Block 2 Outputs – 2 ICA Common and Essential Terms

Appendix 1 - Proposed GTAC amendments

# transmission services

## No Preference or Priority

* 1. First Gas will deal with all Shippers and Interconnected Parties on an arms’ length basis and not prefer or give any priority to any Shipper or Interconnected Party except as expressly provided for in this Code.

# additional agreements

## Interconnection Agreements

* 1. No new Receipt Point, Delivery Point or Bi-directional Point on the Transmission System will be permitted without First Gas and the new Interconnected Party entering into an Interconnection Agreement (it being acknowledged that as of the date of this Code some existing points are the subject of an Existing Interconnection Agreement or may not have an interconnection agreement). First Gas will deal with any person seeking to become an Interconnected Party (and all existing Interconnected Parties) on an arms’ length basis and not prefer or give any priority to any prospective or existing Interconnected Party except as expressly provided for in this Code. First Gas shall maintain a publicly available interconnection policy document.
  2. Any ICA entered into, or with a specified commencement date, on or after the date of this Code:
     1. subject to *section 7.13(c)*, that relates to a Receipt Point is to contain at least the provisions set out in Schedule Five;
     2. subject to *section 7.13(c)*, that relates to a Delivery Point is to contain at least the provisions set out in Schedule Six;
     3. that relates to a Bi-Directional Point is to contain the relevant provisions from Schedule Five and Schedule Six (but shall not duplicate provisions);
     4. is to specify the interconnection fee and if applicable any odorisation, termination or other fee or charge, payable by the Interconnected Party pursuant to the ICA;
     5. may contain other terms or provisions, provided they are not inconsistent with the provisions set out in Schedule Five (in the case of a Receipt Point) or Schedule Six (in the case of a Delivery Point);
     6. may be ordered, numbered, set out and typographically conformed or corrected in the manner determined by First Gas and the relevant Interconnected Party, and may have appropriate changes from Schedule Five or Schedule Six (as applicable) that are required for the specific circumstances of the relevant ICA and the relevant Interconnected Party provided that such changes do not derogate from the overall effect and intention of Schedule Five or Schedule Six (as applicable); and
     7. the Metering Requirements (which are to be referred to in each ICA) are to provide for appropriate transitional arrangements for existing Metering equipment at Receipt Points which exist as of 1 October 2019 (such transitional arrangements to not apply for a period of more than two years).

# schedule Five: Common Receipt Point Interconnection Agreement Provisions

# DEFINITIONS AND CONSTRUCTION

## Defined Terms

* 1. Subject to *section 1.2*, capitalised terms used but not defined in this Agreement are to have the meaning given to those terms in the Code with any necessary changes for the context (including as such terms may be amended from time to time in accordance with the requirements of the Code and thereafter read with any necessary changes for the context).
  2. In this Agreement:

*Agreement* means this “Interconnection Agreement for Receipt Points”, including the schedules and appendices (if any) annexed;

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

*Charges* means all amounts payable by the Interconnected Party under this Agreement (except OBA Charges) including any Interconnection Fee or Odorisation Fee (each of which may be specified in $/Day or some other basis) and any Termination Fee;

*Code* means the Gas Transmission Access Code, as amended or replaced;

*Commencement Date*means the later of [•] and the date it is signed by both Parties;

*Emergency* means 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 exists where First Gas considers:

* + 1. 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;
    2. Gas is at a pressure, or is of a quality, that constitutes a hazard to persons, property or the environment, including where Gas in the Interconnected Party’s Pipeline, First Gas’ Pipeline or at a Receipt Point is at a pressure, or is of a quality, that constitutes a hazard to the Interconnected Party’s Pipeline, the Receipt Point or First Gas’ Pipeline;
    3. First Gas’ ability to receive Gas at a Receipt Point (or to make gas available at a Delivery Point) is impaired; or
    4. First Gas’ ability to maintain safe pressures within a pipeline is affected or threatened, including where the rate of injection of Gas at a Receipt Point exceeds its Maximum Design Flow Rate, Physical MHQ or the flow rate specified in an Operational Flow Order;

*First Gas Equipment* means equipment owned and/or controlled by First Gas and located at a Receipt Point, and includes the equipment as described as such in ICA Schedule One;

*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 this Agreement, 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;

*Hazardous* means, in relation to an area or space, where that area or space is hazardous or potentially hazardous in respect of the electrical equipment that may be installed there, as defined in accordance with AS/NZS2430;

*Interconnection Fee* means [●];

*Interconnected Party* means the Party named as the Interconnected Party in this Agreement;

*Interconnection Point* means the point at which First Gas’ Pipeline physically connects to a Receipt Point, being the demarcation point between the Parties’ respective assets, as defined in ICA Schedule One;

*MAOP* means maximum allowable operating pressure;

*Maximum Design Flow Rate* means the maximum flow rate of Gas that a Receipt Point and Metering are designed to have flow through them and, in the case of Metering, Accurately measure, as set out in ICA Schedule One;

*Metering* means the equipment at the location set out in ICA Schedule One, and complying with the Metering Requirements, which measures the quantities of Gas injected into First Gas’ Pipeline at a Receipt Point in accordance with the requirements of this Agreement;

*Metering Owner* means the Party identified as such in ICA Schedule One;

*Minimum Design Flow Rate* means the minimum flow rate of Gas that a Receipt Point and/or Metering are designed to have flow through them and, in the case of Metering, Accurately measure, as set out in ICA Schedule One;

*OBA Charges* has the meaning set out in *section 11.10*;

*Odorisation Facilities* means the equipment and facilities, complying with *section 7* and ICA Schedule One, to odorise Gas injected at a Receipt Point;

*Odorisation Fee* means [●];

*Operational Flow Order* or *OFO* means a notice issued by First Gas pursuant to *section 9.6* requiring the Interconnected Party to take such actions as it is able to take to reduce its injection of Gas at a Receipt Point as set out in that notice;

*Party* means each of First Gas and the Interconnected Party and Parties means them collectively;

*Physical MHQ* means the Hourly energy equivalent of the Maximum Design Flow Rate of a Receipt Point, as set out in ICA Schedule One;

*Pipeline* means:

* + 1. in relation to First Gas, that part of the Transmission System which connects to a Receipt Point; and
    2. in relation to the Interconnected Party, the high-pressure pipeline that conveys Gas to a Receipt Point;

*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;

*Receipt Point* means a station or facility, including any associated land and equipment, that complies with the technical requirements set out in ICA Schedule Two at which Gas is injected (or may be injected) into First Gas’ Pipeline, and includes any Additional Receipt Point which complies with the technical requirements set out in ICA Schedule Two, in each case which is the subject of this Agreement and the details of which are set out in ICA Schedule One;

*Remote Monitoring Equipment* has the meaning set out in *paragraph 1.3* of ICA Schedule Two;

*Target Taranaki Pressure* means the pressure determined by First Gas at or near the Bertrand Road Offtake to be sufficient to:

* + 1. deliver Shippers’ Nominated Quantities;
    2. provide, using reasonable endeavours, a reasonable quantity of Gas for use in connection with an event or circumstance that First Gas believes, acting as a Reasonable and Prudent Operator, has detrimentally affected the transmission of Gas through the Transmission System or depleted Line Pack to an unacceptable level, or could do so, and includes an Emergency and a Critical Contingency; and/or
    3. provide, using reasonable endeavours, a reasonable quantity of Gas to allow for delivery having regard to relevant Agreed Hourly Profiles and/or relevant Running Mismatch Tolerances;

*Termination Fee* means [●];

## Code Amendments and Precedence

* 1. The Interconnected Party may exercise any rights, and is to comply with any obligations, conferred or placed on it by the Code (including by way of references to particular categories of interconnected parties or interconnected parties generally). Where the Code confers rights or places obligations on the Interconnected Party, or this Agreement refers to or incorporates sections or terms of the Code (including those common provisions specified in Schedule Five or Schedule Six of the Code), this Agreement will be deemed to be amended automatically if, when and to the extent those rights or obligations, or sections or terms of the Code (including those common provisions specified in Schedule Five or Schedule Six of the Code) are changed, amended or supplemented in accordance with the Code (including pursuant to *section 17* of the Code). At the request of a Party, the other Party shall enter into an agreement which records the relevant changes, amendments or additions to this Agreement accordingly (and each Party shall take such actions and execute such documents as is required to do so) promptly after the date of any such request. In the event of any conflict or ambiguity between a provision of this Agreement (where and to the extent the Code confers rights or places obligations on the Interconnected Party, or this Agreement refers to or incorporates sections or terms of the Code) and the Code, the Code shall prevail. In the event the Code expires or is terminated during the term of this Agreement:
     1. this Agreement will survive that expiry or termination and continue in full force and effect until the Expiry Date (subject to earlier termination in accordance with *section 14*); and
     2. the relevant terms of the Code incorporated into this Agreement will continue in full force and effect for the term of this Agreement unless First Gas and the Interconnected Party agree to amend them.

# RECEIPT POINT INTERCONNECtion

## Parties Rights and Obligations

* 1. First Gas will permit connection of the Interconnected Party’s Pipeline to First Gas’ Pipeline at a Receipt Point, on and subject to the terms and conditions set out in this Agreement.
  2. Each Party will act as a Reasonable and Prudent Operator when exercising or performing any of its rights, powers, obligations and duties under this Agreement.
  3. Subject to the terms of this Agreement and the Code*,* First Gas has absolute discretion as to how it conducts the operation of the Transmission System.

## Technical Compliance

* 1. Except as agreed otherwise in writing, the Interconnected Party will ensure that all Receipt Points and Additional Receipt Points comply with ICA Schedule One and ICA Schedule Two.

# injection of gas

## Injection Pressure

* 1. The Interconnected Party acknowledges and agrees that:
     1. it is solely responsible for achieving the pressure required to inject Gas at any Receipt Point, up to the MAOP of First Gas’ Pipeline;
     2. except as provided in *section 3.2*, First Gas shall not be obliged to operate its Pipeline within any particular pressure range to facilitate the injection of Gas at any Receipt Point; and
     3. it shall not cause the MAOP of First Gas’ Pipeline to be exceeded. If the Interconnected Party does so, it shall indemnify First Gas for any Loss that First Gas suffers or incurs, including damage to First Gas’ Pipeline, any First Gas equipment, any loss of Gas and any claim from a third party.

## Target Taranaki Pressure

* 1. If the Receipt Point is on the 400 line between Oaonui and the Turangi Mixing Station, then subject to or except as may be required as a result of a Critical Contingency, Force Majeure Event, Emergency or any Maintenance, First Gas will use its reasonable endeavours to:
     1. maintain the Target Taranaki Pressure in the 400 line between Oaonui and the Turangi Mixing Station at or near the Bertrand Road Offtake between a lower limit of 42 bar gauge and an upper limit of 48 bar gauge (including, if the Target Taranaki Pressure is outside these limits, to bring the Target Taranaki Pressure back within those limits); and
     2. manage the Target Taranaki Pressure to be as low as practicable within the specified range while maintaining sufficient Line Pack to meet its obligations under the Code and interconnection agreements.

If necessary in order for First Gas to comply with its obligations under this *section 3.2* in relation to maintaining the Target Taranaki Pressure under the upper limit of the Target Taranaki Pressure, First Gas may take gas balancing action or exercise its rights to adjust or curtail any gas flow and/or relevant nominations (including pursuant to *section 9*). Any proposed change to the specified limits of the Target Taranaki Pressure shall be subject to a Change Request made in accordance with the Code (any such change to the specified pressure limits not to be effective earlier than 12 Months following its approval).

## Excessive Flow

* 1. The Interconnected Party will not inject Gas at a Receipt Point at a rate greater than the then-current Maximum Design Flow Rate. If it does so, the Interconnected Party shall be liable for:
     1. the cost of any damage to any First Gas Equipment or First Gas’ Pipeline;
     2. the charge determined in accordance with *section 11.11*; and
     3. any Loss pursuant to *section 11.12*.

## Low Flow

* 1. If Gas is injected at a Receipt Point at rates less than the then-current Minimum Design Flow Rate to the extent that, in First Gas’ reasonable opinion, the Accuracy of the metered quantities at that Receipt Point is adversely affected, First Gas shall notify the Interconnected Party accordingly. Unless the Interconnected Party can reasonably demonstrate to First Gas that those low Gas injection rates occurred during plant start-up and shut-down or were extraordinary occurrences and are unlikely to occur again, or that the Metering is Accurate even at those low Gas injection rates, First Gas may require the Interconnected Party at its cost to modify the Metering to improve the Accuracy of metered quantities at low flow rates, and:
     1. the Interconnected Party shall then implement appropriate modifications as soon as practicable; and
     2. during the time required to modify the Metering, First Gas’ shall be entitled to suspend the Interconnected Party’s right to inject Gas at that Receipt Point.

## Outage Notification

* 1. The Interconnected Party shall as soon as reasonably practicable notify First Gas of any scheduled or unscheduled outages affecting such Interconnected Party in relation to its injection of Gas at the Receipt Point. Such notice shall include:
     1. whether it is, or is expected to be, a full or partial outage and the likely duration of that outage;
     2. for scheduled outages, when such outage is expected to commence;
     3. in a reasonable amount of detail, the reason for that outage; and
     4. the extent of the expected reduction in the injection of Gas.

First Gas shall promptly publish on OATIS the information provided by the Interconnected Party under *section 3.5(a)* and *(b)*.

# metering and energy quantity reports

## Metering Required

* 1. The Metering Owner shall install Metering in respect of Receipt Points as set out in ICA Schedule One and use reasonable endeavours to ensure that it operates at all times. The Metering Owner is to ensure that the design, construction, installation, operation and maintenance of the Metering complies with the Metering Requirements.

## Direct Gas Measurement Only

* 1. Metering shall determine Gas quantities by direct measurement only and not by difference.

## Testing of Metering and Provision of Information

* 1. The Metering Owner shall use reasonable endeavours, including by means of periodic testing in accordance with the Metering Requirements, to ensure that Metering is Accurate. The other Party may request, and the Metering Owner shall then provide to the other Party:
     1. reasonable technical information relating to the Metering at a Receipt Point;
     2. a copy of its planned maintenance schedules relating to any Metering; and
     3. the results of any testing of any Metering.
  2. In relation to any new Metering, the Metering Owner shall:
     1. no earlier than 3 Months before that Metering is placed into service, test each custody transfer meter and other gas measurement device forming part of that Metering; and
     2. where the Metering includes a verification meter, conduct an in-situ verification test of each custody transfer meter as soon as practicable after that Metering is placed into service,

to ensure that the Metering is Accurate. If the Metering is found to be Inaccurate, the Metering Owner will service, repair, re-calibrate or replace it, then re-test it to establish that it is Accurate. The Metering Owner will provide the other Party with written evidence of testing pursuant to this *section 4.4*.

## Unscheduled Testing of Metering

* 1. The Party who is not the Metering Owner (the *Requesting Party*) may request (including, in the case where First Gas is the Requesting Party, at the request of a Shipper pursuant to the Code) the Metering Owner to carry out an unscheduled test of any Metering. The Metering Owner shall comply with that request, provided that it shall not be required to undertake any unscheduled test of Metering within one Month before or one Month after any scheduled testing or in any event more frequently than once every three Months. The Metering Owner will allow the Requesting Party’s representative (or a requesting Shipper’s representative) to be present during any unscheduled testing, and provide the Requesting Party (or a requesting Shipper) with the test results as soon as reasonably practicable (and in any event within 5 Business Days of such test results being available to the Metering Owner). Where the Metering is found to be:
     1. Accurate, the Requesting Party will reimburse the Metering Owner for all direct costs it incurs in undertaking the unscheduled testing; or
     2. Inaccurate, the Metering Owner 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 cost and as soon as practicable, service, repair, recalibrate or replace the Metering (or relevant part thereof) to make it Accurate.

## Corrections for Inaccurate Metering

* 1. Where any Metering is found to be Inaccurate, Gas quantities previously measured by, or determined using data from, that Metering shall be corrected in accordance with the Metering Requirements and any Wash-Ups applied in accordance with the Code. If the Party who is not the Metering Owner installs its own check metering at a Receipt Point (which where practicable it shall be entitled to do in its discretion), it shall:
     1. promptly provide data from that check metering to the Metering Owner on request; and
     2. retain all data from that check metering for a period of not less than 3 years.

## Amendment of Metering Requirements

* 1. First Gas may amend the Metering Requirements at any time in accordance with the terms of the Metering Requirements (and they shall thereafter apply as amended).

## Access to Data

* 1. The Metering Owner shall, subject to *sections 4.9* to *4.12*, make available to the other Party at a Receipt Point any of the following data (*Data*) that other Party may request:
     1. for each meter stream that forms part of the Metering for that Receipt Point:
        1. uncorrected volume flow rate at flowing conditions;
        2. corrected volume flow rate;
        3. mass flow rate;
        4. energy flow rate;
        5. accumulating (totalising) uncorrected volume;
        6. accumulating (totalising) corrected volume;
        7. accumulating (totalising) mass;
        8. accumulating (totalising) energy;
        9. the pressure and temperature at the meter;
        10. density at flowing conditions; and
     2. in respect of Gas injected at that Receipt Point:
        1. Specific Gravity or Relative Density;
        2. Base Density;
        3. Gross Calorific Value;
        4. Nett calorific value;
        5. the concentration (in mole %) of Nitrogen, Carbon Dioxide and all hydrocarbon constituents of the Gas individually (including of each such constituent’s isomers that are present in the Gas in other than trace amounts) up to and including Pentanes;
        6. the concentration (in mole %) of all hydrocarbon constituents in the Gas with a molecular weight greater than that of Pentane, either collectively as Hexanes-plus or individually as total Hexanes, total Heptanes, total Octanes and Nonanes-plus, where the capabilities of the gas analyser for the Metering permits; and
        7. Gas quality information including hydrocarbon dewpoint and water content to the extent available,

provided in each case that the Metering Owner shall not be obliged to provide any Data that is not required for the purposes of this Agreement.

* 1. Pursuant to *section 4.8*, the Metering Owner shall:
     1. reasonably determine the source from which any Data is obtained; and
     2. at its cost make the Data available at reasonably located termination points in a non-Hazardous area, and in the manner and in accordance with the frequency, communications protocol and format (including units of measurement) it may reasonably determine.
  2. The recipient of Data pursuant to *section 4.8* shall be responsible for conveying that Data to any other location at its cost.
  3. The Metering Owner shall use reasonable endeavours to maintain the availability of Data, including while the Metering is undergoing repair, re-calibration, testing, servicing or replacement. The Interconnected Party shall not be relieved of any of its obligations under this Agreement due to the unavailability of any Data, for any reason.
  4. If the Metering Owner upgrades or replaces the Metering at a Receipt Point and is no longer able to provide any Data previously received by the other Party, it shall not be obliged to reimburse any costs incurred by the other Party in order to receive that Data.

## Energy Quantity Reports

* 1. For each Receipt Point, First Gas shall, in accordance with the Code, produce daily delivery reports *(DDRs)* and hourly delivery reports *(HDRs)* for each meter at that Receipt Point and for the Receipt Point in aggregate. The Metering Owner shall make available to First Gas (in accordance with *section 4.9* or otherwise) such of the Data as First Gas shall notify it that it requires for that purpose.

## OATIS Access

* 1. First Gas will provide the Interconnected Party with access to OATIS:
     1. to enable the Interconnected Party to view and/or download DDRs and/or HDRs; and
     2. as required for any other purpose relating to this Agreement or the Code,

provided that the Interconnected Party shall be responsible at its cost for ensuring it can access OATIS and does so on the terms and conditions of access to, and use of, OATIS as set out on OATIS. The Parties acknowledge that from time to time First Gas may not be able to provide access to OATIS where it is unavailable due to any unanticipated technical failure or other events or circumstances outside its control.

# energy allocation at A receipt point

## Gas Transfer Agreement

* 1. Subject to *section 5.2*, a Shipper’s Receipt Quantity at a Receipt Point will be the quantity determined by the Gas Transfer Agent pursuant to the relevant Gas Transfer Agreement. Unless an OBA applies, the Interconnected Party shall ensure there is a Gas Transfer Agreement in place in respect of each Receipt Point.

## Operational Balancing Agreement

* 1. The Interconnected Party may determine that an OBA will apply at any Receipt Point, provided that it must give First Gas and all Shippers receiving Gas at that Receipt Point not less than 40 Business Days’ notice in writing before the OBA may commence. At the commencement of the OBA the Interconnected Party shall become an OBA Party in respect of that Receipt Point, and shall comply with all provisions of this Agreement and the Code that apply to an OBA Party (including the Primary Balancing Obligation).
  2. The Interconnected Party may terminate an OBA at a Receipt Point on the expiry of not less than 40 Business Days’ notice in writing to First Gas and all Shippers receiving Gas at that Receipt Point, provided that all those Shippers must sign a Gas Transfer Agreement before the OBA terminates.

## NQ Approval

* 1. The Interconnected Party shall approve, curtail or reject NQs in accordance with the Code.

# gas quality

* 1. The Interconnected Party shall:
     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;
     3. monitor, including in accordance with *section 6.10*, the quality of all gas it injects at a Receipt Point (with such monitoring to be at its cost).

Nothing in this Agreement requires First Gas to monitor the quality of gas injected by the Interconnected Party at any Receipt Point.

* 1. The Interconnected Party shall not knowingly inject Non-Specification Gas (except for the shortest practicable time necessary to terminate its injection of gas after becoming aware that it has been injecting Non-Specification Gas).

## Non-Specification Gas

* 1. First Gas shall promptly notify the Interconnected Party if it detects or reasonably suspects that Non-Specification Gas has been injected or is being injected at the Receipt Point.
  2. On becoming aware that it has injected or is injecting Non-Specification Gas (including pursuant to *section 6.3*), the Interconnected Party shall immediately halt further injection of gas until it has investigated the matter and has determined (and shown to First Gas’ reasonable satisfaction) that no more Non-Specification Gas will be injected once gas injection recommences.
  3. Where it finds that it did inject, or was injecting, Non-Specification Gas (or suspects that it may have done so), the Interconnected Party shall:
     1. notify First Gas as soon as practicable, together with the following information:
        1. the reason why Non-Specification Gas was injected;
        2. the likely time during which Non-Specification Gas was injected and the estimated quantities of Non-Specification Gas injected; and
        3. the extent to which, in terms of the gas characteristics and components referred to in *section 6.10*, the gas it injected was Non-Specification Gas,

and First Gas will notify this information on OATIS in accordance with the Code;

* + 1. mitigate to the maximum extent practicable the effects of any Non-Specification Gas injected (and assist First Gas to do likewise); and
    2. remedy the cause of the injection of Non-Specification Gas before injecting any further gas at that Receipt Point, and take all practicable steps to prevent further injection of Non-Specification Gas.

## Demonstration of Gas Quality

* 1. The Interconnected Party will maintain in place and good working order adequate facilities, systems, procedures and monitoring to ensure that all gas it injects into the Transmission System complies with the Gas Specification. Upon First Gas’ written request at any time, the Interconnected Party shall promptly demonstrate to First Gas that it has adequate facilities, systems, procedures and monitoring in place to ensure that all gas it injects into the Transmission System complies with the Gas Specification. First Gas may publish on OATIS the results of any such demonstration and any associated report of its findings.
  2. If the Interconnected Party fails to comply with *section 6.6* within a reasonable time, First Gas may:
     1. require the Interconnected Party to immediately cease injecting gas until it does comply with *section 6.6* (and the Interconnected Party shall do so); and/or
     2. subject to the relevant provisions of this Agreement, enter that Receipt Point, or any land or facility owned or operated by the Interconnected Party that is a source of gas injected at that Receipt Point, at any reasonable time to undertake such reasonable inspections, inquiries, sampling or testing of gas to determine the Interconnected Party’s compliance with *section 6.6*.
  3. The Interconnected Party shall pay all First Gas’ reasonable costs incurred in exercising its rights under *section 6.7(b)*.
  4. First Gas shall have no liability to the Interconnected Party, and the Interconnected Party shall not be relieved of its obligations under this Agreement, by reason only that First Gas exercised its rights in accordance with this *section 6*.

## Monitoring of Gas Quality

* 1. Without limiting any other provision in this *section 6*, the Interconnected Party shall at its cost monitor the quality of the gas it injects as set out in the following table:

|  |  |  |
| --- | --- | --- |
| **Characteristic or Component to Measure and/or Determine** | | **Required Measurement and/or Determination Frequency** |
| (a) | Wobbe Index | continuously |
| (b) | Relative Density | continuously |
| (c) | Hydrocarbon dewpoint | continuously |
| (d) | Water | continuously |
| (e) | Hydrogen Sulphide | as required but not less than quarterly |
| (f) | Total Sulphur (as S, excluding Sulphur due to odorant) | as required but not less than quarterly |
| (g) | Oxygen | continuously |
| (h) | Hydrogen | as required but not less than quarterly |
| (i) | Temperature | continuously |

To the extent the Interconnected Party can demonstrate to First Gas with reasonable supporting evidence (including by reference to the design and operation of the relevant gas production and processing facility) that:

* + 1. none of the characteristics or components in the above table can exceed; or
    2. one or more of the components (e) to (h) in the above table does not occur at all, or occurs only at a much lower concentration compared to,

the relevant limit set out in the Gas Specification, the Interconnected Party may with First Gas’ written approval (not to be unreasonably withheld or delayed) measure and/or determine that characteristic or component less frequently than stipulated in the above table, provided always that its monitoring is sufficient to demonstrate compliance with the Gas Specification.

* 1. First Gas may disclose any exceptions to the testing frequencies set out in *section 6.10* to any other person, including by publishing that information on OATIS.
  2. Where it also produces the gas it injects, the Interconnected Party shall at its cost test for each of the components (e) to (h) in *section 6.10* following any material change in the source of its gas, including in the proportions of gas obtained from any new reservoir and/or production zones in any reservoir.
  3. The Interconnected Party shall determine the values of the characteristics or components (d) to (i) in *section 6.10* by direct measurement or testing. When so doing the Interconnected Party shall use only:
     1. industry standard equipment and facilities and suitably qualified and competent persons; and
     2. either the relevant test method specified in the Gas Specification or such other method as will produce results that are no less accurate or reproducible.
  4. The Interconnected Party may determine the value of characteristic (c) in *section 6.10* by calculation from the composition of gas injected, provided that:
     1. it obtains First Gas’ approval (not to be unreasonably withheld); and
     2. the method it uses is sufficiently accurate to meet the requirements of the Gas Specification.

## No Contaminants

* 1. During both normal operations and when pigging or otherwise cleaning its Pipeline, the Interconnected Party shall ensure that all gas it injects at a Receipt Point is free of dust and other solid and liquid matter, including hydrocarbon liquids, wax, gums, compressor oil and unsaturated hydrocarbons, that might damage or interfere with the proper operation of any First Gas Equipment or First Gas’ Pipeline, either immediately or over time.

## Provide Gas Testing Results

* 1. The Interconnected Party shall on request promptly provide First Gas with copies of any data from monitoring, measuring or testing of gas undertaken pursuant to this *section 6*, including for a period of up to 5 years prior to the date of the request.First Gas may disclose such information to any other person, including by publishing that information on OATIS.
  2. The Interconnected Party acknowledges and agrees that, for the purposes of the definition of “Reasonable and Prudent Operator”, this *section 6* and *section 16*, any injection by it of Non-Specification Gasshall constitute a failure by the Interconnected Party to act as a Reasonable and Prudent Operator.

# odorisation

## Odorised Pipeline

* 1. If First Gas’ Pipeline which connects to a Receipt Point is stipulated as “Odorised” in ICA Schedule One, there must be appropriate Odorisation Facilities at that Receipt Point to ensure that all Gas injected complies with the detectability requirements set out in New Zealand Standard 5263:2003: Gas Detection and Odorisation, and the Odorisation Facilities Owner is to use reasonable endeavours to ensure that all gas injected into First Gas’ Pipeline shall be odorised accordingly. First Gas will specify the odorant that must be used.

## Ownership of Odorisation Facilities

* 1. If First Gas’ Pipeline which connects to an Additional Receipt Point is stipulated as “Odorised” in the Amending Agreement, then Odorisation Facilities must be constructed and commissioned in respect of that Additional Receipt Point before any gas is injected. First Gas may elect, but shall not be obliged, to own the required Odorisation Facilities.  If First Gas elects not to own the Odorising Facilities, then they shall be owned by the Interconnected Party. The design, construction, operation and maintenance of Odorisation Facilities shall be the responsibility of the owner of the Odorisation Facilities.

## Land for Odorisation Facilities

* 1. Where First Gas elects to own Odorisation Facilities it may require the Interconnected Party to provide it with an area of land at or adjacent to the Receipt Point which First Gas reasonably agrees is sufficient to accommodate the Odorisation Facilities. The Interconnected Party will grant First Gas a bare licence to access, occupy and use that land for all purposes associated with the installation, operation (including unloading, storage and load-out of odorant) and maintenance (including upgrading or replacing) of Odorisation Facilities, free of any charge.
  2. When undertaking any of the activities referred to in *section 7.3*, First Gas shall comply with the requirements of *section 13.2*.

## Odorisation Facilities

* 1. The Odorisation Facilities may (and, where First Gas so directs, shall) include:
     1. an odorant storage vessel not exceeding 5 cubic metres capacity;
     2. a primary means of odorisation (e.g. an odorant injection pump);
     3. a control system to regulate the injection of odorant;
     4. a secondary means of odorisation in case the primary means fails;
     5. an internally-bunded shelter for the items in *sections 7.5(a) to (d)*;
     6. a flare system in a non-Hazardous area to safely dispose of odorant vapour; and
     7. a suitably sealed and bunded area where odorant is off-loaded in bulk from a vehicle to the odorant storage vessel.

## Services to Odorisation Facilities

* 1. Where First Gas owns the Odorisation Facilities, the Interconnected Party shall provide First Gas with the services it reasonably requires for the operation of the Odorisation Facilities, free of any charge, including:
     1. 24 Volt DC and 230 Volt AC power supplies;
     2. a suitable signal representing the flow rate or quantities of Gas to be odorised;
     3. a supply of Gas at a pressure not exceeding 10 bar gauge;
     4. a water supply adjacent to the shelter referred to in *section 7.5(e)* suitable for a personnel safety shower;
     5. suitable cabling and any related facilities to convey the data referred to in *section 7.7* to the Remote Monitoring Equipment,

in each case at agreed termination points at the boundary of the Odorisation Facilities. The Interconnected Party shall also provide reasonable all-weather access to the Odorisation Facilities for vehicles and personnel for the purposes of *section 7.3.*  Where the Interconnected Party owns the Odorisation Facilities, the Interconnected Party shall itself provide the services listed above at its cost.

## Remote Monitoring of Odorisation Facilities

* 1. Irrespective of whether it owns any Odorisation Facilities, the Interconnected Party shall enable First Gas to remotely monitor:
     1. the status or availability of the primary means of odorisation including, where that is an odorant injection pump, direct indication of operation such as stroke rate or speed;
     2. odorant flow rate and/or the volumes of odorant being injected;
     3. odorant storage vessel inventory or liquid level;
     4. odorant storage vessel vapour space pressure and the status of any pressure-relief device;
     5. the Gas supply pressure to the Odorisation Facilities;
     6. the electricity supply to the Odorisation Facilities;
     7. the operating status of the odorant vapour flare; and
     8. any alarm conditions and other parameters it reasonably considers to be relevant.

## No Injection Without Odorisation

* 1. The owner of Odorisation Facilities will use reasonable endeavours to maintain odorisation at all times.
  2. Where a Party becomes aware that odorisation has failed, it will notify the other Party immediately. For the purposes of this *section 7.9*, a failure of odorisation shall include excessive odorisation as well as a total or partial failure of odorisation.
  3. The Interconnected Party shall not inject or cease injecting Gas as soon as practicable on becoming aware of (or being informed of) any odorisation failure. The owner of the Odorisation Facilities will investigate and restore normal odorisation as soon as practicable, whereupon the Interconnected Party may resume injecting Gas.
  4. Notwithstanding any other provision of this Agreement, First Gas may cease odorising (or requiring the odorising of) Gas in any Pipeline or at any Receipt Point on expiry of not less than 18 Months’ written notice to the Interconnected Party and all Shippers.

# Curtailment

## Adverse Events

* 1. Subject to the balance of this *section 9*, First Gas will use reasonable endeavours to avoid curtailing the injection of Gas at a Receipt Point. However, First Gas may curtail the injection of Gas (or the ability to inject Gas) at a Receipt Point to the extent it determines to be necessary, where:
     1. an Emergency is occurring or is imminent;
     2. a Force Majeure Event has occurred or is continuing ;
     3. a Critical Contingency would otherwise occur;
     4. a Shipper’s GTA expires or is terminated or is not executed (and no OBA is in place), or a Shipper is otherwise not entitled to receive Gas at or in respect of that Receipt Point;
     5. this Agreement expires or is terminated, either in total or in relation to that Receipt Point;
     6. it is performing, or is to perform, scheduled or unscheduled Maintenance pursuant to *section 9.2* or *section 9.3*; and/or
     7. it does so to maintain the Target Taranaki Pressure pursuant to this Agreement and/or *section 3.32* of the Code,

provided that in relation to the events described in this *section 9.1(a)* or *(b)*, First Gas shall use reasonable endeavours to minimise the period of curtailment.

## Maintenance

* 1. Where it is necessary or desirable for First Gas to carry out scheduled Maintenance that will curtail the Interconnected Party’s ability to inject Gas (but not in respect of any scheduled Maintenance which it believes will not have that effect), First Gas will:
     1. notify the Interconnected Party as early as practicable (but not less than 20 Business Days prior to commencing work) of the likely duration of that work;
     2. advise the Interconnected Party of the expected impact on its ability to inject Gas at that Receipt Point and/or any other effects; and
     3. consult the Interconnected Party and use reasonable endeavours to undertake that scheduled Maintenance in a manner and at a time that minimises its impact.

Where the start of any scheduled Maintenance notified pursuant to this *section 9.2* is delayed, First Gas will promptly notify the Interconnected Party of that delay on OATIS, but will not be required to re-start the 20 Business Days’ notice period.

* 1. First Gas may carry out unscheduled Maintenance at or in relation to a Receipt Point, including in relation to events referred to in *section 9.1(a)*, *(b)* or *(c)*, but must give the Interconnected Party as much notice as reasonably practicable in each case.
  2. The Interconnected Party shall reasonably facilitate First Gas’ scheduled or unscheduled Maintenance, as and when requested by First Gas, including using reasonable endeavours to flow small quantities of Gas in the manner requested by First Gas.

## Interconnected Party maintenance

* 1. The Interconnected Party, where it intends to carry out maintenance or other work that will significantly reduce (or increase) its injection of Gas (but not any other maintenance or work), shall:
     1. give First Gas as much notice as practicable (and in any event not less than 20 Business Days’ notice unless operational circumstances do not permit such period of notice) before commencing that maintenance or other work;
     2. advise First Gas of the likely duration of that maintenance or other work and the extent of the expected reduction (or increase) in its injection of Gas;
     3. unless otherwise agreed by First Gas (having regard to the usual quantity of Gas injection by the Interconnected Party), provide to First Gas at the same time as it provides notice to First Gas under *section 9.5(a)* shut-down and start-up gas profiles for the duration of the maintenance or other work;
     4. if the shut-down or start-up gas profiles previously provided to First Gas materially change (or are expected to materially change), the Interconnected Party shall promptly provide First Gas with a further notice specifying the changed shut-down and start-up gas profiles.

## Operational Flow Order

* 1. If any of the events described in *section 9.1(a)* to *(g)* occur, First Gas may give the Interconnected Party an Operational Flow Order. The Interconnected Party shall use its best endeavours to take such actions as it is able to take to comply with that OFO in the shortest practicable time. First Gas will minimise the period of curtailment stipulated in an OFO to the extent practicable. First Gas will publish each OFO on OATIS as soon as practicable.
  2. If the Interconnected Party is a gas producer and needs a quantity of Gas to shut down its production plant with minimal risk of damage to that plant, it shall notify First Gas of that requirement and of the specific quantity of Gas required to be injected (which shall be identical to any profile given to the CCO). If First Gas subsequently issues an OFO to the Interconnected Party, it will if practicable allow for such quantity of Gas to be injected.

## Curtailment of Nominated Quantities

* 1. Pursuant to *section 9.6*, First Gas may curtail each Shipper’s most recent Approved NQ at that Receipt Point in OATIS, including where an OBA applies, in accordance with the OFO and the Code.

## Critical Contingency

* 1. In the event of a Critical Contingency, First Gas may instruct the Interconnected Party to comply with the instructions of the Critical Contingency Operator and the requirements of the CCM Regulations (and the Interconnected Party shall do so). OFOs are to be consistent (or amended to be consistent) with any instructions from the Critical Contingency Operator (including any shut down profile required by the Critical Contingency Operator).

## Failure to Comply

* 1. The Interconnected Party agrees that if it fails to comply with an OFO:
     1. First Gas may curtail the Interconnected Party’s injection of Gas itself;
     2. for the purposes of the definition of “Reasonable and Prudent Operator”, this *section 9* and *section 16¸*any such failure shall constitute a failure by the Interconnected Party to act as Reasonable and Prudent Operator; and
     3. the Interconnected Party shall indemnify First Gas for any Loss incurred by First Gas (except to the extent that First Gas contributed to that Loss and/or did not mitigate its Loss to the fullest extent reasonably practicable).

## Relief from Charges

* 1. In relation to any curtailment under *section 9.1(a)* to *(c)* or *section 9.2,* the Interconnection Fee and the Odorisation Fee (if any) at a Receipt Point will not be payable for the period of that curtailment to the extent of the reduction in the normal or intended injection of Gas, except to the extent that the Interconnected Party:
     1. caused or contributed to any event or circumstance giving rise to that curtailment, including in the circumstances referred to in *sections 3.3* or *3.4*;
     2. was itself carrying out maintenance or other work such that its ability to inject Gas was (or would have been) reduced to or less than the level of Gas injection that was (or would otherwise have been) available given the curtailment; or
     3. failed to comply with an instruction from First Gas or from the Critical Contingency Operator under *section 9.6* or *section 9.9*.

# fees and charges

## OBA Charges

* 1. For any Receipt Point at which an OBA applies, the Interconnected Party shall be liable for and shall pay to First Gas:
     1. Balancing Gas Charges;
     2. charges for Excess Running Mismatch; and
     3. Peaking Charges,

((a) through (c), together, *OBA Charges*) determined by First Gas in accordance with the Code.

## Over-Flow Charge

* 1. The Interconnected Party shall pay a charge (*Over-Flow Charge*) for any Hour in which the metered quantity of Gas at a Receipt Point exceeds the Physical MHQ of that Receipt Point (*Over-Flow*), equal to:

Fee × OFQ × 20

where:

*Fee* is First Gas’ highest published fee for Daily Nominated Capacity on the Transmission System (expressed in $/GJ) in the current Year;

*OFQ* (or the *Over-Flow Quantity*) is the greater of:

* + - 1. the Hourly metered quantity – Physical MHQ; and
      2. zero.

## Excessive Flow Causing Loss

* 1. In addition to any Over-Flow Charge, Peaking Charge and/or amount payable under *section 3.3(a),* the Interconnected Party shall indemnify First Gas for any Loss incurred by First Gas that arises from the Over-Flow or Excess Peaking (where that Loss shall include any interconnection fees or charges, Transmission Charges and/or Non-standard Transmission Charges that First Gas may be required to waive or rebate as a result) up to the Capped Amounts. First Gas shall mitigate its Loss to the fullest extent reasonably practicable.

## Balancing Gas Credits Receivable as an OBA Party

* 1. If the Interconnected Party is an OBA Party in respect of a Receipt Point, First Gas will credit the Interconnected Party in accordance with the Code any Balancing Gas Credits due to it.

# term and TERMINATION

## Termination for breach

* 1. Either Party may terminate this Agreement immediately on notice in writing to the other Party specifying the cause if the other Party defaults in the performance of any material covenants or obligations imposed upon it by this Agreement and has not remedied that default within 20 Business Days of notice from the terminating Party.

## Suspension for Default

* 1. If First Gas becomes aware that the Interconnected Party is in breach of any material term or condition of this Agreement, First Gas shall be entitled to suspend its provision of services to the Interconnected Party for the duration of that non-compliance if, and to the extent that, in First Gas’ reasonable opinion, that action is necessary to protect other users or their use of the Transmission System.

## Termination Without Prejudice to Amounts Outstanding

* 1. The expiry or termination of this Agreement shall not relieve the Interconnected Party:
     1. or First Gas of its obligation to pay any amount outstanding under this Agreement; or
     2. if it was an OBA Party, of its obligation to settle its Running Mismatch in accordance with the Code or this Agreement, which, at First Gas’ election but following consultation with the Interconnected Party, may be effected either in dollar terms or by First Gas making Gas available for the Interconnected Party to take, or taking Gas from, the Interconnected Party.

# FORCE MAJEURE

* 1. Notwithstanding the other provisions of this Agreement but subject to s*ection 15.2*, a Party shall be relieved from liability under this Agreement to the extent that a Force Majeure Event results in or causes a failure by that Party in the performance of any of its obligations under this Agreement (*Affected Party*).
  2. A Force Majeure Event shall not relieve an Affected Party from liability:
     1. to pay money due under, or in connection with, this Agreement; or
     2. to give any notice which it may be required to give (other than a notice via OATIS where OATIS is affected by such Force Majeure Event)
     3. if it is an OBA Party, for any Mismatch and Running Mismatch that may arise out of or in connection with, or before, during or after, the Force Majeure Event,

provided that the Interconnected Party shall be relieved of its obligation to pay any Interconnection Fee and Odorisation Fee to the extent that the Interconnected Party is unable to inject Gas at the relevant Receipt Point on account of that Force Majeure Event (as determined by First Gas).

* 1. If an Affected Party seeks relief under *section* *15.1*, that Party shall, upon the occurrence of any failure due to a Force Majeure Event:
     1. as soon as reasonably 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 that failure known to it at that time. The 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. use due diligence and take reasonable steps to rectify, remedy, shorten or mitigate the circumstances giving rise to the 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 reasonably 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 any agent or contractor of that Party, 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.
  3. The Interconnected Party will not be able to claim relief from liability under *section 15.1* solely as a result of the suspended performance, or non-performance, of the obligations of any Shipper using a Receipt Point.

## Information

* 1. The Party who declares a Force Majeure Event shall, as soon as practicable after its occurrence, provide the other Party with a report setting out in reasonable detail the particulars of the event, its causes, its effects and the actions taken by that Party to rectify, remedy, shorten or mitigate the event or circumstance which gave rise to the Force Majeure Event. First Gas will publish that report (or a summary of it) 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 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 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 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.

# dispute RESOLUTION

* 1. Subject to *sections 12.6* and *12.8*, in the event of any dispute of whatever nature arising between the Parties the disputing Party shall notify the other Party of that dispute in writing (*Dispute Notice*). On receipt of a Dispute Notice, the Parties shall use reasonable endeavours to resolve the dispute by negotiation.
  2. If the dispute is not resolved by negotiation within 15 Business Days (or such other period as the Parties may agree in writing) of the date of the Dispute Notice, then the Parties shall submit the dispute to:
     1. resolution by an independent expert agreeable to both parties; or
     2. where the Parties cannot agree upon an independent expert within 5 Business Days after the expiry of the negotiation period referred to above, arbitration pursuant to the Arbitration Act 1996 (excluding paragraphs 4 and 5 of the Second Schedule to that 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 *section 18* affects either Party’s right to seek urgent interlocutory relief.

# general AND LEGAL

## Confidential Information and Disclosure of Agreement

* 1. Subject to *section 19.4* and *section 19.5*, each Party shall keep confidential and not disclose any information made available to it by, on behalf of, or at the request of, the other Party in relation to this Agreement or that relates to the business or operations of such other Party.
  2. A Party may disclose such information to the extent that:
     1. the information is in the public domain, other than by a breach of this Agreement by such Party;
     2. the information was already known to the Party and was not then subject to any obligation of confidentiality;
     3. disclosure to such Party’s professional advisor(s) or consultant(s) on a need to know basis is required;
     4. disclosure is necessary by First Gas to maintain the safety and reliability of the Transmission System, or is required to give effect to the Code, a TSA*,* a supplementary agreement or an interconnection agreement;
     5. this Agreement or the Code contemplates or requires the disclosure or provision of the information (or information or analysis derived from such information) on OATIS or otherwise contemplates or requires the disclosure of such information;
     6. use or disclosure is required by law (including information disclosure requirements and/or the listing rules of a recognised stock exchange) or any order of a competent court;
     7. the other Party has consented in writing to the use or disclosure;
     8. the information is obtained from a third party, whom such Party believes, in good faith, to be under no obligation of confidentiality;
     9. disclosure is to such Party’s auditors; or
     10. disclosure is required pursuant to the resolution of any dispute under this Agreement.

Notwithstanding anything in this Agreement to the contrary, no Party shall be required to disclose information that it is precluded from disclosing by law or third party contractual confidentiality obligations.

* 1. The Parties agree that the existence and terms of this Agreement are not Confidential Information (and are not otherwise confidential). First Gas may make available this Agreement (and any amendment) in full on OATIS and may otherwise disclose such ICA (and any amendment) to any other person.

## Records

* 1. Each Party shall maintain proper books and records in relation to matters which are the subject of this Agreement for a period of not less than seven years (including test results and monitoring data for a period of not less than seven years after the date it was collected).

# ICA schedule One: Receipt Point Details

# [*Individual Receipt Point details for relevant ICA to be specified*]

# ICA schedule two: technical requirements

* 1. The design, construction, commissioning, operation and maintenance of each Receipt Point (including any First Gas Equipment) shall:
     1. conform with good gas industry engineering practice (it being acknowledged that for Receipt Points which exist as of 1 October 2019 such good gas industry engineering practice shall, up until 1 October 2021, reflect applicable practices and equipment in place as at 1 October 2019); and
     2. comply with the requirements of recognised and applicable standards as well as all current and relevant laws, including:
        1. AS 2885.1: 2012 Pipelines - Gas and Liquid Petroleum, Part 1: Design and Construction;
        2. Gas Act 1992 and associated regulations;
        3. Health and Safety at Work Act 2015;
        4. Health and Safety in Employment (Pipelines) Regulations;
        5. Resource Management Act 1991;
        6. Electrical (Safety) Regulations;
        7. AS/NZS 3000 – Wiring Rules;
        8. AS/NZS 60079.14 - Explosive Atmospheres: Electrical Installations, Design Selection and Erection; and
        9. mandatory Codes of Practice and Standards associated with any of the above.
  2. A Receipt Point must incorporate:
     1. appropriate security fencing to reasonably prevent unauthorised access;
     2. adequate means of access and egress for vehicles and personnel;
     3. adequate space to accommodate and permit the safe operation and maintenance of all equipment and structures;
     4. Metering;
     5. clear signs indicating restricted access and Hazardous areas, supplemented by secure barriers where required;
     6. only electrical equipment that complies with applicable legislation that relates to such electrical equipment;
     7. an above-ground isolation valve (specified by First Gas) to allow First Gas to securely and safely isolate its Pipeline from the Interconnected Party’s Pipeline;
     8. suitable bonding of above-ground piping and associated metallic structures to ensure the electrical continuity of such piping and structures, and a suitable earth bed to which such piping and structures are connected;
     9. means to electrically isolate First Gas’ Pipeline from a Receipt Point, as well as a suitable surge diverter installed across each such isolating device;
     10. equipment to reasonably prevent any solid or liquid contaminants from reaching First Gas’ Pipeline;
     11. a flow-restriction device (sonic nozzle or a restriction orifice plate) to prevent over-speeding of any meter and/or ensure that the relevant Maximum Design Flow Rate is not exceeded;
     12. a check (non-return) valve to prevent reverse flow through a Receipt Point.
  3. A Receipt Point shall incorporate equipment to enable First Gas to remotely monitor that Receipt Point, Metering and Odorisation Facilities (if any), retrieve data and other information and (if required) control any First Gas Equipment. Such equipment may include:
     1. a remote terminal unit for First Gas’ SCADA (“Supervisory, Control and Data Acquisition”) system, radio or other communications equipment, and related ancillary equipment; or
     2. such other suitable equipment as First Gas may reasonably require,

(the *Remote Monitoring Equipment*).

* 1. There must be a secure, weather-proof, vermin-proof and adequately ventilated shelter or building, located in a non-Hazardous area, to house such of its Equipment as First Gas reasonably considers requires such protection.
  2. Where the risk assessment referred to in *section 2.8(b)* indicates that means to prevent over-pressurisation of First Gas’ Pipeline are required then, unless First Gas agrees otherwise, such means shall comprise “working” and “standby” pressure control streams, both of which streams shall include:
     1. primary means of pressure control; and
     2. separate and independent means of over-pressure protection, which shall operate in the event that the primary means of pressure control fails.
  3. Pursuant to *paragraph 1.5*:
     1. the primary means of pressure control in both the working stream and the standby stream shall comprise an active regulator or pressure control valve; and
     2. the means of over-pressure protection shall comprise:
        1. a monitor regulator in both the working stream and the standby stream; and
        2. a small-capacity (“token”) pressure relief valve sized for leakage past the active and monitor regulators and/or control valves when the same are in the closed (“no flow”) position; or
        3. a slam-shut valve; or
        4. all of (i), (ii) and (iii).
  4. Where required by First Gas to operate its Remote Monitoring Equipment, any other First Gas’ Equipment and Odorisation Facilities (if any), an external supply of electricity (*Mains Supply*) shall be provided. An uninterruptible power supply (*UPS*) shall also be installed, incorporating batteries with sufficient storage capacity to supply the normal electricity requirements of such First Gas’ Equipment for not less than four hours if the Mains Supply fails.
  5. First Gas may require means to remotely control the flow of Gas at a Receipt Point.

# Schedule Six: Delivery Point Interconnection Agreement Provisions

# Definition and CONSTRUCTION

## Defined Terms

* 1. Subject to *section 1.2*, capitalised terms used but not defined in this Agreement are to have the meaning given to those terms in the Code with any necessary changes for the context (including as such terms may be amended from time to time in accordance with the requirements of the Code and thereafter read with any necessary changes for the context).
  2. In this Agreement:

*Agreement* means this “Interconnection Agreement for Delivery Points”, including the schedules and appendices (if any) annexed;

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

*Charges* means all amounts payable by the Interconnected Party under this Agreement (except OBA Charges), including any Interconnection Fee or Odorisation fee (each of which may be specified in $/Day or some other basis) and any Termination Fee;

*Code* means the Gas Transmission Access Code, as amended or replaced;

*Commencement Date*means the later of [•] and the date it is signed by both Parties;

*Delivery Point* means a station or facility, including any associated land and equipment, that complies with the technical requirements in ICA Schedule Two at which Gas is taken (or may be taken) from First Gas’ Pipeline into the Interconnected Party’s Pipeline, and includes any Additional Delivery Point which complies with the technical requirements set out in ICA Schedule Two, in each case which is the subject of this Agreement details of which are set out in ICA Schedule One;

*Delivery Pressure*means the pressure at which Gas is taken, or made available to be taken, at a Delivery Point;

*Emergency* means 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 exists where First Gas considers:

* + 1. 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;
    2. Gas is at a pressure, or is of a quality, that constitutes a hazard to persons, property or the environment, including where Gas in First Gas’ Pipeline, the Interconnected Party’s Pipeline or at a Delivery Point is at a pressure, or is of a quality, that constitutes a hazard to First Gas’ Pipeline, the Delivery Point or the Interconnected Party’s Pipeline;
    3. First Gas’ ability to make Gas available at a Delivery Point (or to make gas available at a Delivery Point) is impaired; or
    4. First Gas’ ability to maintain safe pressures within a pipeline is affected or threatened including where the take of Gas at a Delivery Point exceeds its Maximum Design Flow Rate, Physical MHQ or the quantity specified in an Operational Flow Order;

*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 that Party in the performance of any obligations imposed on it by this Agreement, notwithstanding the exercise by that Party of reasonable care and, subject to the foregoing, shall include any 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;

*Hazardous* means, in relation to an area or space, where that area or space is hazardous or potentially hazardous in respect of the electrical equipment that may be installed there, as defined in accordance with AS/NZS2430;

*Interconnection Fee* means [●];

*Interconnected Party* means the Party named as the Interconnected Party in this Agreement;

*Interconnected Party Equipment* means equipment owned and/or controlled by the Interconnected Party (other than its Pipeline) at a Delivery Point, and includes the equipment described as such in ICA Schedule One;

*Interconnection Point* means the point at which the Interconnected Party’s Pipeline physically connects to a Delivery Point, being the demarcation point between the Parties’ respective assets, as defined in ICA Schedule One;

*MAOP* means maximum allowable operating pressure;

*Maximum Delivery Pressure*has the meaning set out in ICA Schedule One;

*Maximum Design Flow Rate* means the maximum flow rate of Gas that a Delivery Point and Metering are designed to have flow through them and, in the case of Metering, Accurately measure, as set out in ICA Schedule One;

*Metering* means First Gas’ equipment at the location set out in ICA Schedule One and complying with the Metering Requirements, which measures the quantities of Gas taken from First Gas’ Pipeline at a Delivery Point in accordance with the requirements of this Agreement;

*Minimum Design Flow Rate* means the minimum flow rate of Gas that a Delivery Point and/or Metering are designed to have flow through them and, in the case of Metering, Accurately measure, as set out in ICA Schedule One;

*Nominal Delivery Pressure* means the setting of the active pressure regulator in the working pressure control stream at a Delivery Point;

*OBA Charges* has the meaning set out in *section 11.10*;

*Odorisation Facilities* means all equipment and facilities used to odorise Gas taken at a Delivery Point in accordance with *section 7.1*;

*Odorisation Fee* means [●];

*Operational Flow Order* or *OFO* means a notice issued by First Gas pursuant to *section 9.6* requiring the Interconnected Party to take such actions as it is able to take to reduce its take of Gas at a Delivery Point as set out in that notice;

*Party* means each of First Gas and the Interconnected Party and *Parties* means them collectively;

*Physical MHQ* means the Hourly energy quantity equivalent of the Maximum Design Flow Rate of a Delivery Point, as set out in ICA Schedule One;

*Pipeline* means, in relation to:

* + 1. First Gas, those parts of the Transmission System used to convey Gas to a Delivery Point; and
    2. the Interconnected Party, the pipeline which connects to a Delivery Point and:
       1. conveys Gas taken at that Delivery Point to an End-user; or
       2. is a Distribution Network (or part thereof);

*Pressure Control Settings* means the set-points of, respectively, the active regulator(s) (or pressure control valve(s)), monitor regulator(s) (or pressure control valve(s)), pressure relief valve(s) and slam-shut valve(s) at a Delivery Point, as set out in ICA Schedule One;

*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;

*Remote Monitoring Equipment* has the meaning set out in *paragraph 1.3* of ICA Schedule Two;

*Termination Fee* means [●];

## Code Amendments and Precedence

* 1. The Interconnected Party may exercise any rights, and is to comply with any obligations, conferred or placed on it by the Code (including by way of references to particular categories of interconnected parties or interconnected parties generally). Where the Code confers rights or places obligations on the Interconnected Party, or this Agreement refers to or incorporates sections or terms of the Code (including those common provisions specified in Schedule Five or Schedule Six of the Code), this Agreement will be deemed to be amended automatically if, when and to the extent those rights or obligations, or sections or terms of the Code (including those common provisions specified in Schedule Five or Schedule Six of the Code) are changed, amended or supplemented in accordance with the Code (including pursuant to *section 17* of the Code). At the request of a Party, the other Party shall enter into an agreement which records the relevant changes, amendments or additions to this Agreement accordingly (and each Party shall take such actions and execute such documents as is required to do so) promptly after the date of any such request. In the event of any conflict or ambiguity between a provision of this Agreement (where and to the extent the Code confers right or places obligations on the Interconnected Party, or this Agreement refers to or incorporates sections or terms of the Code) and the Code, the Code shall prevail. In the event the Code expires or is terminated during the term of this Agreement:
     1. this Agreement will survive that expiry or termination and continue in full force and effect until the Expiry Date (subject to earlier termination in accordance with *section 14*); and
     2. the relevant terms of the Code incorporated into this Agreement will continue in full force and effect for the term of this Agreement unless First Gas and the Interconnected Party agree to amend them.

# DELIVERY POINT INTERCONNECtion

## Parties’ Rights and Obligations

* 1. First Gas will permit connection of the Interconnected Party’s Pipeline to a Delivery Point, on and subject to the terms and conditions set out in this Agreement.
  2. Each Party will act as a Reasonable and Prudent Operator when exercising or performing any of its rights, powers, obligations and duties under this Agreement.
  3. Subject to the terms of this Agreement and the Code*,* First Gas has absolute discretion as to how it conducts the operation of the Transmission System.

## Technical Compliance

* 1. Except as agreed otherwise in writing, First Gas will ensure that all Delivery Points and Additional Delivery Points comply with ICA Schedule One and ICA Schedule Two.

# gas delivery

## Controlled Delivery Pressure

* 1. Where ICA Schedule One states that the Delivery Pressure at a Delivery Point is “Controlled”:
     1. First Gas will determine the means of pressure control and over-pressure protection to be used, provided that First Gas shall not use a slam-shut valve for the purpose described in *paragraph 1.6(b)* of ICA Schedule Two unless:
        1. where both duty and standby pressure control streams are installed, and the set-points of the respective slam-shut valves are such that if the slam-shut valve in the working stream closes the slam-shut valve in the standby stream should remain open; or
        2. where only one pressure control stream is installed, the Interconnected Party can tolerate an immediate and complete stoppage in the flow of Gas if either a slam-shut valve or pressure regulating valve closes, and remain without Gas for the reasonable time that First Gas may require to reinstate normal pressure control and the ability to take Gas;
     2. the normal range within which the Delivery Pressure may vary will be determined by the Pressure Control Settings and the performance characteristics of the pressure control equipment;
     3. the Interconnected Party acknowledges and agrees that the Maximum Delivery Pressure may occur during normal operation and that:
        1. it shall ensure that the MAOP of its Pipeline plus any over-pressure allowed under that Pipeline’s design code is not less than the Maximum Delivery Pressure; and
        2. First Gas shall have no liability whatsoever in respect of an increase in Delivery Pressure envisaged under this *section 3.1(c)* unless the Delivery Pressure exceeds the greater of the Maximum Delivery Pressure or the MAOP of the Interconnected Party’s Pipeline.

## Change in Controlled Delivery Pressure

* 1. Either Party may request a change in the Nominal Delivery Pressure at a Delivery Point and the other Party shall not unreasonably withhold or delay its consent, provided that:
     1. the Interconnected Party shall not be required to agree to any request to decrease the Nominal Delivery Pressure where that would (in its reasonable opinion) materially affect its ability to take or utilise Gas;
     2. First Gas shall not be obliged to agree to any request to increase the Nominal Delivery Pressure where that would (in its reasonable opinion) materially reduce its ability to provide transmission services (or additional transmission services);
     3. First Gas may make its agreement to any change in the Nominal Delivery Pressure conditional on changes to other Pressure Control Settings that it reasonably considers to be necessary including, where an increase in the Nominal Delivery Pressure is requested, to the applicable Maximum Delivery Pressure;
     4. in respect of any request to increase the Nominal Delivery Pressure, the Interconnected Party agrees in writing that the MAOP of its Pipeline is sufficient to allow that increase, and any consequent increase in the Maximum Delivery Pressure reasonably determined by First Gas;
     5. the requesting Party shall be responsible for the reasonable direct costs of any required modifications to that Delivery Point, as determined by First Gas and, where First Gas is the requesting Party, First Gas shall also be responsible for any reasonable direct costs incurred by the Interconnected Party as a condition of its agreement to its request; and
     6. ICA Schedule One shall be amended to reflect any changes pursuant to this *section 3.2*.

## Uncontrolled Delivery Pressure

* 1. Where ICA Schedule One states that the Delivery Pressure at a Delivery Point is “Uncontrolled”:
     1. First Gas will provide no representation, warranty or undertaking as to what the Delivery Pressure will be at any time;
     2. First Gas will not be obliged to operate its Pipeline to provide any particular Delivery Pressure or Delivery Pressure range;
     3. the Interconnected Party shall ensure that the MAOP of its Pipeline is not less than the MAOP of First Gas’ Pipeline; and
     4. First Gas shall have no liability to the Interconnected Party whatsoever in relation to or arising from the Delivery Pressure, provided that the Maximum Delivery Pressure does not exceed the MAOP of First Gas’ Pipeline.

## Excessive Flow

* 1. The Interconnected Party will not take Gas at a Delivery Point at a rate greater than the then-current Maximum Design Flow Rate. If it does so, the Interconnected Party shall be liable for:
     1. the cost of repairs to, or replacement of, any First Gas equipment damaged by that excessive flow;
     2. the charge determined in accordance with *section 11.11*; and
     3. any Loss pursuant to *section 11.12*.

## Low Flow

* 1. If Gas is taken at a Delivery Point at rates less than the then-current Minimum Design Flow Rate to the extent that, in First Gas’ reasonable opinion, the Accuracy of the metered quantities at that Delivery Point is adversely affected, First Gas shall notify the Interconnected Party accordingly. Unless the Interconnected Party can reasonably demonstrate to First Gas that those low Gas takes occurred during plant start-up and shut-down or were extraordinary occurrences and are unlikely to occur again, or that the Metering is Accurate event at those low Gas take rates, First Gas may:
     1. notify the Interconnected Party that it intends to modify the Metering to improve the Accuracy of metered quantities at low flow rates; and
     2. require the Interconnected Party to pay First Gas’ actual and reasonable costs to implement those modifications (reasonable evidence of which First Gas shall provide to the Interconnected Party), including via the payment of an Interconnection Fee or an increase in the current Interconnection Fee.

## Outage Notification

* 1. The Interconnected Party shall as soon as reasonably practicable notify First Gas of any scheduled or unscheduled outages affecting such Interconnected Party in relation to its take of Gas at the Delivery Point. Such notice shall include:
     1. whether it is, or is expected to be, a full or partial outage and the likely duration of that outage;
     2. for scheduled outages, when such outage is expected to commence;
     3. in a reasonable amount of detail, the reason for that outage; and
     4. the extent of the expected reduction in the take of Gas.

First Gas shall promptly publish on OATIS the information provided by the Interconnected Party under *section 3.6(a)* and *(b)*.

# metering and energy quantity reports

## Metering Required

* 1. Except where otherwise provided pursuant to *section 5.2* of the Code, First Gas will install Metering in respect of Delivery Points as set out in ICA Schedule One and use reasonable endeavours to ensure that it operates at all times. First Gasis to ensure that the design, construction, installation, operation and maintenance of the Metering complies with the Metering Requirements.

## Direct Gas Measurement Only

* 1. Metering shall determine Gas quantities by direct measurement only and not by difference.

## Testing of Metering and Provision of Information

* 1. First Gas shall use reasonable endeavours, including by means of periodic testing in accordance with the Metering Requirements, to ensure that Metering is Accurate. The Interconnected Party may request, and First Gas shall then provide to the Interconnected Party:
     1. reasonable technical information relating to the Metering at a Delivery Point;
     2. a copy of First Gas’ planned maintenance schedules relating to any Metering; and
     3. the results of any testing of any Metering.
  2. In relation to any new Metering, First Gas will:
     1. no earlier than 3 Months before that Metering is placed into service, test each custody transfer meter and other gas measurement device forming part of that Metering; and
     2. where the Metering includes a verification meter, conduct an in-situ verification test of each custody transfer meter as soon as practicable after that Metering is placed into service,

to ensure that the Metering is Accurate. If the Metering is found to be Inaccurate, First Gas will service, repair, re-calibrate or replace it, then re-test it to establish that it is Accurate. First Gas will provide the Interconnected Party with written evidence of testing pursuant to this *section 4.4*.

## Unscheduled Testing of Metering

* 1. The Interconnected Party may request First Gas to carry out an unscheduled test of any Metering. First Gas shall comply with that request, provided that it shall not be required to undertake any unscheduled test of Metering within one Month before or one Month after any scheduled testing or in any event more frequently than once every three Months. First Gas will allow the Interconnected Party’s representative to be present during any unscheduled testing, and provide the Interconnected Party with the test results as soon as reasonably practicable (and in any event within 5 Business Days of such test results being available to First Gas). Where the Metering is found to be:
     1. Accurate, the Interconnected Party will reimburse First Gas for all direct costs First Gas incurs in undertaking the unscheduled testing; or
     2. Inaccurate, First Gas shall:
        1. bear all costs it incurred in undertaking the unscheduled testing (but not any costs incurred by the Interconnected Party or any other party); and
        2. at its cost and as soon as practicable, service, repair, recalibrate or replace the Metering (or relevant part thereof) to make it Accurate.

## Corrections for Inaccurate Metering

* 1. Where any Metering is found to be Inaccurate, First Gasshall correct energy quantities previously determined from that Metering in accordance with the Metering Requirements and, where applicable, correct any previously invoiced amounts and apply any Wash-ups in accordance with the Code. If the Interconnected Party installs its own check metering downstream of a Delivery Point (which where practicable it shall be entitled to do in its discretion), it shall:
     1. promptly provide data from that check metering to First Gas on request; and
     2. retain all data from that check metering for a period of not less than 3 years.

## Amendment of Metering Requirements

* 1. First Gas may amend the Metering Requirements at any time in accordance with the terms of the Metering Requirements (and they shall thereafter apply as amended).

## Access to Data

* 1. First Gas shall, subject to *sections 4.9* to *4.12*, make available to the Interconnected Party at a Delivery Point any of the following data (*Data*) the Interconnected Party may request:
     1. for each meter stream that forms part of the Metering for that Delivery Point:
        1. uncorrected volume flow rate at flowing conditions;
        2. corrected volume flow rate;
        3. mass flow rate;
        4. energy flow rate;
        5. accumulating (totalising) uncorrected volume;
        6. accumulating (totalising) corrected volume;
        7. accumulating (totalising) mass;
        8. accumulating (totalising) energy;
        9. the pressure and temperature at the meter;
        10. density at flowing conditions; and
     2. in respect of Gas taken at that Delivery Point:
        1. Specific Gravity or Relative Density;
        2. Base Density;
        3. Gross Calorific Value;
        4. Nett calorific value;
        5. the concentration (in mole %) of Nitrogen, Carbon Dioxide and all hydrocarbon constituents of the Gas individually (including isomers of a constituent present in other than trace amounts) up to and including Pentanes;
        6. the concentration (in mole %) of all hydrocarbon constituents in the Gas with a molecular weight greater than that of Pentane, either collectively as Hexanes-plus or individually as total Hexanes, total Heptanes, total Octanes and Nonanes-plus, where the capabilities of the gas analyser for the Metering permits; and
        7. hydrocarbon dewpoint and water content if available,

provided in each case that First Gas shall not be obliged to provide any Data that it does not require for the purposes of this Agreement.

* 1. Pursuant to *section 4.8*, First Gas shall:
     1. reasonably determine the source from which any Data is obtained; and
     2. at its cost make the Data available at reasonably located termination points in a non-Hazardous area, and in the manner and in accordance with the frequency, communications protocol and format (including units of measurement) it may reasonably determine.
  2. The Interconnected Party shall be responsible for conveying the Data to any other location at its cost.
  3. First Gas shall use reasonable endeavours to maintain the availability of Data, including while the Metering is undergoing repair, re-calibration, testing, servicing or replacement. The Interconnected Party shall not be relieved of any of its obligations under this Agreement due to the unavailability of any Data, for any reason.
  4. If First Gas upgrades or replaces the Metering at a Delivery Point and is no longer able to provide any Data previously received by the Interconnected Party, First Gas shall not be obliged to reimburse any costs incurred by the Interconnected Party in order to receive that Data.

## Energy Quantity Reports

* 1. First Gas shall produce daily delivery reports *(DDRs)* and hourly delivery reports *(HDRs)* separately for each meter at a Delivery Point and for the aggregate quantities of Gas taken at that Delivery Point in accordance with the Code.

## OATIS Access

* 1. First Gas will provide the Interconnected Party with access to OATIS:
     1. to enable the Interconnected Party to view and/or download DDRs and HDRs; and
     2. as required for any other purpose relating to this Agreement or the Code,

provided that the Interconnected Party shall be responsible at its cost for ensuring it can access OATIS and does so on the terms and conditions of access to, and use of, OATIS as set out on OATIS. The Parties acknowledge that from time to time First Gas may not be able to provide access to OATIS where it is unavailable due to any unanticipated technical failure or other events or circumstances outside its control.

# Energy allocation at Delivery points

## Downstream Reconciliation Rules

* 1. At each non-Dedicated Delivery Point which is the subject of this Agreement used by:
     1. more than one Shipper, each Shipper’s Daily Delivery Quantity will be determined by the Allocation Agent under the Downstream Reconciliation Rules and the Code; or
     2. only one Shipper, that Shipper’s Daily Delivery Quantity will be the metered quantity for that Day.

## Allocation Agreement

* 1. At each Dedicated Delivery Point which is the subject of this Agreement (other than where an Operational Balancing Agreement (*OBA*) applies) there shall be an Allocation Agreement, irrespective of the number of Shippers using that Dedicated Delivery Point.
  2. Where any such Dedicated Delivery Point:
     1. is reasonably expected to be used by only one Shipper, First Gas (or, if agreed by First Gas and the Interconnected Party, the Interconnected Party) shall be the Allocation Agent and that Shipper’s Daily Delivery Quantities and Hourly Delivery Quantities will be the respective metered quantities; and
     2. is, or is reasonably expected to be, used by more than one Shipper, each Shipper’s Daily Delivery Quantities and Hourly Delivery Quantities will be the respective qualities determined by the Allocation Agent under the applicable Allocation Agreement.
  3. The Interconnected Party at any such a Dedicated Delivery Point shall have the right to determine the rules to be applied by the Allocation Agent to determine Shippers’ Daily Delivery Quantities and Hourly Delivery Quantities. The Interconnected Party is to ensure that the Allocation Agreement requires the Allocation Agent to notify First Gas via OATIS of each Shipper’s Daily Delivery Quantities and Hourly Delivery Quantities within the times published by First Gas on OATIS.

## Operational Balancing Agreement

* 1. The Interconnected Party may determine that an OBA will apply at a Delivery Point, provided that it must give First Gas and all Shippers using that Delivery Point not less than 40 Business Days’ notice in writing before the OBA may commence. At the commencement of the OBA:
     1. that Delivery Point will become an Individual Delivery Point; and
     2. the Interconnected Party shall be an OBA Party in respect of that Delivery Point, and shall comply with all provisions of this Agreement and the Code that apply to an OBA Party (including the Primary Balancing Obligation).
  2. Subject to the Interconnected Party ensuring an Allocation Agreement is put in place that complies with the requirements of *section 5.3(b)*, an Interconnected Party may terminate an OBA at a Delivery Point on the expiry of not less than 40 Business Days’ notice in writing to First Gas and all Shippers using that Delivery Point.

## NQ approval

* 1. The Interconnected Party shall approve, curtail or reject NQs in accordance with the Code.

# 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.

# odorisation

## Odorised Pipeline

* 1. If First Gas’ Pipeline which connects to a Delivery Point is stipulated as “Odorised” in ICA Schedule One, Gas in that part of the Pipeline must be odorised to comply with the detectability requirements set out in New Zealand Standard 5263:2003: Gas Detection and Odorisation.
  2. If either Party becomes aware that insufficiently odorised Gas has flowed or is flowing at a Delivery Point on a Pipeline stipulated as “Odorised” in ICA Schedule One, it will promptly notify the other Party and First Gas will investigate and use its reasonable endeavours to as soon as practicable:
     1. restore odorisation of Gas in accordance with *section 7.1*; and
     2. notify the Interconnected Party of the reason for the insufficiently odorised Gas, the likely period of time during which insufficiently odorised Gas flowed, and any other relevant information.
  3. Notwithstanding any other provision of this Agreement, First Gas shall have no liability to the Interconnected Party whatsoever for any Loss incurred by the Interconnected Party arising from the occurrence of insufficiently odorised Gas.
  4. The design, construction, operation and maintenance of Odorisation Facilities shall be the responsibility of their owner.
  5. Notwithstanding any other provision of this Agreement, First Gas may cease odorising (or requiring the odorising of) Gas in any Pipeline or at any Delivery Point on expiry of not less than 18 Months’ written notice to the Interconnected Party and all Shippers.

# Curtailment

## Adverse Events

* 1. Subject to the balance of this *section 9*, First Gas will use reasonable endeavours to avoid curtailing the taking of Gas at a Delivery Point. However, First Gas may curtail the taking of Gas (or the ability to take Gas) at a Delivery Point to the extent it determines to be necessary, where:
     1. an Emergency is occurring or is imminent;
     2. a Force Majeure Event has occurred or is continuing;
     3. a breach of any Security Standard Criteria and/or a Critical Contingency would otherwise occur;
     4. a Shipper’s TSA or Supplementary Agreement, Existing Supplementary Agreement, GTA, or the Allocation Agreement, expires or is terminated or is not executed;
     5. this Agreement expires or is terminated, either in total or in relation to that Delivery Point;
     6. it is performing, or is to perform, scheduled or unscheduled Maintenance pursuant to *section 9.2* or *section 9.3*; and/or
     7. it does so to maintain the Target Taranaki Pressure pursuant to *section 3.32* of the Code,

provided that in relation to the events described in this *section 9.1(a)* or *(b)*, First Gas shall use reasonable endeavours to minimise the period of curtailment.

## Maintenance

* 1. Where it is necessary or desirable for First Gas to carry out scheduled Maintenance that will curtail the taking of Gas, or the ability to take Gas at a Delivery Point (but not in respect of any scheduled Maintenance which it believes will not have that effect), First Gas will:
     1. notify the Interconnected Party as early as practicable (but not less than 20 Business Days prior to commencing work) of the likely duration of that work;
     2. advise the Interconnected Party of the expected impact on its ability to take Gas at that Delivery Point and/or any other effects; and
     3. consult the Interconnected Party and use reasonable endeavours to undertake that scheduled Maintenance in a manner and at a time that minimises its impact.

Where the start of any scheduled Maintenance notified pursuant to this *section 9.2* is delayed, First Gas will promptly notify the Interconnected Party of that delay on OATIS, but will not be required to re-start the 20 Business Days’ notice period.

* 1. First Gas may carry out unscheduled Maintenance at or in relation to a Delivery Point, including in relation to events referred to in *section 9.1(a)*, *(b)* or *(c)*, but must give the Interconnected Party as much notice as reasonably practicable in each case.
  2. The Interconnected Party shall reasonably facilitate First Gas’ scheduled or unscheduled Maintenance, as and when requested by First Gas, including using reasonable endeavours to take delivery of small quantities of Gas in the manner requested by First Gas.

## Interconnected Party maintenance

* 1. The Interconnected Party, where it intends to carry out maintenance or other work that will significantly reduce (or increase) its take of Gas (but not any other maintenance or work), shall:
     1. give First Gas as much notice as practicable (and in any event not less than 20 Business Days’ notice unless operational circumstances do not permit such period of notice) before commencing that maintenance or other work;
     2. advise First Gas of the likely duration of that maintenance or other work and the extent of the expected reduction (or increase) in its take of Gas;
     3. unless otherwise agreed by First Gas (having regard to the usual quantity of Gas injection by the Interconnected Party), provide to First Gas at the same time as it provides notice to First Gas under *section 9.5(a)* shut-down and start-up gas profiles for the duration of the maintenance or other work; and
     4. if the shut-down or start-up gas profiles previously provided to First Gas materially change (or are expected to materially change), the Interconnected Party shall promptly provide First Gas with a further notice specifying the changed shut-down and start-up gas profiles.

## Operational Flow Order

* 1. If any of the events described in *section 9.1(a)* to *(g)* occurs, First Gas may give the Interconnected Party an Operational Flow Order. The Interconnected Party shall use its best endeavours to take such actions as it is able to take to comply with that OFO in the shortest practicable time. First Gas will minimise the period of curtailment stipulated in an OFO to the extent practicable. First Gas will publish each OFO on OATIS as soon as practicable.
  2. If the Interconnected Party conveys Gas taken at a Delivery Point to an End-user who needs a quantity of Gas to shut down its plant with minimal risk of damage to that plant (but not any product produced by that plant), or the Interconnected Party is such an End-user, the Interconnected Party shall notify First Gas of that requirement and of the specific quantity of Gas required (which shall be identical to any profile given to the CCO). If First Gas subsequently issues an OFO to the Interconnected Party, it will if practicable allow for such quantity of Gas to be taken.

## Curtailment of Nominated Quantities

* 1. Pursuant to *section 9.6*, First Gas may curtail each Shipper’s most recent Approved NQ at that Delivery Point in OATIS, including where an OBA applies, in accordance with the OFO and the Code.

## Critical Contingency

* 1. In the event of a Critical Contingency, First Gas may instruct the Interconnected Party to curtail its take of Gas (or its ability to take Gas) at a Delivery Point as required to comply with the instructions of the Critical Contingency Operator and the requirements of the CCM Regulations (and the Interconnected Party shall do so and shall otherwise comply with any other instructions of the Critical Contingency Operator and the requirements of the CCM Regulations). OFOs are to be consistent (or amended to be consistent) with any instructions from the Critical Contingency Operator (including any shut down profile required by the Critical Contingency Operator).

## Failure to Comply

* 1. The Interconnected Party agrees that if it fails to comply with an OFO:
     1. First Gas may curtail the Interconnected Party’s take of Gas itself;
     2. for the purposes of the definition of “Reasonable and Prudent Operator”, this *section 9* and *section 16*, any such failure shall constitute a failure by the Interconnected Party to act as a Reasonable and Prudent Operator; and
     3. the Interconnected Party shall indemnify First Gas for any Loss incurred by First Gas (except to the extent that First Gas contributed to that Loss and/or did not mitigate its Loss to the fullest extent reasonably practicable).

## Relief from Charges

* 1. In relation to any curtailment under *section 9.1(a)* to *(c)* or *section 9.2,* the Interconnection Fee and the Odorisation Fee (if any) at a Delivery Point will not be payable for the period of that curtailment to the extent of the reduction in the normal or intended take of Gas, except to the extent that the Interconnected Party:
     1. caused or contributed to any event or circumstance giving rise to that curtailment, including in the circumstances referred to in *sections 3.4* or *3.5*;
     2. was itself carrying out maintenance or other work such that its ability to take Gas was (or would have been) reduced to or less than the level of Gas injection that was (or would otherwise have been) available given the curtailment; or
     3. failed to comply with an instruction from First Gas or from the Critical Contingency Operator under *section 9.6* or *section 9.9*.

# fees and charges

## OBA Charges

* 1. For any Delivery Point at which an OBA applies, the Interconnected Party shall be liable for and shall pay to First Gas:
     1. Daily Overrun Charges;
     2. Daily Underrun Charges;
     3. Hourly Overrun Charges; and
     4. Peaking Charges,

and, in addition, shall be liable for and shall pay to First Gas:

* + 1. Balancing Gas Charges; and
    2. charges for Excess Running Mismatch,

((a) through (f), together, *OBA Charges*) determined by First Gas in accordance with the Code.

## Over-Flow Charge

* 1. The Interconnected Party shall pay a charge (*Over-Flow Charge*) for any Hour in which the metered quantity of Gas at a Delivery Point exceeds the Physical MHQ of that Delivery Point (*Over-Flow*), equal to:

Fee × OFQ × 20

where:

*Fee* is the higher of the fee for (as applicable) Daily Nominated Capacity or Supplementary Capacity (expressed in $/GJ in each case) for that Delivery Point in the current Year, as notified by First Gas to the Interconnected Party; and

*OFQ* (or the *Over-Flow Quantity*) is the greater of:

* + - 1. the Hourly metered quantity – Physical MHQ; and
      2. zero*.*

## Excessive Flow Causing Loss

* 1. In addition to any Daily Overrun Charge, Hourly Overrun Charge, Over-Flow Charge, Peaking Charge and/or amount payable under *section 3.4(a)*, the Interconnected Party shall indemnify First Gas for any Loss incurred by First Gas that arises from its Daily Overrun, Over-Flow or Excess Peaking (where that Loss shall include any interconnection fees or charges, Transmission Charges and/or Non-standard Transmission Charges that First Gas may be required to waive or rebate as a result) up to the Capped Amounts. First Gas shall mitigate its Loss to the fullest extent reasonably practicable.

## Balancing Gas Credits Receivable as an OBA Party

* 1. If the Interconnected Party is an OBA Party in respect of a Delivery Point, First Gas will credit the Interconnected Party in respect of such Delivery Point in accordance with the Code any Balancing Gas Credits due to it.

# term and TERMINATION

## Termination for breach

* 1. Either Party may terminate this Agreement immediately on notice in writing to the other Party specifying the cause if the other Party defaults in the performance of any material covenants or obligations imposed upon it by this Agreement and has not remedied that default within 20 Business Days of notice from the terminating Party.

## Suspension for Default

* 1. If First Gas becomes aware that the Interconnected Party is in breach of any material term or condition of this Agreement, First Gas shall be entitled to suspend its provision of services to the Interconnected Party for the duration of that non-compliance if, and to the extent that, in First Gas’ reasonable opinion, that action is necessary to protect other users or their use of the Transmission System.

## Termination Without Prejudice to Amounts Outstanding

* 1. The expiry or termination of this Agreement shall not relieve the Interconnected Party:
     1. or First Gas of its obligation to pay any amount outstanding under this Agreement; or
     2. if it was an OBA Party, of its obligation to settle its Running Mismatch in accordance with the Code or this Agreement, which, at First Gas’ election but following consultation with the Interconnected Party, may be effected either in dollar terms or by First Gas making Gas available for the Interconnected Party to take, or taking Gas from, the Interconnected Party.

# FORCE MAJEURE

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

provided that the Interconnected Party shall be relieved of its obligation to pay any Interconnection Fee and Odorisation Fee to the extent that the Interconnected Party is unable to take Gas at the relevant Delivery Point on account of that Force Majeure Event (as determined by First Gas).

* 1. If an Affected Party seeks relief under *section* *15.1*, that Party shall, upon the occurrence of any failure due to a Force Majeure Event:
     1. as soon as reasonably 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 that failure known to it at that time. The 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. use due diligence and take reasonable steps to rectify, remedy, shorten or mitigate the circumstances giving rise to the 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 reasonably 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 any agent or contractor of that Party, unless that 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.
  3. The Interconnected Party will not be able to claim relief from liability under *section 15.1* solely as a result of the suspended performance, or non-performance, of the obligations of any Shipper using a Delivery Point.

## Information

* 1. The Party who declares a Force Majeure Event shall, as soon as practicable after its occurrence, provide the other Party with a report setting out in reasonable detail the particulars of the event, its causes, its effects and the actions taken by that Party to rectify, remedy, shorten or mitigate the event or circumstance which gave rise to the Force Majeure Event. First Gas will publish that report (or a summary of it) 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 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.

# dispute resolution

* 1. Subject to *sections 12.6* and *12.8*, in the event of any dispute of whatever nature arising between the Parties the disputing Party shall notify the other Party of that dispute in writing (*Dispute Notice*). On receipt of a Dispute Notice, the Parties shall use reasonable endeavours to resolve the dispute by negotiation.
  2. If the dispute is not resolved by negotiation within 15 Business Days (or such other period as the Parties may agree in writing) of the date of the Dispute Notice, then the Parties shall submit the dispute to:
     1. resolution by an independent expert agreeable to both parties; or
     2. where the Parties cannot agree upon an independent expert within 5 Business Days after the expiry of the negotiation period referred to above, arbitration pursuant to the Arbitration Act 1996 (excluding paragraphs 4 and 5 of the Second Schedule to that 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 *section 18* affects either Party’s right to seek urgent interlocutory relief.

# general AND LEGAL

## Confidential Information and Disclosure of Agreement

* 1. Subject to *section 19.4* and *section 19.5*, each Party shall keep confidential and not disclose any information made available to it by, on behalf of, or at the request of, the other Party in relation to this Agreement or that relates to the business or operations of such other Party.
  2. A Party may disclose such information to the extent that:
     1. the information is in the public domain, other than by a breach of this Agreement by such Party;
     2. the information was already known to the Party and was not then subject to any obligation of confidentiality;
     3. disclosure to such Party’s professional advisor(s) or consultant(s) on a need to know basis is required;
     4. disclosure is necessary by First Gas to maintain the safety and reliability of the Transmission System, or is required to give effect to the Code, a TSA, a supplementary agreement or an interconnection agreement;
     5. this Agreement or the Code contemplates or requires the disclosure or provision of the information (or information or analysis derived from such information) on OATIS or otherwise contemplates or requires the disclosure of such information;
     6. use or disclosure is required by law (including information disclosure requirements and/or the listing rules of a recognised stock exchange) or any order of a competent court;
     7. the other Party has consented in writing to the use or disclosure;
     8. the information is obtained from a third party, whom such Party believes, in good faith, to be under no obligation of confidentiality;
     9. disclosure is to such Party’s auditors; or
     10. disclosure is required pursuant to the resolution of any dispute under this Agreement.

Notwithstanding anything in this Agreement to the contrary, no Party shall be required to disclose information that it is precluded from disclosing by law or third party contractual confidentiality obligations.

* 1. The Parties agree that the existence and terms of this Agreement are not Confidential Information (and are not otherwise confidential). First Gas may make available this Agreement (and any amendment) in full on OATIS and may otherwise disclose such ICA (and any amendment) to any other person.

## Records

* 1. Each Party shall maintain proper books and records in relation to matters which are the subject of this Agreement for a period of not less than seven years (including test results and monitoring data for a period of not less than seven years after the date it was collected).

# ICA schedule One: Delivery Point Details

# [*Individual Delivery Point details for relevant ICA to be specified*]

# ICA schedule two: technical requirements

* 1. The design, construction, commissioning, operation and maintenance of each Delivery Point (including any Interconnected Party Equipment) shall:
     1. conform with good gas industry engineering practice (it being acknowledged that for Delivery Points which exist as of 1 October 2019 such good gas industry engineering practice shall, up until 1 October 2021, reflect applicable practices and equipment in place as at 1 October 2019); and
     2. comply with the requirements of recognised and applicable standards as well as all current and relevant laws, including:
        1. AS 2885.1: 2012 Pipelines - Gas and Liquid Petroleum, Part 1: Design and Construction;
        2. Gas Act 1992 and the Gas Regulations;
        3. Health and Safety at Work Act 2015;
        4. Health and Safety in Employment (Pipelines) Regulations;
        5. Resource Management Act 1991;
        6. Electrical (Safety) Regulations;
        7. AS/NZS 3000 – Wiring Rules;
        8. AS/NZS 60079.14 - Explosive Atmospheres: Electrical Installations, Design Selection and Erection; and
        9. mandatory Codes of Practice and Standards associated with any of the above.
  2. Each Delivery Point must incorporate:
     1. appropriate security fencing to reasonably prevent unauthorised access;
     2. adequate means of access and egress for vehicles and personnel;
     3. adequate space to accommodate and permit the safe operation and maintenance of all equipment and structures;
     4. Metering;
     5. clear signs indicating Hazardous areas, and restricted access areas;
     6. only electrical equipment that complies with applicable legislation that relates to such electrical equipment;
     7. an above-ground isolation valve to allow First Gas to securely and safely isolate its Pipeline from the Interconnected Party’s Pipeline;
     8. suitable bonding of above-ground piping and associated metallic structures to ensure the electrical continuity of that piping and those structures, and a suitable earth bed to which that piping and those structures are connected;
     9. means to electrically isolate the Delivery Point from the Interconnected Party’s Pipeline, as well as a suitable surge diverter installed across each such isolating device;
     10. equipment to reasonably prevent any solid or liquid contaminants from affecting meters or other sensitive equipment or reaching the Interconnected Party’s Pipeline;
     11. a flow-restriction device (sonic nozzle or restriction orifice plate) to prevent over-speeding of any meter;
     12. a check (non-return) valve to prevent reverse flow through any meter where First Gas considers that could otherwise occur.
  3. At each Delivery Point there shall be equipment to enable First Gas to remotely monitor that Delivery Point and Metering, retrieve data and other information and (if required) control any of its equipment. That equipment may at First Gas’ discretion include a remote terminal unit for First Gas’ SCADA (“Supervisory, Control and Data Acquisition”) system, radio or other communications equipment, and related ancillary equipment (together, *Remote Monitoring Equipment*).
  4. There must be a secure, weather-proof, vermin-proof and adequately ventilated shelter or building, located in a non-Hazardous area, to house all First Gas equipment which First Gas considers requires that protection.
  5. Where the Delivery Pressure is Controlled, a Delivery Point shall incorporate equipment in accordance with *paragraph 1.6* for that purpose and to prevent over-pressurisation of the Interconnected Party’s Pipeline. Unless the Parties agree otherwise, that equipment shall comprise independent “working” and “standby” pressure control streams, where both streams shall comprise:
     1. primary means of pressure control; and
     2. means of over-pressure protection that is separate and independent and which shall operate in the event that the primary means of pressure control fails.
  6. Pursuant to *paragraph 1.5*, unless the Parties agree otherwise in writing:
     1. the primary means of pressure control shall comprise an active regulator in both the working stream and the standby stream; and
     2. the means of over-pressure protection shall comprise:
        1. a monitor regulator in both the working stream and the standby stream; and
        2. a small-capacity (“token”) pressure relief valve sized for leakage past the active and monitor regulators when the same are in the closed (“no flow”) position; or
        3. a slam-shut valve; or
        4. all of (i), (ii) and (iii).
  7. Subject to *paragraph 1.8*, where the Delivery Pressure is Controlled, a Delivery Point shall incorporate heating equipment sufficient to ensure that, in respect of its temperature, gas complies with the Gas Specification at the Interconnection Point. Unless the Parties agree otherwise, First Gas shall not be required to install secondary heating equipment to maintain the temperature of gas in the event that the primary heating equipment fails or is out of service for any reason.
  8. First Gas may elect not to install (or may remove existing) heating equipment at a Delivery Point where it reasonably believes that gas will comply with the Gas Specification in respect of its temperature at the Interconnection Point without that equipment.
  9. Where required to operate the Metering, Remote Monitoring Equipment and/or other critical equipment, an external supply of electricity (*Mains Supply*) shall be provided to a Delivery Point. An uninterruptible power supply (*UPS*) shall also be installed, incorporating batteries with sufficient storage capacity to supply the normal electricity requirements of all critical equipment for not less than four hours if the Mains Supply fails.
  10. First Gas may install means to remotely control the flow of Gas at a Delivery Point.