

# Gas Transmission Access Code

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This Code sets out the terms and conditions on which First Gas provides gas transmission services.

## 1 DEFINITIONS AND CONSTRUCTION

### Defined Terms

#### 1.1 In this Code:

*Acceptable Line Pack Limits* means the upper and lower Line Pack limits determined by First Gas in accordance with *section 8.5* and published on OATIS;

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

*Aggregate Trade Quantity* means, in respect of a Party (or OBA Party) and a Day, the total of that Party's (or OBA Party's) Gas purchases less the total quantity of that Party's (or OBA Party's) Gas sales that Day via trades pursuant to *section 6.6*;

*Agreed Hourly Profile* or *AHP* means, in respect of a Day, a schedule of Hourly amounts of transmission capacity in respect of a Delivery Point or Hourly nominated quantities in respect of a Receipt Point requested by a Shipper and approved by First Gas ~~in respect of a Dedicated Delivery Point~~;

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

*Allocation Agreement* means, for any Delivery Point at which neither the DRR nor an OBA applies, an agreement between the Shipper or Shippers using that Delivery Point, the relevant Interconnected Party and the Allocation Agent, which complies with the requirements of Schedule Four;

*Allocation Result* means:

- (a) for Delivery Points at which Gas is allocated under the DRR, the allocation result determined under the DRR; and
- (b) for Delivery Points at which Gas is allocated under an Allocation Agreement, the Daily Delivery Quantities and Hourly Delivery Quantities determined under that agreement;

*Approved NQ* means, in respect of a Receipt Point, Delivery Zone or Individual Delivery Point, the amount of a Shipper's NQ approved ~~by First Gas~~ as applicable in the most recent nominations cycle;

*Auction TCs* has the meaning set out in *section 3.18*;

*Auto-Nomination Charge* has the meaning set out in *section 11.7*;

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

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

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

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

*Beneficiary DP* has the meaning set out in *section 3.11*;

*Bi-directional Point* means a station or facility which, at different times, ~~may operate~~ (and at particular points in time), operates either as a Receipt Point or as a Delivery Point;

*Bill Rate* means, ~~on any Business Day, the 90-Day Rate published~~ the rate of interest calculated at the average rate per annum (expressed as a percentage) as quoted by the Reserve Bank of New Zealand ~~for the weekly period in which the Business Day falls~~ under the heading B2 Wholesale Interest Rates – 90 days Bank bill yields (or any successor page displaying substantially the same information) as fixed at 11.10 am on the first Business Day following the relevant or due date (and on the first Business Day following the end of each succeeding three-month period after the relevant or due date);

*Business Day* means any Day (other than a Saturday, Sunday or a public holiday) on which registered banks are open for business in New Plymouth ~~and Wellington;~~ ~~Calorific Value means the energy content of gas, expressed in units of Megajoules per standard cubic metre,~~ Wellington and Auckland;

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

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

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

*Changed Provisional NQ* has the meaning set out in *section 4.9*;

*Changed Provisional Nominations Deadline* means the time published by First Gas on OATIS, by which a Shipper must notify First Gas of its Changed Provisional NQs on the Day before the Day to which those NQs relate;

*Code* means this Gas Transmission Access Code, including all schedules to it and including as changed, amended, varied, substituted or replaced;

*Commerce Commission* means the Commerce Commission established under Part 1 of the Commerce Act 1986;

*Commencement Date* means the commencement date specified in a TSA;

*Congested Delivery Point* means a Delivery Point that is expected to be, or is, subject to Congestion;

*Congestion* means, in respect of a Delivery Point (or more than one), a situation where aggregate NQs, or current offtake associated with DNC exceed, or are expected to exceed, the Available Operational Capacity;

~~*Congested Delivery Point* means a Delivery Point that is expected to be, or is subject to Congestion;~~

*Congestion Management* means any one or a combination of the various measures that First Gas may initiate to alleviate Congestion, as described in *section 10*;

*Congestion Management Charge* means the charge to recover First Gas' costs of Congestion Management, calculated in accordance with *section ~~11.12~~ 11.12*;

*Confidential Information* has the meaning set out in *section 20.3*;

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

*Credit Support* has the meaning set out in *section 14.1(b)*;

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

*Critical Contingency Management Plan* means First Gas' critical contingency management plan approved in accordance with the CCM Regulations (a copy of which shall be published on OATIS);

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

*Daily Delivery Quantity* or DDQ means, in respect of a Day and a Shipper, the quantity of Gas that a Shipper takes in a Delivery Zone, at a Delivery Point in a Delivery Zone or at an Individual Delivery Point ~~on a Day~~, determined in accordance with *section 6*;

*DDR* or *Daily Delivery Report* has the meaning set out in *section 5.5*;

*Daily Nominated Capacity* or DNC means the transmission capacity First Gas makes available under a TSA in a Delivery Zone or at an Individual Delivery Point (which may include under a Supplementary Agreement or Interruptible Agreement as applicable or pursuant to an approved AHP), defined by MDQ and MHQ respectively;

*Daily Overrun* and *DOQ* have the meaning set out in *section 11.4(a)*;

*Daily Nominated Capacity Fee* or *DNC<sub>Fee</sub>* means the fee payable by a Shipper for DNC, as published on OATIS;

*Daily Nominated Capacity Charge* or *DNC Charge* means the charge for DNC calculated in accordance with *section 11.1*;

*Daily Overrun Charge* means the charge payable for exceeding:

- (a) under a TSA, the amount of DNC, calculated in accordance with *section 11.4(a)* of this Code; or
- (b) under a Supplementary Agreement, [Existing Supplementary Agreement](#) or Interruptible Agreement, the MDQ set out in ~~7~~, or determined under the relevant agreement, calculated as set out in that agreement; or
- (c) under an ICA at a Delivery Point where an OBA applies, the aggregate DNC of all Shippers at that Delivery Point;

*Daily Underrun or DUQ* has the meaning set out in *section 11.4(b)*;

*Daily Underrun Charge* means the charge payable (or, if applicable under this Code, a credit receivable) for using less capacity on a Day than:

- (a) under a TSA, the amount of DNC, calculated in accordance with *section 11.4(b)* of this Code; or
- (b) under a Supplementary Agreement, [Existing Supplementary Agreement or Interruptible Agreement](#) if applicable, the MDQ set out in ~~7~~, or determined under the relevant agreement, calculated as set out in that agreement; or
- (c) under an ICA at a Delivery Point where an OBA applies, the aggregate DNC of all Shippers at that Delivery Point;

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

*Dedicated Delivery Point* means a Delivery Point that supplies Gas to a single End-user, either directly or via an Interconnected Party;

*Delivery Point* means a facility (including any associated land and equipment) at which one or more Shippers take (or may take) Gas from the Transmission System or, in the case of an Existing Supplementary Agreement, the delivery point named in that agreement;

*Delivery Zone* means a group of two or more Delivery Points (excluding any Delivery Point at which an OBA applies or any Congested Delivery Point) which, for the purposes of *sections 4* and ~~11~~, are treated as a single notional delivery point;

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

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

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

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

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

- (a) 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;
- (b) Gas is at a pressure, or is of a quality, that constitutes a hazard to persons, property or the environment;
- (c) its ability to receive Gas at any Receipt Point or make Gas available at any Delivery Point is impaired; ~~or~~
- (d) its ability to maintain safe pressures within a pipeline is affected or threatened including by any off-take of Gas at a Delivery Point which exceeds the Physical MHQ of that Delivery Point or the quantity or offtake rate specified in an Operational Flow Order; or
- (e) there is an emergency under, or for the purposes of, any interconnection agreement;

*End-user* means a consumer of Gas;

*ERM Charges* means those charges relating to ERM payable pursuant to section 8;

*Excess Peaking* means where the relevant Hourly Quantity exceeds both the HL for the relevant Hour and the Hourly Limit by more than 25% as contemplated by section 11.5(a);

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

*Existing Interconnection Agreement* means an interconnection agreement in effect as at the date of this Code, (including any amendments before or after the date of this Code) and which commenced or had a specified commencement date before the date of this Code, but excluding an interconnection agreement which terminated on termination of any code replaced by this Code;

*Existing Supplementary Agreement* means a supplementary agreement in effect as at the date of this Code (including any amendments before or after the date of this Code) and which commenced or had a specified commencement date before the date of this Code or a supplementary agreement required by a Transmission Pricing Agreement in effect ~~as at~~before the date of this Code;

*Expiry Date* means the earlier of the expiry date of this Code and, in respect of a TSA, the date specified in a TSA;

*Extra ID Cycle* has the meaning set out in section 4.18;

*First Gas* means First Gas Limited;



*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 Code and/or (in the case of a Shipper) an inability of that Shipper to inject (or have injected on its behalf) or take (or be deemed to take) Gas notwithstanding the exercise by that 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 and includes any such event or circumstance that constitutes a force majeure event under, or for the purposes of, any interconnection agreement;

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

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

- (a) a ~~party~~person other than First Gas for the purposes of trading Gas; and/or
- (b) First Gas, exclusively for the purposes of buying and selling Balancing Gas;

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

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

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

*GIC* means the Gas Industry Company Limited;

*GJ* or *Gigajoule* means a gigajoule of Gas, on a Gross Calorific Value basis;

*Gross Calorific Value* has the meaning set out in NZS 5259: 2015 "Gas Measurement";

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

*High Line Pack Notice* means a notice issued by First Gas to all Shippers and Interconnected Parties on OATIS pursuant to *section 8.6* indicating that Line Pack is increasing towards or has breached the upper Acceptable Line Pack Limit;

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

*HDR* or *Hourly Delivery Report* has the meaning set out in *section 5.5*;

*Hourly Delivery Quantity* or *HDQ* means the quantity of Gas taken by a Shipper at a Dedicated Delivery Point in an Hour, determined in accordance with this Code and the applicable Allocation Agreement;

*Hourly Overrun Charge* means the charge for exceeding MHQ, which is calculated: ~~:(a) under a TSA, in accordance with section 11.5 of this Code; or (b) under a~~ under a Supplementary Agreement, Existing Supplementary Agreement or Interruptible Agreement, as set out in that agreement;

~~*Hourly Delivery Quantity or HDQ* means the quantity of Gas taken by a Shipper at a Dedicated Delivery Point in an Hour, determined in accordance with the Allocation Agreement;~~

*Inaccurate* means not Accurate;

*Individual Delivery Point* means a Delivery Point that is not part of a Delivery Zone, including any Delivery Point at which an OBA applies or a Congested Delivery Point;

*Interconnected Party* means a party whose gas producing or gas processing facility, pipeline, Distribution Network or gas consuming facility is physically connected to the Transmission System, irrespective of whether there is an ICA, an Existing Interconnection Agreement or no interconnection agreement at that point;

*Interconnection Agreement* or ICA means an interconnection agreement between First Gas and an Interconnected Party, entered into, or with a specified commencement date, on or after the date of this Code ~~and complying with section 7.13,~~ which sets out the terms and conditions applicable to that party's connection to the Transmission System at a Receipt Point, Delivery Point or Bi-directional Point (but not including any Existing Interconnection Agreement);

*Interested Party* has the meaning set out in *section 17.1*;

*Interruptible Agreement* means an agreement complying with *section 7.9* between First Gas and a Shipper for the transmission of Gas to a Delivery Point for supply to a specific End-user or site, where transmission capacity may be curtailed at First Gas' sole discretion for any reason at any time;

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

*Interruptible Load* means the Gas offtake of an End-user that First Gas may curtail under an Interruptible Agreement;

*Intra-Day Cycle* means a nominations cycle that occurs on the Day that the NQ relates to (provided that the first such cycle may occur immediately prior to that Day);

*Intra-Day NQ* has the meaning set out in *section 4.10*;

*Intra-Day Nomination Deadline* means the time published by First Gas on OATIS, by which a Shipper must notify First Gas on a Day of an Intra-Day NQ;

*Invoice Dispute* has the meaning set out in *section 11.26*;

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

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

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

*Loaned Gas* has the meaning set out in *section 8.17(b)*;

*Low Line Pack Notice* means a notice issued by First Gas to all Shippers and Interconnected Parties on OATIS pursuant to *section 8.6* indicating that Line Pack is decreasing towards or has breached the lower Acceptable Line Pack Limit;

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

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

*Maximum Daily Quantity* or *MDQ* means, in respect of a Day, the maximum quantity of a Shipper's Gas that First Gas is required to transport from the Receipt Zone (or individual Receipt Point) to a Delivery Zone (including any Dedicated Delivery Point within a Delivery Zone) or Individual Delivery Point, which shall be (as applicable):

- (a) under a TSA, the amount of DNC; or
- (b) under a Supplementary Agreement, an Existing Supplementary Agreement or Interruptible Agreement, the amount set out in or determined in accordance with that agreement;

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

*Maximum Hourly Quantity* or *MHQ* means, in respect of an Hour, the maximum quantity of a Shipper's Gas that First Gas is required to transport from the Receipt Zone (or individual Receipt Point) to a Delivery Zone (including any Dedicated Delivery Point within a Delivery Zone) or Individual Delivery Point, which shall be (as applicable):

- (a) under a TSA:
  - (i) 1/16<sup>th</sup> of the current MDQ; or
  - (ii) where an AHP applies, the ~~greater of: 1/16<sup>th</sup> of the relevant MDQ, the Specific HDQ/DDQ (if applicable) and the transmission capacity~~ Gas quantity for that Hour set out in the AHP as approved by First Gas; or
  - ~~(iii) for a Dedicated Delivery Point (subject to section 11.6), the Specific HDQ/DDQ multiplied by the Daily Delivery Quantity; or~~

- (b) under a [Supplementary Agreement, an Existing](#) Supplementary Agreement or Interruptible Agreement, the amount set out in or determined in accordance with that agreement;

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

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

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

*Minimum Design Flow Rate* means the minimum flow rate of Gas that the relevant Receipt Point, Delivery Point, Bi-directional Point, or Metering [associated with any such point](#), is designed to have flow through it and, in the case of the Metering, Accurately measure;

*Mismatch* means, for each Day and:

- (a) a Shipper, the sum of that Shipper's Receipt Quantities plus its Aggregate Trade Quantity minus the sum of its Daily Delivery Quantities;
- (b) an OBA Party, the sum of that OBA Party's Scheduled Quantities plus its Aggregate Trade Quantity minus the aggregate of its metered quantities; and
- (c) First Gas, the total amount of Gas purchased by First Gas for operational purposes plus its Aggregate Trade Quantity minus the aggregate of Gas used by First Gas for operational purposes (where Gas for operational purposes includes Gas purchased or sold to correct for UFG but excludes Balancing Gas sales and purchases);

*Month* means the period from the first Day to the last Day of a calendar month (inclusive), and *Monthly* shall be read accordingly;

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

- (a) a Receipt Point, a Shipper's notification in OATIS to the Interconnected Party of the quantity of Gas it wishes to be injected into the Transmission System for it or, where the Shipper is the Interconnected Party, the quantity of Gas entered in OATIS that it intends to inject; and
- (b) a Delivery Zone or Individual Delivery Point: ~~(i)~~ the amount of DNC; ~~and/or~~  
~~(ii)~~ [the transmission capacity corresponding to an AHP, \(including quantities nominated under an AHP\)](#) that a Shipper requests First Gas to make available to it;

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

*Non-standard Transmission Charges* means the transmission [or other](#) charges payable under any Existing Supplementary Agreement, Supplementary Agreement or Interruptible Agreement;

OATIS means First Gas' internet-based open access transmission information system or any replacement system, whose homepage First Gas shall notify to Shippers and Interconnected Parties;

Operational Balancing Arrangement or OBA means a Gas allocation option available to an ~~OBA~~ Interconnected Party under its ICA at one or more Receipt Points, or at one or more Individual Delivery Points, whereby at the relevant point:

- (a) each Shipper's Receipt Quantity or Daily Delivery Quantity is its Approved NQ; and
- (b) any difference between the Scheduled Quantity and the metered quantity is the responsibility of the OBA Party;

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

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

Operational Flow Order or OFO means a notice issued by First Gas :

- (a) pursuant to *section 9.5* ~~or section 9.7, requiring a Shipper or Interconnected Party (as applicable)~~ requiring a Shipper to take such actions (including adjusting nominations) as it is able to take to reduce the quantity of Gas being injected on its behalf or to reduce its offtake of Gas (as applicable); or
- (b) pursuant to section 9.7 requiring a relevant Interconnected Party under an ICA to take such actions as it is able to take to reduce its injection of Gas or its offtake of Gas at ~~one or more Delivery Points~~ (as applicable);

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

Over-Flow Charge means the charge calculated in accordance with *section ~~11.7~~11.8*;

Parked Gas has the meaning set out in *section 8.17(a)*;

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

Peaking Charge has the meaning set out in section 11.5;

Peaking Party are those parties determined by First Gas in accordance with sections 3.28 and 3.29;

Physical MHQ means the Hourly Delivery Quantity in GJ corresponding to the Maximum Design Flow Rate of a Delivery Point, as determined by First Gas and published on OATIS;

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

Priority Right or PR has the meaning set out in *section 3.14*;

*Priority Rights Charge* means the charge payable by a Shipper for its PRs, calculated in accordance with *sections 11.2 and 11.3*;

*Proposed Scheduled Quantity* has the meaning set out in *section 4.13(b)(i)*;

*Provisional NQ* has the meaning set out in *section 4.8*;

*Provisional Nominations Deadline* means the time on the last Business Day of a Week published by First Gas on OATIS, by which a Shipper must notify First Gas of its Provisional NQs;

*PR Auction* has the meaning set out in *section 3.17*;

*PR Effective Date* means the day on which PRs allocated following a PR Auction become effective, being the Day not later than the first Day of the Month following the Month in which that PR Auction is held;

*PR Term* means the term/duration of a PR, commencing on the PR Effective Date and ending on the last Day of the PR Term (at which time the relevant PRs shall expire and are no longer effective or able to be used), as determined by First Gas and notified pursuant to *section 3.19*;

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

*Receipt Point* means a station or facility (including any associated land and equipment) at which one or more Shippers inject or may inject (or have, or may have, injected on their behalf) Gas into the Transmission System;

*Receipt Quantity* means, in respect of a Day and a Shipper, the quantity of Gas injected by (or on behalf of) that Shipper at a Receipt Point, as determined in accordance with *section 6*;

*Receipt Zone* means that part of the Transmission System in which Receipt Points are located, defined by First Gas in accordance with *section 3.2*;

*Related Party* has the meaning given to the expression "related company" in section 2(3) of the Companies Act 1993 provided that, for this purpose, references to company in that section shall extend to any body corporate wherever incorporated or registered;

*Reserve Price* means the price (in \$/Priority Right) set by First Gas to recover its reasonable direct costs incurred in administering a PR Auction, below which any bid for PRs at that PR Auction will be invalid and excluded;

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

*Running Mismatch* means, for a Day and:

- (a) a Shipper:
  - (i) the sum of the Shipper's Mismatch on that Day and all previous Days (as calculated at the end of each Day); plus
  - (ii) any quantity of Gas purchased by the Shipper on any previous Day pursuant to *section 8.8(b)*; minus
  - (iii) any quantity of Gas sold by the Shipper on any previous Day pursuant to *section 8.9(b)*; plus and/or minus
  - (iv) any applicable Wash-ups;
- (b) an OBA Party:
  - (i) the sum of that OBA Party's Mismatch on that Day and all previous Days (as calculated at the end of each Day); plus
  - (ii) any quantity of Gas purchased by that OBA Party on any previous Day pursuant to *section 8.8(b)*; minus
  - (iii) any quantity of Gas sold by that OBA Party on any previous Day pursuant to *section 8.9(b)*; plus and/or minus
  - (iv) any applicable Wash-ups; and
- (c) First Gas:
  - (i) the sum of First Gas' Mismatch on that Day and all previous Days (as calculated at the end of each Day); plus
  - (ii) any quantity of Gas purchased by First Gas on any previous Day pursuant to *section 8.8(b)*; minus
  - (iii) any quantity of Gas sold by First Gas on any previous Day pursuant to *section 8.9(b)*; plus and/or minus
  - (iv) any applicable Wash-ups,

where Running Mismatch may be either positive or negative;

*Running Mismatch Tolerance* means, for each Day and:

- (a) each Shipper, an amount equal to: the greater of 400 GJ (or such other quantity as notified by First Gas on OATIS from time to time) provided that it is purchasing Gas from and selling Gas to a person who is not an OBA Party and:

$$\cancel{DNC}_{SHIPPER} \div \cancel{DNC}_{TOTAL} \times \cancel{LPT}_{SHIPPERS}$$

- (i) for Receipt Quantities:

$$\frac{LPT_{RECEIPTS} \times RQ_{SHIPPER}}{RQ_{TOTALRECEIPTS} + MQ_{OBAPSRCEIPTS}}$$

where:

~~DNC<sub>SHIPPER</sub>~~RQ<sub>SHIPPER</sub> is the aggregate of that Shipper's ~~DNC (excluding all AHPs, if any)~~Receipt Quantities in respect of Receipt Points where an OBA does not apply;

~~DNC<sub>TOTAL</sub>~~RQ<sub>TOTALRECEIPTS</sub> is the aggregate of all Shippers' ~~DNC (excluding all AHPs, if any); and~~Receipt Quantities in respect of Receipt Points where an OBA does not apply;

MQ<sub>OBAPSRCEIPTS</sub> has the meaning set out in paragraph (b)(ii) below; and

~~LPT<sub>SHIPPERS</sub>~~LPT<sub>RECEIPTS</sub> is the quantity of Line Pack to provide for ~~Shippers' Running Mismatches~~Receipt Quantities into the Transmission System, periodically determined by First Gas in accordance with *section 8.5* and published on OATIS; plus

(ii) for Daily Delivery Quantities:

$$\frac{LPT_{DELIVERIES} \times DQ_{SHIPPER}}{DQ_{TOTALDELIVERIES} + MQ_{OBAPSDDELIVERIES}}$$

where:

DQ<sub>SHIPPER</sub> is the aggregate of that Shipper's Daily Delivery Quantities (whether under a TSA, an Existing Supplementary Agreement, a Supplementary Agreement, an Interruptible Agreement or otherwise) in respect of Delivery Points where an OBA does not apply;

DQ<sub>TOTALDELIVERIES</sub> is the aggregate of all Shippers' Daily Delivery Quantities (whether under a TSA, an Existing Supplementary Agreement, a Supplementary Agreement, an Interruptible Agreement or otherwise) in respect of Delivery Points where an OBA does not apply;

MQ<sub>OBAPSDDELIVERIES</sub> has the meaning set out in paragraph (b)(ii) below; and

LPT<sub>DELIVERIES</sub> is the quantity of Line Pack to provide for Daily Delivery Quantities from the Transmission System, periodically determined by First Gas in accordance with section 8.5 and published on OATIS; and

- (b) each OBA Party, an amount equal to the greater of 400 GJ (or such other quantity as notified by First Gas on OATIS from time to time) and:

(i) for Receipt Quantities:

$$\frac{LPT_{RECEIPTS} \times MQ_{OBAP}}{MQ_{OBAPS} \times \cancel{LPT_{OBAPS}} (MQ_{OBAPSRCEIPTS} + RQ_{TOTALRECEIPTS})}$$

where:



$MQ_{OBAP}$  is the aggregate of the OBA Party's metered quantities at all that OBA Party's Receipt ~~and/or Delivery~~ Points;

~~$MQ_{OBAPS}$~~   $MQ_{OBAPSRECEIPTS}$  is the aggregate of the metered quantities of all Receipt ~~and Delivery~~ Points where an OBA applies;

$RQ_{TOTALRECEIPTS}$  has the meaning set out in paragraph (a)(i) above; and

~~$LPT_{OBAPS}$~~   $LPT_{RECEIPTS}$  is the quantity of Line Pack to provide for ~~OBA Parties' Running Mismatches~~ Receipt Quantities into the Transmission System, periodically determined by First Gas in accordance with *section 8.5* and published on OATIS; plus

~~where each of  $DNC_{SHIPPER}$ ,  $DNC_{TOTAL}$ ,  $MQ_{OBAPS}$  and  $MQ_{OBAPS}$  is for the prior Day;~~

(ii) for Daily Delivery Quantities:

$LPT_{DELIVERIES} \times MQ_{OBAP} \div (MQ_{OBAPSDIVERIES} + DQ_{TOTALDELIVERIES})$

where:

$MQ_{OBAP}$  is the aggregate of the OBA Party's metered quantities at all that OBA Party's Delivery Points;

$MQ_{OBAPSDIVERIES}$  is the aggregate of the metered quantities of all Delivery Points where an OBA applies;

$DQ_{TOTALDELIVERIES}$  has the meaning set out in paragraph (a)(ii) above; and

$LPT_{DELIVERIES}$  is the quantity of Line Pack to provide for Daily Delivery Quantities from the Transmission System, periodically determined by First Gas in accordance with *section 8.5* and published on OATIS;

where each of the relevant Receipt Quantities, Daily Delivery Quantities and metered quantities (as applicable) referred to in each of  $RQ_{SHIPPER}$ ,  $RQ_{TOTALRECEIPTS}$ ,  $DQ_{SHIPPER}$ ,  $DQ_{TOTALDELIVERIES}$ ,  $MQ_{OBAP}$ ,  $MQ_{OBAPSRECEIPTS}$  and  $MQ_{OBAPSDIVERIES}$  is determined based on the arithmetic average of the relevant quantities specified in each formula over the preceding 14 Days based on the initial Allocation Result;

SCADA means First Gas' "System Control and Data Acquisition" system;

Scheduled PR Auction has the meaning set out in *section 3.17*;

Scheduled Quantity has the meaning set out in *section 4.13(a)* or *(b)(ii)*;

Security Standard Criteria means the physical parameters set out in First Gas' Security Standard (as published on OATIS) to indicate that Operational Capacity may be about to be, or has been, exceeded, including minimum permissible pressures at various points on the Transmission System ( $P_{MIN}$ ) and the projected minimum time to reach any such a pressure ( $T_{MIN}$ );

*Shipper* means a person named as a shipper in a TSA with First Gas; (and includes where applicable a shipper under a Supplementary Agreement, Interruptible Agreement and an Existing Supplementary Agreement);

~~*Specific HDQ/DDQ* means the ratio of Hourly Delivery Quantity to Daily Delivery Quantity for a Dedicated Delivery Point liable for Hourly Overrun Charges and a Year, as determined by First Gas prior to a Year having regard to striking a reasonable balance between the adverse effect of offtake with a higher Hourly to Daily ratio on Operational Capacity and the typical demand profile of the End-user, and published on OATIS;~~

*Specified Customer* has the meaning set out in section 4.22;

*Specified Shipper* has the meaning set out in section 4.22;

*Specified Shipper Nomination SOP* means the Specified Shipper Nomination Standard Operating Procedure published by First Gas on OATIS from time to time containing the process and algorithm for automated nominations to be made by First Gas for Specified Shippers in respect of Gas to be delivered to Specified Customers;

*Supplementary Agreement* means an agreement, complying with section 7.4, entered into by First Gas and a Shipper, or with a specified commencement date, on or after the ~~Commencement Date~~date of this Code, for the transmission of Gas to a Delivery Point for supply to a specific End-user or site (but does not include an Existing Supplementary Agreement);

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

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

- (a) deliver Shippers' approved Nominated Quantities;
- (b) 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 or may detrimentally affect the transmission of Gas through the Transmission System or has or may deplete Line Pack to an unacceptable level, and includes an Emergency and a Critical Contingency; and/or
- (c) 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;

*Tax* has the meaning set out in section 11.23;

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

*Transitional Arrangements Schedule* means Schedule Seven of this Code;

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

*Transmission Charges* means each of the Daily Nominated Capacity Charge, Daily Overrun Charge, Daily Underrun Charge, Hourly Overrun Charge, Peaking Charge, Auto-Nomination Charge and Over-Flow Charge as applicable;

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

- (a) in the form set out in Schedule One that has a Commencement Date on or after the date of this Code; or
- (b) which is deemed to apply by virtue of an Existing Supplementary Agreement;

*Transmission System* means the pipeline system for the ~~transmission~~transportation of Gas owned and operated by First Gas, including those parts ~~which normally~~of Delivery Points designed to operate at pressures less than 20 bar g and including other items of plant, equipment, fixtures and fittings directly forming part of the pipeline system, but excluding any items controlled by a person other than First Gas and excluding any Distribution Network;

*Unaccounted-For-Gas* or *UFG* means, for a period of time and the Transmission System (or defined part thereof), the quantity of Gas equal to:

$$\Sigma \text{Receipts} - \Sigma \text{Deliveries} + \text{Line Pack}_{\text{start}} - \text{Line Pack}_{\text{end}} - \text{Fuel} - \text{Gas Vented}$$

where, in respect of that time period:

$\Sigma \text{Receipts}$  means the sum of metered quantities at the relevant Receipt Points;

$\Sigma \text{Deliveries}$  means the sum of metered quantities at the relevant Delivery Points;

*Line Pack<sub>start</sub>* means the Line Pack at the start;

*Line Pack<sub>end</sub>* means the Line Pack at the end;

*Fuel* means the total quantity of Gas used by First Gas' equipment; and

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

*Unvalidated* means, in relation to energy quantity data, data that is not Validated;

*Urgent Code Change* has the meaning set out in *section 17.19*;

*Validated* means, in relation to energy quantity data, data that First Gas has used reasonable endeavours to verify is accurate;

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

- (a) any adjustments to previously determined Daily Delivery Quantities:
  - (i) determined by an Allocation Agent, including adjustments arising from "interim allocations" ~~and~~ "final allocations" and "special allocations" (as those terms are defined in the DRR); and
  - (ii) to correct for Metering errors or the miscalculation of energy quantities; or
- (b) any adjustment to a previously determined Receipt Quantity,

where the effect of such adjustments shall be as set out in the Wash-up ~~Agreement or, in the absence of such an agreement, in the manner reasonably determined by First Gas~~ Schedule;

~~Wash-up Agreement means the agreement at any time between all Shippers, OBA Parties and First Gas setting out how Wash-ups will affect those parties, including their Running Mismatches;~~ Schedule means Schedule Eight of this Code;

*Week* means a period of 7 Days beginning on Monday; and

*Year* means a period of 365 (or 366 in a leap Year) consecutive Days commencing on the 1<sup>st</sup> Day of October in each Year and ending at the end of the 30<sup>th</sup> Day of September in the following Year, provided that in respect of a particular TSA the first Year shall be the broken period from the Commencement Date (if not 1 October) to the end of the 30<sup>th</sup> September immediately following the Commencement Date.

### **Construction**

1.2 In this Code and each TSA, unless the context otherwise requires:

- (a) "inject" includes to cause or allow Gas to flow into the Transmission System at a Receipt Point;
- (b) "curtail" includes to reduce either partly or to zero ~~and~~ to interrupt or to shut or close down;
- (c) "take" and "offtake" include to cause or allow Gas to flow at a Delivery Point;
- (d) a reference to any enactment, regulation, New Zealand Standard, this Code, or any section of the Code, is a reference to that enactment, regulation, New Zealand Standard, this Code, or section of this Code, as amended ~~or~~ substituted or replaced from time to time;
- (e) a reference to a document includes all valid amendments, variations or supplements to, or replacements of, that document;

- (f) *sections 1 (excluding the definition of Non-Specification Gas), 2 to 11, 13 to 20* apply to Non-Specification Gas as if it were Gas;
- (g) headings appear as a matter of convenience and do not affect the interpretation of this Code;
- (h) a reference to a section is to a section of this Code, a reference to a schedule is to a schedule to this Code, and a reference in any schedule to a paragraph is a reference to a paragraph in that schedule;
- (i) the singular includes the plural and vice versa;
- (j) any derivation of a defined term or of "inject", "curtail" or "take" shall have a corresponding meaning;
- ~~(k) any reference to any person doing any specific thing includes that party doing (or having the right or ability to do that thing) from time to time, unless specified otherwise;~~
- (k) ~~(j)~~ in interpreting any provision of this Code, each TSA shall be deemed to be between First Gas and the Shipper named in that TSA;
- ~~(m) nothing in this Code shall apply to or amend an Existing Supplementary Agreement unless, and only to the extent that that Existing Supplementary Agreement provides for that application or amendment;~~
- (l) ~~(n)~~ for the purposes of interpreting a TSA, unless the context requires otherwise, any reference to a Shipper shall be the shipper stated in that TSA;
- (m) ~~(e)~~ references to a Party or a Shipper includes its respective successors and permitted assignees;
- (n) ~~(p)~~ references to persons shall be deemed to include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, states or agencies of state, government departments and local and municipal authorities in each case whether or not having separate legal personality;
- (o) ~~(q)~~ any reference to a prohibition against doing something includes a reference to not permitting, suffering or causing that thing to be done;
- (p) ~~(r)~~ the rule of construction known as the contra proferentem rule does not apply to this Code;
- (q) ~~(s)~~ any reference to "includes", "including" or similar shall imply no limitation;
- (r) ~~(t)~~ any reference to a "quantity of Gas" is a reference to the energy equivalent of Gas (expressed in GJ) unless otherwise stated;
- (s) ~~(u)~~ any reference to "metered quantity" is a reference to the quantity of Gas determined using data obtained from Metering;

- (t) ~~(v)~~ any reference to a “customer” is a reference to an End-user supplied by a Shipper;
- (u) ~~(w)~~ any reference to a range of sections is inclusive of the first and last sections referenced;
- (v) ~~(x)~~ all references to any time of the day shall, unless expressly referring to New Zealand standard time ~~(NZST)~~, be references to New Zealand statutory time (that is, including adjustments for New Zealand daylight savings time);
- (w) ~~(y)~~ any reference to “law” includes all statutes, regulations, New Zealand Standards, codes of practice and local authority rules;
- (x) ~~(z)~~ any reference to this Code (or any part of it) which forms part of a TSA by virtue of clause 4.2 of that TSA shall be deemed to be a reference to that TSA (or a corresponding clause of it);
- (y) ~~(aa)~~ all references to monetary values shall refer to New Zealand currency;
- (z) ~~(bb)~~ any reference to the “date of this Code” means 1 October ~~2018~~2019; and
- (aa) ~~(cc)~~ this Code shall be interpreted (and First Gas shall exercise its discretion under it) in a manner consistent with the objectives set out section 43ZN of the Gas Act 1992 (*Act*) and the objectives set out in Government Policy Statements on gas prepared under section 43ZO of the Act.

1.3 Nothing in this Code shall apply to or amend an Existing Supplementary Agreement or Existing Interconnection Agreement unless, and only to the extent, that Existing Supplementary Agreement or Existing Interconnection Agreement (as applicable) provides for that application or amendment.

## 2 TRANSMISSION SERVICES

### **Gas Transmission Capacity**

- 2.1 First Gas shall provide Gas transmission capacity only to Shippers, as:
- (a) DNC; and/or
  - (b) Supplementary Capacity; and/or
  - (c) Interruptible Capacity.
- 2.2 First Gas will provide Gas transmission capacity up to the prevailing Operational Capacity and, subject to the terms of this Code, will operate the Transmission System in the manner as it may determine in order to do so.
- 2.3 Subject to the terms of this Code, First Gas shall at all times be able to receive Gas from a Shipper and, simultaneously, be able to make available equivalent Gas for that Shipper to take, up to [the](#) limits of that Shipper's MDQ and MHQ. First Gas will be deemed to have delivered Gas to a Shipper when that Shipper takes Gas at a Delivery Point.
- 2.4 First Gas shall have the right to co-mingle a Shipper's Gas with other Gas in the Transmission System and shall not be obliged to deliver the same Gas it receives from a Shipper at a Receipt Point to that Shipper at any Delivery Point.
- 2.5 First Gas will have control and possession of, and risk in, all Gas present in the Transmission System at any time.

### **No Preference or Priority**

- 2.6 First Gas will deal with all Shippers [and Interconnected Parties](#) on an [armsarm's](#) length basis and not prefer or give any priority to any Shipper [or Interconnected Party](#) except as expressly provided for in this Code.
- 2.7 If First Gas (or a Related Party of First Gas) operates a business as a gas producer, gas retailer or gas wholesaler (as those terms are defined in the Gas Act 1992) or is an Interconnected Party (*Related Business*), First Gas will deal with the Related Business on arm's length terms on the same basis as it would deal with any other Shipper or Interconnected Party in similar circumstances.

### **Uneconomic Transmission Services**

- 2.8 First Gas shall be under no obligation to provide transmission services, or additional transmission services where to do so would require the construction of material new assets which, in First Gas' reasonable opinion, would be uneconomic for First Gas, or not in the best interests of users of the Transmission System generally, taking into account the likely cost, incremental revenue and the business and technical risks associated with that construction.
- 2.9 Subject to *section 2.10*, First Gas may, on the expiry of 12 Months' written notice to all Shippers, discontinue providing transmission services to any Delivery Point from which DNC Charges for the preceding 12 Months are less than First Gas' reasonable estimate of the future average annual operating and maintenance costs of that Delivery Point (which First Gas shall include with its notice). For the purposes of this *section 2.9*, [in relation to Delivery](#)

Zones, DNC Charges for those 12 Months will be the aggregate DNC Charges for the relevant Delivery Zone multiplied by the metered quantity of that Delivery Point and divided by the aggregate metered quantity of the Delivery Zone.

- 2.10 In the circumstances described in *section 2.9* or where no Gas is taken at a Delivery Point for a continuous period of 12 months, First Gas will consult the Interconnected Party to determine whether it considers there is any reasonable likelihood of demand for transmission services being sufficient to generate DNC Charges at least equal to First Gas' reasonable estimate of the future average annual operating and maintenance costs of that Delivery Point (*Ongoing DP Cost*). If the Interconnected Party is unaware of any such future demand, and either does not require the Delivery Point to be kept open or is unwilling to pay the fee determined by First Gas to cover the Ongoing DP Cost, First Gas may notify Shippers of its intention to disestablish that Delivery Point with effect from the date that is 20 Business Days from the date of such notification.

**Reasonable and Prudent Operator Obligations**

- 2.11 First Gas shall act as a Reasonable and Prudent Operator when exercising or performing any of its rights, powers, obligations and duties under this Code.
- 2.12 Each Shipper shall act as a Reasonable and Prudent Operator when exercising or performing any of its rights, powers, obligations and duties under this Code.



### 3 TRANSMISSION PRODUCTS AND ZONES

#### **Daily Nominated Capacity**

- 3.1 DNC is First Gas' standard Gas transmission capacity product. DNC:
- (a) is obtainable only by Shippers, via the nomination processes set out in *section 4*;
  - (b) cannot be transferred or traded;
  - (c) may be curtailed by First Gas in the circumstances described in *sections 9 and 10*; and
  - (d) cannot be used in conjunction with Supplementary [Capacity](#) or Interruptible Capacity [to supply the same customer except as expressly provided in the relevant agreement relating to such Supplementary Capacity or Interruptible Capacity](#).

#### **Receipt Zone**

- 3.2 First Gas will publish the Receipt Points included in the Receipt Zone on OATIS, including any new Receipt Point added to that Receipt Zone. Where First Gas determines that an additional receipt zone needs to be defined (including to accommodate an existing Receipt Point), it will raise a Change Request to that effect.

#### **Delivery Zones**

- 3.3 By 30 June each year, First Gas will notify all Shippers of the Delivery Zones to apply at the start of the next Year. In determining Delivery Zones First Gas will have regard to:
- (a) the Available Operational Capacity it expects to be available at the constituent Delivery Points (both individually and as a group);
  - (b) the geographical location and other similarities of the constituent Delivery Points;
  - (c) current and any expected material changes in offtake; and
  - (d) the merits of the constituent Delivery Points having the same transmission fees.

#### **Congestion and Priority Rights**

- 3.4 Pursuant to *section 3.3*, First Gas will use reasonable endeavours to identify, and notify all Shippers (and the relevant Interconnected Party) of any Delivery Point likely to experience Congestion during the next Year and in what periods of that Year. Subsequently, to avoid or manage any such Congestion, First Gas will determine whether:
- (a) new investment in the Transmission System is, or may be technically and economically feasible; and/or
  - (b) sufficient Interruptible Load can be obtained; and/or
  - (c) Priority Rights (*PRs*) may need to be utilised.

#### **Interruptible Load**

- 3.5 Pursuant to *section 3.4(b)*, First Gas will notify Shippers of the amount of Interruptible Load [that](#) would provide a useful Congestion Management tool for the affected Delivery Point(s).

- 3.6 On receipt of a notice under *section 3.5*, each Shipper using the specified part of the Transmission System will use reasonable endeavours to ascertain whether any End-user it supplies (who must meet the requirements set out in *section 3.8*) would be willing to provide any part of the required Interruptible Load.
- 3.7 Each Shipper will notify First Gas of any End-user willing to provide Interruptible Load, and provide any information in relation to that End-user that First Gas may reasonably require. Where First Gas agrees that an End-user could provide suitable Interruptible Load it will use reasonable endeavours to negotiate an Interruptible Agreement with the Shipper in respect of that End-user.
- 3.8 First Gas will publish on OATIS reasonable eligibility criteria which an End-user willing to provide Interruptible Load must meet. The criteria may vary depending on where First Gas requires Interruptible Load and may include that an End-user:
- (a) is located where its offtake, if curtailed, would be useful in relieving Congestion;
  - (b) normally uses more than 500 GJ/Day;
  - (c) normally uses more than 50 GJ/Hour;
  - (d) has a TOU Meter, which First Gas can interrogate via telemetry or SCADA;
  - (e) is contactable by First Gas at any time;
  - (f) fully understands its contractual obligations and is both willing and able to comply with them at all times; and
  - (g) has not previously failed to comply with a valid curtailment notice from First Gas.
- 3.9 First Gas will notify all Shippers if it does not obtain sufficient Interruptible Load pursuant to *section 3.7*, together with the amount of Interruptible Load it still requires.
- 3.10 Notwithstanding any other provision of this *section 3*, First Gas may publicly notify its requirement for Interruptible Load via its website or via OATIS, and:
- (a) if an End-user responds by contacting First Gas or a Shipper, First Gas and that Shipper shall cooperate to ascertain whether the End-user meets First Gas' then current eligibility criteria and, if so, is willing to become an interruptible End-user; and
  - (b) use reasonable endeavours to negotiate an Interruptible Agreement.
- 3.11 Where First Gas enters into an Interruptible Agreement for the purposes of Congestion Management, First Gas will notify all Shippers via OATIS of the Delivery Point(s) at which the Available Operational Capacity will increase as a result (each a *Beneficiary DP*) and publish the agreement on OATIS. First Gas will recover all amounts payable to the relevant Shipper from Shippers using a Beneficiary DP as set out in *section ~~11.11~~ 11.12*.
- 3.12 Nothing in this *section 3* shall oblige First Gas to enter into any Interruptible Agreement. First Gas may terminate any Interruptible Agreement by notice to the relevant Shipper with

immediate effect if the relevant End-user fails to comply with a valid curtailment notice given by First Gas under that Interruptible Agreement.

### **Priority Rights**

- 3.13 If, pursuant to *section 3.4*, First Gas determines that PRs will need to be utilised (including where it intends to invest to avoid Congestion but that that investment cannot reasonably be completed in time), First Gas will notify all Shippers (and affected Interconnected Parties) as soon as practicable.
- 3.14 Each Priority Right (*PR*) gives the holder priority access to Approved NQ (namely DNC, where one (1) PR represents one (1) GJ of MDQ) for the PR Term, provided that to use its PRs a Shipper must nominate one (1) GJ of NQ per PR [held by the Shipper](#) in accordance with *section 4*. A Shipper may use its PRs in any nominations cycle to the extent that, in an Intra-Day Cycle, *section 4.16* ~~(b)~~ is not contravened in respect of any other Shipper.
- 3.15 Subject to *section 3.16*, PRs will apply only at the Congested Delivery Point for which they are allocated and cannot be used at, or transferred to, any other Congested Delivery Point.
- 3.16 Where Congestion affects more than one Delivery Point in a Delivery Zone, First Gas may define PRs as being applicable to the Congested Delivery Points as a group.

### **Obtaining Priority Rights**

- 3.17 First Gas will allocate PRs exclusively by auction (each a *PR Auction*) to Shippers only. First Gas will, in respect of each Congested Delivery Point notified pursuant to *section 3.13*, schedule a PR Auction for the first Business Day of the Month prior to the first Month in which it expects Congestion to occur (*Scheduled PR Auction*), provided that:
- (a) this *section 3.17* will apply only after the date of this Code; and
  - (b) First Gas may cancel any Scheduled PR Auction where it considers a Delivery Point (or more than one) will no longer be affected by Congestion.
- 3.18 First Gas will develop the terms and conditions applicable to any PR Auction (*Auction TCs*) in consultation with Shippers, and those Auction TCs will be subject to approval by the GIC applying the criteria for changing this Code set out in *section 17.11*. Any amendment to the Auction TCs will also require consultation with Shippers, and ~~GIC approval~~ [will be subject to approval by the GIC applying the criteria for changing this Code set out in section 17.11](#). The Auction TCs must be published on OATIS no later than 30 Business Days before any PR Auction.
- 3.19 First Gas will notify Shippers not later than ~~10~~20 Business Days [\(or, if circumstances require a shorter period of time, such shorter period of time\)](#) before a Scheduled PR Auction of the:
- (a) Delivery Point(s) for which PRs are to be offered;
  - (b) PR Effective Date and PR Term;
  - (c) estimated Available Operational Capacity during the PR Term, and how First Gas determined that;

- (d) number of PRs on offer, together with an explanation as to the determination of that number in relation to the estimated Available Operational Capacity; and
- (e) Reserve Price.

3.20 In any PR Auction, a Shipper may bid for up to five tranches of PRs provided that its bid price for each tranche (\$ per PR per Day) must be different. Promptly following each PR Auction, First Gas will rank all valid bids in descending order of bid price, treating bids for different tranches of PRs as separate bids. First Gas will then allocate:

- (a) to the highest price bidder the number of PRs equal to the lesser of the number it bid for and the number on offer; and
- (b) remaining PRs to bidders in descending order of bid price until either all PRs on offer have been allocated or all bidders' requests have been satisfied,

provided that:

- (c) no bid lower than the Reserve Price will be considered;
- (d) equal price bids will be ranked equally; and
- (e) if the number of PRs remaining to be allocated is less than the number bid for in the next lowest priced tranche or tranches, those PRs will be allocated to:
  - (i) that bidder; or
  - (ii) if there is more than one bidder with the same bid price, a whole number to all bidders pro-rata in proportion to the number of PRs for which the bidders bid the same price; and

First Gas will then promptly notify each Shipper of the PRs allocated to it (if any) and publish each Shipper's holdings of PRs on OATIS.

3.21 Subject to *section 3.22*, a Shipper may trade whole numbers only of PRs with any other Shipper at any time (with the transfer of PRs occurring during the PR Term), using the trading platform specified by First Gas for that purpose (which may be part of OATIS). In relation to any trade, the parties must enter on the trading platform:

- (a) the name of the Congested Delivery Point;
- (b) the identities of the buyer and seller;
- (c) the number of PRs to be traded; and
- (d) the Day on which the trade will become effective (which must be after the Day on which the trade is lodged).

After any trade becomes effective, First Gas will update the Shippers' PR holdings on OATIS. No trade of PRs will affect the relevant PR Effective Date or PR Term.

3.22 Promptly following any agreement to trade PRs, the buyer must notify First Gas of the amount payable to (or by) the seller for the total PRs to be traded (the *Trade Price*, expressed as positive or negative \$/PR). The Trade Price is separate from, and unrelated to, the Priority Rights Charge, which will continue to be payable by the Shipper who holds the PRs at any time. First Gas will publish the Trade Price on OATIS. First Gas will have no responsibility for, or role in relation to, the Trade Price.

3.23 Where a Shipper holds PRs in respect of a Delivery Point and has previously supplied, but no longer supplies, Gas to an End-user at that Delivery Point, that Shipper will use its reasonable endeavours to promptly trade those PRs in accordance with section 3.21 where it has no legitimate interest in continuing to hold those PRs.

3.24 ~~3.23~~ Each Shipper must pay Priority Rights Charges for all PRs it obtains pursuant to section 3.20 and/or section 3.21, whether it uses those Priority Rights or not.

#### **Congestion that Arises or Abates During a Year**

3.25 ~~3.24~~ First Gas will notify all Shippers as soon as practicable if a Delivery Point (or more than one) is expected to experience, or experiences, Congestion during a Year that was not foreseen prior to that Year. Subject to providing all Shippers (and the affected Interconnected Party) with the information referred to in section 3.19(a) to (e) ~~not less than 15 Business Days prior,~~ within the timeframes specific in section 3.19, First Gas may hold a PR Auction for the affected Delivery Point(s). From the PR Effective Date, the Congested Delivery Point(s) will be excluded from the relevant Delivery Zone.

3.26 ~~3.25~~ Where in its reasonable judgement a Delivery Point ceases to be affected by Congestion during a Year, First Gas will:

- (a) promptly notify all Shippers and the relevant Interconnected Party of that via OATIS and, where relevant and from the date it shall specify, include that Delivery Point in a Delivery Zone;
- (b) allow any Shipper to cancel any number of the PRs it holds at the relevant Delivery Point(s) with effect on any Day on or after the date specified in any notice provided under section ~~3.25(a)~~ 3.26(a) and in such circumstances the Shipper may cancel such PRs by giving written notice to First Gas (but if it does not such PRs shall continue); and
- (c) update Shippers' amended holdings of PRs on OATIS as required.

#### **Agreed Hourly Profiles Peaking Parties and Agreed Hourly Profiles**

~~3.26 An Agreed Hourly Profile (AHP) is intended to provide an additional means for both a Shipper and First Gas to manage transmission capacity in respect of an End-user whose use of Gas is unusually variable.—~~

3.27 First Gas acknowledges that certain Receipt Points and Delivery Points may have gas injection profiles or gas take profiles (as applicable) which have the potential to materially impact other users of the Transmission System and in respect of which Hourly nominations are to be provided by the relevant Shippers.

3.28 A Peaking Party is any Shipper who uses, or an OBA Party who controls, a Receipt Point or Delivery Point where First Gas determines (and notifies such Shipper or OBA Party

accordingly) from time to time that a gas producer using such Receipt Point or an End-user supplied by the Shipper using such Delivery Point materially impacts or has the potential to materially impact the availability of the Transmission System and/or use of the Transmission System by other users (including having regard to whether:

- (a) gas producers or End-users that can inject or take more than 1/16 of their Daily Gas quantity in an Hour;
- (b) gas producers or End-users can increase or decrease their Gas injection or take within an Hour in a manner that can adversely affect other users of the Transmission System;
- (c) either:
  - (i) gas producers have the capacity to inject Gas at a rate that can adversely affect the Line Pack and/or pressure in the Receipt Zone or Transmission System; or
  - (ii) End-users have the capacity to take Gas at a rate that can adversely affect the Line Pack and/or pressure in the relevant part of the Transmission System; and/or
- (d) gas producers or End-users are in control of their injection or usage (as applicable) of Gas).

3.29 Not less than once each Year, First Gas shall review whether each of the relevant gas producers or End-users continue to satisfy the criteria set out in section 3.28 and whether there are any other users (or potential users) of the Transmission System who do, or may, satisfy such criteria. First Gas shall publish on OATIS a list of gas producers, End-users and the relevant interconnected points served by a Peaking Party no later than three months prior to the date of this Code and three Months prior to the start of each Year thereafter (and shall update it as required). Each Shipper shall promptly notify First Gas if it supplies, or proposes to supply, Gas to an End-User that meets, or may meet, the requirements of section 3.28. First Gas shall give written notice to a Peaking Party if it ceases to be a Peaking Party.

3.30 ~~3.27 A Shipper may~~Where a Shipper is a Peaking Party, or where a Shipper takes gas from, or supplies gas to or through (including to an End-User), an OBA Party who is a Peaking Party, then such Shipper must, using the relevant functionality provided on OATIS, requestprovide an AHP in ~~any nominations cycle for a Dedicated Delivery Point only. The OATIS functionality will distinguish the transmission capacity corresponding to the AHP from that corresponding to DNC.~~each nominations cycle in respect of the relevant Receipt Points and/or Delivery Points. The sum of the Hourly amounts of transmission capacity requested by the Shipper in respect of a Delivery Point and the Hourly quantities requested by the Shipper in respect of a Receipt Point in each case in respect of a Day and point shall be the relevant Shipper's nominations for the relevant Day and point for the purposes for sections 4.7 to 4.10. The sum of the Hourly amounts of transmission capacity nominated by a Shipper (including as amended in a later nominations cycle) and approved by First Gas shall be the Shipper's DNC in respect of the relevant Delivery Point.

~~3.28 An AHP can only be requested in advance. An AHP may be for part of a Day and/or a full Day (or Days) up to a maximum of 7 Days. An AHP must commence at a time corresponding to the start of a nominations cycle. An AHP that starts on a Day must include all Hours from the time it starts until the end of that Day.~~

~~3.29 No AHP may reduce the Shipper's DNC below the amount determined in accordance with section 4.16(b).~~

~~3.30 An AHP amends DNC. For all purposes of this Code, DNC amended by an AHP shall be treated as "standard" DNC unless specifically stated otherwise. The Shipper's DNC shall be, where an AHP applies for:~~

~~(a) a full Day, equal to the sum of the Hourly amounts of transmission capacity set out in the AHP; or~~

~~(b) part of a Day, equal to:-~~

$$\text{DNC}_P \times H/24 + \sum \text{HTC}_{\text{AHP}}$$

~~where:~~

~~DNC<sub>P</sub> is the Shipper's DNC at the time the AHP starts;~~

~~H is the number of hours between 00:00 on the Day until the AHP start time; and~~

~~∑HTC<sub>AHP</sub> is the sum of the Hourly amounts of transmission capacity from the AHP start time until the end of that Day.~~

3.31 First Gas will approve, curtail or reject AHPs pursuant to sections 4.14 and 4.15. First Gas will approve any requested AHP except where that would:

(a) adversely impact other users of the Transmission System;

(b) ~~(a)~~ require it to curtail any Shipper's request:

~~(i) in the same nominations cycle, for DNC; and/or~~

(i) ~~(ii)~~ previously approved DNC ; and/or

(ii) Supplementary Capacity;

(c) ~~(b)~~ exceed the physical MHQ for the relevant Receipt Point specified in the interconnection agreement relating to that Receipt Point;

(d) exceed the physical MHQ of the relevant Receipt Point or Physical MHQ of the relevant Delivery Point; or

(e) ~~(c)~~ unduly increase the risk of breaching an Acceptable Line Pack Limit; or the requirements relating to maintaining Target Taranaki Pressure set out in section 3.33.

3.32 ~~Subject to section 4.16(b), where it is unable to approve a Shipper's request for an AHP, First Gas will offer the most DNC it reasonably can. A Shipper using Supplementary Capacity shall not be a Peaking Party in relation to the use of such Supplementary Capacity.~~

### **Target Taranaki Pressure**

- ~~3.33 First Gas may curtail any previously approved AHP where it determines that is necessary to avoid breaching an Acceptable Line Pack Limit or having to curtail DNC or Supplementary Capacity. Where it does so after the AHP start time, First Gas will convert the AHP into Approved NQ (or an adjustment to the Approved NQ prior to the start of the AHP). 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:~~
- ~~3.34 A Shipper may cancel a previously approved AHP only via OATIS, provided that the Shipper may not, on a Day, cancel an AHP that starts on that Day in respect of that Day. A Shipper may, on any Day, cancel a previously approved AHP in respect of all subsequent Days to which it applies.~~
- ~~3.35 Subject to section 4.16(b), once an AHP has started, a Shipper may not, on that Day, revert to nominating DNC for that Day but may, in accordance with section 3.27, request a change in that AHP:~~
- ~~(a) 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~~
  - ~~(b) 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 this Code and interconnection agreements.~~

If necessary in order for First Gas to comply with its obligations under this section 3.33 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 any rights to adjust or curtail any gas flow and/or relevant nominations (including pursuant to section 4 and/or 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).



## 4 NOMINATIONS

### Receipt Nominations

~~4.1 Where an OBA (or other arrangement requiring Shipper nominations) applies at a Receipt Point:~~

~~4.1 (a) each~~Each Shipper using ~~that~~a Receipt Point shall notify its NQs in accordance with sections 4.8, 4.9 and 4.10; ~~and (b) — the 4.10. The~~ Interconnected Party ~~will be may (and, if~~ required ~~(under its ICA, will) to approve or,~~ curtail or reject those NQs, including in accordance with section 4.12-4.12 as applicable.

4.2 First Gas will not be required to approve ~~or,~~ curtail or reject NQs at any Receipt Point (other than in relation to AHPs). First Gas may curtail gas flow and/or associated nominations at a Receipt Point in the circumstances referred to in section 9.1.

### Delivery Zone Nominations

4.3 A Shipper wishing to obtain DNC at one or more Delivery Points in a Delivery Zone shall notify a single, aggregate NQ for that Delivery Zone in accordance with sections 4.8, 4.9 and 4.10.

### Individual Delivery Point Nominations

4.4 Subject to section 4.5, each Shipper wishing to obtain DNC at an Individual Delivery Point shall notify a separate NQ for that Individual Delivery Point in accordance with sections 4.8, 4.9 and 4.10.

4.5 Where the Interconnected Party at an Individual Delivery Point specifies that an OBA will apply, its ICA will require that Interconnected Party to approve ~~or,~~ curtail or reject Shippers' NQs in accordance with section 4.12.

4.6 At a Congested Delivery Point, a Shipper's NQ may be less than, equal to or more than the number of PRs it holds (if any).

### Nominations Cycles

4.7 The nomination cycles referred to in sections 4.8, 4.9 and 4.10 shall apply in respect of:

(a) each Receipt Point ~~at which section 4.1 applies~~; and

(b) all Delivery Zones and Individual Delivery Points.

4.8 Each Shipper must notify First Gas of its NQs for each Day of the following Week via OATIS (each a *Provisional NQ*) before the Provisional Nominations Deadline. If it fails to do so, the Shipper's Provisional NQs shall be deemed to be zero.

4.9 A Shipper may replace any Provisional NQ before the Changed Provisional Nominations Deadline by notifying First Gas of a changed NQ via OATIS (a *Changed Provisional NQ*). Any unchanged Provisional NQ will automatically be deemed to be that Shipper's Changed Provisional NQ.

4.10 Subject to ~~section 4.16(a) or (b) (as the case may be),~~ 4.16, a Shipper may replace any Changed Provisional NQ before the relevant Intra-Day Nominations Deadline by notifying First Gas of a changed NQ via OATIS (an *Intra-Day NQ*).

4.11 First Gas will make provision in OATIS for not less than 4 Intra-Day Cycles, at times published on OATIS. Before making any change to the number of Intra Day Cycles or to the timing of any Intra-Day Cycle, First Gas will consult all Shippers and Interconnected Parties and provide not less than 60 Business Days' notice of that change. First Gas may only reduce the number of Intra-Day Cycles to less than 4 Intra-Day Cycles by way of a Change Request.

**~~OBA Party~~ NQ Confirmation**

4.12 Pursuant to ~~sections 4.1(b) and 4.5~~ and subject to ~~section 4.16(a),~~ 4.16, the Interconnected Party under its ICA:

(a) must either approve ~~or~~, curtail or reject Shippers' NQs (including under any AHP) on OATIS not later than 30 minutes after the Provisional Nominations Deadline, Changed Provisional Nominations Deadline or Intra-Day Nominations Deadline (as the case by be); and

(b) if it fails to do so, will be deemed to have approved each applicable NQ.

For the purposes of this *section 4.12*, First Gas will ~~ensure~~ provide in the relevant ICA for the Interconnected Party ~~has to have~~ the required access to OATIS.

4.13 Under an OBA:

(a) at a Receipt Point, the aggregate of Shippers' NQs the Interconnected Party approves pursuant to *section 4.12* will be that OBA Party's Scheduled Quantity for that Day;

(b) at a Delivery Point:

(i) the aggregate of Shippers' NQs the Interconnected Party approves pursuant to *section 4.12* will be its Proposed Scheduled Quantity for that Day; and

(ii) the aggregate of Shippers' NQs First Gas approves pursuant to *section 4.14* (which may be less, but shall not be more, than the Proposed Scheduled Quantity) will be that OBA Party's Scheduled Quantity for that Day.

**First Gas Analysis and Response**

4.14 In respect of all Delivery Zones and Individual Delivery Points and in respect of AHPs at applicable Delivery Points and Receipt Points, First Gas will, as soon as practicable and no later than 1 hour after:

(a) the Provisional Nominations Deadline;

(b) the Changed Provisional Nominations Deadline; and

(c) each Intra-Day Nomination Deadline,

analyse Shippers' NQs and Shippers' NQs approved by Interconnected Parties as required (including Shippers' AHPs as applicable), and ~~7~~ via OATIS, ~~7~~ notify each Shipper ~~of its~~ (and where

applicable the relevant Interconnected Party that approves its NQ pursuant to section 4.12 or 4.13 of the Shipper's Approved NQs (being that Shipper's DNC) for a Delivery Point or Delivery Zone) and also whether there is, or is expected to be, Congestion at a Delivery Point.

4.15 Pursuant to *section 4.14*, First Gas will have regard to:

- (a) the Available Operational Capacity;
- (b) where applicable, ~~request~~requests for Interruptible Capacity;
- (c) where applicable, a Shipper's holdings of Priority Rights; and
- (d) ~~section 4.16(b)~~4.16.

and where it is unable to approve a Shipper's NQ (including an AHP) in full due to Congestion or where section 9.1 applies First Gas will curtail that NQ in accordance with ~~section 10.3~~10.3 and any applicable ICA.

#### **Deemed Flows**

4.16 ~~Any~~Where an AHP applies, no AHP may amend Hourly nominations already made in respect of an Hour were gas has already flowed in that Hour. Where an AHP does not apply, any decreased NQ requested in an Intra-Day Cycle ~~will~~may be approved, provided that:

- (a) at any Receipt Point ~~or~~(irrespective of whether or not an OBA applies) or at a Delivery Point where an OBA applies, any change (including as agreed by the relevant OBA Party and Shippers (as applicable)) on that Day to the most recent Scheduled Quantity shall be subject to the limitation that 1/24<sup>th</sup> of the Scheduled Quantity applicable in each previous Hour of that Day (an *Hourly SQ*) shall be deemed to have flowed and, accordingly, the decreased Scheduled Quantity (for a Receipt Point) or ~~deceased~~decreased Proposed ~~Schedule~~Scheduled Quantity (for a Delivery Point), respectively, shall not be less than the sum of the Hourly SQ for all the Hours of that Day up to and including the Hour in which the Intra-Day NQ must be approved; and
- (b) for any Delivery Zone or Individual Delivery Point where an OBA does not apply, no Intra-Day NQ for that Day shall be less than the most recent Approved NQ divided by 24 and multiplied by the number of Hours since the start of that Day up to and including the Hour in which that Intra-Day NQ must be approved.

#### **NQ auto-approval**

4.17 Auto-approval of NQs pursuant to ~~sections 4.1(b)~~4.1, 4.5 and 4.14 (up to an adjustable, pre-set limit in OATIS) may be used.

#### **Extra Nominations Cycle**

4.18 If practicable, First Gas will provide one (or more) Intra-Day Cycles in addition to those referred to in *section 4.11*, for use where:

- (a) a Shipper experiences an unforeseeable material change in either:
  - (i) its receipts of Gas, due to a gas supplier's unplanned production outage; or

- (ii) a major customer's (or, where it is an End-user, its own) demand for Gas due to a plant or process malfunction including, where it loses the use of an alternative fuel, ~~its~~ demand for Gas materially increases or decreases; or
- (b) an ~~OBA~~Interconnected Party experiences an unforeseeable and material unplanned production outage or, where it is an End-user, a problem of the kind referred to in *section 4.18(a)(ii)*; or
- (c) First Gas experiences technical problems with any part of the Transmission System which reduces Operational Capacity or, following earlier technical problems, Operational Capacity is restored to previous levels,

(each an *Extra ID Cycle*).

- 4.19 An affected Shipper or ~~OBA~~Interconnected Party ~~must~~may request First Gas to provide an Extra ID Cycle, and provide a reasonable explanation of the unforeseeable material change that has occurred. First Gas may itself (without any such request from a Shipper or Interconnected Party) provide an Extra ID Cycle. First Gas will notify all Shippers and ~~OBA~~Interconnected Parties if the Extra ID Cycle will be available, not later than 1 hour prior to the Intra-Day Nomination Deadline of that cycle. ~~First Gas will publish the name of the person who requested the Extra ID Cycle on OATIS, together with that person's explanation of the need for it, whether it agrees to the Extra ID Cycle or not.~~
- 4.20 Any Extra ID Cycle will be available at all Receipt Points and Delivery Points, and to First Gas and all Shippers and ~~OBA~~Interconnected Parties, and all relevant provisions of the normal nominations cycles will apply.
- ~~4.21~~ As soon as practicable and not later than 2 Business Days after the Extra ID Cycle, the person who requested it shall provide First Gas with a report on the circumstances which led it to request that Extra ID Cycle, together with the reasons why that person was unable to use alternative means to rectify, remedy, shorten or mitigate those circumstance. ~~First Gas will publish that report on OATIS.~~

**Nominations for Allocation group 4 and 6 customers**

- 4.22 The provisions of sections 4.23, 4.24 and 11.7 will apply in respect of Shippers (Specified Shippers) who deliver Gas to customers or users in allocation groups 4 and 6 under the Downstream Reconciliation Rules (Specified Customers) to the extent they ship Gas to such customers or users in or using a Delivery Zone or a Delivery Point (other than any Congested Delivery Point). Those provisions shall not apply in respect of Gas shipped to customers or users who are not in allocation groups 4 and 6 or in respect of a Congested Delivery Point, and Shippers are to make nominations in respect of such Gas deliveries pursuant to the other provisions of this Code (including, where applicable, in addition to any automated nominations made pursuant to section 4.23) and the other provisions of this Code shall apply accordingly.
- 4.23 First Gas will make automated nominations in accordance with sections 4.8 to 4.10 in respect of Gas to be delivered by Specified Shippers to Specified Customers on each Day on the following basis:
- (a) such automated nominations will be made one Hour before the relevant Provisional Nominations Deadline, the Changed Provisional Nominations Deadline and the Intra-Day Nominations Deadline in respect of each Day in accordance with the Specified Shipper Nomination SOP;
  - (b) the Specified Shipper Nomination SOP will specify an algorithm which will determine the relevant automated nomination to be made by First Gas for Specified Shippers (in respect of and to the extent they deliver Gas to Specified Customers). First Gas will not be required to apply any discretionary judgement or forecasting capability in respect of the automated nominations;
  - (c) the automated nominations will not apply in respect of Gas deliveries made or to be made by Specified Shippers to Delivery Zones or Delivery Points where those Gas deliveries are not for Specified Customers;
  - (d) an Auto-Nomination Charge under section 11.7 shall apply each Day in relation to automated nominations and related Gas deliveries by Specified Shippers in respect of Specified Customers in lieu of any Daily Overrun Charge or Daily Underrun Charge under section 11.4;
  - (e) a Specified Shipper may amend or overwrite in OATIS the automated nomination provided by First Gas before the relevant Provisional Nominations Deadline, the Changed Provisional Nominations Deadline and the Intra-Day Nomination Deadline in respect of each Day (and such amended or overwritten nominations will apply for all purposes under this Code). No previous automated nomination nor section 11.7 shall apply in respect of such Day;
  - (f) if, in respect of a Day, and a Delivery Zone or a Delivery Point, a Specified Shipper amends or overwrites an automated nomination provided by First Gas, First Gas will not provide any further automated nominations for any nomination cycle in respect of that Day and that Delivery Zone or Delivery Point;

- (g) if in respect of a Day a Specified Shipper does not amend or overwrite in OATIS an automated nomination, the relevant automated nominations provided by First Gas are to apply for all purposes under this Code (and shall constitute DNC for the purposes of this Code);
- (h) the automated nominations made by First Gas pursuant to this section 4.23 will be made by First Gas in good faith, but First Gas will have no liability for any Loss suffered by any Shipper or Interconnected Party as a result of or in connection with any such automated nomination; and
- (i) a Specified Shipper may notify First Gas in writing that it does not wish First Gas to provide automated nominations for its Specified Customers (such that the provisions of sections 4.22, 4.23 and 11.7 shall not apply to or in respect of such Specified Shipper). If a Specified Shipper wishes to resume having First Gas making automated nominations under sections 4.22 and 4.23, then it shall give written notice to First Gas not later than 20 Business Days before the start of any Year (and First Gas shall resume making automated nominations for such Specified Shipper from the start of such Year).

4.24 Each Specified Shipper will (including at the reasonable request of First Gas and irrespective of whether a Specified Shipper was given notice under section 4.23(i)) provide to First Gas, no later than three Months prior to the date of this Code and three Months prior to the start of each Year thereafter, the number, location, characteristics and other relevant information in respect of customers or users in allocation groups 4 and 6 under the Downstream Reconciliation Rules as further specified in the Specified Shipper Nomination SOP. If there is a material change in this information during the course of any Year, the Specified Shipper is to promptly provide updated information to First Gas.

## 5 ENERGY QUANTITY DETERMINATION

### Metering Required

- 5.1 Subject to *section 5.2*, there shall be Metering for every Receipt Point, Delivery Point and Bi-directional Point, which shall measure Gas ~~directly~~ quantities by direct measurement only and not by difference ~~or in any other indirect manner~~.
- 5.2 Where it believes that installing Metering would be technically impractical or uneconomic, First Gas may elect not to install Metering at a Delivery Point. In that event, First Gas may require each Shipper using that Delivery Point to provide it at the end of each Month with that Shipper's daily delivery quantities, determined by:
- (a) the Shipper itself (for example by aggregating the consumption of its customers downstream of that Delivery Point); or
  - (b) the Allocation Agent, where relevant,

and each Shipper shall do so by the time stipulated in the DRR at the time by which a Shipper must provide its customers' consumption data to the Allocation Agent.

### Unscheduled Testing of Metering

- 5.3 Subject to *section 5.4*, a Shipper who uses a Receipt Point, Delivery Point or Bi-directional Point (*Requesting Party*) may request First Gas to carry out (or request the carrying out of) an unscheduled test of Metering. First Gas shall comply with that request, provided that it shall not be required to ~~do so where it has tested that Metering within 30 days of the request, nor shall it be required to undertake an~~ undertake any unscheduled test of ~~Metering any~~ Metering within one Month before or one Month after any scheduled testing or in any event more frequently than once every ~~9 months~~ three Months. Where it undertakes an unscheduled test of Metering, First Gas will allow the Requesting Party or its representative to be present, and provide the Requesting 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:
- (a) Accurate, the Requesting Party will reimburse First Gas for all direct costs incurred by First Gas in undertaking the unscheduled testing; ~~and/or~~
  - (b) Inaccurate, First Gas shall:
    - (i) bear all costs it incurred in undertaking the unscheduled testing (but not any costs incurred by the Requesting Party or any other party); and
    - (ii) at its own cost and as soon as practicable, service, repair, recalibrate or replace the Metering (or relevant part thereof) to make it Accurate, and the requirements set out in ~~section 5.10~~ 5.9 shall apply.
- 5.4 Where First Gas is not the Metering Owner at any Receipt Point, Delivery Point or Bi-directional Point used by the Requesting Party:

- (a) the Requesting Party shall first exercise whatever contractual rights (including as a purchaser or transferee of Gas at the relevant point) it has to procure any unscheduled testing of the Metering; and
- (b) only where the Requesting Party is unable to procure the unscheduled testing pursuant to ~~part (a) of this section 5.4, 5.4(a)~~, shall it request First Gas to use whatever contractual rights First Gas may have in relation to the Metering Owner to procure the unscheduled testing provided that the Requesting Party reimburses First Gas for all costs it incurs in procuring that unscheduled testing.

First Gas may publish on OATIS a summary of the results of any testing (whether scheduled or unscheduled) of any Metering.

### **Energy Quantity Reports**

5.5 Subject to:

- (a) the Metering Owner (where not First Gas) making available to First Gas all the data that First Gas requires, First Gas will produce daily delivery reports (*DDRs*) and hourly delivery reports (*HDRs*) in accordance with *sections 5.6 to 5.7*; and
- (b) Shippers making available to First Gas their daily delivery quantities, First Gas will produce a *DDR* (but not an *HDR*) for each Delivery Point to which *section 5.2* applies,

and make those *DDRs* and *HDRs* available on OATIS in accordance with the timings set out in Schedule Two. Each *DDR* and *HDR* will be created in accordance with the Metering Requirements (including the standards defined in NZS 5259: 2015 for data conversion).

5.6 First Gas will produce separate *DDRs* and *HDRs* for each meter forming part of Metering and for the aggregate quantities of Gas injected or taken:

- (a) ~~(e)~~ where Metering is monitored by telemetry or SCADA, in respect of the *HDRs* each Hour and in respect of the *DDRs* each Day for all previous Days in the current Month; and
- (b) ~~(d)~~ for all other Metering, at the end of each Month for all Days of that Month in accordance with Schedule Two.

5.7 Each *DDR* and *HDR* shall be in the format agreed by First Gas and Shippers. Unless all Shippers agree in writing, the agreed format may be changed only using the provisions of *section 17*. For each Day or Hour (respectively), *DDRs* and *HDRs* will include the following information:

- (a) the name and identification number (as determined by First Gas) of the Receipt Point, Delivery Point or Bi-directional Point;
- (b) the date;
- (c) the time of the Day (*HDR* only);
- (d) uncorrected volume (cubic metres at flowing conditions);



- (e) metering pressure (HDR only);
- (f) metering temperature (HDR only);
- (g) compressibility correction factor (HDR only);
- (h) altitude correction factor (HDR only);
- (i) corrected volume (standard cubic metres);
- (j) Gross Calorific Value (in Megajoules per standard cubic metre); and
- (k) energy quantity (GJ).

**Gas Composition Data**

5.8 In relation to Gas taken at each Delivery Point First Gas will, in accordance with Schedule Two, publish on OATIS the following data:

- (a) the date;
- (b) daily average carbon dioxide and nitrogen content (in mole %);
- (c) daily average Gross Calorific Value (in ~~megajoules~~Megajoules per standard cubic metre); and
- (d) relative density (or specific gravity).

First Gas shall publish on OATIS not less than once during each Year a summary report describing the facilities, systems, procedures and monitoring it uses to verify that the data published pursuant to section 5.8 is accurate.

**Corrections for Inaccurate Metering**

5.9 Where Metering is found to be Inaccurate, First Gas will as soon as reasonably practicable following discovery:

- (a) correct previously calculated energy quantities in accordance with the Metering Requirements;
- (b) publish corrected HDRs and DDRs on OATIS;
- (c) notify all Shippers and the relevant Interconnected Party on OATIS; and
- (d) apply the necessary Wash-ups in accordance with the Wash-up ~~Agreement or, in the absence of such an agreement, in the manner it shall reasonably determine~~Schedule.

## 6 ENERGY ALLOCATIONS

### **Receipt Quantities under an Operational Balancing Arrangement**

- 6.1 [An Interconnected Party with an ICA at a Receipt Point may elect under its ICA whether an OBA applies at the Receipt Point.](#) Where an OBA applies at a Receipt Point, a Shipper's Receipt Quantity will be its Approved NQ.

### **Receipt Quantities under a Gas Transfer Agreement**

- 6.2 For all Receipt Points where an OBA does not apply, a Shipper's Receipt Quantity will be calculated by the Gas Transfer Agent in accordance with the relevant GTA. [Shippers shall not unreasonably delay entering into, or unreasonably withhold its approval of, a GTA.](#)
- 6.3 Under any GTA, the aggregate of Receipt Quantities allocated to all Shippers using that Receipt Point must equal the metered quantity of Gas on that Day, provided that the GTA will set out the rules the Gas Transfer Agent will use to determine each Shipper's ~~primary~~ allocation.
- 6.4 Each Shipper and First Gas shall ensure that every GTA includes a commitment by the Gas Transfer Agent to notify First Gas via OATIS of each Shipper's Receipt Quantities within the times published by First Gas on OATIS. First Gas must give Shippers at least 10 Business Days' notice of any change to those times.
- 6.5 First Gas will be the Gas Transfer Agent [for all relevant Receipt Points where an OBA does not apply](#) unless all Shippers agree in writing to appoint a replacement and First Gas considers that the replacement will properly fulfil the Gas Transfer Agent's role. Any replacement Gas Transfer Agent appointed in accordance with this *section 6.5* will retain that role unless all Shippers and First Gas [agree to](#) appoint another replacement in accordance with this *section 6.5*. Any Shipper using a Receipt Point must agree to the Gas Transfer Agent at that Receipt Point.

### **Secondary Trading of Gas**

- 6.6 Subject to *section 6.8*, any Shipper, OBA Party or First Gas may buy or sell Gas in the Receipt Zone via a GTA, Gas Market or using any relevant trading functionality provided on OATIS, for any reason, including to manage their respective Running Mismatches.
- 6.7 No Gas transfer or trade [in the Receipt Zone](#), whether completed via a GTA, Gas Market or OATIS, will be unwound, or the quantities of Gas transferred or traded changed, due to a Wash-up or any other reason.
- 6.8 It is the responsibility of the buyer and seller in respect of any Gas trade to ensure that First Gas is notified of that trade (whether via a GTA, Gas Market or OATIS) before Running Mismatches for that Day are calculated.

### **Delivery Quantities under an Operational Balancing Arrangement**

- 6.9 [An Interconnected Party with an ICA at a Delivery Point may elect under its ICA whether an OBA applies at the Delivery Point.](#) Where an OBA applies at a Delivery Point, a Shipper's Daily Delivery Quantity will be its Approved NQ.

### **Delivery Quantities under the Downstream Reconciliation Rules**

6.10 Subject to *section 6.11*, at each Delivery Point where the DRR apply, each Shipper's Daily Delivery Quantity will be determined by the Allocation Agent under the DRR.

6.11 Each Shipper agrees that at each Delivery Point ~~where the DRR apply~~, its "initial" ~~(as that term is defined in the DRR)~~ Daily Delivery Quantity (including as modified by a later special allocation, if applicable) for each Day will be determined:

(a) in accordance with the ~~industry agreement (approved by all Shippers and First Gas and which the GIC approves as being compatible with the DRR) and~~ DRR, as provided to First Gas by the Allocation Agent each Day in arrears; or

(b) as provided to First Gas by the GIC under the agreement between First Gas and the GIC dated 14 December 2015; or

(c) ~~(b)~~ if Daily Delivery Quantities are not provided pursuant to *section 6.11(a)* or 6.11(b) for any reason, ~~or in the absence of the industry agreement referred to in section 6.11(a)~~; by First Gas as soon as practicable after each Day as the quantity of Gas equal to:

$$(MQ - SQ_{TOTAL}) \times DNC_{SHIPPER} \div (DNC_{TOTAL} - SQ_{TOTAL})$$

where, for that Day and Delivery Point:

MQ is the metered quantity;

SQ<sub>TOTAL</sub> is the estimated aggregate Daily Delivery Quantity under ~~all~~ the applicable Supplementary Agreements and Existing Supplementary Agreements (if any), being the sum of:

- (i) the ~~metered deliveries (from~~ quantities derived from the relevant TOU Meters on the Distribution Network), to the extent available; and/or
- (ii) the approved nominated quantities of Supplementary Capacity, to the extent applicable; and/or
- (iii) the MDQ set out in each Supplementary Agreement and Existing Supplementary Agreement.

provided that SQ<sub>TOTAL</sub> may be no greater than MQ;

DNC<sub>SHIPPER</sub> is the Shipper's DNC for the Delivery Zone in which that Delivery Point is included; and

DNC<sub>TOTAL</sub> is the aggregate DNC of all Shippers for the Delivery Zone in which that Delivery Point is included.

### **Delivery Quantities at a Dedicated Delivery Point**

6.12 At each Dedicated Delivery Point (except where an OBA applies) there shall be an Allocation Agreement, irrespective of the number of Shippers using it.

6.13 Where ~~thesuch Dedicated~~ Delivery Point ~~is used by~~:

(a) is, or is reasonably expected to be, used by only one Shipper, First Gas (or, if agreed by First Gas and the relevant Interconnected Party, that Interconnected Party) will be the Allocation Agent and that Shipper's Daily Delivery Quantities and Hourly Delivery Quantities will be the respective metered quantities; and

(b) 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 quantities determined by the Allocation Agent appointed under the Allocation Agreement.

and any Shipper who proposes to start to make nominations in respect of or otherwise uses a Delivery Point to which section 6.13(b) applies will first execute an Allocation Agreement or become a party to the existing Allocation Agreement.

6.14 At any Delivery Point where an Allocation Agreement applies, each Shipper using that Delivery Point shall ensure that:

(a) it is or remains a party to an Allocation Agreement which sets out the allocation methodology ~~is~~ acceptable to the Interconnected Party and relevant Shippers;

(b) it ceases to be a party to an Allocation Agreement when it no longer has a contract for Gas supply downstream of the Dedicated Delivery Point;

(c) it allows a new Shipper to become a party to the Allocation Agreement, without frustrating or delaying that process, where that new Shipper has a contract for Gas supply downstream of the Dedicated Delivery Point; and

(d) ~~(b)~~ 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.

### **Delivery Quantities under Supplementary and Interruptible Agreements**

6.15 If First Gas enters into a Supplementary Agreement or Interruptible Agreement in respect of an End-user supplied via a Distribution Network, it will advise the Allocation Agent under the DRR of that agreement and its commencement and termination date.

6.16 Daily Delivery Quantities under any Supplementary Agreement, Existing Supplementary Agreement or Interruptible Agreement shall be the quantities determined by, and notified to, First Gas by the Allocation Agent under the DRR unless the relevant agreement specifies otherwise.

### **Finality of Allocation Results and Energy Quantities**

6.17 First Gas shall be entitled to rely on the Allocation Result, and the determination of any Receipt Quantity or Daily Delivery Quantity, and shall not be obliged to check or correct any Receipt Quantity or Daily Delivery Quantity.

**End-user Right ~~to Allocation Agreement~~**

- 6.18 Each Shipper acknowledges and agrees that the End-user at any Dedicated Delivery Point has the right, subject to the terms of any existing Gas supply agreement it may have, to buy Gas from more than one Shipper and to determine when, and how much Gas it buys from each Shipper.
- 6.19 ~~Subject to section 6.15, if~~ if the End-user at a Dedicated Delivery Point wishes to commence buying Gas from a new Shipper while continuing to buy Gas from an existing Shipper, ~~both or Shippers, all relevant~~ Shippers shall be or become party to an Allocation Agreement consistent with ~~section 6.18.6.14.~~

**Title to Gas and Risk**

- 6.20 Each Shipper warrants that it shall have good title to all Gas that:
- (a) it injects, or which is injected on its behalf, at a Receipt Point;
  - (b) it takes, or is deemed to take, at a Delivery Point; and/or
  - (c) it sells or transfers to another Shipper in accordance with this Code,
- free of any lien, charge, encumbrance or adverse claim (as to title or otherwise) and, where it acts as an agent for another person in respect of any of the activities referred to in this section 6.20, it makes the same warranty on behalf of that person ~~warrants the same. 6.21.~~

## 7 ADDITIONAL AGREEMENTS

### Supplementary Agreements

- 7.1 Any Shipper may at any time request First Gas to enter into a Supplementary Agreement [\(with such request to address each of the following criteria\)](#). First Gas will promptly evaluate that request against any of the following criteria:
- (a) the amount of transmission capacity requested, including whether providing it would affect Available Operational Capacity to the extent of impeding or forestalling opportunities more beneficial to First Gas and other users of the Transmission System;
  - (b) whether the Shipper (or End-user) can demonstrate that it has a practical opportunity to bypass the Transmission System or use an alternative fuel that is cheaper than Gas;
  - (c) whether the Shipper (or End-user) can demonstrate that paying First Gas' standard transmission fees would be uneconomic; and
  - (d) whether the Shipper (or End-user) is the sole user of the relevant Delivery Point or other transmission assets and those assets would cease to be useful were the End-user to cease using Gas.
- 7.2 When evaluating any request to enter into a Supplementary Agreement against the criteria referred to in *section 7.1*, First Gas will use the information available to it at that time. [If First Gas enters into a Supplementary Agreement \(but not otherwise\), it will publish on OATIS a summary of both the information provided by the Shipper under section 7.1 and the analysis undertaken by First Gas pursuant to this section 7.2 when evaluating the Supplementary Agreement request. Any decision whether to enter to a Supplementary Agreement, and the evaluation of any such request, is solely a matter for First Gas. First Gas shall maintain a publicly available Supplementary Agreement policy document.](#)
- 7.3 No Shipper has the right to require First Gas to enter into a Supplementary Agreement.
- 7.4 A Supplementary Agreement may vary the terms and conditions of the Code in relation to some or all of the following (and only the following) matters:
- (a) definitions of:
    - (i) the Receipt Point and/or Delivery Point;
    - (ii) the End-user;
    - (iii) Supplementary Capacity, including the MDQ and/or MHQ;
    - (iv) the transmission fees payable, including whether (and, if so, how and when) First Gas may redetermine them;
    - (v) the term of the agreement, including rights of renewal;

- (b) whether the Supplementary Capacity is constant or varies over time and/or whether and under what conditions it can be changed;
- (c) termination by either party in the event a Force Majeure Event renders the End-user unable to use Gas, or restore its use of Gas within a defined period of time;
- (d) whether a termination fee is required in the event such agreement is terminated before the intended expiry date and how that fee should be determined;
- (e) making that agreement conditional on (or otherwise incorporate) any of the following:
  - (i) the relevant Interconnected Party entering into an ICA with First Gas (or amending an Existing Interconnection Agreement)
  - (ii) the End-user entering into a TPA;
  - (iii) First Gas obtaining any necessary statutory or regulatory approvals;
  - (iv) the Shipper complying with its obligations under the DRR, Allocation Agreement or OBA; and
  - (v) the Allocation Agent providing First Gas with Daily Delivery Quantities and the Shipper agreeing to First Gas' use of those Daily Delivery Quantities for the purposes of the agreement;
- (f) whether or not to require the Shipper to make nominations to access the Supplementary Capacity (including by using the nominations processes set out in *section 4*);
- (g) setting the priority of Supplementary Capacity in relation to DNC with Priority Rights; and
- (h) requiring any End-user not directly connected to the Transmission System to have a TOU Meter at all times and, if First Gas so requires, facilitating First Gas' retrieval of data from that TOU Meter remotely via telemetry or SCADA.

7.5 A Supplementary Agreement will:

- (a) survive expiry or termination of this Code and/or the Shipper's TSA and shall continue in full force and effect for its term (subject to any early termination provisions); and
- (b) incorporate the provisions of any replacement transmission code or regulations, provided that the terms of the Supplementary Agreement will prevail in the event of any inconsistency.

7.6 Supplementary Agreements are not Confidential Information and First Gas will publish each in full on OATIS promptly after the date of the first gas flow under such agreement.

**Interruptible Agreements**

7.7 First Gas may, but shall not be obliged to, enter into an Interruptible Agreement:

- (a) to improve or maximise use of the Transmission System in circumstances where it considers Available Operational Capacity is insufficient and/or the relevant End-user has an alternative fuel; or
- (b) as a Congestion Management measure in accordance with *section 3*.

7.8 No Shipper has the right to require First Gas to enter into an Interruptible Agreement.

7.9 An Interruptible Agreement may vary the terms and conditions of the Code in relation to some or all of the following (and only the following) matters:

- (a) definitions of:
  - (i) the Receipt Point and/or Delivery Point;
  - (ii) the End-user;
  - (iii) Interruptible Capacity, including the MDQ and MHQ;
  - (iv) the transmission fees payable, including whether (and, if so, how and when) First Gas may redetermine them; and
  - (v) the term of the agreement;
- (b) the procedure for obtaining Interruptible Capacity (including by using the nominations processes set out in *section 4*);
- (c) making that agreement conditional on (or otherwise incorporate) any of the following:
  - (i) the relevant Interconnected Party entering into an ICA with First Gas (or amending an Existing Interconnection Agreement);
  - (ii) the relevant End-user entering into a TPA;
  - (iii) First Gas obtaining any necessary statutory or regulatory approvals;
  - (iv) ~~(iii)~~ the End-user, where not directly connected to the Transmission System, having a TOU Meter at all times and, if First Gas so requires, facilitating First Gas' monitoring of the End-user's offtake of Gas and retrieval of data from that TOU Meter remotely via telemetry or SCADA;
  - (v) ~~(iv)~~ the Shipper complying with its obligations under the DRR, Allocation Agreement or OBA; and
  - (vi) ~~(v)~~ the Allocation Agent providing First Gas with Daily Delivery Quantities and the Shipper agreeing to First Gas' use of those Daily Delivery Quantities for the purposes of the agreement;
- (d) enabling First Gas to curtail Interruptible Capacity at its sole discretion for any reason at any time, provided that where an Interruptible Agreement is a Congestion Management measure, it shall provide for First Gas to pay the Shipper the amounts set



out in that agreement to the extent that First Gas curtails the Interruptible Capacity provided under it.

- 7.10 An Interruptible Agreement will terminate automatically on expiry or termination of this Code and/or the Shipper's TSA.
- 7.11 Interruptible Agreements are not Confidential Information and First Gas will publish each in full on OATIS [promptly after the date of the first gas flow under such agreement.](#)

### **Interconnection Agreements**

- 7.12 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~~arm's length basis and not prefer or give any priority to any prospective or existing Interconnected Party except as expressly provided for in this Code ~~– (it being acknowledged that this requirement is for the benefit of both prospective and existing Interconnected Parties).~~ [First Gas shall maintain a publicly available interconnection policy document.](#)
- 7.13 Any ICA ~~must (without limitation) stipulate:~~ [entered into, or with a specified commencement date, on or after the date of this Code:](#)
- (a) ~~in relation to each Receipt Point, Delivery Point or Bi-directional Point it covers:~~ [subject to section 7.13\(c\), that relates to a Receipt Point is to contain at least the provisions set out in Schedule Five;](#)
- ~~(i) — the owner of such station and the land on which it is located, and of any other equipment and facilities located within the station;~~
- ~~(ii) — definition of the physical point(s) at which the Interconnected Party's pipeline, Distribution Network, gas producing or gas consuming facility connects to the Transmission System;~~
- ~~(iii) — the Maximum Design Flow Rate;~~
- ~~(iv) — the Minimum Design Flow Rate; and~~
- ~~(v) — that an Over Flow Charge will be payable for exceeding Physical MHQ;~~
- ~~(vi) — the other fees and charges payable by the Interconnected Party, including whether (and, if so, how and when) First Gas may redetermine them;~~
- (b) ~~the requirement for Metering (including its location, ownership and monitoring rights);~~ [subject to section 7.13\(c\), that relates to a Delivery Point is to contain at least the provisions set out in Schedule Six;](#)
- (c) ~~that, for every Receipt Point, or Bi-directional Point when operating as a Receipt Point:~~ [relates to a Bi-Directional Point is to contain the relevant provisions from Schedule Five and Schedule Six \(but shall not duplicate provisions\);](#)

- ~~(i) — the provisions of section 12.2 shall apply; and~~
- ~~(ii) — injection of gas into the Transmission System that is not Gas shall constitute a failure by the Interconnected Party to act as an RPO;~~
- ~~(d) — whether the pressure at which Gas is injected into or taken from the Transmission System is controlled (and if so, what the means of control are);~~
- ~~(e) — for any Receipt Point on First Gas' "400 line" between Oaonui and the Turangi Mixing Station as at the date of this Code, that First Gas will use reasonable endeavours to maintain the pressure in that line at or near the Bertrand Road Offtake between 42 and 48 bar gauge (Target Taranaki Pressure), subject to a Critical Contingency, Force Majeure Event, Emergency, Maintenance or the aggregate ERM of Shippers and/or OBA Parties, and that any change to the Target Taranaki Pressure shall be subject to a Change Request not to be effective earlier than 12 Months following its approval;~~
- ~~(f) — the Metering and other data First Gas must make available to the Interconnected Party and/or vice-versa;~~
- ~~(g) — the information the Interconnected Party must provide to First Gas concerning its scheduled and unscheduled outages, including:
  - ~~(i) — the reason for, and likely duration of that outage;~~
  - ~~(ii) — the extent of the expected reduction in the injection or take of Gas; and~~
  - ~~(iii) — for scheduled outages, the required notice,~~and that First Gas may publish that information on OATIS;~~
- ~~(h) — for any Receipt Point, limits on the rate at which any nominated quantity of Gas may be injected, provided that the Interconnected Party may request that it be able to inject Gas according to an agreed hourly profile;~~
- ~~(i) — that First Gas will produce and publish DDRs and HDRs for every Receipt Point, Delivery Point and Bi-directional Point irrespective of whether it owns the Metering;~~
- ~~(j) — whether Gas injected into or taken from the Transmission System must be odorised and, if so, the party responsible for odorisation;~~
- ~~(k) — the term of the agreement;~~
- ~~(l) — whether the Interconnected Party must pay a termination fee if the ICA is terminated (either in its entirety or in respect of a specific Receipt Point, Delivery Point and Bi-directional Point) before its intended expiry date, in what circumstances, and how that fee will be determined;~~
- ~~(m) — that construction of any new Receipt Point, Delivery Point or Bi-directional Point, or material upgrade of any such existing station is conditional on:
  - ~~(i) — compliance with First Gas' reasonable technical requirements;~~~~

- ~~(ii) approval of the design by First Gas' pipeline certifying authority before any construction begins; and~~
- ~~(iii) First Gas obtaining any necessary statutory or regulatory approvals;~~
- ~~(n) the method for allocating Gas quantities injected into or taken from the Transmission System, including an OBA;~~
- (d) (e) where it determines that an OBA will apply, that the Interconnected Party must comply with its obligations as an OBA Party; and 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;
- ~~(i) at a Receipt Point, will be eligible for credits of Over Flow Charges and ERM Charges payable by OBA Parties at all Receipt Points; or~~
- ~~(ii) at a Delivery Point, will be eligible for credits of Daily Overrun Charges, Daily Underrun Charges, Hourly Overrun Charges, Over Flow Charges and ERM Charges payable by OBA Parties at all Delivery Points where an OBA applies, to be determined (in both cases) pro rata based on the metered quantities of the Interconnected Party and all other OBA Parties at the relevant Receipt Points or Delivery Points;~~
- ~~(p) where an OBA does not apply, that the Interconnected Party must comply with its obligations under the relevant GTA or Allocation Agreement (as the case may be);~~
- ~~(q) whether nominations (to be notified in accordance with section 4) are required for any Receipt Point, Delivery Point and Bi-directional Point (including where an OBA does not apply);~~
- ~~(r) liabilities provisions consistent with those in section 16; and~~
- ~~(s) grounds for terminating the ICA (either in its entirety or in respect of a specific Receipt Point, Delivery Point and Bi-directional Point) and the consequences of termination (including requiring the Interconnected Party to disconnect from the Transmission System);~~
- (e) 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);
- (f) 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
- (g) 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).

- 7.14 Where this Code confers rights or places obligations on an Interconnected Party under an ICA, or an ICA refers to or incorporates sections or terms of this Code (including those common provisions specified in Schedule Five or Schedule Six to be included in ICAs), the relevant ICA will:
- (a) be deemed to be amended automatically if ~~and~~, when and to the ~~relevant~~ extent those rights or obligations in this Code, or ~~the~~ those sections or terms of the Code referred to or incorporated in that ICA ~~are amended;~~ (including those common provisions specified in Schedule Five or Schedule Six) are changed, amended or supplemented in accordance with this Code (including pursuant to section 17 of this Code); and
  - (b) survive expiry or termination of this Code and continue in full force and effect for the term specified in that ICA (subject to any early termination provisions); ~~and (e) —~~ the relevant terms of this Code incorporated into ICAs will continue in full force and effect for the term of that ICA unless First Gas and the Interconnected Party agree to amend them.
- 7.15 ICAs entered into pursuant to section 7.13 are not Confidential Information (and are not otherwise confidential). First Gas will ~~publish each~~ promptly after the date of the first gas flow under such ICA make available each such ICA (and any amendment) in full on OATIS and may otherwise disclose such ICA (and any amendment) to any other person.

## 8 BALANCING

### Applicability

8.1 The provisions of this *section 8* apply in respect of the entire Transmission System, irrespective of:

- (a) the number or location of Receipt Points and Delivery Points used by a Shipper; and
- (b) the location of any Receipt Point or Delivery Point at which an OBA applies.

### Primary Balancing Obligations

8.2 Subject to *section 8.16*, each Shipper shall use reasonable endeavours to ensure that each Day the aggregate of its Receipt Quantities matches the aggregate of its Daily Delivery Quantities, provided that:

- (a) each Shipper shall use reasonable endeavours to minimise its Running Mismatch; and
- (b) pursuant to ~~this-section 8.2(a)~~, the Shipper's Receipt Quantities and Daily Delivery Quantities may be different,

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

8.3 First Gas will ensure, subject to *section 8.16*, that where an OBA applies the OBA Party will be required under its ICA to use reasonable endeavours to ensure that each Day the metered quantity of Gas at the Receipt Point or Delivery Point matches the Scheduled Quantity, provided that:

- (a) each OBA Party shall use reasonable endeavours to minimise its Running Mismatch; and
- (b) pursuant to ~~this-section 8.3(a)~~, the metered quantity of Gas and the Scheduled Quantity may be different on a Day,

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

8.4 First Gas will use reasonable endeavours to ensure that each Day the aggregate quantity of Gas it purchases for operational purposes (including fuel and UFG but excluding Balancing Gas) matches the aggregate quantity of Gas it requires for those purposes, provided that:

- (a) First Gas shall use reasonable endeavours to minimise its Running Mismatch; and
- (b) pursuant to ~~this-section 8.4(a)~~, the quantities of Gas that First Gas purchases and uses on a Day may be different,

(First Gas' *Primary Balancing Obligation*).

### Line Pack Management

8.5 First Gas will use reasonable endeavours to maintain the Line Pack between the lower and upper limits it determines (respectively, the lower and upper *Acceptable Line Pack Limits*) ~~will- enable it~~ in order to:

- (a) meet its current obligations to provide all DNC and Supplementary Capacity;
- (b) provide Running Mismatch Tolerance for Shippers and OBA Parties, ~~subject~~having regard to:
  - (i) prevailing Transmission System operating conditions, including the availability and operability of compression;
  - (ii) ~~(i)~~ not affecting its ability to provide additional transmission capacity;
  - (iii) ~~(ii)~~ not unduly increasing the risk of breaching an Acceptable Line Pack Limit;
  - (iv) the requirements relating to maintaining the Target Taranaki Pressure set out in section 3.33; and
  - (v) ~~(iii)~~ providing a reasonable allowance for ~~Specific HDQ/DDQ and~~ AHPs; ~~and~~
  - ~~(iv) providing for park and loan service (where First Gas elects to offer such service); and~~
- (c) meet any other obligations it has under this Code, ~~including and~~ any other obligations it has to Interconnected Parties ~~set out in section 7.;~~ and
- (d) once it has had regard to the requirements of section 8.5(a) to (c), provide for any park and loan service (where First Gas elects to offer such service).

8.6 Where it determines that a breach of an Acceptable Line Pack Limit is ~~likely~~anticipated without any corrective action, First Gas will (subject to a Critical Contingency, Force Majeure Event or Emergency):

- (a) where time and circumstances permit, issue a Low Line Pack Notice or High Line Pack Notice (as applicable); or
- (b) where:
  - (i) time and circumstances do not permit, ~~or where~~ the issue of such a notice; or
  - (ii) corrective action in response to its prior issuance of a Low Line Pack Notice or High Line Pack Notice did not result in sufficient corrective action (or is expected to not result in sufficient corrective action in sufficient time); or
  - (iii) it otherwise considers it necessary to do so,

use reasonable endeavours to buy or sell Gas to manage Line Pack (*Balancing Gas*) ~~within Acceptable Line Pack Limits. Without limiting any other provision of this Code, First Gas shall have regard, acting as a Reasonable and Prudent Operator, to whether it should buy or sell Balancing Gas pursuant to this section 8.6 in order to facilitate the provision of DNC and Supplementary Capacity (including to support the transportation of Approved NQs). to manage the Target Taranaki Pressure in accordance with section 3.33, and/or to manage or maintain Line Pack and/or pipeline pressure within operational limits more generally.~~

- 8.7 When buying or selling Balancing Gas, First Gas will (without limiting any of its other obligations under this Code) use reasonable endeavours to undertake that transaction in the most cost effective, efficient and transparent manner, including via a Gas Market.

**Allocation of Balancing Gas Costs and Credits**

- 8.8 If First Gas buys Balancing Gas on a Day ( $Day_n$ ) it will, to each party (Shipper, OBA Party and First Gas) with negative Running Mismatch at the end of the previous Day ( $Day_{n-1}$ ):

- (a) allocate a charge (*Balancing Gas Charge*) equal to:

- (i) where the quantity of Balancing Gas purchased (*BGP*) exceeds  $NRM_{ALL,n-1}$ :

Balancing Gas Purchase Price  $\times$   $NRM_{P,n-1}$ ; or

- (ii) where *BGP* is less than  $NRM_{ALL,n-1}$ :

Balancing Gas Purchase Price  $\times$   $BGP \times NRM_{P,n-1} \div NRM_{ALL,n-1}$ ,

where:

$NRM_{ALL,n-1}$  is the aggregate of all parties' negative Running Mismatches at 2400 on  $Day_{n-1}$ ;

$NRM_{P,n-1}$  is the negative Running Mismatch of a party at 2400 on  $Day_{n-1}$ ; and

*Balancing Gas Purchase Price* is the weighted average price (\$/GJ) paid by First Gas for the quantity of Balancing Gas purchased on  $Day_n$ , which may include a component designed to recover any fixed costs payable by First Gas under any Balancing Gas procurement arrangement; and

- (b) transfer title to a quantity of Gas at 2400 on  $Day_n$  equal to:

- (i) where *BGP* exceeds  $NRM_{ALL,n-1}$ :

$NRM_{P,n-1}$ ; or

- (ii) where *BGP* is less than  $NRM_{ALL,n-1}$ :

$BGP \times NRM_{P,n-1} \div NRM_{ALL,n-1}$ ,

where:

$NRM_{P,n-1}$ , *BGP* and  $NRM_{ALL,n-1}$  each has the meaning set out part (a) of this section 8.8.

- 8.9 If First Gas sells Balancing Gas on a Day ( $Day_n$ ) it will, to each party (Shipper, OBA Party and First Gas) with positive Running Mismatch at the end of the previous Day ( $Day_{n-1}$ ):

- (a) allocate a credit from the sale of Balancing Gas (*Balancing Gas Credit*) for  $Day_n$  equal to:

- (i) where the quantity of Balancing Gas sold (*BGS*) exceeds  $PRM_{ALL,n-1}$ :

Balancing Gas Sale Price  $\times$   $PRM_{P,n-1}$ ; or

- (ii) where BGS is less than  $PRM_{ALL,n-1}$ :

Balancing Gas Sale Price  $\times$  BGS  $\times$   $PRM_{P,n-1} \div PRM_{ALL,n-1}$ ,

where:

$PRM_{ALL,n-1}$  is the aggregate of all parties' positive Running Mismatches at 2400 on Day<sub>n-1</sub>;

$PRM_{P,n-1}$  is the positive Running Mismatch of a party at 2400 on Day<sub>n-1</sub>; and

*Balancing Gas Sale Price* is the weighted average price (\$/GJ) received by First Gas for the quantity of Balancing Gas sold on Day<sub>n</sub>, which may include a component designed to recover any fixed costs payable by First Gas under any Balancing Gas procurement arrangement; and

- (b) take title to a quantity of Gas at 2400 on Day<sub>n</sub> equal to:

- (i) where BGS exceeds  $PRM_{ALL,n-1}$ :

$PRM_{P,n-1}$ ; or

- (ii) where BGS is less than  $PRM_{ALL,n-1}$ :

BGS  $\times$   $PRM_{P,n-1} \div PRM_{ALL,n-1}$ ,

where:

$PRM_{P,n-1}$ , BGS and  $PRM_{ALL,n-1}$  each has the meaning set out part (a) of this section 8.9.

8.10 First Gas' determination of Balancing Gas Charges and/or Balancing Gas Credits, and of transfers of title to the corresponding quantities of Gas, are subject to the effect of any Wash-up ~~on~~of Running Mismatches. First Gas will apply any changes to Balancing Gas Charges and/or Balancing Gas Credits, and to transfers of title to the corresponding quantities of Gas, as prior Month adjustments on its next ~~Balancing Gas~~ invoice [under section 11.19](#) following receipt of any Wash-up. [The Wash-up Schedule applies in respect of Wash-ups in relation to the period on and from the date of this Code. The provisions of the Transitional Arrangements Schedule apply in respect of wash-ups in relation to any period prior to the date of this Code and also determine First Gas', each Shipper's and each OBA Party's opening Running Mismatch \(if applicable\) as at the date of this Code.](#)

#### **Excess Running Mismatch Charges**

8.11 Each Shipper and OBA Party shall pay a charge to First Gas for each Day on which it has Excess Running Mismatch (*ERM*) calculated in accordance with section 8.12 or section 8.13, irrespective of whether First Gas buys or sells Balancing Gas on or in respect of that Day.

8.12 For any Day on which a Shipper or OBA Party has negative Excess Running Mismatch (*Negative ERM*), that Shipper or OBA Party will pay to First Gas a charge equal to:



Negative ERM  $\times F_{NERM} \times I_N$

where:

$F_{NERM}$  is a fee determined by First Gas in accordance with *section 8.14* and published on OATIS; and

$I_N$  is 1, except ~~on~~ where in respect of all or any part of any Day ~~on which First Gas issues:~~

- (a) ~~a Low~~ the Line Pack Notice is or falls below the specified lower Acceptable Line Pack Limit, when it is 5 for such Day; and
- (b) ~~a High Line Pack Notice~~ except where paragraph (a) applies in respect of such Day, the Line Pack is above or exceeds the specified upper Acceptable Line Pack Limit, when it is zero for such Day.

8.13 For any Day on which a Shipper or OBA Party has positive Excess Running Mismatch (*Positive ERM*), that Shipper or OBA Party will pay to First Gas a charge equal to:

Positive ERM  $\times F_{PERM} \times I_P$

where:

$F_{PERM}$  is a fee determined by First Gas in accordance with *section 8.14* and published on OATIS; and

$I_P$  is 1, except ~~on~~ where in respect of all or any part of any Day ~~on which First Gas issues:~~

- (a) the Line Pack is above or exceeds the specified upper Acceptable Line Pack Limit, when it is 5 for such Day; and
- (b) ~~(a) a Low Line Pack Notice~~ except where paragraph (a) applies in respect of such Day, the Line Pack is or falls below the specified lower Acceptable Line Pack Limit, when it is zero; ~~and~~ for such Day.
- ~~(b) — a High Line Pack Notice, when it is 5.~~

8.14 The fees referred to in *sections 8.12* and *8.13* respectively will be:

- (a)  $F_{NERM}$ : ~~\$0.60~~ \$0.50/GJ; and
- (b)  $F_{PERM}$ : ~~\$0.20~~ \$0.50/GJ,

provided that where it reasonably believes these fees are not providing an appropriate incentive to remove ERM, First Gas may increase or reduce  $F_{NERM}$  or  $F_{PERM}$  on expiry of not less than 5 Business Days' notice to all Shippers and OBA Parties. When determining whether to implement any such increase or reduction, First Gas will consider whether or not  $F_{NERM}$  and  $F_{PERM}$  should be the same or a different amount. First Gas may only increase  $F_{NERM}$  or  $F_{PERM}$  to greater than \$1.00/GJ by a Change Request.

**Publication of Running Mismatches**

- 8.15 The Mismatch and Running Mismatch of any party will not be Confidential Information. First Gas will publish the Running Mismatch of each Shipper, OBA Party and itself on OATIS in accordance with Schedule Two. First Gas will use its reasonable endeavours to calculate and, where practicable, make available to each relevant Shipper and OBA Party on OATIS (on a confidential basis and for information purposes only) such person's estimated Mismatch calculated on an Hourly basis and such person's estimated Running Mismatch at the end of the Day calculated on an Hourly basis.

**Park and Loan**

- 8.16 First Gas may offer "park and loan" service to Shippers and OBA Parties, allowing a party to store Parked Gas or take Loaned Gas. Where it elects to do so, those services will comply with the provisions of *sections 8.17 to 8.22*.

- 8.17 First Gas may determine:

- (a) the aggregate quantity of Gas which Shippers and/or OBA Parties may temporarily accumulate in the Transmission System (*Parked Gas*); and/or
- (b) the aggregate quantity of Line Pack which Shippers and/or OBA Parties may temporarily draw down (*Loaned Gas*),

and will publish those quantities on OATIS.

- 8.18 A Shipper or OBA Party must apply to First Gas in advance to either store Parked Gas or take Loaned Gas on a Day. First Gas will publish on OATIS the procedures to be used:

- (a) to apply to store Parked Gas or take Loaned Gas; and
- (b) by First Gas in responding to that application,

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

- 8.19 Applications to store Parked Gas or take Loaned Gas will be processed on a "first come, first served" basis, provided that First Gas may:

- (a) introduce procedures to allocate quantities of Parked Gas and/or Loaned Gas should requests to park Gas and/or take Loaned Gas exceed the quantities determined pursuant to *section 8.17*;
- (b) allow a Shipper or OBA Party to both store Parked Gas in one period of a Day and take Loaned Gas in another period of the same Day, provided that:
  - (i) those periods do not overlap; and
  - (ii) the Shipper or OBA Party makes separate applications to store Parked Gas and take Loaned Gas; and
- (c) link its approval of requests to take Loaned Gas on a Day to requests to store Parked Gas on that same Day.

8.20 To the extent that First Gas approves any application to store Parked Gas or take Loaned Gas on any Day it will exclude the approved quantity of Parked Gas or Loaned Gas from its calculation of the Shipper's or OBA Party's Mismatch and Running Mismatch for (only) that Day.

8.21 First Gas will from [time](#) to time determine and notify on OATIS the prices payable to store Parked Gas and take Loaned Gas.

8.22 Nothing in *sections 8.16 to 8.21* will limit First Gas' obligations to provide transmission capacity and maintain Line Pack between Acceptable Line Pack Limits.

**OBA Party's Running Mismatch**

8.23 Where an OBA applies at a Delivery Point, the OBA Party's Mismatch (including Running Mismatch and any ERM) will be deemed to exist in the Receipt Zone and not at the Delivery Point.

**~~Gas Trades to Adjust Running Mismatch~~**

~~8.24 In respect of any Gas trade on a Day, First Gas will make the required adjustments to the Running Mismatch of the seller and buyer, respectively, at the end of that Day.~~

## 9 CURTAILMENT

### Adverse Events

9.1 Subject to the balance of this *section 9*, First Gas will use reasonable endeavours to avoid curtailing any Shipper's DNC or Supplementary Capacity. However, First Gas may curtail the injection of Gas (or the ability to inject Gas) at a Receipt Point, the flow of Gas through the Transmission System, or the taking of Gas (or the ability to take Gas) at a Delivery Point, to the extent that it determines to be necessary, where:

- (a) an Emergency is occurring or is imminent;
- (b) a Force Majeure Event has occurred or is continuing;
- (c) a breach of any Security Standard Criteria and/or a Critical Contingency would otherwise occur;
- (d) an Interconnected Party's ~~ICA~~ interconnection agreement expires or is terminated; ~~and/~~ or is not executed;
- (e) a Shipper's TSA, Supplementary Agreement, Existing Supplementary Agreement, GTA or Allocation Agreement expires or is terminated;
- (f) it is performing, or is to perform, scheduled or unscheduled Maintenance pursuant to section 9.2 or section 9.3; and/or
- (g) it does so to maintain the Target Taranaki Pressure pursuant to section 3.33 or under any ICA.

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

### Maintenance

9.2 Where it ~~intends~~ is necessary or desirable for First Gas to carry out scheduled Maintenance that will reduce its ability to receive Gas at a Receipt Point and/or make Gas available at a Delivery Point (but not in respect of any scheduled Maintenance which will not have that effect), First Gas will:

- (a) publicly notify that scheduled Maintenance on OATIS as early as practicable and not less than 20 Business Days' prior to commencing work, together with the likely duration of the work;
- (b) advise the expected impact on transmission capacity and/or any other effects; and
- (c) 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 that delay on OATIS, but will not be required to re-start the 20 Business Days' notice period.

9.3 First Gas may carry out unscheduled Maintenance, including in relation to events referred to in *section 9.1(a), (b) or (c)*, as may be necessary, provided that in each case it gives ~~each affected Shipper~~ as much notice as is reasonably practicable ~~in each case~~ by publishing on OATIS the fact that such unscheduled Maintenance is to occur.

9.4 Each Shipper directly affected by scheduled or unscheduled Maintenance will reasonably facilitate that work as and when requested by First Gas.

#### **Operational Flow Order**

9.5 Subject to ~~sections 9.6 and~~ section 9.7, if any of the events described in *section 9.1(a) to (eg) occurs* occur, First Gas may issue an OFO to a Shipper (or Shippers) ~~at one or more Delivery Points~~. Each Shipper 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.

9.6 If a Shipper supplies Gas to an End-user (or is itself the 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), the Shipper shall notify First Gas as soon as it becomes aware of that requirement and of the specific quantity of Gas required to be injected. If First Gas subsequently issues an OFO to that Shipper, it will if practicable allow for such quantity of Gas to be taken.

9.7 First Gas will, ~~at~~ in respect of any Receipt Point or Dedicated Delivery Point where it has the right to do so, in circumstances where it determines to issue an OFO in respect of Gas injection at that Receipt Point or Gas take at that Dedicated Delivery Point (as applicable), issue an OFO to the Interconnected Party under its interconnection agreement rather than or in addition to the Shipper(s) using that point where it considers the relevant Interconnected Party is better able to give effect to that OFO. First Gas will publish that OFO on OATIS as soon as practicable.

#### **Curtailment of NQs after OFO Issued**

9.8 Pursuant to ~~section 9.5, 9.5~~ and subject to section 9.6, where it instructs all Shippers using a Receipt Point or Delivery Point or Delivery Zone to reduce their Gas take to less than their most recent Approved NQs, First Gas will:

(a) notify each Shipper to reduce its Gas take ~~for that Day~~ to an amount equal to that Shipper's most recent Approved NQ divided by the ~~Aggregate~~ aggregate of all Shippers' most recent Approved NQs ~~(excluding any AHPs)~~ and multiplied by the Daily quantity that First Gas shall stipulate, subject to the limitations set out in *section 4.16* ~~(b)~~; and

(b) reduce each Shipper's most recent Approved NQ in OATIS accordingly.

9.9 ~~Pursuant to section 9.7,~~ Where, pursuant to section 9.7 and the terms of the relevant interconnection agreement, the OFO is issued to an Interconnected Party, First Gas will:

(a) notify the Interconnected Party to reduce ~~its take~~ injection of Gas or offtake of Gas to the Daily quantity that First Gas shall stipulate; and

(b) reduce each Shipper's most recent Approved NQ in OATIS as set out in *section 9.8(a)*, subject to the limitations set out in ~~section 4.16(b)~~ 4.16.

9.10 Where the Delivery Point(s) referred to in *section 9.5* is part of a Delivery Zone and there are no Approved NQs for that Delivery Point alone, for the purposes of *sections 9.8(a)* and ~~*9.9(b)*~~, *9.9*, First Gas will determine the reductions in Shippers' Approved NQs for that Delivery Zone and those Delivery Point(s) as applicable using the best information available to it at the time, which may include Shippers' Daily Delivery Quantities in the most recent Month.

#### **Critical Contingency**

9.11 In the event of a Critical Contingency, First Gas may instruct any Shipper to curtail its take of Gas at any Delivery Point (or its ability to take Gas) as required to comply with the instructions of the CCO ~~and the requirement of the CCM Regulations (and the Shipper 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**

9.12 Each Shipper agrees that if it fails to comply with an Operational Flow Order in accordance with *section 9.5*:

- (a) First Gas may ~~(to the extent practicable)~~ curtail the Shipper's take of Gas itself; and
- (b) 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 Shipper shall be deemed not to have acted to act as a Reasonable and Prudent Operator; and
- (c) the Shipper 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 ~~use reasonable endeavours to~~ mitigate its Loss to the fullest extent reasonably practicable) . The indemnity under *this section 9.12(c)* is subject to the limitations and exclusions set out in *sections 16.2 to 16.8 (but not section 16.1)*.

#### **Relief from Charges**

9.13 In respect of any curtailment under *this section 9*, First Gas shall excuse each affected Shipper of any fixed charge (including Transmission Charge, Non-standard Transmission Charge or Priority Rights Charge) that would otherwise be payable by that Shipper, in proportion to the reduction in that Shipper's DNC or Supplementary Capacity, except to the extent that the Shipper caused or contributed to any event or circumstance which gave rise to the curtailment and/or failed to comply with any instruction from First Gas given or from the CCO under *section 9.5* or *section 9.11*.

## 10 CONGESTION MANAGEMENT

### Determination of Congestion

- 10.1 First Gas will use reasonable endeavours to predict Congestion before it occurs, including by monitoring Security Standard Criteria on those parts of the Transmission System where Congestion is most likely to occur.
- 10.2 First Gas will notify Shippers as soon as practicable of its intention to initiate Congestion Management.

### Congestion Management

- 10.3 First Gas will, to the extent necessary (and in the order stated):
- (a) where the total of Shippers' NQs would result in Congestion:
- (i) estimate the amount by which those NQs exceed the Available Operational Capacity;
  - (ii) curtail any request for Interruptible Capacity (if any);
  - ~~(iii) curtail any request for an AHP by converting to a (no greater) amount of DNC;~~
  - ~~(iii)~~ ~~(iv)~~ curtail requests for Supplementary Capacity (if any), where the relevant Supplementary Agreement or Existing Supplementary Agreement so allows; ~~and~~ and after approving NQs to the extent Shippers ~~have exercised their hold~~ Priority Rights in respect of the relevant NQ and the relevant Day (subject to and in accordance with section 3.14);
  - ~~(iv)~~ ~~(v)~~ to the extent there is Available Operational Capacity, approve further unapproved NQs pro-rata in proportion to Shippers' ~~NQs~~ Approved NQs (or, if none are approved, their unapproved NQs); or
  - ~~(v)~~ ~~(vi)~~ if Available ~~Operation~~ Operational Capacity is ~~still~~ or becomes insufficient, curtail ~~NQs~~ each relevant Shipper's Approved NQ pro-rata in proportion to the aggregate of Shippers' then current Approved NQs, subject to (as applicable) section 4.16(a) or 4.16(b); or
- (b) where Congestion is in effect due to the current offtake of Gas:
- (i) estimate the reduction in current offtake required;
  - (ii) determine (where visible to First Gas) whether any Shipper is exceeding its MHQ, or has exceeded its MDQ, and instruct that Shipper (including by means of an OFO if necessary (with the provisions of section 9.5 to section 9.12 to apply accordingly with any necessary changes for context)) to reduce its offtake accordingly;
  - (iii) curtail Interruptible Capacity (if any);

~~(iv) curtail any AHP by converting to a (no greater) amount of DNC;~~

~~(iv)~~ ~~(v)~~ curtail Supplementary Capacity (if any), where the relevant [Supplementary Agreement or Existing Supplementary Agreement](#) ~~so~~ allows; and

~~(v)~~ ~~(vi)~~ if Available Operational Capacity is ~~still~~ ~~or becomes~~ insufficient, after allowing for the extent to which Shippers ~~have exercised their~~ ~~hold~~ Priority Rights ~~such that Approved NQs with Priority Rights are curtailed or reduced last~~ (subject to ~~and in accordance with~~ [section 3.14](#)), curtail ~~Shippers'~~ ~~Shipper's~~ then current Approved NQs pro-rata in proportion to ~~the aggregate of~~ ~~Shippers'~~ ~~Approved~~ NQs, subject to (as applicable) ~~section 4.16(a) or (b).~~ [4.16](#).

### Over-Nomination

- 10.4 Each Shipper ~~warrants that for~~ [will ensure to the extent reasonably practicable that in respect of](#) any Congested Delivery Point its NQs will represent its best estimate of its End-users' requirements and that it will not inflate those NQs with the intention of securing a greater share of the Available Operational Capacity.

### Critical Contingency

- 10.5 The CCM Regulations will take precedence over Congestion Management so, if the CCO declares a Critical Contingency, First Gas will amend its Congestion Management actions to the extent required.

### Notification of New Load

- 10.6 First Gas will ensure that any ICA it enters into after the date of this Code with any person who owns Distribution Networks:
- (a) clearly sets out the capacity of any Delivery Point supplying any of that person's Distribution Networks; and
  - (b) requires that person to consult First Gas before connecting new End-users to any of its Distribution Network that would exceed the capacity of the relevant Delivery Point.
- 10.7 Each Shipper, before agreeing to supply Gas to any new End-user, or substantially increased quantities of Gas to any existing End-user, must [\(unless First Gas notifies the Shipper it already has the relevant information\)](#):
- (a) ascertain there is sufficient Available Operational Capacity;
  - (b) notify First Gas of the expected maximum daily offtake, maximum hourly offtake and annual offtake of that new or existing End-user where:
    - (i) that expected maximum daily [offtake](#) is greater than ~~either 400 GJ or 10% of the current peak Daily offtake of~~ [at](#) the relevant Delivery Point; and/or
    - (ii) that expected maximum hourly offtake is greater than 40 GJ ~~or 10% of the current peak Hourly offtake of~~ [at](#) the relevant Delivery Point; and/or
    - (iii) that expected annual offtake is greater than 20,000 GJ [at the relevant Delivery Point](#); and



- (c) notify First Gas of the Day on which that new or existing End-user wishes to commence taking Gas, or increased quantities of Gas.

**No Liability**

10.8 First Gas will have no liability to any person for:

- (a) not predicting Congestion; or
- (b) the period of notice prior to initiating Congestion Management; or
- (c) initiating [or undertaking](#) Congestion Management; or
- (d) its inability to secure sufficient, or any Interruptible Load; or
- (e) Available Operational Capacity being insufficient to supply [Gas to](#) new End-users or the increased take of [Gas by](#) existing End-users.

10.9 Nothing in this *section 10* shall limit First Gas' rights to curtail its provision of transmission services in accordance with *section 9*.

## 11 FEES AND CHARGES

### Daily Nominated Capacity Charges

- 11.1 Each Shipper ([including Specified Shippers](#)) shall pay a charge for each Day on which it has DNC for a Delivery Zone and/or Individual Delivery Point (*Daily Nominated Capacity Charge*), equal to:

$$DNC_{FEE} \times DNC$$

where:

$DNC_{FEE}$  is the applicable fee for Daily Nominated Capacity (\$/GJ of DNC) (~~subject to~~ [in accordance with section 11.15](#)); and

$DNC$  is the Shipper's Daily Nominated Capacity (GJ) for the applicable Delivery Zone or Individual Delivery Point ([including an automated nomination made pursuant to sections 4.22 and 4.23](#)).

### Priority Rights Charges

- 11.2 A Shipper allocated PRs for a Congested Delivery Point pursuant to *section 3.20* shall pay [to First Gas](#) a charge for those PRs (*Priority Rights Charge*) [in respect of each Day during the PR Term for those PRs](#), equal to:

$$P_C \times N_A$$

where:

$P_C$  is the lowest price (\$ per PR [per Day](#)) bid ([over the Reserve Price](#)) for any PRs allocated at that Congested Delivery Point in accordance with *section 3.20*; and

$N_A$  is the total number of PRs allocated to the Shipper in accordance with *section 3.20*,

provided that the Shipper's liability to pay that Priority Rights Charge will cease at the end of the PR Term [except](#) to the extent it:

- (a) sells any PRs to another Shipper pursuant to *section 3.21*, [when it will cease](#) with effect from the Day the sale of those PRs becomes effective; and/or
- (b) [earlier](#) cancels PRs pursuant to *section ~~3.25~~3.26(b)*.

- 11.3 A Shipper who purchases PRs for a Congested Delivery Point pursuant to *section 3.21* shall pay [to First Gas](#) a Priority Rights Charge [in respect of each Day during the PR Term](#) for those PRs, equal to:

$$P_C \times N_P$$

where:

$P_C$  has the meaning set out in *section 11.2*; and

$N_P$  means the number of PRs purchased by the Shipper,

provided that the Shipper's liability to pay a Priority Rights Charge in respect of any PRs it purchases will commence only on the Day that purchase becomes effective and will cease at the end of the PR Term except to the extent it:

- (a) sells any PRs to another Shipper pursuant to *section 3.21*, when it will cease with effect from the Day that the sale of those PRs becomes effective; and/or
- (b) earlier cancels PRs pursuant to *section 3.253.26(b)*.

**Daily Overrun and Underrun Charges**

11.4 Subject to ~~section~~sections 11.5, 11.7 and 11.12, a Shipper shall pay, in respect of a Delivery Zone or Individual Delivery Point and Day:

- (a) a charge for any Daily overrun on a Day (*Daily Overrun Charge*), equal to:

$$DNC_{FEE} \times DOQ \times F$$

where:

$DNC_{FEE}$  has the meaning set out in *section 11.1*;

$DOQ$  (or Daily Overrun) is the Shipper's Daily overrun quantity, equal to the greater of:

- (i)  $DDQ_{DNC} - DNC$ ; and
- (ii) Zero; and

- (b) a charge or credit (as applicable) for any Daily underrun on a Day (*Daily Underrun Charge*), equal to:

$$DNC_{FEE} \times DUQ \times (F - \pm 2)$$

where:

$DNC_{FEE}$  has the meaning set out in *section 11.1*;

$DUQ$  (or Daily Underrun) is the Shipper's Daily underrun quantity, equal to the greater of:

- (i)  $DNC - DDQ_{DNC}$ ; and
- (ii) zero,

and where, for ~~this~~each of *section 11.4(a)* and *section 11.4(b)*:

$DNC$  has the meaning set out in *section 11.1*;

$DDQ_{DNC}$  is the Shipper's Daily Delivery Quantity shipped using DNC; and

F is, for each:

- (i) Delivery Zone and non-Congested Individual Delivery Point: ~~21.5~~; and
- (ii) Congested Delivery Point: ~~10~~, (where First Gas has notified on OATIS in connection with a nomination cycle that there is, or is expected to be, Congestion at a Delivery Point): 7.5.

provided that where it considers the current value of F is not providing Shippers with an appropriate incentive to maximise the accuracy of their NQs, First Gas will notify, and consult with Shippers concerning, the value of F that would, in its view, better achieve that outcome. Unless Shippers provide sufficient evidence to reasonably demonstrate to First Gas that a different course of action would be more effective, First Gas may (but not sooner than 60 Business Days after the date of its notification) increase the value of F for each Delivery Zone and non-Congested Individual Delivery Point, to a maximum of 5. First Gas may only increase the value of F above 5 (or, for a Congested Delivery Point, above ~~10~~7.5) in accordance with an approved Change Request. First Gas may decrease the ~~either~~ current value of F on expiry of 60 Business Days' notice to Shippers ~~;~~ and

provided further that if any Delivery Point is notified as a Congested Delivery Point in connection with any Intra-Day Cycle, it shall be and remain be a Congested Delivery Point for such Day and the value of F shall be 7.5 accordingly.

#### **Hourly Overrun Peaking Charges**

- 11.5 ~~Subject to sections 11.6 and 11.12, a Shipper using a Dedicated Delivery Point (whether included in a Delivery Zone or not) shall pay a charge for any Hour in which it incurs an Hourly overrun (Hourly Overrun Charge), equal to:~~ A Peaking Party (being the relevant Shipper or OBA Party) shall pay a charge (or where applicable receive a credit) in respect of any Hour in which its Hourly Quantity either exceeds both the HL for that Hour and the Hourly Limit by more than 25% or is more than 25% less than both the HL for that Hour and the Hourly Limit (Peaking Charge). The Peaking Charge shall be calculated:

- (a) in the case where the Hourly Quantity exceeds both the HL for the relevant Hour and the Hourly Limit by more than 25%, as follows:

$$DNC_{FEE} \times HOQ \times M$$

- (b) in the case where the Hourly Quantity is more than 25% less than both the HL for the relevant Hour and the Hourly Limit, as follows:

$$DNC_{FEE} \times HUQ \times (M-2)$$

where, for the purposes of this section 11.5:

Hourly Quantity means:

- (i) in respect of a Dedicated Delivery Point, the quantity of Gas taken by a Peaking Party at a Dedicated Delivery Point in an Hour, determined based on metered quantities for an OBA Party and under the applicable Allocation Agreement for a Shipper; and

- (ii) in respect of a Receipt Point, the quantity of Gas injected by a Peaking Party at a Receipt Point in an Hour, determined based on metered quantities for an OBA Party and under the applicable Gas Transfer Agreement for a Shipper;

Hourly Limit is calculated as follows:

$$HL_{AVF} = (HL_{H-1} + HL_H + HL_{H+1})/3$$

where:

HL<sub>H-1</sub> = HL in respect of the Hour before the relevant Hour;

HL<sub>H</sub> = HL in respect of the relevant Hour;

HL<sub>H+1</sub> = HL in respect of the Hour after the relevant Hour; and

provided that, in the case of section 11.5(a) only, if the Hourly Limit determined using the formula immediately above is less than 1 TJ, then the Hourly Limit shall be deemed to be 1 TJ;

DNC<sub>FEE</sub> has the meaning set out in section 11.1, provided that in the case of a Peaking Party at a Receipt Point, the DNC<sub>FEE</sub> will be the lowest published DNC<sub>FEE</sub> for any Delivery Zone on the Transmission System on the relevant Day; ~~and~~

~~HOQ is the Shipper's Hourly overrun quantity and is equal to the greater of:~~

~~(i) HDQ<sub>DNC</sub> (DDQ<sub>DNC</sub> × Specific HDQ/DDQ); or~~

~~(ii) where an Agreed Hourly Profile applies, HDQ<sub>DNC</sub> HTC<sub>AHP</sub>; and~~

~~(iii) zero;~~

~~where:-~~

~~HDQ<sub>DNC</sub> is the Shipper's Hourly Delivery Quantity shipped using DNC in that Hour, equal to:~~ (i) ~~where the Shipper is the sole user of the Dedicated Delivery Point, the metered quantity~~ Quantity for such Hour less the HL for that Hour; ~~or~~

~~(ii) where the Dedicated Delivery Point is used by more than one Shipper, HUQ is the HL for that Hour less than~~ the Hourly ~~Delivery~~ Quantity ~~determined pursuant to section 6.13;~~

~~DDQ<sub>DNC</sub> has the meaning set out in section 11.4; HTC<sub>AHP</sub> is the Hourly transmission capacity for that Hour from the Agreed Hourly Profile; and~~ for such Hour;

~~M is 5 where the Dedicated Delivery Point is affected by Congestion, and 2 in all other cases, 1.5,~~ provided that where First Gas considers the current value of M is not providing Shippers Peaking Parties with an appropriate incentive to ~~avoid~~ maximise the accuracy of Hourly ~~overruns, nominations~~ First Gas will notify, and consult with Shippers Peaking Parties concerning, the value of M that would, in its view, better achieve that outcome. Unless Shippers Peaking Parties provide sufficient evidence to

reasonably demonstrate to First Gas that a different course of action would be more effective, First Gas may (but not sooner than 60 Business Days after the date of its notification) increase the ~~relevant~~ value of M ~~to its preferred value up to, for Dedicated Delivery Points that are not Congested,~~ for this purpose to a maximum of 5. First Gas may only increase the value of M for this purpose above 5 ~~(or, for a Congested Dedicated Delivery Points, above 10)~~ in accordance with an ~~Approved~~ approved Change Request. First Gas may decrease the current value of M on expiry of 60 Business Days' notice to ~~Shippers.~~ Peaking Parties; and

HL means:

- (i) for OBA Parties, the Scheduled Quantity for the relevant Hour; and
- (ii) for Shippers, the amount of the Hourly quantity nominated at a Receipt Point or Hourly transmission capacity nominated at a Delivery Point in the Shipper's AHP for the relevant Hour.

in each case approved in respect of the Hour.

11.6 ~~The Hourly Overrun Charge shall not be payable for any Hour in which the metered quantity is less than 200 GJ.~~ Section 11.4 shall not apply to Peaking Parties if and to the extent section 11.5 applies. In addition, section 11.5 shall not apply to a Peaking Party only:

- (a) where the relevant OBA Party or Interconnected Party (supplied by the Peaking Party) has validly given notice of maintenance under section 9.5 of its ICA (or equivalent section); and
- (b) in respect of the Day on which such maintenance is commenced (as specified in such notice) and the Day in respect of which such maintenance is completed (as specified in such notice).

#### **Auto-Nomination Charge**

11.7 Where sections 4.22 and 4.23 apply, a Specified Shipper shall pay in respect of each Day for a Delivery Zone or Delivery Point, in relation to automated nominations and related Gas deliveries in respect of Specified Customers, an amount calculated in accordance with the following (each, an Auto-Nomination Charge):

$$\underline{DNC_{FFF} \times DNC \times ((DOQ_{NON\ SS} / DNC_{NON\ SS} \times F) + (DUQ_{NON\ SS} / DNC_{NON\ SS} \times (F-2)))}$$

where:

*DNC<sub>FFF</sub>* has the meaning set out in section 11.1;

*DNC* has the meaning set out in section 11.1;

*DOQ<sub>NON SS</sub>* is the total of all DOQs (calculated in accordance with section 11.4(a)) for all Shippers (but excluding such DOQs for Specified Shippers in respect of Specified Customers) for the relevant Month; and

*DNC<sub>NON SS</sub>* is the total of all DNC for all Shippers (but excluding DNC for Specified Shippers in respect of Specified Customers) for the relevant Month; and

*DUQ<sub>NON-SS</sub>* is the total of all DUQs (calculated in accordance with *section 11.4(b)* for all Shippers (but excluding such DUQs for Specified Shippers in respect of Specified Customers)) for the relevant Month; and

*DNC<sub>NON-SS</sub>* is the total of all DNC for all Shippers (but excluding DNC for Specified Shippers in respect of Specified Customers) for the relevant Month; and

*F* is 1.5.

provided that any change to the value of *F* for Delivery Zones and non-Congested Individual Delivery Points in accordance with *section 11.4* shall also apply as the value of *F* for the purposes of this *section 11.7*.

*Section 11.4* shall not apply to Specified Shippers in respect of Specified Customers if and to the extent this *section 11.7* applies. *Section 11.7* applies to Specified Shippers in respect of Specified Customers irrespective of actual overrun or underrun quantities in respect of those customers.

### **Over-Flow Charge**

11.8 ~~11.7~~ Notwithstanding *section 4.3* but subject to *section 11.8, 11.9*, a Shipper using a Dedicated Delivery Point (whether included in a Delivery Zone or not) shall pay a charge (*Over-Flow Charge*) for any Hour in which its Hourly Delivery Quantity exceeds the Physical MHQ (to the extent attributable to such Shipper based on the proportion of Gas allocated to it) of that Dedicated Delivery Point (~~*Over-Flow-Charge*~~), equal to:

$$DNC_{FEE} \times OFQ \times 20$$

where:

*DNC<sub>FEE</sub>* has the meaning set out in *section 11.1* (or equivalent charge in respect of Supplementary Capacity);

*OFQ* is the Shipper's Over-Flow Quantity and is the greater of:

- (i) ~~*HDQ<sub>DNC</sub>*~~ the Shipper's Hourly Delivery Quantity in that Hour – Physical MHQ (to the extent attributable to such Shipper based on the proportion of Gas allocated to it); and
- (ii) zero.

~~where:-~~

~~*HDQ<sub>DNC</sub>* has the meaning set out in *section 11.5*.~~

11.9 ~~11.8~~ The Over-Flow Charge referred to in *section 11.7* 11.8 will not be payable by any Shipper where there is an Interconnection Agreement that requires the Interconnected Party to pay that same charge.

### **Other Consequences of Overrun**

11.10 ~~11.9~~ Subject to *section 11.12, 11.13*, in addition to any Daily Overrun Charge, Hourly Overrun Charge, Peaking Charge or Over-Flow Charge that is payable, any Shipper who incurs any of

those charges shall indemnify First Gas for any Loss incurred by First Gas that arises from its Daily ~~or Hourly~~ Overrun ~~or~~ Over-Flow or Excess Peaking (where that Loss shall include any ~~Interconnection Fees~~ interconnection fees or charges, Transmission Charges and/or Non-standard Transmission Charges that First Gas may be required to waive or rebate to any other Shippers or Interconnected Parties as a result) ~~up to the Capped Amounts. First Gas shall use reasonable endeavours to mitigate its Loss. The Shipper shall: (a) not be relieved of liability under the~~ The indemnity ~~in~~ under this section ~~11.9; and 11.10 is subject to the~~ limitations and exclusions set out in sections 16.1 to 16.8.

~~(b) be deemed not to have acted as a Reasonable and Prudent Operator;~~

~~if its Daily or Hourly Overrun or Over-Flow result in a Critical Contingency being declared.~~

### **Non-standard Transmission Charges**

11.11 ~~11.10~~ Each Shipper shall pay the Non-standard Transmission Charges in respect of any Supplementary Agreements, Existing Supplementary Agreements and/or Interruptible Agreements to which it is a Party and the provisions of this section 11 will apply (with all necessary modifications for context) accordingly.

### **Congestion Management Charge**

11.12 ~~11.11~~ In addition to the Daily Nominated Capacity Charge, each Shipper with DNC at a Beneficiary DP shall pay a charge for each Day on which First Gas makes payment under an Interruptible Agreement pursuant to section 3.11 (*Congestion Management Charge*) equal to:

$$CMC_{TOTAL} \times DNC_{SHIPPER} \div DNC_{TOTAL}$$

where:

$CMC_{TOTAL}$  is the relevant aggregate amount payable by First Gas under an Interruptible Agreement pursuant to section 3.11;

$DNC_{SHIPPER}$  is the Shipper's DNC at that Beneficiary DP on that Day; and

$DNC_{TOTAL}$  is the aggregate DNC of all Shippers at that Beneficiary DP on that Day.

### **OBA at a Delivery Point**

11.13 ~~11.12~~ At any Delivery Point where an OBA applies, the relevant ICA shall provide that:

(a) any Daily Overrun Charge, Daily Underrun Charge, Hourly Overrun Charge, Peaking Charge or Over-Flow Charge is payable by the OBA Party; and

(b) the indemnity referred to in section ~~11.9~~ 11.10 shall be provided by the OBA Party,

and not by any Shipper using that Delivery Point.

### **Credit of ~~Certain Transmission Charges and Priority Rights Charges~~**

11.14 ~~11.13~~ Each Month, First Gas will credit each Shipper a share of the total ~~transmission-related incentive charges and~~ Priority Rights Charges payable by all Shippers in respect of the previous Month, equal to:

$$(\mathit{DOC}_{TOTAL} + \mathit{PRC}_{TOTAL}) \times DNCC_{SHIPPER} \div DNCC_{TOTAL}$$



where:

~~$DOC_{TOTAL}$  is the total of Daily Overrun Charges, Daily Underrun Charges, Hourly Overrun Charges and Over-Flow Charges payable by all Shippers;~~

$PRC_{TOTAL}$  is the total of Priority Rights Charges payable by all Shippers;

$DNCC_{SHIPPER}$  is the total of DNC Charges paid by the Shipper; and

$DNCC_{TOTAL}$  is the total of DNC Charges paid by all Shippers.

**~~Credit of Excess Running Mismatch Charges~~**

~~11.14 Each Month, First Gas will credit each Shipper a share of the total Excess Running Mismatch Charges payable by all Shippers in respect of the previous Month, equal to:~~

$$\text{(ERM}_N - \text{ERM}_P) \times \text{DDQ}_{SHIPPER} \div \text{DDQ}_{TOTAL}$$

where:

~~$ERM_N$  is the total charges for Negative ERM payable by all Shippers;~~

~~$ERM_P$  is the total charges for Positive ERM payable by all Shippers;~~

~~$DDQ_{SHIPPER}$  is the aggregate of a Shipper's Daily Delivery Quantities (including under all that Shipper's Supplementary Agreements, Existing Supplementary Agreements and Interruptible Agreements, if any) excluding all that Shipper's Daily Delivery Quantities at Delivery Points where an OBA applies; and~~

~~$DDQ_{TOTAL}$  is the aggregate of all Shippers' Daily Delivery Quantities (including under all Supplementary Agreements, Existing Supplementary Agreements and Interruptible Agreements) excluding all Shippers' Daily Delivery Quantities at Delivery Points where an OBA applies.~~

**Redetermination of Transmission Fees**

11.15 First Gas will determine standard transmission fees annually using its then current Gas Transmission Pricing Methodology (*GTPM*), including in compliance with the then current price-quality path set by the Commerce Commission and, as far as practicable, the Commission's "Pricing Principles".

11.16 By 30 June each Year, First Gas will notify Shippers and publish on OATIS the standard transmission fees it will use to calculate ~~Transmission~~DNC Charges in the following Year.

**Transmission Services Invoice**

11.17 On or before the 10<sup>th</sup> Day of each Month (or as soon thereafter as practicable), First Gas shall invoice each Shipper for the Transmission Charges and any Non-standard Transmission Charges ~~(if any)~~, Congestion Management Charges, Priority Rights Charges and any other relevant amounts payable by that Shipper in respect of the previous (and any prior) Month.

**Non-Transmission Services Invoice**

11.18 For each Month, each Shipper and OBA Party shall pay to First Gas all amounts payable by it pursuant to, and determined by First Gas in accordance with, *section 8*.

11.19 On or before the 14<sup>th</sup> Day of each Month (or as soon thereafter as is practicable), First Gas shall:

- (a) invoice each Shipper and OBA Party for the ~~net~~ cost of each of Balancing Gas, ERM Charges, and park and loan charges incurred by that party; or
- (b) issue a credit note to each Shipper and OBA Party for ~~the net~~ any credit of Balancing Gas, ~~ERM Charges, and park and loan charges~~ attributed to that party,

in respect of the previous (and any prior) Month.

**Contents of Transmission Service Invoice**

11.20 To support any invoice to a Shipper under *section 11.17*, First Gas shall notify the Shipper of:

- (a) Daily Delivery Quantities at each Delivery Point used by the Shipper in the previous Month;
- (b) each Transmission Charge and Non-standard Transmission Charge payable (or if applicable credited) for each Day of the previous Month;
- (c) any Congestion Management Charges and any Priority Rights Charges;
- (d) any credit or debit of Transmission Charges for a prior Month required due to a Wash-up;
- (e) any credit in respect of ~~Daily Overrun Charges, Daily Underrun Charges, Hourly Overrun Charges and Over-Flow Charges and~~ Priority Rights Charges;
- ~~(f) any credit of ERM Charges;~~
- (f) ~~(g)~~ any ~~charges~~ other amounts payable by the Shipper, including any charges, amounts or credits outstanding in respect of any prior Month; and
- (g) ~~(h)~~ the GST Amount.

**Contents of Non-Transmission Services Invoice**

11.21 To support any invoice to a Shipper or OBA Party under *section 11.19*, First Gas shall notify that party in respect of each Day, and in aggregate for the Month:

- (a) any Balancing Gas Charges payable and/or Balancing Gas Credits receivable;
- (b) the party's Mismatch (GJ);
- (c) the party's Running Mismatch (GJ);
- (d) the aggregate Running Mismatch of all parties with negative Running Mismatch (GJ);
- (e) the aggregate Running Mismatch of all parties with positive Running Mismatch (GJ);
- (f) the quantity of Balancing Gas First Gas purchased and/or sold, together with the prices paid and/or received for that Gas;

- (g) the aggregate of all parties' allocations of Balancing Gas Charges and Balancing Gas Credits;
- (h) the party's allocation of Balancing Gas debits and/or credits (GJ);
- (i) the party's Excess Running Mismatch (GJ)
- (j) any Excess Running Mismatch charges payable ~~or Excess Running Mismatch credits-receivable~~;
- (k) any credit or debit of Balancing Gas Charges for a prior Month required due to a Wash-up;
- (l) any credit or debit of ~~Excess Running Mismatch~~ERM Charges for a prior Month required due to a Wash-up;
- (m) any other amounts payable by the party, including any charges, amounts or credits outstanding in respect of any prior Month; and
- (n) the GST Amount.

#### **Goods and Services Tax**

11.22 First Gas shall express all amounts payable to it by any party as excluding GST, which shall be due and payable at the same time as the payment to which it relates is due (*GST Amount*). Any invoices provided to the Shipper under *sections 11.17* and *11.19* shall specify the GST Amount and shall comply with the "tax invoice" requirements in the Goods and Services Tax Act 1985.

#### **Other Taxes**

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

#### **Issuing of Invoices**

11.24 First Gas may issue any invoice (together with any supporting information) under *section 11.17* or *11.19* by:

- (a) e-mailing to a Shipper's e-mail address most recently (and specifically) notified in writing to First Gas; and/or
- (b) publishing the invoice as one or more PDF files on OATIS, accessible only by the Shipper.

#### **Payment by a Shipper**

11.25 Subject to *sections 11.26*, *11.27* and *11.28*, and to receiving invoices under *sections 11.17* and/or *11.19*, each Shipper shall pay to First Gas the aggregate amount stated on each the

invoice by direct credit to First Gas' bank account stated on the invoice (or to any other bank account notified by First Gas in writing) by the later of:

- (a) the 20<sup>th</sup> Day of the Month in which the invoice is issued (or, if such Day is not a Business Day, the next Business Day); and
- (b) 10 ~~Business~~ Days after the invoiced is issued (or, if such Day is not a Business Day, the next Business Day).

Each Shipper shall no later than one Business Day after a payment is made notify First Gas of the invoice numbers and the respective amounts to which any payment by the Shipper relates.

### **Disputed Invoices**

- 11.26 ~~Subject to section 11.27, if~~ a Shipper ~~disputes~~wishes to dispute any invoiced amount (*Invoice Dispute*), that Shipper shall, within 10 Business Days from the date it received the invoice, notify First Gas in writing identifying the amount in dispute and giving full reasons for the dispute (*Invoice Dispute Notice*). The disputing Shipper shall pay the undisputed portion of the invoice. If the Invoice Dispute has not been resolved by negotiation between the Parties within 10 Business Days of First Gas receiving the Invoice Dispute Notice, *section 18* will apply. Where either Party has to pay money to the other Party as a result of the determination of an Invoice Dispute, then in addition to such payment, interest shall be payable on the amount payable from the due date for payment until the date such payment is made, at a rate equal to the Bill Rate plus 2% per annum, calculated on a Daily basis (compounded Monthly).
- 11.27 ~~In the absence of any manifest error,~~Except to the extent provided in section 11.26, a Shipper shall pay the invoiced amount in full in accordance with *section 11.25* without any withholding, deduction or set-off of any kind.

### **Incorrect Invoices**

- 11.28 If it is found at any time that a Shipper has been overcharged or undercharged then, within 20 Business Days after such error has been discovered and the correct amount has been agreed by the Parties or determined pursuant to *section 18*, First Gas shall issue a credit note or debit note (as appropriate) in accordance with the Goods and Services Tax Act 1985. If the Shipper has paid the invoice(s) containing an overcharge or undercharge First Gas will issue a credit note or debit note (where required) and refund or pay that Shipper the amount of that overcharge or undercharge, as appropriate, as a correction on its next invoice to the Shipper, provided that there shall be no right to re-open invoices if more than 26 Months ~~has~~have elapsed since the date of the invoice.

### **Default Interest**

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

## 12 GAS QUALITY

- 12.1 Each Shipper (and First Gas) shall ensure that any contract it has with a third party for the sale or purchase of gas [that is transported on the Transmission System](#) includes a requirement that all [such](#) gas sold or purchased must comply with the Gas Specification.
- 12.2 First Gas shall ensure that any ~~ICA~~ [new ICA in respect of a Receipt Point](#) it enters into ~~at a Receipt Point, or which has a specified commencement date, on or after the date of this Code~~ requires the Interconnected Party [under that ICA](#) to:
- (a) ensure that all gas it injects into the Transmission System complies with the Gas Specification;
  - (b) [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, except to the extent that:](#)
    - (i) [such Loss arose from First Gas causing or contributing to such Non-Specification Gas entering the Transmission System; and/or](#)
    - (ii) [First Gas has not mitigated such Loss to the fullest extent reasonably practicable; and](#)
  - (c) ~~(b)~~ on request by First Gas, promptly demonstrate [to First Gas](#) that it has adequate facilities, systems, procedures and monitoring to comply with ~~this section 12.2(a)~~.
- 12.3 Without limiting First Gas's or a Shipper's obligation to act as a Reasonable and Prudent Operator or to mitigate its Loss arising out of or in relation to Non-Specification Gas that enters, or is in, the Transmission System, each Party acknowledges that should Non-Specification Gas enter, or be in, the Transmission System, First Gas is unlikely to be able to prevent that gas from reaching a Delivery Point.
- 12.4 If First Gas becomes aware that Non-Specification Gas has flowed at a Receipt Point, or suspects that it may flow at a Delivery Point, it will notify all Shippers [and Interconnected Parties](#) via OATIS as soon as practicable and provide [a summary of](#) any details of which it is aware in relation to:
- (a) the reason why that gas was or may be Non-Specification Gas;
  - (b) 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
  - (c) the nature and extent of the deviation from the Gas Specification.
- 12.5 If a Shipper becomes aware that Non-Specification Gas has flowed at a Receipt Point, or suspects that it may have flowed at a Delivery Point, it will notify First Gas as soon as practicable and, to the extent it can, provide the information referred to in *section 12.4*. First

Gas will then promptly notify all Shippers and Interconnected Parties of that event (or suspected event) via OATIS together with a summary of the information provided to it.

- 12.6 Subject to *section 12.7*, First Gas, upon receiving a ~~reasonable~~-written request from a Shipper (acting reasonably), shall exercise the rights referred to in *section 12.2(b)c* and publish a summary report on OATIS setting out its findings. First Gas shall have no liability to the requesting Shipper in connection with the ~~exercise by manner in which~~ First Gas ~~under this section 12.6, of~~exercises its rights ~~under~~referred to in *section 12.2(b)-c* pursuant to *section 12.6*.
- 12.7 First Gas shall not be obliged to exercise the rights referred to in *section 12.2(b)c* in respect of a Receipt Point pursuant to a request from any Shipper ~~more frequently than once every 9-Months~~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.
- 12.8 Nothing in this *section 12* requires First Gas to monitor the quality of gas injected into the Transmission System.
- 12.9 First Gas will, where it owns the Delivery Point, install and maintain equipment at each Delivery Point to ensure that all Gas taken complies with the Gas Specification in respect of dust and/or compressor oil.
- 12.10 ~~Non-Specification Gas will be deemed to have been Non-Specification Gas at the time it was injected into the Transmission System, provided that where it is shown that First Gas caused Gas to become Non-Specification Gas, First Gas will (subject to section 16.1)~~First Gas shall indemnify each Shipper for any Loss incurred by that Shipper arising out of or in relation to that Shipper taking Non-Specification Gas at a Delivery Point, except to the extent that:
- (a) ~~a Shipper's such~~ Loss arose from ~~that~~the Shipper causing or contributing to the ~~injection of~~ Non-Specification Gas ~~into~~entering the Transmission System; and/or
  - (b) the Shipper ~~did~~has not ~~mitigate~~mitigated its Loss to the fullest extent reasonably practicable.
- 12.11 ~~Unless it is shown that First Gas caused Gas to become Non-Specification Gas, First Gas shall have no liability to any Shipper for any Loss incurred by that Shipper arising out of or in relation to that Shipper taking Non-Specification Gas at a Delivery Point. Where First Gas did not cause or contribute to gas being or becoming Non-Specification Gas, the indemnity under section 12.10 is subject to the limitations and exclusions set out in sections 16.2 to 16.7 (but not section 16.1).~~
- 12.12 Where First Gas caused or contributed to gas being or becoming Non-Specification Gas, the indemnity under section 12.10 is subject to the limitations and exclusions set out in sections 16.1 to 16.7.
- 12.13 For the purposes of sections 12.10, 12.11 and 12.12, Non-Specification Gas will be deemed to have been Non-Specification Gas at the time it was injected or delivered into the Transmission System unless and to the extent it is shown that First Gas caused or contributed to Gas being or becoming Non-Specification Gas.

12.14 ~~12.12~~ Any claim made by a Shipper under ~~section 12.10~~ sections 12.10, 12.11 and/or 12.12 shall be without prejudice to any other rights or remedies available to that Shipper (but any other rights and remedies will be subject to the limitations and exclusions set out in section 16).

## 13 ODORISATION

### Requirement

- 13.1 Except to the extent required by law and subject to section 13.6, First Gas will not commence odorising Gas in an unodorised pipeline or at a Delivery Point on an unodorised pipeline, or cease odorising Gas in an odorised pipeline or at a Delivery Point on an ~~unodorised~~odorised pipeline, unless all Shippers, ~~and~~ First Gas and the Interconnected Parties connected to the relevant pipeline agree in writing.
- 13.2 Where First Gas odorises Gas in a pipeline in accordance with *section 13.1*, it will inject such quantities of a suitable odorant into the Gas to ensure that, in normal circumstances, the odorised Gas meets the detectability requirements set out in New Zealand Standard 5263:2003: Gas Detection and Odorisation.
- 13.3 First Gas will conduct spot checks on each odorised pipeline owned by it (but not at all Delivery Points on any such pipeline) to test whether Gas taken from that pipeline meets the detectability requirements set out in New Zealand Standard 5263:2003. If it becomes aware that such Gas does not meet those requirements, notwithstanding that normal quantities of odorant have been injected, First Gas will notify all Shippers as soon as practicable and take reasonable steps to remedy the situation.
- 13.4 First Gas shall use its reasonable endeavours to conduct spot checks on each such odorised pipeline owned by it if it receives a written request from a Shipper (acting reasonably) for it to do so in order to facilitate such Shipper's reporting and compliance requirements. First Gas shall not be obliged to conduct spot checks in response to such a request where such request is not reasonable in the circumstances or where First Gas considers (whether as a result of prior spot checks or otherwise) that undertaking such spot checks will not provide it with any new relevant information.
- 13.5 ~~13.4~~ Each Month, First Gas will publish on OATIS the results of any odorisation spot checks completed in the previous Month. First Gas shall also publish on OATIS not less than once during each Year a summary report describing the facilities, systems, procedures and monitoring that it uses in order to verify compliance with section 13.2.
- 13.6 ~~13.5~~ Notwithstanding *sections 13.1* to ~~13.4,13.5~~, First Gas may cease odorising (or cease requiring the odorisation of) Gas in a pipeline upon the expiry of 18 months' written notice to all Shippers and Interconnected Parties.



## 14 PRUDENTIAL REQUIREMENTS

14.1 At all times during the term of its TSA and until the Shipper has paid all outstanding amounts and all amounts payable or which may become payable in the 26 months following expiry or termination of that TSA, each Shipper must comply, at its election, with one of the following:

- (a) hold an acceptable credit rating in accordance with *section 14.2*; or
- (b) arrange for a third party to provide one or a combination of the following securities (each a *Credit Support*), for the amount required in accordance with this *section 14*, provided the party providing the Credit Support maintains an acceptable credit rating in accordance with *section 14.2*:
  - (i) an unconditional payment guarantee or letter of credit in favour of First Gas; or
  - (ii) an unconditional third party payment guarantee in favour of First Gas; or
  - (iii) a security bond in favour of First Gas.

14.2 For the purposes of *section 14.1*, an acceptable credit rating means a long term credit rating of at least Baa3 (Moody's Investor Services Inc.), BBB- (Standard & Poors Ratings Group), B (AM Best), B (Fitch) or an equivalent credit rating or other reference from a reputable person which is acceptable to First Gas, (including confirmation from an auditor that, in its opinion, the relevant Shipper or third party Credit Support provider satisfies the criteria that would be applied in the granting of that credit rating).

14.3 First Gas may require the Shipper or third party Credit Support provider, as the case may be, to provide evidence of the existence of an acceptable credit rating (as set out in *section 14.2*).

14.4 The amount secured by any Credit Support shall be:

- (a) \$100,000 (plus GST), in respect of Balancing Gas Charges; plus
- (b) First Gas' reasonable estimate of 3 months of the Shipper's Transmission Charges` and Non-standard Transmission Charges (if any) (plus GST), provided that either Party may periodically review that amount (though not more frequently than quarterly) and require it to be adjusted up or down.

14.5 Where it has complied with the requirements of this *section 14*, a Shipper shall as soon as practicable notify First Gas should any of the following occur:

- (a) the Shipper ceases to comply with the requirements of *section 14.1*;
- (b) the Shipper believes that its financial position is likely to be materially adversely impaired such that its ability to pay its Transmission Charges and Non-standard Transmission Charges and/or Balancing Gas Charges will be consequently affected; ~~or~~

(c) the Shipper becomes aware that a third party Credit Support provider (upon which its current satisfaction of the prudential requirements in this *section 14* depends) ceases to hold an acceptable credit rating in terms of *section ~~14.1.14.1~~*; or

(d) either it, or the third party Credit Support provider, is placed on negative credit watch.

14.6 If a Shipper fails to pay First Gas any amount set out in any invoice issued by First Gas pursuant to this Code on the due date for payment (other than as a result of an Invoice Dispute or dispute) then on the expiry of 5 Business Days' prior written notice from First Gas, without limiting any other right First Gas may have under this Agreement, First Gas may:

(a) make a claim under any Credit Support to the extent payment is due and the Shipper shall procure that payment;

(b) require Credit Support from the Shipper, if Credit Support has not already been provided by the Shipper;

(c) require a change to the type of Credit Support provided for the Shipper; and

(d) require an increase to the level of Credit Support held for the Shipper.

14.7 Where First Gas makes a claim against any Credit Support, the Shipper must procure replacement Credit Support within 10 Business Days to ensure that the Credit Support requirements set out in *section 14.1* continue to be met.

14.8 Where a Shipper is required to provide new or additional Credit Support, it must do so within 20 Business Days of First Gas' written request.

14.9 If a Shipper's TSA or this Code is terminated, First Gas will release any associated Credit Support when and to the extent that the Shipper has paid all outstanding amounts under its TSA.

~~14.10 If required by First Gas in writing, the Shipper will show evidence of comprehensive liability insurance cover with a reputable insurer covering third party property damage and personal liability for which the Shipper may be legally liable under or in connection with this Code, up to the Capped Amounts, except to the extent that that insurance is not permitted by law.~~

**15 FORCE MAJEURE**

15.1 Notwithstanding the other provisions of this Code but subject to *section 15.2*, a Party shall be relieved from liability under this Code 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 Code (an *Affected Party*).

15.2 A Force Majeure Event shall not relieve an Affected Party from liability:

- (a) to pay money due under, or in connection with, this Code;
- (b) 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); or
- (c) for any Mismatch and Running Mismatch that may arise out of or in connection ~~to~~with, or before, during or after, the Force Majeure Event,

provided that a Shipper shall be relieved of its obligation to pay any fixed transmission charge (including Transmission Charge, Non-standard Transmission Charge or Priority Rights Charge), to the extent that First Gas cannot provide transmission services up to that Shipper's DNC and/or Supplementary Capacity on account of that Force Majeure Event (as determined by First Gas).

15.3 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:

- (a) as soon as practicable but in any event within 48 hours give notice to the other Party of the occurrence of the event or circumstance claimed to be a Force Majeure Event and provide to the other Party full particulars relating to the event or circumstance and the cause of that failure known to it at that time. The notice shall also contain an estimate of the period of time required to remedy the failure;
- (b) 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;
- (c) use due diligence and take all reasonable steps to rectify, remedy, shorten or mitigate the circumstances giving rise to Force Majeure Event so as to minimise any Loss or other effects of the suspension of obligations suffered or incurred, or likely to be suffered or incurred by the other Party; and
- (d) give notice as soon as practicable, but in any event within 48 hours, to the other Party upon termination of the Force Majeure Event.

15.4 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:

- (a) any agent or contractor of that Party; or
- (b) in the case of a Shipper, any person selling or supplying Gas to that Shipper,

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

- 15.5 A Shipper will not be able to claim relief from liability under *section 15.1* as a result of the suspended performance, or non-performance, of the obligations of any of its customers, howsoever caused.
- 15.6 Subject to *section 9.11*, if Congestion occurs due a Force Majeure Event, First Gas will allocate Available Operational Capacity in accordance with *section 10.3*.

**Information**

- 15.7 Any Shipper who declares a Force Majeure Event shall, as soon as practicable after its occurrence, provide First Gas with a ~~full~~ report ~~on the details~~ setting out in reasonable detail the particulars of the event, its causes, its effects on the Shipper and the actions taken by the Shipper to rectify, remedy, shorten or mitigate the event or circumstance which gave rise to the Force Majeure Event. First Gas will publish that report (or a summary of it) on OATIS.
- 15.8 If First Gas declares a Force Majeure Event it shall, as soon as practicable publish on OATIS a ~~full~~ report ~~on the details~~ setting out in reasonable detail the particulars of the event, its causes, its effects and the actions taken by First Gas to rectify, remedy, shorten or mitigate the event or circumstance which gave rise to the Force Majeure Event.

## 16 LIABILITIES

### Exclusion from a Party's Liability

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

### Limitation of a Party's Liability

- 16.2 If the *Liable Party* is liable to the *Other Party* in respect of any Loss suffered or incurred by the *Other Party* that arises out of or in connection with the relevant TSA (whether in contract, tort (including negligence) or generally at common law, equity or otherwise), other than for payment of amounts due pursuant to *section 11*, the *Liable Party* will only be liable for direct Loss suffered or incurred by the *Other Party* excluding (and the *Liable Party* shall not be liable for):
- (a) any loss of use, revenue, profit or savings by the *Other Party*;
  - (b) the amount of any damages awarded against the *Other Party* in favour of a third party, except where the *Liable Party* is liable to make a payment under *section ~~11.9~~11.10 or section 12.10*; and
  - (c) the amount of any money paid by the *Other Party* by way of settlement to a third party, except where the *Liable Party* is liable to make a payment under *section ~~11.9, 11.10 or section 12.10~~*.
- 16.3 The *Liable Party* shall in no circumstances be liable for any indirect or consequential Loss arising directly or indirectly from any breach of its (or any of the *Other Party's*) obligations under the relevant TSA, whether or not the Loss was, or ought to have been, known by the *Liable Party*.

### Capped Liability

- 16.4 Subject to *sections 16.5 to 16.8*, the maximum liability of a Party to the *Other Party* will be:
- (a) in relation to any single event or series of related events, \$~~10,000,000 (ten million dollars)~~12,500,000; and
  - (b) in any Year, \$~~30,000,000 (thirty million dollars)~~37,500,000, irrespective of the number of events in that Year.

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

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

$$\text{Adjustment Factor} = \text{CPI}_n / \text{CPI}_{(n-1)}$$

where:

$\text{CPI}_n$  means the most recently published CPI Index for the June quarter in the preceding Year; and

$\text{CPI}_{(n-1)}$  means the most recently published CPI Index for the June quarter in the Year that is 2 years prior to the Year in which the adjustment is being made.

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

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

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

#### **Liability where First Gas is the Liable Party ~~under Multiple Agreements~~**

- 16.6 Where:

- (a) First Gas is the Liable Party (including under the indemnity set out in *section 12.10*); and
- (b) First Gas' liability is or may be wholly or partially caused or contributed to by a breach of a TSA and/or ICA by one or more other Shippers or Interconnected Parties (*Liable Third Parties*), ~~and First Gas recovers (using reasonable endeavours to pursue and seek recovery of those amounts, or pursuant to *section 16.12*) any amount from those Liable Third Parties in respect of that breach,~~

then First Gas' liability shall be limited to the aggregate of the amount ~~so recovered~~ 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). Subject to *section 16.11*, 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.

16.7 Where:

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

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

- 16.8 Where the Liable Party is not First Gas, the maximum aggregate liability of the Liable Party to First Gas under the relevant TSA and any Coincident Agreements shall not exceed the ~~relevant~~ Capped Amount.

**General**

- 16.9 Each limitation or exclusion of this *section 16* and each protection given to First Gas or a Shipper or its respective officers, employees, or agents by any provision of this *section 16* is to be construed as a separate limitation or exclusion applying and surviving even if for any reason any of the provisions is held inapplicable in any circumstances and is intended to be for the benefit of and enforceable by each of the Party's officers, employees, and agents.
- 16.10 Nothing in this Code or a TSA shall limit the right of either Party to enforce the terms of a TSA by seeking equitable relief, including injunction and specific performance, in addition to all other remedies at law or in equity.

**Subrogated Claims**

- 16.11 If First Gas is the subject of a claim by a Shipper or ~~third party~~ an Interconnected Party (the *Claimant*) where the claim (or any part of it) arises because of a purported breach of a TSA by another Shipper or a purported breach of an ICA by an Interconnected Party (each such Shipper or Interconnected Party being the *Defending Party*), the following procedure shall apply:
- (a) First Gas shall immediately give notice of the claim to the Defending Party;
  - (b) First Gas will not make any payment or admission of liability in respect of the claim without the prior written consent of the Defending Party. The Defending Party will not unreasonably withhold or delay its consent under this *section 16.11(b)*;
  - (c) the Defending Party may elect to defend in the name of First Gas any third party claim involving any litigation. The Defending Party must notify First Gas of its election within 10 Business Days of receiving notice of the claim. First Gas shall provide or procure to

be provided such assistance as the Defending Party may require provided that the Defending Party first agrees in writing to:

- (i) 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
- (ii) pay any reasonable costs directly incurred by First Gas in providing assistance in defending the claim,

except that First Gas shall not be required to render any assistance to the Defending Party pursuant to this *section 16.11(c)* (other than allowing a defence in First Gas' name) in circumstances where First Gas has reasonable grounds to refuse such assistance;

- (d) if the Defending Party elects to defend a claim under *section 16.11(c)* then it may choose its own counsel for its defence. The costs of counsel will be met by the Defending Party;
- (e) 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
- (f) the Defending Party shall not be required to make any payment in respect of any claim under this *section 16.11* based on a contingent liability until the contingent liability becomes an actual liability and is due and payable.

~~16.12 If a Shipper (Claiming Party) suffers a Loss arising from an act or omission of another Shipper in breach of its TSA or Interconnected Party in breach of its ICA (each such Shipper or Interconnected Party being a Breaching Party) then:~~

- ~~(a) the Claiming Party may elect to pursue the claim in the name of First Gas. The Claiming Party must notify First Gas of its election. First Gas shall provide or procure to be provided such assistance as the Claiming Party may require provided that the Claiming Party first agrees in writing to:
  - ~~(i) indemnify First Gas against any liabilities resulting from that claim and/or pursuit of that claim except to the extent that First Gas has directly caused those liabilities; and~~
  - ~~(ii) pay any reasonable costs directly incurred by First Gas in providing assistance in pursuing the claim,~~~~

~~except that First Gas shall not be required to render any assistance to the Claiming Party pursuant to this *section 16.12(a)* (other than allowing proceedings to be commenced and prosecuted in First Gas' name) in circumstances where First Gas has reasonable grounds to refuse such assistance;~~

- ~~(b) if the Claiming Party elects to pursue a claim under *section 16.12(a)* then it may choose its own counsel. The costs of counsel will be met by the Claiming Party;~~



- ~~(c) the Claiming Party's Loss shall be deemed to be First Gas' Loss for the purposes of the TSA or ICA between First Gas and the Breaching Party;~~
- ~~(d) a breach of the Breaching Party's obligations under its TSA or ICA shall be deemed to be a breach by First Gas of its TSA with the Claiming Party; and~~
- ~~(e) 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 16.12(a)(i).~~

16.12 ~~16.13~~ A Shipper shall not make any claim, demand or commence proceedings directly against another Shipper or Interconnected Party in relation to that other Shipper's or Interconnected Party's breach of its TSA or ICA (as applicable) or negligence in relation to any matter pertaining to or dealt with in this Code, a TSA or ICA. Neither a Shipper nor First Gas shall make any claims, demands or commence proceedings against each other in relation to any matter dealt with by a TSA (including a claim that First Gas or a Shipper has been negligent in relation to any matter pertaining to or dealt with in that TSA) except in accordance with that TSA. Nothing shall prevent:

- (a) First Gas from exercising its rights and remedies under any ICA; or
- (b) a transferor, transferee or Gas Transfer Agent from exercising its rights and remedies under a GTA, or party to an Allocation Agreement exercising its rights and remedies under an Allocation Agreement.

16.13 ~~16.14~~ Prior to First Gas making any claim against any Liable Third Parties, First Gas shall first consult any Shipper who is a Claimant and provide an opportunity for that Shipper to have its Loss included in First Gas' claim(s) if applicable. ~~A Claimant's Loss shall be deemed to be First Gas' Loss for the purposes of any claim against a Liable Third Party.~~

16.14 ~~16.15~~ If ~~required~~requested by either Party in writing, the other Party will show evidence of comprehensive liability insurance cover with a reputable insurer covering third party property damage and personal liability for which the other Party may be legally liable under or in relation to its TSA, up to the Capped Amounts, except to the extent that such insurance is not permitted by law.

16.15 ~~16.16~~ For the purposes of this section 16, any reference to ~~a breach of, or liability under a TSA shall include any breach of, or liability under a Supplementary Agreement or Interruptible Agreement.~~ ;

- (a) 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);
- (b) 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;
- (c) an ICA or Interconnection Agreement shall include a reference to any Existing Interconnection Agreement or any other interconnection agreement or arrangement (and a reference to an Interconnected Party shall include a reference to an interconnected party under any such agreement or arrangement); and

(d) a breach of, or liability under, an ICA or Interconnection Agreement shall include any breach of, or liability under, an Existing Interconnection Agreement or any other interconnection agreement or arrangement.

## 17 CODE CHANGES

### **Amendment of Code**

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

### **Draft Change Request**

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

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

- 17.4 First Gas will publish any Draft Change Request on OATIS as soon as is reasonably practicable and in any event within 3 Business Days of receiving it.
- 17.5 ~~Within 10~~ As soon as reasonably practicable but in any event on or before the date which is 15 Business Days ~~following~~after First Gas' publication of a Draft Change Request (such date, the Further Information Request Date), any Interested Party may request the Change Requestor to provide additional, relevant information in relation to the proposed change.
- 17.6 The Change Requestor shall provide both First Gas and GIC with the additional information reasonably requested pursuant to *section 17.5* as soon as reasonably practicable and in any case not later than the date which is 10 Business Days after the Further Information Request Date (such date, the Further Information Provision Date). The Change Requestor shall not be required to provide the additional information requested if and to the extent the amount of additional information requested is unduly onerous or not relevant to the Draft Change Request.
- 17.7 Within 5 Business Days following the Further Information Provision Date (or, if no information request being made, 17.7 Within 20 is made under section 17.5, within 30 Business Days ~~following of~~ First Gas' publication of a Draft Change Request), any Interested Party may notify both First Gas and GIC:
- (a) whether it supports the proposed change in principle;
  - (b) of any specific objections it has; and/or
  - (c) of any conditions that would attach to its support for the proposed change,

in each case including reasons.

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

#### **Change Request**

- 17.9 Not later than ~~25~~17 Business Days following the Further Information Provision Date (or, if no information request is made under section 17.5, within 42 Business Days of First Gas' publication of a Draft Change Request), the Change Requestor may submit to both First Gas and GIC the following information (*Change Request*):

- (a) the information referred to in *section 17.3*, amended as required to reflect Interested Parties' responses pursuant to *section 17.7*; and
- (b) its responses to any substantive specific objections raised,

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

- 17.10 First Gas will publish any Change Request on OATIS as soon as is reasonably practicable and in any event within 3 Business Days of receiving it, and notify if as a result of information provided under section 17.9 First Gas does not support the proposed change.

#### **GIC Recommendation**

- 17.11 Following submission of a Change Request in accordance with *section 17.9*, GIC, after appropriate consultation with the Gas industry, will provide a written recommendation stating whether or not it approves that Change Request. The GIC recommendation will consider (but not be limited to) whether the proposed change better achieves the objectives set out in section 43ZN of the Gas Act 1992 and the objectives set out in Government Policy Statements on gas prepared under section 43ZO of the Gas Act 1992 than the current Code. In doing so, the GIC may also suggest any further Code changes or actions by any Interested Party that it considers relevant.
- 17.12 Subject to *section 17.14*, a Change Request approved by GIC (*Recommended Change Request*) will become effective on the date specified in the approval. A Change Request the GIC does not ~~support~~approve will be deemed to have been declined and will lapse.
- 17.13 Where it approves a Recommended Change Request, First Gas will notify all Interested Parties thereof via OATIS within 2 Business Days, and publish an amended Code on OATIS which shall be effective from the later of the publication date and any effective date set out in the Recommended Change Request.
- 17.14 First Gas may decline to approve a Recommended Change Request if it has previously given notice under *section 17.7* or under section 17.10 that it does not support the proposed change and:
- (a) it considers that the Change Request ~~would~~:
    - (i) could reasonably be expected to cause ~~either the Change Requestor or~~ First Gas or another Interested Party to breach its obligation to act as a Reasonable and Prudent Operator; or

(ii) [is inconsistent with other obligations under the Code or an Interconnection Agreement; or](#)

(b) the proposed Code change would:

(i) require First Gas to incur expenditure it could not recover; or

(ii) be likely to adversely affect First Gas' current or future provision of transmission services, pricing structure or revenue recovery,

provided that First Gas must publish its reasons on OATIS within 5 Business Days of receiving GIC's decision pursuant to *section 17.11*.

### **Correction Amendments**

17.15 If an Interested Party believes this Code needs to be amended either:

(a) as a result of any law change, or the order of any Court with competent jurisdiction;

(b) to correct a typographical or other error; or

(c) to update a reference to an external source including any act or standard,

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

(d) the proposed amendments to the Code;

(e) the explanation for each proposed amendment; and

(f) the date on which the proposed amendments will take effect (not to be ~~not~~ sooner than 20 Business Days after the Correction Request is notified) (*the Code Correction Date*).

17.16 A Correction Request shall be deemed to have amended the Code unless an Interested Party submits a notice of objection to both First Gas (which First Gas will promptly publish on OATIS) and GIC prior to the Code Correction Date.

17.17 In the absence of any notice of objection pursuant to *section 17.16*, First Gas shall publish marked up and clean copies of the Code incorporating the changes set out in the Correction Request on OATIS and the amended Code shall take effect on the Code Correction Date.

17.18 If a notice of objection is submitted pursuant to *section 17.16*, the Correction Request shall be deemed to have been withdrawn (and the Interested Party who submitted it may submit a Draft Change Request).

### **Urgent Code Change**

17.19 First Gas may make a temporary change to the Code in accordance with this *section 17.19* and *section 17.20* if it believes that such change is necessary to respond to unforeseen ~~circumstance~~[circumstances](#) which threaten the integrity of, or the proper commercial operation of, the Transmission System (*Urgent Code Change*).

17.20 First Gas will notify all Interested Parties and GIC of any Urgent Code Change and in relation to any Urgent Code Change must publish the following information on OATIS:

- (a) the required amendments to the Code;
- (b) the explanation of each required amendment; and
- (c) the date on which the required Code amendments will take effect (not be earlier than the first Business Day after the Urgent Code Change is published on OATIS).

17.21 Subject to *section 17.22*, the Code amendments implemented via any Urgent Code Change shall expire 6 Months after the date they take effect and, if First Gas wishes them to be permanent, it may submit a ~~Code~~[CodeDraft](#) Change Request accordingly (at any time).

17.22 GIC may at any time revoke an Urgent Code Change that it considers to be manifestly unreasonable or contrary to the interests of users of the Transmission System.

**18 DISPUTE RESOLUTION**

- 18.1 Subject to *sections 11.26 and 11.27*, in the event of any dispute of whatever nature between a Shipper and First Gas, either Party may notify the other in writing that it wishes to attempt resolution of the dispute in accordance with this *section 18 (Dispute Notice)*. On receipt of a Dispute Notice, the Parties shall each use reasonable endeavours to resolve the dispute by negotiation.
- 18.2 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:
- (a) resolution by an independent expert agreeable to both parties; or
  - (b) where the Parties cannot agree upon an independent expert within 10 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).
- 18.3 The arbitration will be conducted by an arbitrator appointed:
- (a) jointly by the Parties; or
  - (b) 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.
- 18.4 Nothing in this *section 18* affects either Party's right to seek urgent interlocutory relief.

## 19 TERM AND TERMINATION

### Term of TSA

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

### Term of Code

- 19.2 Subject to *section 7.5, 7.5 and section 7.14*, the terms and conditions of this Code expire at 2400 on ~~30 September 2022~~ the date which is 10 Years after the date of this Code. Not later than the date which is:

- (a) 8 Years after the date of this Code, First Gas will consider whether any changes ought to be made to this Code; and
- (b) 8 Years and six Months after the date of this Code, First Gas will initiate a Draft Change Request to:
- (i) extend the term of the Code (with the duration of the extension proposed not to be less than five years unless there is good reason to propose a shorter extension); and
- (ii) propose any other changes to the Code it considers are appropriate having regard to its review work it undertook in relation to the Code pursuant to *section 19.2(a)*.

and the provisions of *section 17* shall apply accordingly.

### Shipper May Terminate

- 19.3 A Shipper may give First Gas written notice to terminate its TSA at any time, and the termination date will be 2400 on the later of:
- (a) the date for termination set out in the Shipper's notice of termination;
- (b) without limiting *section 19.3(c)*, the expiry of all PRs held by the Shipper (if any);
- (c) the date the sale of all PRs held by the Shipper (if any) becomes effective (or, if earlier, the date the relevant Shipper pays all amounts outstanding for the PRs to the end of the PR Term); and
- (d) the date which is three months after the date First Gas receives the Shipper's notice of termination.

### Termination for Default

- 19.4 Either Party may terminate a TSA immediately on notice in writing to the other Party specifying the cause, if:
- (a) any money payable by the other Party under this Code remains unpaid after its due date (other than pursuant to *section 11.26* or *section 18*) for a period of more than 10 Business Days and the other Party has not remedied that default within 20 Business Days of notice from the terminating Party; or



- (b) a Shipper fails to comply with the prudential requirements set out in *section 14* for a period of 60 Business Days and the Shipper has not remedied that default within 20 Business Days of notice from the terminating Party; or
- (c) the other Party defaults in the performance of any material covenants or obligations imposed upon it under this Code and has not remedied that default within 20 Business Days of notice from the terminating partyParty; or
- (d) a resolution is passed or an order made by a court for the liquidation or winding up of the other Party, except for the purposes of solvent reconstruction or amalgamation; or
- (e) the other Party makes or enters into or endeavours to make or enter into any composition, assignment or other arrangement with or for the benefit of that Party's creditors; or
- (f) a Force Majeure Event occurs such that the other Party could not be expected to be in a position to perform its obligations under this Code for a period of six Months or more.

#### **Suspension for Default**

19.5 If First Gas becomes aware that a Shipper is in breach of any material term or condition of this Code, First Gas shall be entitled to suspend any transmission services provided to that Shipper for the duration of any non-compliance if, and to the extent that, in First Gas' reasonable opinion, that action is necessary to protect other Shippers or Interconnected Parties or their use of the Transmission System.

#### **Termination Without Prejudice to the Amounts Outstanding**

19.6 The expiry or termination of a TSA shall not:

- (a) relieve a Shipper or First Gas of its obligation to pay any money outstanding under this Code or pursuant to the TSA; or
- (b) relieve a Shipper of any obligation to settle the Shipper's Running Mismatch in accordance with *section 8*, which, at First Gas' election (where First Gas is the terminating Party) but following consultation with that Shipper, may be done either in dollar terms or by First Gas making Gas available for that Shipper to take, or taking Gas from, that Shipper.

#### **Effects of Termination**

19.7 Termination, suspension or expiry of a TSA shall not prejudice any rights or obligations of a Party that existed prior to termination, suspension or expiry.

19.8 The provisions of this Code shall continue in effect after expiry or termination of the relevant TSA to the extent they relate to an event or circumstance that occurred prior to the date of expiry or termination of that TSA.

## 20 GENERAL AND LEGAL

### Notices

20.1 Subject to *section 20.2*, all legal notices to be provided under this Code or any TSA (excluding [OFOs and](#) all operational notifications required to be provided via OATIS, except where First Gas declares that OATIS is not operational) must be in writing and shall be deemed served if personally delivered (including via courier) or sent by registered mail or email to:

- (a) in the case of First Gas, the contact set out below (or other contact First Gas may notify in writing):

Transmission Manager – Commercial  
First Gas Limited  
Level 6, ~~Resimae House~~ [Midland Chambers](#)  
45 Johnston Street  
PO Box 865  
Wellington 6011,

Email: ~~[ ]~~ [Commercial.analyst@firstgas.co.nz](mailto:Commercial.analyst@firstgas.co.nz); and

- (b) in the case of a Shipper, the contact set out in its TSA (or other contact the Shipper may subsequently notify to First Gas in writing).

20.2 Any legal notice sent [\(excluding OFOs and other operational notices\)](#):

~~(a) — via OATIS; or~~

[\(a\)](#) ~~(b)~~ by email shall [expressly and prominently state that it is a formal notice for the purposes of this section 20 and](#) (unless the sender receives an automatic response stating that the recipient's email address does not exist or the email has not been successfully sent):

- (i) if sent prior to 1600 on any Business Day, be deemed served on that Business Day; or
- (ii) if sent after 1600 on any Business Day, shall be deemed served on the next Business Day.

[except in the case of a notice given under section 15.3, which shall be deemed served at the time received by the recipient;](#) or

[\(b\)](#) ~~(c)~~ by registered mail shall be deemed served on the earlier of the date of receipt or on the second Business Day after the ~~same~~ [notice](#) was committed to post.

A notice concerning breach of this Code or any TSA must be sent by email.

### Confidential Information

20.3 Confidential Information means:

- (a) information provided by Shippers to First Gas (or vice versa) for the purposes of setting ~~Prudential Requirements~~prudential requirements under section 14;
- (b) a Shipper's bids for Priority Rights prior to a PR Auction;
- (c) a Shipper's Transmission Charges, including the information used to calculate them;
- (d) the substance, but not the fact or existence, of any dispute between a Shipper and First Gas where the substance relates to Confidential Information or the Parties agree in writing that it is confidential;
- (e) documents or other information made available by a Party during a dispute resolution process;
- (f) information provided by a Shipper in response to a First Gas tender for Gas;
- (g) advice which is protected by legal professional privilege;
- (h) information provided by a Shipper in relation to a customer or potential customer of that Shipper, including in relation to the availability of or provision of transmission capacity, that could be of value to any of the Shipper's competitors; and
- (i) any other material a Party wishes to disclose to ~~First Gas~~the other Party on the basis that it is ~~Confidential Information and which First Gas agrees (commercially sensitive confidential information and which the first-mentioned Party identifies in writing~~ prior to actual disclosure of the information)is Confidential Information, to the other Party is commercially sensitive confidential information (it being acknowledged that any such identification must relate to specific information provided to the other Party rather than general categories or types of information).

20.4 ~~and First Gas shall have suitable procedures, protocols and systems in place at all times to ensure that Confidential Information it holds at any time is securely stored and available only to those First Gas employees who need access to it.~~First Gas shall have suitable procedures, protocols and systems in place at all times to ensure that Confidential Information it holds at any time is securely stored and available only to those First Gas employees who need access to and use of it for or in connection with the operation or use of the Transmission System and any interconnected points, and is not otherwise disclosed to third parties other than as permitted pursuant to this Code. Each Shipper shall ensure that Confidential Information it holds at any time is securely stored and available only to those of its employees who need access to it for or in connection with the operation or use of the Transmission System and any interconnected points, and is not otherwise disclosed to third parties other than as permitted pursuant to this Code.

20.5 Where disclosure of Confidential Information is made by the relevant Party to any third party pursuant to section 20.10(c) or (i), the relevant Party is to ensure that appropriate steps are taken prior to any such disclosure to protect the confidentiality of any disclosed information consistent with the requirements of this section 20, including such third party entering into an appropriate form of confidentiality agreement or undertaking or otherwise being bound by appropriate professional obligations as to confidentiality.

- 20.6 Any Shipper with a valid TSA may appoint a reputable international firm of auditors, independent of themselves and First Gas, to carry out an independent audit of First Gas' operating procedures if it reasonably believes First Gas has disclosed Confidential Information other than in accordance with the requirements of this Code. First Gas will allow such auditor access to First Gas' records for this purpose, provided that:
- (a) prior to conducting the audit, the auditor shall sign a confidentiality undertaking in a form reasonably acceptable to First Gas; and
  - (b) the person appointing the auditor shall pay all costs and expenses of the auditor and the audit.
- 20.7 The results of any audit carried out pursuant to section 20.6 shall be provided to the person appointing the auditor and to First Gas at the same time by way of a draft report (which shall include a summary section). The auditor shall have due regard to any comments provided by First Gas in relation to the findings of the audit and as soon as reasonably practicable thereafter issue its final report to the appointing person and First Gas. First Gas shall publish the summary section of the final report on OATIS as soon as reasonably practicable thereafter.
- 20.8 First Gas, acting as a Reasonable and Prudent Operator, shall consider, and where appropriate use its reasonable endeavours to implement, any recommendations made in the final report provided by the auditor.
- 20.9 The existence and terms of a TSA are not Confidential Information. Notwithstanding anything in this Code 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.
- 20.10 ~~20.4~~ First Gas or the relevant Shipper (as applicable) may use or disclose Confidential Information to the extent that:
- (a) the information is in the public domain, other than by a ~~First Gas~~ breach of this Code by First Gas or the relevant Shipper (as applicable);
  - (b) the information was already known to First Gas or the relevant Shipper (as applicable) and was not then subject to any obligation of confidentiality;
  - (c) disclosure to ~~First Gas~~ a professional advisor(s) or consultant(s) on a need to know basis is required, including for the purposes of analysing any request relating to the availability or provision of transmission services;
  - (d) disclosure is necessary to maintain the safety and reliability of the Transmission System, or is required to give effect to the relevant TSA, a Supplementary Agreement, Existing Supplementary Agreement, Interconnection Agreement or an Existing Interconnection Agreement to which the Confidential Information relates;
  - (e) the Code, any Interconnection Agreement or any Existing Interconnection Agreement contemplates or requires the disclosure or provision of information (or information or analysis derived from such information) on OATIS or otherwise contemplates or requires the disclosure of such information;

- (f) ~~(e)~~ 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;
- (g) ~~(f)~~ the other Party has consented in writing to the use or disclosure;
- (h) ~~(g)~~ the information is obtained from a third party, whom First Gas or the relevant Shipper (as applicable) believes, in good faith, to be under no obligation of confidentiality;
- (i) ~~(h)~~ disclosure is to the auditors of First Gas ~~auditors~~ or the relevant Shipper (as applicable); or
- (j) ~~(i)~~ disclosure is required pursuant to the resolution of any dispute under this Code.

### **Information on OATIS**

20.11 ~~20.5~~ First Gas will provide each Shipper and Interconnected Party with the required permissions they need to access OATIS for any purpose relating to this Code. Every party who accesses OATIS shall agree to the terms and conditions of access to and use of OATIS, as set out on OATIS.

20.12 ~~20.6~~ Each Shipper is solely responsible for ensuring it has the required information technology to access OATIS.

20.13 ~~20.7~~ First Gas will use OATIS to publish operational and other information required under this Code. Schedule Two is a summary of the information, as at the date of this Code, that First Gas will publish on OATIS. The Parties acknowledge and agree that:

- (a) Schedule Two is not necessarily an exclusive list of the information First Gas may publish;
- (b) First Gas will be under no obligation to continue to publish information that (in its reasonable opinion) is no longer relevant, useful or necessary but will give all Shippers and Interconnected Parties 10 Business Days' before discontinuing publication of any information;
- (c) First Gas may amend Schedule Two at any time to reflect changes in the Code, without the need for a Change Request, provided it notifies all Shippers and Interconnected Parties; and
- (d) to the extent a Shipper fails to comply with its obligations under this Code as a direct result of First Gas not publishing information that the Shipper needs in order to do so (excluding any information not generated by First Gas itself and which is not made available to First Gas to publish) then, to the extent of that failure, the Shipper shall be relieved of liability.

### **Waiver**

20.14 ~~20.8~~ No failure, delay or indulgence by a Party in exercising any power or right conferred on that Party by a TSA will operate as a waiver of that power or right.

### **Entire Agreement**

[20.15](#) ~~20.9~~ Each TSA constitutes the entire agreement between the Parties from the Commencement Date in relation to the subject matter of that TSA and supersedes all prior negotiations, representations and agreements between the Parties [in relation to its subject matter](#).

### **Exclusion of Implied Terms**

[20.16](#) ~~20.10~~ All terms and conditions relating to a TSA that are implied by law or custom are excluded to the maximum extent permitted by law.

### **Severability**

[20.17](#) ~~20.11~~ If any section or provision of this Code is held to be illegal or unenforceable by any judgment of any Court or tribunal having competent jurisdiction, that judgment shall not affect the remaining provisions of this Code, which shall remain in full force and effect as if that illegal or unenforceable section or provision had not been included in this Code, but only if severance does not materially affect the purpose of, or frustrate, this Code, in which case the severed section or provision shall be modified to the extent necessary to render it legal, valid and enforceable and to reflect the economic and operational effect of the severed section or provision to the maximum extent practicable.

### **Exclusion of Consumer Legislation**

[20.18](#) ~~20.12~~ The Parties acknowledge and agree that, in relation to a TSA:

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

### **Contractual Privity**

[20.19](#) ~~20.13~~ A TSA shall not, and is not intended to, confer any benefit on, or create any obligation enforceable at the suit of, any person who is not a Party to that TSA.

### **Assignment**

[20.20](#) ~~20.14~~ A Shipper must not assign or transfer any of its rights or obligations under a TSA unless it has obtained First Gas' prior written consent, which must not be unreasonably withheld or delayed.

[20.21](#) ~~20.15~~ First Gas must not assign or transfer any of its rights or obligations under any TSA, unless it can reasonably demonstrate that the assignee is capable of meeting First Gas' obligations under that TSA.

[20.22](#) ~~20.16~~ Where a Party (*Assignor*) assigns or transfers a TSA, the Assignor shall remain liable to the other Party to the TSA for the due performance of all obligations [arising](#) under that TSA [prior to the date of assignment](#) as primary obligor and not merely as surety or guarantor only, unless that other Party has given its prior written consent to the release of the Assignor from its obligations.

20.23 ~~20.17~~ Prior to any assignment or transfer of a TSA, the Assignor must obtain execution by the assignee of a deed of covenant, in favour of the other Party to that TSA, binding the assignee to perform all the Assignor's obligations under that TSA.

20.24 ~~20.18~~ Notwithstanding any assignment, the assignor shall remain liable for any amounts payable by it under the TSA up to the end of the Month during which the assignment takes effect.

**Governing Law**

20.25 ~~20.19~~ Each TSA shall be construed and interpreted in accordance with the law of New Zealand and the Parties submit to the non-exclusive jurisdiction of the New Zealand courts.

**SCHEDULE ONE: TRANSMISSION SERVICES AGREEMENT**

**DATE:**

**PARTIES**

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

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

**AGREEMENT:**

**1 SHIPPER'S CONTACT DETAILS**

Physical Address: [ ]

Postal Address: [ ]

E-mail Address: [ ]

**2 COMMENCEMENT DATE**

[ ]

**3 EXPIRY DATE**

[ ]

**4 INCORPORATION OF CODE**

- 4.1 First Gas agrees to provide and the Shipper agrees to accept Gas transmission services in respect of the transport of the Shipper's Gas through the Transmission System on the terms and conditions set out in this Transmission Services Agreement (TSA) and the Gas Transmission Access Code (as amended from time to time) [but not including the common terms of interconnection set out in Schedule Five and Schedule Six](#) (the Code).
- 4.2 Each Party agrees to comply with and be bound by the terms and conditions of the Code as if they were set out in full in this TSA.
- 4.3 All terms used in this TSA that are defined in the Code shall have the same meaning where used in this TSA.

**5 DISCLOSURE**

- 5.1 This TSA is not Confidential Information and First Gas will publish it in full on OATIS.



Signed for and on behalf of  
**First Gas Limited** by:

Signed for and on behalf of  
**the Shipper** by:

\_\_\_\_\_  
Signature of authorised signatory

\_\_\_\_\_  
Signature of authorised signatory

\_\_\_\_\_  
Name of authorised signatory

\_\_\_\_\_  
Name of authorised signatory

**SCHEDULE TWO: INFORMATION TO BE PUBLISHED**

<b>Section</b>	<b>Item</b>	<b>Frequency of Publication</b>
1.1	Acceptable Line Pack Limits (upper and lower)	As required for operational purposes
1.1	Critical Contingency Management Plan	As required (e.g. after any change)
1.1	<u>Aggregate of DNC at the end of each Day</u>	<u>At the end of each Day</u>
1.1	Intra-Day Nominations Deadlines	As required (e.g. after any change to the number of cycles)
1.1	Metering Requirements	As required (e.g. after any change)
1.1	Line Pack to provide Running Mismatch Tolerance for Shippers and OBA Parties	Periodically
1.1	Security Standard Criteria	As required
<del>2.11</del> 2.9	Uneconomic / discontinued transmission services	As required
3.2	Receipt Points in the Receipt Zone	As at the date of this Code, updated if and when required
3.3	Delivery Zones and likely Congested Delivery Points	Annually, by <del>±30 September</del> <u>June</u>
3.5	Need for Interruptible Load; amount of Interruptible Load required	Annually by 30 June and then as required
3.8	Criteria for Interruptible Load	As required
3.9	Notification of insufficient Interruptible Load	As required
3.10	First Gas' direct request for Interruptible Load	As required
3.11	Notification of Beneficiary <del>Delivery Points</del> <u>DPs</u>	After <del>execution</del> <u>publication</u> of <u>the</u> Interruptible Agreement
3.17	Scheduled PR Auction	As required
3.19	PR Auction <del>Term</del> <u>terms</u> and <del>Conditions</del> <u>conditions</u> ; Number of PRs on offer; PR Term and PR Effective Date; Reserve Price for PRs;	<del>Minimum 10 Business Days before a PR-Auction</del> <u>As per section 3.19</u>
3.20	Publication of the number of PRs allocated to each Shipper after a PR Auction	After each PR <del>auction</del> <u>Auction</u> and before the relevant PR Effective Date
3.21	Publication of the number of PRs traded by Shippers and the PR sale price; Amendment of Shipper PR holdings following any trade	<del>Promptly</del> <u>As soon as practicable</u> following any trade
<del>3.24</del> 3.25	Notification of Congestion arising during a year; Confirmation of a PR Auction date; Exclusion of Congested Delivery Point from a Delivery Zone	As <del>required</del> <u>soon as practicable after the decision</u>
<del>3.25</del> 3.26	Notification that Congestion no longer exists; Update Shippers' holdings of PRs on OATIS for any PRs cancelled; <del>Notify</del> <u>Notification of</u> the Delivery Zone in which the former Congested Delivery Point will be included	As <del>required</del> <u>soon as practicable after the decision</u>
3.29	<u>Peaking Parties</u>	<u>Annually and as otherwise required</u>

<b>Section</b>	<b>Item</b>	<b>Frequency of Publication</b>
<a href="#">4.1</a>	<a href="#">Sum of Shippers' nominations at Receipt Points (where OBA does not apply)</a>	<a href="#">Each nomination cycle</a>
4.11	Intra-Day Cycle times, including deadlines for NQs and First Gas approval	As required
<a href="#">4.14</a>	<a href="#">Notify Congested Delivery Points</a>	<a href="#">Following each nomination cycle</a>
5.5/ <a href="#">5.6</a>	<del>Daily Delivery Reports;</del> Hourly Delivery Reports	For Metering that First Gas monitors by telemetry (including SCADA), as soon as practicable <a href="#">after the Hour ends for Unvalidated data</a> and not later than <del>(1200 on the next Day after a Day);</del> <del>1000 for Unvalidated data;</del> and <del>1200</del> for Validated data
<a href="#">5.5/5.6</a>	<a href="#">Daily Delivery Reports</a>	<a href="#">For Metering that First Gas monitors by telemetry (including SCADA), as soon as reasonably practicable and not later than 1000 on the next Day after a Day for Unvalidated data and not later than 1200 on the next Day after a Day for Validated data</a>
<a href="#">5.6(b)</a>	<a href="#">Hourly Delivery Reports (Metering not monitored by telemetry or SCADA)</a>	<a href="#">For Metering that First Gas does not monitor by telemetry or SCADA, as soon as practicable after the end of the Month and not later than 1200 on the 4<sup>th</sup> Business Day of the following Month (for all Days in that Month)</a>
5.8	Gas composition data	<del>By</del> <a href="#">As soon as is practicable but not later than</a> 1200 each Day, data for the previous Day
<del>7.5</del> <a href="#">7.6</a>	Supplementary Agreements	<del>As soon as practicable</del> <a href="#">Promptly following execution</a> <del>first gas flow</del>
<del>7.10</del> <a href="#">7.11</a>	Interruptible Agreements	<del>As soon as practicable</del> <a href="#">Promptly following execution</a> <del>first gas flow</del>
<del>7.14</del> <a href="#">7.15</a>	Interconnection Agreements	<del>As soon as practicable</del> <a href="#">Promptly following execution</a> <del>first gas flow</del>
8.6	Low Line Pack Notice; High Line Pack Notice	As soon as reasonably <del>practical</del> <a href="#">practicable</a> , if Line Pack is decreasing or increasing excessively fast
8.12	Negative ERM fee ( $F_{\text{NERM}}$ )	As required
8.13	Positive ERM fee ( $F_{\text{PERM}}$ )	As required
8.15	Running Mismatches of Shippers, OBA Parties and First Gas	As soon as practicable after determination
<a href="#">8.15</a>	<a href="#">Estimated Mismatch (calculated Hourly) and estimated Running Mismatch (at the end of the Day calculated Hourly)</a>	<a href="#">In accordance with section 8.15</a>
8.17	Parked Gas and/or Loaned Gas quantities	<del>Following</del> <a href="#">As soon as practicable following</a> their determination
8.19	Procedures for parties applying to Park or take Loaned Gas	As required
8.21	Prices payable to Park Gas and take Loaned Gas	As required
9.2	Notice of scheduled Maintenance that affects receipt or delivery of Gas	Not less than 20 Business Days' notice (to the affected parties)
9.5, 9.7	Operational Flow Orders	As soon as practicable after issuance
<del>11.1</del> <del>11.1</del> <a href="#">11.15</a>	Daily Nominated Capacity Fees	Prior to <del>1-September</del> <a href="#">30 June</a> annually

<b>Section</b>	<b>Item</b>	<b>Frequency of Publication</b>
<del>11.5</del>	<del>Specific HDQ/DDQ for all Dedicated-Delivery Points</del>	<del>Annually</del>
<del>11.7</del> <u>11.8</u>	Physical MHQ for all Dedicated Delivery Points	Annually
<del>12.4, 12.5</del>	Notification of Non-Specification Gas	As soon as <del>practical</del> <u>practicable</u> after the event
<del>12.6</del>	Report on Interconnected Party's compliance with Gas Specification	As soon as practicable following requested demonstration
<del>13.4</del>	Odourisation spot check results	Monthly
<del>15.3</del>	First Gas declares a Force Majeure Event	As soon as practicable after the event
<del>15.8</del> <u>15.7</u>	Shipper Report on Force Majeure Event	As soon as practicable after report received.
<del>15.9</del> <u>15.8</u>	First Gas report on Force Majeure Event	As soon as practicable
<del>16.4</del>	Adjusted Capped Amounts	Following annual CPI adjustment
<del>17.4</del> <u>17</u>	<del>Publication of Draft Change Request</del> <u>requests</u>	<del>Within 3 Business Days of receipt</del> <u>As per section 17</u>
<del>17.8</del>	<del>Publication of questions, responses and views about Draft Change Request</del>	<del>Within 2 Business Days of receipt</del>
<del>17.10</del>	<del>Publication of Change Request</del>	<del>Within 3 Business Days of receipt</del>
<del>17.13</del>	<del>First Gas' approval of Change Request approved by GIC</del>	<del>Within 5 Business Days of GIC decision</del>
<del>17.14</del>	<del>First Gas' decision not to approve a Change Request approved by GIC, with reasons</del>	<del>Within 5 Business Days of decision</del>
<del>17.16</del>	<del>Publication of notice of objection</del>	<del>As soon as practicable after receipt</del>
<del>17.17</del>	<del>Publication of Code incorporating Correction Request</del>	<del>As soon as practicable following expiry of objection period.</del>
<del>17.20</del>	<del>Notification of Urgent Code Change</del>	<del>As soon as practicable</del>

## SCHEDULE THREE: REQUIREMENTS OF GAS TRANSFER AGREEMENTS

### 1 Definitions

In this Schedule Three:

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

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

### 2 General Requirements

#### 2.1 A GTA must:

- (a) be in writing, executed by the transferor and transferee;
- (b) be provided to the Gas Transfer Agent for its consideration and execution and be executed by the Gas Transfer Agent no less than 2 hours before the Gas to which that GTA refers is to be injected into, or transferred within ~~or taken from~~ the Transmission System, except that where Gas is to be injected, or transferred ~~or taken~~ on a Day that is not a Business Day, the GTA must be provided to the Gas Transfer Agent no less than 8 hours before;
- (c) provide unambiguous rules for determining the quantity of Gas transferred by the transferor to the transferee (including standard rules such as pro-rata, swing and ranking as may be made available by First Gas on OATIS for determining the allocations of metered quantities);
- (d) specify the order of priority between two or more of the transferor's GTAs for the same Receipt Point in the event of any inconsistency between those agreements; ~~and~~
- (e) provide for all Inputs to be provided to the Gas Transfer Agent by the times published by First Gas on OATIS; and
- (f) provide for Hourly allocations for Bi-directional Points as appropriate.

#### 2.2 A GTA must set out Gas Transfer Rules which:

- (a) acknowledge (either explicitly or implicitly) that, except where this Schedule Three allows a transferor to go into negative Mismatch, the total quantity of Gas available on a Day for transfer by the transferor:
  - (i) at any Receipt Point where an OBA applies, is the transferor's Approved NQ at that point plus or minus any earlier traded quantities; and
  - (ii) at all other Receipt Points, is the metered quantity;

- (b) are compatible with the transferor's other GTAs in respect of the same Receipt Point; and
- (c) are not conditional on allocated quantities at any Delivery Point.

### 3 Specific Requirements

#### 3.1 A GTA must:

- (a) specify that if the quantity of Gas available to the transferor to transfer (as determined by, or calculated by reference to, the Inputs) is insufficient to meet the proposed transfer:
  - (i) the transferor will go into negative Mismatch to complete the transfer if the transferor is a Shipper; and
  - (ii) the transfer will not be completed to the extent of the insufficiency if the transferor is not a Shipper;
- (b) set out default rules to be applied by the Gas Transfer Agent where:
  - (i) the Inputs are not provided or received in full and within the required times or if they contain any deficiency;
  - (ii) the Inputs cannot be calculated for any reason other than a Force Majeure Event;
  - (iii) the Outputs cannot be calculated for any reason other than a Force Majeure Event;
  - (iv) the quantity of Gas available to the transferor is less than the combined quantities claimed for transfer by the transferee(s) and the transferor is not eligible to go into negative Mismatch to complete the transfer;
  - (v) the quantity of Gas available to be allocated is a metered quantity, and the total quantity claimed by the transferee or transferees does not equal that metered quantity;
  - (vi) there is a dispute between the parties to the GTA (or any two of them) as to the Inputs, Outputs or the interpretation of the GTA affecting the determination or calculation of those Inputs or Outputs, where those default rules must ensure:
    - A the determination of the Outputs by the 12th Day of the Month following the Month in which the relevant Gas was injected into, transferred within or taken from the Transmission System; and
    - B that under no circumstances will First Gas (as the owner and operator of the Transmission System) be involved in the dispute; and
- (c) set out "Fall Back Default Rules" the Gas Transfer Agent shall apply, including those set out below, if a default rule referred to in *paragraph 3.1(b)* above fails:

- (i) where any of the default rules in relation to *paragraphs 3.1(b)(i), (ii), (iii) or (vi)* of this Schedule Three fails, the Gas Transfer Agent shall determine that no transfer of Gas to the transferee has occurred;
- (ii) where the default rule in relation to *paragraph 3.1(b)(iv)* of this Schedule Three fails, the Gas Transfer Agent shall complete the transfer to the extent of the Gas available but on a pro rata basis, across each transferee's nominations; or
- (iii) where the default rule in relation to *paragraph 3.1(b)(v)* of this Schedule Three fails, the Gas Transfer Agent shall:
  - A transfer the metered quantity to the transferee, if there is only one transferee; or
  - B split the metered quantity equally between the transferees, if there is more than one transferee.

## SCHEDULE FOUR: REQUIREMENTS OF ALLOCATION AGREEMENTS

### 1 Definitions

In this Schedule Four:

*Inputs* means the data required to perform the calculations required by the [allocation rule or rules \("Allocation Rules"\) specified by the Allocation Agreement](#); and

*Outputs* means DDRs and HDRs corresponding to each Shipper's Daily and Hourly Delivery Quantities (respectively).

### 2 General Requirements

#### 2.1 An Allocation Agreement must:

(a) be in writing, executed by the Allocation Agent, [the relevant Interconnected Party](#) and all Shippers (including where there ~~is~~[may be](#) only one Shipper [at a particular point in time](#)) at the relevant Dedicated Delivery Point;

[\(b\) provide for the appointment of the Allocation Agent at the relevant Dedicated Delivery Point, who shall be:](#)

[\(i\) where it is reasonably expected there will be only one Shipper, First Gas \(or, if agreed by First Gas and the relevant Interconnected Party, that Interconnected Party\); or](#)

[\(ii\) where it is reasonably expected there will be one or more Shippers, First Gas, one of those Shippers or the relevant Interconnected Party, as agreed by First Gas, those Shippers and the relevant Interconnected Party; or](#)

[\(iii\) in the absence of such agreement, a person appointed by the relevant Interconnected Party and approved by First Gas,](#)

[provided that such person must be qualified and equipped to undertake that role;](#)

[\(c\) ~~\(b\)~~ define the Inputs required by the Allocation Agent and who is to provide them;](#)

[\(d\) ~~\(e\)~~ set out unambiguous Allocation Rules for determining the Outputs at the relevant Dedicated Delivery Point \[\\(and such Allocation Rules must not be circular in nature\\)\]\(#\);](#)

[\(e\) ~~\(d\)~~ ensure that the Allocation Agent provides the Outputs to Shippers, \[the Interconnected Party\]\(#\) and First Gas in accordance with the times published by First Gas on OATIS \[which shall be sufficient to use as inputs into other daily processes\]\(#\);](#)

[\(f\) \[provide for Hourly allocations for Bi-directional Points as appropriate; and\]\(#\)](#)

[\(g\) \[provide for the Allocation Agent to provide correction to the Outputs in \\(e\\) above when there are any changes to any of the Inputs.\]\(#\)](#)



2.2 An Allocation Agreement shall ensure that aggregate Outputs on any Day or in any Hour equal (respectively) the metered quantity for that Day or Hour (such that all the metered quantities are allocated).

### 3 Specific Requirements

3.1 An Allocation Agreement must:

- (a) ~~provide for the appointment of the Allocation Agent at the relevant Dedicated Delivery Point, who shall be: specify:~~
- (i) ~~where there is only one Shipper, First Gas; or~~ which Allocation Rule(s) are available under the Allocation Agreement, which are to be selected from those set out on OATIS (or, if not listed on OATIS, may be agreed by the parties to the Allocation Agreement provided they are not circular in nature and do not adversely affect any other user of the Transmission System or First Gas);
  - (ii) ~~where there are two or more Shippers, one of those Shippers, as agreed by them; or~~ which Allocation Rule is to apply with effect from the commencement date of the Allocation Agreement;
  - (iii) ~~in the absence of agreement amongst those Shippers, a person appointed by the relevant End user and approved by First Gas;~~ that the Allocation Rule applied by the Allocation Agent from time to time is to be determined by the relevant Interconnected Party giving notice to the Allocation Agent;  
  
~~provided that such person must be qualified and equipped to undertake that role;~~
  - (iv) that the Interconnected Party will provide not less than ten Business Days' notice to all parties to the Allocation Agreement and First Gas if the applicable Allocation Rule is to be changed (including where due to a change in the Shippers using the relevant Dedicated Delivery Point); and
  - (v) that different Allocation Rules will not apply in respect of the same Day without good reason;
- (b) where the Allocation Rules involve the use of Shippers' nominated delivery quantities, enable the Outputs to be determined irrespective of whether the total of Shippers' nominated delivery quantities equal the metered quantity for (as the case may be) any Day or any Hour;
- (c) set out default rules to be applied by the Allocation Agent where:
- (i) the Inputs are not provided or received in full and within the required times or if they contain any deficiency;
  - (ii) the Inputs cannot be calculated for any reason other than a Force Majeure Event;
  - (iii) the Outputs cannot be calculated for any reason other than a Force Majeure Event;

- (iv) there is a dispute between any parties to the Allocation Agreement as to the Inputs, Outputs or the interpretation of the Allocation Agreement or Allocation Rules, which ensure that:
  - A the Outputs shall be determined in accordance with the timing referred to in ~~section 6.14(b) of~~ the Code; and
  - B First Gas (as the owner and operator of the Transmission System) is not required to be involved in the dispute unless it is a party to the Allocation Agreement; and
- (d) set out "Fall-Back Allocation Rules" which the Allocation Agent shall apply if a default rule referred to in *paragraph 3.1(b)* fails, to determine each Shipper's Outputs.

## **SCHEDULE FIVE: COMMON RECEIPT POINT INTERCONNECTION AGREEMENT PROVISIONS<sup>1</sup>**

### **1 DEFINITIONS AND CONSTRUCTION**

#### **Defined Terms**

1.1 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).

1.2 In this Agreement:

Additional Receipt Point means [●];

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

Amending Agreement means [●];

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 Odourisation 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 [●];

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:

- (a) 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;
- (b) 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;
- (c) First Gas' ability to receive Gas at a Receipt Point (or to make gas available at a Delivery Point) is impaired;

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<sup>1</sup> The Receipt Point ICA common terms set out in this Schedule Five are intentionally non-sequentially numbered.

- (d) 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; or
- (e) there is an emergency under, or for the purposes of, the Code or any other interconnection agreement;

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 and includes any such event or circumstance that constitutes a force majeure event under, or for the purposes of, the Code or any other interconnection agreement;

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/NZS 60079.10.1:2009;

Interconnection Fee means [●];

Interconnected Party means [●];

Interconnection Point means [●];

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;

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

Odourisation 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:

- (a) in relation to First Gas, that part of the Transmission System which connects to a Receipt Point; and
- (b) 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:

- (a) deliver Shippers' approved Nominated Quantities;
- (b) 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 or may detrimentally affect the transmission of Gas through the Transmission System or has or may deplete Line Pack to an unacceptable level, and includes an Emergency and a Critical Contingency; and/or
- (c) 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**

1.3 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:

- (a) 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
- (b) 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.

## **2 RECEIPT POINT INTERCONNECTION**

### **Parties' Rights and Obligations**

- 2.1 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.
- 2.2 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.
- 2.3 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**

- 2.4 Except as agreed otherwise in writing, the Interconnected Party will ensure that all Receipt Points and Additional Receipt Points (if and to the extent included in this Agreement) comply with ICA Schedule One and ICA Schedule Two.

## **3 INJECTION OF GAS**

### **Injection Pressure**

- 3.1 The Interconnected Party acknowledges and agrees that:

- (a) it is solely responsible for achieving the pressure required to inject Gas at any Receipt Point, up to the MAOP of First Gas' Pipeline;
- (b) 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
- (c) 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. The indemnity under this section 3.1(c) is subject to the limitations and exclusions set out in sections 16.1 to 16.8.

**Target Taranaki Pressure**

3.2 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:

- (a) 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
- (b) 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 any rights to adjust or curtail any gas flow and/or relevant nominations (including pursuant to section 9 and/or section 4 of the Code). 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**

3.3 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:

- (a) the cost of any damage to any First Gas Equipment or First Gas' Pipeline;
- (b) the charge determined in accordance with section 11.11; and
- (c) any Loss pursuant to section 11.12.

**Low Flow**

3.4 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:

- (a) the Interconnected Party shall then implement appropriate modifications as soon as practicable; and
- (b) 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**

3.5 The Interconnected Party shall as soon as reasonably practicable notify First Gas of any scheduled or unscheduled outages (other than outages that are not material) affecting such Interconnected Party in relation to its injection of Gas at the Receipt Point. Such notice shall include:

- (a) whether it is, or is expected to be, a full or partial outage and the likely duration of that outage;
- (b) for scheduled outages, when such outage is expected to commence;
- (c) in a reasonable amount of detail, the reason for that outage; and
- (d) the extent of the expected reduction in the injection of Gas.

## **4 METERING AND ENERGY QUANTITY REPORTS**

### **Metering Required**

4.1 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**

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

### **Testing of Metering and Provision of Information**

4.3 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:

- (a) reasonable technical information relating to the Metering at a Receipt Point;
- (b) a copy of its planned maintenance schedules relating to any Metering; and
- (c) the results of any testing of any Metering.



and First Gas may publish on OATIS a summary of the results of any testing (whether scheduled or unscheduled) of any Metering.

4.4 In relation to any new Metering, the Metering Owner shall:

- (a) no earlier than 3 Months (or such earlier date as may be agreed with First Gas) before that Metering is placed into service, test each custody transfer meter and other gas measurement device forming part of that Metering; and
- (b) 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**

4.5 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:

- (a) Accurate, the Requesting Party will reimburse the Metering Owner for all direct costs the Metering Owner incurs in undertaking the unscheduled testing; or
- (b) Inaccurate, the Metering Owner shall:
  - (i) bear all costs it incurred in undertaking the unscheduled testing (but not any costs incurred by the Requesting Party or any other party); and
  - (ii) 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**

4.6 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, where applicable, correct any previously invoiced amounts and apply any Wash-ups 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:

- (a) promptly provide data from that check metering to the Metering Owner on request; and
- (b) retain all data from that check metering for a period of not less than 3 years.

**Amendment of Metering Requirements**

4.7 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**

4.8 The Metering Owner shall, subject to sections 4.9 to 4.11, make available to the other Party at a Receipt Point any of the following data (Data) the other Party may request:

- (a) for each meter stream that forms part of the Metering for that Receipt Point:
  - (i) uncorrected volume flow rate at flowing conditions;
  - (ii) corrected volume flow rate;
  - (iii) mass flow rate;
  - (iv) energy flow rate;
  - (v) accumulating (totalising) uncorrected volume;
  - (vi) accumulating (totalising) corrected volume;
  - (vii) accumulating (totalising) mass;
  - (viii) accumulating (totalising) energy;
  - (ix) the pressure and temperature at the meter;
  - (x) density at flowing conditions; and
- (b) in respect of Gas injected at that Receipt Point:
  - (i) Specific Gravity or Relative Density;
  - (ii) Base Density;
  - (iii) Gross Calorific Value;
  - (iv) Nett calorific value;
  - (v) 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;

- (vi) 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
- (vii) 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 or the Code.

4.9 Pursuant to section 4.8, the Metering Owner shall:

- (a) reasonably determine the source from which any Data is obtained; and
- (b) at its cost make the Data available to the other Party 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.

4.10 The recipient of Data pursuant to section 4.8 shall be responsible for conveying that Data to any other location at its cost.

4.11 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.

4.12 If the Metering Owner upgrades or replaces the Metering at a Receipt Point and provides Data in a different format, the Metering Owner shall not be obliged to reimburse any costs incurred by the other Party in order to receive that Data.

#### **Energy Quantity Reports**

4.13 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 that it requires for that purpose.

#### **OATIS Access**

4.14 First Gas will provide the Interconnected Party with access to OATIS:

- (a) to enable the Interconnected Party to view and/or download DD Rs and/or HDRs; and
- (b) 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.

## **5 ENERGY ALLOCATION AT A RECEIPT POINT**

### **Gas Transfer Agreement**

5.1 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 Arrangement**

5.2 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).

5.3 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**

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

## **6 GAS QUALITY**

6.1 The Interconnected Party shall:

- (a) ensure that all gas it injects into the Transmission System complies with the Gas Specification;
- (b) 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, except to the extent that:
  - (i) such Loss arose from First Gas causing or contributing to such Non-Specification Gas entering the Transmission System; and/or
  - (ii) First Gas has not mitigated such Loss to the fullest extent reasonably practicable; and
- (c) 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).

The indemnity under section 6.1(b) is subject to the limitations and exclusions set out in sections 16.2 to 16.8 (but not section 16.1). Nothing in this Agreement requires First Gas to monitor the quality of gas injected by the Interconnected Party at any Receipt Point.

6.2 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 or unless otherwise agreed with First Gas).

**Non-Specification Gas**

6.3 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.

6.4 On becoming aware that it has injected or is injecting Non-Specification Gas (including pursuant to section 6.3), the Interconnected Party shall (unless otherwise agreed by First Gas) immediately halt further injection of gas until it has investigated the matter and has determined (acting as a Reasonable and Prudent Operator and in consultation with First Gas where appropriate) that no more Non-Specification Gas will be injected once gas injection recommences.

6.5 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:

(a) notify First Gas as soon as practicable, together with the following information:

(i) the reason why Non-Specification Gas was injected;

(ii) the likely time during which Non-Specification Gas was injected and the estimated quantities of Non-Specification Gas injected; and

(iii) 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;

(b) mitigate to the maximum extent practicable the effects of any Non-Specification Gas injected (and assist First Gas to do likewise); and

(c) 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**

6.6 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.

6.7 If the Interconnected Party fails to comply with section 6.6 within a reasonable time (having been notified by First Gas of such non-compliance and not having remedied it), First Gas may:

- (a) 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
- (b) 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*.

6.8 The Interconnected Party shall pay all First Gas' reasonable costs incurred in exercising its rights under *section 6.7(b)*.

6.9 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**

6.10 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:

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

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:

- (a) none of the characteristics or components in the above table can exceed; or

(b) 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.

6.11 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.

6.12 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 or composition of its gas, including in the proportions of gas obtained from any new reservoir and/or production zones in any reservoir.

6.13 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:

(a) industry standard equipment and facilities and suitably qualified and competent persons; and

(b) 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.

6.14 The Interconnected Party may determine the value of characteristic (c) in section 6.10 by calculation from the composition of gas injected, provided that:

(a) it obtains First Gas' approval (not to be unreasonably withheld); and

(b) the method it uses is sufficiently accurate to meet the requirements of the Gas Specification.

#### **No Contaminants**

6.15 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 cause damage to or interfere with First Gas Equipment or First Gas' Pipeline through which it flows, either immediately or over time.

#### **Provide Gas Testing Results**

6.16 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.

#### **RPO**

6.17 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 Gas shall constitute a failure by the Interconnected Party to act as a Reasonable and Prudent Operator.

## 7 ODORISATION

### Odorised Pipeline

7.1 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

7.2 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

7.3 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.

7.4 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

7.5 The Odorisation Facilities may (and, where First Gas so directs, shall) include:

- (a) an odorant storage vessel not exceeding 5 cubic metres capacity;
- (b) a primary means of odorisation (e.g. an odorant injection pump);
- (c) a control system to regulate the injection of odorant;
- (d) a secondary means of odorisation in case the primary means fails;
- (e) an internally-bunded shelter for the items in sections 7.5(a) to (d);
- (f) a flare system in a non-Hazardous area to safely dispose of odorant vapour; and
- (g) a suitably sealed and bunded area where odorant is off-loaded in bulk from a vehicle to the odorant storage vessel.



**Services to Odourisation Facilities**

7.6 Where First Gas owns the Odourisation Facilities, the Interconnected Party shall provide First Gas with the services it reasonably requires for the operation of the Odourisation Facilities, free of any charge, including:

- (a) 24 Volt DC and 230 Volt AC power supplies;
- (b) a suitable signal representing the flow rate or quantities of Gas to be odourised;
- (c) a supply of Gas at a pressure not exceeding 10 bar gauge;
- (d) a water supply adjacent to the shelter referred to in *section 7.5(e)* suitable for a personnel safety shower;
- (e) 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 Odourisation Facilities. The Interconnected Party shall also provide reasonable all-weather access to the Odourisation Facilities for vehicles and personnel for the purposes of *section 7.3*. Where the Interconnected Party owns the Odourisation Facilities, the Interconnected Party shall itself provide the services listed above at its cost.

**Remote Monitoring of Odourisation Facilities**

7.7 Irrespective of whether it owns any Odourisation Facilities, the Interconnected Party shall enable First Gas to remotely monitor:

- (a) the status or availability of the primary means of odourisation including, where that is an odorant injection pump, direct indication of operation such as stroke rate or speed;
- (b) odorant flow rate and/or the volumes of odorant being injected;
- (c) odorant storage vessel inventory or liquid level;
- (d) odorant storage vessel vapour space pressure and the status of any pressure-relief device;
- (e) the Gas supply pressure to the Odourisation Facilities;
- (f) the electricity supply to the Odourisation Facilities;
- (g) the operating status of the odorant vapour flare; and
- (h) any alarm conditions and other parameters it reasonably considers to be relevant.

**No Injection Without Odourisation**

7.8 The owner of Odourisation Facilities will use reasonable endeavours to maintain odourisation at all times.

- 7.9 Where a Party becomes aware that odourisation has failed, it will notify the other Party immediately. For the purposes of this section 7.9, a failure of odourisation shall include excessive odourisation as well as a total or partial failure of odourisation.
- 7.10 The Interconnected Party shall not inject or cease injecting Gas as soon as practicable on becoming aware of (or being informed of) any odourisation failure. The owner of the Odourisation Facilities will investigate and restore normal odourisation as soon as practicable, whereupon the Interconnected Party may resume injecting Gas.
- 7.11 Notwithstanding any other provision of this Agreement, First Gas may cease odourising (or cease requiring the odourisation 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.

## 9 **CURTAILMENT**

### **Adverse Events**

- 9.1 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:
- (a) an Emergency is occurring or is imminent;
  - (b) a Force Majeure Event has occurred or is continuing;
  - (c) a Critical Contingency would otherwise occur;
  - (d) 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;
  - (e) this Agreement expires or is terminated, either in total or in relation to that Receipt Point;
  - (f) it is performing, or is to perform, scheduled or unscheduled Maintenance pursuant to section 9.2 or section 9.3; and/or
  - (g) it does so to maintain the Target Taranaki Pressure pursuant to this Agreement and/or section 3.33 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**

- 9.2 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:
- (a) 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;

- (b) advise the Interconnected Party of the expected impact on its ability to inject Gas at that Receipt Point and/or any other effects; and
- (c) 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.

9.3 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 in each case must give the Interconnected Party as much notice as reasonably practicable by publishing on OATIS the fact that such unscheduled Maintenance is to occur.

9.4 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 (provided that such Interconnected Party shall not be required to incur any additional costs unless First Gas has agreed to reimburse it for those costs).

#### **Interconnected Party maintenance**

9.5 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:

- (a) 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;
- (b) 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;
- (c) 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
- (d) 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**

9.6 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.

9.7 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. 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**

9.8 Pursuant to section 9.6 and subject to section 9.7, First Gas may curtail each Shipper's most recent Approved NO at that Receipt Point in OATIS, including where an OBA applies, in accordance with the OFO and the Code.

**Critical Contingency**

9.9 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**

9.10 The Interconnected Party agrees that if it fails to comply with an OFO in accordance with section 9.6:

- (a) First Gas may curtail the Interconnected Party's injection of Gas itself;
- (b) 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
- (c) 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). The indemnity under this section 9.10(c) is subject to the limitations and exclusions set out in sections 16.2 to 16.8 (but not section 16.1).

**Relief from Charges**

9.11 In relation to any curtailment under section 9.1(a) to (c) or section 9.2, the Interconnection Fee and the Odourisation 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:

- (a) 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;
- (b) 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; and/or
- (c) failed to comply with an instruction from First Gas or from the Critical Contingency Operator under section 9.6 or section 9.9.

## 11 FEES AND CHARGES

### OBA Charges

11.10 For any Receipt Point at which an OBA applies, the Interconnected Party shall be liable for and shall pay to First Gas:

- (a) Balancing Gas Charges;
- (b) charges for Excess Running Mismatch; and
- (c) Peaking Charges.

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

### Over-Flow Charge

11.11 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' lowest 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:

- (i) the Hourly metered quantity – Physical MHQ; and
- (ii) zero.

### Excessive Flow Causing Loss

11.12 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). The indemnity under this section 11.12 is subject to the limitations and exclusions set out in sections 16.1 to 16.8.

### Balancing Gas Credits Receivable as an OBA Party

11.13 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.

## 14 TERM AND TERMINATION

### Termination for breach

14.4 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**

14.6 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**

14.11 The expiry or termination of this Agreement shall not relieve the Interconnected Party:

- (a) or First Gas of its obligation to pay any amount outstanding under this Agreement; or
- (b) 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.

**15 FORCE MAJEURE**

15.1 Notwithstanding the other provisions of this Agreement but subject to section 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).

15.2 A Force Majeure Event shall not relieve an Affected Party from liability:

- (a) to pay money due under, or in connection with, this Agreement; or
- (b) 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); or
- (c) 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 Odourisation 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).

15.3 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:

- (a) 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;

- (b) 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;
- (c) 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
- (d) 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.

15.4 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.

15.5 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**

15.6 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.

## **16 LIABILITIES**

### **Exclusion from a Party's Liability**

16.1 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**

16.2 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):

- (a) any loss of use, revenue, profit or savings by the Other Party;

(b) 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 or section 6.1; and

(c) 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 or section 6.1.

16.3 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**

16.4 Subject to sections 16.5 to 16.8, the maximum liability of a Party to the Other Party under this Agreement will be:

(a) in relation to any single event or series of related events, \$12,500,000; and

(b) 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.

16.5 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:

$$\text{Adjustment Factor} = \frac{\text{CPI}_n}{\text{CPI}_{(n-1)}}$$

where:

CPI<sub>n</sub> means the most recently published CPI Index for the June quarter in the preceding Year; and

CPI<sub>(n-1)</sub> 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****16.6 Where:**

- (a) First Gas is the Liable Party; and
- (b) 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). Subject to section 16.11, 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.

**16.7 Where:**

- (a) First Gas is the Liable Party; and
- (b) 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
- (c) 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.

**16.8** Where the Liable Party is not First Gas, the maximum aggregate liability of the Liable Party to First Gas under this Agreement and any Coincident Agreements shall not exceed the Capped Amount.

**General**

**16.9** 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.

16.10 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.

16.11 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:

- (a) First Gas shall immediately give notice of the claim to the Interconnected Party;
- (b) 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);
- (c) 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:
  - (i) 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
  - (ii) 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;

- (d) 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;
- (e) 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
- (f) 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.

16.12 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.

16.13 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.

16.14 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.

16.15 For the purposes of this section 16, any reference to:

- (a) 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);
- (b) 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;
- (c) an ICA or Interconnection Agreement shall include a reference to this Agreement, any Existing Interconnection Agreement and any other interconnection agreement or arrangement (and a reference to an Interconnected Party shall include a reference to an interconnected party under any such agreement or arrangement); and
- (d) 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 or arrangement.

## **18 DISPUTE RESOLUTION**

18.1 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.

18.2 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:

- (a) resolution by an independent expert agreeable to both parties; or
- (b) 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).

18.3 The arbitration will be conducted by an arbitrator appointed:

- (a) jointly by the Parties; or
- (b) 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.

18.4 Nothing in this section 18 affects either Party's right to seek urgent interlocutory relief.

## 19 GENERAL AND LEGAL

### **Confidential Information and Disclosure of Agreement**

19.3 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.

19.4 A Party may disclose such information to the extent that:

- (a) the information is in the public domain, other than by a breach of this Agreement by such Party;
- (b) the information was already known to the Party and was not then subject to any obligation of confidentiality;
- (c) disclosure to such Party's professional advisor(s) or consultant(s) on a need to know basis is required;
- (d) 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;
- (e) 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;
- (f) 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;
- (g) the other Party has consented in writing to the use or disclosure;
- (h) the information is obtained from a third party, whom such Party believes, in good faith, to be under no obligation of confidentiality;
- (i) disclosure is to such Party's auditors; or
- (j) 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.

- 19.5 First Gas shall have suitable procedures, protocols and systems in place at all times to ensure that relevant confidential information under this Agreement it holds at any time is securely stored and available only to those First Gas employees who need access to and use of it for or in connection with the operation or use of the Transmission System and any interconnected points, and is not otherwise disclosed to third parties other than as permitted pursuant to the Code or this Agreement. Each Interconnected Party shall ensure that relevant confidential information under this Agreement it holds at any time is securely stored and available only to those of its employees who need access to it for or in connection with the operation or use of the Transmission System and any interconnected points, and is not otherwise disclosed to third parties other than as permitted pursuant to the Code or this Agreement.
- 19.6 Where disclosure of confidential information is made by the relevant Party to any third party pursuant to *section 19.4(c) or (j)*, the relevant Party is to ensure that appropriate steps are taken prior to any such disclosure to protect the confidentiality of any disclosed information consistent with the requirements of this *section 19*, including such third party entering into an appropriate form of confidentiality agreement or undertaking or otherwise being bound by appropriate professional obligations as to confidentiality.
- 19.7 The Interconnected Party may appoint a reputable international firm of auditors, independent of themselves and First Gas, to carry out an independent audit of First Gas' operating procedures if it reasonably believes First Gas has disclosed confidential information other than in accordance with the requirements of this Agreement. First Gas will allow such auditor access to First Gas' records for this purpose, provided that:
- (a) prior to conducting the audit, the auditor shall sign a confidentiality undertaking in a form reasonably acceptable to First Gas; and
  - (b) the person appointing the auditor shall pay all costs and expenses of the auditor and the audit.
- 19.8 The results of any audit carried out pursuant to *section 19.7* shall be provided to the Interconnected Party and to First Gas at the same time by way of a draft report (which shall include a summary section). The auditor shall have due regard to any comments provided by First Gas in relation to the findings of the audit and as soon as reasonably practicable thereafter issue its final report to the appointing person and First Gas. First Gas shall publish the summary section of the final report on OATIS as soon as reasonably practicable thereafter.
- 19.9 First Gas, acting as a Reasonable and Prudent Operator, shall consider, and where appropriate use its reasonable endeavours to implement, any recommendations made in the final report provided by the auditor.
- 19.10 The Parties agree that the existence and terms of this Agreement are not Confidential Information (and are not otherwise confidential). First Gas will promptly after the date of first gas flow under this Agreement 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**

19.11 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**

1.1 The design, construction, commissioning, operation and maintenance of each Receipt Point (including any First Gas Equipment) shall:

- (a) 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
- (b) comply with the requirements of recognised and applicable standards as well as all current and relevant laws, including:
  - (i) AS 2885.1: 2012 Pipelines - Gas and Liquid Petroleum, Part 1: Design and Construction;
  - (ii) Gas Act 1992 and associated regulations;
  - (iii) Health and Safety at Work Act 2015;
  - (iv) Health and Safety in Employment (Pipelines) Regulations;
  - (v) Resource Management Act 1991;
  - (vi) Electrical (Safety) Regulations;
  - (vii) AS/NZS 3000 – Wiring Rules;
  - (viii) AS/NZS 60079.14 - Explosive Atmospheres: Electrical Installations, Design Selection and Erection; and
  - (ix) mandatory Codes of Practice and Standards associated with any of the above.

1.2 A Receipt Point must incorporate:

- (a) appropriate security fencing to reasonably prevent unauthorised access;
- (b) adequate means of access and egress for vehicles and personnel;
- (c) adequate space to accommodate and permit the safe operation and maintenance of all equipment and structures;
- (d) Metering;
- (e) clear signs indicating restricted access and Hazardous areas, supplemented by secure barriers where required;
- (f) only electrical equipment that complies with applicable legislation that relates to such electrical equipment;



- (g) 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;
- (h) 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;
- (i) means to electrically isolate First Gas' Pipeline from a Receipt Point, as well as a suitable surge diverter installed across each such isolating device;
- (j) unless otherwise agreed in writing by First Gas, equipment to reasonably prevent any solid or liquid contaminants from reaching First Gas' Pipeline;
- (k) a flow-restriction device (sonic nozzle or a restriction orifice plate) to prevent, or otherwise be designed in such a manner as to prevent, over-speeding of any meter and/or ensure that the relevant Maximum Design Flow Rate is not exceeded; and
- (l) a check (non-return) valve to prevent reverse flow through a Receipt Point.

1.3 A Receipt Point shall incorporate equipment to enable First Gas to remotely monitor that Receipt Point, Metering and Odourisation Facilities (if any), retrieve data and other information and (if required) control any First Gas Equipment. Such equipment may include:

- (a) a remote terminal unit for First Gas' SCADA ("Supervisory, Control and Data Acquisition") system, radio or other communications equipment, and related ancillary equipment; or
- (b) such other suitable equipment as First Gas may reasonably require,

(the Remote Monitoring Equipment).

1.4 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.

1.5 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:

- (a) primary means of pressure control; and
- (b) separate and independent means of over-pressure protection, which shall operate in the event that the primary means of pressure control fails.

1.6 Pursuant to paragraph 1.5:

- (a) 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

(b) the means of over-pressure protection shall comprise:

- (i) a monitor regulator in both the working stream and the standby stream; and
- (ii) 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
- (iii) a slam-shut valve; or
- (iv) all of (i), (ii) and (iii).

1.7 Where required by First Gas to operate its Remote Monitoring Equipment, any other First Gas' Equipment and Odourisation 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.

1.8 First Gas may require means to remotely control the flow of Gas at a Receipt Point pursuant to the provisions of this Agreement or the Code (including for necessary operational, safety and emergency purposes).

1.9 In respect of any Receipt Point which is in existence on 30 September 2019, the foregoing requirements of this ICA Schedule Two shall not apply in respect of that Receipt Point, provided:

- (a) the Interconnected Party demonstrates to First Gas' reasonable satisfaction that such Receipt Point and the Interconnected Party continue to comply with the equivalent technical standards and other requirements (which are consistent with good gas industry engineering practice) which apply in respect of such Receipt Point on 30 September 2019;
- (b) to the extent such Receipt Point complies with the requirements of this ICA Schedule Two on the date of this Code, the Interconnected Party shall ensure that such Receipt Point continues to comply with those requirements of this ICA Schedule Two; and
- (c) any new facilities or equipment installed or commissioned at the Receipt Point after the date of this Code shall comply with the applicable requirements of this ICA Schedule Two.

## **SCHEDULE SIX: DELIVERY POINT INTERCONNECTION AGREEMENT PROVISIONS<sup>2</sup>**

### **1 DEFINITIONS AND CONSTRUCTION**

#### **Defined Terms**

1.1 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).

1.2 In this Agreement:

*Additional Delivery Point* means [●];

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

*Amending Agreement* means [●];

*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 Odourisation 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 [●];

*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 and the 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:

- (a) 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;

<sup>2</sup> The Delivery Point ICA common terms set out in this Schedule Six are intentionally non-sequentially numbered.

- (b) 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;
- (c) First Gas' ability to make Gas available at a Delivery Point (or to make gas available at a Delivery Point) is impaired;
- (d) 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; or
- (e) there is an emergency under, or for the purposes of, the Code or any other interconnection agreement;

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 and includes any such event or circumstance that constitutes a force majeure event under, or for the purposes of, the Code or any other interconnection agreement;

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/NZS 60079.10.1:2009;

Interconnection Fee means [●];

Interconnected Party means [●];

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 [●];

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 the 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;

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 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;

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

Odourisation 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 MHO 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:

- (a) First Gas, those parts of the Transmission System used to convey Gas to a Delivery Point; and
- (b) the Interconnected Party, the pipeline which connects to a Delivery Point and:
  - (i) conveys Gas taken at that Delivery Point to an End-user; or
  - (ii) 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;

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

- (a) deliver Shippers' approved Nominated Quantities;
- (b) 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 or may detrimentally affect the transmission of Gas through the Transmission System or has or may deplete Line Pack to an unacceptable level, and includes an Emergency and a Critical Contingency; and/or
- (c) 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**

1.3 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:

- (a) 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
- (b) 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.

## **2 DELIVERY POINT INTERCONNECTION**

### **Parties' Rights and Obligations**

2.1 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.

2.2 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.

2.3 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**

2.4 Except as agreed otherwise in writing, First Gas (or, if not owned by First Gas, the Interconnected Party as the owner of the Delivery Point) will ensure that all Delivery Points and Additional Delivery Points (if and to the extent included in this Agreement) comply with ICA Schedule One and ICA Schedule Two.

**3 GAS DELIVERY**

**Controlled Delivery Pressure**

3.1 Where ICA Schedule One states that the Delivery Pressure at a Delivery Point is "Controlled":

(a) 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:

(i) 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

(ii) 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;

(b) 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; and

(c) the Interconnected Party acknowledges and agrees that the Maximum Delivery Pressure may occur during normal operation and that:

(i) 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

(ii) 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**

3.2 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:

- (a) 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;
- (b) 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);
- (c) 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;
- (d) 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;
- (e) 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
- (f) ICA Schedule One shall be amended to reflect any changes pursuant to this section 3.2.

**Uncontrolled Delivery Pressure**

3.3 Where ICA Schedule One states that the Delivery Pressure at a Delivery Point is "Uncontrolled":

- (a) First Gas will provide no representation, warranty or undertaking as to what the Delivery Pressure will be at any time;
- (b) First Gas will not be obliged to operate its Pipeline to provide any particular Delivery Pressure or Delivery Pressure range;
- (c) the Interconnected Party shall ensure that the MAOP of its Pipeline is not less than the MAOP of First Gas' Pipeline; and
- (d) 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.

**Target Taranaki Pressure**

3.4 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:

- (a) 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

- (b) 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 3.4 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 any rights to adjust or curtail any gas flow and/or relevant nominations (including pursuant to section 9 and/or section 4 of the Code). 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**

- 3.5 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:

- (a) the cost of repairs to, or replacement of, any of First Gas' pipeline or equipment damaged by that excessive flow;
- (b) the charge determined in accordance with section 11.11; and
- (c) any Loss pursuant to section 11.12.

#### **Low Flow**

- 3.6 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 even at those low Gas take rates, First Gas may:

- (a) if the Interconnected Party is the Metering Owner, require the Interconnected Party at its cost to modify the Metering to improve the Accuracy of the metered quantities at low flow rates, and:
- (i) the Interconnected Party shall then implement appropriate modifications as soon as practicable; and
- (ii) during the time required to modify the Metering, First Gas shall be entitled to suspend the Interconnected Party's right to take Gas at that Delivery Point; or
- (b) if First Gas is the Metering Owner:
- (i) notify the Interconnected Party that it intends to modify the Metering to improve the Accuracy of metered quantities at low flow rates; and

- (ii) 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**

3.7 The Interconnected Party shall as soon as reasonably practicable notify First Gas of any scheduled or unscheduled outages (other than outages that are not material) affecting such Interconnected Party in relation to its take of Gas at the Delivery Point. Such notice shall include:

- (a) whether it is, or is expected to be, a full or partial outage and the likely duration of that outage;
- (b) for scheduled outages, when such outage is expected to commence;
- (c) in a reasonable amount of detail, the reason for that outage; and
- (d) the extent of the expected reduction in the take of Gas.

## **4 METERING AND ENERGY QUANTITY REPORTS**

### **Metering Required**

4.1 Except where First Gas has elected otherwise pursuant to section 5.2 of the Code, the Metering Owner 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. 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**

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

### **Testing of Metering and Provision of Information**

4.3 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:

- (a) reasonable technical information relating to the Metering at a Delivery Point;
- (b) a copy of its planned maintenance schedules relating to any Metering; and
- (c) the results of any testing of any Metering.

and First Gas may publish on OATIS a summary of the results of any testing (whether scheduled or unscheduled) of any Metering.

4.4 In relation to any new Metering, the Metering Owner will:

- (a) 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

- (b) 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**

4.5 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:

- (a) Accurate, the Requesting Party will reimburse the Metering Owner for all direct costs the Metering Owner incurs in undertaking the unscheduled testing; or
- (b) Inaccurate, the Metering Owner shall:
- (i) bear all costs it incurred in undertaking the unscheduled testing (but not any costs incurred by the Requesting Party or any other party); and
  - (ii) 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**

4.6 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, where applicable, correct any previously invoiced amounts and apply any Wash-ups in accordance with the Code. If the Party who is not the Metering Owner installs its own check metering at, or upstream or downstream (as applicable) of, a Delivery Point (which where practicable it shall be entitled to do in its discretion), it shall:

- (a) promptly provide data from that check metering to the Metering Owner on request; and
- (b) retain all data from that check metering for a period of not less than 3 years.

#### **Amendment of Metering Requirements**

4.7 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**

4.8 The Metering Owner shall, subject to sections 4.9 to 4.11, make available to the other Party at a Delivery Point any of the following data (Data) the other Party may request:

(a) for each meter stream that forms part of the Metering for that Delivery Point:

- (i) uncorrected volume flow rate at flowing conditions;
- (ii) corrected volume flow rate;
- (iii) mass flow rate;
- (iv) energy flow rate;
- (v) accumulating (totalising) uncorrected volume;
- (vi) accumulating (totalising) corrected volume;
- (vii) accumulating (totalising) mass;
- (viii) accumulating (totalising) energy;
- (ix) the pressure and temperature at the meter;
- (x) density at flowing conditions; and

(b) in respect of Gas taken at that Delivery Point:

- (i) Specific Gravity or Relative Density;
- (ii) Base Density;
- (iii) Gross Calorific Value;
- (iv) Nett calorific value;
- (v) 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;
- (vi) 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
- (vii) hydrocarbon dewpoint and water content if 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 or the Code.

4.9 Pursuant to *section 4.8*, the Metering Owner shall:

- (a) reasonably determine the source from which any Data is obtained; and
- (b) at its cost make the Data available to the other Party 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.

4.10 The recipient of Data pursuant to *section 4.8* shall be responsible for conveying the Data to any other location at its cost.

4.11 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.

4.12 If the Metering Owner upgrades or replaces the Metering at a Delivery Point and provides Data in a different format, the Metering Owner shall not be obliged to reimburse any costs incurred by the other Party in order to receive that Data.

#### **Energy Quantity Reports**

4.13 For each Delivery Point, First Gas shall, in accordance with the Code, 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. The Metering Owner (if it is not First Gas) shall make available to First Gas (in accordance with *section 4.9* or otherwise) such of the Data as First Gas shall notify that it requires for that purpose.

#### **OATIS Access**

4.14 First Gas will provide the Interconnected Party with access to OATIS:

- (a) to enable the Interconnected Party to view and/or download DD Rs and/or HDRs; and
- (b) 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.

## **5 ENERGY ALLOCATION AT DELIVERY POINTS**

### **Downstream Reconciliation Rules**

5.1 At each non-Dedicated Delivery Point which is the subject of this Agreement used by:

- (a) 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
- (b) only one Shipper, that Shipper's Daily Delivery Quantity will be the metered quantity for that Day.

**Allocation Agreement**

5.2 At each Dedicated Delivery Point which is the subject of this Agreement (other than where an Operational Balancing Arrangement (OBA) applies) there shall be an Allocation Agreement, irrespective of the number of Shippers using that Dedicated Delivery Point.

5.3 Where any such Dedicated Delivery Point:

(a) 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

(b) 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 quantities determined by the Allocation Agent under the applicable Allocation Agreement.

5.4 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 Arrangement**

5.5 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:

(a) that Delivery Point will become an Individual Delivery Point; and

(b) 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).

5.6 Subject to the Interconnected Party ensuring an Allocation Agreement is put in place that complies with the requirements of *section 5.3*, 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**

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

**6 GAS QUALITY**

6.1 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.

- 6.2 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:
- (a) ensure that all gas it injects into the Transmission System complies with the Gas Specification;
  - (b) 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 except to the extent that:
    - (i) such Loss arose from First Gas causing or contributing to such Non-Specification Gas entering the Transmission System; and/or
    - (ii) First Gas has not mitigated such Loss to the fullest extent reasonably practicable; and
  - (c) 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.
- 6.3 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.
- 6.4 If First Gas becomes aware that Non-Specification Gas has flowed at a Receipt Point, or suspects that it may flow at a Delivery Point, it will notify all Shippers and interconnected parties (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:
- (a) the reason why that gas was or may be Non-Specification Gas;
  - (b) 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
  - (c) the nature and extent of the deviation from the Gas Specification.
- 6.5 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.
- 6.6 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*.

6.7 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.

6.8 First Gas will, where it owns the Delivery Point, 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.

## 7 ODORISATION

### Odorised Pipeline

7.1 If First Gas' Pipeline 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.

7.2 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:

(a) restore odorisation of Gas in accordance with *section 7.1*; and

(b) 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.

7.3 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.

7.4 The design, construction, operation and maintenance of Odorisation Facilities shall be the responsibility of their owner.

7.5 Notwithstanding any other provision of this Agreement, First Gas may cease odorising (or cease requiring the odorisation 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.

## 9 CURTAILMENT

### Adverse Events

9.1 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:



- (a) an Emergency is occurring or is imminent;
- (b) a Force Majeure Event has occurred or is continuing;
- (c) a breach of any Security Standard Criteria and/or a Critical Contingency would otherwise occur;
- (d) a Shipper's TSA or Supplementary Agreement, Existing Supplementary Agreement, GTA, or the Allocation Agreement, expires or is terminated or is not executed;
- (e) this Agreement expires or is terminated, either in total or in relation to that Delivery Point;
- (f) it is performing, or is to perform, scheduled or unscheduled Maintenance pursuant to section 9.2 or section 9.3; and/or
- (g) it does so to maintain the Target Taranaki Pressure pursuant to this Agreement and/or section 3.33 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**

9.2 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:

- (a) 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;
- (b) advise the Interconnected Party of the expected impact on its ability to take Gas at that Delivery Point and/or any other effects; and
- (c) 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.

9.3 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 in each case must give the Interconnected Party as much notice as reasonably practicable by publishing on OATIS the fact that such unscheduled Maintenance is to occur.

9.4 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**

- 9.5 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:
- (a) 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;
  - (b) 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;
  - (c) 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
  - (d) 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**

- 9.6 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.
- 9.7 If the Interconnected Party conveys Gas taken at a Delivery Point to an End-user (or is itself the 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. 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**

- 9.8 Pursuant to section 9.6 and subject to section 9.7, 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**

- 9.9 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**

9.10 The Interconnected Party agrees that if it fails to comply with an OFO in accordance with section 9.6:

- (a) First Gas may curtail the Interconnected Party's take of Gas itself;
- (b) 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
- (c) 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). The indemnity under this section 9.10(c) is subject to the limitations and exclusions set out in sections 16.2 to 16.8 (but not section 16.1).

**Relief from Charges**

9.11 In relation to any curtailment under section 9.1(a) to (c) or section 9.2, the Interconnection Fee and the Odourisation 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:

- (a) caused or contributed to any event or circumstance giving rise to that curtailment, including in the circumstances referred to in sections 3.5 or 3.6;
- (b) 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; and/or
- (c) failed to comply with an instruction from First Gas or from the Critical Contingency Operator under section 9.6 or section 9.9.

**11 FEES AND CHARGES**

**OBA Charges**

11.10 For any Delivery Point at which an OBA applies, the Interconnected Party shall be liable for and shall pay to First Gas:

- (a) Daily Overrun Charges;
- (b) Daily Underrun Charges;
- (c) Hourly Overrun Charges; and
- (d) Peaking Charges.

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

- (e) Balancing Gas Charges; and
- (f) charges for Excess Running Mismatch.

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

**Over-Flow Charge**

11.11 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:

- (i) the Hourly metered quantity – Physical MHQ; and
- (ii) zero.

**Excessive Flow Causing Loss**

11.12 In addition to any Daily Overrun Charge, Hourly Overrun Charge, Over-Flow Charge, Peaking Charge and/or amount payable under section 3.5(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). The indemnity under this section 11.12 is subject to the limitations and exclusions set out in sections 16.1 to 16.8.

**Balancing Gas Credits Receivable as an OBA Party**

11.13 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.

**14 TERM AND TERMINATION**

**Termination for breach**

14.4 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**

14.6 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**

14.11 The expiry or termination of this Agreement shall not relieve the Interconnected Party:

- (a) or First Gas of its obligation to pay any amount outstanding under this Agreement; or
- (b) 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.

**15 FORCE MAJEURE**

15.1 Notwithstanding the other provisions of this Agreement but subject to section 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).

15.2 A Force Majeure Event shall not relieve an Affected Party from liability:

- (a) to pay money due under, or in connection with, this Agreement; or
- (b) 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); or
- (c) 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 Odourisation 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).

15.3 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:

- (a) 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;
- (b) 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;
- (c) 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

(d) 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.

15.4 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.

15.5 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**

15.6 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.

## **16 LIABILITIES**

### **Exclusion from a Party's Liability**

16.1 Subject to any further limitations contained in this section 16, a Party (*Liabe 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 Liabe 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 Liabe 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 Liabe 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**

16.2 If the Liabe 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 Liabe Party will only be liable for direct Loss suffered or incurred by the Other Party excluding (and the Liabe Party shall not be liable for):

(a) any loss of use, revenue, profit or savings by the Other Party;

(b) the amount of any damages awarded against the Other Party in favour of a third party, except where the Liabe Party is liable to make a payment under section 11.12; and

(c) the amount of any money paid by the Other Party by way of settlement to a third party, except where the Liabe Party is liable to make a payment under section 11.12.

16.3 The Liabe 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**

16.4 Subject to sections 16.5 to 16.8, the maximum liability of a Party to the Other Party under this Agreement will be:

(a) in relation to any single event or series of related events, \$12,500,000; and

(b) 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.

16.5 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 =  $\frac{CPI_n}{CPI_{(n-1)}}$

where:

CPI<sub>n</sub> means the most recently published CPI Index for the June quarter in the preceding Year; and

CPI<sub>(n-1)</sub> 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**

16.6 Where:

(a) First Gas is the Liable Party; and

(b) 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). Subject to *section 16.11*, 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.

16.7 Where:

- (a) First Gas is the Liable Party; and
- (b) 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
- (c) 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.

16.8 Where the Liable Party is not First Gas, the maximum aggregate liability of the Liable Party to First Gas under this Agreement and any *Coincident Agreement* shall not exceed the Capped Amount.

**General**

16.9 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.

16.10 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.

16.11 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:

- (a) First Gas shall immediately give notice of the claim to the Interconnected Party;



- (b) 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);
- (c) 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:

  - (i) 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
  - (ii) 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;
- (d) 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;
- (e) 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
- (f) 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.

16.12 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.

16.13 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.

16.14 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.

16.15 For the purposes of this section 16, any reference to:

- (a) 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);
- (b) 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;
- (c) an ICA or Interconnection Agreement shall include a reference to this Agreement, any Existing Interconnection Agreement and any other interconnection agreement or arrangement (and a reference to an Interconnected Party shall include a reference to an interconnected party under any such agreement or arrangement); and
- (d) 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 or arrangement.

## 18 DISPUTE RESOLUTION

18.1 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.

18.2 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:

- (a) resolution by an independent expert agreeable to both parties; or
- (b) 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).

18.3 The arbitration will be conducted by an arbitrator appointed:

- (a) jointly by the Parties; or
- (b) 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.

18.4 Nothing in this section 18 affects either Party's right to seek urgent interlocutory relief.

## 19 **GENERAL AND LEGAL**

### **Confidential Information and Disclosure of Agreement**

19.3 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.

19.4 A Party may disclose such information to the extent that:

- (a) the information is in the public domain, other than by a breach of this Agreement by such Party;
- (b) the information was already known to the Party and was not then subject to any obligation of confidentiality;
- (c) disclosure to such Party's professional advisor(s) or consultant(s) on a need to know basis is required;
- (d) 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;
- (e) 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;
- (f) 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;
- (g) the other Party has consented in writing to the use or disclosure;
- (h) the information is obtained from a third party, whom such Party believes, in good faith, to be under no obligation of confidentiality;
- (i) disclosure is to such Party's auditors; or
- (j) 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.

19.5 First Gas shall have suitable procedures, protocols and systems in place at all times to ensure that relevant confidential information under this Agreement it holds at any time is securely stored and available only to those First Gas employees who need access to and use of it for or in connection with the operation or use of the Transmission System and any interconnected points, and is not otherwise disclosed to third parties other than as permitted pursuant to the Code or this Agreement. Each Interconnected Party shall ensure that relevant confidential information under this Agreement it holds at any time is securely stored and available only to those of its employees who need access to it for or in connection with the operation or use of

the Transmission System and any interconnected points, and is not otherwise disclosed to third parties other than as permitted pursuant to the Code or this Agreement.

19.6 Where disclosure of confidential information is made by the relevant Party to any third party pursuant to section 19.4(c) or (j), the relevant Party is to ensure that appropriate steps are taken prior to any such disclosure to protect the confidentiality of any disclosed information consistent with the requirements of this section 19, including such third party entering into an appropriate form of confidentiality agreement or undertaking or otherwise being bound by appropriate professional obligations as to confidentiality.

19.7 The Interconnected Party may appoint a reputable international firm of auditors, independent of themselves and First Gas, to carry out an independent audit of First Gas' operating procedures if it reasonably believes First Gas has disclosed confidential information other than in accordance with the requirements of this Agreement. First Gas will allow such auditor access to First Gas' records for this purpose, provided that:

(a) prior to conducting the audit, the auditor shall sign a confidentiality undertaking in a form reasonably acceptable to First Gas; and

(b) the person appointing the auditor shall pay all costs and expenses of the auditor and the audit.

19.8 The results of any audit carried out pursuant to section 19.7 shall be provided to the Interconnected Party and to First Gas at the same time by way of a draft report (which shall include a summary section). The auditor shall have due regard to any comments provided by First Gas in relation to the findings of the audit and as soon as reasonably practicable thereafter issue its final report to the appointing person and First Gas. First Gas shall publish the summary section of the final report on OATIS as soon as reasonably practicable thereafter.

19.9 First Gas, acting as a Reasonable and Prudent Operator, shall consider, and where appropriate use its reasonable endeavours to implement, any recommendations made in the final report provided by the auditor.

19.10 The Parties agree that the existence and terms of this Agreement are not Confidential Information (and are not otherwise confidential). First Gas will promptly after the date of first gas flow under this Agreement 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**

19.11 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**

1.1 The design, construction, commissioning, operation and maintenance of each Delivery Point (including any Interconnected Party Equipment) shall:

- (a) 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
- (b) comply with the requirements of recognised and applicable standards as well as all current and relevant laws, including:
  - (i) AS 2885.1: 2012 Pipelines - Gas and Liquid Petroleum, Part 1: Design and Construction;
  - (ii) Gas Act 1992 and associated regulations;
  - (iii) Health and Safety at Work Act 2015;
  - (iv) Health and Safety in Employment (Pipelines) Regulations;
  - (v) Resource Management Act 1991;
  - (vi) Electrical (Safety) Regulations;
  - (vii) AS/NZS 3000 – Wiring Rules;
  - (viii) AS/NZS 60079.14 - Explosive Atmospheres: Electrical Installations, Design Selection and Erection; and
  - (ix) mandatory Codes of Practice and Standards associated with any of the above.

1.2 Each Delivery Point must incorporate:

- (a) appropriate security fencing to reasonably prevent unauthorised access;
- (b) adequate means of access and egress for vehicles and personnel;
- (c) adequate space to accommodate and permit the safe operation and maintenance of all equipment and structures;
- (d) Metering;
- (e) clear signs indicating Hazardous areas, and restricted access areas;
- (f) only electrical equipment that complies with applicable legislation that relates to such electrical equipment;

- (g) an above-ground isolation valve to allow First Gas to securely and safely isolate its Pipeline from the Interconnected Party's Pipeline;
- (h) 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;
- (i) 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;
- (j) equipment to reasonably prevent any solid or liquid contaminants from affecting meters or other sensitive equipment or reaching the Interconnected Party's Pipeline;
- (k) a flow-restriction device (sonic nozzle or restriction orifice plate) to prevent over-speeding of any meter; and
- (l) a check (non-return) valve to prevent reverse flow through any meter where First Gas considers that could otherwise occur.

1.3 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*).

1.4 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.

1.5 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:

- (a) primary means of pressure control; and
- (b) 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.

1.6 Pursuant to *paragraph 1.5*, unless the Parties agree otherwise in writing:

- (a) the primary means of pressure control shall comprise an active regulator in both the working stream and the standby stream; and
- (b) the means of over-pressure protection shall comprise:

  - (i) a monitor regulator in both the working stream and the standby stream; and

- (ii) 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
- (iii) a slam-shut valve; or
- (iv) all of (i), (ii) and (iii).

1.7 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.

1.8 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.

1.9 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.

1.10 First Gas may install, or require the installation of, means to remotely control the flow of Gas at a Delivery Point pursuant to the provisions of this Agreement or the Code (including for necessary operational, safety and emergency purposes).



## **SCHEDULE SEVEN: TRANSITIONAL ARRANGEMENTS**

### **1 General**

1.1 As set out in section 8.10 of the Code, this Schedule Seven applies in respect of wash-ups in relation to any period prior to the date of this Code. Schedule Eight applies in respect of Wash-ups in relation to the period on and from the date of this Code.

1.2 In this Schedule Seven:

*D+1 Pilot* means the D+1 Pilot referred to in the MBB Agreement;

*MBB Agreement* means the MBB D+1 Pilot Agreement dated 1 December 2015 originally between Vector Gas Limited, Contact Energy Limited, Mighty River Power Limited, Genesis Energy Limited, Trustpower Limited, Nova Gas Limited, Greymouth Gas New Zealand Limited and Vector Gas Trading Limited;

*MPOC* means the Maui Pipeline Operating Code dated 4 January 2018 (including as changed, amended or varied);

*Running Operational Imbalance* has the meaning given in the MPOC;

*Running Operational Imbalance Limit* has the meaning given in the MPOC;

*Welded Point* has the meaning given in the MPOC;

*VTC* means the Vector Transmission Code posted on OATIS on 2 October 2015 and effective as at 1 October 2015 (including as changed, amended or varied);

*VTC Running Imbalance* means Vector's Running Imbalance as defined in the MBB Agreement; and

*VTC Running Mismatch* means Running Mismatch as defined in the MBB Agreement.

### **2 Obligations prior to the date of this Code**

2.1 Each Shipper, Interconnected Party and First Gas will (as applicable) use their reasonable endeavours to manage the flow of Gas so that each of their:

(a) VTC Running Mismatch or VTC Running Imbalance (as applicable); and/or

(b) aggregated Running Operational Imbalance for all relevant Welded Points under the MPOC,

are or tend towards zero by 2400 hours on 30 September 2019.

2.2 An Interconnected Party must notify First Gas (where it is entitled to give such notification under the Code and its ICA) in writing no later than 40 Business Days (or such lesser period

as accepted by First Gas, acting reasonably) prior to the date of this Code if it wishes to become an OBA Party under this Code.

### 3 Balancing position as at the date of this Code

3.1 If and to the extent there are any imbalance positions under the MPOC above the Running Operational Imbalance Limit as at 2400 hours on 30 September 2019, such imbalance position will be cashed out in accordance with sections 12.10 to 12.12 of the MPOC as at 30 September 2019.

3.2 For the purposes of this Code:

- (a) if an Interconnected Party who is a Welded Party under the MPOC prior to 2400 hours on 30 September 2019 does not notify First Gas in writing that it wishes to become an OBA Party under this Code in accordance with *paragraph 2.2* of this Schedule Seven then:
  - (i) its aggregated Running Operational Imbalance for all relevant Welded Points under the MPOC as at 2400 hours on 30 September 2019 will be cashed out in accordance with the MPOC and/or Schedule 2 of the MBB Agreement (as applicable); and
  - (ii) it will not have an opening Running Mismatch position under this Code as at 0000 hours on 1 October 2019;
  
- (b) if an Interconnected Party who is a Welded Party under the MPOC prior to 2400 hours on 30 September 2019 notifies First Gas in writing that it wishes to become an OBA Party under this Code in accordance with *paragraph 2.2* of this Schedule Seven then subject to *paragraph 3.1* of this Schedule Seven, its aggregated Running Operational Imbalance for all relevant Welded Points under the MPOC as at 2400 hours on 30 September 2019 will become its opening Running Mismatch position under the Code as at 0000 hours on 1 October 2019;
  
- (c) in respect of First Gas:
  - (i) Schedule 1 of the MBB Agreement will apply to First Gas in its capacity as the TP Welded Party under the MPOC prior to 2400 hours on 30 September 2019 and First Gas will be cashed out in accordance with the MPOC and Schedules 1 and 2 of the MBB Agreement (as applicable) in respect of the TP Welded Party's Running Operational Imbalance for all relevant Welded Points under the MPOC as at 2400 hours on 30 September 2019; and
  
  - (ii) First Gas':
    - (A) VTC Running Imbalance as at 2400 hours on 30 September 2019 as adjusted (if applicable) in accordance with the MPOC and the MBB Agreement following the cash-out process pursuant to *paragraph 3.2(c)(i)* of this Schedule Seven; plus

(B) aggregated Running Operational Imbalance for all relevant Welded Points under the MPOC as at 2400 hours on 30 September 2019 (but excluding any Welded Points in respect of which it is the TP Welded Party),

will become its opening Running Mismatch under the Code as at 0000 hours on 1 October 2019; and

(d) notwithstanding clause 5.4(b)(iii) of the MBB Agreement, each Shipper's VTC Running Mismatch as at 2400 hours on 30 September 2019 (as adjusted (if applicable) in accordance with the MPOC and the MBB Agreement following the cash-out process pursuant to *paragraph 3.2(c)(i)* of this Schedule Seven) will become its opening Running Mismatch under the Code as at 0000 hours on 1 October 2019.

#### 4 MBB Agreement

4.1 The MBB Agreement will terminate at 2400 hours on 30 September 2019, provided that (by virtue of this Code and the MBB Agreement itself) all provisions of the MBB Agreement will continue to apply and bind the parties to the MBB Agreement in respect of wash-ups in relation to any period prior to 2400 hours on 30 September 2019 for so long as is necessary to give effect to the parties' respective rights and obligations under each of the MBB Agreement, the VTC and the MPOC in respect of wash-ups in relation to any such period prior to 2400 hours on 30 September 2019 (including, in particular, Schedule 3 of the MBB Agreement), except to the extent expressly varied by this Schedule Seven.

4.2 Notwithstanding clause 5.4(b)(i) of the MBB Agreement, First Gas will, in relation to any period prior to 2400 hours on 30 September 2019, continue wash-up calculations for "interim allocations", "final allocations" and "special allocations" (each as defined in the DDR) issued during the 26 months (rather than the four months) following 2400 hours on 30 September 2019 in accordance with Schedule 3 of the MBB Agreement.

4.3 The invoicing and payment provisions under *section 11* of this Code will apply to give effect to any adjustments as a consequence of the wash-up calculations under *paragraph 4.2* of this Schedule Seven (including for the purposes of invoicing and payment), rather than the relevant invoicing and payment provisions of the VTC and the MPOC.

4.4 Notwithstanding clause 5.2(c) of the MBB Agreement, the D+1 Pilot continues to apply if and to the extent necessary in respect of this Schedule Seven and associated wash-ups and will not come to an immediate end as at 2400 hours on 30 September 2019.

4.5 As contemplated by clause 5.4(b)(ii) of the MBB Agreement, First Gas and each Shipper's Residual Imbalance (as defined in the MBB Agreement) calculated during September 2019 will be spread evenly over October 2019.

4.6 Without limiting *paragraph 4.1* of this Schedule Seven, the termination of the MBB Agreement:

(a) will be without prejudice to the accrued interests, rights, obligations or claims of any party to the MBB Agreement in relation to any act or omission of such party prior to 30 September 2019 (which are to survive such termination); and

- (b) will not (except to the extent expressly varied by this Schedule Seven):
- (i) relieve any party to the MBB Agreement of its obligation to pay any money outstanding under the MBB Agreement or the VTC as at 30 September 2019;
  - (ii) relieve any Shipper of its obligation to settle a Running Mismatch in accordance with the MBB Agreement in relation to any period prior to 30 September 2019; or
  - (iii) relieve any Shipper of any obligation to settle a Running Mismatch in accordance with the VTC in relation to the period prior to 30 September 2019.

## 5 Industry Agreement

5.1 First Gas is to use its reasonable endeavours to agree with the GIC amendments to any applicable industry agreement to enable "D+1 allocations" to continue in accordance with the Code (including this Schedule Seven and Schedule Eight).

## 6 Acknowledgements

6.1 Each Shipper, Interconnected Party and First Gas acknowledges and agrees that:

- (a) if and to the extent this Schedule Seven constitutes an amendment to the VTC or change to the MPOC, then the requirements of section 25 of the VTC and section 29 of the MPOC are hereby agreed to be satisfied;
- (b) First Gas may raise a Change Request Notification or Change Request under the VTC or MPOC (respectively) to give a more proper or fulsome effect to the provisions of this Schedule Seven if and to the extent it is considered necessary or desirable to do so;
- (c) if and to the extent it is not possible for any reason whatsoever for:
  - (i) in respect of paragraph 3.2(b) of this Schedule Seven, a relevant Interconnected Party's aggregated Running Operational Imbalance for all relevant Welded Points under the MPOC as at 2400 hours on 30 September 2019 to become its opening Running Mismatch position under the Code as at 0000 hours on 1 October 2019;
  - (ii) in respect of paragraph 3.2(c)(ii) of this Schedule Seven, First Gas' VTC Running Imbalance plus First Gas' aggregated Running Operational Imbalance for the relevant Welded Points under the MPOC as at 2400 hours on 30 September 2019 (in each case, as set out in paragraph 3.2(c)(ii) of this Schedule Seven) to become its opening Running Mismatch under the Code as at 0000 hours on 1 October 2019; or
  - (iii) in respect of paragraph 3.2(d) of this Schedule Seven, a Shipper's VTC Running Mismatch as at 2400 hours on 30 September 2019 (as adjusted (if applicable) following the cash-out process in paragraph 3.2(c)(i) of this Schedule Seven) to become its opening Running Mismatch under the Code as at 0000 hours on 1 October 2019.

then First Gas may cash-out each of those parties in accordance with the MPOC, the VTC and/or the MBB Agreement (as applicable) in respect of the relevant person's aggregated Running Operational Imbalance for all relevant Welded Points under the MPOC, VTC Running Imbalance and/or relevant VTC Running Mismatch position, in each case as at 2400 hours on 30 September 2019, and the opening Running Mismatch position for each relevant person under this Code at 0000 hours on 1 October 2019 will be zero accordingly; and

- (d) First Gas will apply the provisions of this Schedule Seven in a manner and with a view to having as close an economic effect as is reasonably practicable to the arrangements agreed by the parties to the MBB Agreement and to the VTC and the MPOC prior to the date of this Code.

## **SCHEDULE EIGHT: WASH-UPS**

### **1 General**

1.1 As set out in section 8.10 of the Code, this Schedule Eight applies in respect of Wash-ups in relation to the period on and from 1 October 2019.

1.2 In this Schedule Eight:

D+1 Data means any data used or calculated by First Gas in performing its obligations under this Schedule Eight and section 8.8 and section 8.9 of the Code, or otherwise made available to Shippers or OBA Parties by First Gas in connection with this Schedule Eight;

MBB Agreement means the MBB D+1 Pilot Agreement dated 1 December 2015 originally between Vector Gas Limited, Contact Energy Limited, Mighty River Power Limited, Genesis Energy Limited, Trustpower Limited, Nova Gas Limited, Greymouth Gas New Zealand Limited and Vector Gas Trading Limited; and

Wilful Default means an intentional or deliberate act or omission on behalf of a party that:

- (a) the party knew or ought to reasonably have known was wrongful; and
- (b) the party knew or ought reasonable to have known would likely have harmful consequences,

but does not mean any innocent or negligent action, omission or mistake.

### **2 Balancing Wash-up Calculations**

2.1 The Running Mismatch and/or ERM for each Shipper, OBA Party and First Gas will or may require Wash-ups when changes are required:

- (a) to Daily Delivery Quantities determined by the Allocation Agent; and/or
- (b) as a result of corrections required for Metering errors or miscalculation of energy quantities; and/or
- (c) to Receipt Quantities determined by the Gas Transfer Agent; and/or
- (d) for operational or technical reasons determined by First Gas.

2.2 Following the release of the "interim allocations", "final allocations" or any "special allocations" (each as defined in the DDR) during a Month, First Gas will calculate Wash-ups in accordance with Attachment 1 to this Schedule Eight, which will be applied to each Shipper's, each OBA Party's and First Gas' opening Running Mismatch position on the first Day of the Month following receipt of the relevant "interim allocations", "final allocations" or "special allocations" (as applicable).

### 3      **Calculation of Balancing Wash-up Amounts**

3.1      Changes to Running Mismatch and/or ERM quantities pursuant to *paragraph 2* of this Schedule Eight may result in changes to invoiced amounts under *section 11*. First Gas will determine the difference between the amounts resulting from such changes to Running Mismatch and/or ERM quantities, and will debit and/or credit the resulting changes to Shippers and OBA Parties in accordance with Attachment 2 to this Schedule Eight and *section 11*.

### 4      **D+1 business rules**

4.1      Each Shipper and each OBA Party will use their reasonable endeavours to comply with the GIC's D+1 business allocation rules published from time to time on the GIC's website.

### 5      **First Gas obligations**

5.1      Nothing in this Schedule Eight will oblige First Gas to do, or not do, anything that may (in First Gas' opinion) cause First Gas to:

- (a)      be non-compliant with any applicable law (including any statute, regulation, by-law, scheme, determination, ordinance, rule or other like provision); or
- (b)      operate other than as a Reasonable and Prudent Operator.

### 6      **Acknowledgements and liability**

6.1      Each Shipper and each OBA Party acknowledge that First Gas will determine "initial" Daily Delivery Quantities in accordance with *section 6.11*.

6.2      Each Shipper acknowledges and agrees that First Gas does not make any representations or warranties that any D+1 Data is reliable, accurate or complete. First Gas is not liable for any loss resulting from any action taken by a Shipper or OBA Party in relation to, or any reliance placed by a Shipper or OBA Party on, any D+1 Data.

### 7      **Independent Auditor**

7.1      Any Shipper or OBA Party may give notice (*Audit Notice*) to First Gas requiring the appointment of an independent auditor to review the processes under this Schedule Eight, in which case:

- (a)      the Shipper or OBA Party who requested an audit (*Requesting Party*) and First Gas will jointly appoint an independent international audit firm with the necessary expertise to determine the matter (*Independent Auditor*) or failing agreement on the appointment within fourteen days of the date of the *Audit Notice*, the Independent Auditor will be appointed by the President of the New Zealand Institute of Chartered Accountants;
- (b)      no later than fourteen days following the appointment of the Independent Auditor, First Gas will allow the Independent Auditor reasonable access to First Gas' systems, books and records for the purpose of satisfying the Independent Auditor that First Gas has

complied with its obligations under this Schedule Eight in its use of the daily allocated quantities provided by the GIC;

- (c) the Requesting Party and First Gas will instruct the Independent Auditor to comply with any reasonable security and non-disclosure requirements imposed by First Gas;
- (d) the Requesting Party and First Gas will instruct the Independent Auditor to carry out its review in a manner which as far as reasonably practicable minimises any disruption to First Gas' business and affairs; and
- (e) the Requesting Party will pay the costs of the Independent Auditor. If the audit was requested by more than one Requesting Party, then the costs of the Independent Auditor will be shared equally by them.

7.2 First Gas will promptly take correction active to rectify any error identified in the audit carried out under *paragraph 7.1* of this Schedule Eight to prevent such error occurring again (but will not be obliged to retrospectively correct any such error).

## **8 Liability, Indemnity and Costs**

8.1 To the maximum extent permitted by law, First Gas will not be liable to any Shipper or OBA Party for any Loss suffered or incurred by any Shipper or OBA Party or any other person in connection with this Schedule Eight, except to the extent of any Wilful Default by First Gas.

8.2 Each Shipper and OBA Party agrees that it will not bring any claim against First Gas in relation to this Schedule Eight, whether by way of a claim for breach of any obligation under this Schedule Eight by First Gas or otherwise, except to the extent of any Wilful Default by First Gas.

8.3 If First Gas is liable to any Shipper or OBA Party as a result of any Wilful Default by First Gas, then First Gas' total liability to that Shipper or OBA Party for any Loss suffered or incurred by any Shipper, OBA Party or any other person in connection with this Schedule Eight will be limited in accordance with *sections 16.2 to 16.7* of the Code.

8.4 Each Shipper and each OBA Party will defend, hold harmless and indemnify First Gas for any Loss suffered or incurred as a direct or indirect result of a claim made by any End-user of that Shipper or OBA Party (*Claiming End-user*) in connection with the D+1 Data or this Schedule Eight. If the Claiming End-user is an End-user of more than one Shipper or OBA Party, then those Shippers and OBA Parties will jointly defend, hold harmless and indemnify First Gas in accordance with this *paragraph 8.4*.

8.5 In any case where First Gas is indemnified by one or more Shippers or OBA Parties (the *Liable Washup Party*) in accordance with *paragraph 8.4* of this Schedule Eight:

- (a) First Gas will notify the Liable Washup Party promptly on receiving any notice of proceeding relating to the matter for which First Gas is indemnified;
- (b) First Gas will allow the Liable Washup Party to conduct the defence and/or settlement of those proceedings (and the Washup Party will be responsible for allocating responsibility for such defence and/or settlement amongst them), unless and until First



Gas releases the Liable Washup Party from all liability relating to those proceedings;  
and

- (c) the Liable Washup Party will use reasonable endeavours to conduct proceedings in a way that does not prejudice First Gas' interests.

**ATTACHMENT ONE: BALANCING WASH-UP CALCULATIONS**

**1 RUNNING MISMATCH WASH-UPS**

**Requirement**

1.1 On or before the 16th Business Day of each Month or as required, First Gas will calculate, for each Day in the Month that requires a Wash-up, the changed Running Mismatch for each Shipper, OBA Party and First Gas.

**Shipper Running Mismatch Wash-up Calculation**

1.2 A Shipper’s changed Running Mismatch ( $RM_n$ ) is initially defined as:

$$RM_n = RM_{d-1} + (R_n - D_n) + ATQ_n + WU$$

where:

$RM_{d-1}$  is the Shipper’s initial published Running Mismatch for the previous Day, calculated in accordance with [section 1.1](#);

$R_n$  is the Shipper’s most recently calculated Receipt Quantity for that Day;

$D_n$  is the Shipper’s most recently calculated Daily Delivery Quantity for that Day;

$ATQ_n$  is the Shipper’s the most recently calculated Aggregate Trade Quantity for that Day;  
and

$WU$  is the Shipper’s previously calculated Wash-up quantity for the Month.

**First Gas Running Mismatch Wash-up Calculation**

1.3 First Gas’ changed Running Mismatch ( $RM_n$ ) for a Day is defined as:

$$RM_n = RM_{d-1} + (R_n - D_n) + ATQ_n + WU$$

where:

$RM_{d-1}$  is First Gas’ initial published Running Mismatch for the previous Day, calculated in accordance with [section 1.1](#);

$R_n$  is First Gas’ most recently calculated quantity of Gas purchased by First Gas for that Day;

$D_n$  is First Gas’ most recently calculated quantity of Gas sold by First Gas or consumed by equipment such as compressors and line heaters for that Day;

$ATQ_n$  is First Gas’ most recently calculated Aggregate Trade Quantity for that Day; and

$WU$  is First Gas’ previously calculated Wash-up quantity for the Month.

**Delivery Point OBA Party Running Mismatch Wash-up Calculation**

1.4 A Delivery Point OBA Party's changed Running Mismatch ( $RM_n$ ) for a Day is defined as:

$$RM_n = RM_{d-1} + (N_n - DQ_n) + ATQ_n + WU$$

where:

$RM_{d-1}$  is the OBA Party's initial published Running Mismatch for the previous Day, calculated in accordance with [section 1.1](#);

$N_n$  is the most recently calculated total approved nominations for the applicable Delivery Point and that Day;

$DQ_n$  is the most recently calculated metered quantity for the applicable Delivery Point and that Day;

$ATQ_n$  is the OBA Party's most recently calculated Aggregate Trade Quantity for that Day; and

$WU$  is the OBA Party's previously calculated Wash-up quantity for the Month.

**Receipt Point OBA Party Running Mismatch Wash-up Calculation**

1.5 A Receipt Point OBA Party's changed Running Mismatch ( $RM_n$ ) for a Day is defined as:

$$RM_n = RM_{d-1} + (RQ_n - N_n) + ATQ_n + WU$$

where:

$RM_{d-1}$  is the OBA Party's initial published Running Mismatch for the previous Day, calculated in accordance with [section 1.1](#);

$RQ_n$  is the most recently calculated metered quantity for the applicable Receipt Point and that Day;

$N_n$  is the most recently calculated total approved nominations for the applicable Receipt Point and that Day;

$ATQ_n$  is the OBA Party's most recently calculated Aggregate Trade Quantity for that Day; and

$WU$  is the OBA Party's previously calculated Wash-up quantity for the Month.

**2 BALANCING GAS ALLOCATION WASH-UP****Requirement**

2.1 Following the calculation of Running Mismatch Wash-ups in accordance with [paragraph 1 of this Attachment One](#), First Gas will calculate, for each Day in the Month, the changed Balancing Gas allocation for each Shipper, OBA Party and First Gas.

**Balancing Gas purchased**

2.2 If, for a Day, First Gas has purchased Balancing Gas ( $PG_n$ ), then the allocated Wash-up quantity of that Balancing Gas for each Shipper and OBA Party ( $BGP_n$ ) is:

(a) if  $PG_n$  is greater than  $NRM_{ALLWU-1}$ :

$$BGP_n = -1 \times NRM_{WU-1}$$

(b) if  $PG_n$  is less than  $NRM_{ALLWU-1}$ :

$$BGP_n = PG_n \times \frac{NRM_{WU-1}}{NRM_{ALLWU-1}}$$

where:

$NRM_{WU-1}$  is the Shipper or OBA Party's most recently calculated Running Mismatch for the previous Day, as calculated in accordance with paragraph 1 of this Attachment One, if that value is less than zero; and

$NRM_{ALLWU-1}$  is the sum of all  $NRM_{WU-1}$  for all Shippers and OBA Parties.

**Balancing Gas sold by Shippers and OBA Parties**

2.3 If for a Day, First Gas has sold Balancing Gas ( $SG_n$ ), then the allocated Wash-up quantity of that Balancing Gas for each Shipper and OBA Party ( $BGS_n$ ) is:

(a) if  $SG_n$  is greater than  $PRM_{ALLWU+1}$ :

$$BGS_n = PRM_{WU-1}$$

(b) if  $SG_n$  is less than  $PRM_{ALLWU+1}$ :

$$BGS_n = SG_n \times \frac{PRM_{WU-1}}{PRM_{ALLWU+1}}$$

where:

$PRM_{WU-1}$  is the Shipper or OBA Party's most recently calculated Running Mismatch for the previous Day, as calculated in accordance with paragraph 1 of this Attachment One, if that value is greater than zero; and

$PRM_{ALLWU+1}$  is the sum of all  $PRM_{WU-1}$  for all Shippers and OBA Parties.

**3 CALCULATION AND APPLICATION OF WASH-UP QUANTITIES**

**Requirement**

3.1 First Gas will calculate the difference between the Running Mismatch calculated in accordance with paragraph 1 of this Attachment One and the previously calculated Running Mismatch. The difference will be returned to Shippers, OBA Parties and First Gas as an adjustment to Running Mismatch in the next Month after the calculation has been performed.

**Months after 1 October 2019**

3.2 For each Shipper, OBA Party and First Gas, First Gas will calculate the applied Wash-up quantity ( $WU$ ), which is the sum of the Wash-up quantities of prior Days ( $WU_A$ ) divided by the Days of the Month after the Day of calculation ( $M$ ).  $WU$  will be applied to each Day of the Month following the Month that these calculations take place, where:

(a)  $WU_A$  for a Day is:

$$WU_A = RM_n - RM_{n-1}$$

where:

$RM_n$  has the meaning set out in paragraph 1.2 of this Attachment One for Shippers, paragraph 1.3 of this Attachment One for First Gas, paragraph 1.4 of this Attachment One for Delivery Point OBA Parties and paragraph 1.5 of this Attachment One for Receipt Point OBA Parties; and

$RM_{n-1}$  is the previous calculated Running Mismatch for the relevant Day.

(b)  $WU$  is:

$$WU = \frac{\sum_{i=1}^X WU_A}{M}$$

where:

$X$  is the count of prior Days that have had a change to variables that make up Running Mismatch; and

$M$  is the number of days in the Month following the Month in which  $WU$  is calculated.

**4 FINAL REVISED RUNNING MISMATCH**

**Shipper Running Mismatch Wash-up Calculation**

4.1 A Shipper's changed Running Mismatch ( $RM_n$ ) is finally defined as:

$$RM_n = RM_{n-1} + (R_n - D_n) + ATQ_n + (BGP_n - BGS_n) + WU$$

where:

$RM_{n-1}$  is the Shipper's initial published Running Mismatch for the previous Day, calculated in accordance with section 1.1;

$R_n$  is the Shipper's most recently calculated Receipt Quantity for that Day;

$D_n$  is the Shipper's most recently calculated Daily Delivery Quantity for that Day;

$ATQ_n$  is the Shipper's the most recently calculated Aggregate Trade Quantity for that Day;

$BGP_n$  is calculated in accordance with paragraph 2.2 of this Attachment One;

$BGS_n$  is calculated in accordance with *paragraph 2.3* of this Attachment One; and

$WU$  is the Shipper's previously calculated Wash-up quantity for the Month.

**First Gas Running Mismatch Wash-up Calculation**

4.2 First Gas changed Running Mismatch ( $RM_n$ ) for a Day is defined as:

$$RM_n = RM_{d-1} + (R_n - D_n) + ATQ_n + (BGP_n - BGS_n) + WU$$

where:

$RM_{d-1}$  is First Gas' initial published Running Mismatch for the previous Day, calculated in accordance with *section 1.1*;

$R_n$  is First Gas' most recently calculated quantity of Gas purchased by First Gas for that Day;

$D_n$  is First Gas' most recently calculated quantity of Gas sold by First Gas or consumed by equipment such as compressors and line heaters for that Day;

$ATQ_n$  is First Gas' most recently calculated Aggregate Trade Quantity for that Day;

$BGP_n$  is calculated in accordance with *paragraph 2.2* of this Attachment One;

$BGS_n$  is calculated in accordance with *paragraph 2.3* of this Attachment One; and

$WU$  is the First Gas' previously calculated Wash-up quantity for the Month.

**Delivery Point OBA Party Running Mismatch Wash-up Calculation**

4.3 A Delivery Point OBA Party's changed Running Mismatch ( $RM_n$ ) for a Day is defined as:

$$RM_n = RM_{d-1} + (N_n - DQ_n) + ATQ_n + (BGP_n - BGS_n) + WU$$

where:

$RM_{d-1}$  is the OBA Party's initial published Running Mismatch for the previous Day, calculated in accordance with *section 1.1*;

$N_n$  is the most recently calculated total approved nominations for the applicable Delivery Point and that Day;

$DQ_n$  is the most recently calculated metered quantity for the applicable Delivery Point and that Day;

$ATQ_n$  is the OBA Party's most recently calculated Aggregate Trade Quantity for that Day;

$BGP_n$  is Balancing Gas Purchases calculated in accordance with *paragraph 2.2* of this Attachment One;

$BGS_n$  is Balancing Gas Sold calculated in accordance with *paragraph 2.3* of this Attachment One; and

$WU$  is the OBA Party's previously calculated Wash-up quantity for the Month.

**Receipt Point OBA Party Running Mismatch Wash-up Calculation**

4.4 A Receipt Point OBA Party's changed Running Mismatch ( $RM_n$ ) for a Day is defined as:

$$RM_n = RM_{n-1} + (RQ_n - N_n) + ATQ_n + (BGP_n - BGS_n) + WU$$

where:

$RM_{n-1}$  is the OBA Party's initial published Running Mismatch for the previous Day, calculated in accordance with *section 1.1*;

$RQ_n$  is the most recently calculated metered quantity for the applicable Receipt Point and that Day;

$N_n$  is the most recently calculated total approved nominations for the applicable Receipt Point and that Day;

$ATQ_n$  is the OBA Party's most recently calculated Aggregate Trade Quantity for that Day;

$BGP_n$  is calculated in accordance with *paragraph 2.2* of this Attachment One; and

$BGS_n$  is calculated in accordance with *paragraph 2.3* of this Attachment One;

$WU$  is the OBA's previously calculated Wash-up quantity for the Month.

4.5 The Final Running Mismatch positions when calculated by First Gas in accordance with *paragraphs 4.1 to 4.4* above will apply as each Shipper's, OBA Party's and First Gas' opening position on  $D_{n+1}$ .

**5 CALCULATION OF ERM WASH-UP QUANTITIES**

**Requirement**

5.1 First Gas will recalculate the positive and negative ERM quantities as based on the Wash-up Running Mismatch calculated in accordance with *paragraph 1* of this Attachment One. Any resulting differences from what was previously charged will be debited and/or credited in accordance with Attachment Two of this Schedule Eight.

**Determination of Running Mismatch Tolerance Wash up**

5.2 For each Day that  $RM_n$  has been calculated, First Gas will calculate the Running Mismatch Tolerance for First Gas, each Shipper and each OBA Party. This will be calculated with the same quantities used in the determination of  $RM_n$  and in accordance with the definition of Running Mismatch Tolerance in *section 1.1*. Where the Running Mismatch Tolerance is:

(a) positive it is the positive Running Mismatch Tolerance ( $PT_n$ ); and

(b) negative it is the negative Running Mismatch Tolerance ( $NT_i$ ).

**Calculation of Positive and Negative ERM Quantity Wash up**

5.3 For each Day that  $RM_i$  has been calculated, First Gas will calculate the positive ERM quantity Wash-up ( $PERM_i$ ) and negative ERM quantity Wash-up ( $NERM_i$ ), and:

(a) if  $RM_i$  is greater than  $PT_i$ , then

$PERM_i$  will equal  $RM_i$  less  $PT_i$ ; otherwise

$PERM_i$  equals zero.

(b) if  $RM_i$  is less than  $NT_i$ , then

$NERM_i$  will equal  $RM_i$  less  $NT_i$  multiplied by -1; otherwise

$NERM_i$  equals zero.



**ATTACHMENT TWO: CALCULATION OF BALANCING WASH-UP AMOUNTS**

**1 CALCULATION OF BALANCING GAS ALLOCATION WASH-UP AMOUNT**

**Requirement**

1.1 For each Day that Balancing Gas allocation quantities have been determined in accordance with *paragraph 2* of Attachment One of this Schedule Eight, First Gas will determine the resulting debit and credit amounts for each Shipper and OBA Party.

**Calculation of the Balancing Gas Allocation Wash-up Amount**

1.2 First Gas will calculate for each Month:

- (a) the allocated amount based on the quantities determined in accordance with *paragraphs 2.2 and 2.3* of Attachment One of this Schedule Eight ( $BG_n$ ):

$$BG_n = \sum_{i=1}^m (BGP_n \times P_n) - \sum_{i=1}^m (BGS_n \times S_n)$$

- (b) the Balancing Gas Allocation Wash-up Amount (BGW):

$$BGW = BG_n - BG_{n-1}$$

where:

$m$  is the count of the Days of the Month;

$BGP_n$  is calculated in accordance with *paragraph 2.2* of Attachment One of this Schedule Eight;

$P_n$  is the applied price to the Balancing Gas purchase;

$BGS_n$  is calculated in accordance with *paragraph 2.3* of Attachment One of this Schedule Eight;

$S_n$  is the applied price to the Balancing Gas sale; and

$BG_{n-1}$  is the most recent of the amount calculated in accordance with *sections 8.8 and 8.9* or the previously calculated amount for  $BG_n$ .

**Invoicing of the Balancing Gas Allocation Wash-up Amount**

1.3 For the amounts calculated in accordance with *paragraph 1.2* of this Attachment Two of this Schedule Eight:

- (a) if  $BGW$  is positive, that amount will be charged to the relevant Shipper or OBA Party; or
- (b) if  $BGW$  is negative, that amount will be credited to the relevant Shipper or OBA Party.

in each case, in accordance with *section 11.21(m)*.

**2 CALCULATION OF ERM WASH-UP AMOUNT**

**Requirement**

2.1 For each Day that ERM quantities have been determined in accordance with *paragraph 5 of Attachment One of this Schedule Eight*, First Gas will determine the resulting ERM debit and credit amounts for each Shipper and OBA Party.

**Calculation of the ERM Wash-up Amount**

2.2 For each Month, First Gas will calculate:

(a) the total amount using the ERM quantities determined in accordance with *paragraph 5 of Attachment One of this Schedule Eight* ( $ERM_n$ ):

$$ERM_n = \sum_{i=1}^m (PERM_{n,i} \times F_{ERM} \times I_n) + \sum_{i=1}^m (NERM_{n,i} \times F_{ERM} \times I_n)$$

(b) the ERM Wash-up Amount ( $EW$ ):

$$EW = ERM_n - ERM_{n-1}$$

where:

$m$  is the count of the Days of the Month;

$PERM_{n,i}$  is calculated in accordance with *paragraph 5.3 of Attachment One of this Schedule Eight*;

$F_{ERM}$  is calculated in accordance with *section 8.14(b)*;

$I_n$  is calculated in accordance with *section 8.13*;

$NERM_{n,i}$  is calculated in accordance with *paragraph 5.3 of Attachment One of this Schedule Eight*;

$F_{ERM}$  is calculated in accordance with *section 8.14(a)*;

$I_n$  is calculated in accordance with *section 8.12*;

$ERM_{n-1}$  is the most recent of the total of the amounts calculated in accordance with *sections 8.12 and 8.13* or the previous calculated amount for  $ERM_n$ .

**Invoicing of the ERM Wash-up Amount**

2.3 In respect of the amounts calculated in accordance with *paragraph 2.2 of Attachment Two of this Schedule Eight*:

(a) if  $EW$  is positive, that amount will be charged to the relevant Shipper or OBA Party; and

(b) if  $EW$  is negative, that amount will be credited to the relevant Shipper or OBA Party.



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