

APPENDIX C: TERMS & CONDITIONS

Allgas Energy Pty Ltd
(ABN 52 009 656 446)

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BACKGROUND

- A. Allgas Energy Pty Ltd (Allgas) submitted an Access Arrangement to the Queensland Competition Authority in accordance with requirements of the *Gas Pipelines Access (Queensland) Act 1998* and the Code. This Access Arrangement has been approved.
- B. Section 3.6 of the Code requires Allgas to include in the Access Arrangement the Terms and Conditions on which it will supply Reference Services. The Terms and Conditions must be reasonable in the opinion of the Queensland Competition Authority.
- C. Allgas has prepared these Terms and Conditions to satisfy its obligations under section 3.6 of the Code. The Terms and Conditions are intended to be consistent with the Access Arrangement.
- D. The party seeking access to the Network on these Terms and Conditions is referred to as the User. The contracting party may be either a retailer, who provides a bundled service to an End User of gas, or the End User of gas directly.
- E. The Agreement between Allgas and the User comprises the Terms and Conditions set out below.

AGREEMENT

1. ACKNOWLEDGMENT

Allgas and the User acknowledge:

- (a) that this Agreement is intended to be consistent with the Access Arrangement as amended from time to time; and
- (b) to the extent that there is any inconsistency between this Agreement and the Access Arrangement as amended from time to time, the provisions of the Access Arrangement prevail.

2. REFERENCE SERVICES

2.1 Provision of Reference Services

During the Term, Allgas will make available Volume Customer Services, Demand Customer Services and Ancillary Services to the User.

2.2 Determination of Customer

Allgas will determine from time to time whether an End User is a Volume Customer or a Demand Customer. This determination is binding on the User.

2.3 Operation and Management

Allgas will ensure that the Network is operated and managed in accordance with the Access Arrangement, the Code and with applicable laws and any relevant standards which apply from time to time.

3. CAPACITY MANAGEMENT

3.1 Quantity Delivered

The MHQ of Natural Gas which Allgas must transport to each Delivery Point is limited to the Agreed Demand.

The MDQ of Natural Gas which Allgas transports to each Delivery Point is not limited.

3.2 MDQ Overruns

The MDQ for a Demand Customer is nominated for the Contract Year based on their MDQ in the previous 12 months. Where a Demand Customer has Interval Metering and their actual MDQ exceeds their nominated MDQ at a Delivery Point:

- (a) within a single billing period, Allgas will not adjust the nominated MDQ for that Contract Year; or
- (b) in a second billing period during the same Contract Year, the nominated MDQ for the remainder of the Contract Year will reflect the highest recorded MDQ.

3.3 Authorisation

Notwithstanding Clauses 3.1 and 3.2, the User authorises Allgas during the Term to deliver through each Delivery Point the quantity of Natural Gas supplied by Allgas through that Delivery Point (whether the delivered quantity of Natural Gas is or is not specifically authorised by the User or the End User).

3.4 Network Limitations

At no time will Allgas have any obligation to deliver more Natural Gas through any Delivery Point than is possible given the technical, physical or other limitations of the Network and the pressure and flow-rate of the Natural Gas within the Network. Allgas will not connect a new Delivery Point to the Network unless the system has sufficient capacity to sustain that End User. Allgas will maintain the network in accordance with legislative and statutory requirements where relevant and, to the extent not covered by legislation, in accordance with good engineering and industry practice.

3.5 Gas Balancing

At all times during the Term, the User must ensure that the aggregate quantity of Natural Gas delivered through each Receipt Point by or for the account of the User is equal to the aggregate quantity of Natural Gas delivered to or for the account of the User through each Delivery Point, after accounting for Unaccounted for Gas.

3.6 Quantity Received

Allgas may determine the quantity of Natural Gas delivered through each Receipt Point by or for the account of the User on a reasonable basis, and this determination binds the User.

4. METERING

4.1 General Obligations

4.1.1 Provision of Metering Equipment

Allgas will ensure each Delivery Point has Metering in accordance with applicable laws and any relevant standards that apply from time to time, to measure the volume of Natural Gas delivered through that Delivery Point.

4.1.2 Maintenance

Allgas will ensure that all Metering is maintained in a reasonable condition throughout the Term, in accordance with applicable laws and any relevant standards that apply from time to time.

4.1.3 Meter Accuracy

The accuracy of Metering at any Receipt Point or Delivery Point is in accordance with applicable laws and any relevant standards that apply from time to time.

4.1.4 Correction of Readings

If Allgas is required to correct previous readings under Clause 4.1.3:

- (a) the correction must reflect:
 - (i) the actual volume of Natural Gas delivered; or
 - (ii) a reasonable estimate of the volume of Natural Gas delivered, since the date of the last reading taken from the Metering or, if later, the last date on which the Metering was tested and the measurements found to be within the Allowable Margin of Accuracy;
- (b) the correction will be binding on the User; and
- (c) Allgas must recalculate the Charges for the relevant Delivery Point, and debit the User any underpayment or credit the User any overpayment, in the next tax invoice issued in accordance with Clause 8.

4.2 Meter Reading

4.2.1 Scheduled

Subject to this Agreement, Allgas will use best endeavours to ensure that the Metering:

- (a) at each Delivery Point of a Volume Customer is read at least every 3 months; and
- (b) at each Delivery Point of a Demand Customer is read at least monthly.

4.2.2 Special

The User may request Allgas to make special readings of the Metering at any Delivery Point at the User's cost. The cost of the special reading:

- (a) is stipulated in Appendix B to the Access Arrangement, 'Tariff Schedule';
- (b) must be paid by the User if the reading is not taken because Allgas is unable to obtain safe, reasonable and unhindered access pursuant to Clause 11; and
- (c) will be refunded by Allgas if the scheduled reading taken is found to be in error.

4.2.3 No Measurements

If the volume of Natural Gas delivered at any Delivery Point during any period is not measured by the Metering at that Delivery Point for any reason whatsoever, Allgas may estimate the volume of Natural Gas delivered at that Delivery Point during that period on a reasonable basis and this will bind the User.

5. NETWORK PRESSURES

5.1 Receipt Point Pressures

5.1.1 User's Obligation

The User will arrange for the delivery of Natural Gas at each Receipt Point within a pressure range as reasonably nominated from time to time by Allgas.

5.1.2 Failure to Comply

If the User is in breach of Clause 5.1.1, Allgas may:

- (a) curtail or interrupt deliveries through any Receipt Point or any Delivery Point;
- (b) flare or otherwise dispose of Natural Gas in the Network; or
- (c) take whatever steps Allgas considers necessary or desirable,

to increase or reduce the pressure of Natural Gas within the Network or to avoid any threat to persons or property.

5.2 Delivery Point Pressures

5.2.1 Allgas' Obligation

Subject to the technical, physical or other limitations of the Network, Allgas will deliver Natural Gas at each Delivery Point at a minimum pressure of 1.125kPa, but always within the pressure range specified by Allgas from time to time.

5.2.2 Failure to Comply

Allgas will not breach its obligations under Clause 5.2.1 where its failure to comply with that Clause is due to:

- (a) the technical, physical or other limitations of the Network;
- (b) insufficient Natural Gas being delivered into the Network; or
- (c) delivery of Natural Gas into the Network at pressures outside the limits specified from time to time by Allgas,

whether or not Allgas knew, or ought to have known, of those facts or matters at any time.

5.2.3 No Implied Obligation

To avoid any doubt, Allgas is not under an obligation to modify, or cause to be modified, the technical, physical or other limitations of the Network other than to ensure that the safety and integrity of the Network is maintained.

6. GAS SPECIFICATIONS

6.1 Odourisation

Allgas will ensure that all Natural Gas in the Network is odourised in accordance with applicable laws and any relevant standards which apply from time to time.

6.2 Quality of Gas

The User must:

- (a) ensure all arrangements in relation to the delivery of Natural Gas to the Delivery Points, including the Delivery Point Facilities, are in accordance with any applicable laws and relevant standards which apply from time to time; and
- (b) deliver, or cause to be delivered, at each Receipt Point, Natural Gas which meets the gas specifications stipulated in applicable laws and relevant standards from time to time.

6.3 Quality of Gas

Allgas must ensure that the quality of the Natural Gas, delivered at each Receipt Point, is maintained at the gas specifications stipulated in applicable laws and relevant standards from time to time.

6.4 Failure to Comply

If the User is in breach of Clause 6.2, Allgas is not required to provide the Reference Services and may:

- (a) curtail or interrupt deliveries through any Receipt Point or any Delivery Point;
- (b) flare or otherwise dispose of Natural Gas in the Network; or
- (c) take whatever steps Allgas considers necessary or desirable,

to ensure the Natural Gas within the Network meets the gas specifications stipulated in applicable laws and relevant standards from time to time or to avoid any threat to persons or property.

7. OWNERSHIP OF GAS

7.1 Warranty of Title

The User warrants that:

- (a) the User has good title to all Natural Gas delivered into the Network at each Receipt Point, which is free and clear of all mortgages, charges and other encumbrances; and
- (b) the User has fulfilled all obligations, including regulatory and contractual, necessary for the User to supply Natural Gas at each Receipt Point for transportation by Allgas under this Agreement.

7.2 Ownership

Upon receipt of Natural Gas at a Receipt Point:

- (a) the Natural Gas, except Unaccounted for Gas, shall remain the property of the User within the Network; and

- (b) Unaccounted for Gas shall become the property of Allgas within the Network.

7.3 Commingling

The Natural Gas received at any Receipt Point may be commingled with other Natural Gas in the Network. Allgas is entitled to deliver Natural Gas in a commingled state to each Delivery Point.

8. CHARGES, INVOICING AND PAYMENTS

8.1 Security

Allgas may require a User to:

- (a) provide reasonable security, the type and extent to be reasonably determined by Allgas, for the performance of the User's obligations under this Agreement; and
- (b) demonstrate to Allgas' reasonable satisfaction the User's ability to meet all financial obligations under this Agreement.

8.1.1 When Security Undertaking is Required

In applying Clause 8.1, Allgas may request the User to procure an undertaking under Clause 8.1.2 if, at the time of the request the User cannot demonstrate that:

- (a) it has an unqualified Standard and Poor's credit rating of at least BBB+ or its equivalent form from another recognised credit reporting agency reasonably acceptable to Allgas (an 'Acceptable Credit Rating'); or
- (b) the performance of the User's obligations under this Agreement are guaranteed (on terms acceptable to Allgas) by another entity who has an Acceptable Credit Rating ('Credit Rating Guarantor').

8.1.2 Undertaking

Subject to Clause 8.1.1, the User must give to Allgas within 10 Business Days after Allgas' request under Clause 8.1.1, an unconditional and irrecoverable undertaking ('Credit Support') in favour of Allgas for an amount not less than the amount payable by the User to Allgas under this Agreement for the 3 months following the request, such amount is to be reasonably estimated by Allgas ('Required Amount'). The Credit Support must be issued to either an Australian Bank and another financial institution approved by Allgas on terms acceptable to Allgas to secure the due and punctual performance of the User's obligations under this Agreement.

8.1.3 Suspend Reference Services

If, with 10 Business Days after Allgas' request under Clause 8.1.2 the User fails to provide the Credit Support, Allgas may suspend the provision of Services until the user provides Allgas with the Credit Support.

8.1.4 Call on the Credit Support

Allgas may only call on the Credit Support to convert it into money if the User has failed to pay any amount due and owing to Allgas in connection with this Agreement within 7 days of Allgas issuing a written notice of demand requiring payment.

8.1.5 User not to Restrain

Subject to Allgas complying with Clause 8.1.4, the User must not take any steps to seek an injunction or otherwise restrain:

- (a) any issuer of the Credit Support from paying Allgas pursuant to the Credit Support;
- (b) Allgas from taking any steps for the purposes of making a demand against the Credit Support; or
- (c) Allgas using the money obtained in the calling on the Credit Support.

8.1.6 Maintenance of Required Amount

If, at any time during the term of this Agreement, the uncalled Credit Support is less than the Required Amount, the User must, within 10 Business Days of Allgas' request, increase the amount of the Credit Support to the Required Amount.

8.1.7 Refund of Balance

Any balance of the Credit Support outstanding after payment of all amounts owing by the User to Allgas in connection with this Agreement will be paid to the User (or cancelled or returned to the User, as appropriate or advised by the User) following termination of this Agreement.

8.1.8 No Prejudice of Rights

Allgas' exercise of its rights under this Clause 8.1 does not prejudice any other rights which Allgas may have in respect of any outstanding amount owed by the User.

8.2 Obligation to Pay Charges

In consideration for the Reference Services provided, or to be provided under this Agreement, the User must pay Allgas the Charges in accordance with this Clause 8.

8.3 Invoicing

Allgas will use reasonable endeavours to provide, either in writing or by electronic means, a tax invoice (the 'Tax Invoice') by the seventh Day of each Month, specifying an itemised list:

- (a) of the amounts due in respect of the Reference Services supplied to the User in the preceding Month;
- (b) of any other item agreed between the parties; and
- (c) describing each item with sufficient information to enable the User to reconcile the DUOS charges at an individual customer level.

Any failure to provide the Tax Invoice within this period does not limit or restrict the rights of Allgas in relation to the amounts due under this Agreement.

8.4 Payment

The User shall pay the aggregate amount stated in the Tax Invoice within 14 Days of the date of the Tax Invoice (the 'Due Date'). Payment may be made by electronic funds transfer to a nominated bank account or such other means as previously agreed to in writing between the parties. If the Due Date is not a Business Day, then payment shall be made on or before the preceding Business Day.

Notwithstanding Clause 8.6, the User shall pay the full amount of any disputed invoice in accordance with this Clause.

8.5 Failure to Pay the Tax Invoice

If the Tax Invoice is not paid by the Due Date:

- (a) Allgas may require the User to pay interest on the overdue amount, calculated on a daily basis at the Rate plus 2% per annum from the Due Date to the date of payment;
- (b) Allgas may issue a written notice of demand requiring payment of the amount within 7 Days from the date of the notice of demand; and
- (c) if the amount is not paid within the time specified in the notice of demand, Allgas may:
 - (i) suspend provision of the Reference Services to the User, or
 - (ii) terminate this Agreement in accordance with Clause 18.

8.6 Disputed Tax Invoices

If the User disputes part or all of the Tax Invoice:

- (a) the User shall, within 7 Days after receipt of the Tax Invoice, notify Allgas in writing specifying the amount in dispute and the reasons for the dispute;
- (b) each party shall nominate an officer who shall meet with the other party's officer to try to resolve the dispute; and
- (c) if those officers fail to resolve the dispute within 21 Days, each party shall comply with Clause 16.

8.7 Incorrect Tax Invoices

If it comes to the attention of either party that the User has been overcharged or undercharged:

- (a) the party, upon becoming aware of the error, must notify the other party of the error;
- (b) Allgas must verify the error and the amount undercharged or overcharged;
- (c) within 28 Days of the notification under paragraph (a), Allgas may issue an amended tax invoice or if the Tax Invoice has been paid, credit the User's account in respect of the amount in error.

The User may not claim from Allgas any amount overcharged if more than 12 Months has elapsed since the date of the Tax Invoice in which the overcharge occurred.

Allgas may not claim from any User any amount undercharged if more than 12 Months has elapsed since the date of the Tax Invoice in which the undercharge occurred.

8.8 Interest on Disputed or Incorrect Amount

If either party makes a payment under Clause 8.6 or 8.7, the party can be required to pay interest on that amount, calculated daily at the Rate plus 2% per annum, from the Due Date.

8.9 Adjustment Where Tax Invoice Estimated

If information is unavailable to Allgas at the beginning of a Month to allow preparation of the Tax Invoice based on actual Charges, ('Estimated Month') Allgas shall use estimated information to prepare the Tax Invoice. In the Month that information becomes available ('Current Month') with respect to these actual Charges, the Tax Invoice for the Current Month shall be adjusted to reflect the difference between the actual and estimated Charges of the Estimated Month. Neither Allgas nor the User shall be entitled to the payment of interest on any adjustment under this Clause 8.9.

9. TAXATION

9.1 Existing Impost Increases

If the rate of an Impost levied at the Commencement Date increases during the Term, Allgas is entitled to recover the amount of the increase from the User each Month, according to a mechanism reasonably determined by Allgas which is equitable and is designed to ensure Allgas will not enjoy a windfall benefit. Any proposed increase must be Material and must be submitted to the Regulator for approval.

9.2 Existing Impost Decreases

If the rate of an Impost levied at the Commencement Date decreases or is abolished during the Term, Allgas shall pay the User the amount of the decrease or the abolished amount each Month, according to a mechanism reasonably determined by Allgas which is equitable and is designed to ensure Allgas will not enjoy a windfall benefit. Any proposed decrease must be Material and must be submitted to the Regulator for approval.

9.3 New Impost

Where a new Impost becomes payable after the Commencement Date, Allgas may recover that Impost from the User according to a mechanism reasonably determined by Allgas which is designed to ensure Allgas will not enjoy a windfall benefit. Any such increase will be approved by the Regulator prior to being levied.

10. INFORMATION AND ASSISTANCE

The User will provide Allgas or procure the User's End Users or Transmission Pipeline Operator to provide to Allgas:

- (a) whatever information Allgas might reasonably require from time to time; and
- (b) whatever assistance or co-operation Allgas might reasonably require from time to time,

in connection with this Agreement.

11. ACCESS TO PREMISES

11.1 User's Obligation

The User must:

- (a) grant Allgas, its employees, servants and agents safe, reasonable and unhindered access and any easement, licence or other document which Allgas reasonably requires to assure Allgas its right of access, to enter any premises owned by the User upon which facilities connected to the Network are located; and
- (b) use reasonable endeavours to assist Allgas, its employees, servants and agents safe, reasonable and unhindered access, and any easement, licence or other document which Allgas reasonably requires to assure Allgas its right of access, to enter any premises owned by a third party, including the User's End User, upon which facilities connected to the Network are located,

so that Allgas may perform its obligations or exercise any rights under this Agreement.

11.2 Allgas' Obligation

Prior to exercising any rights conferred by Clause 11.1, Allgas must take all reasonable steps to ensure its employees, servants and agents who enter the premises cause as little inconvenience to the User as possible and observe relevant safety and security procedures in providing the Reference Services under this Agreement.

12. INTERRUPTIONS FOR MAINTENANCE

12.1 Immediate Repairs or Maintenance

After providing the User as much notice as is reasonable in the circumstances (except in an emergency when no notice is required), Allgas shall be entitled to curtail or interrupt provision of the Reference Services:

- (a) to protect the operational integrity and safe operation of the Network; or
- (b) to comply with any applicable laws and regulations; or
- (c) in any other situation when immediate repairs or maintenance are required.

Allgas, when undertaking localised curtailment or interruption to the provision of the Reference Services will do so in a manner that treats similar Users the same.

12.2 Planned Repairs or Maintenance

If Allgas proposes to carry out any planned work which may affect its ability to provide Reference Services to the User, Allgas shall give the User reasonable notice of the planned work and after consultation with the User, shall in carrying out that work, use all reasonable endeavours to avoid or minimise any disruption or curtailment to the Reference Services as is reasonable in the circumstances.

12.3 SUPPLY CURTAILMENT

12.3.1 Right to Curtail

Subject to clauses 12.3.2 and 12.3.3, Allgas may interrupt or curtail deliveries of Gas through the Network (whether to or for the account of the Network User or to or for the account of any other person):

- (a) where necessary to permit maintenance, repairs, improvements or alterations to the Network or any part of it;
- (b) where necessary to protect the operational integrity of the Network or any part of it or to ensure the safe and efficient operation of the Network or any part of it;
- (c) where the Quantity of Gas delivered into the Network or any part of it is insufficient to meet demand; or
- (d) in the event of an emergency or where necessary to avert danger to persons or property or to comply with any law.

12.3.2 Notice of Curtailment

Allgas will give the Network User or the Network User's Customers at least four days' notice whenever Allgas proposes to interrupt or curtail deliveries of Gas to or for the account of the Network User in order that Allgas may undertake Planned Maintenance or augment the Network.

Whenever Allgas proposes to interrupt or curtail deliveries of Gas to or for the account of the Network User for any reason (other than an emergency), Allgas will give the Network User whatever notice is reasonable in the circumstances.

12.3.3 Order of Priority

If Allgas proposes to interrupt or curtail deliveries of Gas pursuant to clause 12.3 and it has a choice about which deliveries it will interrupt or curtail, or the order in which it will interrupt or curtail deliveries, then, to the extent that it is practicable to do so, Allgas will endeavour to interrupt or curtail deliveries in the following descending order of priority:

- (a) Interruptible DPs;
- (b) Demand DPs with alternative fuel sources;
- (c) Demand DPs with the ability to shut down their plant or operations with minimal disruption;
- (d) Demand DPs which are capable of releasing the greatest capacity to that part or parts of the Network in respect of which load shedding is required;
- (e) other Demand DPs;
- (f) Volume DPs that are not Domestic DPs;
- (g) Domestic DPs;
- (h) emergency or essential services (such as hospitals).

Where two or more DPs fall within a particular category specified in this clause, Allgas may interrupt or curtail deliveries to those DPs in such order as Allgas determines having regard to the relevant circumstances, but Allgas will not select which of those DPs to curtail or interrupt based on the identity of the Network User.

12.3.4 Categorisation of Delivery Points

For the purposes of clause 12.3, Allgas will determine, on a reasonable basis, into which category any particular DP falls, based on its actual knowledge of the DP. Allgas' determination will bind the Network User.

12.3.5 Network User Information

The Network User must give Allgas whatever information Allgas reasonably requests from time to time to enable Allgas to interrupt or curtail deliveries of Gas pursuant to the Agreement. That information may include (but is not limited to) emergency contact details for the Network User and for the Network User's Customers.

12.3.6 Updates

The Network User must give Allgas whatever additional information is necessary from time to time to ensure that all information given to Allgas pursuant to the previous clause remains true, correct and up to date throughout the Term.

12.3.7 Assistance

The Network User must give Allgas (and must cause or procure each Network User's Customer to give Allgas) whatever assistance Allgas reasonably requests from time to time to interrupt or curtail deliveries of Gas to or for the account of the Network User.

13. INSURANCE

13.1 User's Obligation

The User must:

- (a) take out valid insurance policies throughout the Term, with insurers approved by Allgas, such approval not being unreasonably withheld, against whatever risks Allgas reasonably specifies from time to time by notice to the User, including:
 - (i) workers' compensation insurance in accordance with statutory requirements, including cover for unlimited common law liability;
 - (ii) all risks property damage insurance providing indemnity against any damage, loss or destruction of the User's plant and equipment connected to the Network; and
 - (iii) public and products liability insurance for an amount of not less than \$10 million providing indemnity against any risk of loss, destruction, damage, death or injury to property or third parties;
- (b) obtain Allgas' approval of the terms of each insurance policy, such approval not being unreasonably withheld; and
- (c) whenever reasonably requested by Allgas, give Allgas:
 - (i) a true and complete copy of any insurance policy which the User obtains or maintains under this Agreement;
 - (ii) a certificate of currency for the insurance; and
 - (iii) whatever other information Allgas requests in relation to that insurance.

13.2 Claims

In dealing with claims or potential claims against the insurance policy maintained by the User under this Agreement, the User must:

- (a) promptly notify Allgas of the event which gives rise to, or may give rise to, the claim;
- (b) take whatever steps Allgas reasonably requires to enforce settlement of the claim; and
- (c) not take any action to settle or compromise the claim without the consent of Allgas, with such consent not to be unreasonably withheld.

13.3 Failure to Insure

If the User fails to obtain or maintain any insurance under Clause 13.1:

- (a) the User must promptly notify Allgas of the breach; and
- (b) Allgas may proceed to obtain and maintain that insurance on behalf of the User, at the User's expense.

14. WARRANTIES, INDEMNITIES AND LIMITATION OF LIABILITY

14.1 Indirect or Consequential Loss

Notwithstanding any clause of this Agreement, neither Allgas nor the User will be liable for any indirect or consequential loss arising out of or in connection with this Agreement (except as provided for elsewhere in the Access Arrangement).

14.2 Claim by the User

If the User has any claim against Allgas arising out of or in connection with this Agreement the User must promptly notify Allgas in writing, including sufficient details of the claim to enable a reasonable assessment by Allgas.

14.3 Limit of Liability

Notwithstanding any other provision of this Agreement, any claim or claims by the User against Allgas arising out of or in connection with this Agreement shall be limited to \$100,000 in total in any one calendar year during the Term.

14.4 Implied Warranties

In respect of implied conditions and warranties:

- (a) Allgas excludes all implied conditions and warranties except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this Clause to be void ('**Non-excludable Warranty**');
- (b) Allgas' liability to the User for breach of a Non-excludable Warranty (other than an implied warranty of title) is limited, at Allgas' option, to refunding the price of the goods or services in respect of which the breach occurred or to providing, replacing or repairing those goods or providing those services again but in either case shall not exceed the amount of \$100,000; and
- (c) nothing in this Agreement excludes or limits the application of any provision of any statute (including the *Trade Practices Act 1974*) where to do so would:
 - (i) contravene that statute; or
 - (ii) cause any part of this Agreement to be void.

14.5 Indemnities

Allgas will make good or pay compensation to an equivalent value for damage to property caused by Allgas or its agents in installing, reading or servicing equipment used for the purpose of delivering gas.

The User indemnifies Allgas and its employees, agents and contractors, against all liabilities, losses, damages, costs and expenses suffered or incurred by Allgas or its employees, agents and contractors as a result of:

- (a) breach by the User of its obligations under this Agreement;
- (b) breach by the User of any of its warranties made or deemed to have been made under this Agreement;

- (c) damage to any Receipt Point, any Delivery Point, any Metering Equipment or any other part of the Network, that is caused by the act or omission of the User or any of the User's End Users or any of their respective employees, agents, contractors or invitees;
- (d) death or personal injury of any person resulting from an act or omission of the User or any of the User's End Users or any of their respective employees, agents, contractors or invitees;
- (e) any claim by any third party, including any of the User's End Users, in respect of any injury, loss, damage, costs or expenses of any kind arising out of or in connection with this Agreement or resulting directly or indirectly from the operation, maintenance, repair, administration or management of the Network or any part of it; and
- (f) the imposition of costs, charges, royalties, excises or taxes.

15. CONFIDENTIALITY

15.1 User's Obligations

The User:

- (a) may use Confidential Information only for the purposes of this Agreement; and
- (b) must keep confidential all Confidential Information, except if disclosure is permitted by Clause 15.2.

15.2 Disclosure

The User may disclose Confidential Information:

- (a) to the extent required by law; and
- (b) to its employees, servants and agents for the purposes of this Agreement, having first directed its employees, servants and agents to keep confidential all Confidential Information.

15.3 Allgas' Obligations

Allgas is bound by Section 4.1(f) of the Code regarding the confidentiality of information disclosed by Users.

16. DISPUTE RESOLUTION

A party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Agreement ('**Dispute**') unless it has complied with the following procedure:

- (a) a party claiming that a Dispute has arisen must notify the other party to the Dispute giving details of the Dispute;
- (b) during the 20 Business Day period after a notice is given under paragraph (a) (or longer period agreed in writing by the parties to the Dispute) ('**Initial Period**') each party to the Dispute ('**Disputant**') must use its reasonable efforts to resolve the Dispute;
- (c) if the Disputants are unable to resolve the Dispute within the Initial Period, each Disputant agrees that the Dispute must be referred for mediation, at the request of either Disputant;

- (d) a Dispute referred for mediation under paragraph (c) must be dealt with in the following manner:
 - (i) the mediator will be appointed by the Institute of Arbitrators;
 - (ii) the mediation process and timetable will be chosen by the mediator but must be completed within one Month of referral to mediation;
 - (iii) any determination of the mediator will not be binding on the parties unless the parties agree to be bound in writing;
 - (iv) information relating to the subject matter of the Dispute must remain confidential to the parties; and
 - (v) if the Dispute is not resolved within one Month of being referred to mediation, the mediation process will terminate at the expiry of that period;
- (e) each Disputant must bear its own costs of complying with this Clause and the Disputants must bear equally the costs of any mediator engaged; and
- (f) each party must continue to comply with this Agreement notwithstanding the existence of a Dispute under this Clause.

17. SETTLEMENT OF INDUSTRIAL DISPUTES

Notwithstanding any other provision in this Agreement, the parties agree that the settlement of strikes, lockouts and other industrial disturbances affecting the Network shall be entirely within the discretion of Allgas.

18. TERMINATION

18.1 Default by the User

If the User:

- (a) suffers an Insolvency Event; or
- (b) defaults in the payment of any moneys owing following receipt of a notice of demand under Clause 8.5; or
- (c) defaults in the performance of any obligations under this Agreement, other than the payment of any moneys owing and, where such default is capable of remedy, fails to remedy or remove the cause or causes of default within 21 Days from the receipt of written notification from Allgas requiring the User to remedy or remove the default,

Allgas may at its sole discretion:

- (a) suspend the Reference Services to the User until:
 - (i) all moneys in default plus interest at the Rate plus 2% per annum have been paid; or
 - (ii) any other default, including the Insolvency Event, has been remedied or removed; and/or
- (b) terminate this Agreement by notice, with immediate effect upon receipt.

18.2 Default by Allgas

If Allgas defaults in the performance of material obligations under this Agreement and, where such default is capable of remedy, fails to remedy or remove the cause or causes of the default within 21 Days from the receipt of written notification from the User requiring Allgas to remedy or remove the default, then the User may terminate this Agreement by notice with immediate effect upon receipt.

18.3 After Termination

After termination of this Agreement, Allgas and the User have no further rights or obligations under this Agreement except:

- (a) under Clauses 8, 14, 18.6 and 18.7 which continue in full force and effect; and
- (b) the User is still obligated to pay moneys owing.

18.4 Costs

Without notice to the User, any costs reasonably incurred by Allgas in remedying a default under this Clause 18 may be treated as a liquidated debt payable by the User.

18.5 Additional Rights and Remedies

The termination rights and remedies set out in this Clause 18 are in addition to and not in substitution for any other rights or remedies available to Allgas whether pursuant to this Agreement, at law, in equity or otherwise.

18.6 Effect of Termination

Termination by a party shall be without prejudice to any accrued rights or remedies of either party which are expressed to survive termination.

19. FORCE MAJEURE

19.1 Effect of Force Majeure

If a Force Majeure Event affecting a party precludes that party ('**Precluded Party**') partially or wholly from complying with its obligations, except its payment obligations under Clause 8 of this Agreement, then:

- (a) as soon as reasonably practicable after that Force Majeure Event arises, the Precluded Party must notify the other party of:
 - (i) the Force Majeure Event;
 - (ii) which obligations the Precluded Party is precluded from performing ('**Affected Obligations**');
 - (iii) the extent to which the Force Majeure Event precludes the Precluded Party from performing the Affected Obligations ('**Precluded Event**'); and
 - (iv) the expected duration of the delay arising directly out of the Force Majeure Event;
- (b) the Precluded Party's obligation to perform the Affected Obligations will, to the Precluded Event, be suspended for the duration of the actual delay arising directly out of the Force Majeure Event ('**Actual Delay**'); and
- (c) the other party's obligations to perform any obligations dependent on the Affected Obligations will be suspended until the Precluded Party resumes performance.

19.2 Termination

If the Actual Delay continues for more than 6 months, the other party may terminate this Agreement immediately by giving notice to the Precluded Party.

20. ASSIGNMENT

20.1 The User

The User must not transfer, assign or otherwise deal with this Agreement or any rights under this Agreement except in accordance with the Access Arrangement as amended from time to time.

20.2 Allgas

Allgas may:

- (a) transfer or assign its rights and obligations under this Agreement to any person; and
- (b) mortgage, charge or otherwise encumber any of its rights or obligations under this Agreement in favour of any person.

20.3 Effect of Assignment

If Allgas exercises its right under Clause 20.2 (a), Allgas will be automatically released and discharged from its rights, obligations and liabilities under and in relation to this Agreement.

21. NOTICES

21.1 Written Notice

Unless otherwise agreed, a party notifying under this Agreement must do so in writing:

- (a) directed to the recipient's address as specified in the Instrument of Arrangement, or as varied by any notice; or
- (b) hand delivered or sent by prepaid post or facsimile to that address.

Allgas' address and facsimile numbers is:

Allgas: Chief Executive Officer
Allgas Energy Pty Ltd
GPO Box 1461
Brisbane 4001 Australia

Tel: (07) 3426 1618
Fax: (07) 3426 1665

21.2 When Notice Received

A notice given in accordance with Clause 21.1 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, 3 Business Days after the date of posting; or
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within eight Business Hours after that transmission, the recipient informs the sender that it has not received the entire notice.

22. MISCELLANEOUS PROVISIONS

22.1 Authority to Sign

Each party warrants that it has authority to sign this Agreement and that such authority has not been revoked. Each representative signing this Agreement warrants that:

- (a) the authority under which the representative has been appointed to sign this Agreement on behalf of each party is effective; and
- (b) the representative has received no notice of the termination (including any event which would constitute termination by operation of law) of the authority to sign this Agreement on behalf of each party.

22.2 Waiver

The failure of a party at any time to require performance of any obligation under this Agreement is not a waiver of that party's right:

- (a) to insist on performance of, or claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver; and
- (b) at any other time to require performance of that or any other obligation under this Agreement.

22.3 Rights, Powers and Remedies

Each right, power and remedy of Allgas under this Agreement is in addition to any other right, power and remedy of Allgas under this Agreement or at law. The exercise by Allgas of any one right, power or remedy will not preclude the simultaneous or subsequent exercise of any other right, power or remedy.

22.4 Governing Law

This Agreement is governed by the law applicable in Queensland. Each party submits to the jurisdiction of the courts of Queensland.

22.5 Severability

Part or all of any provisions of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining provisions of this Agreement continue in force.

22.6 No Benefit to Other Persons

Neither Allgas nor the User intends that the provisions of this Agreement are to benefit, or affect contractually, in any way any other person. No person, other than valid assignees, will have any right to enforce the terms of this Agreement against the User or Allgas.

22.7 Relationship

Allgas and the User acknowledge that this Agreement does not create a relationship of joint venturers or partnership between Allgas and the User.

22.8 Costs and Stamp Duty

Each party will bear its own costs of preparing and executing of this Agreement. The User will pay all stamp duty payable in any jurisdiction on or in respect of this Agreement or any document prepared or executed to give effect this Agreement.

22.9 Further Assurances

The User will do, or procure to be done, all things that Allgas considers necessary or desirable from time to time to give full effect to this Agreement.

22.10 Alteration

Subject to Clause 1, this Agreement may be altered only in writing signed by each party.

22.11 Counterparts

This Agreement may be executed in any number of counterparts.

23. DEFINITIONS AND INTERPRETATION

23.1 Definitions

Access Arrangement	has the meaning given in Recital A.
Access Arrangement Information	has the meaning given to it in the Code, as applicable to the Access Arrangement.
Acceptable Credit Rating	means the level of credit rating of the credit guarantor provided by an independent party that is acceptable to Allgas.
Agreed Demand	means the nominated MHQ as determined by Allgas.
Allowable Margin of Accuracy	means in respect of Meters operating at outlet pressures up to 7kPa and not exceeding 6 cubic metres per hour capacity, an accuracy of between plus two and minus three percent and in respect of all other Meters, an overall accuracy within plus or minus one per cent.
Business Day	means a Day other than a Saturday or Sunday or a gazetted Public Holiday in the State of Queensland.
Business Hours	means the hours between 9am and 4pm on a Business Day.
Business Rules	means the <i>Gas Retail Market Business Rules for consumers using at least 1TJ per year</i> , which is an industry Code of Conduct legislated under to the <i>Gas Supply Regulations 2003</i> .
Charges	means the amounts payable for the Reference Services calculated in accordance with Appendix B of the Access Arrangement.'
Code	means the <i>National Third Party Access Code for Natural Gas Pipeline Systems</i> established under the Gas Pipelines Access Law.
Commencement Date	has the meaning given in section 1.2 of the Access Arrangement.
Confidential Information	means: (a) all information: (i) disclosed (whether orally, in writing or in any other form) by a party ('Discloser') to the other party ('Recipient') in relation to this Agreement; and (ii) treated by the Discloser as confidential; and (b) all copies, notes, records and related information generated by the Recipient based on or arising out of any such disclosure.
Contract Year	means a year commencing at 8.00am Eastern Standard Time on the date specified by Allgas.
Credit Rating Guarantor	means another entity that is providing a credit guarantee to Allgas on behalf of a User.
Credit Support	means the credit guarantee or similar instrument acceptable to Allgas.

Day	means a period of 24 consecutive hours beginning at 8.00am Australian Eastern Standard Time.
Delivery Point	means a point on the Network at which Natural Gas is delivered from the Network to or for the account of the User.
Delivery Point Facilities	means those facilities installed at a Delivery Point to enable delivery of Natural Gas from the Network including a tapping point, a remote shut-off valve, any communication facilities and associated power supply.
Demand Customer	means an End User who withdraws from the Network a quantity of Natural Gas of at least 10TJ per year.
Demand Customer Service	means the provision of Reference Services to a Demand Customer in respect of the forward haulage of Natural Gas.
Due Date	is 14 Days after the date on the Tax Invoice.
End User	means the person who acquires Natural Gas from a User or a Producer.
Force Majeure Event	means anything affecting a person outside of that party's reasonable control including, but not limited to, fire, storm, flood, earthquake, explosion, war, invasion, rebellion, sabotage, epidemic, labour dispute, labour shortage, failure or delay in transportation, act or omission (including laws, regulations, disapprovals or failures to approve) of any third person (including, but not limited to, subcontractors, customers, governments or government agencies).
GJ	means a gigajoule of Natural Gas or 10^9 J, as that term is defined in Australian Standard AS 1000-1979.
Impost	means any tax or other statutory charge, or costs imposed as a result of major changes in government policy (for example, the costs associated with the introduction of full retail contestability).

Insolvency Event	means in relation to any party: <ul style="list-style-type: none">(a) a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the assets or undertaking of the party (Receiver Appointed);(b) the party suspends payment of its debt generally (Payments Suspended);(c) the party is or becomes unable to pay its debts when they are due or is unable to pay its debts within the meaning of the Corporations Law or the party may be presumed to be insolvent under section 459C of the Corporations Law (Unable to Pay);(d) the party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them (Arrangements with Creditors);(e) an application or order is made for the winding up or dissolution of, or the appointment of a provisional liquidator to the party or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the party otherwise than for the purpose of an amalgamation or reconstruction (Winding Up); or(f) an administrator is appointed in relation to the person under Division 2 of Part 5.3A of the Corporations Law (Administration).
Instrument of Agreement	means the specific contractual arrangement agreed between Allgas and a User in relation to the Allgas Access Arrangement.
Meter	means the device used to measure the volume or demand of Natural Gas.
Metering	means the Meter and any associated equipment, including filters, regulators, pipework and other equipment used to measure the volume or demand of Natural Gas.
MHQ	means the maximum hourly quantity of Natural Gas (in GJ) which Allgas is obliged to receive on behalf of the User and to transport and deliver to Delivery Points on behalf of the User during an hour (net of Unaccounted for Gas).
Month	means a calendar month.
Natural Gas	has the meaning given in the Code.
Network	means the distribution network owned by Allgas through which gas will be transported and includes the Receipt Point Facilities and Delivery Point Facilities which exist from time to time.
Producer	means a supplier of Natural Gas.
Rate	means the Commonwealth Bank Corporate Overdraft Reference Rate (monthly charging) current on the first Day of each Month.
Receipt Point	means a point on the Network at which Natural Gas is received into the Network from or on account of the User.
Receipt Point Facilities	means those facilities installed at a Receipt Point to enable receipt of Natural Gas into the Network including a tapping point, a remote shut-off valve, any communication facilities and associated power supply.

Reference Services	means any or all of the Reference Services referred to in section 2.1 of the Access Arrangement.
Required Amount	means the amount of the Credit Support to be provided by the User or by the Credit Rating Guarantor as reasonably estimated by Allgas to meet Allgas' credit security requirement for a User.
Term	refers to section 1.3 of the Access Arrangement.
Unaccounted for Gas	means the quantities of Natural Gas necessary for the efficient operation of the Network, including gas used for compressors or other equipment, and quantities otherwise lost and unaccounted for in connection with the operation of the Network, including as a result of any limitations on the accuracy of Metering Equipment.
User	has the meaning given to it in the Code.
Volume Customer	means an End User who withdraws from the Network a quantity of Natural Gas less than 10TJ per year.
Volume Customer Service	means the provision of Reference Services to a Volume Customer in respect of the forward haulage of Natural Gas

23.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of this Agreement;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) references to 'dollar' and '\$' is a references to Australian currency;
- (e) a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State legislation as applicable;
- (f) a reference to a Clause, paragraph, schedule or annexure is a reference to a Clause or paragraph of, or a schedule or annexure to this Agreement and a reference to this Agreement includes any schedules and annexures;
- (g) a reference to a document or Agreement, including this Agreement, includes a reference to that document or a document or Agreement as novated, altered or replaced from time to time;
- (h) a reference to a party includes its executors, administrators, successors and permitted assigns;
- (i) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments, governmental and local authorities and agencies; and
- (j) a reference to a time or date in connection with the performance of an obligation is a reference to the time and date in Brisbane, Australia, even if the obligation is to be performed elsewhere.

23.3 Terminology

Terminology used to describe units will, unless otherwise agreed, be in accordance with Australian Standard AS1000 '*The International System of Units (SI System) and Its Application*', the Commonwealth '*National Measurement Act 1960*' and regulations thereunder, Australian Standard AS1376-1973 '*Conversion Factors*' and the Australian Gas Association publication '*Metric Units and Conversion Factors for Use in the Australian Gas Industry*'.