 1. First Gas will offer Priority Rights (*PRs*) for each Congested Delivery Point only and not for Delivery Zones or for Dedicated Delivery Points. Shippers may obtain PRs only via the processes set out in this *section 3*.
  2. Each Priority Right (*PR*) gives the holder priority access to 1 GJ of DNC in the event that DNC is curtailed for any reason other than an Emergency, Force Majeure Event or Critical Contingency.
  3. PRs may only be used at the Delivery Point for which First Gas allocates them. PRs cannot be transferred to any other Delivery Point.
  4. First Gas will use reasonable endeavours to offer PRs up to the amount of Available Operational Capacity, having regard to:
     1. the throughput of gas in the previous 12 Months, adjusted for any changes of which First Gas is aware;
     2. Supplementary Capacity (if any); and
     3. the capacity of the relevant Delivery Point.

## Obtaining Priority Rights

* 1. First Gas will allocate PRs for each Congested Delivery Point exclusively via auction (*PR Auction*), where:
     1. First Gas will notify Shippers not later than 10 Business Days prior to each PR Auction of:
        1. the number of PRs on offer;
        2. the Reserve Price, below which any bid for PRs will be invalid and automatically excluded; and
        3. the PR Auction terms and conditions including the bidding rules and settlement terms;
     2. only Shippers may participate in a PR Auction;
     3. a Shipper may bid for a maximum of five tranches of PRs in any PR Auction, provided that:
        1. the bid price for each tranche ($ per PR) must be different; and
        2. if the Shipper bids for an aggregate number of PRs in excess of the number on offer, all the Shipper’s bids in that auction will be invalid and automatically excluded from that auction; and
     4. PR Auction terms and conditions will be those determined by First Gas and published [on OATIS] not less than 30 Days before any PR Auction.
  2. First Gas will schedule not less than two PR Auctions for a Year (*YearN*), on:
     1. the second Monday in September in YearN-1; and
     2. one or more dates at intervals during YearN,

and in each case allocate PRs on the first Day of the Month following the Month in which the PR Auction is held (the *PR Allocation Day*), provided that:

* + 1. in the Year this Code commences only one PR Auction will be held, on the second Monday in March of that Year, for which the PR Allocation Day will be 1 April in that Year; and
    2. in the event First Gas notifies Shippers pursuant to *section 3.6* prior to a scheduled PR Auction, such PR Auction will not be held.
  1. On each PR Allocation Day, First Gas will rank all valid bids in descending order of bid price, treating bids for different tranches of PRs as separate bids. First Gas will then allocate:
     1. to the highest price bidder the number of PRs equal to the lesser of the number requested by that bidder and the number on offer; and
     2. remaining PRs to bidders in descending order of bid price until either all PRs on offer have been allocated or all bidders’ requests have been satisfied,

provided that:

* + 1. equal price bids will be ranked equally; and
    2. if the number of PRs remaining to be allocated is less than the number bid for in the next lowest priced tranche, no PRs will be allocated to that, or any other tranche.
  1. On or immediately following each PR Allocation Day, First Gas will publish [on OATIS] the number of PRs allocated to each Shipper at a Congested Delivery Point.
  2. The term of each PR (the *PR Term*) will commence at 0000 on the PR Allocation Day and terminate at 2400 on the Day prior to the PR Allocation Date for the immediately following scheduled PR Auction, inclusive. All PRs will expire automatically at the end of the PR Term.
  3. A Shipper may trade PRs with another Shipper at any time during the PR Term, using the trading functionality provided by First Gas for the purpose. After any such trade, First Gas will update the Shippers’ PR holdings [on OATIS].
  4. Each Shipper will pay for the PRs allocated to it, or which it purchases pursuant to *section 3.16*, via Priority Rights Charges in accordance with *section 11.4* and/or *section 11.5*.
  5. A Shipper must pay the Priority Rights Charge for the full amount of its PRs regardless of its Nominated Quantities. Where a Shipper’s NQ is less than its holding of PRs at a Congested Delivery Point, the “unused” PRs will not be available to that Shipper.

## Agreed Hourly Profiles

* 1. First Gas recognises that DNC may not always suit the requirements of End-users whose Gas use is inherently highly variable, or which may change substantially from Hour to Hour. To provide an additional means for both a Shipper and First Gas to manage such an End-user’s Gas demand, First Gas may be willing to approve an Agreed Hourly profile. In principle, First Gas views an Agreed Hourly Profile as an agreed variation of DNC, specifically in respect of the relationship between MDQ and MHQ.
  2. A Shipper may request an Agreed Hourly Profile at Dedicated Delivery Point only. First Gas will consider, but shall not be obliged to approve such request.
  3. First Gas reserves the right to cancel any Agreed Hourly Profile without prior notice, and shall have no liability to any party whatsoever if it does so.
  4. The existence of an Agreed Hourly Profile shall not relieve a Shipper of its obligation to notify NQs in accordance with *section 4* and, in each nomination cycle, the Shipper must confirm whether such Agreed Hourly Profile is to apply or not. First Gas will provide a facility [on OATIS] to enable the Shipper to do that.
  5. Where First Gas has approved an Agreed Hourly Profile but the Shipper fails to confirm pursuant to *section 3.22* that such profile is to apply, First Gas will disregard such Agreed Hourly Profile:
     1. in its operation of the Transmission System; and
     2. in determining the Shipper’s Hourly Overrun Charges during the relevant nominations cycle.
  6. Where requested, First Gas may also approve an Agreed Hourly Profile at a Receipt Point where an OBA applies, for example to manage Scheduled Maintenance or an unplanned Gas production outage.
  7. First Gas’ approval of an Agreed Hourly Profile shall not derogate from any Shipper’s or OBA Party’s Primary Balancing Obligation.

# nominations

## Receipt Nominations

* 1. Where an OBA (or other agreement that requires Shipper nominations) applies at a Receipt Point, each Shipper using that Receipt Point shall notify its Nominated Quantities (*NQs*) to First Gas [via OATIS].
  2. NQs notified pursuant to *section 4.1* will be subject to the Interconnected Party’s approval [via OATIS] in accordance with *section 4.17*.
  3. First Gas may curtail Receipt Point NQs that would:
     1. in aggregate, exceed the Maximum Design Flow Rate of the relevant Receipt Point; and/or
     2. in First Gas’ reasonable opinion, would cause the upper Acceptable Line Pack Limit to be exceeded.
  4. First Gas will provide for not less than 4 Intra-Day Cycles at every Receipt Point.

## Nominations for Delivery Zones

* 1. Each Shipper wishing to take Gas at one or more Delivery Points in a Delivery Zone shall notify a single, aggregate NQ for that Delivery Zone to First Gas [via OATIS] in any nominations cycle, which NQ shall represent the Shipper’s total requirement for DNC in that Delivery Zone at that time.
  2. For any Delivery Point declared to be a Congested Delivery Point pursuant to *section 3.5(b)*, *section 4.5* will cease to apply from the date that Delivery Point’s exclusion from a Delivery Zone becomes effective, whereupon *section 4.7* will apply.

## Nominations for Individual Delivery Points

* 1. Each Shipper wishing to use a Dedicated Delivery Point or Congested Delivery Point (each an *Individual Delivery Point*) must notify NQs for each such point individually [via OATIS].
  2. At any Dedicated Delivery Point where an OBA applies, a Shipper’s NQs will be subject to the OBA Party’s approval [via OATIS] pursuant to *section 4.17*.
  3. First Gas will make provision [in OATIS] for not less than 4 Intra-Day Cycles at each Individual Delivery Point.
  4. A Shipper’s NQ may be less than, equal to or more than the number of PRs it holds (if any) for a Congested Delivery Point.
  5. For each Delivery Zone and Individual Delivery Point, First Gas will receive, approve, amend or reject each Shipper’s NQs in accordance with the *sections 4.19* to *4.26*, [via OATIS].
  6. Subject to *section 8.2*, the aggregate of a Shipper’s delivery nominations may be different from the aggregate of that Shipper’s receipt nominations for a Day.

## Nominations Cycles

* 1. The nomination cycles referred to in *sections* *4.14,* *4.15* and *4.16* shall apply in respect of:
     1. each Receipt Point at which an OBA applies;
     2. any other Receipt Point at which any agreement between the Interconnected Party and the relevant Shippers requires those Shippers to notify NQs;
     3. all Delivery Zones and Individual Delivery Points (including those at which there is an OBA).
  2. Each Shipper must notify First Gas of its NQs for each Day of the following Week [via OATIS] (each such NQ a *Provisional NQ*) before the Provisional Nominations Deadline.
  3. A Shipper may amend any Provisional NQ before the Changed Provisional Nominations Deadline by notifying First Gas of a changed NQ [via OATIS] (a *Changed Provisional NQ*). Any Provisional NQ that remains unchanged will automatically be deemed to be the Shipper’s Changed Provisional NQ.
  4. A Shipper may amend any Changed Provisional NQ before the relevant Intra-Day Nominations Deadline by notifying First Gas of a changed NQ [via OATIS] (an *Intra-Day NQ*).

## OBA Party Analysis and Response

* 1. Where an OBA (or any other agreement requiring the Interconnected Party’s approval of Shippers’ NQs) applies at a Receipt Point or a Delivery Point, First Gas will procure that the Interconnected Party:
     1. has the ability to approve (or curtail) each Shipper’s NQ [via OATIS]; and
     2. must do so not later than 30 minutes after the Provisional, Changed Provisional or Intra-Day Nominations Deadline (as the case by be),

and, if the Interconnected Party fails to do so, it will be deemed to have approved any such NQ.

* 1. The aggregate of Shippers’ NQs approved by the Interconnected Party pursuant to *section 4.17* will be (where an OBA applies) the Proposed Scheduled Quantity. The aggregate of Shippers’ NQs First Gas approves pursuant to *section 4.19*, *4.20* or *4.21*  will be the Scheduled Quantity for the relevant Day.

## First Gas Analysis and Response

* 1. As soon as practicable and no later than 1 hour after the Provisional Nominations Deadline, First Gas will analyse each Shipper’s Provisional NQs and either approve each NQ or such lesser NQ as it shall determine [via OATIS].
  2. As soon as practicable and no later than 1 hour after the Changed Provisional Nominations Deadline, First Gas will analyse each Shipper’s Changed Provisional NQs and either approve each NQ or such lesser NQ as it shall determine [via OATIS].
  3. No later than 1 hour after each Intra-Day Nomination Deadline, First Gas will analyse each Shipper’s Intra-Day NQs and either approve each NQ or such lesser NQ as it shall determine [via OATIS]. In determining whether to approve any Intra-Day NQ greater than:
     1. the most recent Intra-Day NQ for the relevant Day; or
     2. the Shipper’s Changed Provisional NQ,

First Gas will give precedence to other Shippers’ Changed Provisional NQs (except to the extent they have been reduced via Intra-Day NQs).

* 1. Each NQ First Gas approves pursuant to *section 4.19*, *4.20* or *4.21* will be a Shipper’s Approved NQ (and, therefore, DNC) for the relevant point and Day.
  2. Subject to *section 4.24*, in determining the amounts of Shippers’ NQs to approve pursuant to *sections 4.19*, *4.20* and *4.21*, First Gas will have regard to:
     1. the Available Operational Capacity (including where the capacity of a Delivery Point is temporarily reduced for any reason);
     2. where applicable, Shippers’ holdings of Priority Rights; and
     3. where applicable, the Proposed Scheduled Quantity.
  3. First Gas’ approval of any change to an Approved NQ pursuant to an Intra-Day NQ will be subject to the limitation that:
     1. 1/24th of that Approved NQ (the *Hourly ANQ*) shall be deemed to have flowed in each Hour of the relevant Day (and accordingly the changed NQ shall not be less than the sum of each Hourly ANQ from 0000 up to and including the Hour in which First Gas approves the relevant Intra-Day NQ (or part thereof)); or
     2. where an Agreed Hourly Profile applies, the changed NQ shall not be less than the sum of the hourly quantities specified in that Agreed Hourly Profile from 0000 up to and including the Hour in which First Gas approves the relevant Intra-Day NQ (or part thereof).
  4. Where First Gas is unable to approve a Shipper’s NQs in full due to Congestion it will reduce such NQs in accordance with *section 10*.
  5. First Gas may use auto-approval of NQ (up to an adjustable, pre-set limit [in OATIS]) at any Receipt Point, Delivery Zone or Dedicated Delivery Point.

# energy quantity determination

## Metering Required

* 1. Subject to *section 5.2*, there shall be Metering for every Receipt Point, Delivery Point and Bi-directional Point, which shall measure Gas directly and not by difference or in any other indirect manner.
  2. Where First Gas believes that installing Metering would be impractical or uneconomic, such as where the take of Gas is unusually low and intermittent, it may (at its discretion, and only in relation to a Delivery Point) vary the requirement set out in *section 5.1*. For the purposes of this *section 5.2*, First Gas may require each Shipper using that Delivery Point to provide it with that Shipper’s Delivery Quantities, as determined by:
     1. the Allocation Agent, where relevant; or
     2. in all other cases, the Shipper itself (for example by aggregating the consumption of its customers downstream of the Delivery Point),

and each Shipper shall provide such Delivery Quantities, as soon as practicable after their determination.

## Unscheduled Testing of Metering

* 1. Subject to *section 5.4*, a Shipper (the *Requesting Party*) may request First Gas to carry out an unscheduled test of the Metering at any Receipt, Delivery or Bi-directional Point used by the Requesting Party, and provide the Requesting Party with the test results and/or allow that Requesting Party or its representative to be present during such testing. First Gas shall comply with any such request, provided that:
     1. it shall not be required to undertake such unscheduled testing where it has tested the Metering within 1 Month of the Requesting Party’s request, or more frequently than once every 9 months;
     2. where the Metering is found to be Accurate, the Requesting Party will reimburse First Gas for all costs incurred by First Gas in undertaking the unscheduled testing; and
     3. where the Metering is found to be Inaccurate First Gas shall:
        1. bear all costs it incurred in undertaking the unscheduled testing (but not any costs incurred by the Requesting Party or any other party); and
        2. at its own cost and as soon as practicable, service, repair, recalibrate or replace the Metering (or relevant part thereof) to make it Accurate.
  2. Where First Gas is not the Metering Owner at any Receipt, Delivery or Bi-directional Point used by the Requesting Party:
     1. the Requesting Party shall first exercise whatever contractual rights (including as a purchaser or transferee of Gas at the relevant point) to procure any unscheduled testing of the Metering; and
     2. only where the Requesting Party is unable to procure the unscheduled testing pursuant to part (a) of this *section 5.4*, shall it request First Gas to use whatever contractual rights First Gas may have in relation to the Metering Owner to procure such unscheduled testing provided that, in that event, the Requesting Party will reimburse First Gas for all costs incurred by First Gas in procuring that unscheduled testing.

## Energy Quantity Reports

* 1. Subject to the Metering Owner making available all the data that First Gas may require, First Gas will produce daily delivery reports *(DDRs)* and hourly delivery reports *(HDRs)* in accordance with *sections 5.6* to *5.8*.
  2. For each Receipt, Delivery or Bi-directional Point (*Metered Site*), First Gas will produce separate DDRs and HDRs for each meter (if more than one) and for the Metered Site in aggregate:
     1. for each Metered Site on telemetry or SCADA, not less frequently than each Business Day for all previous Days in the current Month; and
     2. for all Metered Sites, at the end of each Month for all Days of that Month.
  3. Each DDR and HDR shall be in the format, and contain the information that First Gas shall determine. For each Day or Hour (respectively) such information may include:
     1. the name and identification number (as determined by First Gas) of the Metered Site;
     2. the date;
     3. the time of the Day (HDR only);
     4. uncorrected volume (cubic metres at flowing conditions)
     5. metering pressure (HDR only);
     6. metering temperature (HDR only);
     7. compressibility correction factor (HDR only);
     8. altitude correction factor (HDR only);
     9. corrected volume (standard cubic metres);
     10. Calorific Value (in Megajoules per standard cubic metre); and
     11. energy quantity (GJ).
  4. First Gas will make all DDRs and HDRs available [on OATIS].

## Corrections for Inaccurate Metering

* 1. Where Metering is found to be Inaccurate, First Gas will correct previously calculated energy quantities in accordance with the Metering Requirements and publish corrected HDRs and DDRs [on OATIS].

# energy allocations

## Receipt Quantities under an Operational Balancing Agreement

* 1. Where an OBA applies at a Receipt Point, each Shipper’s Receipt Quantity will be its Approved NQ.

## Receipt Quantities under a Gas Transfer Agreement

* 1. At any Receipt Point where an OBA does not apply, Shippers’ Receipt Quantities will be calculated by the Gas Transfer Agent in accordance with the relevant GTA.
  2. Under any GTA the aggregate of Receipt Quantities allocated to Shippers at a Receipt Point must equal the metered quantity of Gas at that point on that Day, provided that the GTA will set out the rules the Gas Transfer Agent will use to determine each Shipper’s primary allocation of such metered quantity.
  3. Each Shipper and First Gas shall ensure that every GTA to which each is a party includes a commitment by the Gas Transfer Agent to use reasonable endeavours to notify First Gas in writing of each Shipper’s Receipt Quantities within the times posted by First Gas [on OATIS]. First Gas must give Shippers at least 10 days’ notice of any change to such times.
  4. First Gas will be the Gas Transfer Agent unless all Shippers agree in writing to appoint a replacement and First Gas considers any such replacement will properly fulfil the Gas Transfer Agent’s role. Any replacement Gas Transfer Agent appointed in accordance with this *section 6.5* will retain that role unless all Shippers and First Gas appoint another replacement in accordance with this *section 6.5*. Any Shipper using a Receipt Point must agree to recognise and accept the Gas Transfer Agent at that Receipt Point.

## Secondary Trading of Gas

* 1. Any Shipper who receives a primary allocation of Gas at a Receipt Point pursuant to *section 6.3* may sell or transfer any amount of such Gas at that Receipt Point (or in the relevant Receipt Zone) to another Shipper, and the two parties (as transferor and transferee) will determine the rules to be applied by the Gas Transfer Agent to determine the quantities of Gas transferred pursuant to such sale or transfer.
  2. Subject to *section 6.8*, any Shipper, OBA Party (at either a Receipt Point or a Delivery Point) or First Gas may buy or sell Gas via a Gas Market.
  3. Transmission Charges are payable in respect of all Gas purchased by an OBA Party at a Delivery Point via a Gas Market, for transmission of the Gas to the relevant Delivery Point. Where the OBA Party is not itself a Shipper, it must arrange for a party who is a Shipper to transmit the Gas on its behalf.

## Delivery Quantities under an Operational Balancing Agreement

* 1. Where an OBA applies at a Delivery Point, each Shipper’s Delivery Quantity will be its Approved NQ.

## Delivery Quantities under the Downstream Reconciliation Rules or an Allocation Agreement

* 1. A Shipper’s Delivery Quantity at a Delivery Point used by only one Shipper will be the metered quantity.
  2. At each Delivery Point where an Allocation Agreement applies, each Shipper must ensure that:
     1. the allocation methodology is acceptable to the Interconnected Party; and
     2. not later than 17:00 on the second Business Day after the Day on which the Allocation Agent receives any necessary information from First Gas, the Allocation Agent notifies First Gas [via OATIS] of each Shipper’s Delivery Quantities (including, in the case of a Dedicated Delivery Point, Hourly Quantities).

## Supplementary and Interruptible Agreements

* 1. If and when First Gas enters into a Supplementary Agreement or Interruptible Agreement in respect of an End-user located on a Distribution Network, it will advise the Allocation Agent of the existence of such agreement and its commencement date.
  2. Delivery Quantities under any agreement in the circumstances referred to in *section 6.12* shall be the quantities determined by, and notified to First Gas by the Allocation Agent under the DRR.

## Finality of Allocation Results and Energy Quantities

* 1. Except to the extent of any metering corrections or manifest error by First Gas or the Gas Transfer Agent, First Gas shall be entitled to rely on the Allocation Result and shall not be obliged to check or correct any Receipt Quantity or Delivery Quantity.

## End-user Right to Allocation Agreement

* 1. Each Shipper acknowledges and agrees that the End-user at any Dedicated Delivery Point has the right to buy Gas from more than one Shipper and to determine how much Gas it buys from each Shipper, and when.
  2. If the End-user at a Dedicated Delivery Point wishes to commence buying Gas from a new Shipper (whether the second or further, a *New Shipper*) while continuing to buy Gas from an existing Shipper (or more than one, each an *Incumbent Shipper*), all Shippers who may sell Gas to the End-user shall become party to an Allocation Agreement (new, or existing amended) and no incumbent Shipper shall unreasonably delay or frustrate execution of such Allocation Agreement. Nothing in this *section 6.16* shall require any Shipper to sell Gas to any End-user.

## Title to Gas and Risk

* 1. Each Shipper warrants that it (or when acting as an agent, the party for whom it is acting in that capacity) shall have good title to all Gas that:
     1. First Gas receives from such Shipper at a Receipt Point;
     2. such Shipper takes at a Delivery Point; and/or
     3. such Shipper sells or transfers to another Shipper in accordance with this Code,

free of any lien, charge, encumbrance or adverse claim (as to title or otherwise), subject to the terms of this Code.

# additional agreements

* 1. First Gas may enter into one or more agreements of the kind described in this *section 7*.

## Supplementary Agreements

* 1. Any Shipper may at any time request First Gas to enter into a Supplementary Agreement. First Gas shall not be obliged to do so, but will in any case promptly evaluate any such request against the following criteria:
     1. the amount of transmission capacity requested, including whether providing it would affect Available Operational Capacity to the extent of impeding or forestalling business opportunities more beneficial to First Gas and other users of the Transmission System;
     2. whether the Shipper (or End-user) can demonstrate that it has a practical opportunity to bypass the Transmission System or use an alternative fuel that is cheaper than Gas;
     3. whether the Shipper (or End-user) can demonstrate that paying First Gas’ Transmission Fees would be uneconomic; and
     4. whether the Shipper (or End-user) is the sole user of the relevant Delivery Point or other transmission assets and such assets would cease to be useful were the End-user to cease using Gas.
  2. When evaluating any request to enter into a Supplementary Agreement against the criteria referred to in *section 7.2*, First Gas will use the information available to it at that time. No party may dispute First Gas’ decision whether or not to enter into a Supplementary Agreement.
  3. A Supplementary Agreement may amend the Shipper’s TSA in relation to any number of the following (and only the following) matters:
     1. definitions of:
        1. the Receipt Point and/or Delivery Point;
        2. the End-user;
        3. Supplementary Capacity, including the MDQ and/or MHQ;
        4. the transmission fees payable, including whether (and, if so, how and when) First Gas may redetermine them;
        5. the term of the agreement, including rights of renewal;
     2. whether the Supplementary Capacity is constant or varies over time and/or whether and under what conditions it can be changed;
     3. termination by either party in the event a Force Majeure Event renders the End-user unable to use Gas, or restore its use of Gas within a defined period of time;
     4. whether a termination fee is required in the event such agreement is terminated before the intended expiry date and how such fee should be determined;
     5. making any such agreement conditional on:
        1. the relevant Interconnected Party entering into an ICA with First Gas (or amending an existing ICA)
        2. the End-user entering into a TPA;
        3. First Gas obtaining any necessary statutory or regulatory approvals;
        4. the Shipper (where relevant) complying with its obligations under the DRR, Allocation Agreement or OBA; and
        5. (where relevant), the Allocation Agent providing First Gas with Delivery Quantities and the Shipper agreeing to First Gas’ use of those Delivery Quantities for the purposes of the agreement;
     6. whether or not to require the Shipper to make nominations in accordance with *section 4* in order to access the Supplementary Capacity;
     7. setting the priority of Supplementary Capacity in relation to DNC, with and/or without Priority Rights during Congestion;
     8. requiring any End-user not directly connected to the Transmission System to have a TOU Meter at all times and, if First Gas so requires, facilitating First Gas’ retrieval of data from such TOU Meter remotely via telemetry or SCADA.
  4. A Supplementary Agreement will:
     1. survive expiry or termination of this Code and/or the underlying TSA that it supplements and amends and shall continue in full force and effect for the term specified in it (subject to any early termination provisions); and
     2. incorporate the provisions of any replacement transmission code or regulations and any replacement underlying TSA, provided that to the extent there is any inconsistency between their terms and any terms of the Supplementary Agreement, the terms of the Supplementary Agreement will prevail.
  5. Supplementary Agreements are not Confidential Information and First Gas will publish each in full [on OATIS].

## Interruptible Agreements

* 1. First Gas may, but shall not be obliged to enter into an Interruptible Agreement:
     1. to maximise use of the Transmission System in circumstances where it considers Available Operational Capacity is insufficient and/or the relevant End-user has an alternative fuel; or
     2. as a Congestion Management measure in accordance with *section 10*.
  2. No party may dispute First Gas’ decision either to enter into an Interruptible Agreement or to decline to do so.
  3. An Interruptible Agreement may amend the Shipper’s TSA in relation to any number of the following (and only the following) matters:
     1. definitions of:
        1. the Receipt Point and/or Delivery Point;
        2. the End-user;
        3. Interruptible Capacity, including the MDQ and MHQ;
        4. the transmission fees payable, including whether (and, if so, how and when) First Gas may redetermine them; and
        5. the term of the agreement;
     2. the procedure for obtaining Interruptible Capacity (including by using nominations processes like those set out in *section 4*);
     3. making any such agreement conditional on:
        1. the relevant Interconnected Party entering into an ICA with First Gas (or amending an existing ICA);
        2. the relevant End-user entering into a TPA;
        3. the End-user, where not directly connected to the Transmission System, having a TOU Meter at all times and, if First Gas so requires, facilitating First Gas’ monitoring of the End-user’s offtake of Gas and retrieval of data from such TOU Meter remotely via telemetry or SCADA.
        4. the Shipper (where relevant) complying with its obligations under the DRR, Allocation Agreement or OBA; and
        5. (where relevant), the Allocation Agent providing First Gas with Delivery Quantities and the Shipper agreeing to First Gas’ use of those Delivery Quantities for the purposes of the agreement;
     4. enabling First Gas to curtail Interruptible Capacity at its sole discretion for any reason at any time without liability, provided that where an Interruptible Agreement is a Congestion Management measure, it shall provide for First Gas to pay the Shipper the amounts set out in that agreement to the extent that First Gas curtails the Interruptible Capacity provided under it.
  4. An Interruptible Agreement will terminate automatically on expiry or termination of this Code and/or the TSA it amends.
  5. Interruptible Agreements are not Confidential Information and First Gas will publish each in full [on OATIS].

## Interconnection Agreements

* 1. No new interconnection to the Transmission System will be permitted without an Interconnected Agreement in respect of the relevant Receipt Point, Delivery Point or Bi-directional Point.
  2. Any ICA must (without limitation) stipulate:
     1. the interconnection (or more than one) which the agreement covers;
     2. in relation to each interconnection the agreement covers:
        1. whether the interconnection is a Receipt Point, Delivery Point or Bi-directional Point);
        2. the owner of the interconnection, including the land on which it is located and of the equipment and facilities which located there;
        3. the Interconnection Point;
        4. the Maximum Design Flow Rate;
        5. the Minimum Design Flow Rate; and
        6. the fees payable by the Interconnected Party, including whether (and, if so, how and when) First Gas may redetermine them;
     3. that Metering is required, where it is located and who owns it;
     4. that, for every Receipt Point, or Bi-directional Point when operating as a Receipt Point:
        1. the provisions of *section 12.2* shall apply; and
        2. injection of gas into the Transmission System that is not Gas shall constitute a failure by the Interconnected Party to act as a reasonable and prudent operator;
     5. whether the pressure at which Gas is injected into or taken from the Transmission System is controlled (and if so, what the means of control are) or uncontrolled;
     6. the data First Gas must make available to the Interconnected Party, and vice versa;
     7. that First Gas will produce and publish energy quantity reports for every interconnection (including where it is not the owner or the Metering Owner);
     8. whether Gas injected into or taken from the Transmission System must be odorised (in accordance with First Gas’ normal requirements) and if so who will do that;
     9. the term of the agreement;
     10. whether the Interconnected Party must pay a termination fee in the event its ICA is terminated (either in its entirety or in respect of any specific interconnection it covers) before its intended expiry date, in what circumstances, and how such fee will be determined;
     11. that construction of any new interconnection, or upgrade of any existing interconnection is conditional on:
         1. compliance with First Gas’ reasonable technical requirements;
         2. approval of the design of any interconnection by First Gas’ pipeline certifying authority before any construction begins;
         3. First Gas obtaining any necessary statutory or regulatory approvals; and
         4. the Interconnected Party (where relevant) complying with its obligations under the relevant GTA, Allocation Agreement or OBA;
     12. whether the ICA incorporates an OBA;
     13. whether nominations (to be notified in accordance with *section 4*) are required for any interconnection, pursuant to an OBA or otherwise; and
     14. grounds for terminating the ICA (either in its entirety or in respect of any specific interconnection) and requiring the Interconnected Party to disconnect from the Transmission System.
  3. An ICA may reference certain terms of this Code and if it does the ICA will:
     1. survive expiry or termination of this Code and continue in full force and effect for the term specified in it (subject to any early termination provisions); and
     2. the relevant terms of the previous code will likewise continue in full force and effect for the term of the ICA unless First Gas and the Interconnected Party agree to amend them.
  4. ICAs are not Confidential Information and First Gas will publish each in full [on OATIS].

# balancing

## Applicability

* 1. The provisions of this Code relating to “balancing” apply in respect of the entire Transmission System, irrespective of:
     1. in the case of each Shipper, the number or location of Receipt and Delivery Points used by that Shipper; and
     2. the location of any Receipt Point or Delivery Point at which an OBA applies.

## Primary Balancing Obligations

* 1. Subject to *section 8.21,* each Shipper agrees that it will use all reasonable endeavours to ensure that each Day the aggregate of its Receipt Quantities matches the aggregate of its Delivery Quantities, provided that:
     1. each Shipper shall also use all reasonable endeavours to move its Running Mismatch as close to zero as practicable within the shortest practicable time; and
     2. in order to comply with part (a) of this *section 8.2*, the Shipper’s Receipt and Delivery Quantities on a Day may be different,

(the Shipper’s *Primary Balancing Obligation*).

* 1. In the relevant ICA First Gas will procure that, subject to *section 8.21*, the OBA Party will use all reasonable endeavours to ensure that each Day the metered quantity of Gas at the Receipt Point or Delivery Point, as the case may be, matches the Scheduled Quantity, provided that:
     1. each OBA Party shall also use all reasonable endeavours to move its Running Mismatch as close to zero as practicable within the shortest practicable time; and
     2. in order to comply with part (a) of this *section 8.3*, the metered quantity of Gas and the Scheduled Quantity may be different on a Day,

(the OBA Party’s *Primary Balancing Obligation*).

* 1. First Gas will use all reasonable endeavours to ensure that each Day the aggregate quantity of Gas it purchases for operational purposes (including fuel and UFG) matches the aggregate quantity of Gas it uses for such purposes, provided that:
     1. First Gas shall also use all reasonable endeavours to move its Running Mismatch as close to zero as practicable within the shortest practicable time; and
     2. in order to comply with part (a) of this *section 8.4*, the quantities of Gas it purchases and uses on a Day may be different,

(First Gas’ *Primary Balancing Obligation*).

## Line Pack Management

* 1. First Gas will use reasonable endeavours to maintain Line Pack between the upper and lower Acceptable Line Pack Limits. First Gas will determine such limits as being those it considers sufficient for it to provide all DNC and Supplementary Capacity while complying with its Security Standard and any other obligations it has under this Code at that time.
  2. To the extent that (in aggregate) parties do not comply with their Primary Balancing Obligation, Line Pack may be either depleted or inflated. Where First Gas determines that a breach of the relevant Acceptable Line Pack Limit is likely without any preventative action, First Gas will (except during a Critical Contingency, Force Majeure Event or Emergency) take steps to ensure that Line Pack remains within acceptable limits, including by:
     1. where practical, moving Gas from one part of the Transmission System to another; and/or
     2. increasing the incentive for Interconnected Parties and/or Shippers to assist in maintaining Line Pack within the Acceptable Limits as described in *sections 8.12* and *8.13*; and/or
     3. buying or selling Gas to manage Line Pack (*Balancing Gas*).
  3. When buying or selling Balancing Gas, First Gas will (without limiting any of its other obligations under this Code) use reasonable endeavours to undertake any such transaction in a competitive, efficient and transparent manner, including via a Gas Market.

## Allocation of Balancing Gas Costs and Credits

* 1. If First Gas buys Balancing Gas on a Day (*Dayn*) it will, to each party with Negative Running Mismatch at the end of the previous Day (*Dayn-1*):
     1. allocate a share of the Balancing Gas cost (a *Balancing Gas Charge*) for Dayn to each such a party equal to:
        1. for a Shipper: Balancing Gas cost × NRMS,n-1 ÷ NRMALL,n-1;
        2. for an OBA Party: Balancing Gas cost × NRMI,n-1 ÷ NRMALL,n-1;
        3. for First Gas: Balancing Gas cost × NRMF,n-1 ÷ NRMALL,n -1,

where:

NRMS,n-1, NRMI,n-1 andNRMF,n-1 are the Negative Running Mismatch of (respectively) a Shipper, an OBA Party and First Gas at 2400 on Dayn-1;

NRMALL,n-1 is the aggregate of all parties’ Negative Running Mismatches at 2400 on Dayn-1; and

the Balancing Gas Cost referred to in this *section 8.8* may include a component, determined by First Gas that is designed to recover any fixed costs payable by First Gas under any arrangement under which it may procure Balancing Gas; and

* + 1. transfer title to a quantity of Gas to each such party at 2400 on Dayn equal to:
       1. for a Shipper: Balancing Gas GJ × NRMS,n-1 ÷ NRMALL,n-1;
       2. for an OBA Party: Balancing Gas GJ × NRMI,n-1 ÷ NRMALL,n-1;
       3. for First Gas: Balancing Gas GJ × NRMF,n-1 ÷ NRMALL,n -1,

where:

NRMS,n-1, NRMI,n-1 andNRMF,n-1 and NRMALL,n-1 each has the meaning set out part (a) of this *section 8.8*.

* 1. If First Gas sells Balancing Gas on a Day (*Dayn*) it will, to each party with Positive Running Mismatch at the end of the previous Day (*Dayn-1*):
     1. allocate a share of the Balancing Gas sale proceeds (a *Balancing Gas Credit*) for Dayn to each such party equal to:
        1. for a Shipper: Balancing Gas proceeds × PRMS,n-1 ÷ PRMALL,n-1;
        2. for an OBA Party: Balancing Gas proceeds × PRMI,n-1 ÷ PRMALL,n-1;
        3. for First Gas: Balancing Gas proceeds × PRMF,n-1 ÷ PRMALL,n -1,

where:

PRMS,n-1, PRMI,n-1 andPRMF,n-1 are the Positive Running Mismatch of (respectively) a Shipper, an OBA Party and First Gas at 2400 on Dayn-1; and

PRMALL,n-1 is the aggregate of all parties’ Positive Running Mismatches at 2400 on Dayn-1; and

* + 1. take title to a quantity of Gas from each such party at 2400 on Dayn equal to:
       1. for a Shipper: Balancing Gas GJ × PRMS,n-1 ÷ PRMALL,n-1;
       2. for an OBA Party: Balancing Gas GJ × PRMI,n-1 ÷ PRMALL,n-1;
       3. for First Gas: Balancing Gas GJ × PRMF,n-1 ÷ PRMALL,n -1,

where:

PRMS,n-1, PRMI,n-1,PRMF,n-1 and PRMALL,n-1 each has the meaning set out part (a) of this *section 8.9*.

* 1. First Gas’ determination of Balancing Gas Charges and Balancing Gas Credits are subject to the effect of any Wash-up on a Shipper’s Running Mismatch. First Gas will apply any changes to Balancing Gas Charges and/or Balancing Gas Credits as prior Month adjustments on its next Balancing Gas invoice following receipt of any Wash-up.

## Excess Running Mismatch Charges

* 1. Each party shall pay a charge to First Gas for each Day on which it has Excess Running Mismatch (*ERM*) calculated in accordance with *section 8.12* or *section 8.13*, irrespective of whether First Gas buys or sells Balancing Gas on or in respect of that Day.
  2. For any Day on which a Shipper or OBA Party has Negative Excess Running Mismatch (*Negative ERM*), such party will pay to First Gas a charge equal to:

Negative ERM × FNERM × IN

where:

*FNERM* is a fee determined by First Gas and published [on OATIS]; and

*IN* is 1, except on any Day on which First Gas issues:

* + 1. a Low Line Pack Notice, when it is 5; and
    2. a High Line Pack Notice, when it is zero.
  1. For any Day on which a Shipper or OBA Party has Positive Excess Running Mismatch (*Positive ERM*), such party will pay to First Gas a charge equal to:

Positive ERM × FPERM × IP

where:

*FPERM* is a fee determined by First Gas and published [on OATIS]; and

*IP* is 1, except on any Day on which First Gas issues:

* + 1. a Low Line Pack Notice, when it is zero; and
    2. a High Line Pack Notice, when it is 5.

## First Gas May Sell or Buy Gas Corresponding to ERM

* 1. First Gas will determine at its sole discretion whether in respect of any Day it will:
     1. sell any Gas to Shippers and/or OBA Parties with Negative ERM; or
     2. buy any Gas from Shippers and/or OBA Parties with Positive ERM,

and if it decides to do so, such sale or purchase of Gas will be compulsory and in accordance with the balance of this *section 8*.

* 1. In respect of any Day, where it elects to sell any Gas pursuant to *section 8.14(a)*, First Gas will:
     1. determine the total quantity of Gas it will sell (which will be less than or equal to the aggregate amount of Negative ERM); and
     2. sell a part (*QS*) of such total quantity of Gas to each Shipper and/or OBA Party with Negative ERM, where QS will be equal to:

Q∑SOLD × Negative ERMBUYER ÷ Negative ERMTOTAL

where:

Q∑SOLD is the total quantity of Gas sold by First Gas;

Negative ERMBUYER is the Negative Excess Running Mismatch of the Shipper or OBA Party; and

Negative ERMTOTAL is the aggregate Negative Excess Running Mismatch of all Shippers and OBA Parties with Negative ERM;

* + 1. charge each such Shipper and/or OBA Party an amount equal to:

QS × PSELL

where:

PSELL is the higher of:

* + - 1. the highest price paid by First Gas for any Balancing Gas on that Day; and
      2. the Average Market Price for that Day plus an adjustment;

plus:

* + - 1. the Trading Fee,

where:

“Trading Fee”, “Average Market Price” and “adjustment” each has the meaning set out in *section 8.17*; and

* + 1. title to all Gas sold will transfer from First Gas to each purchaser, and the Running Mismatch of each such purchaser will be amended accordingly, at the end of the Day on which each such sale is made.
  1. In respect of any Day, where it elects to buy any Gas pursuant to *section 8.14(b)*, First Gas will:
     1. determine the total quantity of Gas it will buy (which will be less than or equal to the aggregate amount of Positive ERM); and
     2. purchase a part (*QP*) of such total quantity of Gas from each Shipper and/or OBA Party with Positive ERM, where QP will be equal to:

Q∑BOUGHT × Positive ERMSELLER ÷ Positive ERMTOTAL

where:

Q∑BOUGHT is the total quantity of Gas purchased by First Gas;

Positive ERMSELLER is the Positive Excess Running Mismatch of the Shipper or OBA Party; and

Positive ERMTOTAL is the aggregate Positive Excess Running Mismatch of all Shippers and OBA Parties with Positive ERM; and

* + 1. pay each such Shipper and/or OBA Party an amount equal to:

QP × PBUY

where:

PBUY is the lower of:

* + - 1. the lowest price received by First Gas for any sale of Balancing Gas on that Day; and
      2. the Average Market Price for that Day minus an adjustment;

plus:

* + - 1. the Trading Fee,

where:

“Trading Fee”, “Average Market Price” and “adjustment” each has the meaning set out in *section 8.17*; and

* + 1. title to all Gas purchased by First Gas will transfer from each seller to First Gas, and the Running Mismatch of each such seller will be amended accordingly, at the end of the Day on which each such purchase is made.
  1. Pursuant to the determination of PSELL and PBUY as referred to in *sections 8.15* and *8.16* (respectively) for any Day:
     1. the Average Market Price shall be:
        1. the GJ-weighted average price of all Gas trades effective on that Day, provided such trades are made on the Day or on the previous Day on a Gas Market; or
        2. the prices determined in accordance with *section 8.18*;
     2. the values of the “adjustment” will be those published by First Gas [on OATIS] (but not less than one Day before they become effective), where:
        1. such values may differ depending on whether First Gas is selling or buying Gas; and
        2. each value will be a percentage of the Average Market Price; and
     3. the Trading Fee will be equal to the unweighted mean value of all categories of trading fees per GJ posted by all Gas Markets (excluding any such market controlled or operated by First Gas) on their websites (or provided to First Gas) at midday on the Day prior to the Day.
  2. First Gas will determine the prices referred to in *section 8.17(a)(ii)* and publish them [on OATIS]. First Gas will use such prices where:
     1. no Gas Market was available or operational on the Day the relevant sale or purchase of Gas was undertaken; or
     2. trades effective on that Day (made either on that Day or on the previous Day) were in aggregate less than the GJ amount determined by First Gas.

## Publication of Running Mismatches

* 1. The Mismatch and Running Mismatch of any person will not be Confidential Information. Subject to *section 8.20*, First Gas will, as soon as practicable after determining them, publish the Running Mismatch of each Shipper, OBA Party and of First Gas itself [on OATIS].
  2. Subject to the availability of allocated Delivery Quantities, First Gas will display Running Mismatches [on OATIS] for the rolling number of Days it will determine (not being less than [28] Days. First Gas will not be obliged to re-publish Running Mismatches that are subsequently amended by a Wash-up.

## Park or Loan

* 1. First Gas may, but shall not be obliged to offer “Park or Loan” services to Shippers and OBA Parties. Where it elects to do so, such services will comply with the provisions of *sections 8.22* to *8.27*.
  2. First Gas may determine:
     1. the aggregate quantity of Gas which Shippers and/or OBA Parties may temporarily accumulate in the Transmission System (*Parked Gas*); and/or
     2. the aggregate quantity of Line Pack which Shippers and/or OBA Parties may temporarily draw down (*Loaned Gas).*
  3. A Shipper or OBA Party must apply to First Gas in advance of any Day to either Park Gas or take Loaned Gas on that Day. First Gas will from time publish [on OATIS] reasonable procedures to be used by:
     1. any party applying to Park or take Loaned Gas; and
     2. First Gas in responding to any such application,

which may include deadlines by which applications must be lodged and approved.

* 1. Applications to Park Gas or take Loaned Gas will be processed on a “first come, first served” basis, provided that First Gas may:
     1. introduce procedures to allocate quantities of Parked Gas and/or Loaned Gas should requests to Park Gas and/or take Loaned Gas exceed the quantities determined pursuant to *section 8.22*;
     2. allow a Shipper or OBA Party to both Park Gas in one period of a Day and take Loaned Gas in another period of the same Day, provided that:
        1. such periods do not overlap; and
        2. the party concerned makes separate applications to Park Gas and take Loaned Gas; and
     3. link its approval of requests to take Loaned Gas on a Day to requests to Park Gas on that same Day.
  2. To the extent that First Gas approves any application to Park Gas or take Loaned Gas on any Day it will exclude the approved quantity of Parked Gas or Loaned Gas from its calculation of the Shipper’s or Interconnected Party’s Mismatch and Running Mismatch for (only) that Day.
  3. First Gas will from to time determine and notify [on OATIS] the prices payable to Park Gas and take Loaned Gas, which may be different both in magnitude and structure.
  4. Nothing in *sections 8.21* to *8.26* will derogate from First Gas requirement to provide transmission capacity and maintain Line Pack between Acceptable Operating Limits.

## Gas Trading to Affect Mismatch

* 1. Shippers and OBA Parties may trade Gas for any reason, including as a means of managing their respective Running Mismatches.
  2. No Gas trade will be unwound, nor will any adjustment be made to the Running Mismatch of either party to any Gas trade because of any adjustment to the seller’s Running Mismatch (as such was known at the time the trade occurred) made subsequently, whether as the result of a Wash-up or for any other reason.
  3. In respect of any Gas trade on a Day, First Gas will make the required adjustments to the Running Mismatch of the seller and buyer, respectively, at the end of such Day. It is the responsibility of the buyer and seller in respect of any Gas trade to ensure that First Gas is aware of that trade.

# curtailment

## Adverse Events

* 1. Subject to the balance of this *section 9*, First Gas will use all reasonable endeavours to avoid curtailing any Shipper’s DNC or Supplementary Capacity. First Gas may, without incurring any liability to a Shipper, curtail the injection of Gas (or the ability to inject Gas) at a Receipt Point, the flow of Gas through the Transmission System or the taking of Gas (or the ability to take Gas) at a Delivery Point to the extent that it determines to be necessary, where:
     1. First Gas detects or suspects that an Emergency is occurring or will occur;
     2. a Force Majeure Event has occurred;
     3. a breach of a Security Standard Criterion and/or a Critical Contingency would otherwise occur;
     4. First Gas’ ability to make Gas available at any Delivery Point is impaired, or the safe and reliable operation of the Transmission System or any Distribution Network is at risk due to Line Pack being depleted below the lower Acceptable Line Pack Limit;
     5. First Gas needs to undertake Maintenance or Scheduled Maintenance;
     6. an Interconnected Party’s ICA expires or is terminated; and/or
     7. a Shipper’s TSA, Supplementary Agreement, GTA or Allocation Agreement expires or is terminated,

provided that where the need for curtailment arises due to Congestion, the provisions of *section 10* shall apply.

## Scheduled Maintenance

* 1. Where it intends to carry out Scheduled Maintenance that will reduce its ability to receive Gas at a Receipt Point and/or make Gas available at a Delivery Point (but not any Scheduled Maintenance which First Gas believes will not have such an effect), First Gas will:
     1. give each affected Shipper and Interconnected Party as much notice as it can, and in any case not less than 30 Days’ notice, prior to commencing such Scheduled Maintenance;
     2. advise each affected Shipper and Interconnected Party of the likely duration of the Scheduled Maintenance and the likely effects; and
     3. use reasonable endeavours to undertake such Scheduled Maintenance at a time that will minimise the likely effects,

provided that where any Scheduled Maintenance notified pursuant to part(a) of this *section 9.2* is delayed prior to work commencing, First Gas will notify each affected Shipper and Interconnected Party thereof but will not be required to re-start the 30 Days’ notice period.

## Operational Flow Order

* 1. If any of the events described in *section 9.1(a)* to *(g)* occurs, First Gas may give a Shipper an Operational Flow Order, upon receipt of which that Shipper shall use its best endeavours to comply with such Operational Flow Order in the shortest practicable time consistent with (where relevant) the safe shut down of affected plant. First Gas will minimise the period of curtailment stipulated in an Operational Flow Order to the extent practicable.

## Critical Contingency

* 1. First Gas may instruct any Shipper to curtail its injection of Gas (or its ability to inject Gas) at any Receipt Point or its take of Gas (or its ability to take Gas) at any Delivery Point as required to comply with the CCM Regulations, without incurring any liability to that Shipper.

## Failure to Comply

* 1. Each Shipper agrees that in the event it fails to comply with an Operational Flow Order:
     1. First Gas may curtail the Shipper’s injection and/or take of Gas itself, or procure that the relevant Interconnected Party does so; and
     2. the Shipper shall indemnify First Gas for any Loss incurred by First Gas that results from that failure to comply and the limitation set out in *section 16.1* shall not apply in respect of the Shipper’s indemnity.

## Rebate of Charges

* 1. In any case of curtailment under this *section 9,* First Gas shall provide each affected Shipper with a rebate of:
     1. any fixed transmission charge; and
     2. any Priority Rights Charges,

that would otherwise be payable by that Shipper, in proportion to the reduction in that Shipper’s DNC or Supplementary Capacity, except to the extent that the Shipper caused or contributed to any event or circumstance which gave rise to such curtailment or failed to comply with an instruction from First Gas given under *section 9.3 or section 9.4*.

# congestion management

## Determination of Congestion

* 1. Through capacity modelling and/or other means, First Gas will use reasonable endeavours to identify if and when Congestion is likely to occur.
  2. For the purposes of *section 10.1*, First Gas will use the best information available to it at the time, including actual offtake data and any information it has relating to future Gas demand.
  3. First Gas will monitor Security Standard Criteria on a Daily and Hourly basis on those parts of the Transmission System where Congestion is most likely to occur.

## Congestion Management

* 1. Congestion Management is intended to minimise the prospect of a Critical Contingency.
  2. First Gas will use reasonable endeavours to give Shippers advance notice of its intention to initiate Congestion Management.
  3. Subject to *section 10.7*, First Gas, to the extent necessary and in the order stated, will:
     1. where Congestion arises from Shippers’ aggregate requests for DNC:
        1. estimate the shortfall in Available Operational Capacity in the absence of any Congestion Management;
        2. decline requests for Interruptible Capacity (if any) to the extent that would materially assist in increasing Available Operational Capacity; and
        3. allocate DNC in accordance with *section 10.16*; or
     2. where Congestion arises from Shippers’ aggregate offtake of Gas:
        1. estimate the reduction in current offtake required;
        2. determine (to the extent visible to First Gas) whether any Shipper is exceeding its MHQ or MDQ and instruct any such Shipper (by means of an OFO if necessary) to reduce its offtake accordingly;
        3. curtail the use of Interruptible Capacity (if any) to the extent that would materially assist in relieving the Congestion; and
        4. re-allocate previously approved DNC in accordance with *section 10.16*.
  4. During Congestion, First Gas will provide:
     1. DNC up to the lesser of a Shipper’s Approved NQ or Priority Rights (if any); and
     2. Supplementary Capacity (if any) in accordance with the relevant agreement,

before allocating, or re-allocating DNC pursuant to *section 10.16*.

## Interruptible Load

* 1. First Gas will notify Shippers if it believes that, for any part of the Transmission System it may specify, Interruptible Load would be a useful Congestion Management measure and, if so, the aggregate amount required.
  2. Following notification under *section 10.8*, each Shipper using the specified part of the Transmission System will use reasonable endeavours to ascertain whether, to provide any part of (or all of) the required Interruptible Load, any of its customers is willing to allow its Gas supply to become interruptible by First Gas.
  3. The Shipper will notify First Gas if any of its customers (who must comply with *section 10.13.*) is willing to becoming an interruptible End-user, and provide such information as First Gas may require in relation to that End-user. Where First Gas considers that an End-user complies with its reasonable criteria (including those set out in *section 10.11*), it will use reasonable endeavours to negotiate an Interruptible Agreement with the Shipper in respect of that End-user.
  4. First Gas may set reasonable eligibility criteria which any End-user willing to be bound by an Interruptible Agreement must meet. Such criteria may vary depending on where First Gas requires Interruptible Load. Criteria considered reasonable will include that an End-user:
     1. is (in First Gas’ opinion) located where its offtake (if curtailed) would be useful in relieving Congestion;
     2. has normal daily offtake greater than [400] GJ;
     3. has normal hourly offtake greater than [40] GJ;
     4. has a TOU Meter, which First Gas is able to interrogate via telemetry or SCADA;
     5. is contactable by First Gas at any time;
     6. fully understands its contractual obligations and is both willing and able to comply with them at all times; and
     7. has never failed to comply with a valid curtailment notice given by First Gas under any previous Interruptible Agreement.
  5. First Gas will notify all Shippers if it does not obtain sufficient Interruptible Load pursuant to *section 10.10*, together with the amount of Interruptible Load it still requires.
  6. Notwithstanding any other provision of this *section 10*, First Gas may at its discretion publicly notify its requirement for Interruptible Load via its website or [via OATIS]. If an End-user responds to any such notice by contacting a Shipper, that Shipper shall promptly notify First Gas. First Gas and the Shipper will then:
     1. ascertain whether the End-user meets First Gas’ then current eligibility criteria and, if so, is willing to become an interruptible End-user; and
     2. use reasonable endeavours to negotiate an Interruptible Agreement.
  7. Where First Gas enters into an Interruptible Agreement specifically for the purposes of Congestion Management, First Gas will notify all Shippers [via OATIS] and will specify those Delivery Points that, in its reasonable opinion, would benefit from First Gas curtailing load under that Interruptible Agreement (each such Delivery Point a *Beneficiary DP*). Where, under such an Interruptible Agreement, First Gas must pay the Shipper in consideration for curtailing the relevant End-user’s load, First Gas will recover all the amounts payable by it from each Shipper with DNC at a Beneficiary DP on any Day on which First Gas is liable to make such payments, as set out in *section 11.9*.
  8. Nothing in this *section 10* shall oblige First Gas to enter into any Interruptible Agreement. First Gas may terminate any Interruptible Agreement by notice to the relevant Shipper with immediate effect if the relevant End-user fails to comply with a valid curtailment notice given by First Gas under that Interruptible Agreement.

## Allocation and Re-allocation of DNC

* 1. In any event of Congestion, for the purposes of *section 10.7(a) or (b)*, First Gas will:
     1. allocate DNC up to the limit of its then current assessment of Available Operational Capacity;
     2. use the capacity corresponding to Priority Rights not used by the holder of such rights to provide DNC to other Shippers; and
     3. subject to *section 10.17*, allocate DNC in a manner which accords no priority to any Shipper.
  2. If Congestion Management is unsuccessful and a Critical Contingency results, transmission capacity and Gas will be allocated by the CCO in accordance with the CCM Regulations. On that basis, First Gas shall have the right, pursuant to *section 10.16* to:
     1. require each Shipper to provide it with the same information the Shipper is obligated to provide the CCO in relation to its customers (being the “consumer information” referred to in the CCM Regulations); and
     2. allocate DNC in a manner which approximates what the allocation of available transmission capacity and Gas would be if such were to be allocated in accordance with the then current curtailment bands set out in the CCM Regulations.

## Over-Nomination

* 1. Each Shipper warrants that for any Congested Delivery Point it will request DNC in line with its best estimate of its customers’ Gas requirements and will not inflate its NQs with the intention of securing a greater share of the Available Operational Capacity.
  2. Where it suspects that a Shipper has inflated its NQs for the purpose referred to in *section 10.18*, First Gas may curtail that Shipper’s NQs or DNC without incurring any liability to that Shipper.

## Critical Contingency

* 1. The Critical Contingency Regulations will take precedence over Congestion Management hence, where a Critical Contingency is declared by the CCO, Congestion Management (where previously initiated) will end.

## Notification of New Load

* 1. First Gas will ensure that, in any Interconnection Agreement it enters into with the owner of a Distribution Network after the date of this Code, the Interconnected Party:
     1. is aware of the capacity of each Delivery Point supplying any of its Distribution Networks; and
     2. is required to consult First Gas in relation to increasing such capacity before connecting new End-users to its Distribution Network that would necessitate such capacity.
  2. Each Shipper, before agreeing to supply any customer who is not currently an End-user or is an End-user who proposes to substantially increase its use of Gas, must:
     1. ascertain that Available Operational Capacity is sufficient; and
     2. where the End-user is or will be connected to a Distribution Network, ascertain that such system has the capacity to supply that customer; and
     3. notify First Gas of the expected MDQ, MHQ and annual offtake of any End-user whose:
        1. expected MDQ is greater than [400] GJ; and/or
        2. expected MHQ is greater than [40] GJ; and/or
        3. expected annual offtake is greater than [40,000] GJ; and

notify First Gas of the date on which the End-user wishes to commence taking Gas, or increased quantities of Gas.

## No Liability

* 1. First Gas will have no liability whatsoever to any person for:
     1. not predicting Congestion; or
     2. any lack of notice prior to initiating Congestion Management; or
     3. initiating Congestion Management; or
     4. not securing sufficient, or any Interruptible Load for any reason; or
     5. Available Operational Capacity not being sufficient to supply new customers or the increased offtake of existing customers of whom it was not made aware.
  2. Nothing in this *section 10* shall derogate from First Gas’ ability to curtail its provision of transmission services in accordance with *section 9*.

# fees and charges

## Transmission and Related Charges

* 1. As applicable, each Shipper shall pay to First Gas Monthly in arrears:
     1. the Transmission Charges calculated as set out in this *section 11*; and
     2. the Non-standard Transmission Charges (if any) calculated in accordance with the relevant Supplementary Agreements and/or Interruptible Agreements.

## Daily Nominated Capacity Charges

* 1. Each Shipper shall pay a Daily Nominated Capacity Charge for each Day on which it has DNC at a Delivery Zone and/or Delivery Point, equal to:

DNCFEE × DNC

where:

*DNCFEE* is the applicable fee for Daily Nominated Capacity ($/GJ of DNC) (subject to *section 11.12*); and

*DNC* is the Shipper’s Daily Nominated Capacity (GJ).

## Throughput Charges

* 1. Each Shipper shall pay a Throughput Charge for each Day on which it takes Gas in a Delivery Zone, and/or at a Delivery Point, equal to:

TPF × DQDNC

where:

*TPF* is the applicable Throughput Fee ($/GJ) (subject to *section 11.12*); and

*DQDNC* is that part of the Shipper’s Delivery Quantity (GJ) shipped using DNC.

## Priority Rights Charges

* 1. A Shipper allocated PRs for a Delivery Point pursuant to *section 3.13* shall pay a Priority Rights Charge for such PRs, equal to:

PC × NA

where:

*PC* is the lowest price ($ per PR) bid for any tranche of PRs allocated to any Shipper at that Delivery Point in accordance with *section 3.13*;and

*NA* is the total number of PRs allocated to the Shipper in accordance with *section 3.13*,

provided that the Shipper’s liability to pay such Priority Rights Charge will cease at the end of the PR Term and/or be reduced to the extent it sells any PRs to another Shipper pursuant to *section 3.13*, with effect from the Day the sale of such PRs is completed.

* 1. A Shipper who purchases PRs for a Delivery Point pursuant to *section 3.16* shall pay a Priority Rights Charge for such PRs, equal to:

PC × NP

where:

*PC* has the meaning set out in *section 11.4*; and

*NP* means the number of PRs purchased by the Shipper,

provided that the Shipper’s liability to pay such Priority Rights Charge in respect of any PRs its purchases will commence only on the Day that purchase is completed and will cease at the end of the PR Term and/or be reduced to the extent it sells any PRs to another Shipper pursuant to *section 3.16*, with effect from the Day the sale of such PRs is completed.

## Overrun and Underrun Charges

* 1. Subject to *section 11.9*, a Shipper shall pay, in respect of each Day and Delivery Zone or Delivery Point:
     1. an Overrun Charge where it incurs an Overrun Quantity, equal to:

OQ × DNCFEE × F

where:

*OQ* is the Shipper’s Overrun Quantity, which is equal to the greater of:

* + - 1. DQDNC - DNC; and
      2. Zero; and
    1. an Underrun Charge where it incurs an Underrun Quantity, equal to:

UQ × DNCFEE × F

where:

*UQ* is the Shipper’s Underrun Quantity, which is equal to the greater of:

* + - 1. DNC - DQDNC; and
      2. zero,

where, for both part (a) and part (b) of this *section 11.6*:

*DNCFEE* has the meaning referred to in *section 11.2*;

*DNC* is the Shipper’s Daily Nominated Capacity;

*DQDNC* has the meaning referred to in *section 11.3*; and

*F* is, for each:

* + - 1. Delivery Zone: 5
      2. Dedicated Delivery Point: 5; and
      3. Congested Delivery Point: 10,

provided that First Gas may, on expiry of not less than [six] months’ notice to all Shippers, change the value of F, subject to (where the change is an increase) a maximum value of 10.

## Hourly Overrun Charge

* 1. Subject to *sections 3.19* to *3.23* and to *section 11.8*, a Shipper shall pay an Hourly Overrun Charge for each Hour in which it incurs an Hourly Overrun Quantity at a Dedicated Delivery Point only, equal to:

HOQ × DNCFEE × M

where:

*HOQ* is the Shipper’s Hourly Overrun Quantity and is equal to the greater of:

* + - 1. HQDNC - MHQ; and
      2. zero,

where:

*HQDNC* is that part of the Shipper’s Delivery Quantity, shipped using DNC only, taken at the Dedicated Delivery Point in an Hour;

*MHQ* has the meaning (in relation to the Shipper’s DNC) set out in *section 1*;

*DNCFEE* has the meaning referred to in *section 11.2*; and

*M* is:

* + - 1. 5, where the Delivery Point is not a Congested Delivery Point; and
      2. 20, where the Delivery Point is a Congested Delivery Point,

provided that:

1. the Hourly Overrun Charge that would otherwise be payable for any Hour during any Intra-Day Cycle for a Day shall be reduced to the extent that, during that Intra-Day Cycle, the Shipper requests an increased NQ for the Day (in accordance with *section 4.18*) in order to increase the MHQ available to the Shipper for that Day, and First Gas approves such increased NQ; and
2. First Gas may, on expiry of not less than [six] months’ notice to all Shippers, change the value of M, subject to (where the change is an increase) a maximum value of 20.

## Other Consequences of Overrun

* 1. Subject to *section 11.10*, in addition to any Overrun Charge or Hourly Overrun Charge that are payable, any Shipper who incurs an OQ or HOQ shall indemnify First Gas for any Loss incurred by First Gas that arises from such OQ or HOQ (where such Loss shall include any Transmission Charges and/or Non-standard Transmission Charges that First Gas may be required to rebate to any other Shippers) up to the Capped Amounts. First Gas shall use reasonable endeavours in the circumstances to mitigate its Loss. The Shipper shall not be relieved of its indemnity under this *section 11.8* should its OQ or HOQ result in a Critical Contingency being declared, nor shall the limitations expressed in *section 16.1* apply in respect of the Shipper’s indemnity. The Shipper’s indemnity under this *section 11.8* shall be without prejudice to any other rights and remedies available to First Gas.

## Congestion Management Charge

* 1. Each Shipper with DNC at a Beneficiary DP on a Day on which First Gas makes payment under an Interruptible Agreement pursuant to *section 10.14* shall pay a Congestion Management Charge for that Day and each Beneficiary DP, equal to:

CMCTOTAL × DNCSHIPPER ÷ DNCTOTAL

where:

*CMCTOTAL* is the relevant aggregate amount payable by First Gas pursuant to *section 10.14*;

*DNCSHIPPER* is the Shipper’s DNC at that Beneficiary DP on that Day; and

*DNCTOTAL* is the aggregate DNC of all Shippers at that Beneficiary DP on that Day.

## OBA at a Delivery Point

* 1. At any Delivery Point where there is an OBA, the relevant Interconnection Agreement shall also provide that:
     1. any Overrun Charge and/or Hourly Overrun Charge is payable by the OBA Party; and
     2. the indemnity referred to in *section 11.8* shall be provided by the OBA Party,

and not by any Shipper using the Delivery Point.

## Credit for Priority Rights Charges

* 1. Each Month, First Gas will credit each Shipper a share of the total Priority Rights Charges payable by all Shippers in the previous Month, equal to:

PRCTOTAL × DNCCSHIPPER ÷ DNCCTOTAL

where, for the Month preceding the prior Month:

*PRCTOTAL* is the total of Priority Rights Charges payable by all Shippers;

*DNCCSHIPPER* is the total of DNC Charges paid by the Shipper; and

*DNCCTOTAL* is the total of DNC Charges paid by all Shippers.

## Redetermination of Transmission Fees

* 1. First Gas will determine Transmission Fees annually using its then current Gas Transmission Pricing Methodology (*GTPM*), in compliance with the then current price-quality path set by the Commerce Commission and, as far as practicable, the Commission’s “Pricing Principles”.
  2. First Gas will notify Shippers by 1 September in each Year of the Transmission Fees to be used in the calculation of the Transmission Charges in the following Year. First Gas will also publish such Transmission Fees [on OATIS].
  3. Each Shipper agrees that First Gas’ statutory information disclosures are sufficient to establish First Gas’ compliance with the requirements referred to in *section 11.12* and that neither the GTPM nor the setting of Transmission Fees will be subject to any dispute under this Code.

## Transmission Services Invoice

* 1. On or before the 10th Day of each Month (or as soon thereafter as practicable), First Gas shall invoice each Shipper for the Transmission Charges and Non-standard Transmission Charges (if any) payable by that Shipper in respect of the previous (and any prior) Month.

## Balancing Gas and Park and Loan Invoice

* 1. For each Month, each Shipper and OBA Party shall pay to First Gas all amounts payable by it pursuant to, and determined by First Gas in accordance with, *section 8*.
  2. Subject to *section 11.18*, on or before the 14th Day of each Month (or as soon thereafter as is practicable), First Gas shall invoice each Shipper and OBA Party for the net cost of Balancing Gas incurred by that party in respect of the previous (and any prior) Month.
  3. Where the Balancing Gas Charges incurred by a party for a Month are less than the Balancing Gas Credits incurred by that party for the same Month, First Gas will credit the difference against any Balancing Gas Charges payable the following Month.

## Contents of Transmission Service Invoice

* 1. To support any invoice to a Shipper under *section 11.15*, First Gas shall notify the Shipper of:
     1. all Delivery Quantities in the previous Month;
     2. each Transmission Charge and Non-standard Transmission Charge payable for each Day of the previous Month;
     3. any Congestion Management Charges;
     4. any credit or debit of Transmission Charges for a prior Month required due to a Wash-up;
     5. any credit of Priority Rights Charges;
     6. any charges outstanding in respect of any prior Month; and
     7. the GST Amount.

## Contents of Balancing Gas Invoice

* 1. To support any invoice to a Shipper or OBA Party under *section 11.17*, First Gas shall notify such party in respect of each Day, and in aggregate for the Month:
     1. any Balancing Gas Charges payable and/or Balancing Gas Credits receivable;
     2. the party’s Mismatch;
     3. the party’s Running Mismatch;
     4. the aggregate Running Mismatch of all parties with Negative Running Mismatch;
     5. the aggregate Running Mismatch of all parties with Positive Running Mismatch;
     6. the quantity of Balancing Gas First Gas purchased and/or sold, together with the prices paid for and/or received for such Gas;
     7. the aggregate of all parties’ allocations of Balancing Gas Charges and Credits;
     8. the party’s allocation of Balancing Gas debits and/or credits (in GJ);
     9. the party’s Excess Running Mismatch and charges for Excess Running Mismatch;
     10. the aggregate quantities of Gas sold to, or purchased from all parties to settle Excess Running Mismatch;
     11. the quantity of Gas sold to, or purchased from the party to settle its Excess Running Mismatch;
     12. any credit or debit of Balancing Gas Charges for a prior Month required due to a Wash-up;
     13. any credit or debit of Excess Running Mismatch Charges for a prior Month required due to a Wash-up;
     14. any charges or credits outstanding in respect of any prior Month; and
     15. the GST Amount.

## Goods and Services Tax

* 1. First Gas shall express all amounts payable to it by any party as excluding GST, which shall be due and payable at the same time as the payment to which it relates is due (*GST Amount*). Any invoices provided to the Shipper under *sections 11.15* and *11.17* shall specify the GST Amount and shall comply with the “tax invoice” requirements in the Goods and Services Tax Act 1985.

## Other Taxes

* 1. In addition to the fees, charges and GST payable pursuant to this *section 11*, each Shipper shall pay to First Gas an amount equal to any new or increased tax, duty, impost, levy or charge (but excluding income tax and rates) (each a *Tax*) directly or indirectly imposed by the Government or any other regulatory authority that directly relates to First Gas’ provision of transmission services under that Shipper’s TSA (including First Gas’ sale and purchase of Balancing Gas), or in respect of any goods or services provided pursuant to the relevant TSA and this Code (including any increase of any such Tax). First Gas agrees that any decrease of any such Tax will be passed on to the relevant Shippers.

## Issuing of Invoices

* 1. First Gas may issue any invoice (together with any supporting information) under *section 11.15* or *11.17* by:
     1. e-mailing to a Shipper’s e-mail address most recently (and specifically) notified in writing to First Gas; and/or
     2. posting the invoice as one or more PDF files [on OATIS].

## Payment by a Shipper

* 1. Subject to *sections 11.25*, *11.26* and *11.27*, and to receiving invoices under *sections* *11.15* and/or *11.17*, each Shipper shall pay to First Gas the aggregate amount stated on each such invoice by direct credit to First Gas’ bank account stated on that invoice (or to such other bank account notified by First Gas in writing) by the later of:
     1. the 20th Day of the Month in which the invoice is issued; and
     2. 10 Business Days after such invoiced is issued.

Each Shipper shall immediately notify First Gas of the invoice numbers and the respective amounts to which any payment by the Shipper relates.

## Disputed Invoices

* 1. Subject to *section 11.26*, if a Shipper disputes any invoiced amount under *section 11.15* (*Invoice Dispute*), that Shipper shall, within 10 days from the date it received the invoice, notify First Gas in writing identifying the amount in dispute and giving full reasons for the dispute (*Invoice Dispute Notice*). The disputing Shipper shall pay the undisputed portion of the invoice. If the Invoice Dispute has not been resolved by negotiation between the Parties within 10 Business Days of First Gas receiving the Invoice Dispute Notice, *section 18* will apply.
  2. In respect of any invoice issued under *section 11.15*, in the absence of any manifest error a Shipper must not dispute any such invoice and shall pay the invoiced amount in full in accordance with *section 11.24* without any deduction or set-off of any kind. The Shipper hereby waives all rights to withhold, dispute or otherwise make any claim in relation to any such amount it may have under this Code or otherwise.

## Incorrect Invoices

* 1. If it is found at any time that a Shipper has been overcharged or undercharged under its TSA then, within 30 days after such error has been discovered and the correct amount has been agreed by the Parties or determined pursuant to *section 18*, First Gas shall issue a credit note or debit note (as appropriate) in accordance with the Goods and Services Tax Act 1985. If the Shipper has paid the invoice(s) containing such overcharge or undercharge First Gas will refund or pay that Shipper the amount of any such overcharge or undercharge, as appropriate, as a correction on its next invoice to the Shipper, provided that there shall be no right to re-open invoices if more than 18 months has elapsed since the date of the invoice.

## Default Interest

* 1. Where a Shipper or First Gas defaults without reasonable excuse in the payment on the due date of any money payable under a TSA or this Code, then interest shall be payable on the amount unpaid from the due date for payment until the date payment is made, at a rate equal to the Bill Rate plus 5% per annum, calculated on a Daily basis (compounded monthly).

# gas quality

## Shipper Obligation

* 1. Each Shipper (and First Gas) shall ensure that any contract it has with a third party for the sale or purchase of gas includes a requirement that all such gas must be Gas.
  2. First Gas shall ensure that any ICA it enters into at a Receipt Point requires the Interconnected Party to:
     1. ensure that all gas it injects into the Transmission System is Gas; and
     2. demonstrate that it has adequate facilities, systems, procedures and monitoring to comply with part (a) of this *section 12.2* on request by First Gas.
  3. Without limiting either First Gas’s or a Shipper’s obligation to act as a Reasonable and Prudent Operator or to mitigate its Loss arising out of or in relation to Non-Specification Gas that enters, or is in, the Transmission System, each Party acknowledges that should Non-Specification Gas enter, or be in, the Transmission System, First Gas is unlikely to be able to prevent such gas from reaching a Delivery Point.
  4. As soon as practicable upon First Gas or a Shipper detecting or suspecting that Non-Specification Gas has flowed, or is likely to flow at a Receipt Point or Delivery Point, that Party will notify the other Party of the same and provide any details of which that Party is aware in relation to:
     1. the reason why that gas was or may be Non-Specification Gas;
     2. the likely period of time during which Non-Specification Gas was injected into the Transmission System;
     3. the likely period of time during which Non-Specification Gas was or may be taken at a Delivery Point; and
     4. the nature and extent of the deviation from the Gas Specification.
  5. First Gas, upon receiving a reasonable written request from a Shipper, shall exercise such contractual rights as referred to in *section 12.2(b)* that it has, provided that First Gas shall not be obliged to do so where the Shipper itself can exercise similar contractual rights, whether in its capacity as a gas purchaser or otherwise. First Gas shall have no liability to the requesting Shipper by reason only that First Gas exercised its rights described in this *section 12.5*.
  6. Nothing in this *section 12* requires First Gas to monitor the quality of gas injected into the Transmission System.
  7. To the extent that Gas may take up dust and/or compressor oil as it passes through the Transmission System, First Gas will take reasonable steps to ensure that Gas taken at any Delivery Point is not, in respect of such contaminants, Non-Specification Gas.
  8. Non-Specification Gas will be deemed to have been Non-Specification Gas at the time it was injected into the Transmission System unless it is shown that First Gas caused Gas to become Non-Specification Gas.
  9. Where First Gas did not cause gas to become Non-Specification Gas it shall have no liability to any Shipper for any Loss incurred by that Shipper arising out of or in relation to that Shipper taking Non-Specification Gas at a Delivery Point.
  10. Where it did cause gas to become Non-Specification Gas, First Gas shall indemnify each Shipper for any Loss incurred by that Shipper arising out of or in relation to that Shipper taking Non-Specification Gas at a Delivery Point, except to the extent that:
      1. such Loss arose from the Shipper causing or contributing to the injection of such Non-Specification Gas into the Transmission System; and/or
      2. the Shipper has not mitigated its Loss to the fullest extent practicable.
  11. First Gas’ indemnity under *section 12.10* will be subject to the limitations and exclusions set out in *sections 16.1* to *16.4, 16.6* and *16.7*.
  12. Any claim made by a Shipper under *section 12.10* shall be without prejudice to any other rights or remedies available to that Shipper.

# odorisation

## Requirement

* 1. First Gas will not commence odorising Gas in an unodorised pipeline, or cease odorising Gas in an odorised pipeline, unless all Shippers request in writing that it do so and First Gas agrees to do so.
  2. Where First Gas odorises Gas in a pipeline in accordance with *section 13.1*, it will inject such quantities of a suitable odorant into the Gas to ensure that, in normal circumstances, the odorised Gas meets the detectability requirements set out in New Zealand Standard 5263:2003: Gas Detection and Odorisation.
  3. First Gas will conduct spot checks on each odorised pipeline (but not at all Delivery Points on any such pipeline) to test whether Gas taken from that pipeline meets the detectability requirements set out in New Zealand Standard 5263:2003. If it becomes aware that such Gas does not meet those requirements, notwithstanding that normal quantities of odorant have been injected, First Gas will notify all Shippers as soon as practicable and take all reasonable steps to remedy the situation.
  4. Notwithstanding *sections 13.1* to *13.3*, First Gas may cease odorising Gas in a pipeline upon the expiry of 18 months’ written notice to all Shippers.

# prudential requirements

* 1. At all times during the term of its TSA and until the Shipper has paid all outstanding amounts and all amounts payable or which may become payable in the 30 months following expiry or termination of that TSA, each Shipper must comply, at its election, with one of the following:
     1. hold an acceptable credit rating in accordance with *section 14.2*;
     2. arrange for a third party to provide one or a combination of the following securities (each a *Credit Support*), for the amount required in accordance with this *section 14*, provided the party providing the Credit Support maintains an acceptable credit rating in accordance with *section 14.2*:
        1. an unconditional payment guarantee or letter of credit in favour of First Gas; or
        2. an unconditional third party payment guarantee in favour of First Gas; or
        3. a security bond in favour of First Gas.
  2. For the purposes of *section 14.1*, an acceptable credit rating means a long term credit rating of at least Baa3 (Moody’s Investor Services Inc.), BBB- (Standard & Poors Ratings Group), B (AM Best), B (Fitch) or such other equivalent credit rating or other reference from a reputable person which is acceptable to First Gas, (including confirmation from an auditor that, in its opinion, the relevant Shipper or third party Credit Support provider satisfies the criteria that would be applied in the granting of such a credit rating).
  3. The Shipper or third party Credit Support provider, as the case may be, will provide such evidence of the acceptable credit rating (as set out in *section 14.2*), as First Gas may require.
  4. The amount which may be payable to First Gas pursuant to any Credit Support shall be:
     1. $100,000 (plus GST); plus
     2. First Gas’ reasonable estimate of 3 months of the Shipper’s Transmission Charges plus Non-standard Transmission Charges (if any) (plus GST), provided that either Party may periodically review such amount (though not more frequently than quarterly) and require it to be adjusted up or down.
  5. Where it has complied with the requirements of this *section 14*, a Shipper shall as soon as practicable notify First Gas should any of the following occur:
     1. the Shipper ceases to comply with the requirements of *section 14.1*;
     2. the Shipper believes that its financial position is likely to be materially adversely impaired such that its ability to pay its Transmission Charges and Non-standard Transmission Charges and/or Balancing Charges will be consequently affected; or
     3. a third party Credit Support provider (upon which its current satisfaction of the prudential requirements in this *section 14* depends) ceases to hold an acceptable credit rating in terms of *section 14.1*.
  6. If a Shipper fails to pay First Gas any amount set out in any invoice issued by First Gas pursuant to that Shipper’s TSA on the due date for payment (otherwise than for manifest error or as a result of an invoice dispute or dispute) then on the expiry of 5 days’ prior written notice from First Gas, without limiting any other right First Gas may have under this Agreement, First Gas may:
     1. make a claim under any Credit Support to the extent payment is due and the Shipper shall procure such payment;
     2. require Credit Support from the Shipper, if Credit Support has not already been provided by the Shipper;
     3. require a change to the type of Credit Support provided for the Shipper; and
     4. require an increase to the level of Credit Support held for the Shipper.
  7. Where First Gas makes a claim against any Credit Support, the Shipper must procure replacement Credit Support within 10 Business Days to ensure that the Credit Support requirements set out in *section 14.1* continue to be met.
  8. Where a Shipper is required to provide new or additional Credit Support, it must do so within 20 Business Days of First Gas’ written request.
  9. If this Agreement is terminated, First Gas will release any associated Credit Support when and to the extent that the Shipper has paid all outstanding amounts under its TSA.
  10. If required by First Gas in writing, the Shipper will show evidence of comprehensive liability insurance cover with a reputable insurer covering third party property damage and personal liability for which the Shipper may be legally liable under or in relation to its TSA, up to the Capped Amounts*,* except to the extent that such insurance is not permitted by law.

# force majeure

* 1. Notwithstanding the other provisions of the relevant TSA, but subject to s*ection 15.2*, a Party shall be relieved from liability under a TSA to the extent that a Force Majeure Event results in or causes a failure by that Party in the performance of any obligations imposed on it by that TSA (an *Affected Party*).
  2. A Force Majeure Event shall not relieve an Affected Party from liability:
     1. to pay money due under its TSA (including any Supplementary Agreement or Interruptible Agreement);
     2. to give any notice which it may be required to give; or
     3. for any Mismatch and Running Mismatch that may arise out of or in connection to, or before, during or after, the Force Majeure Event,

provided that a Shipper shall be relieved of its obligation to pay any fixed transmission charge (being a charge not determined by the delivery of any quantity of Gas), to the extent that First Gas cannot provide transmission services up to that Shipper’s DNC and/or Supplementary Capacity on account of that Force Majeure Event (as determined by First Gas).

* 1. If a Party seeks relief under *section* *15.1*, that Party shall, upon the occurrence of any such failure due to a Force Majeure Event:
     1. as soon as practicable but in any event within 48 hours give notice to the other Party of the occurrence of the event or circumstance claimed to be a Force Majeure Event and provide to the other Party full particulars relating to the event or circumstance and the cause of such failure. Such notice shall also contain an estimate of the period of time required to remedy such failure;
     2. render the other Party reasonable opportunity and assistance to examine and investigate the event or circumstance and the matters which caused the event or circumstance and failure;
     3. as quickly as practicable, use due diligence and take all reasonable steps which may be necessary to rectify, remedy, shorten or mitigate the circumstances giving rise to Force Majeure Event so as to minimise any Loss or other effects of the suspension of obligations suffered or incurred, or likely to be suffered or incurred by the Party; and
     4. give notice as soon as practicable, but in any event within 48 hours to the other Party upon termination of the Force Majeure Event.
  2. A Party will not be able to claim relief from liability under *section 15.1* solely as a result of the act or omission of:
     1. any agent or contractor of that Party; or
     2. in the case of a Shipper, any person selling or supplying Gas to that Shipper,

unless such act or omission is caused by or results from events and/or circumstances which would be a Force Majeure Event if such person were the Affected Party.

* 1. A Shipper will not be able to claim relief from liability under *section 15.1* as a result of the suspended performance, or non-performance, of the obligations of any of its customers, howsoever caused
  2. Subject to *section 9.4*, if Congestion occurs due a Force Majeure Event, First Gas will allocate Available Operational Capacity in accordance with *section 10.16*.

## Information

* 1. On becoming aware of any serious prospect of a forthcoming Force Majeure Event, a Shipper must notify First Gas as soon as practicable of the particulars of which it is aware.
  2. Any Shipper who declares a Force Majeure Event shall, as soon as practicable after its occurrence, provide First Gas with a full report on the details of such event, its causes, its effects on the Shipper and the actions taken by the Shipper to rectify, remedy, shorten or mitigate the event or circumstance which gave rise to the Force Majeure Event. First Gas will publish such report [on OATIS].

# liabilities

## Exclusion from a Party’s Liability

* 1. Subject to any further limitations contained in this *section 16*,a Party (*Liable Party*) will not be liable to the other Party (*Other Party*) in respect of any Loss suffered or incurred by that Other Party that arises out of or in connection with a TSA (in contract, tort or generally at common law, equity or otherwise), except to the extent that such Loss arose from an act or omission of the Liable Party that constituted a failure by it to comply with a provision of that TSA to the standard of a Reasonable and Prudent Operator. The Liable Party shall only be liable to the Other Party to the extent that the Other Party did not cause or contribute to such Loss (in whole or in part) through breach of that TSA. The Liable Party shall not be liable to the extent that the Other Party has not mitigated its Loss to the fullest extent practicable.

## Limitation of a Party’s Liability

* 1. If the Liable Party is liable to the Other Party in respect of any Loss suffered or incurred by that Other Party that arises out of or in connection with a TSA (in contract, tort or generally at common law, equity or otherwise), other than for payment of amounts due pursuant to *section 11*), the Liable Party will only be liable for direct Loss suffered or incurred by the Other Party excluding (and the Liable Party shall not be liable for):
     1. any loss of use, revenue, profit or savings by the Other Party;
     2. the amount of any damages awarded against the Other Party in favour of a third party, except where the Liable Party is liable to make a payment under *section 11.8*; and
     3. the amount of any money paid by the Other Party by way of settlement to a third party, except where the Liable Party is liable to make a payment under *section 11.8*.
  2. The Liable Party shall in no circumstances be liable for any indirect or consequential Loss arising directly or indirectly from any breach of its (or any of the other Party’s) obligations under its TSA, whether or not the Loss was, or ought to have been, known by the Liable Party.

## Capped Liability

* 1. Subject to *sections 16.5* to *16.8*, the maximum liability of a Party to the Other Party (in each case excluding liability, if any, that arises under *section 11.8*) will be:
     1. in relation to any single event or series of related events, $10,000,000 (ten million dollars); and
     2. in any Year, $30,000,000 (thirty million dollars), irrespective of the number of events in such period,

where an event is part of a series of related events only if such event or events factually arise from the same cause.

* 1. The amounts referred to in *section 16.4(a)* and *(b)* (the *Capped Amounts*) shall each be adjusted annually on 1 October of each Year by multiplying each Capped Amount for the previous Year by the following adjustment factor:

Adjustment Factor = CPIn / CPI(n –1)

where:

CPIn means the most recently published CPI Index for the June quarter in the preceding Year; and

CPI(n –1) means the most recently published CPI Index for the June quarter in the Year that is 2 years prior to the Year in which the adjustment is being made.

The adjusted Capped Amounts calculated pursuant to this *section 16.5* shall be rounded to the nearest whole number.

The adjusted Capped Amounts shall not be retrospectively adjusted in the event the Government Statistician (or his/her replacement as the case may be) later revises the previously published values of the CPI Index.

The first such adjustment will take place on 1 October in the Year following the first Year of this Code.

## Liability where First Gas is the Liable Party under multiple agreements

* 1. Where:
     1. First Gas is the Liable Party; and
     2. First Gas’ liability is wholly or partially caused or contributed to by a breach of any other TSA and/or ICA by one or more third parties (*Liable Third Parties*), and First Gas recovers (using all reasonable endeavours to pursue and seek recovery of such amounts) any amount from those Liable Third Parties in respect of that breach,

then First Gas’ liability shall be limited to the aggregate of the amount so recovered plus any First Gas-caused liability (where the First Gas-caused liability is any amount for which First Gas is liable as a result of failing to act as a Reasonable and Prudent Operator, which in any event shall be limited to the Capped Amounts).

* 1. Where:
     1. First Gas is the Liable Party;
     2. First Gas is liable to one or more third parties under any other TSA and/or ICA (each such agreement being a *Coincident Agreement*); and
     3. the sum of First Gas’ liability to the Shipper and to any third parties before the application of any monetary caps (*the Apparent Liability*) exceeds the relevant Capped Amount,

then the maximum liability of First Gas to the Shipper under its TSA and/or under all Coincident Agreements shall be reduced to an amount determined and notified to the Shipper by First Gas, which amount shall reflect the proportion that First Gas’ liability to the Shipper bears to the Apparent Liability taking into account any differences between the respective monetary caps under this Agreement and/or all Coincident Agreements. For the avoidance of doubt, First Gas’ aggregated liability to the Shipper together with its liability under all Coincident Agreements shall not exceed the relevant Capped Amount.

* 1. Where the Shipper is the Liable Party and is liable to First Gas under any Coincident Agreement, the maximum liability of the Shipper to First Gas and/or all Coincident Agreements shall not exceed the relevant Capped Amount.

## General

* 1. Each limitation or exclusion of this *section* *16* and each protection given to First Gas or a Shipper or its respective officers, employees, or agents by any provision of this *section 16* is to be construed as a separate limitation or exclusion applying and surviving even if for any reason any of the provisions is held inapplicable in any circumstances and is intended to be for the benefit of and enforceable by each of the Party’s officers, employees, and agents.
  2. Nothing in a TSA shall limit the right of either Party to enforce the terms of that TSA by seeking equitable relief, including injunction and specific performance, in addition to all other remedies at law or in equity.
  3. [If First Gas is the subject of a claim by a Shipper or third party (the *Claimant*) whose claim relates to the purported breach of its TSA by another Shipper (the *Defending Party*), the following procedure shall apply:
     1. First Gas shall immediately give notice of the claim to the Defending Party;
     2. First Gas will not make any payment or admission of liability in respect of the claim without the prior written consent of the Defending Party. The Defending Party will not unreasonably withhold or delay its consent under this *section 16.11(b)*;
     3. the Defending Party may elect to defend in the name of First Gas any third party claim involving any litigation. The Defending Party must notify First Gas of its election within 10 Business Days of receiving notice of the claim. First Gas shall provide or procure to be provided such assistance as the Defending Party may require if:
        1. the Defending Party first agrees in writing to indemnify First Gas against any liabilities resulting from such claim and/or defence of that claim except to the extent that First Gas has caused such liabilities; and
        2. the Defending Party agrees that it will pay reasonable costs incurred by First Gas in providing assistance in defending the claim,

provided that First Gas shall not be required to render any assistance to the Defending Party pursuant to this *section 16.11(c)* (other than allowing a defence in First Gas’ name) in circumstances where First Gas believes that its reputation could be damaged or impaired by such assistance;

* + 1. if the Defending Party elects to defend a claim under *section 16.11(c)* then it may choose its own counsel for such defence. The costs of that counsel will be met by the Defending Party;
    2. First Gas will not take any active steps which could be expected to directly result in the occurrence of an event for which an indemnity is payable under *section 16.11(c)(i)*; and
    3. the Defending Party shall not be required to make any payment in respect of any claim under this *section 16.11* based on a contingent liability until the contingent liability becomes an actual liability and is due and payable.
  1. A Shipper shall not make any claim, demand or commence proceedings directly against another Shipper in relation to that other Shipper’s breach of its TSA or negligence in relation to any matter pertaining to or dealt with in that agreement. Neither a Shipper nor First Gas shall make any claims, demands or commence proceedings against each other in relation to any matter dealt with by a TSA (including a claim that First Gas or a Shipper has been negligent in relation to any matter pertaining to or dealt with in that TSA) except in accordance with that TSA. For the avoidance of doubt, nothing shall prevent:
     1. First Gas from exercising its rights and remedies under any ICA; or
     2. a transferor, transferee or Gas Transfer Agent from exercising its rights and remedies under a GTA.
  2. Prior to First Gas making any claim against any Liable Third Parties, First Gas shall first consult any Shipper who is a Claimant and provide an opportunity for such Shipper to have its Loss included in First Gas’ claim(s). ]
  3. If required by either Party in writing, the other Party will show evidence of comprehensive liability insurance cover with a reputable insurer covering third party property damage and personal liability for which the other Party may be legally liable under or in relation to this Agreement, up to the Capped Amounts, except to the extent that such insurance is not permitted by law.
  4. For the purposes of this *section 16*, any reference to a breach of a TSA shall include any breach of a Supplementary Agreement or Interruptible Agreement under that TSA.

# code changes

## Amendment of Code

* 1. Subject to the balance of this *section 17*, First Gas, any Shipper or any Interconnected Party with an ICA (each an *Interested Party*) may apply to amend this Code (such party being a *Change Requestor*).
  2. Notwithstanding *section 17.1*, provided all Interested Parties agree in writing, the Code may be changed other than as set out in this *section 17*.

## Draft Change Request

* 1. A Change Requestor shall notify its wish to amend the Code by submitting the following documentation to both First Gas and GIC (*Draft* *Change Request*):
     1. a description of the proposed change;
     2. the reasons for, and the intended effect and impact of the proposed change;
     3. a marked-up version of the Code showing any proposed amendments; and
     4. the provisional date on which the amended Code would take effect if approved,

provided that no Change Request may be notified in the period from 24 December to 2 January in any Year, inclusive.

* 1. First Gas will publish any Draft Change Request [on OATIS] within 3 Business Days of receiving it.
  2. Within 10 Business Days following First Gas’ publication of a Draft Change Request, any Interested Party may request the Change Requestor to provide additional, relevant information in relation to the proposed change.
  3. The Change Requestor shall provide both First Gas and GIC with the additional information requested pursuant to *section 17.5* as soon as practicable and in any case not later than 5 Business Days following such request being made.
  4. Within 10 Business Days following First Gas’ publication of a Draft Change Request, any Interested Party may notify both First Gas and GIC:
     1. whether it supports the proposed change in principle;
     2. of any specific objections it has; and/or
     3. of any conditions that would attach to its support for the proposed change,

in each case including reasons.

* 1. First Gas will publish any request pursuant to *section 17.5*, the Change Requestor’s response pursuant to *section 17.6*, and all Interested Parties’ views notified pursuant to *section 17.7* [on OATIS] within 2 Business Days of receiving the same.

## Change Request

* 1. Not later than 25 Business Days following First Gas’ publication of a Draft Change Request, the Change Requestor may submit to both First Gas and GIC the following information (*Change Request*):
     1. the information referred to in *section 17.3*, amended as required to reflect Interested Parties’ responses pursuant to *section 17.7*; and
     2. its responses to any substantive specific objections raised,

and if it does not do so the proposed Change Request will be treated as formally withdrawn.

## GIC Consultation

* 1. Following submission of a Change Request in accordance with *section 17.9*, GIC, following appropriate Gas industry consultation, will provide a written recommendation stating whether or not it supports that Change Request. In doing so, the GIC may also recommend any further Code changes or actions by any Party that it considers relevant.
  2. Subject to *section 17.12*, a Change Request approved by GIC (*Recommended Change Request*) will become effective on the date specified therein.
  3. First Gas may decline to approve a Final Change Request if:
     1. it considers that the Change Requestor has breached, or that First Gas would otherwise breach its obligation to act as a Reasonable and Prudent Operator; or
     2. the proposed Code change would:
        1. require First Gas to incur capital expenditure;
        2. increase First Gas’ operating expenses or costs; or
        3. be likely to adversely affect First Gas’ current or future provision of transmission services, pricing structure, revenue recovery or business structure,

provided that First Gas must publish its reasons on OATIS within 5 Business Days of receiving GIC’s decision pursuant to *section 17.10*.

* 1. Where it also approves a Recommended Change Request, First Gas will notify all Interested Parties thereof [via OATIS] within 2 Business Days, and publish an amended Code [on OATIS] which shall be effective from the later of that date or the date set out in the Recommended Change Request.

## Correction Amendments

* 1. If an Interested Party believes this Code needs to be amended either:
     1. as a result of any law change, or the order of any Court with competent jurisdiction;
     2. to correct a typographical or other error; or
     3. to update a reference to an external source including any act or standard,

that Interested Party may submit a notice to both First Gas and GIC (*Correction Request*) setting out:

* + 1. the proposed amendments to the Code;
    2. the explanation for each proposed amendment; and
    3. the date on which the proposed amendments will take effect (not to be not sooner than [20] Business Days after the Correction Request is notified) (the *Code Correction Date*).
  1. A Correction Request shall be deemed to have amended the Code unless an Interested Party submits a notice of objection to both First Gas and GIC prior to the Code Correction Date.
  2. In the absence of any notice of objection pursuant to *section 17.15*, First Gas shall publish marked up and clean copies of the Code incorporating the changes set out in the Correction Request [on OATIS] and the amended Code shall take effect on the Code Correction Date*.*
  3. If a notice of objection is submitted pursuant to *section 17.15*, the Correction Request shall be deemed to have been withdrawn (and the Interested Party who submitted it may submit a Draft Change Request).

## Urgent Code Change

* 1. First Gas may make a temporary change to the Code in accordance with this *section 17.18* and *section 17.19* if it believes that such change is necessary to respond to unforeseen circumstance which threaten the integrity of, or the proper commercial operation of the Transmission System (*Urgent Code Change*).
  2. First Gas will notify all Interested Parties and GIC of any Urgent Code Change and in relation to any Urgent Code Change must publish the following information [on OATIS]:
     1. the required amendments to the Code;
     2. the explanation of each required amendment; and
     3. the date on which the required Code amendments will take effect (not be earlier than the first Business Day after the Urgent Code Change is published [on OATIS]).
  3. The Code amendments implemented via any Urgent Code Change shall expire 6 Months after the date they take effect and, if First Gas wishes them to be permanent it shall submit a Code Change Request accordingly (at any time).

# dispute resolution

* 1. Subject to *sections 11.25* and *11.26*, any dispute of whatever nature between a Shipper and First Gas, either Party may notify the other in writing that it wishes to attempt resolution of the dispute in accordance with this *section 18* (*Dispute Notice*). On receipt of a Dispute Notice, the Parties shall each use reasonable endeavours to resolve the dispute by negotiation.
  2. If the dispute is not resolved by negotiation within 15 Business Days of the date of the Dispute Notice, then the Parties shall submit the dispute to arbitration pursuant to the Arbitration Act 1996 (excluding paragraphs 4 and 5 of the Second Schedule to such Act).
  3. The arbitration will be conducted by an arbitrator appointed:
     1. jointly by the Parties; or
     2. if the Parties cannot agree on an arbitrator within 25 Business Days of the date of the Dispute Notice, by the President of the Arbitrators and Mediators’ Institute of New Zealand upon the application of either Party.
  4. Nothing in this s*ection 18* affects either Party’s right to seek urgent interlocutory relief.

# term and TERMINATION

## Term of TSA

* 1. Each TSA will commence on the Commencement Date and expire on the Expiry Date, unless terminated earlier in accordance with this *section 19*.

## Term of Code

* 1. Subject to *section 7.5*, the terms and conditions of this Code expire at 2400 on 30 September [2022]*.*

## Shipper May Terminate

* 1. A Shipper may give First Gas written notice to terminate its TSA at any time, and the termination date will be 2400 on the later of:
     1. the date for termination set out in the Shipper’s notice of termination;
     2. the expiry of all PRs held by the Shipper (if any);
     3. the date the sale of all PRs held by the Shipper (if any) becomes effective; and
     4. the date which is three months after the date First Gas receives the Shipper’s notice of termination.

## Termination for Default

* 1. Either Party may terminate a TSA immediately on notice in writing to the other Party specifying the cause, if:
     1. either Party defaults in payment of any money payable under that TSA (for reasons other than those in *section 11.24* for a period of 10 Business Days; or
     2. a Shipper fails to comply with the prudential requirements set out in *section 14* for a period of 60 Business Days; or
     3. the other Party defaults in the performance of any material covenants or obligations imposed upon it by that TSA and has not remedied that default within 30 days of notice from the terminating party; or
     4. a resolution is passed or an order made by a court for the liquidation of the other Party, except for the purposes of solvent reconstruction or amalgamation; or
     5. the other Party makes or enters into or endeavours to make or enter into any composition, assignment or other arrangement with or for the benefit of that Party’s creditors; or
     6. a Force Majeure Event occurs such that the other Party could not be expected to be in a position to perform its obligations under its TSA for a period of six Months or more.

## Suspension for Default

* 1. If First Gas becomes aware that a Shipper is in breach of any material term or condition of its TSA, First Gas shall be entitled to suspend any transmission services provided to that Shipper for the duration of any non-compliance if, and to the extent that, in First Gas’ opinion, such action is necessary to protect other Shippers or their use of the Transmission System.

## Termination Without Prejudice to the Amounts Outstanding

* 1. The expiry or termination of a TSA shall not:
     1. relieve a Shipper or First Gas of its obligation to pay any money outstanding under that TSA; or
     2. relieve a Shipper of any obligation to settle the Shipper’s Running Mismatch in accordance with *section 8*, which, at First Gas’ election (where First Gas is the terminating Party) but following consultation with that Shipper, may be done either in dollar terms or by making Gas available for that Shipper to take, or taking Gas from, that Shipper.

## Effects of Termination

* 1. Termination, suspension or expiry of a TSA shall not prejudice any rights or obligations of a Party that existed prior to termination, suspension or expiry.
  2. The provisions of this Code shall continue in effect after expiry or termination of the relevant TSA to the extent they relate to an event or circumstance that occurred prior to the date of such expiry or termination of that TSA.

# general and legal

## Notices

* 1. Subject to *section* *20.2*,all notices and other documents provided under this Code or any TSA must be in writing and shall be deemed served if personally delivered or sent by registered mail or email to:
     1. in the case of First Gas, the contact set out below (or other such contact as First Gas may notify in writing):

Transmission Manager – Commercial  
First Gas Limited  
Level 6, Resimac House

45 Johnston Street  
PO Box 865  
Wellington 6011,

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

* + 1. in the case of a Shipper, the contact set out in its TSA (or other such contact as the Shipper may notify to First Gas in writing).
  1. A notice sent:
     1. by registered mail shall be deemed served on the earlier of the date of receipt or on the second Business Day after the same was committed to post;
     2. by email shall (unless the sender receives an automatic response stating that the recipient’s email address does not exist or the email has not been successfully sent):
        1. if sent prior to 4.00 p.m. on any Business Day, be deemed served on that Business Day; or
        2. if sent after 4.00 p.m. on any Business Day, shall be deemed served on the next Business Day.

## Confidential Information

* 1. Confidential Information means:
     1. information provided to First Gas for the purposes of setting Prudential Requirements;
     2. a Shipper’s bids for Priority Rights prior to a PR Allocation Day;
     3. a Shipper’s Transmission Charges, including the information used to calculate them;
     4. the substance, but not the fact or existence, of any dispute between a Shipper and First Gas where the substance relates to Confidential Information or the Parties agree in writing that it is confidential;
     5. documents or other information made available during a dispute resolution process.
     6. information provided by a Shipper in response to a First Gas tender for Gas;
     7. advice which is protected by legal professional privilege;
     8. information provided by a Shipper in relation to a customer or potential customer of that Shipper, including in relation to the availability of or provision of transmission capacity, that could be of value to any of the Shipper’s competitors; and
     9. any other material a Party wishes to disclose to First Gas on the basis that it is Confidential Information and which First Gas agrees (prior to actual disclosure of the information) is Confidential Information,

and First Gas shall have suitable procedures, protocols and systems in place at all times to ensure that Confidential Information it holds at any time is securely stored and available only to those First Gas employees who need access to it.

* 1. First Gas may use or disclose Confidential Information to the extent that:
     1. the information is in the public domain, other than by a First Gas breach of this Code;
     2. the information was already known to First Gas and was not then subject to any obligation of confidentiality;
     3. disclosure to First Gas professional advisor(s) or consultant(s) on a need to know basis is required, including for the purposes of analysing any request relating to the availability or provision of transmission services;
     4. disclosure is necessary to maintain the safety and reliability of the Transmission System, or is required to give effect to the relevant TSA to which the Confidential Information relates;
     5. use or disclosure is required by law (including information disclosure requirements and/or the listing rules of a recognised stock exchange) or any order of a competent court;
     6. the other Party has consented in writing to the use or disclosure;
     7. the information is obtained from a third party, whom First Gas believes, in good faith, to be under no obligation of confidentiality;
     8. disclosure is to First Gas’ auditors; or
     9. disclosure is required pursuant to the resolution of any dispute under a TSA or this Code.

## Information [on OATIS]

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

## Waiver

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

## Entire Agreement

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

## Exclusion of Implied Terms

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

## Severability

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

## Exclusion of Consumer Legislation

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

## Contractual Privity

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

## Assignment

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

## Governing Law

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

# schedule one: transmission services agreement

Date:

**PARTIES**

**First Gas Limited** (*First Gas*)

**[                 ] Limited** (*the Shipper*)

**BACKGROUND**

A First Gas is engaged in the provision of Gas transmission services.

B The Shipper wishes First Gas to provide it with Gas transmission services.

C First Gas agrees to provide Gas transmission services to the Shipper on the terms and conditions set out in this TSA.

**AGREEMENT**:

**PART A: INDIVIDUAL INFORMATION**

1. **SHIPPER’S CONTACT DETAILS**

Physical Address: [ ]

Postal Address: [ ]

E-mail Address: [ ]

1. **COMMENCEMENT DATE**

[ ]

1. **EXPIRY DATE**

[ ]

1. **RECEIPT AND DELIVERY OF GAS**
   1. Subject to the Shipper complying with its obligations under the relevant GTA or OBA, as the case may be, the Shipper is entitled to use any Receipt Point.
   2. Subject to the Shipper complying with its obligations under the DRR, Allocation Agreement or OBA, as the case may be, the Shipper is entitled to use any Delivery Point.
2. **DAILY NOMINATED CAPACITY**
   1. Subject to the terms and conditions of the Code, First Gas shall provide transmission capacity to the Shipper to the extent of the Shipper’s DNC.
3. **PRIORITY RIGHTS**
   1. The Shipper may obtain Priority Rights, in accordance with *section 3* of the Code.
4. **TRANSMISSION CHARGES**

## Daily Nominated Capacity Charges

* 1. The Shipper shall pay all Daily Nominated Capacity Charges determined by First Gas in accordance with *section 11.2* of the Code.

## Throughput Charges

* 1. The Shipper shall pay all Throughput Charges determined by First Gas in accordance with *section 11.3* of the Code.

## Priority Rights Charges

* 1. The Shipper shall pay all Priority Rights Charges determined by First Gas in accordance with *sections 11.4* and *11.5* of the Code.

## Overrun and Underrun Charges

* 1. The Shipper shall pay all Overrun Charges and Underrun Charges determined by First Gas in accordance with (respectively) *section 11.6(a)* and *section 11.6(b)* of the Code.

## Hourly Overrun Charges

* 1. The Shipper shall pay all Hourly Overrun Charges determined by First Gas in accordance with *section 11.7* of the Code

## Congestion Management Charges

* 1. The Shipper shall pay all Congestion Management Charges determined by First Gas in accordance with *section 11.9* of the Code.

## Credit of Priority Rights Charges

* 1. First Gas will credit the Shipper a share of total Priority Rights Charges in accordance with *section 11.11* of the Code.

1. **BALANCING CHARGES**
   1. The Shipper shall pay all charges determined by First Gas pursuant to *section 8* of the Code.
2. **PAYMENT**
   1. The Shipper shall pay to First Gas:
      1. the charges pursuant to clauses 7.1 to 7.6 of this TSA; and
      2. the charges pursuant to clause 8.1 of this TSA,

Monthly in arrears in accordance with *section 11.24* of the Code.

**PART B: INCORPORATION OF CODE**

1 Each Party agrees that this TSA (once duly completed and executed) and the Gas Transmission Access Code, as amended in accordance with its terms (the *Code*) together comprise the agreement between the Parties in relation to First Gas provision of transmission services on the Transmission System.

2 Each Party agrees to comply with and be bound by the terms and conditions of the Code as if they were set out in full in this TSA.

3 Except as the context otherwise requires, all terms used in this TSA that are defined in the Code shall have the same meaning where used in this TSA.

**IN WITNESS WHEREOF** this TSA was executed by the Parties on the date first written above:

|  |  |
| --- | --- |
| Signed for and on behalf of **First Gas Limited** by:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Authorised Signatory  in the presence of:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Occupation  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Address | Signed for and on behalf of **[*the Shipper*]** by:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Authorised Signatory  in the presence of:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Occupation  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Address |

# 

# schedule two: information to be published

|  |  |  |
| --- | --- | --- |
| **Section** | **Item** | **Frequency** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

# schedule three: requirements of gas transfer agreements

1. **Definitions**

In this Schedule Three:

*Inputs* means the data required to perform the calculations required by the Gas Transfer Rules; and

*Outputs* means the quantities of Gas transferred after application of the relevant Gas Transfer Rules.

1. **General Requirements**
   1. A GTA must:
      1. be in writing, executed by the transferor and transferee;
      2. be provided to the Gas Transfer Agent for its consideration and execution and be executed by the Gas Transfer Agent no less than 2 hours before the Gas to which that GTA refers is to be injected into, transferred within or taken from the Transmission System, except that where Gas is to be injected, transferred or taken on a Day that is not a Business Day, the GTA must be provided to the Gas Transfer Agent no less than 8 hours before;
      3. provide unambiguous rules for determining the quantity of Gas transferred by the transferor to the transferee;
      4. specify the order of priority between two or more of the transferor’s GTAs for the same Receipt Point in the event of any inconsistency between those agreements; and
      5. provide for all Inputs to be provided to the Gas Transfer Agent by the times published by First Gas [on OATIS]).
   2. A GTA must set out Gas Transfer Rules which:
      1. acknowledge (either explicitly or implicitly) that, except where this Schedule Three allows a transferor to go into negative Mismatch, the total quantity of Gas available on a Day for transfer by that transferor:
         1. at any Receipt Point where an OBA applies, is the transferor’s Approved NQ at that point plus or minus any earlier traded quantities; and
         2. at all other Receipt Points, is the metered quantity;
      2. are compatible with the transferor’s other GTAs in respect of the same Receipt Point; and
      3. are not conditional on allocated quantities at any Delivery Point.
2. **Specific Requirements**
   1. A GTA must:
      1. specify that if the quantity of Gas available to the transferor to transfer (as determined by, or calculated by reference to, the Inputs) is insufficient to meet the proposed transfer:
         1. the transferor will go into negative Mismatch to complete the transfer if that transferor is a Shipper; and
         2. the transfer will not be completed to the extent of the insufficiency if that transferor is not a Shipper;
      2. set out default rules to be applied by the Gas Transfer Agent where:
         1. the Inputs are not provided or received in full and within the required times or if they contain any deficiency;
         2. the Inputs cannot be calculated for any reason other than a Force Majeure Event;
         3. the Outputs cannot be calculated for any reason other than a Force Majeure Event;
         4. the quantity of Gas available to the transferor is less than the combined quantities claimed for transfer by the transferee(s) and the transferor is not eligible to go into negative Mismatch to complete the transfer;
         5. the quantity of Gas available to be allocated is a metered quantity, and the total quantity claimed by the transferee or transferees does not equal that metered quantity;
         6. there is a dispute between the parties to the GTA (or any two of them) as to the Inputs, Outputs or the interpretation of the GTA affecting the determination or calculation of those Inputs or Outputs, where such default rules must ensure:

A the determination of the Outputs by the 12th Day of the Month following the Month in which the relevant Gas was injected into, transferred within or taken from the Transmission System; and

B that under no circumstances will First Gas (as the owner and operator of the Transmission System) be involved in the dispute; and

* + 1. set out “*Fall Back Default Rules*” the Gas Transfer Agent shall apply, including those set out below, if a default rule referred to in *paragraph 3.1(b)* above fails:
       1. where any of the default rules in relation to *paragraphs 3.1(b)(i), (ii), (iii)* or *(vi)* of this Schedule Three fails, the Gas Transfer Agent shall determine that no transfer of Gas to the transferee has occurred;
       2. where the default rule in relation to *paragraph 3.1(b)(iv)* of this Schedule Three fails, the Gas Transfer Agent shall complete the transfer to the extent of the Gas available but on a pro rata basis, across each transferee’s nominations; or
       3. where the default rule in relation to *paragraph 3.1(b)(v)* of this Schedule Three fails, the Gas Transfer Agent shall:

A transfer the metered quantity to the transferee, if there is only one transferee; or

B split the metered quantity equally between the transferees, if there is more than one transferee