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| Interconnection Agreement for Delivery Points |

First Gas Limited (First Gas)

[ ] (the Interconnected Party)

[August 2018]

# gas quality

* 1. Where it is an End-user, the Interconnected Party shall ensure that any contract for the purchase of gas that is transported on the Transmission System it has with any person includes a requirement that all such gas 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 Agreement, 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 6.2(a)*.

Nothing in this Agreement requires First Gas to monitor the quality of gas in, or injected into, the Transmission System or taken at a Delivery Point.

* 1. Without limiting either Party’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, First Gas’ Pipeline, each Party acknowledges that, should Non-Specification Gas enter, or be in, First Gas’ Pipeline, First Gas is unlikely to be able to prevent that gas from reaching a Delivery Point.
  2. 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 (including the Interconnected Party) 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.
  3. If the Interconnected Party becomes aware or suspects that Non-Specification Gas has 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 6.4*. First Gas will then promptly notify all Shippers and interconnected parties (including the Interconnected Party) of that event (or suspected event) via OATIS together with a summary of the information provided to it.
  4. Subject to *section 6.7*, First Gas, upon receiving a written request from the Interconnected Party (acting reasonably), shall exercise the rights referred to in *section 6.2(c)* and publish a summary report on OATIS setting out its findings. First Gas shall have no liability to the Interconnected Party in connection with the manner in which First Gas exercises its rights referred to in *section 6.2(c)* pursuant to *section 6.6*.
  5. First Gas shall not be obliged to exercise the rights referred to in *section 6.2(c)* in respect of a Receipt Point pursuant to a request from the Interconnected Party 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.
  6. First Gas will install and maintain equipment at each Delivery Point under this Agreement to ensure that all Gas taken complies with the Gas Specification in respect of dust and/or compressor oil.

*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 Agreement, 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 other interconnected parties and Shippers who also use the Transmission System to inject, convey or receive Gas and 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 any Loss suffered or incurred by that Other Party that arises out of or in connection with this Agreement (whether in contract, tort (including negligence) or generally at common law, equity or otherwise), except to the extent that that Loss arose from an act or omission of the Liable Party that constituted a failure by it to comply with a provision of this Agreement 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 by a breach of this Agreement. 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 this Agreement (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 11.12*; 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 11.12*.
  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 this Agreement, 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 under this Agreement 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 any Charges or OBA Charges.

* 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 Agreement.

## 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 or may be wholly or partially caused or contributed to by a breach of any Interconnection Agreement or any TSA by one or more Interconnected Parties or Shippers (*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; and
     2. First Gas is or may be liable to one or more Interconnected Parties under any other Interconnection Agreement and/or Shippers under any TSA (each such Interconnection Agreement or TSA being a *Coincident Agreement*); and
     3. the sum of First Gas’ liability (including under any indemnity) to the Interconnected Party and to any other Interconnected Parties and Shippers before the application of any monetary caps (*the Apparent Liability*) exceeds the Capped Amount,

then the maximum aggregate liability of First Gas to the Interconnected Party shall be reduced to an amount determined and notified to the Interconnected Party by First Gas, which amount shall reflect the proportion that First Gas’ liability to the Interconnected Party bears to the Apparent Liability, provided that the aggregate of First Gas’ liability to the Interconnected 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 this Agreement or any Coincident Agreement shall not exceed the Capped Amount.

## General

* 1. Each limitation or exclusion of this *section* *16* and each protection given to First Gas or the Interconnected Party 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 Agreement shall limit the right of either Party to enforce the terms of this Agreement 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 any Interconnected Party where the claim (or any part of it) arises because of a purported breach of this Agreement by the Interconnected Party, the following procedure shall apply:
     1. First Gas shall immediately give notice of the claim to the Interconnected 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 Interconnected Party. The Interconnected Party will not unreasonably withhold or delay its consent under this *section 16.11(b)*;
     3. the Interconnected Party may elect to defend in the name of First Gas any third party claim involving any litigation. The Interconnected 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 Interconnected Party may require provided that the Interconnected 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 Interconnected 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 such assistance;

* + 1. if the Interconnected 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 Interconnected 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 Interconnected 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. The Interconnected Party shall not make any claim, demand or commence proceedings directly against any Shipper or another Interconnected Party in relation to that Shipper’s or other Interconnected Party’s breach of its TSA or ICA (as applicable) or negligence in relation to any matter pertaining to or dealt with in the Code, a TSA or ICA. Neither the Interconnected Party nor First Gas shall make any claims, demands or commence proceedings against each other in relation to any matter dealt with by this Agreement (including a claim by either Party that the other Party has been negligent in relation to any such matter) except in accordance with this Agreement. Nothing shall prevent First Gas from exercising its rights and remedies under any TSA, GTA or Allocation Agreement.
  2. Prior to First Gas making any claim against any Liable Third Party, First Gas shall first consult the Interconnected Party and provide an opportunity for the Interconnected Party to have any 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 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:
     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 this Agreement, any Existing Interconnection Agreement and 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, this Agreement, any Existing Interconnection Agreement and any other interconnection agreement.