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| Gas Transmission Access Code |

# gas quality

* 1. Each Shipper (and First Gas) shall ensure that any contract it has with a third party for the sale or purchase of gas that is transported on the Transmission System includes a requirement that all gas sold or purchased must comply with the Gas Specification.
	2. First Gas shall ensure that any new ICA in respect of a Receipt Point it enters into, or which has a specified commencement date, on or after the date of this Code requires the Interconnected Party under that ICA to:
		1. ensure that all gas it injects into the Transmission System complies with the Gas Specification;
		2. indemnify First Gas for any Loss incurred by First Gas arising out of or in relation to the injection of Non-Specification Gas at a Receipt Point into the Transmission System; and
		3. on request by First Gas, promptly demonstrate to First Gas that it has adequate facilities, systems, procedures and monitoring to comply with *section 12.2(a)*.
	3. Without limiting First Gas’ 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 that gas from reaching a Delivery Point.
	4. If First Gas becomes aware that Non-Specification Gas has flowed at a Receipt Point, or suspects that it may flow at a Delivery Point, it will notify all Shippers and Interconnected Parties via OATIS as soon as practicable and provide a summary of any details of which it 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 or may be injected at a Receipt Point, or taken at a Delivery Point; and
		3. the nature and extent of the deviation from the Gas Specification.
	5. If a Shipper becomes aware that Non-Specification Gas has flowed at a Receipt Point, or suspects that it may have flowed at a Delivery Point, it will notify First Gas as soon as practicable and, to the extent it can, provide the information referred to in *section 12.4*. First Gas will then promptly notify all Shippers and Interconnected Parties of that event (or suspected event) via OATIS together with a summary of the information provided to it.
	6. Subject to *section 12.7*, First Gas, upon receiving a written request from a Shipper (acting reasonably), shall exercise the rights referred to in *section 12.2(c)* and publish a summary report on OATIS setting out its findings. First Gas shall have no liability to the requesting Shipper in connection with the manner in which First Gas exercises its rights referred to in *section 12.2(c)* pursuant to *section 12.6*.
	7. First Gas shall not be obliged to exercise the rights referred to in *section 12.2(c)* in respect of a Receipt Point pursuant to a request from any Shipper where such request is not reasonable in the circumstances or First Gas considers (whether as a result of its prior exercise of such rights or otherwise) that exercising such rights will not provide it with any new relevant information.
	8. Nothing in this *section 12* requires First Gas to monitor the quality of gas injected into the Transmission System.
	9. First Gas will install and maintain equipment at each Delivery Point to ensure that all Gas taken complies with the Gas Specification in respect of dust and/or compressor oil.
	10. 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 Non-Specification Gas entering the Transmission System; and/or
		2. the Shipper has not mitigated its Loss to the fullest extent reasonably practicable.
	11. Where First Gas did not cause or contribute to Gas being or becoming Non-Specification Gas, the indemnity under *section [12.10](#_bookmark2)* is subject to the limitations and exclusions set out in *sections 16.2* to *16.7.*
	12. Where First Gas caused or contributed to Gas being or becoming Non-Specification Gas, the indemnity under *section [12.10](#_bookmark2)* is subject to the limitations and exclusions set out in *sections 16.1* to *16.7.*
	13. For the purposes of *sections 12.10, [12.11](#_bookmark3)* and *12.12,* Non-Specification Gas will be deemed to have been Non-Specification Gas at the time it was injected or delivered into the Transmission System unless and to the extent it is shown that First Gas caused or contributed to Gas being or becoming Non-Specification Gas.
	14. Any claim made by a Shipper under *sections 12.10, 12.11* and/or *12.12* shall be without prejudice to any other rights or remedies available to that Shipper (but any other rights and remedies will be subject to the limitations and exclusions set out in *section 16*).

*Capped Amounts* means the amounts specified in *section 16.4(a) and (b)* (as adjusted in accordance with *section 16.5* as applicable);

*Reasonable and Prudent Operator* or *RPO* means, in relation to the performance of obligations under this Code, the application by the relevant party of that degree of diligence, prudence and foresight reasonably and ordinarily exercised by experienced operators engaged in the same line of business under the same or similar circumstances and conditions having due regard to the Interconnected Parties and Shippers who also use the Transmission System to inject, convey or receive Gas and to First Gas;

# 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 Loss suffered or incurred by the Other Party that arises out of or in connection with the relevant TSA (whether in contract, tort (including negligence) or generally at common law, equity or otherwise), except to the extent that Loss arose from an act or omission of the Liable Party that constituted a failure by it to comply with a provision of the relevant 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 that Loss. The Liable Party shall not be liable to the extent that the Other Party has not mitigated its Loss to the fullest extent reasonably 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 the Other Party that arises out of or in connection with the relevant TSA (whether in contract, tort (including negligence) 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 11.9 or section 12.10*; 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 11.9 or section 12.10*.
	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 the relevant 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 will be:
		1. in relation to any single event or series of related events, $12,500,000; and
		2. in any Year, $37,500,000, irrespective of the number of events in that Year.

For the purposes of this *section 16.4*, an event is part of a series of related events only if that event or events factually arise from the same cause. The limitations in this *section 16.4* shall not apply in respect of or include the payment of amounts pursuant to *section 8* or *section 11*.

* 1. The amounts referred to in *section 16.4(a)* and *(b)* 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 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 (including under the indemnity set out in *section 12.10*); and
		2. First Gas’ liability is or may be wholly or partially caused or contributed to by a breach of a TSA and/or ICA by one or more other Shippers or Interconnected Parties (*Liable Third Parties*),

then First Gas’ liability shall be limited to the aggregate of the amount received by First Gas in payment from any such Liable Third Party (including under any indemnity from the Liable Third Party) in respect of any such breach by the Liable Third Party which gave rise to such liability for First Gas (less any reasonable costs and expenses, including legal costs and expenses on a solicitor and own client basis, incurred by First Gas in connection with pursuing any such recovery) plus any First Gas-caused liability (where the First Gas-caused liability is any amount which First Gas caused or contributed to as a result of failing to act as a Reasonable and Prudent Operator, which in any event shall be limited to the Capped Amounts). First Gas is to use its reasonable endeavours to pursue and seek recovery from the Liable Third Party of any damages payable to First Gas as a result of a breach by the Liable Third Party of the relevant TSA and/or ICA.

* 1. Where:
		1. First Gas is the Liable Party (including under the indemnity set out in *section 12.10*); and
		2. First Gas is or may be liable to one or more Shippers or Interconnected Parties under any TSA and/or any ICA (each such TSA and ICA being a *Coincident Agreement*); and
		3. the sum of First Gas’ liability (including under the indemnity set out in *section 12.10* or equivalent indemnity given by First Gas under a Coincident Agreement) to the Other Party and to any other Shippers and Interconnected Parties before the application of any monetary caps (*the Apparent Liability*) exceeds the Capped Amount,

then the maximum aggregate liability of First Gas to the Other Party shall be reduced to an amount determined and notified to the Other Party by First Gas, which amount shall reflect the proportion that First Gas’ liability to the Other Party bears to the Apparent Liability, provided that the aggregate of First Gas’ liability to the Other Party and under all Coincident Agreements shall not exceed the Capped Amount.

* 1. Where the Liable Party is not First Gas, the maximum aggregate liability of the Liable Party to First Gas under the relevant TSA and any Coincident Agreements shall not exceed the 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 this Code or a TSA shall limit the right of either Party to enforce the terms of a TSA by seeking equitable relief, including injunction and specific performance, in addition to all other remedies at law or in equity.

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* 1. If First Gas is the subject of a claim by a Shipper or an Interconnected Party (the *Claimant*) where the claim (or any part of it) arises because of a purported breach of a TSA by another Shipper or a purported breach of an ICA by an Interconnected Party (each such Shipper or Interconnected Party being 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 provided that the Defending Party first agrees in writing to:
			1. indemnify First Gas against any liabilities resulting from that claim and/or defence of that claim except to the extent that First Gas has caused those liabilities; and
			2. pay any reasonable costs directly incurred by First Gas in providing assistance in defending the claim,

except 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 has reasonable grounds to refuse suchassistance;

* + 1. if the Defending Party elects to defend a claim under *section 16.11(c)* then it may choose its own counsel for its defence. The costs of 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 or Interconnected Party in relation to that other Shipper’s or Interconnected Party’s breach of its TSA or ICA (as applicable) or negligence in relation to any matter pertaining to or dealt with in this Code, a TSA or ICA. 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. 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, or party to an Allocation Agreement exercising its rights and remedies under an Allocation Agreement.
	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 that Shipper to have its Loss included in First Gas’ claim(s) if applicable.
	3. If requested 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 its TSA, 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:
		1. a TSA shall include a reference to any Supplementary Agreement, Existing Supplementary Agreement or Interruptible Agreement (and a reference to a Shipper shall include a reference to a shipper under any such agreement);
		2. a breach of, or liability under, a TSA shall include any breach of, or liability under, a Supplementary Agreement, Existing Supplementary Agreement or Interruptible Agreement;
		3. an ICA or Interconnection Agreement shall include a reference to any Existing Interconnection Agreement or any other interconnection agreement (and a reference to an Interconnected Party shall include a reference to an interconnected party under any such agreement); and
		4. a breach of, or liability under, an ICA or Interconnection Agreement shall include any breach of, or liability under, an Existing Interconnection Agreement or any other interconnection agreement.