

**National Third Party Access Code for Natural Gas  
Pipeline Systems:**

**AlintaGas Networks Pty Ltd's Access Arrangement  
for the Mid-West and South-West Gas Distribution  
Systems**



Approved by the Regulator on 10 August 2005

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**Commencement Date: 25 August 2005**

**Part A - Principal Arrangements**

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# **ALINTAGAS NETWORKS PTY LTD ACCESS ARRANGEMENT**

for the

## **MID-WEST AND SOUTH-WEST GAS DISTRIBUTION SYSTEMS**

### **Part A - Principal Arrangements**

#### **INTRODUCTION**

##### **Purpose of this document**

1. This revision to this Access Arrangement for the AGN GDS approved by the Regulator on 18 July 2000 is submitted by AlintaGas Networks Pty Ltd (“**AGN**”) under section 2 of the Code. This Access Arrangement as revised is a statement of the policies and the basic terms and conditions which apply to third party access to the AGN GDS.

##### **Composition of Access Arrangement**

2. This Access Arrangement as revised comprises this document together with the plans of the AGN GDS previously lodged with the Regulator.
3. This document comprises three parts:
  - (a) Part A - Principal Arrangements;
  - (b) Part B - Reference Tariffs and Reference Tariff Policy; and
  - (c) Part C - Terms and Conditions.
4. A separate document titled “AlintaGas Networks Access Arrangement Information for the Mid-West and South-West Gas Distribution Systems” dated 29 July 2005 constitutes the Access Arrangement Information required under section 2.28 of the Code.

##### **Pipelines covered by this Access Arrangement**

5. This Access Arrangement applies to the AGN GDS as at the Commencement Date, and the AGN GDS as modified under the Extensions/Expansions Policy.

##### **Effective date**

6. The Access Arrangement came into effect on 1 January 2000. This Access Arrangement as revised for the Second Access Arrangement Period comes into effect on 25 August 2005.

#### **DEFINITIONS AND INTERPRETATION**

7. In this Access Arrangement and supporting documents, where a word or phrase is capitalised, unless the context otherwise requires:

- (a) it has the meaning given to it in the Code (unless the word or phrase is also defined in the Glossary, in which case the word or phrase has the meaning given to it in the Glossary); or
- (b) the meaning given to it in the Glossary.

8. In the event of any inconsistency between a provision of this Access Arrangement and a provision of the Retail Market Scheme, the provision of this Access Arrangement prevails to the extent of the inconsistency.

## **CONTACT DETAILS**

9. The contact officers for further details on this Access Arrangement are:

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## **ELEMENTS SET OUT IN SECTION 3 OF THE CODE**

10. The following clauses of this Part A, in compliance with section 2.29 of the Code, include the elements set out in sections 3.1 to 3.20 of the Code that are applicable to AGN.

## **SERVICES POLICY**

11. Each of the Reference Services to be provided is likely to be sought by a significant part of the market.

### **Reference Service A1**

12. Reference Service A1 is a Service on the terms and conditions set out in Part C and Part C, Schedule 1 by which a User may take delivery of Gas at a Delivery Point on either the High Pressure System or the Medium Pressure/Low Pressure System, where:

- (a) at the time the User submitted the Application:
    - (i) it was reasonably anticipated that the User would take delivery of 35 terajoules or more of Gas during each Year of the Haulage Contract; and
    - (ii) the User requested a Contracted Peak Rate of 10 gigajoules or more per hour;
- and

- (b) the User requested User Specific Delivery Facilities.

### **Reference Service A2**

13. Reference Service A2 is a Service on the terms and conditions set out in Part C and Part C, Schedule 2 by which a User may take delivery of Gas at a Delivery Point on either the High Pressure System or the Medium Pressure/Low Pressure System, where:
- (a) at the time the User submitted the Application the User requested User Specific Delivery Facilities and either (or both):
    - (i) it was reasonably anticipated that the User would take delivery of 10 terajoules or more of Gas, but less than 35 terajoules of Gas, during each Year of the Haulage Contract; or
    - (ii) the User requested a Contracted Peak Rate of less than 10 gigajoules per hour;or
  - (b) an Above 10 TJ Determination has been, or is likely to be, made under the Retail Market Rules.

### **Reference Service B1**

14. Reference Service B1 is a Service on the terms and conditions set out in Part C and Part C, Schedule 3 by which a User may take delivery of Gas at a Delivery Point on either the High Pressure System or the Medium Pressure/Low Pressure System, where:
- (a) at the time the User submitted the Application either (or both):
    - (i) it was reasonably anticipated that the User would take delivery of less than 10 terajoules of Gas during each Year of the Haulage Contract; or
    - (ii) the User requested a Contracted Peak Rate of less than 10 gigajoules per hour;and
  - (b) the User requested User Specific Delivery Facilities.

### **Reference Service B2**

15. Reference Service B2 is a Service on the terms and conditions set out in Part C and Part C, Schedule 4 by which a User may take delivery of Gas:
- (a) at a Delivery Point on the Medium Pressure/Low Pressure System; and
  - (b) using Standard Delivery Facilities which include a Standard 12 m<sup>3</sup>/hr meter.



### **Reference Service B3**

16. Reference Service B3 is a Service on the terms and conditions set out in Part C and Part C, Schedule 4 by which a User may take delivery of Gas:
- (a) at a Delivery Point on the Medium Pressure/Low Pressure System; and
  - (b) using Standard Delivery Facilities which include a Standard 6 m<sup>3</sup>/hr meter.

### **Ancillary Services**

17. AGN will make the following Ancillary Services available to Prospective Users:
- (a) Apply Meter Lock Service – a Service by which AGN applies a Meter lock to a Meter at a Delivery Point at which a User is entitled to take delivery of Gas under Reference Service B3;
  - (b) Remove Meter Lock Service – a Service by which AGN removes a Meter lock from a Meter at a Delivery Point at which a User is entitled to take delivery of Gas under Reference Service B3;
  - (c) Deregistration Service – a Service to permanently remove a Meter from a Delivery Point and terminate the association of a User with the Delivery Point;
  - (d) Disconnection Service – a Service by which AGN discontinues the supply of Gas at a Delivery Point at which a User is entitled to take delivery of Gas under Reference Service B2 or Reference Service B3; and
  - (e) Reconnection Service – a Service in respect of a Delivery Point at which a User is entitled to take delivery of Gas under Reference Service B2 or Reference Service B3 at which a Disconnection Service has previously been supplied, by which AGN recommences the supply of Gas at the Delivery Point.

### **Re-allocation of Reference Services**

18. If a User has contracted for a Current Reference Service at a Delivery Point, AGN may at any time where permitted by Part A, clause 19, by written notice to the relevant User, vary the Haulage Contract to allocate a Replacement Reference Service at that Delivery Point.
19. AGN may only allocate a Replacement Reference Service under Part A, clause 18 if either:
- (1) it anticipates as a reasonable and prudent person (having regard to information provided by the User under Part A, clause 20, if any) that the quantity of Gas to be delivered to the User in the coming Year would fall within the requirements for a Reference Service other than the Current Reference Service (being the requirements set out in Part A, clauses 12(a), 13(a), 14(a), 15(b) or 16(b), as applicable); or
  - (2) Part A, clause 13(b) applies and the Current Reference Service is not already Reference Service A1 or Reference Service A2.

20. Before giving a notice under Part A, clause 18, AGN must give the User at least 10 Business Days' advance warning that it proposes to give the notice, and the User may provide information to AGN regarding why the notice should not be given.
21. A notice under Part A, clause 18 takes effect as a variation to the Haulage Contract, changing the Current Reference Service at the Delivery Point to the Replacement Reference Service, with effect from 08:00 hours on the day which is 20 Business Days after the date of the notice.

### **Gas quality**

22. All Gas which enters the AGN GDS must comply with the Gas Quality Specifications.

### **General operational matters**

23. In addition to any other rights and remedies that may be available to it under any Law or agreement or otherwise, AGN may refuse to accept the quantity of Gas delivered to a Receipt Point by a Related Shipper if:
  - (a) the Gas does not comply with the Gas Quality Specifications or any applicable Gas quality standards;
  - (b) without limiting Part A, clause 23(a), AGN considers as a reasonable and prudent person that accepting the Gas would be inconsistent with a heating value blending management plan under the Gas Standards Regulations, or otherwise will, or might reasonably be expected to, cause the heating value of the Gas in any part of the AGN GDS to depart from any requirement in or under the Gas Standards Regulations;
  - (c) AGN considers as a reasonable and prudent person that it would be unsafe or may give rise to an unsafe situation for the operation of the AGN GDS to accept the quantity of Gas delivered to the Receipt Point by the Related Shipper;
  - (d) AGN considers as a reasonable and prudent person that it would, or might reasonably be expected to, be or cause a breach of any Law to accept the Gas; or
  - (e) acceptance of the Gas by AGN would cause the AGN GDS to exceed its maximum allowable operating pressure.
24. Subject to and in accordance with any other rights and remedies that may be available to it under any Law or agreement or otherwise, AGN may wholly or partly curtail the quantity or pressure of Gas deliveries to a User at a Delivery Point if:
  - (a) AGN considers as a reasonable and prudent person that it would be unsafe or may give rise to an unsafe situation (whether for the operation of the AGN GDS or in respect of anything downstream of the Delivery Point) to deliver Gas to the User at the Delivery Point;
  - (b) without limiting Part A, clause 24(a) or 24(c), AGN considers as a reasonable and prudent person that there is, or that there is a reasonable prospect of, any non-compliance with the *Gas Standards (Gasfitting and*

*Consumer Gas Installations) Regulations 1999* (WA) downstream of the Delivery Point by any person; or

- (c) AGN considers as a reasonable and prudent person that it would, or might be reasonably be expected to, be or cause a breach of any Law to deliver the Gas.

### **Interconnection Service**

- 25. AGN will make an Interconnection Service available to Prospective Users by which a Prospective User may acquire the right to interconnect a Pipeline with the AGN GDS in order to supply Gas into the AGN GDS.

### **Interconnection Event**

- 26. If, at any time, a Physical Gate Point associated with a Receipt Point is not, or ceases to be, the subject of current Interconnection Arrangements (“**Interconnection Event**”), then:
  - (a) as soon as reasonably practicable after a User has been notified of the Interconnection Event, acting as a reasonable and prudent person:
    - (i) the User must not deliver Gas into the AGN GDS at the Receipt Point; and
    - (ii) the User must not take delivery of Gas at a Delivery Point under a Haulage Contract that includes the Receipt Point; and
  - (b) acting as a reasonable and prudent person:
    - (i) AGN may refuse to accept any quantity of Gas at the Receipt Point; and
    - (ii) AGN may wholly or partly curtail the quantity or pressure of Gas deliveries to a User at a Delivery Point under a Haulage Contract that includes the Receipt Point.

### **Elements of a Service**

- 27. (1) To the extent practicable and reasonable, a Prospective User must be able to obtain a Service which includes only those elements of a Service that the Prospective User wishes to be included in a Service.
- (2) To the extent practicable and reasonable, AGN must provide a separate Tariff for an element of a Service requested under Part A, clause 27(1) if this is requested by a Prospective User.

### **Protection of system pressure – new Service Agreements**

- 28. AGN will only enter into a Service Agreement for a Service relating to the transportation of Gas (including a Haulage Contract) if:
  - (a) the Prospective User provides to AGN:
    - (i) a written System Pressure Protection Plan; and

- (ii) an enforceable undertaking to comply with a System Pressure Protection Plan approved under Part A, clause 28(b) from the time of commencement of the Service Agreement, which undertaking must contain provisions setting out the remedies that will be available to AGN in the event of a breach of the undertaking by the Prospective User; and
- (b) AGN, in writing, approves the System Pressure Protection Plan and the enforceable undertaking, which approval must be provided if AGN, acting as a reasonable and prudent person, is reasonably satisfied with the System Pressure Protection Plan.

29. A “**System Pressure Protection Plan**” must outline the manner in which the Prospective User will ensure that it does not jeopardise system pressure by being in a position where it is unable to supply sufficient Gas at Receipt Points on a Sub-network and is simultaneously unable to sufficiently reduce the delivery of Gas it takes at its Delivery Points on the Sub-network, and must do so using one of the options set out below:

- (a) **(Option 1)** the Prospective User may have sufficient contractual entitlements to firm Gas transportation capacity on one or more Interconnected Pipelines for delivery to one or more Receipt Points (on the same Sub-network as the Delivery Points under the Service Agreement) to meet the Contracted Peak Rate requested by the Prospective User at the Delivery Points; or

to the extent that the Prospective User does not comply with Part A, clause 29(a), the Prospective User demonstrates that the issues potentially arising from the Prospective User not complying with Part A, clause 29(a) are adequately addressed as follows:

- (b) **(Option 2)** due to the fact that the Delivery Points under the Service Agreement are on a Sub-network which is supplied by two or more Interconnected Pipelines and an alternate supply or a different service which serves the same purpose is available to the Prospective User in sufficient quantity; or

- (c) **(Option 3)** the Prospective User agreeing:

- (i) to indemnify AGN and keep AGN indemnified against any liability (however arising including by negligence) to:

- A. any Downstream Person of the Prospective User; or
- B. any other User; or
- C. any Downstream Person of any other User;

arising directly or indirectly in connection with any curtailment, interruption, restriction or cessation of Gas deliveries into the AGN GDS by or on behalf of the Prospective User at a Receipt Point; and

- (ii) to indemnify AGN and keep AGN indemnified (on a solicitor own client basis) in respect of all legal costs incurred by AGN in connection with the release referred to in Part C, clause 17(3) and the indemnity referred to in Part A, clause 29(c)(i); and

- (iii) that the indemnities referred to in Part A, clause 29(c)(i) and 29(c)(ii) apply despite any other provision of the Service Agreement which would otherwise limit the User's liability;

or

- (d) **(Option 4)** by the Prospective User, at the Prospective User's expense, acquiring a System Pressure Service at the relevant Delivery Points; or
- (e) **(Option 5)** by a combination of the options set out in this Part A, clause 29 or in any other way that adequately addresses the issues potentially arising from the Prospective User not complying with Part A, clause 29(a).

- 30. A **"System Pressure Service"** is a Service by which AGN may supply, maintain, operate and monitor remotely operated flow controllers at relevant Delivery Points, on terms and conditions (including as to payment of a System Pressure Charge) agreed between the Prospective User and AGN, each acting as reasonable and prudent persons.
- 31. A **"System Pressure Charge"** applies in respect of the System Pressure Service, and is an amount which reflects the costs to AGN of providing the System Pressure Service under the Service Agreement, which may consist of capital costs and Non-Capital Costs, and includes AGN's administration costs incurred in relation to the System Pressure Service.

#### **Protection of system pressure – existing Service Agreements**

- 32. Clause 33 applies to a User who:
  - (1) entered into a Service Agreement prior to the start of the Second Access Arrangement Period which continues in effect after the start of the Second Access Arrangement Period; and
  - (2) at the time that the Second Access Arrangement Period starts, complies with Part A, clause 29(a).
- 33. A User to whom this Part A, clause 33 applies must not at any time cease complying with Part A, clause 29(a) unless the User has submitted a System Pressure Protection Plan and enforceable undertaking to AGN for its approval in accordance with Part A, clauses 28 - 31 (read with appropriate amendments to take into account, among other things, the fact that the User is already party to a Service Agreement) and, once the plan and undertaking are approved, the User may, subject to the System Pressure Protection Plan, cease complying with Part A, clause 29(a).
- 34. To avoid doubt, if a User fails to comply with its obligations under Part A, clause 33, AGN may exercise any remedy against the User in respect of the failure which would be available to it under this Access Arrangement or a Service Agreement if the User had:
  - (a) made an undertaking to comply with an approved System Pressure Protection Plan under Part A, clause 28(a)(ii) and had breached the undertaking; and
  - (b) made the representation and warranty set out in Part A, clause 65, and breached the representation and warranty.

## **REFERENCE TARIFFS AND REFERENCE TARIFF POLICY**

35. Reference Tariffs and the Reference Tariff Policy applicable to this Access Arrangement are set out in Part B as follows:
- (a) Part B, clauses 1-14 and Schedules 1-5 describe the Initial Reference Tariffs and the basis for adjustment.
  - (b) Part B, clause 15 describes the approach to be used for setting Tariffs for Services other than Reference Services.
  - (c) Part B also sets out AGN's Reference Tariff policy describing the principles used to determine a Reference Tariff. The policy addresses:
    - (i) the calculation of Total Revenue;
    - (ii) New Facilities Investment;
    - (iii) allocation of revenue between Services and between Users;
    - (iv) the form of regulation; and
    - (v) the Incentive Mechanism.
  - (d) Part B, clause 36 describes a range of Fixed Principles that are to apply to this Access Arrangement.

## **TERMS AND CONDITIONS**

36. The terms of a Haulage Contract will be:
- (a) the general terms and conditions as set out in Part C and the Schedules to Part C; and
  - (b) Part A, clauses 18 - 21 (Re-allocation of Reference Services), 22 (Gas quality and temperature), clauses 23 - 26 (General operational matters), clause 31 (System Pressure Charge), clauses 32 - 34 (Protection of System Pressure – existing Service Agreements), clause 64 (Receipt Points) and clauses 65 and 66 (Maintaining and complying with approved System Pressure Protection Plan).

## **CAPACITY MANAGEMENT POLICY**

37. The AGN GDS is a Contract Carriage Pipeline.

## **TRADING POLICY**

### **Transfers or assignments of Capacity**

38. A User may transfer or assign all or part of its Contracted Peak Rate at a Delivery Point under Part A, clause 39 or 40, but not otherwise.

## **Bare Transfers**

39. (1) A User may transfer or assign all or part of its Contracted Peak Rate at a Delivery Point without the consent of AGN if the transfer or assignment is a Bare Transfer.
- (2) A transfer or assignment is a **“Bare Transfer”** if:
- (a) the User’s obligations under the Haulage Contract with AGN remain in full force and effect after the transfer or assignment; and
  - (b) the terms and conditions (including Tariffs) of the Haulage Contract with AGN are not altered as a result of the transfer or assignment.
- (3) As soon as practicable after a transfer or assignment under Part A, clause 39(1), and in any event before utilising the transferred or assigned Contracted Peak Rate, the transferee or assignee must notify AGN of:
- (a) the identity of:
    - (i) the User which made the transfer or assignment; and
    - (ii) the transferee or assignee;
  - (b) the nature of the Contracted Peak Rate which was transferred or assigned, including the amount of Contracted Peak Rate transferred or assigned and the location of the relevant Receipt Point and Delivery Point; and
  - (c) the period to which the transfer or assignment relates.
- (4) Without limiting the generality of Part A, clause 39(2)(b), AGN may continue to send all invoices and other notices to the User in accordance with the terms and conditions of the User’s Haulage Contract during the period to which the transfer or assignment relates.

## **Other transfers**

40. (1) A User may, with the prior written consent of AGN, transfer or assign all or part of its Contracted Peak Rate at a Delivery Point other than by way of a Bare Transfer.
- (2) AGN may:
- (a) withhold its consent to a transfer or assignment under this clause 40 only on reasonable commercial or technical grounds; or
  - (b) give its consent to a transfer or assignment under this clause 40 subject to conditions only if they are reasonable on commercial or technical grounds.
- (3) Without limiting the generality of Part A, clause 40(2), AGN may make its consent to a transfer or assignment conditional upon the satisfaction of any or all of the pre-conditions in Part A, clauses 28 and 46 (which are to be read as though references to the Prospective User were instead references to the proposed transferee or assignee, and references to the proposed Service Agreement or the proposed Haulage Contract were instead references to the proposed assigned Haulage Contract).

## **Transferor remains liable to AGN**

41. Unless the parties agree in writing to the contrary, a User which transfers or assigns all or part of its Contracted Peak Rate under Part A, clauses 39 or 40 remains liable to AGN for all Charges and other amounts payable to AGN in respect of the whole of its Contracted Peak Rate, including the portion (or whole) of the Contracted Peak Rate transferred or assigned.

## **Change of Receipt Point or Delivery Point**

42. (1) A User may, with the prior written consent of AGN, add to or change a Receipt Point, or relocate all or part of its Contracted Peak Rate to another Delivery Point, from that specified in the Haulage Contract.
- (2) AGN may:
- (a) withhold its consent to an addition or change of a Receipt Point or a relocation of Contracted Peak Rate to another Delivery Point under this clause 42 only on reasonable commercial or technical grounds; or
  - (b) give its consent to an addition or change of a Receipt Point or a relocation of Contracted Peak Rate to another Delivery Point under this clause 42 subject to conditions only if they are reasonable on commercial or technical grounds.
- (3) Without limiting the generality of Part A, clause 42(2), AGN may make its consent to an addition, change or relocation conditional upon the satisfaction of any or all of the pre-conditions in Part A, clauses 28 and 46 (which are to be read as though references to the Prospective User were instead references to the User proposing the addition, change or relocation, and references to the proposed Service Agreement or the proposed Haulage Contract were instead references to the Haulage Contract as proposed to be amended by the addition, change or relocation).
- (4) An addition, change or relocation under this clause 42 may only be initiated by written notice from the User to AGN, and the Queuing Policy applies to that notice as if the notice was an Application.

## **Examples**

43. In accordance with section 3.11 of the Code, examples of things that would be reasonable for the purposes of Part A, clauses 40 and 42 are:
- (a) AGN refusing to agree to a User's request to relocate Contracted Peak Rate to another Delivery Point where a reduction in the amount of the Service provided to the original Delivery Point will not result in a corresponding increase in AGN's ability to provide that Service to the alternative Delivery Point; and
  - (b) AGN specifying that, as a condition of its agreement to an addition or change of the Receipt Point, or relocation of Contracted Peak Rate to another Delivery Point, AGN will receive the same amount of revenue it would have received before the addition, change or relocation.



## Costs

44. (1) A User requesting:
- (a) the transfer or assignment of its Contracted Peak Rate under Part A, clause 40(1); or
  - (b) an addition or change to a Receipt Point or a relocation of all or part of its Contracted Peak Rate under Part A, clause 42(1),
- must reimburse AGN for all reasonable costs AGN incurs in processing and determining the request.
- (2) If requested, AGN must provide a quote for the costs that are expected to be incurred by AGN under Part A, clause 44(1), but provided the quote is prepared in good faith, it does not limit the costs which must be reimbursed under Part A, clause 44(1).

## QUEUING POLICY

### When Queuing Policy applies

45. This Queuing Policy applies to determine the priority that a Prospective User (the “**First Prospective User**”) has, as against any other Prospective User, to:
- (a) enter into a Service Agreement, including in respect of access to Spare Capacity and Developable Capacity; and
  - (b) seek dispute resolution under section 6 of the Code,

where the provision of the Service sought by the First Prospective User may impede the ability of AGN to provide a Service that is sought or which may be sought by another Prospective User.

### Pre-conditions to and restrictions on provision of Services

46. (1) In accordance with section 6.18 of the Code, AGN will only enter into a Service Agreement (including a Haulage Contract) if:
- (a) doing so would not impede the existing right of a User to obtain a Service;
  - (b) doing so would not deprive any person of a pre-existing contractual right other than an Exclusivity Right which arose on or after 30 March 1995; and
  - (c) doing so would be consistent with the Queuing Policy, if applicable.
- (2) In accordance with sections 2.24 and 6.15 of the Code, AGN will only enter into a Haulage Contract (and unless the parties agree otherwise will only enter into a Service Agreement for a non-Reference Service relating to the transportation of Gas) if:
- (a) it is possible to accommodate the Prospective User’s requirements under the Service consistently with the safe operation of the AGN GDS and prudent Pipeline practices accepted in the industry; and

- (b) in relation to each requested Delivery Point, for the duration of the Haulage Contract (or Service Agreement), the Delivery Point will be of sufficient capability to accommodate the Contracted Peak Rate requested at the Delivery Point and the Receipt Point (and its associated Physical Gate Points) and the Sub-network will be of sufficient capability to accommodate the User's requirements under the Haulage Contract (or Service Agreement), having regard to the current contracted entitlements of all other Users of the Sub-network.
- (3) In accordance with section 6.22 of the Code, AGN will only enter into a Haulage Contract (and unless the parties agree otherwise will only enter into a Service Agreement for a non-Reference Service relating to the transportation of Gas) if either:
- (a) for the duration of the Haulage Contract (or Service Agreement), there will be sufficient Spare Capacity to accommodate the User's requirements under the Haulage Contract (or Service Agreement); or
  - (b) any necessary Extension or Expansion complies with the Extensions/Expansions Policy and meets the requirements set out in sections 6.22(a) to 6.22(e) of the Code.
- (4) AGN will only enter into a:
- (a) Service Agreement (including a Haulage Contract) if the Prospective User satisfies AGN's reasonable minimum prudential and insurance requirements; and
  - (b) Haulage Contract (and unless the parties agree otherwise will only enter into a Service Agreement for a non-Reference Service relating to the transportation of Gas), if the Haulage Contract (or Service Agreement) identifies the Receipt Point or Receipt Points (which must be on the same Sub-network as the Delivery Point) at which one or more Related Shippers will deliver Gas into the Sub-network for transportation to the Delivery Point.
47. (1) The Applications Procedure may, subject to the Code, waive, add to or vary one or more of the pre-conditions listed in Part A, clause 46(1) or 46(4).
- (2) AGN may, subject to the Code, in its discretion as a reasonable person waive one or more of the pre-conditions listed in Part A, clause 46(1) or 46(4), and may do so on any reasonable terms and conditions.

**First come first served**

48. (1) A Prospective User's priority in respect of an Application is to be determined on a first come first served basis, except where:
- (a) it is necessary or appropriate to depart from the first come first served principle:

- (i) in order to accommodate, to the extent reasonably possible, the legitimate business interests of one or more of AGN, Users and Prospective Users who have lodged an Application; or
    - (ii) in order to generate, to the extent reasonably possible, economically efficient outcomes;
  - or
  - (b) in AGN's reasonable opinion and without limiting the generality of Part A, clause 48(1)(a), a Prospective User's Application is Vexatious.
- (2) If AGN applies Part A, clauses 48(1)(a) or 48(1)(b) in relation to a Prospective User's Application, it must give notice of that action to all Prospective Users in the first come first served queue who are affected by that action.
- (3) The position of a Prospective User's Application in the first come first served queue is to be determined by reference to the time at which AGN actually received the Application.
- (4) If a Prospective User submits more than one Application, then the Prospective User has a different priority in respect of each Application, and every reference in this Queuing Policy to the Prospective User's priority is to be read as a reference to the Prospective User's priority in respect of the relevant Application.

### **Processing of Applications not affected**

49. To avoid doubt, nothing in the Queuing Policy prevents AGN from processing more than one Application concurrently, save that in the event of any limitation on resources the processing will take place in accordance with Part A, clause 48.

### **Obtaining access to services**

50. If a prospective User wishes to obtain access to a Service, then the Prospective User must either:
- (a) make an Application in accordance with this Access Arrangement; or
  - (b) exercise an option to extend the duration of a Service Agreement which has been previously granted by AGN to the Prospective User in which case Part A, clause 48 does not apply.
51. An option granted to a User as part of the terms and conditions of a Service Agreement to extend the duration of the Service Agreement is not an Application and is not subject to Part A, clause 48.

### **Obtaining details of Medium Pressure/Low Pressure system**

52. (1) Subject to Part A, clause 52(2), a Prospective User may request that AGN provide it with a detailed map or description of the Medium Pressure/Low Pressure System in respect of a Delivery Point at which the Prospective User is in good faith contemplating taking deliveries of Gas.

- (2) If AGN is required to spend more than 1 hour in satisfying a Prospective User's request under Part A, clause 52(1), then AGN may, in its discretion, charge the Prospective User a reasonable amount for satisfying that request.

### **Outline of procedure for the Access Offer and entering into the Service Agreement**

53. (1) The Applications Procedure will specify details and timing for the procedure outlined in this Part A, clause 53.
- (2) If AGN determines under this Access Arrangement and the Code to enter into a Service Agreement with a Prospective User in response to an Application, AGN will make an Access Offer to the Prospective User within the time specified in the Applications Procedure.
- (3) An Access Offer must be for the same Contracted Peak Rate as is requested in the Application (as amended, if applicable, by agreement under Part A, clause 55), and a purported Access Offer which does not comply with this Part A, clause 53(3) is not an Access Offer, and is to be treated as an invitation by AGN to negotiate under clause Part A, 55 to amend the Application (which invitation, to avoid doubt, the Prospective User may reject).
- (4) Despite the giving of an Access Offer by AGN to the Prospective User, AGN and the Prospective User will not be taken to have entered into a Service Agreement until a written agreement has been duly executed between the parties.
- (5) The Prospective User must after receipt of an Access Offer, within the time specified in the Applications Procedure, either:
  - (a) execute a Service Agreement; or
  - (b) request amendments to its Application; or
  - (c) reject the Access Offer,and if after the expiry of the specified time the Prospective User has not executed the Access Offer, requested amendments to its Application, or rejected the Access Offer, the Prospective User is taken to have rejected the Access Offer.
- (6) If the Prospective User rejects or is deemed to have rejected an Access Offer, the Prospective User is taken to have withdrawn its Application.
- (7) If the Prospective User requests amendments to its Application under Part A, clause 53(5)(b), then unless the parties enter into a Service Agreement or notify a dispute under section 6.1 of the Code in response to the Application before 17:00 hours on the day which is 2 months after the date of that request, the Application is from that day to be taken to have priority under Part A, clause 48(3) from the time of the request for amendments, rather than from the time the Application was actually received by AGN.
- (8) Unless the parties enter into a Service Agreement or notify a dispute under section 6.1 of the Code in response to the Application before 17:00 hours on the day which is 6 months after an Access Offer is made, the Access Offer is taken to be rejected.

### **Priority of withdrawn Applications**

54. (1) An Application which is withdrawn or deemed by this Access Arrangement or the Applications Procedure to have been withdrawn loses its priority under Part A, clause 48(3).
- (2) Without limiting Part A, clause 54(1), a Prospective User may resubmit in accordance with the Applications Procedure an Application withdrawn or deemed by this Access Arrangement or the Applications Procedure to have been withdrawn, in which case the resubmitted Application has priority under Part A, clause 48(3) from the time of resubmission.

### **Priority of amended Applications**

55. (1) If, at any time before entering into a Service Agreement, a Prospective User requests an increase in the Contracted Peak Rate at a Delivery Point above the Contracted Peak Rate (if any) specified in its Application for that Delivery Point, then:
- (a) the initial Application retains its priority under Part A, clause 48(3); and
- (b) the request is to be treated as an Application for the incremental Contracted Peak Rate, which has priority determined by reference to the time at which AGN actually received the request.
- (2) If, at any time before entering into a Service Agreement, a Prospective User requests a decrease in the Contracted Peak Rate at a Delivery Point below the Contracted Peak Rate (if any) specified in its Application for that Delivery Point, then the Application's priority is not affected.

### **User may increase Contracted Peak Rate etc only by new Application**

56. (1) Subject to this clause, the parties may not extend the duration of a Service Agreement or increase a User's Contracted Peak Rate at a Delivery Point above the Contracted Peak Rate (if any) specified in its Haulage Contract for that Delivery Point, other than by way of an Application by the User for the extended duration or incremental amount of Contracted Peak Rate.
- (2) Part A, clause 56(1) does not prevent:
- (a) a User from having Contracted Peak Rate transferred or assigned to it under the Trading Policy where that transfer or assignment does not involve any relocation of the Contracted Peak Rate;
- (b) a User from extending the duration of a Service Agreement by duly exercising an option granted to it as part of the terms and conditions of the Service Agreement; or
- (c) AGN or a User from exercising their respective rights under Part C, Schedule 1 clauses 7 - 9 and Part C, Schedule 2 clause 9, or AGN from exercising its rights under Part A, clauses 18 - 21.

### **Notification of position in queue**

57. (1) If:

- (a) a Prospective User has an Application in the first come first served queue; and
- (b) AGN has notice of a change (which change may reasonably be considered material in the context of the Prospective User and its Application) in when the Capacity sought in the Application may be available, from the timing last notified to the Prospective User,

then AGN must notify the Prospective User of the changed timing as soon as practicable after AGN knows of the change.

- (2) AGN may make known to any Prospective User with an Application in the first come first served queue:
  - (a) the fact that another Application exists (but not any details regarding the content of that other Application or the Prospective User who submitted it);
  - (b) the position in the first come first served queue of the Prospective User who submitted that other Application; and
  - (c) information which AGN is required under Part A, clause 57(1) to disclose, and to avoid doubt, this information is not Confidential Information.
- (3) Part A, clause 57(2) applies despite any confidentiality obligations otherwise imposed on AGN.

## **EXTENSIONS/EXPANSIONS POLICY**

58. Part A, clauses 58 - 63 apply to any Extension or Expansion which is owned and operated by AGN and first becomes Operational on or after the Commencement Date.

### **Incremental expansions automatically included**

59. Subject to clause 61, any Extension or Expansion to which Part A, clauses 58-63 apply, which is part of, or (for the purposes of Gas flow) directly connected with, an existing Sub-network is to be treated as part of the AGN GDS for all purposes under the Code, including a situation where the direct connection is made to a part of that Sub-network which became part of the Sub-network by an earlier operation of this clause.

### **Other extensions automatically excluded**

- 60. (1) Unless AGN makes a determination under Part A, clause 60(2), any Extension or Expansion to which these clauses apply which is neither part of, nor (for the purposes of Gas flow) directly connected with, an existing Sub-network, is not to be treated as part of the AGN GDS for any purpose under the Code.
- (2) AGN may make a written determination that an Extension or Expansion that would otherwise be excluded from the AGN GDS under Part A, clause 60(1) is to be included in the AGN GDS, in which case:
  - (a) the Extension or Expansion is to be treated as part of the AGN GDS for all purposes under the Code; and

- (b) AGN must provide a copy of that determination to the Regulator.

### **Excluded Extensions**

61. (1) AGN may, in its discretion and with the Regulator's consent, declare that an Extension or Expansion which would otherwise become part of the AGN GDS under Part A, clause 59 is to be an Excluded Extension.
- (2) Before undertaking an Extension or Expansion, AGN may make a written request to the Regulator seeking the Regulator's prior consent under Part A, clause 61(1).
- (3) If, after receiving a request under Part A, clause 61(2), the Regulator does not consent to the proposed Extension or Expansion being an Excluded Extension under Part A, clause 61(1) then AGN may, in its discretion, decide not to undertake the Extension or Expansion.
- (4) An Excluded Extension is not to be treated as part of the AGN GDS for any purpose under the Code.

### **Impact on Reference Tariffs**

62. (1) An Extension or Expansion which is treated as part of the AGN GDS under this Extensions/Expansions Policy will not affect Reference Tariffs for the remainder of the Second Access Arrangement Period.
- (2) Subject to Part A, clause 62(3), AGN may from time to time impose Surcharges or seek Capital Contributions in respect of New Facilities Investment, where permitted by and subject to the provisions of the Code.
- (3) Where AGN is obliged under a Distribution Licence to connect a premises to the AGN GDS ("**Obligation to Connect**") AGN will not impose Surcharges or seek Capital Contributions in respect of Standard Delivery Facilities used to provide either Reference Service B2 or Reference Service B3 to the extent that AGN is required by the Distribution Licence to bear costs under the Obligation to Connect.
- (4) Except where AGN imposes a Surcharge or seeks a Capital Contribution, Users of Incremental Capacity under a Reference Service will pay the relevant Reference Tariff.
- (5) AGN may from time to time allocate New Facilities Investment to the Speculative Investment Fund, where permitted under and subject to the provisions of sections 8.18 and 8.19 of the Code.

### **New connections**

63. Where the provision of a Reference Service requires AGN to install Delivery Facilities:
- (a) the Haulage Contract (or another contract) must deal, to AGN's reasonable satisfaction, with the construction and installation of the Delivery Facilities, including:
- (i) matters relating to site access, health and safety, standards of work and scheduling of work; and

- (ii) the User's obligations as to the payment for the installation of the Delivery Facilities;
- (b) subject to Part A, clause 62(3), AGN may seek a Capital Contribution from the User in respect of the Delivery Facilities; and
- (c) to avoid doubt and without limiting Part A, clause 63(b), AGN may decline to install Delivery Facilities where it is not obliged by a Distribution Licence to install them.

## **INTERCONNECTION WITH OTHER PIPELINES**

### **Receipt Points**

64. (1) There is to be one Receipt Point for each Interconnected Pipeline for each Sub-network, regardless of how many Physical Gate Points are used to make the interconnection between the Interconnected Pipeline and the Sub-network.
- {Example: There will be one Receipt Point in respect of the interconnection between the DBNGP and the North Metro Sub-network, despite there currently being three Physical Gate Points making that interconnection. There is also one Receipt Point for the interconnection between the Parmelia Pipeline and the North Metro, making a total of two Receipt Points for the North Metro Sub-network.}
- (2) If there is more than one Physical Gate Point for an Interconnected Pipeline for a Sub-network, then:
- (a) Gas flows at the several Physical Gate Points are to be treated as aggregated into the single Receipt Point; and
  - (b) a User's right to Deliver Gas, AGN's obligation to Receive Gas, and any curtailment or refusal to accept Gas is taken to occur at the Receipt Point and not at any of the Physical Gate Points; and
  - (c) it is not AGN's responsibility to manage how Gas deemed to be delivered at a Receipt Point is apportioned between, or physically transported to, Physical Gate Points.
- (3) If there is only one Physical Gate Point for an Interconnected Pipeline for a Sub-network then the Receipt Point is deemed to be located at that Physical Gate Point.
- (4) AGN has prepared a Schedule identifying all Sub-networks in the AGN GDS, and all Receipt Points in respect of each Sub-network, and may from time to time vary or substitute that Schedule.

### **Maintaining and complying with approved System Pressure Protection Plan**

65. (1) Each Haulage Contract contains a representation and warranty by the User that:
- (a) the User has the ability to comply with its approved System Pressure Protection Plan and will comply with its approved System Pressure Protection Plan; and



- (b) the User will notify AGN if at any time it is, suspects that it may be, or suspects that it is likely that it will in the near future be, in breach of the representation and warranty set out in Part A, clause 65(1)(a), as soon as possible after it becomes aware of the fact or the suspicion arises.
  - (2) The User makes the representation and warranty referred to in Part A, clause 65(1) anew on each day for the duration of the Haulage Contract.
  - (3) The exclusion of Indirect Damage in Part C, clause 50 does not apply in respect of the representation and warranty in Part A, clause 65(1) and therefore liability in respect of the matters is to be determined by Law, and to avoid any doubt the definition of Indirect Damage in Part C is to be disregarded for the purposes of that determination.
  - (4) The provisions of this clause 65 may be waived or modified by an express provision of a Haulage Contract, if AGN in its sole discretion so agrees.
66. Upon AGN's reasonable request, the User must as soon as practicable provide evidence to AGN's reasonable satisfaction that the User has the ability to comply, and is complying, with its System Pressure Protection Plan.

{Example: AGN may require: contact details for one or more Related Shippers; confirmation that the User's arrangements with its Related Shippers are compatible with this Access Arrangement and the Haulage Contract; information regarding the circumstances (if any) in which a Related Shipper may refuse to supply Gas to the User; and other operational information.}

## **REVIEW AND EXPIRY OF THIS ACCESS ARRANGEMENT**

### **Revisions Submission Date for the Third Access Arrangement Period**

67. AGN will submit revisions to this Access Arrangement to the Regulator on or before the Revisions Submission Date of 31 March 2009.

### **Proposed Revisions Commencement Date for the Third Access Arrangement Period**

68. AGN's Proposed Revisions Commencement Date for the revisions it submits to the Regulator under Part A, clause 67 is 1 January 2010.

### **Early revisions required if a Revisions Trigger Event occurs**

69. (1) Schedule 1 applies to determine:
- (a) if a Revisions Trigger Event has occurred; and
  - (b) if so, the date on which the Revisions Trigger Event occurs.
- (2) If a Revisions Trigger Event occurs under Schedule 1 prior to 31 March 2009, then AGN must submit revisions to this Access Arrangement by no later than the day which is 3 months after the Revisions Trigger Event occurs.

## **SCHEDULE 1: TRIGGER EVENTS**

### **Revisions Trigger Event for higher-than-forecast Gas flows**

1. (1) For the purposes of Part A, clause 69(1)(a), a Revisions Trigger Event occurs if the Actual Received Volume for a calendar Year exceeds the sum of the Forecast Delivered Volume for the Year and the Forecast UAFG for the Year by more than 25%.
- (2) For the purposes of Part A, clause 69(1)(b) of the Access Arrangement, the Revisions Trigger Event under subclause 1(1) of this Schedule occurs at the end of the calendar Year in question.

### **Revisions Trigger Event for Regulatory Changes and Tax Changes**

2. (1) For the purposes of Part A, clause 69(1)(a), a Revisions Trigger Event occurs if:
  - (a) a Relevant Change takes effect; and
  - (b) the net direct and indirect impact of the Relevant Change upon AGN's business is such that if the forecast total costs for providing Reference Services were recalculated for the next full calendar Year after the Relevant Change takes effect ("**Next Full Year**"), on the same basis as it was calculated in the Access Arrangement Information but taking into account the Relevant Change (including all applicable Transitional Provisions), the recalculated forecast total costs would be less than 97.5% of:
    - (i) if the Next Full Year is 2006, \$111.3 m;
    - (ii) if the Next Full Year is 2007, \$112.3 m;
    - (iii) if the Next Full Year is 2008, \$112.7 m; and
    - (iv) if the Next Full Year is 2009, \$114.1 m.

{Note: The values in paragraphs (i) to (iv) are expressed in Dec 2004 \$ and are those set out in the Access Arrangement Information.}
- (2) For the purposes of Part A, clause 69(1)(b) of this Access Arrangement, the Revisions Trigger Event under clause 2(1) of this Schedule occurs on whichever is earlier of:
  - (a) the day the Relevant Change takes effect;
  - (b) the day the Change in Law which gives rise to the Relevant Change receives Royal Assent; and
  - (c) the day the Change in Law which gives rise to the Relevant Change takes effect.

## SCHEDULE 2: GLOSSARY - DEFINITIONS AND INTERPRETATION

### Definitions

1. Unless the contrary intention appears, in this Access Arrangement:

**Above 10TJ Determination** has the meaning given it in rule 139(3)(b) of the Retail Market Rules;

**Access Arrangement** means the arrangement for access to the AGN GDS approved by the Regulator under the Code on 18 July 2000, as revised in accordance with the Code;

**Access Arrangement Information** means a document submitted to the Regulator by AGN on 31 March 2004 entitled "AlintaGas Networks Access Arrangement Information for the Mid-West and South-West Gas Distribution Systems" and submitted in revised form on 29 July 2005;

**Access Offer** means the access offer referred to in Part A, clause 53(2);

**Act** means the *Gas Pipelines Access (Western Australia) Act 1998 (WA)*;

**Actual Received Volume** for a calendar Year means the total quantity of Gas which AGN actually receives into the AGN GDS during the calendar Year, summed across all Interconnected Pipelines;

**AGN** means AlintaGas Networks Pty Ltd (ABN 90 089 531 975) of Level 7, The Quadrant, 1 William Street, Perth WA 6000, and includes its successors and assigns;

**AGN GDS** means those Pipelines of the Mid-West and South-West Gas Distribution Systems owned and operated by AGN comprising:

- (a) the High Pressure System; and
- (b) the Medium Pressure/Low Pressure System,

and to avoid doubt, does not include the Kalgoorlie Gas Distribution System or any system of Pipelines that does not distribute Natural Gas. At such time as a system of Pipelines in the Mid-West and South-West Gas Distribution Systems owned and operated by AGN which has not been distributing Natural Gas begins distributing Natural Gas, the system of Pipelines will become part of the AGN GDS;

**Ancillary Service** means any one of Apply Meter Lock Service, Remove Meter Lock Service, Deregistration Service, Disconnection Service and Reconnection Service as set out in Part A, clause 17, and **Ancillary Services** means all of them;

**Application** means an application for access to a Service under Part A, clause 50;

**Applications Procedure** means the process by which a Prospective User wishing to obtain access to a Service must submit an Application, which will be set out as part of the Information Package described in section 5.1 of the Code;

**Apply Meter Lock Service** means a Service by which AGN applies a Meter Lock to a Meter at a Delivery Point as set out in Part A, clause 17(a);

**Arbitrator** has the meaning given to it in section 10.8 of the Code;

**Bare Transfer** means a transfer or assignment of Contracted Peak Rate as set out in Part A, clause 39(2);

**Business Day** has the meaning given to it in section 10 of the Appendix to Schedule 1 to the Act;

**Capacity** has the meaning given to it in section 10.8 of the Code;

**Capacity Management Policy** has the meaning given to it in section 10.8 of the Code;

**Capital Base** has the meaning given to it in section 8.4 of the Code;

**Capital Contribution** has the meaning given to it in section 8.23 of the Code;

**Causing Users** has the meaning given to it in Part C, clause 23(2);

**Change in Law** means:

- (a) the introduction of a new Law; or
- (b) an amendment to, or repeal of, an existing Law; or
- (c) a new or changed interpretation (which is binding on AGN) of an existing Law resulting from a decision of:
  - (i) a court;
  - (ii) a tribunal;
  - (iii) an arbitrator;
  - (iv) a Government or regulatory department, body, instrumentality, minister, commissioner, officer, agency or other authority; or
  - (v) a person or body which is the successor to the administrative responsibilities of any person or body described in paragraph (iv) of this definition;

**Charge** has the meaning given to it in section 10.8 of the Code;

**Code** means the National Third Party Access Code for Natural Gas Pipeline Systems, applying as a law of Western Australia by virtue of section 9 of the Act, as changed from time to time in accordance with the Gas Pipelines Access Law;

**Commencement Date** is the date on which the first revisions to this Access Arrangement commence, as determined in accordance with Part A, clause 6;

**Confidential Information** means:

- (a) the contents of a Haulage Contract; and
- (b) any information provided to the receiving party by the disclosing party during the course of negotiations for, or during the duration of, a Haulage Contract, which:

- (i) relates specifically to the affairs of a person; and
- (ii) is claimed by the disclosing party to be confidential,

where the disclosure of that information would or might seriously and prejudicially affect the interests of the person,

but excludes information which AGN reasonably determines as a prudent network operator is the minimum information necessary to disclose to an operator of an Interconnected Pipeline for operational reasons relating to the interconnection of that Interconnected Pipeline with the AGN GDS;

**Contract Carriage** has the meaning given to it in section 10.8 of the Code;

**Contracted Peak Rate**, in respect of a User entitled to take delivery of Gas at a Delivery Point under a Haulage Contract, means the rate specified in the User's Haulage Contract as the highest Instantaneous Flow Rate through the Delivery Point at which AGN can be required to deliver Gas;

**Contracted Reference Service** has the meaning given to it in Part C, clause 34(2);

**Cost of Service** has the meaning given to “**Cost of Service approach**” in section 8.4 of the Code;

**CPI** means the Consumer Price Index (All Groups, Eight Capital Cities) published quarterly by the Australian Bureau of Statistics, or, if applicable, an alternative index determined under Part B, clause 9;

**Current Reference Service** means a Reference Service that is currently contracted by a User in respect of a Delivery Point under a Haulage Contract, as referred to in Part A, clause 18;

**Delivery Facilities** means as applicable, Standard Delivery Facilities or User Specific Delivery Facilities;

**Delivery Point** means a point, including a flange or joint, specified in a Haulage Contract as a point at which the User takes custody of Gas from AGN out of the AGN GDS;

**Depreciation** has the meaning given to it in section 8.4 of the Code;

**Depreciation Schedule** means the methodology used to calculate the set of depreciation schedules (one of which corresponds to each asset/group of assets that form part of the AGN GDS) referred to in Part B, clause 24;

**Deregistered**, in relation to a Delivery Point which has been the subject of a Deregistration Service, means that Gas is permanently precluded from being supplied at the Delivery Point;

**Deregistration Service** means a service to permanently remove a Meter from a Delivery Point and terminate the association of the User with the Delivery Point as set out in Part A, clause 17(c);

**Developable Capacity** means any increase in Capacity which would arise from any Extension or Expansion to the AGN GDS;

**Direct Damage:**

- (a) in relation to any person, means loss or damage which is not Indirect Damage; and
- (b) in relation to AGN only, means, in addition, any liability of AGN to any User, any claim, demand, action and proceeding brought against AGN by any User, and any of AGN's costs or expenses in connection with the claim, demand, action or proceeding;

**Disconnection Service** means a Service by which AGN discontinues the supply of Gas at a Delivery Point as set out in Part A, clause 17(d);

**Distribution Licence** means a licence that authorises AGN to transport Gas through the AGN GDS and, if required for that purpose, to make alterations to the AGN GDS, and to operate and maintain the AGN GDS;

**Downstream Person**, of a User, means:

- (a) any person:
  - (i) supplied; or
  - (ii) having or claiming an entitlement to be supplied,  
  
directly or indirectly with Gas which is, or is to be, or should have been, transported by or on behalf of the User through the AGN GDS (whether or not it was also to be transported through any other Pipeline by or on behalf of the User or any other person); and
- (b) any person claiming directly or indirectly on behalf of or through such a person;

**Emergency** means:

- (a) any extreme operating situation; or
- (b) any other situation (however caused) which, in AGN's opinion, poses an immediate or imminent danger to persons or property or otherwise constitutes an emergency or justifies or requires urgent or unilateral action;

**Equivalent Reference Service** has the meaning given to it in Part C, clause 34(2);

**Excluded Extension** means an Extension or Expansion which is declared to be an excluded extension under Part A, clause 61(1);

**Exclusivity Right** has the meaning given to it in section 10.8 of the Code;

**Extension or Expansion** includes a new Pipeline, and any extension to, or expansion of the Capacity of, all or part of an existing Pipeline;

**Extensions/Expansions Policy** means the policy set out in Part A, clauses 58 - 63;

**First Access Arrangement Period** means the period commencing on 1 January 2000 and ending on the Commencement Date;

**First Prospective User** has the meaning given to it in Part A, clause 45;

**Fixed Period** has the meaning given to it in section 8.47 of the Code;

**Fixed Principle** means an element of the Reference Tariff Policy that cannot be changed without the agreement of AGN, as set out in Part B, clause 36;

**Force Majeure** means any event or circumstance which is not within a party's control and which the party, by applying the standard of a reasonable and prudent person, is not able to prevent or overcome;

**Forecast Delivered Volume** for a calendar Year means the total quantity of Gas which AGN, for the purposes of determining Reference Tariffs, forecast would be delivered to Users of Reference Services from the AGN GDS during the calendar Year, summed across all Reference Services;

**Forecast UAFG** for a calendar Year means the total quantity of Gas which AGN, for the purposes of determining Reference Tariffs, forecast would be unaccounted for Gas during the calendar Year;

**FRC Costs** means the Non-Capital Costs connected to or associated with:

- (a) the introduction of full retail contestability in the Western Australian Gas market; and
- (b) AGN operating in a contestable Gas retail market, including the ongoing costs associated with AGN's membership of the Retail Energy Market Company Limited (ACN 103 318 556) and its compliance with the Retail Market Scheme;

**Gas** or **Natural Gas** means a substance:

- (a) which is in a gaseous state at standard temperature and pressure and which consists of naturally occurring hydrocarbons, or a naturally occurring mixture of hydrocarbons and non-hydrocarbons, the principal constituent of which is methane; and
- (b) which has been processed to be suitable for consumption;

**Gas Hour** means a period of 60 minutes, commencing and ending on the hour;

**Gas Pipelines Access Law** has the meaning given to it in section 3 of the Act;

**Gas Quality Specifications** has the meaning given to it in Part C, Schedule 6;

**Gas Standards Regulations** means the *Gas Standards (Gas Supply and System Safety) Regulations 2000* (WA) and any other regulations under the *Gas Standards Act 1972* (WA) which relate to Gas quality, including heating value;

**Glossary** means the glossary set out in this Part A, clause 1 of Schedule 2.

**GST** has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) including any associated and delegated legislation;

**Guaranteed Service Level or GSL** means a standard of service that must be provided by AGN in respect of certain Services to Small Use Customers of Users under this Access Arrangement as set out in the Access Arrangement Information;

**Haulage Contract** means an agreement entered into between AGN and a User under which AGN agrees to provide Reference Service A1, Reference Service A2, Reference Service B1, Reference Service B2 or Reference Service B3 on terms and conditions including those set out in Part C of this Access Arrangement;

**HHV Costs** has the meaning given to it in Part B, clause 12;

**High Pressure System** means those Pipelines owned and operated by AGN operating at a nominal pressure of 300 kPa or more including those which fall within one or more of the following categories:

- (a) any expansion to the High Pressure System which is required to be installed under section 6.22 of the Code; and
- (b) Pipelines which become part of the High Pressure System under the Extensions/Expansions Policy,

and excludes all high pressure regulators which reduce the pressure from those parts of the AGN GDS which operate at a nominal pressure of 300 kPa or more to those parts of the AGN GDS which operate at a nominal pressure of less than 300 kPa;

**Incentive Mechanism** has the meaning given to it in section 10.8 of the Code;

**Incremental Capacity** has the meaning given to it in section 10.8 of the Code;

**Indirect Damage** suffered by a person means:

- (a) any consequential loss or damage however caused, including without limitation any:
  - (i) loss of (or loss of anticipated) use, production, revenue, income, profits, business and savings; or
  - (ii) business interruption,whether or not the consequential loss or damage was foreseeable; and
- (b) any liability of the person to any other person, or any claim, demand, action or proceeding brought against the person by any other person, and any costs or expenses in connection with the claim, demand, action or proceeding,

but in relation to AGN does not mean loss or damage referred to in paragraph (b) of the definition of “Direct Damage” in this Part A, clause 1 of Schedule 2;

**Initial Reference Tariffs** means the Reference Tariffs for each Reference Service for Year 1 as set out in Part B, clause (3) of each of Schedules 1 to 5;

**Instantaneous Flow Rate** at a Delivery Point means a flow rate measured over the shortest period of time over which the Meter is capable of measuring a flow rate;



**Interconnected Pipeline** means a transmission Pipeline, distribution Pipeline or gas storage system from which Gas is supplied into the AGN GDS;

**Interconnection Arrangements** means a written or unwritten contract, arrangement or understanding in respect of an interconnection at a Physical Gate Point between the AGN GDS and an Interconnected Pipeline (and includes a Service Agreement for the provision of an Interconnection Service):

- (a) on terms (including as to cost reimbursement), and in a form, acceptable to AGN acting as a reasonable and prudent person;
- (b) between AGN and a person who is either:
  - (i) the operator of the Interconnected Pipeline; or
  - (ii) another person whom AGN, acting as a reasonable and prudent person, considers has adequate technical and financial resources and adequate ability to operate, or direct the operation of, the Physical Gate Point;

and

- (c) governing all matters which AGN, acting as a reasonable and prudent person, considers necessary to be governed in respect of the management of the interconnection at the Physical Gate Point, which may include:
  - (i) the design, construction, commissioning, ownership and funding of the Physical Gate Point and associated facilities;
  - (ii) operational issues; and
  - (iii) management plans in respect of Gas quality, odourisation and metering at the Physical Gate Point and management of heating values,

and which must establish the Minimum Receipt Temperature for the Physical Gate Point;

**Interconnection Distance** means a distance measured along the straight line which represents the shortest distance between the Delivery Point and the nearest Pipeline or storage system from which Gas is (or would be, if Interconnection Arrangements were entered into and necessary Physical Gate Points and associated facilities were constructed) supplied into the AGN GDS;

**Interconnection Event** has the meaning given to it in Part A, clause 26;

**Interconnection Service** means the Service described in Part A, clause 25;

**Invoicing Period** means the period to which an invoice under a Haulage Contract relates;

**Law** means all:

- (a) written and unwritten laws of the Commonwealth, of Western Australia and of any other State, Territory or foreign country having jurisdiction over the subject matter of this Access Arrangement; and

- (b) judgments, determinations, decisions, rulings, directions, notices, regulations, by-laws, statutory instruments, Codes of Practice, Australian Standards or orders given or made under any of those laws or by any government agency or authority;

**Medium Pressure/Low Pressure System** means those Pipelines owned and operated by AGN operating at a nominal pressure of less than 300 kPa including those which fall within one or more of the following categories:

- (a) any expansion to the Medium Pressure/Low Pressure System which is required to be installed under section 6.22 of the Code; and
- (b) Pipelines which become part of the Medium Pressure/Low Pressure System under the Extensions/Expansions Policy,

and includes all high pressure regulators owned and operated by AGN which reduce the pressure from those parts of the AGN GDS which operate at a nominal pressure of 300 kPa or more to those parts of the AGN GDS which operate at a nominal pressure of less than 300 kPa;

**Meter** means all equipment used to measure the flow of Gas taken from the AGN GDS at a Delivery Point, including any ancillary equipment;

**Minimum Receipt Temperature** means the minimum temperature at which Gas may enter the AGN GDS at a Physical Gate Point under Interconnection Arrangements which must be between 0°C and 10°C;

**New Facilities Investment** has the meaning given to it in section 8.15 of the Code;

**Next Full Year**, in relation to a Relevant Change, means the next full calendar Year after the Relevant Change takes effect;

**Non-Capital Costs** has the meaning given to it in section 8.4 of the Code;

**Non-Firm User** means a User who is bound to comply with an approved System Pressure Protection Plan which uses, to any extent, any option other than Option 1 set out in Part A, clause 29(a);

**Obligation to Connect** means any circumstances in which AGN is obliged, under a Distribution Licence, to connect a premises to the AGN GDS;

**Operational** means in working order and ready for use to the extent intended with all testing, commissioning and other checking completed to AGN's satisfaction;

**Overrun Charge**, in relation to Reference Service A1, has the meaning given to it in Part C, clause 7 of Schedule 1;

**Overrun Rebate**, for a User for a Year, means the amount determined under Part B clause 37(1)(c);

**Overrun Service**, in relation to Reference Service A1, has the meaning given to it in Part C, clause 7 of Schedule 1;

**Overrun Service Rate**, in relation to Reference Service A1, has the meaning given it in Part C, clause 7 of Schedule 1;

**Physical Gate Point** means a flange, joint or other point which marks a physical boundary between the AGN GDS and an Interconnected Pipeline;

**Pipeline** means a pipe, or system of pipes, or part of a pipe or system of pipes, for transporting Gas, and any tanks, reservoirs, machinery or equipment directly attached to the pipe, or system of pipes, but does not include:

- (a) unless paragraph (b) applies, anything upstream of a prescribed exit flange on a pipeline conveying Gas from a prescribed Gas processing plant; or
- (b) if a connection point upstream of an exit flange on such a pipeline is prescribed, anything upstream of that point; or
- (c) a gathering system operated as part of an upstream producing operation; or
- (d) any tanks, reservoirs, machinery or equipment used to remove, add components to or change Gas (other than odorisation facilities) such as a Gas processing plant; or
- (e) anything downstream of the connection point to a consumer;

**Pipeline Operator** means the operator of a transmission Pipeline from which Gas is or is to be supplied into the AGN GDS at a Receipt Point;

**Prescribed Interest Rate** in respect of a day on which interest is to be payable, means an annual interest rate which is 3 percentage points higher than the bank bill rate, where the bank bill rate:

- (a) means the average bid rate (rounded up to four decimal places) for bank accepted bills having a tenor of one month as displayed on the “BBSW” page of the Reuters Monitor System at or about 10.30am (Sydney time) on that day; or
- (b) if the bank bill rate cannot be determined by the procedure in paragraph (a) of this definition, a reasonable rate determined by AGN having regard to comparable indices then available;

**Price Path** has the meaning given to it in Part B, clause 4;

**Proposed Revisions Commencement Date** is 1 January 2010 as set out in clause 68;

**Prospective User** means a person who seeks or who is reasonably likely to seek to enter into a contract for a Service, and includes a User who seeks or who may seek to enter into a contract for an additional Service;

**Queuing Policy** means the policy set out in Part A, clauses 45 - 57;

**Rate of Return** has the meaning given to it in section 8.4 of the Code;

**Receipt Point** for a Sub-network means a point (which may be in the same physical location as a Physical Gate Point) which is designated as a Receipt Point for that Sub-network in the Schedule prepared by AGN under Part A, clause 64(4);

**Reconnection Service** means a Service in respect of a Delivery Point at which a Disconnection Service has previously been supplied, by which AGN recommences the supply of Gas at the Delivery Point as set out in Part A, clause 17(e);

**Reference Service** means any one of Reference Service A1, Reference Service A2, Reference Service B1, Reference Service B2 and Reference Service B3, and **Reference Services** means all of them;

**Reference Service A1** means the Service described in Part A, clause 12;

**Reference Service A2** means the Service described in Part A, clause 13;

**Reference Service B1** means the Service described in Part A, clause 14;

**Reference Service B2** means the Service described in Part A, clause 15;

**Reference Service B3** means the Service described in Part A, clause 16;

**Reference Tariff** means any one of Reference Tariff A1, Reference Tariff A2, Reference Tariff B1, Reference Tariff B2 and Reference Tariff B3, and **Reference Tariffs** means all of them;

**Reference Tariff A1** means the Reference Tariff described in Part B, Schedule 1;

**Reference Tariff A2** means the Reference Tariff described in Part B, Schedule 2;

**Reference Tariff B1** means the Reference Tariff described in Part B, Schedule 3;

**Reference Tariff B2** means the Reference Tariff described in Part B, Schedule 4;

**Reference Tariff B3** means the Reference Tariff described in Part B, Schedule 5;

**Reference Tariff Policy** means the policy set out in Part B, clauses 16 - 37;

**Regulator** has the meaning given to “**Relevant Regulator**” in section 10.8 of the Code;

**Regulatory Change** means a change in, the removal of, or the imposition of, a Regulatory Requirement imposed on AGN in its capacity as operator of the AGN GDS, including:

- (a) a community service obligation;
- (b) an additional, changed or new environmental, safety, technical, accounting, operating or administrative standard or requirement;
- (c) a uniform Tariff obligation or any other restriction on the level of Tariffs;
- (d) a licensing requirement; or
- (e) a fee or charge paid or payable, or a change to the amount of the fee or charge paid or payable, to the Regulator for a license or any other membership, contribution or other charge payable to any regulatory body or agency;

which results from a Change in Law;

**Regulatory Costs** means a cost connected to or associated with:

- (a) the submission and approval of the revisions to this Access Arrangement; and

- (b) AGN's compliance with the Act, the Code, its Distribution Licences, the *Energy Coordination Act 1994* (WA), the *Gas Standards Act 1972* (WA), the *Energy Operators (Powers) Act 1979*, *Environmental Protection Act 1986* (WA) and all other applicable Laws;

**Regulatory Requirement** means any obligation, condition, prohibition or restriction imposed by or under any Law;

**Related Shipper**, in relation to a User for a Sub-network, means a person who, from time to time, is named in the User's allocation instruction for the Sub-network under the Retail Market Rules, and to avoid doubt, the User may be its own Related Shipper;

**Releasing User** means a User who releases AGN from liability in accordance with Part C, clause 17(3);

**Relevant Change** means a Regulatory Change or Tax Change to the extent that the Regulatory Change or Tax Change results (or, but for any Transitional Provision, would result) in:

- (a) AGN being required to pay an amount that it would not otherwise have been required to pay;
- (b) a change in the amount which AGN is required to pay from that which it would have otherwise been required to pay; or
- (c) AGN no longer being required to pay an amount that it would otherwise have been required to pay,

under the Law that applied at the Submission Date (or, if a Change in Law occurred after the Submission Date but before the date of approval of the revisions to apply in the Second Access Arrangement Period and it was taken into account by the Regulator in its approval of forecast total costs as set out in clause 2(1)(b) of Schedule 1 to Part A for that period, the Law that applied at the date on which the Regulator approved the revisions to the Access Arrangement to apply for the Second Access Arrangement Period);

**Relevant Tax** means any Tax the effect of which was properly taken into account (directly or indirectly) when setting Reference Tariffs, as affecting an amount which AGN is or will be required to pay in relation to its supply of one or more Services;

**Remove Meter Lock Service** means a Service by which AGN removes a Meter lock from a Meter at a Delivery Point as set out in Part A, clause 17(b);

**Replacement Reference Service** means a Reference Service which, under Part A, clauses 18 to 21, replaces the Current Reference Service at a Delivery Point;

**Restructure**, in Part C, clause 39(1), has the meaning given to it in Part C, clause 39(2);

**Retail Market Rules** means the rules, established by the Retail Energy Market Company Limited (ACN 103 318 556), that govern the operation of the gas retail markets of South Australia and Western Australia, as amended from time to time;

**Retail Market Scheme** means the retail market scheme, including the Retail Market Rules, approved under section 11ZOJ of the *Energy Coordination Act 1994* (WA) as applying in respect of AGN's GDS, as amended from time to time;

**Return** means a return obtained by applying a Rate of Return;

**Revised Access Arrangement**, in respect of the Third Access Arrangement Period, has the meaning given to it in Part C, clause 34(2);

**Revisions Submission Date** is set out in Part A, clause 67 and is 31 March 2009;

**Revisions Trigger Event** has the meaning given in Part A, clauses 1(1) and 2(1) of Schedule 1;

**Second Access Arrangement Period** means the period commencing on the Commencement Date and ending on the date on which revisions to this Access Arrangement to apply in respect of the Third Access Arrangement Period commence;

**Service** has the meaning given to it in section 10.8 of the Code;

**Service Agreement** means a Haulage Contract or any other agreement entered into between AGN and a User under which AGN agrees to provide a Service to the User;

**Service Pipe** means the pipe and associated fittings which connect a Delivery Point to the main;

**Service Provider** has the meaning given to it in section 10.8 of the Code;

**Small Use Customer** has the meaning given to it under section 3 of the *Energy Coordination Act 1994 (WA)*;

**Spare Capacity** has the meaning given to it in section 10.8 of the Code;

**Specified Event**, in relation to HHV Costs, has the meaning given to it in Part B, clause 13;

**Speculative Investment Fund** has the meaning given to it in section 8.19 of the Code;

**Standard Delivery Facilities** includes:

- (a) either:
  - (i) in the case of Reference Service B2, a Standard 12 m<sup>3</sup>/hr Meter; or
  - (ii) in the case of Reference Service B3, a Standard 6 m<sup>3</sup>/hr Meter;
- (b) up to 20 metres of Service Pipe;
- (c) a Standard Pressure Regulator, sized to suit the applicable Meter; and
- (d) any ancillary pipes and equipment,

being the standard facility or facilities adopted for the purposes of this definition as specified from time to time by AGN;

**Standard 6 m<sup>3</sup>/hr Meter** means a standard Meter with a badged capacity of not more than 6 cubic metres of Gas per hour, being the standard facility or facilities adopted for the purposes of this definition as specified from time to time by AGN;

**Standard 12 m<sup>3</sup>/hr Meter** means a standard Meter with a badged capacity of not less than 6 cubic metres of Gas per hour and not more than 12 cubic metres of Gas per hour, being the standard facility or facilities adopted for the purposes of this definition as specified from time to time by AGN;

**Standard Pressure Regulator** means a pressure regulator or pressure regulators provided by AGN as part of Reference Service B2 and Reference Service B3 which are the standard facilities adopted for the purposes of this definition as specified from time to time by AGN;

**Submission Date** means 31 March 2004;

**Sub-network** means a part of the AGN GDS which is identified by AGN as a sub-network in the most recent Schedule prepared by AGN under Part A, clause 64(4);

**Surcharge** has the meaning given to it in section 10.8 of the Code;

**System Pressure Charge** means an amount payable by a User in connection with the provision by AGN of the System Pressure Service, in accordance with Part A, clause 31;

**System Pressure Protection Plan** means a plan provided in accordance with Part A, clauses 28 and 29 by a Prospective User which sets out the manner in which the Prospective User will ensure that it does not jeopardise the system pressure of the AGN GDS;

**System Pressure Service** means the Service described in Part A, clause 30;

**Tariff** has the meaning given to it in section 10.8 of the Code;

**Tariff Component** means a component of a Reference Tariff which is the rate at which a User is charged for a single element or attribute of a Reference Service;

**Tax** includes any tax, rate, impost, levy, duty, fee, compulsory loan, tax-equivalent payment or surcharge withheld, deducted, charged, levied or imposed under any Law;

**Tax Change** means:

- (a) a change in the way, or rate at which, a Relevant Tax is calculated; or
- (b) the removal of a Relevant Tax; or
- (c) the imposition of a Relevant Tax,

which results from a Change in Law;

**Telemetry** means the communication equipment used for transmission of data collected from a Meter to AGN's central data management system and typically encompasses modems, telecom landline (which may be dedicated or part of the PSTN network) or radio transceivers (which may be in the form of a dedicated radio network, GSM, GPRS or satellite telephony);

**Third Access Arrangement Period** means the Access Arrangement period commencing on the date on which the revisions to this Access Arrangement submitted after the Commencement Date take effect (by virtue of a decision pursuant to section 2 of the Code);

**Total Charges**, in Part B, clause 37, means the total of all Overrun Charges received from all Users for a Year;

**Total Revenue** has the meaning given to it in section 8.2 of the Code;

**Trading Policy** means the policy set out in Part A, clauses 38 - 44;

**Transitional Provision**, in relation to a Tax Change or Regulatory Change, means a provision which affects or prevents the application of the Tax Change or Regulatory Change to, or in respect of, certain (or certain classes of) persons, goods, services, contracts or arrangements by reference to the time or times at which the Tax Change or Regulatory Change is announced, is enacted or takes effect;

**Trigger Event Adjustment Approach** has the meaning given to it in Part B, clause 11;

**User** means a person who has a current Service Agreement or an entitlement to a Service as a result of an arbitration;

**User Initiated Capital** means capital expenditure primarily required to provide reticulation and Delivery Facilities, including Metering facilities, to connect a Delivery Point on behalf of a User, but excludes User Specific Delivery Facilities;

**User Specific Delivery Facilities** for a User means:

- (a) a Meter which is not a Standard 6 m<sup>3</sup>/hr Meter or a Standard 12 m<sup>3</sup>/hr Meter;
- (b) Service Pipe from the main to the Delivery Point;
- (c) a User Specific Pressure Regulator;
- (d) any ancillary pipes and equipment; or
- (e) in the case of Reference Service A1 and Reference Service A2, also includes Telemetry,

being the facility or facilities which are the most appropriate for that User, as determined by AGN as a reasonable person;

**User Specific Pressure Regulator** means a pressure regulator which is not a Standard Pressure Regulator;

**Variation Report** means a report given by AGN to the Regulator as set out in Part B, clause 10;

**Variation Year** means the calendar Year (other than Year 1) in respect of which a Varied Reference Tariff is being calculated or proposed under Part B, clauses 3 - 10;

**Varied Reference Tariff** means a varied Reference Tariff proposed by AGN for a Year under Part B and includes the Varied Tariff Components;

**Varied Tariff Component** means a varied Tariff Component proposed by AGN for a Year under Part B;



**Vexatious** includes trivial, misconceived, lacking in substance, unreasonable or not made in good faith;

**WACC** has the meaning given to it in Part B, clause 8;

**x** has the meaning given to it in Part B, clause 7;

**Year** means a period of 12 months; and

**Year 1** means the first calendar Year of the Second Access Arrangement Period.

## **Interpretation**

2. Headings are for convenience only and do not affect interpretation.
3. Except where otherwise indicated, a reference in this Access Arrangement to a Part, clause, subclause, paragraph, subparagraph or Schedule is a reference to a Part, clause, subclause, paragraph or subparagraph of, or Schedule to, this Access Arrangement.
4. Unless the context otherwise requires, in this Access Arrangement:
  - (a) words indicating a gender include each other gender; and
  - (b) words in the singular include the plural and vice versa.
5. If this Access Arrangement defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.
6. The term “including” means “including but not limited to”.
7. A reference:
  - (a) to a Delivery Point being “on” the High Pressure System, the Medium Pressure/Low Pressure System or a Sub-network means that the Delivery Point is attached to or forms part of the relevant system or Sub-network, such that Gas flowing through the Delivery Point flows from that system or Sub-network; and
  - (b) to a Receipt Point being “on” a Sub-network means that the Physical Gate Points associated with the Receipt Point are attached to or form part of the relevant Sub-network, such that Gas flowing through the Physical Gate Points flows into that Sub-network; and
  - (c) “associated”, when used to describe the relationship between a Receipt Point and a Physical Gate Point means that each of them is associated with the same Sub-network.
8. The term “under” in relation to a provision of this Access Arrangement, includes “by”, “in accordance with”, “pursuant to” and “by virtue of”.
9. A gas day commences at 08:00 hours on each day and ends at 08:00 hours on the following day, so:

- (a) a reference in this Access Arrangement to a day or date is a reference to the gas day commencing at 08:00 hours on the day or date referred to, and ending at 08:00 hours on the following day; and
  - (b) references in this Access Arrangement to months, quarters and years are to be given corresponding meanings; and
  - (c) in reckoning periods of months, quarters and years, the 8 hours offset between months, quarters and years reckoned under clause 9(b) and calendar months, quarters and years, is to be disregarded.
10. In this Access Arrangement, a reference to:
- (a) a Law includes any amendment or re-enactment of it that is for the time being in force, and includes all Laws made under it from time to time; and
  - (b) a rule of the Retail Market Rules or a provision of the Retail Market Scheme includes any amendment to or substitution of the rule or provision.

### **Definitions in Act apply to this Access Arrangement**

- 11. Unless the contrary intention appears in this Access Arrangement, the Appendix to Schedule 1 of the Act will apply to the interpretation of this Access Arrangement.
- 12. Part A, Clause 11 applies in respect of terms used in this Access Arrangement, even if when those terms are used in the Act they are subject to the *Interpretation Act 1984* (WA).
- 13. Despite clause 29(2) of the Appendix to Schedule 1 of the Act, where a period of time is expressed to begin at, on, or with a specified day, that day is included in the period.

### **Outlines, examples and notes**

- 14. Where information in this Access Arrangement is set out in braces (namely “{“ and “}”), whether or not preceded by the expression “Note”, “Outline” or “Example”, the information:
  - (a) is provided for information only and does not form part of this Access Arrangement;
  - (b) is to be disregarded in interpreting this Access Arrangement; and
  - (c) might not reflect amendments to this Access Arrangement, the Act or the Gas Pipelines Access Law made after the first publication of this document.

### **SI units**

- 15. Unless otherwise indicated, all units in this Access Arrangement and a Service Agreement are SI units in accordance with the International System of Units set out in Australian Standard 1000-1979.

### **References to Spare Capacity, Developable Capacity or Contracted Peak Rate**

- 16. Unless the contrary intention appears, wherever Spare Capacity, Developable Capacity, Contracted Peak Rate or Capacity of the AGN GDS generally is required by this Access

Arrangement or a Service Agreement to be quantified, it is to be quantified as an Instantaneous Flow Rate and is to be expressed in gigajoules per hour.

**National Third Party Access Code for Natural Gas  
Pipeline Systems:  
AlintaGas Networks Pty Ltd's  
Access Arrangement  
for the Mid-West and South-West Gas Distribution  
Systems**



**Commencement Date: 25 August 2005**

**Part B - Reference Tariffs and Reference Tariff Policy**

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## Part B - Reference Tariffs and Reference Tariff Policy

### REFERENCE TARIFFS

#### Initial Reference Tariffs

1. AGN will make available the Reference Services described in Part A at a Reference Tariff for each Service.
2. The Initial Reference Tariffs to apply for Year 1 are set out in Part B, Schedules 1-5 on a GST-inclusive basis.

#### Variation of the Reference Tariffs

3. AGN has adopted a ‘tariff basket price cap’ approach as the manner in which Tariff Components may vary within the Second Access Arrangement Period.
4. AGN will vary Tariff Components annually in accordance with Part B, clauses 3 - 10 (the “**Price Path**”). Subject to the limit on the Varied Tariff Components contained in Part B, clause 6, AGN may in its discretion vary any Tariff Component for each Variation Year.
5. Each Varied Tariff Component becomes a Tariff Component applying on and from the first day of the Variation Year.

#### Limit on Varied Tariff Components

6. A Tariff Component variation under Part B, clause 4 must be in accordance with the following:

$$P_t \leq P_{t-1} * \frac{SepCPI_{t-1}}{SepCPI_{t-2}} * (1 - x) * (1 + R_t) * (1 + Y)$$

where:

$P_t$  is the value of the Tariff Component for Year  $t$ ;

$P_{t-1}$  is the value of the Tariff Component for Year  $t-1$ ;

$x$  is positive 0.0224;

$Y$  is positive 0.02;

$R_t$  is the regulatory costs factor for calendar Year  $t$  and is calculated in accordance with Part B, clause 8;

$SepCPI_{t-1}$  is the September quarter CPI for Year  $t-1$ ;

$SepCPI_{t-2}$  is the September quarter CPI for Year  $t-2$ ; and

$t$  is the Variation Year.

7. The price basket is determined as follows:

- (1) AGN must ensure that the ratio  $B_t$ , being the ratio calculated in accordance with Part B, clause 7(2) for all Tariff Components of a Reference Tariff does not exceed:

$$\frac{SepCPI_{t-1} * (1 - x) * (1 + R_t)}{SepCPI_{t-2}}$$

where:

$x$  is positive 0.0224;

$R_t$  is the regulatory costs factor for calendar Year  $t$  and is calculated in accordance with Part B, clause 8;

$SepCPI_{t-1}$  is the September quarter CPI for Year  $t-1$  and

$SepCPI_{t-2}$  is the September quarter CPI for Year  $t-2$ .

- (2)  $B_t$  is calculated as follows:

$$B_t = \frac{\sum_{j=1}^m p_t^{ij} \cdot q_{t-2}^{ij}}{\sum_{j=1}^m p_{t-1}^{ij} \cdot q_{t-2}^{ij}}, i = 1, \dots, n$$

where:

$p_t^{ij}$  is the proposed value for Tariff Component  $j$  of Reference Tariff  $i$  in calendar Year  $t$ ;

$p_{t-1}^{ij}$  is the value for Tariff Component  $j$  of Reference Tariff  $i$  in calendar Year  $t-1$ ; and

$q_{t-2}^{ij}$  is the quantity of Tariff Component  $j$  of Reference Tariff  $i$  that was sold in calendar Year  $t-2$ .

8. The Regulatory Cost factor (“ $R$ ”) is calculated as follows:

- (a) for Variation Year 2006:

$$R_t = \frac{1 + \frac{Drc_{t-1} * (1 + WACC)}{Rrev_t}}{1} - 1$$

- (b) for each Variation Year other than 2006:

$$R_t = \frac{1 + \frac{Drc_{t-1} * (1 + WACC)}{Rrev_t}}{1 + \frac{Drc_{t-2} * (1 + WACC)}{Rrev_{t-1}}} - 1$$

where:

$Drc_{t-1}$  is the actual Regulatory Costs minus the forecast Regulatory Costs for Year  $t-1$  and is calculated as follows:

$$Drc_{t-1} = \frac{SepCPI_{2004}}{SepCPI_{t-1}} Arc_{t-1} - Frc_{t-1}$$

where:

$Arc_{t-1}$  is the actual Regulatory Costs for Year  $t-1$ ;

$Frc_{t-1}$  is the forecast Regulatory Costs for Year  $t-1$ ;

$SepCPI_{2004}$  is the Consumer Price Index (All Groups, Eight Capital Cities) published by the Australian Bureau of Statistics for the September quarter of 2004, being 145.4; and

$SepCPI_{t-1}$  is the Consumer Price Index (All Groups, Eight Capital Cities) published by the Australian Bureau of Statistics for the September quarter of calendar Year  $t-1$ ;

$Drc_{t-2}$  is the actual Regulatory Costs minus the forecast Regulatory Costs for Year  $t-2$  and is calculated as follows:

$$Drc_{t-2} = \frac{SepCPI_{2004}}{SepCPI_{t-2}} Arc_{t-2} - Frc_{t-2}$$

where:

$Arc_{t-2}$  is the actual Regulatory Costs for Year  $t-2$ ;

$Frc_{t-2}$  is the forecast Regulatory Costs for Year  $t-2$ ;

$SepCPI_{2004}$  is the Consumer Price Index (All Groups, Eight Capital Cities) published by the Australian Bureau of Statistics for the September quarter of 2004, being 145.4; and

$SepCPI_{t-2}$  is the Consumer Price Index (All Groups, Eight Capital Cities) published by the Australian Bureau of Statistics for the September quarter of calendar Year  $t-2$ ;

$WACC$  is the real pre-tax Weighted Average Cost of Capital as set out in section 4 of the Access Arrangement Information; and

$Rrev_t$  is the Total Revenue for Year  $t$ ; and

$Rrev_{t-1}$  is the Total Revenue for Year  $t-1$ .

### Alternatives to Consumer Price Index

9. In the event that the Consumer Price Index (All Groups, Eight Capital Cities), ceases to be published quarterly by the Australian Bureau of Statistics or is published on a basis



materially different (including due to a change in its nature, composition or reference base) to its basis at the Submission Date, then:

- (a) if the Australian Bureau of Statistics publishes a substitute index, AGN may adopt the substitute index for use in this Part B if in AGN's reasonable opinion the use of that substitute index (with, if necessary, any arithmetical correction factor) will maintain a reasonable level of continuity of Tariffs calculated using the two indices, subject to the Regulator's approval;
- (b) if AGN does not adopt a substitute index under Part B, clause 9(a), AGN may adopt any other substitute index subject to the Regulator's approval; or
- (c) if the Regulator does not approve an index proposed by AGN under Part B, clause 9(b), then a substitute index is to be determined by an independent consulting actuary appointed at the request of either AGN or the Regulator by the President for the time being of the Institute of Actuaries of Australia. The consulting actuary will act as an expert and not an arbitrator, and the actuary's costs will be borne by AGN and may be recovered under this Access Arrangement.

#### **Annual report to be given to the Regulator**

10. In accordance with sections 8.3B and 8.3C of the Code, AGN will give the Regulator a Variation Report at least 30 Business Days before the start of the Variation Year.

#### **TRIGGER EVENT ADJUSTMENT**

11. Under the "**Trigger Event Adjustment Approach**" set out in Part B, clauses 11 to 14 and subject to the Code, Reference Tariffs may be varied within this Access Arrangement period in accordance with a methodology that meets the objectives in section 8.1 of the Code and is otherwise fair and reasonable to enable AGN to recover HHV Costs.
12. In Part B, clauses 11 to 14, "**HHV Costs**" means the New Facilities Investment and the Non-Capital Costs:
  - (a) incurred or to be incurred by AGN in connection with or in association with AGN's or another person's management of heating value blending, including New Facilities Investment and Non-Capital Costs incurred or to be incurred in connection with or in association with the measurement, recording, auditing, facilitation or otherwise in relation to the management of heating value blending;
  - (b) which have not already been recovered by AGN; and
  - (c) which do not exceed the amount that would be incurred by a prudent Service Provider acting efficiently, in accordance with accepted good industry practice, and to achieve the lowest sustainable cost of delivering Services, taking into account the obligations imposed on AGN by all applicable Laws.

13. If:

- (a) AGN incurs or is to incur HHV Costs ("**Specified Event**"); or

- (b) in accordance with section 8.3B(b) of the Code, AGN otherwise wishes to vary a Reference Tariff in accordance with the Trigger Event Adjustment Approach,

then AGN may, in accordance with section 8.3B(a) of the Code, provide a notice to the Regulator and the process set out in sections 8.3B to 8.3H of the Code and Part B, clauses 11 to 14 applies.

- 14. Without limiting the operation of Part B, clauses 11 to 14, if Reference Tariffs are varied in accordance with the Trigger Event Adjustment Approach in respect of HHV Costs:
  - (a) which are New Facilities Investment - those costs shall be deemed to meet the requirements of section 8.16 of the Code and the Capital Base will be increased by the amount of those costs from the commencement of the Third Access Arrangement Period; and
  - (b) which are Non-Capital Costs - those costs shall be deemed to meet the requirements of section 8.37 of the Code and the Total Revenue will be increased by the amount of those costs from the commencement of the Third Access Arrangement Period.

## **TARIFFS FOR SERVICES OTHER THAN REFERENCE SERVICES**

- 15. Tariffs for Services which are not Reference Services will be negotiated between the parties.

## **REFERENCE TARIFF POLICY**

### **General principles**

- 16. The Reference Tariffs have been designed to:
  - (a) achieve the objectives set out in section 8.1 of the Code; and
  - (b) recover:
    - (i) all of the Total Revenue that reflects costs incurred (including capital costs) directly attributable to the Reference Services; and
    - (ii) a share of the Total Revenue that reflects costs incurred (including capital costs) that are attributable to providing the Reference Services.
- 17. The share referred to in Part B, clause 16(b)(ii) has been determined using a method that meets the objectives in section 8.1 of the Code and is otherwise fair and reasonable.

### **Calculation of Total Revenue**

- 18. The Total Revenue has been calculated using the Cost of Service method as described in section 8.4 of the Code.
- 19. The Capital Base for the AGN GDS as at 1 January 2005 is \$658.6 million (expressed in \$m as at 31 December 2004). This value excludes the value of User Specific Delivery Facilities.

20. The Capital Base has been determined in accordance with the process set out in section 8.9 of the Code and, with respect to section 8.9(c) of the Code, the values used for Depreciation are the approved forecast Depreciation values for that period.

### **Forecast capital expenditure**

21. New Facilities Investment that is forecast to occur within the Second Access Arrangement Period has been taken into account in:
- (a) Depreciation;
  - (b) the Return on the Capital Base; and
  - (c) the calculation of “x” referred to in Part B, clause 6.

### **Calculation of Rate of Return**

22. The Rate of Return has been set on the basis of a weighted average of the returns applicable to equity and debt.
23. The return on equity referred to in Part B, clause 22 has been determined using the Capital Asset Pricing Model.

### **Depreciation Schedule**

24. Each group of assets that forms part of the AGN GDS has been depreciated using the straight-line method.

### **Non-Capital Costs**

25. (1) The Reference Tariffs provide for the recovery of all forecast Non-Capital Costs to the extent permitted under section 8.37 of the Code.
- (2) Without limiting Part B, clause 25(1), the FRC Costs that are incurred, or are expected to be incurred, in the delivery of the Reference Services are included as a component of the Non-Capital Costs.

### **Allocation of revenue between Services**

26. The portion of the Total Revenue that each Reference Service has been designed to recover includes, to the maximum extent commercially and technically reasonable:
- (a) all of the Total Revenue that reflects costs incurred (including capital costs) that are directly attributable to each Reference Service;
  - (b) a share of the Total Revenue that reflects costs incurred (including capital costs) that are attributable to providing each Reference Service jointly with other Services, with this share being determined using a methodology that meets the objectives in section 8.1 of the Code and is otherwise fair and reasonable; and
  - (c) a share of the Total Revenue that reflects costs incurred but not recovered from those Users of Reference Services who pay at a prudent discount to the Reference Tariff.

27. The items in Part B, clause 26 have, in part, been based on forecasts.

### **Allocation of revenue between Users**

28. The Reference Tariffs have, to the maximum extent technically and commercially reasonable, been designed to be consistent with section 8.42 of the Code.

### **Prudent discounts**

29. Some Users of Reference Services pay a discount to the Reference Tariff. AGN has structured Tariffs in accordance with section 8.43 of the Code which permits recovery of the revenue foregone in a fair and reasonable manner.

### **Form of regulation**

30. AGN has adopted a “tariff basket price cap” approach as the manner in which the Reference Tariffs may vary within the Second Access Arrangement Period.

### **Use of Incentive Mechanisms**

31. Section 8.44 of the Code provides for a Service Provider’s Reference Tariff Policy to include an Incentive Mechanism that permits the Service Provider to retain all, or any share of any, returns to the Service Provider from the sale of Reference Services:

- (a) during the Second Access Arrangement Period - that exceed the level of returns expected for that Access Arrangement period; or
- (b) during a period approved by the Regulator - that exceed the level of returns expected for that period.

32. (1) The incentive arrangements that apply to cost-related efficiencies achieved by AGN, and the adjustment to preserve the incentive to meet efficient growth in demand, are a combination of:

- (a) a tariff basket form of price control; and
- (b) the carryover that results in AGN retaining the reward associated with an efficiency improving initiative for five Years after the Year in which the gain was achieved. For example, a reward (being the net amount of the efficiency gains (or losses) relating to User Initiated Capital costs and Non-Capital Costs) earned in one Year of an Access Arrangement period will be added to the Total Revenue and carried forward into subsequent Access Arrangement periods as necessary, until it has been retained by AGN for a full period of five Years.

(2) To avoid doubt, the Incentive Mechanism does not operate to automatically carry forward from the end of the Second Access Arrangement Period a net efficiency loss relating to User Initiated Capital costs and Non-Capital Costs, however that loss may be carried forward at the discretion at the Regulator in accordance with the Code.

(3) There will be no claw-back of gains that have already been made (or losses that have been incurred) during the Second Access Arrangement Period.

- (4) Efficiency gains (or losses) related to User Initiated Capital expenditure in any Year will reflect the difference between the actual expenditure and the original forecast (or benchmark) expenditure level, as follows:

$$\text{Efficiency Gain} = \text{WACC} * (\text{Capex Forecast} - \text{Capex Actual})$$

where:

“WACC” is the prevailing regulatory WACC as defined in section 4 of the Access Arrangement Information; and

“Capex Forecast” and “Capex Actual” are both expressed in real terms.

- (5) For Non-Capital Costs the annual efficiency gain (or loss) flowing from a project in calendar Year  $t$  will be calculated as:

$$\text{Efficiency Gain} = \text{Underspending}_t - \text{Underspending}_{t-1}$$

where:

“Underspending $_t$ ” = Opex Forecast - Opex Actual

where:

“Opex Forecast” and “Opex Actual” are both expressed in real terms.

- (6) For Non-Capital Costs, the additional reward (penalty) associated with initiatives undertaken in a particular Year will reflect the reduction (increase) in the level of recurrent non-capital expenditure in excess of the assumed productivity gain (as reflected in expenditure forecasts) over the Year.
- (7) For User Initiated Capital expenditure, the additional reward (penalty) associated with initiatives undertaken in a particular Year will reflect the reduction (increase) in financing costs resulting from the difference between the actual and benchmark assumption for User Initiated Capital expenditure in the Year. The financing savings will be calculated as the WACC multiplied by the capital expenditure saving.

33. (1) For Non-Capital Costs, it will be assumed that AGN does not achieve more than the forecast productivity gain between the penultimate and last Years of the Second Access Arrangement Period. As a result, if AGN makes an efficiency gain in the last Year of the Second Access Arrangement Period, there will be no carryover in respect of that Year. However, the non-capital expenditure benchmark for the Third Access Arrangement Period will then be higher than otherwise and will be higher by the amount of the efficiency gain. This will provide AGN with precisely the same reward had the expenditure level in the last Year been known.
- (2) For User Initiated Capital expenditure, it will be assumed that the actual expenditure in the last Year of the Second Access Arrangement Period was equal to the forecast for that Year. As a result, if AGN makes an efficiency gain in the last Year of the Second Access Arrangement Period, there will be no carryover in respect of that Year. However, the Capital Base (and thus the return on assets) will be higher than otherwise over the next Access Arrangement period, thereby implying that the return on assets included in the revenue benchmarks will be higher, and provides AGN

with precisely the same reward as the carryover had the expenditure level in the last Year been known. At the following review, the Capital Base will then be adjusted to take account of the difference between the forecast and actual capital expenditure for the last Year of the Second Access Arrangement Period.

- (3) The original expenditure benchmarks against which the assessment of the efficiency gains in excess of the forecast will be measured will be adjusted only as follows:
  - (a) The carryover of cost-related efficiency gains will be calculated in a manner that takes account of any change in the scope of the activities which form the basis of the determination of the original benchmarks. AGN will provide information in relation to any change in scope, to be assessed by the Regulator, as part of the Access Arrangement Information submitted on or before 31 March 2009. This information will, without limitation, quantify and substantiate the impact of the scope changes on the original benchmarks.
  - (b) The carryover in respect of cost-related efficiency gains will be calculated in a manner that takes account of the difference between forecast and actual growth by adjusting the original benchmarks on the basis of the difference between the actual number of connections in any Year and the assumed number of connections for that Year multiplied by the User Initiated Capital expenditure per connection and non-capital expenditure per connection.
  - (c) Subject to Part B, clause 33(4), the carryover in respect of cost-related efficiency gains will be calculated in a manner that takes account of any adjustment to the original benchmark to reflect any difference between the capital replacement works assumed in Reference Tariffs for the Second Access Arrangement Period and the works actually undertaken in the Second Access Arrangement Period.
- (4) Nothing in Part B, clause 33(3)(c):
  - (a) requires AGN to undertake the forecast capital replacement works; or
  - (b) constrains AGN's discretion in determining the timing, size and nature of the capital replacement works.
34. Each of the mechanisms set out in Part B, clauses 33(1), 33(2) and 33(3)(c) apply for subsequent carryovers between Access Arrangement periods.
35. The following costs shall not be taken into consideration when determining AGN's performance in relation to any efficiency measures or Incentive Mechanism:
  - (a) any Non-Capital Costs which are FRC Costs or Regulatory Costs;
  - (b) any HHV Costs; and
  - (c) any New Facilities Investment which is not User Initiated Capital.

#### **Reference Tariff principles not subject to review**

36. (1) In accordance with sections 8.47 and 8.48 of the Code, the following principles are Fixed Principles:

- (a) the method of calculation of the Total Revenue as described in Part B, clause 18;
  - (b) the financing structure (being a 60/40 debt/equity ratio) that has been assumed for the purposes of determining the Rate of Return in accordance with section 8.30 of the Code;
  - (c) the straight-line method of depreciation for each group of assets referred to in Part B, clause 24;
  - (d) the inclusion of FRC Costs as a component of Non-Capital Costs for the duration of the Fixed Period as described in Part B, clause 25(2);
  - (e) the inclusion:
    - (i) in the Capital Base from the commencement of the next Access Arrangement period of HHV Costs which are New Facilities Investment; and
    - (ii) in the Total Revenue for the next Access Arrangement period of HHV Costs which are Non-Capital Costs,
 in respect of which Reference Tariffs have been varied under the Trigger Event Adjustment Mechanism; and
  - (f) the method of allocating revenue between Services as described in Part B, clause 26.
- (2) The Fixed Period is a period of 10 Years commencing from the start of the Second Access Arrangement Period.

#### **Rebatable revenue – Overrun Charge**

37. (1) After the end of each calendar Year AGN must, within a reasonable period, calculate Overrun Rebates for Users for the Year by:
- (a) determining the total of all Overrun Charges received from all Users for the Year (“**Total Charges**”); and
  - (b) deducting AGN’s reasonable administration costs connected with administering the rebate scheme under this Part B clause 37 from the Total Charges; and
  - (c) pro-rating the amount determined under Part B clause 37(1)(b) across each User by reference to the total volume of Gas delivered to that User by AGN in the Year to determine each User’s “**Overrun Rebate**”.
- (2) AGN must show the Overrun Rebate for a User as a credit on the first account issued to that User by AGN following its calculation of the Overrun Rebate for the Year and must provide to each User a summary of the elements referred to in Part B, clause [37\(1\)](#) used in the calculation of its Overrun Rebate for the Year.

## **SCHEDULE 1: REFERENCE TARIFF A1**

### **Reference Tariff A1**

- (1) AGN will make available Reference Service A1 at Reference Tariff A1.
- (2) Reference Tariff A1 consists of:
  - (a) a standing charge which is payable each day regardless of Contracted Peak Rate and regardless of usage;
  - (b) a demand charge calculated for each day by multiplying the demand charge rate by the User's Contracted Peak Rate (expressed in gigajoules to three decimal places) and multiplying the resulting amount by the Interconnection Distance (expressed in kilometres to one decimal place);
  - (c) a usage charge calculated by multiplying the usage charge rate by the quantity of Gas delivered to the User at a Delivery Point (expressed in gigajoules to three decimal places) and multiplying the resulting amount by the Interconnection Distance (expressed in kilometres to one decimal place); and
  - (d) a daily User specific charge for the User Specific Delivery Facilities.
- (3) For Reference Tariff A1 for Year 1:
  - (a) the standing charge is \$48,689.35 per year;
  - (b) the demand charge rate is:
    - (i) \$201.00 per gigajoule per kilometre per year for the first 10 kilometres of the Interconnection Distance; and
    - (ii) \$100.50 per gigajoule per kilometre per year for any part of the Interconnection Distance in excess of 10 kilometres;
  - (c) the usage charge rate is:
    - (i) \$0.04899 per gigajoule per kilometre for the first 10 kilometres of the Interconnection Distance; and
    - (ii) \$0.02448 per gigajoule per kilometre for any part of the Interconnection Distance in excess of 10 kilometres;

and

  - (d) the User specific charge is to be an amount per day which reflects the costs to AGN of providing the User Specific Delivery Facilities under a Haulage Contract, which may consist of capital costs and Non-Capital Costs, where the component of the User specific charge which reflects capital costs is calculated as follows:
    - (i) the value of the User Specific Delivery Facilities is to be amortised monthly on an "in arrears" basis; and



- (ii) using the pre-tax nominal Weighted Average Cost of Capital specified in the Access Arrangement Information as amended from time to time; and
  - (iii) over the lesser of the duration of the Haulage Contract and the economic life of the User Specific Delivery Facilities.
- (4) The User specific charge may be pro-rated across a lesser period than a Year for invoicing purposes.

## **SCHEDULE 2: REFERENCE TARIFF A2**

### **Reference Tariff A2**

- (1) AGN will make available Reference Service A2 at Reference Tariff A2.
- (2) Reference Tariff A2 consists of:
  - (a) a standing charge which is payable each day regardless of Contracted Peak Rate and regardless of usage;
  - (b) a usage charge calculated by multiplying the usage charge rate by the quantity of Gas delivered to the User at a Delivery Point (expressed in gigajoules to three decimal places); and
  - (c) a daily User specific charge for the User Specific Delivery Facilities.
- (3) For Reference Tariff A2 for Year 1:
  - (a) the standing charge is \$553.28 per year;
  - (b) the usage charge rate is:
    - (i) \$5.10 per gigajoule for the first 5 terajoules of Gas delivered to the User per Year;
    - (ii) \$4.85 per gigajoule for Gas delivered to the User in excess of 5 terajoules per Year and up to 10 terajoules per Year; and
    - (iii) \$1.28 per gigajoule for Gas delivered to the User in excess of 10 terajoules per Year;and
  - (c) the User specific charge is to be an amount per day which reflects the costs to AGN of providing the User Specific Delivery Facilities under a Haulage Contract, which may consist of capital costs and Non-Capital Costs, where the component of the User specific charge which reflects capital costs is calculated as follows:
    - (i) the value of the User Specific Delivery Facilities is to be amortised monthly on an “in arrears” basis; and
    - (ii) using the pre-tax nominal Weighted Average Cost of Capital specified in the Access Arrangement Information as amended from time to time; and
    - (iii) over the lesser of the duration of the Haulage Contract and the economic life of the User Specific Delivery Facilities.
- (4) Both of the usage charge and the User specific charge may be pro-rated across a lesser period than a Year for invoicing purposes in accordance with clauses (6), (7) and (8), and if so, in relation to the usage charge, usage may be averaged across that lesser period for the purposes of applying the thresholds in clause (3)(b) of this Schedule 2.

- (5) A User must at the commencement of a Haulage Contract elect whether the pro-rating under clause (4) of this Schedule 2 of the usage charge is to be based on 5, 6 or 7 days of Gas flow per week, and the Haulage Contract may specify the basis of the pro-rating and any necessary end-of-Year reconciliations.

**Pro-rating methodology**

- (6) A pro-rating of the User specific charge under clause (4) of this Schedule 2 is to be done on the basis of a 365 day Year.
- (7) A pro-rating of the usage charge under clause (4) of this Schedule 2 is to be done across the number of days elected by a User under clause (5) of this Schedule 2, and if no election was made the usage charge is to be pro-rated based on 5 days of Gas flow per week.
- (8) At the end of each Year of a Haulage Contract, if the total amount of usage charges paid by a User as a result of a pro-rating under clause (7) of this Schedule 2:
- (a) is less than the usage charge that would have been payable had the User been invoiced on an annual basis without pro-rating, then AGN may invoice the User for the balance on the next invoice; and
  - (b) is more than the usage charge that would have been payable had the User been invoiced on an annual basis without pro-rating, then AGN must allow User a credit on its next invoice for the balance.

### **SCHEDULE 3: REFERENCE TARIFF B1**

#### **Reference Tariff B1**

- (1) AGN will make available Reference Service B1 at Reference Tariff B1.
- (2) Reference Tariff B1 consists of:
  - (a) a standing charge which is payable each day regardless of Contracted Peak Rate and regardless of usage;
  - (b) a usage charge calculated by multiplying the usage charge rate by the quantity of Gas delivered to the User at a Delivery Point (expressed in gigajoules to three decimal places); and
  - (c) a daily User specific charge for the User Specific Delivery Facilities.
- (3) For Reference Tariff B1 for Year 1:
  - (a) the standing charge is \$553.28 per year;
  - (b) the usage charge rate is:
    - (i) \$5.10 per gigajoule for the first 5 terajoules of Gas delivered to the User per Year;
    - (ii) \$4.85 per gigajoule for Gas delivered to the User in excess of 5 terajoules per Year;

and

  - (c) the User specific charge is to be an amount per day which reflects the costs to AGN of providing the User Specific Delivery Facilities under a Haulage Contract, which may consist of capital costs and Non-Capital Costs, where the component of the User specific charge which reflects capital costs is calculated as follows:
    - (i) the value of the User Specific Delivery Facilities is to be amortised monthly on an “in arrears” basis; and
    - (ii) using the pre-tax nominal Weighted Average Cost of Capital specified in the Access Arrangement Information as amended from time to time; and
    - (iii) over the lesser of the duration of the Haulage Contract and the economic life of the User Specific Delivery Facilities.
- (4) Both of the usage charge and the User specific charge may be pro-rated across a lesser period than a Year for invoicing purposes in accordance with clauses (6), (7) and (8) of this Schedule 3, and if so, in relation to the usage charge, usage may be averaged across that lesser period for the purposes of applying the thresholds in clause (3)(b) of this Schedule 3.

- (5) A User must at the commencement of a Haulage Contract elect whether the pro-rating under clause (4) of this Schedule 3 of the usage charge is to be based on 5, 6 or 7 days of Gas flow per week, and the Haulage Contract may specify the basis of the pro-rating and any necessary end-of-Year reconciliations.

**Pro-rating methodology**

- (6) A pro-rating of the User specific charge under clause (4) of this Schedule 3 is to be done on the basis of a 365 day Year.
- (7) A pro-rating of the usage charge under clause (4) of this Schedule 3 is to be done across the number of days elected by a User under clause (5) of this Schedule 3, and if no election was made the usage charge is to be pro-rated based on 5 days of Gas flow per week.
- (8) At the end of each Year of a Haulage Contract, if the total amount of usage charges paid by a User as a result of a pro-rating under clause (7) of this Schedule 3:
- (a) is less than the usage charge that would have been payable had the User been invoiced on an annual basis without pro-rating, then AGN may invoice the User for the balance on the next invoice; and
  - (b) is more than the usage charge that would have been payable had the User been invoiced on an annual basis without pro-rating, then AGN must allow User a credit on its next invoice for the balance.

## **SCHEDULE 4: REFERENCE TARIFF B2**

### **Reference Tariff B2**

- (1) AGN will make available Reference Service B2 at Reference Tariff B2.
- (2) Reference Tariff B2 consists of:
  - (a) a standing charge which is payable each day regardless of usage; and
  - (b) a usage charge calculated by multiplying the usage charge rate by the quantity of Gas delivered to the User at a Delivery Point (expressed in gigajoules to three decimal places).
- (3) For Reference Tariff B2 for Year 1:
  - (a) the standing charge is \$221.31 per year; and
  - (b) the usage charge rate is:
    - (i) \$5.64 per gigajoule for the first 100 gigajoules of Gas delivered to the User per Year; and
    - (ii) \$5.08 per gigajoule for Gas delivered to the User in excess of 100 gigajoules per Year.
- (4) The usage charge may be pro-rated across a lesser period than a Year for invoicing purposes, and if so, usage may be averaged across that lesser period for the purposes of applying the thresholds in clause (3)(b) of this Schedule 4.

## **SCHEDULE 5: REFERENCE TARIFF B3**

### **Reference Tariff B3**

- (1) AGN will make available Reference Service B3 at Reference Tariff B3.
- (2) Reference Tariff B3 consists of:
  - (a) a standing charge which is payable each day regardless of usage; and
  - (b) a usage charge calculated by multiplying the usage charge rate by the quantity of Gas delivered to the User at a Delivery Point (expressed in gigajoules to three decimal places).
- (3) For Reference Tariff B3 for Year 1:
  - (a) the standing charge is \$27.66 per year; and
  - (b) the usage charge rate is:
    - (i) \$9.46 per gigajoule for the first 15 gigajoules of Gas delivered to the User per Year;
    - (ii) \$6.61 per gigajoule for Gas delivered to the User in excess of 15 gigajoules per Year and up to 45 gigajoules per Year; and
    - (iii) \$4.35 per gigajoule for Gas delivered to the User in excess of 45 gigajoules per Year.
- (4) The usage charge may be pro-rated across a lesser period than a Year for invoicing purposes, and if so, usage may be averaged across that lesser period for the purposes of applying the thresholds in clause (3)(b) of this Schedule 5.

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**National Third Party Access Code for Natural Gas  
Pipeline Systems:**

**AlintaGas Networks Pty Ltd's**

**Access Arrangement**

**for the Mid-West and South-West Gas Distribution  
Systems**



**Commencement Date: 25 August 2005**

**Part C - Terms and Conditions**

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## **Part C - Terms and Conditions**

### **DEFINITIONS AND INTERPRETATION**

1. The Glossary in Part A of this Access Arrangement applies to the interpretation of a Haulage Contract.
2. The terms of a Haulage Contract will be:
  - (a) these general terms and conditions as set out in this Part C and the Schedules to Part C; and
  - (b) Part A, clauses 18 - 21 (Re-allocation of Reference Services), 22 (Gas quality and temperature), clauses 23 - 26 (General operational matters), clause 31 (System Pressure Charge), clauses 32 - 34 (Protection of System Pressure – existing Service Agreements), clause 64 (Receipt Points) and clauses 65 and 66 (Maintaining and complying with approved System Pressure Protection Plan).

### **RELATIONSHIP BETWEEN AGN AND USER**

3. (1) AGN may from time to time require a User to:
  - (a) provide security for the performance of its obligations under a Haulage Contract in the form of a bank guarantee applying for the duration of the Haulage Contract for at least an amount that is equal to AGN's reasonable estimate of all fees and charges that will be incurred by the User under the Haulage Contract in the 2 months following the date of estimation, and if necessary a greater amount if, in AGN's reasonable opinion, a greater amount is necessary to protect AGN's legitimate business interests;
  - (b) pay all amounts owing under a Haulage Contract to continue to receive one or more Reference Services under the Haulage Contract;
  - (c) demonstrate its compliance with AGN's minimum insurance and prudential requirements, including its ability to meet all financial obligations under a Haulage Contract. Unless otherwise agreed, the minimum insurance and prudential requirement is third party liability insurance including product liability, noting AGN's interest, in the amount of not less than \$20,000,000 for any one occurrence; and
  - (d) provide evidence of the identity of its Related Shippers,and (without limiting any other remedies which may be available to it) AGN may refuse to deliver Gas to the User for so long as the relevant requirement remains unsatisfied.
- (2) A User must pay AGN the amount of the Tariff for a Service even if AGN was unable to provide, undertake or complete the Reference Service as a direct result of either:
  - (a) an act or omission of the User that prevented AGN from providing, undertaking or completing the Service; or

- (b) the requested Service not being able to be provided or undertaken in respect of the Delivery Point for which the Service was requested by the User.
- (3) AGN's ability to provide a Service to a User is subject to the User ensuring that AGN has unfettered access to the Meter located at the Delivery Point the subject of the Service:
  - (a) during the term of the Haulage Contract; and
  - (b) if applicable, until the Delivery Point the subject of the Haulage Contract is Deregistered and the Deregistration Service has been completed.

## **THE HAULAGE SERVICE**

### **Receipt and delivery of Gas**

4. Under a Haulage Contract, the User will be entitled to take delivery of Gas at each Delivery Point identified in the Haulage Contract on the terms and conditions set out in the Haulage Contract.

### **Obligation to accept and deliver Gas**

5. (1) Subject to the terms of a Haulage Contract:
- (a) AGN must accept the quantity of Gas delivered to a Receipt Point by one or more Related Shippers; and
  - (b) deliver Gas to a User at a Delivery Point the subject of a Haulage Contract, up to the levels specified in the Haulage Contract.
- (2) In addition to any other rights and remedies that may be available to it under any Law or agreement or otherwise, AGN may refuse to accept the quantity of Gas delivered to a Receipt Point by a Related Shipper if:
- (a) the Gas does not comply with the Gas Quality Specifications or any applicable Gas quality standards;
  - (b) without limiting Part C, clause 5(2)(a), AGN considers as a reasonable and prudent person that accepting the Gas would be inconsistent with a heating value blending management plan under the Gas Standards Regulations, or otherwise will, or might reasonably be expected to, cause the heating value of the Gas in any part of the AGN GDS to depart from any requirement in or under the Gas Standards Regulations;
  - (c) AGN considers as a reasonable and prudent person that it would be unsafe or may give rise to an unsafe situation for the operation of the AGN GDS to accept the quantity of Gas delivered to the Receipt Point by the Related Shipper;
  - (d) AGN considers as a reasonable and prudent person that it would, or might reasonably be expected to, be or cause a breach of any Law to accept the Gas;

- (e) AGN is relieved from doing so under Part C, clause 37 (Force Majeure);
- (f) acceptance of the Gas by AGN would cause the AGN GDS to exceed its maximum allowable operating pressure;
- (g) AGN is permitted to do so by the Haulage Contract; or
- (h) the User is in breach of the Haulage Contract.

### **Duration**

6. A Haulage Contract will specify:
- (a) the duration of the Haulage Contract;
  - (b) the date from which the User is entitled to take delivery of Gas at each Delivery Point; and
  - (c) the duration of any options to extend the Haulage Contract.

### **Receipt Points and Delivery Points**

7. (1) A Haulage Contract will specify:
- (a) one or more Delivery Points at which the User may take delivery of Gas; and
  - (b) for each Delivery Point, one or more Receipt Points at which a Related Shipper may from time to time deliver Gas into the Sub-network for transportation to the Delivery Point.
- (2) A Haulage Contract may specify procedures for adding Delivery Points during the duration of the Haulage Contract, but any such procedures will be subject to the Queuing Policy and may be subject to the Applications Procedure.
- (3) If at the termination of a Haulage Contract for a Delivery Point, the Delivery Point is not transferred to another User under the Retail Market Rules, then the current User must request a Deregistration Service from AGN and until such time as the Delivery Point is Deregistered, the User must continue to pay the applicable Charges for the Delivery Point.
- (4) Subject to Part C, clause 7(5), if a User:
- (a) in accordance with this Access Arrangement or the Queuing Policy; and
  - (b) during the term of a Haulage Contract,
- acquires a Replacement Reference Service at a Delivery Point at which it already acquires a Current Reference Service under the Haulage Contract, then AGN must agree to a request from the User to remove the Delivery Point from the Haulage Contract for the Current Reference Service.
- (5) Part C, clause 7(4) applies only if the provision of the Replacement Reference Service at the Delivery Point, compared with the provision of the Current Reference

Service, will not place AGN in a less advantageous financial position over the life of the Haulage Contract.

### **Interconnection Arrangements**

8. A Haulage Contract will specify the Interconnection Arrangements applicable to the Physical Gate Points associated with the Receipt Points referred to in Part C, clause 7(1)(b).

### **Contracted Peak Rate**

9. A Haulage Contract will specify the Contracted Peak Rate for each Delivery Point.

### **User Specific Delivery Facilities**

10. A Haulage Contract will describe the User Specific Delivery Facilities (if any) at each Delivery Point.

### **Title to Gas**

11. (1) AGN has title to and possession of all Gas in the AGN GDS.
- (2) The User indemnifies AGN against any claim brought against AGN in respect of any Gas delivered into the AGN GDS for transportation to a Delivery Point under a Haulage Contract:
- (a) claiming any interest in, or making any claim of any nature over, the Gas; or
  - (b) in respect of any unpaid charges, royalties or Taxes in respect of or in connection with the Gas or the production of the Gas incurred by any person (including the User and a Related Shipper) before or arising out of the delivery of the Gas to AGN.

### **Only User may take delivery, title and possession of Gas from AGN**

12. (1) All Gas delivered under a Haulage Contract by AGN at a Delivery Point is to be received by the User only.
- (2) To the extent that there has been a transfer of title to AGN at the Receipt Point, the delivery by AGN to a User at a Delivery Point is a transfer of title to and possession of the Gas from AGN to the User, effective at the Delivery Point at the time of the delivery, and is free and clear of all claims of any nature.
- (3) A User may agree with any other person to transfer to the person title to and possession of Gas delivered by AGN to the User at the Delivery Point at any time after the User receives title and possession from AGN.

### **User's entitlement to receive Gas is contractual**

13. The User's entitlement to receive Gas under a Haulage Contract is a contractual entitlement and not a proprietary entitlement.

### **Change in title not to trigger a GST event**

14. A transfer of Gas title is not intended to trigger a liability for GST.



## Gas quality

15. Gas entering and being transported through the AGN GDS must at all times comply with the Gas Quality Specifications.

## Gas balancing

16.
  - (1) For each day, the User must ensure that it procures the injection of an amount of Gas into each Sub-network that is equal to the User's good faith estimate, acting as a reasonable and prudent person, of the quantity of Gas that the User is likely to withdraw from the Sub-network on the day.
  - (2) AGN may do all reasonable things to maintain a balance between total energy content of Gas inputs to, and total energy content of Gas outputs from, a Sub-network.
17.
  - (1) The User must ensure that its, and its Related Shippers' or related swing service providers' (as applicable), conduct (including conduct within a particular day) does not:
    - (a) jeopardise Gas injections into the Sub-network in such a way that the Sub-network's system pressure is threatened; or
    - (b) impede AGN's ability to ensure that the system pressure in a Sub-network is maintained; or
    - (c) cause any User or other person to suffer loss or damage of a kind referred to in Part C, clause 17(3).
  - (2) Without limiting Part C, this clause 17, the User must ensure that its intra-day Gas flows do not:
    - (a) jeopardise the operation of the Sub-network; or
    - (b) cause the obligation to keep the Sub-network pressurised to fall disproportionately on other parties; or
    - (c) cause any User or other person to suffer loss or damage of a kind referred to in Part C, clause 17(3).
  - (3) If and for so long as any User ("**Non-Firm User**") is bound to comply with an approved System Pressure Protection Plan which, to any extent, uses any option other than Option 1 in Part A, clause 29(a), then the Non-Firm User and every other User (each, including the Non-Firm User, a "**Releasing User**") severally agree to release AGN from any liability (however arising including by negligence) to a Releasing User in respect of any loss or damage suffered by the Releasing User (including loss or damage in connection with any claim against the Releasing User by any Downstream Person of the Releasing User) arising directly or indirectly in connection with any curtailment, interruption, restriction or cessation of Gas deliveries into the GDS by or on behalf of the Non-Firm User (including by a Related Shipper) at a Receipt Point.

## **Unaccounted for Gas**

18. AGN will replace Gas which is lost while in its control or possession.

## **Commingling permitted**

19. AGN may:

- (a) commingle with other Gas in the AGN GDS any Gas delivered into the AGN GDS; and
- (b) deliver Gas out of the AGN GDS in a commingled state,

where and when it considers it necessary or convenient to do so.

## **Gas losses and Gas consumed by AGN**

20. Without limiting the generality of Part C, clause 19, AGN may commingle with other Gas in the AGN GDS any Gas purchased by AGN to replace:

- (a) Gas used by AGN in its operation of the AGN GDS; or
- (b) Gas lost from the AGN GDS or otherwise unaccounted for.

## **Emergencies**

21. (1) Without limiting any other power under the Code, this Access Arrangement, a Haulage Contract, or any Law, and despite any other provision of the Code, this Access Arrangement or a Haulage Contract, AGN may in an Emergency without notice to any other persons do all things which it considers necessary to prevent injury, death, loss or damage to persons or property and to render the situation safe, including without limitation entering onto any land or premises, stopping, disconnecting or reducing any Gas flow, curtailing any delivery of Gas, refusing to accept any Gas into the AGN GDS and giving any reasonable instructions to Users.
- (2) AGN must as soon as practicable after determining that an Emergency exists give written notice of the Emergency to all Users affected either by the Emergency or by AGN's actions in dealing with the Emergency, but a failure to give such written notice does not limit AGN's powers under Part C, clause 21(1).
- (3) AGN must, as soon as practicable after the Emergency has been dealt with, remove itself and any person, machinery, equipment or thing under its control, from any land or premises onto which it entered under Part C, clause 21(1), except to the extent that the person, machinery, equipment or thing is required to continue dealing with the Emergency or to prevent its recurrence or to comply with any obligation imposed on AGN by any Law.
- (4) A User must comply with any reasonable instruction (including without limitation any instruction concerning the management of the User's or its Gas customers' Gas demand and any instruction directed to preservation or restoration of Capacity of the AGN GDS) given to it by AGN during, and related to, an Emergency, and a User is liable to AGN for any injury, death, loss or damage suffered by reason of the User's failure to comply with such an instruction.

## **CURTAILMENT**

### **AGN to minimise curtailment**

22. AGN will in its operation and maintenance of the AGN GDS use reasonable endeavours to minimise the magnitude and duration of any curtailment of Gas deliveries to the User, except where the curtailment is attributable to the default of the User.

### **Curtailment**

23. (1) Subject to and in accordance with any other rights and remedies that may be available to it under any Law or Haulage Contract or otherwise, AGN may wholly or partly curtail the quantity or pressure of Gas deliveries to the User at a Delivery Point if:
- (a) one or more of the following User-related issues occur:
    - (i) the User exceeds its Contracted Peak Rate at the Delivery Point;
    - (ii) AGN considers as a reasonable and prudent person that it would, or might reasonably be expected to, be or cause a breach of any Law to deliver the Gas;
    - (iii) its Related Shippers are not entitled to have delivered, or fail to have delivered, an equivalent quantity of Gas at one or more Receipt Points on the same Sub-network as the Delivery Point;
    - (iv) the User is in default under the Haulage Contract;
    - (v) AGN has refused to accept Gas from the relevant Interconnected Pipeline due to the Gas not complying with the Gas Quality Specifications or any applicable Gas quality standards;
    - (vi) in AGN's opinion formed as a reasonable and prudent person, the User is in breach of the representation and warranty set out in Part A, clause 65(1);
    - (vii) the operator of an Interconnected Pipeline, in respect of a particular day:
      - A. has curtailed or interrupted, or has given notice that it intends to curtail or interrupt, the entitlement of a Related Shipper to receive Gas at a Receipt Point for the Sub-network in which the Delivery Point is located; or
      - B. refused, or has given written notice that it intends to refuse, to deliver Gas to a Related Shipper at a Receipt Point for the Sub-network in which the Delivery Point is located,and the Related Shipper is, or is likely to be, named in the User's allocation instruction under the Retail Market Rules for the day; and
    - (viii) a Physical Gate Point associated with a Receipt Point is not, or ceases to be, the subject of current Interconnection Arrangements;

- (b) one or more of the following AGN GDS issues occur:
    - (i) the level of Capacity falls or remains below that necessary to meet all Users' requirements;
    - (ii) an Emergency or AGN experiences an event of Force Majeure; and
    - (iii) AGN undertakes any Extension or Expansion under Part C, clause 24;
  - (c) one or more of the following safety issues occur:
    - (i) AGN considers as a reasonable and prudent person that it would be unsafe or may give rise to an unsafe situation (whether for the operation of the AGN GDS or in respect of anything downstream of the Delivery Point) to deliver Gas to the User at the Delivery Point; or
    - (ii) without limiting Part C, clause 23(1)(a)(ii) or clause 23(1)(c)(i), AGN considers as a reasonable and prudent person that there is or is a reasonable prospect of any non-compliance with the *Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999 (WA)* downstream of the Delivery Point by any person; and
  - (d) any other circumstance arises under which curtailment is permitted by the Haulage Contract.
- (2) If AGN can choose which Delivery Points it will curtail, or the order in which it can curtail Delivery Points, then such decisions will be made by AGN in its discretion having regard to the relevant circumstances. Where the conduct of one or more Users ("**Causing Users**") has made a curtailment necessary (including due to a User-related issue under Part C, clause 23(1)(a)), it may not always be practicable for AGN to only, or firstly, curtail the Causing Users, and AGN may instead curtail one or more other Users.
  - (3) AGN will where practicable use reasonable endeavours to provide the User with a reasonable advance warning of the magnitude, starting time and expected duration of an impending curtailment of Gas deliveries to the User and the reasons for the curtailment.
  - (4) A Haulage Contract is to specify the procedures by which AGN may effect a curtailment.

### **Curtailment for system reinforcement**

24. AGN may:

- (a) at any time by arrangement with the User; or
- (b) at any time at least 30 days after giving the User written notice,

wholly or partially curtail Gas deliveries to the User to the extent reasonably necessary to permit AGN to undertake any Extension or Expansion or any maintenance of the AGN GDS.

## **METERING**

### **Meter readings**

25. A Meter reading to calculate and record the quantity of Gas delivered to the User at a Delivery Point taken at any time in a Gas day under a Haulage Contract is deemed to be a Meter reading of the Delivery Point at the start of the Gas day.
26. Part C, clause 25 does not apply to a Meter which is read daily by means of Telemetry.

### **Provision of data**

27. AGN must provide metering data to the User.

### **Metering uncertainty**

28. User Specific Delivery Facilities and Standard Delivery Facilities for Reference Services will be designed, adjusted, operated and maintained so as to achieve the best accuracy of measurement which is, having regard to the nature and duration of the Haulage Contract and the magnitude of the User's Contracted Peak Rate, technically and economically feasible consistent with the standard of a prudent Service Provider acting efficiently, in accordance with accepted good industry practice, and to achieve the lowest sustainable cost of delivering Services.

### **Use of Gas quality data from other locations**

29. AGN may use Gas quality data from equipment at one or more other locations to estimate Gas quality at a Delivery Point in order to calculate energy flow rates for, and quantities of Gas delivered to, a Delivery Point, and in the absence of manifest error the rates and quantities so calculated bind both parties to a Haulage Contract.

## **INVOICING AND PAYMENT**

### **Invoicing**

30. (1) AGN will invoice the User on approximately the first and eleventh Business Days of each month with each invoice reflecting all Meter readings taken during the Invoicing Period.
- (2) Each invoice will show:
  - (a) all charges payable under a Haulage Contract for the Invoicing Period in respect of each Delivery Point;
  - (b) a summary of any metering information used to calculate the charges referred to in Part C, clause 30(2)(a);
  - (c) all other amounts (if any) which are payable in arrears or credited or debited for the Invoicing Period under a Haulage Contract;
  - (d) any outstanding amounts from previous Invoicing Periods and the interest payable on those amounts, and any outstanding credits carried forward under Part C, clause 30(3); and

- (e) such other information as the parties may agree.
- (3) If the sum of all credits shown on an invoice exceeds the sum of all amounts shown as payable on the invoice, then no amount is payable in respect of that Invoicing Period, and (subject to Part C, clause 30(4)) any residual credits are carried forward without interest to the next Invoicing Period, and so on.
- (4) Any credit or debit which remains or accrues to the User's account after the last invoice has been issued at the end of a Haulage Contract is to be dealt with by an appropriate payment from one party to the other.

### **Payment within 10 Business Days**

- 31. (1) Subject to clauses 31(3) and 31(4), the User must, within 10 Business Days after receiving an invoice, pay to AGN in the manner shown on the invoice the net amount shown on the invoice as payable under the Haulage Contract.
- (2) If the User fails to comply with Part C, clause 31(1) then, without prejudice to AGN's other rights, the User must pay interest on any unpaid amount, calculated daily at the Prescribed Interest Rate, from 10 Business Days after receiving the invoice until payment.
- (3) The User must reconcile the invoice on a line item basis.
- (4) Payment must be by electronic funds transfer and must match the sum of the reconciled (that is, non-disputed) line item charges in aggregate or the payment may be rejected.

### **Disputed invoices**

- 32. (1) If the User disputes any amount set out in an invoice as payable, then the User must under Part C, clause 31 pay the undisputed portion (if any) and one half of the disputed portion of the amount shown on the invoice, and must, within 10 Business Days after receiving the invoice, give written notice to AGN that it disputes the amount and provide in that written notice full details of the dispute.
- (2) Any amount withheld by the User under this clause but subsequently found to have been payable may, without prejudice to AGN's other rights, at AGN's option attract interest calculated daily at the Prescribed Interest Rate from 10 Business Days after receiving the invoice until payment.
- (3) Any amount paid by the User under this Part C, clause 32 but subsequently found not to have been payable may, without prejudice to the User's other rights, at the User's option attract interest calculated daily at the Prescribed Interest Rate from the date the User paid the amount until the date AGN repays the amount to the User.

### **Correction of payment errors**

- 33. (1) If a party detects any underpayment or overpayment by a party of any amount, the detecting party must give written notice to the other party of the underpayment or overpayment, and an adjusting payment is to be made by the appropriate party within 10 Business Days after receiving that written notice.

- (2) If a party fails to make an adjusting payment in accordance with Part C, clause 33(1) then, without prejudice to the other party's other rights, the party required to make the adjusting payment must pay interest on any unpaid amount, calculated daily at the Prescribed Interest Rate, from 10 Business Days after receiving the written notice until payment.

### **Pricing if agreement continues beyond end of Second Access Arrangement Period**

34. (1) This clause applies to determine the prices payable under a Haulage Contract if the duration of the Haulage Contract continues beyond the end of the Second Access Arrangement Period.
- (2) If:
- (a) an Access Arrangement ("**Revised Access Arrangement**") is approved in respect of the Third Access Arrangement Period, containing a Reference Service ("**Equivalent Reference Service**") which is materially the same as the Reference Service contained in the Haulage Contract ("**Contracted Reference Service**") - then for so much of the remaining duration of the Haulage Contract which falls within the Third Access Arrangement Period, the User's obligation under the Haulage Contract to pay the Reference Tariff for the Contracted Reference Service is to be read as an obligation to pay the Reference Tariff (including, if the new Reference Service contains a demand component, an Overrun Charge for an Overrun Service on terms equivalent to those contained in Part C, Schedule 1) approved and adjusted from time to time under the Revised Access Arrangement in respect of the Equivalent Reference Service;
  - (b) a Revised Access Arrangement is approved in respect of the Third Access Arrangement Period but does not contain an Equivalent Reference Service - then for so much of the remaining duration of the Haulage Contract which falls within the Third Access Arrangement Period, the User's obligation under the Haulage Contract to pay the Reference Tariff for the Contracted Reference Service is to be read as an obligation to pay the Reference Tariff (including, if the new Reference Service contains a demand component, an Overrun Charge for an Overrun Service on terms equivalent to those contained in Part C, Schedule 1) as determined for the last Year of the Second Access Arrangement Period, increased annually at "**CPI-x**" with the value of "**x**" being that specified (if applicable) in the Revised Access Arrangement for the relevant Year of the Third Access Arrangement Period or (otherwise) specified in Part B, clause 6 of this Access Arrangement for the last Year of the Second Access Arrangement Period; or
  - (c) for any reason (including the repeal or amendment of the Act) there is no Third Access Arrangement Period or no Revised Access Arrangement is approved - then for the remaining duration of the Haulage Contract after the end of the Second Access Arrangement Period the User's obligation under the Haulage Contract to pay the Reference Tariff for the Contracted Reference Service is to be read as an obligation to pay the Reference Tariff (including, if the new Reference Service contains a demand component, an Overrun Charge for an Overrun Service on terms equivalent to those contained in Part C, Schedule 1) as determined for the last Year of the Second Access Arrangement Period, increased annually at "**CPI-x**" with the

value of “x” being that specified in Part B, clause 7 of this Access Arrangement for the last Year of the Second Access Arrangement Period.

- (3) This Part C, clause 34 applies, with appropriate modifications, in respect of the end of the Third Access Arrangement Period and the end of each successive Access Arrangement period thereafter for the duration of the Haulage Contract.
- (4) For the purposes of Part C, clause 34(2), either party may give written notice to the other party contending that the Revised Access Arrangement does not contain an Equivalent Reference Service. If the party which receives that notice does not agree in writing with that contention within 20 Business Days of receiving the contention, a dispute exists for the purposes of the Haulage Contract.
- (5) To avoid disruption to contracted Tariffs, AGN will use reasonable endeavours to ensure that a Revised Access Arrangement contains a Service (with an associated Tariff) which is materially the same as the Contracted Reference Service, but nothing in this clause limits AGN’s right to create new Reference Services or to develop new Reference Tariff policies and structures.

### **Guaranteed Service Level payments**

35. (1) If AGN is required to pay a Small Use Customer in accordance with its Guaranteed Service Level (“GSL”) scheme for a failure by AGN to satisfy a GSL, AGN may notify the User that it wishes to make the payment of the required amount through the User, in which case:
  - (a) AGN must notify the User of the amount owing to the Small Use Customer;
  - (b) the User must pay that amount to the Small Use Customer or credit that amount to the Small Use Customer as soon as practicable, in accordance with the User’s Small Use Customer invoicing procedures; and
  - (c) subject to Part C, clause 35(3), AGN must credit the amount actually paid to the Small Use Customer to the next invoice that it issues to the User under the Haulage Contract.
- (2) AGN is not required to make a payment to a Small Use Customer, the User or any other person as a result of failing to satisfy a GSL where AGN’s failure to satisfy the GSL was caused by an event or circumstance (including any delay by Dial Before You Dig WA Ltd ABN 92 095 617 066 or any other person) that was not within AGN’s control and which AGN, acting as a reasonable and prudent person, was not able to prevent or overcome.
- (3) Without limiting Part C, clause 35(2), if:
  - (a) the User receives notification of a matter and the User unreasonably delays in passing on that notification to AGN; and
  - (b) but for clause 35(2), as a result of that delay, AGN would be required to make a payment to a Small Use Customer as a result of failing to satisfy a GSL, then despite clause 35(2), AGN may in its discretion choose to make the payment to the Small Use Customer and the User must either:
    - (i) reimburse AGN for the payment made to the Small Use Customer; or



- (ii) if requested by AGN, on its behalf, pay the appropriate payment to the Small Use Customer or credit that amount to the Small Use Customer's next bill, and AGN is not required to reimburse or credit the User for that amount.
- (4) A User must notify AGN where it is aware that AGN is required to make a GSL payment to a Small Use Customer.
- (5) AGN must notify the User where it makes a GSL payment directly to a Small Use Customer.

## **INFORMATION EXCHANGE**

- 36. (1) Information provided to AGN, or provided by AGN to other parties, under a Haulage Contract must be provided in accordance with the format and procedure specified in the Retail Market Scheme for information to be provided under the Retail Market Rules (to the extent that it is applicable), including, without limiting the foregoing, by wherever possible providing information in electronic form, which means a structured electronic file that is capable of being downloaded and is in a format fit for purpose.
- (2) Where information is not exchanged in accordance with Part C, clause 36(1), AGN may recover from the person providing or requesting the information the reasonable additional costs involved in dealing with the information.

## **FORCE MAJEURE**

- 37. (1) Subject to Part C, clause 37(2), a party is excused from performance of, and is not liable for any failure in carrying out, any of its obligations under a Haulage Contract if it is prevented from doing so by Force Majeure.
- (2) Subject to Part C, clause 37(3), the occurrence of Force Majeure does not relieve the User of the obligation to pay any charge or charges which are specified by the Code, this Access Arrangement or a Haulage Contract to be payable despite the operation on the User of Force Majeure.
- (3) To the extent that AGN fails to provide a Service under a Haulage Contract and claims the benefit of Force Majeure in respect of that failure, the User is excused from the obligation to pay the Reference Tariffs (including any standing charge or demand charge).
- (4) The inability to pay money, however caused, does not constitute Force Majeure.
- (5) If a party claims the benefit of Force Majeure, it must:
  - (a) promptly give written notice to the other party of the occurrence and circumstances in which the claim arises;
  - (b) use its best endeavours to remedy the consequences without delay; and
  - (c) resume full performance of its obligations under the Haulage Contract as soon as reasonably practicable.

- (6) Settlement of strikes, lock outs, stoppages and restraints of labour or other industrial disturbances are entirely within the discretion of the party claiming the benefit of this Part C, clause 37 and the party may refrain from settling industrial disturbances or may settle them on any terms it considers to be in its best interests.
- (7) If at any time during the duration of a Haulage Contract a party is validly claiming, and has for a consecutive period of at least one Year validly claimed, the benefit under this Part C, clause 37 of Force Majeure in respect of a failure by the party to substantially comply with its obligations under the Haulage Contract then either party may in its sole discretion by written notice to the other party terminate the Haulage Contract.

## **DEFAULT AND TERMINATION**

### **Default by a party**

38. A party is in default under a Haulage Contract in any one or more of the following circumstances:
- (a) if the party makes default in the due and punctual payment, at the time and in the manner prescribed for payment by the Haulage Contract, of any amount payable under the Haulage Contract;
  - (b) if the party makes default in the due and punctual performance or observance of any of the other covenants, agreements, conditions or other obligations contained, or implied by the operation of Law, in the Haulage Contract;
  - (c) if a receiver, receiver and manager, administrator, or controller is appointed over the party or if a petition or application is presented (and not withdrawn within 10 Business Days), or an order is made or a resolution is passed for the winding up or dissolution without winding up of the party otherwise than for the purpose of reconstruction or amalgamation under a scheme to which the other party has given consent;
  - (d) if there is any adverse change in the business or financial condition of the party or an event occurs which could, in the reasonable opinion of the other party, materially affect the party's ability to meet its obligations to the other party under the Haulage Contract;
  - (e) if the party is found to be materially in breach of any warranty given to the other party whether in the Haulage Contract, the Application which gave rise to the Haulage Contract, or any instrument relating to the Haulage Contract or that Application, or if any statement or representation made by the party in any instrument described above, is found to be false or misleading in any material particular;
  - (f) if the party is in default under any other Haulage Contract between the parties; or
  - (g) in any other circumstance specified in the Haulage Contract.

### **Restructuring or sale of AGN not a default**

39. (1) The restructuring or sale of AGN is not a default for the purposes of Part C, clause 38 if it is conducted as part of, in preparation for or otherwise to facilitate:
- (a) a restructure of all or part of the AGN corporate group; or
  - (b) the establishment of ringfencing procedures specified in or under section 4 of the Code.
- (2) The term “**restructure**” in Part C, clause 39(1) includes the division of AGN into two or more separate legal entities, and the assignment, sale or other transfer of all or part of AGN’s business or assets to one or more subsidiaries or related corporations of AGN.

### **Notice of default**

40. If a party is in default under a Haulage Contract, then the other party may give written notice to the defaulting party specifying the default.

### **When a party may exercise remedy**

41. A party cannot terminate a Haulage Contract under Part C, clause 43:
- (a) for a default under Part C, clause 38(a) - unless it has given a written notice under Part C, clause 40 of that default, and the default has not been remedied within 5 Business Days after the other party receives that written notice; and
  - (b) for any other default under Part C, clause 38 - unless it has given a written notice under Part C, clause 40 of that default, and the default has not been remedied within 15 Business Days after the other party receives that written notice.

### **Curtailment for the User’s default**

42. If the User is in default under a Haulage Contract, then AGN may in its sole discretion wholly or partly curtail Gas deliveries to the User at a Delivery Point or reduce or suspend any other Service to the User until such time as all defaults have been remedied.

### **Termination**

43. Subject to Part C, clause 41, if a party is in default under a Haulage Contract, then the other party may in its sole discretion by written notice to the defaulting party terminate the Haulage Contract.

### **Saving of other remedies**

44. A party’s rights under Part C, clause 43 and AGN’s rights under Part C, clause 42 are in addition to any other rights and remedies available to the party, whether under any Law, the Code, this Access Arrangement, a Haulage Contract or in contract, tort, equity or otherwise.

### **Effect of termination**

45. (1) Termination of a Haulage Contract:

- (a) does not prejudice the rights or remedies accrued to either party at the date of termination; and
  - (b) subject to Part C, clause 45(2), relieves each party of all further obligations under the Haulage Contract to the other parties.
- (2) Termination of a Haulage Contract by a party does not relieve the other party of its obligations:
- (a) to pay all amounts outstanding at the time of termination; and
  - (b) to pay all amounts which would have become payable under the Haulage Contract but for its termination.

**Novation of contracts do not trigger default provisions**

46. (1) A Haulage Contract may be novated with AGN’s prior written consent, and such consent must not be unreasonably withheld. AGN’s consent will not be unreasonably withheld if it is withheld on the ground that if the novation occurred, in AGN’s opinion formed acting as a reasonable and prudent person, there would be an increase in the commercial or technical risk to AGN.
- (2) A novation of a Haulage Contract is not an event of default of the Haulage Contract for the purposes of Part C, clause 38 and does not give rise to the right to terminate the Haulage Contract if it is conducted in accordance with Part C, clause 46(1).
- (3) AGN may charge a reasonable fee, in its absolute discretion, to cover AGN’s costs associated with assessing whether to grant its consent under Part C, clause 46(1).

**No assignment except as provided for in Trading Policy**

47. No party may assign any right, interest or obligation under a Haulage Contract except in accordance with the Trading Policy.

**LIABILITY OF PARTIES**

**Liability for negligence and default limited to Direct Damage**

48. (1) If a party:
- (a) is negligent in any matter relating to or arising out of a Haulage Contract; or
  - (b) defaults in respect of its obligations to the other party under a Haulage Contract, (subject to Part C, clause 48(2)),

then the party is liable to the other party (including its directors, servants, consultants, independent contractors and agents) for, and indemnifies the other party (including its directors, servants, consultants, independent contractors and agents) against, any Direct Damage to the other party caused by or arising out of the negligence or default.

- (2) AGN is not liable to the User for Direct Damage or Indirect Damage caused by or arising out of any curtailment of Gas deliveries to the User, or any non-delivery of

Gas into the AGN GDS, where that curtailment or non-delivery is undertaken under the Code, this Access Arrangement or a Haulage Contract.

### **Liability for fraud**

49. A party who is fraudulent in respect of its obligations to the other party under a Haulage Contract is liable to the other party for, and indemnifies the other party against, any loss or damage caused by or arising out of the fraud, in respect of which the exclusion of Indirect Damage in Part C, clause 50 does not apply.

### **No liability for Indirect Damage**

50. Neither party is in any circumstances to be liable to the other party for any Indirect Damage, whether arising under a Law, or in contract, tort or equity, or otherwise, provided that where this Part C states that "[t]he exclusion of Indirect Damage in Part C, clause 50 does not apply", or words to similar effect, in relation to a matter then:
- (1) the exclusion of Indirect Damage in Part C, clause 50 does not apply in relation to that matter; and
  - (2) the parties' liability in relation to the matter is to be determined by Law, and to avoid any doubt the definition of Indirect Damage in this Part C is to be disregarded for the purposes of that determination.

### **Extended operation of clause 50**

51. To the extent that AGN is not liable to the User as a result of Part C, clauses 17(3) or 50, then if a **"Downstream Person"** of the User makes a claim against AGN in respect of any matter connected with or arising out of a curtailment, interruption, restriction or cessation of Gas flow, then the User must indemnify and keep indemnified AGN against any liability to the Downstream Person which would exceed AGN's liability to the User if the claim were brought by the User rather than the Downstream Person.

### **No liability arising out of any approval by AGN**

52. Without limiting the generality of Part C, clause 50 of this Part C, AGN is not, except as provided in Part C, clauses 48 and 49, in any circumstances liable to the User for any injury, death, loss or damage (including Indirect Damage), caused by or arising out of any approval by AGN of any design, location or construction of, or proposed operating or maintenance procedures in relation to, any equipment, apparatus, machine, component, installation, cable, pipe or facility connected to, or adjacent to and associated with, the AGN GDS.

### **Saving of contractual payments**

53. Nothing in Part C, clauses 37 - 54 limits the liability of either party to make all payments under a Haulage Contract.

### **Each limitation separate**

54. Each limitation or exclusion created by Part C, clauses 37 - 54 and each protection given to AGN or the User or to their respective directors, servants, consultants, independent contractors and agents by Part C, clauses 37 - 54 is a separate limitation, exclusion or protection applying and surviving even if for any reason any provision of Part C, clauses 37 - 54 is held inapplicable in any circumstances.

## **DISPUTE RESOLUTION**

### **Parties to attempt to resolve**

55. (1) If any dispute arises between the parties, either party may give written notice to the other party specifying the details of the dispute.
- (2) If the dispute remains unresolved for a period of 30 days after the date on which the written notice was given under Part C, clause 55(1), authorised officers of the parties are to meet within 5 Business Days after the end of that 30 day period and use their best endeavours to resolve the dispute.

### **Disposition of unresolved disputes**

56. If the dispute remains unresolved for a further 10 Business Days (ie a total of 15 Business Days after the end of the 30 day period referred to in Part C, subclause 55(2)), then:
- (a) if the dispute is of a kind that the Arbitrator may hear and determine, then the dispute is to be heard in accordance with section 6 of the Code, or in such other manner as is prescribed by regulation; or
- (b) if the dispute is not of a kind that the Arbitrator may hear and determine, then the dispute must be referred to arbitration under Part C, clause 57.

### **Arbitration**

57. (1) Where under Part C, clause 56(b) the parties must refer a dispute to arbitration, either party may give written notice to the other party specifying with reasonable particularity the matter in dispute, and the dispute is by that written notice by force of this clause referred to arbitration of a single arbitrator under this Part C, clause 57.
- (2) If the parties cannot agree on a person to be arbitrator, either party may request the President for the time being of the Law Society of Western Australia to nominate a person to be arbitrator.
- (3) In any arbitration:
- (a) the proceedings are to be conducted generally under the *Commercial Arbitration Act 1985* (WA) as modified by the Haulage Contract;
- (b) a party may be represented by a legal practitioner; and
- (c) the proceedings are to be conducted in Perth.
- (4) In conducting proceedings, the arbitrator is not to be bound by the rules of evidence.
- (5) The arbitrator must not order any of the parties to take any steps to achieve a settlement of the dispute being arbitrated.
- (6) A party to the arbitration proceedings may:

- (a) apply to a Judge (or acting Judge or auxiliary Judge) of the Supreme Court of Western Australia for the determination of any question of law that may arise in the course of the arbitration; or
  - (b) appeal to a Judge (or acting Judge or auxiliary Judge) of the Supreme Court of Western Australia on any question of law arising out of an award by an arbitrator.
- (7) The arbitrator may:
- (a) of his or her own motion, but only to the extent reasonably necessary to facilitate the determination of a dispute presently before him or her, retain the services of any person suitably qualified in any field of expertise to advise the arbitrator in relation to matters within that field of expertise;
  - (b) award such interest as he or she considers appropriate;
  - (c) if a party has overpaid another, whether under a mistake of law or fact, order repayment of the sum overpaid together with interest; and
  - (d) rectify any term of the Haulage Contract, so as to conform to the true intention of the parties, but any rectification must comply with the Code, this Access Arrangement and the principles of the general law applicable to the rectification of contracts.
- (8) If the arbitrator retains a person under Part C, clause 57(7)(a):
- (a) that person may sit with the arbitrator during the hearing of all evidence relating to the person's field of expertise and may take part in the proceedings;
  - (b) the arbitrator, in making an award, may adopt the opinion of that person, after first disclosing the opinion to the parties and receiving the parties' submissions thereon;
  - (c) the costs and expenses of that person must be reasonable and are to be in the arbitrator's discretion and, without limiting that discretion, may be dealt with as part of the costs of the proceedings; and
  - (d) the duration of retainer of that person must end no later than the day on which the arbitrator publishes his or her final award in the proceedings in question.

### **Dispute not a default**

58. For so long as a fact or matter is the subject of a dispute which is being dealt with in good faith under:
- (a) Part C, clauses 55 - 57;
  - (b) the Code; or
  - (c) the Retail Market Scheme,

no party is in default for the purposes of Part C, clause 38 by virtue of the fact or matter.

### **Disputes under Retail Market Scheme**

59. Any dispute arising under the Retail Market Scheme must be dealt with under the Retail Market Scheme dispute procedures.

## **MISCELLANEOUS CONTRACTUAL MATTERS**

### **Representations and warranties**

60. (1) A Haulage Contract is to specify the representations and warranties made by the User to AGN in making the Application which gave rise to the Haulage Contract, and in entering into the Haulage Contract, including that the User has in full force and effect all authorisations, licences, permits, consents, certificates, authorities and approvals necessary under all Laws to receive and supply Gas at Receipt Points and Delivery Points and to otherwise conduct operations in connection with the Haulage Contract.
- (2) A Haulage Contract is to specify the representations and warranties made by AGN to the User in entering into the Haulage Contract.
- (3) A Haulage Contract may provide for the representations and warranties referred to in Part C, clauses 60(1) and 60(2) to be repeated anew on each day of the Haulage Contract.
- (4) The representation and warranty set out in Part A, clause 65 is a term of a Haulage Contract.

### **Insurances**

61. (1) A Haulage Contract will require the User to procure and maintain liability insurance with insurers for such amount as AGN may require and the User must arrange for endorsement of the interests of AGN on the policy.
- (2) AGN may require the User to provide evidence of the matters in Part C, clause 61(1).

### **Making good damage caused in the course of installing Delivery Facilities**

62. (1) Except as provided in this clause, AGN will not be liable to pay compensation for or in respect of, or make good any damage done to the land or premises of the User or the User's Gas customer by AGN, its officers, servants, or agents in the reasonable course of installing the User Specific Delivery Facilities or the Standard Delivery Facilities whether that damage is of a temporary character or a permanent character.
- (2) If, in the course of installing User Specific Delivery Facilities or Standard Delivery Facilities, AGN opens or breaks up any sealed or paved surface, or damages or disturbs any lawn, landscaping or other improvement, then AGN will if necessary fill in any ground to restore it to approximately its previous level.
- (3) AGN will be liable to reinstate or make good, or pay compensation in respect of, any sealed or paved surface opened or broken up, or any lawn, landscaping or other improvement damaged or disturbed, in the course of installing the User Specific



Delivery Facilities or the Standard Delivery Facilities to the land or premises of the User or the User's Gas customer, if and to the extent that AGN fails to act reasonably having regard to the safe and efficient operation of the AGN GDS and prudent Pipeline practices generally accepted in the natural Gas haulage industry.

- (4) If the User is required to compensate the User's Gas customer for any damage done in circumstances where AGN would be liable in respect of such damage under Part C, clause 62(3), then AGN will indemnify the User to the extent of the lesser of:
  - (a) the value of the compensation the User's Gas customer receives from the User; and
  - (b) the value of compensation which would be payable by AGN to the User under Part C, clause 62(3), if the damage had been suffered wholly by the User instead of the User's Gas customer.
- (5) Except to the extent that AGN is liable to the User or the User's Gas customer under Part C, clause 62(3), the User will indemnify AGN against all claims brought by the User or the User's Gas customer in respect of any damage done to the land or premises of the User or the User's Gas customer by AGN, its officers, servants, or agents in the reasonable course of installing the User Specific Delivery Facilities or the Standard Delivery Facilities whether that damage is of a temporary character or a permanent character.
- (6) An obligation to indemnify which arises under Part C, clauses 62(4) or 62(5) will be discharged by payment in full by the indemnifying party to the indemnified party (or to such person as the indemnified party nominates) within 30 days after the date the indemnified party provides written notice to the indemnifying party setting out adequately detailed grounds for, and specifying the full quantum of, the claim for indemnification.

## **NOTICES AND ADDRESSES FOR NOTICES**

63. Notices provided to AGN, or provided by AGN to other parties, under a Haulage Contract must be provided in accordance with the format and procedure specified in the Retail Market Scheme for notices to be provided under the Retail Market Rules (to the extent that it is applicable).
64. Where notices are not provided in accordance with Part C, clause 63, AGN may recover from the person providing the notice the reasonable additional costs involved in dealing with the information.
65. A Haulage Contract will specify the address for each party for all notices to be sent under the Haulage Contract.

## **CONFIDENTIALITY**

66. (1) A party must not disclose Confidential Information except:
  - (a) with the prior written consent of the other party;
  - (b) if the information is obtainable with reasonable diligence from sources other than the parties, or which enters the public domain other than by breach of this Part C, clause 66(1);

- (c) when required under any Law;
  - (d) to any consultant or adviser to the party or, subject to section 4 of the Code, to any 'Associate' as defined in section 10.8 of the Code;
  - (e) when, in the reasonable opinion of AGN, the information is required to be disclosed in the course of any restructuring or sale of AGN contemplated in Part C, clause 39; or
  - (f) when, in the reasonable opinion of the disclosing party, the information is required to be disclosed to any present or prospective lender to or financier of a party.
- (2) In the case of a permitted disclosure under Part C, clause 66(1), the disclosing party must use reasonable endeavours to make disclosure on terms which preserve as far as practicable the confidentiality of the information.
- (3) In the case of a disclosure to which Part C, clause 66(1)(c) applies, the disclosing party must use reasonable endeavours to:
- (a) give advance notice to the other party of the impending disclosure;
  - (b) oppose or restrict such disclosure, or make such disclosure on terms which preserve as far as practicable the confidentiality of the information; and
  - (c) take such steps as will permit the other party to have a reasonable opportunity to oppose or restrict such disclosure by lawful means.
- (4) The definition of 'Confidential Information' in section 10.8 of the Code does not apply to this clause.

## **SCHEDULE 1: TERMS AND CONDITIONS OF REFERENCE SERVICE A1**

### **Duration of Haulage Contract**

1. A Haulage Contract for Reference Service A1 will be of a duration of one Year or more.

### **Delivery Facilities**

2. (1) AGN will provide User Specific Delivery Facilities to measure the amount of Gas taken by a User at each Delivery Point specified in a Haulage Contract which will include, as a minimum, a Meter which:
  - (a) is read by means of Telemetry; and
  - (b) aggregates the flow of Gas across time and records that flow for each Gas Hour.
- (2) AGN will design and construct all User Specific Delivery Facilities, and will have regard to the User's reasonable requirements in doing so.
- (3) AGN will own, operate and maintain, and may from time to time modify, any User Specific Delivery Facilities.
- (4) The User must use its reasonable endeavours to cooperate with AGN in installing, operating, maintaining, and modifying any User Specific Delivery Facilities including, without limitation, providing or procuring access to all land to which access is required for those purposes or any of them.

### **Accuracy verification**

3. (1) AGN will verify the accuracy of the Meter forming part of any User Specific Delivery Facilities with the frequency required by good industry practice and applicable Laws.
- (2) A Haulage Contract may detail the procedures by which, and terms and conditions on which, the verification set out under clause 3(1) of this Schedule is to be carried out.

### **Gas pressure**

4. (1) A Haulage Contract is to set out the nominal pressure at which AGN is to deliver Gas to the User at each Delivery Point.
- (2) The pressure set out under clause 4(1) of this Schedule will not exceed that pressure adopted by AGN from time to time as the minimum nominal operating pressure for the main to which the Delivery Point is connected.

### **Meter reading**

5. AGN will be responsible for calculating and recording the quantity of Gas delivered to the User at the Delivery Point by Telemetry reading. AGN will endeavour to take such Telemetry readings every day.

## Prices

6. Reference Service A1 is made available at Reference Tariff A1, as adjusted from time to time during the term of a Haulage Contract under this Access Arrangement, and if the duration of the Haulage Contract continues beyond the end of the Second Access Arrangement Period, under Part C, clause 34.

## Exceeding Contracted Peak Rate

7. If a User's Instantaneous Flow Rate exceeds its Contracted Peak Rate for a Delivery Point, then the User has acquired "**Overrun Service**" and must pay AGN an "**Overrun Charge**" calculated as follows:

$$OC = OSR \times Q \text{ Overrun}$$

where:

OC = the Overrun Charge payable by the User to AGN for the Delivery Point for the month;

OSR = the "**Overrun Service Rate**" which is calculated by multiplying the average Reference Tariff applicable under a Haulage Contract for the month by 2; and

Q Overrun = the total for the month of each gigajoule or part of a gigajoule of Gas in excess of the User's Contracted Peak Rate that was delivered to the User at the Delivery Point during a period of time in which the User's Instantaneous Flow Rate exceeded its Contracted Peak Rate.

8. Despite any provision to the contrary, a requirement under clause 7 of this Schedule to pay the Overrun Service Rate in respect of a gigajoule or part of a gigajoule does not relieve the User of the obligation to pay the Reference Tariff in respect of that gigajoule or part gigajoule.

9. If a User's Instantaneous Flow Rate for a Delivery Point exceeds its Contracted Peak Rate for a Delivery Point on:

- (1) three or more days during any 30 day period; or
- (2) eight or more days during a Year,

then AGN must, as soon as reasonably practicable, notify the User of this fact and of whether:

- (3) an increase in the User's Contracted Peak Rate in accordance with clause 9(3)(a) of this Schedule would not breach AGN's Queuing Policy, in which case the User must within 10 Business Days elect between:
  - (a) agreeing to an increase in its Contracted Peak Rate, with effect from the last of the days referred to in clause 9(1) or 9(2) of this Schedule, as applicable, so that it is equal to the highest Instantaneous Flow Rate at the Delivery Point during the days referred to in clause 9(1) or 9(2) of this Schedule, as applicable; or

- (b) agreeing to AGN installing, and to the User paying the costs of AGN acquiring and installing, a flow control device at the Delivery Point which will regulate Gas deliveries to the User to no more than the Contracted Peak Rate,

and if the User does not so elect within 10 Business Days, AGN may elect; or

- (4) an increase in the User's Contracted Peak Rate in accordance with clause 9(3)(a) of this Schedule would breach AGN's Queuing Policy, in which case AGN may install, and the User must pay the costs of AGN acquiring and installing, a flow control device at the Delivery Point which will regulate Gas deliveries to the User to no more than the Contracted Peak Rate.

### **Other terms and conditions**

- 10. In addition to the terms and conditions in this Schedule, the terms and conditions in Part C, clauses 1 - 66 apply to Users of Reference Service A1.

### **Ancillary Services**

- 11. AGN will provide Ancillary Services as set out in Part A, clause 17 at Tariffs determined under Part C, Schedule 5.

## **SCHEDULE 2: TERMS AND CONDITIONS OF REFERENCE SERVICE A2**

### **Duration of Haulage Contract**

1. A Haulage Contract for Reference Service A2 will be of a duration of one Year or more.

### **Delivery Facilities**

2.
  - (1) AGN will provide User Specific Delivery Facilities to measure the amount of Gas taken by a User at each Delivery Point specified in a Haulage Contract.
  - (2) AGN will design and construct all User Specific Delivery Facilities, and will have regard to the User's reasonable requirements in doing so.
  - (3) The User Specific Delivery Facilities at that Delivery Point will include, as a minimum, a Meter which:
    - (a) is read by means of Telemetry; and
    - (b) aggregates the flow of Gas across time and records that flow for each Gas Hour.
  - (4) AGN will own, operate and maintain, and may from time to time modify, any User Specific Delivery Facilities.
  - (5) The User must use its reasonable endeavours to cooperate with AGN in installing, operating, maintaining, and modifying any User Specific Delivery Facilities including, without limitation, providing or procuring access to all land to which access is required for those purposes or any of them.

### **Accuracy verification**

3.
  - (1) AGN will verify the accuracy of the Meter forming part of any User Specific Delivery Facilities with the frequency required by good industry practice and applicable Laws.
  - (2) A Haulage Contract may detail the procedures by which, and terms and conditions on which, the verification set out under clause 3(1) of this Schedule is to be carried out.

### **Gas pressure**

4.
  - (1) A Haulage Contract is to set out the nominal pressure at which AGN is to deliver Gas to the User at each Delivery Point.
  - (2) The pressure set out under clause 4(1) of this Schedule will not exceed that pressure adopted by AGN from time to time as the minimum nominal operating pressure for the main to which the Delivery Point is connected.

## **Meter reading**

5. AGN will be responsible for calculating and recording the quantity of Gas delivered to the User at the Delivery Point by Telemetry reading. AGN will endeavour to take such Telemetry readings every day.

## **Prices**

6. Reference Service A2 is made available at Reference Tariff A2, as adjusted from time to time during the term of a Haulage Contract under this Access Arrangement, and if the duration of the Haulage Contract continues beyond the end of the Second Access Arrangement Period, under Part C, clause 34.
7. The User specific charge is to be pro-rated under Part B, Schedule 2 clause (4).
8. The usage charge is to be pro-rated under Part B, Schedule 2 clause (4).

## **Exceeding Contracted Peak Rate**

9. If a User's Instantaneous Flow Rate for a Delivery Point exceeds its Contracted Peak Rate for a Delivery Point on:

- (1) three or more days during any 30 day period; or
- (2) eight or more days during a Year,

then AGN must, as soon as reasonably practicable, notify the User of this fact and of whether:

- (3) an increase in the User's Contracted Peak Rate in accordance with clause 9(3)(a) of this Schedule would not breach AGN's Queuing Policy, in which case the User must within 10 Business Days elect between:
  - (a) agreeing to an increase in its Contracted Peak Rate, with effect from the last of the days referred to in clause 9(1) or 9(2) of this Schedule, as applicable, so that it is equal to the highest Instantaneous Flow Rate at the Delivery Point during the days referred to in clause 9(1) or 9(2) of this Schedule, as applicable; or
  - (b) agreeing to AGN installing, and to the User paying the costs of AGN acquiring and installing, a flow control device at the Delivery Point which will regulate Gas deliveries to the User to no more than the Contracted Peak Rate,

and if the User does not so elect within 10 Business Days, AGN may elect; or

- (4) an increase in the User's Contracted Peak Rate in accordance with clause 9(3)(a) of this Schedule would breach AGN's Queuing Policy, in which case AGN may install, and the User must pay the costs of AGN acquiring and installing, a flow control device at the Delivery Point which will regulate Gas deliveries to the User to no more than the Contracted Peak Rate.

**Other terms and conditions**

10. In addition to the terms and conditions in this Schedule, the terms and conditions in Part C, clauses 1 - 66 apply to Users of Reference Service A2.

**Ancillary Services**

11. AGN will provide Ancillary Services as set out in Part A, clause 17 at Tariffs determined under Schedule 5 to Part C.



## **SCHEDULE 3: TERMS AND CONDITIONS OF REFERENCE SERVICE B1**

### **Duration of Haulage Contract**

1. A Haulage Contract for Reference Service B1 will be of a duration of one Year or more.

### **Delivery Facilities**

2. (1) AGN will provide User Specific Delivery Facilities to measure the amount of Gas taken by a User at each Delivery Point specified in a Haulage Contract.  
(2) AGN will design and construct all User Specific Delivery Facilities, and will have regard to the User's reasonable requirements in doing so.  
(3) The User Specific Delivery Facilities at the Delivery Point will include a Meter which aggregates the flow of Gas between readings.  
(4) AGN will own, operate and maintain, and may from time to time modify, any User Specific Delivery Facilities.  
(5) The User must use its reasonable endeavours to cooperate with AGN in installing, operating, maintaining, and modifying any User Specific Delivery Facilities including, without limitation, providing or procuring access to all land to which access is required for those purposes or any of them.

### **Accuracy verification**

3. (1) AGN will verify the accuracy of the Meter forming part of any User Specific Delivery Facilities with the frequency required by good industry practice and applicable Laws.  
(2) A Haulage Contract may detail the procedures by which, and terms and conditions on which, the verification set out under clause 3(1) of this Schedule is to be carried out.

### **Gas pressure**

4. (1) A Haulage Contract is to set out the nominal pressure at which AGN is to deliver Gas to the User at each Delivery Point.  
(2) The pressure set out under clause 4(1) of this Schedule will not exceed that pressure adopted by AGN from time to time as the minimum nominal operating pressure for the main to which the Delivery Point is connected.

### **Meter reading**

5. AGN will be responsible for calculating and recording the quantity of Gas delivered to the User at the Delivery Point approximately 12 times each Year at intervals of approximately 35 days.

## **Prices**

6. Reference Service B1 is made available at Reference Tariff B1, as adjusted from time to time during the term of a Haulage Contract under this Access Arrangement, and if the duration of the Haulage Contract continues beyond the end of the Second Access Arrangement Period, under Part C, clause 34.
7. The User specific charge is to be pro-rated under Part B, Schedule 3 clause (4).
8. The usage charge is to be pro-rated under Part B, Schedule 3 clause (4).

## **Other terms and conditions**

9. In addition to the terms and conditions in this Schedule, the terms and conditions in Part C, clauses 1 - 66 apply to Users of Reference Service B1.

## **Ancillary Services**

10. AGN will provide Ancillary Services as set out in Part A, clause 17 at Tariffs determined under Schedule 5 to Part C.

## **SCHEDULE 4: TERMS AND CONDITIONS OF REFERENCE SERVICE B2 AND REFERENCE SERVICE B3**

### **Duration of Haulage Contract**

1. A Haulage Contract for Reference Service B2 or Reference Service B3 has a duration of one Year or more.

### **Delivery Facilities**

2. (1) AGN will provide Standard Delivery Facilities to measure the amount of Gas taken by a User at each Delivery Point specified in a Haulage Contract which aggregates the flow of Gas between readings.  
(2) AGN will own, operate and maintain, and may from time to time modify, any Standard Delivery Facilities.  
(3) The User must use its reasonable endeavours to cooperate with AGN in installing, operating, maintaining, and modifying any Standard Delivery Facilities including, without limitation, providing or procuring access to all land to which access is required for those purposes or any of them.

### **Gas pressure**

3. Provided it is within the capability of the AGN GDS at the proposed Delivery Point, AGN will deliver Gas to the User at each Delivery Point at standard nominal pressures not exceeding 7 kPa.

{Note: The limit of 7 kPa is in accordance with Clause 406 of Schedule 6 to the *Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999* (WA). The current standard nominal pressures are 1.25 kPa and 2.75 kPa. }

### **Meter reading**

4. AGN will be responsible for calculating and recording the quantity of Gas delivered to the User at the Delivery Point approximately 4 times each Year at intervals of approximately 100 days.

### **Prices**

5. (1) Reference Service B2 is made available at Reference Tariff B2, as adjusted from time to time during the term of a Haulage Contract under this Access Arrangement, and if the duration of the Haulage Contract continues beyond the end of the Second Access Arrangement Period, under Part C, clause 34.  
(2) Reference Service B3 is made available at Reference Tariff B3, as adjusted from time to time during the term of a Haulage Contract under this Access Arrangement, and if the duration of the Haulage Contract continues beyond the end of the Second Access Arrangement Period, under Part C, clause 34.

### **Other terms and conditions**

6. In addition to the terms and conditions in this Schedule, the terms and conditions in Part C, clauses 1 - 66 apply to Users of Reference Service B2 and Users of Reference Service B3.

## **Ancillary Services**

7. AGN will provide Ancillary Services as set out in Part A, clause 17 at Tariffs determined under Schedule 5 to Part C.

## **SCHEDULE 5: ANCILLARY SERVICES**

1. AGN will make the following Ancillary Services available to Users at the Tariffs set out below (inclusive of GST), as escalated under clause 2 of this Schedule 5:
  - a. Apply Meter Lock Service (available for Reference Service B3): \$16.50;
  - b. Remove Meter Lock Service (available for Reference Service B3): \$16.50;
  - c. Deregistration Service (available for Reference Services): \$183.70;
  - d. Disconnection Service (available for Reference Service B2 and Reference Service B3): \$183.70; and
  - e. Reconnection Service (available for Reference Service B2 and Reference Service B3): \$183.70.
2. AGN may escalate the Tariffs specified in clause 1 of this Schedule 5 annually by applying the Western Australian Labour Price Index for the Energy Industry, and such escalated Tariffs will apply in substitution for the Tariffs specified in clause 1 of this Schedule 5.
3. AGN will, when requested, inform a User of the prevailing Tariff for an Ancillary Service.

## SCHEDULE 6: GAS QUALITY SPECIFICATION TABLE

**Gas Quality Specifications** means the most stringent component of the following components:

- (a) the standards detailed in regulation 5 of the Gas Standards Regulations, including the requirement to odourise the Gas detailed in regulation 6; and
- (b) the broadest specification requirements detailed in the table set out below:

<b>Component</b>	<b>Unit of Measurement</b>	<b>Specification</b>
Maximum carbon dioxide	mol %	4.0
Maximum inert gases	mol %	7.0
Minimum higher heating value	MJ/m <sup>3</sup>	35.1
Maximum higher heating value	MJ/m <sup>3</sup>	42.3
Minimum Wobbe Index	MJ/m <sup>3</sup>	46.0
Maximum Wobbe Index	MJ/m <sup>3</sup>	51.5
Maximum total sulphur (including odorant)	mg/m <sup>3</sup>	20
Maximum Hydrogen Sulphide	mg/m <sup>3</sup>	4.6
Maximum Oxygen	mol %	0.2
Maximum Water	mg/m <sup>3</sup>	100
Hydrocarbon dewpoint over the pressure range 2.5 to 8.72 MPa absolute	°C	Below the Minimum Receipt Temperature applying for the Physical Gate Point
Maximum radioactive components	Bq/m <sup>3</sup>	600