
Gas Transmission Code

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1 **DEFINITIONS AND CONSTRUCTION**

Defined Terms

1.1 In this Code:

Acceptable Operational Limits means, for a Pipeline, the upper and lower Line Pack limits for that Pipeline notified by Firstgas to each Shipper in accordance with Schedule Five;

Accumulated Excess Operational Imbalance has the meaning given to it by the MPOC;

Accurate means, in relation to any gas measurement device forming part of Metering, a state wherein the Uncertainty of any such gas measurement device falls within the respective limits set out in Part 2 of the Metering Requirements;

Adjusted Verified Claim has the meaning set out in *section 8.16(a)*;

Affected Day has the meaning set out in *section 8.21(a)*;

Allocation Agent means the person referred to as such in the Downstream Reconciliation Rules or (where relevant) an Allocation Agreement;

Allocation Agreement means, for Delivery Points which are used by more than one Shipper and at which Delivery Quantities are not allocated under the Downstream Reconciliation Rules, an agreement between all Shippers who take Gas at that Delivery Point and the allocation agent named in that agreement, and which sets out, among other things, the methodology to be used by that allocation agent to apportion the total metered quantity of Gas taken at the Delivery Point between such Shippers who are party to the allocation agreement, as well as the terms of appointment of the allocation agent;

Allocation Result means:

- (a) for Delivery Points which are used by more than one Shipper and at which Gas is not allocated under the Downstream Reconciliation Rules, the quantities of Gas calculated and advised by the Allocation Agent (from time to time) as being delivered to that Shipper; and
- (b) for Delivery Points at which Gas is allocated under the Downstream Reconciliation Rules, the meaning given to it in the Downstream Reconciliation Rules;

Alternative Transmission Services or ATS has the meaning set out in *section 2.20*;

Alternative Transmission Services Charge or ATS Charge means the charge for ATS calculated in accordance with the ATS Notice;

Alternative Transmission Services Notice or ATS Notice means the notice of ATS issued in accordance with *section 2.20*;

Approved Nomination has the meaning given to it by the MPOC;

Authorised Overrun Charge is the charge calculated in accordance with *clause 7.4* of Part A of the relevant TSA;

Authorised Overrun Quantity means the quantity of Gas on any Day in excess of a Shipper's Reserved Capacity which Firstgas notifies to that Shipper that it accepts under *section 4.22*;

Arbitration Notice has the meaning set out in *section 18.2*;

Balancing Gas means, in relation to each Pipeline, any Gas bought or sold by Firstgas in accordance with *section 8.4*;

Balancing and Peaking Pool or BPP means the pool for each Pipeline to be operated by the BPP Trustee in the manner described in *section 8*;

Bill Rate means, on any Business Day, the average (reasonably determined by Firstgas and rounded up to the nearest fifth decimal place) of the individual bid rates, expressed as a percentage per annum, quoted by entities (each a *bank*) on the Reuters Screen Pages "BKBL" and "BKBM" (or such other pages as may replace those pages on that service for displaying quotations for bank bills of exchange having a tenor of three months) at or about 10.45 a.m. on the relevant Business Day for bills of exchange having a tenor of three months which have been drawn, accepted or endorsed by such banks and for each non-Business Day, the Bill Rate on the most recent Business Day;

BOP Pipeline has the meaning given to it on OATIS;

BPP Account means the bank account described in *section 8.24*;

BPP Allocation Day means:

- (a) where a purchase or sale of Balancing Gas has occurred, the Day on which the obligation to buy or sell Balancing Gas, as the case may be, becomes unconditional; or
- (b) where a Cash-out occurs, the Day to which the Cash-out relates;

BPP Amounts means all amounts payable to, by, or at the direction of, the BPP Trustee in accordance with *section 8*;

BPP Commencement Day means the Day on which Firstgas gives Shippers written notice that it has sufficient information required in order for Firstgas to

commence the process for determining each Shipper's and each Non-Code Shipper's Mismatch position on each Day in respect of the prior Month, apply the allocation mechanisms in *section 8* and allocate BPP Amounts to Shippers;

BPP Trustee means Firstgas, as trustee of the BPP Account;

BPP Schedule has the meaning set out in *section 16.3*;

Business Day means any day (other than a Saturday, Sunday or a public holiday) on which registered banks are open for business in Wellington and Auckland;

Capacity Reservation Charge means the charge calculated in accordance with *clause 7.1* of Part A of the relevant TSA;

Capped Amounts has the meaning described in *section 23.4*;

Cash-out means where MDL buys from or sells to Firstgas a quantity of Gas pursuant to *section 12.10, 12.11 or 12.13* of the MPOC;

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

Change Request Notification has the meaning set out in *section 25.4*;

Claimant means a Shipper or third party who makes a claim against Firstgas, where the claim is caused by a purported breach of the relevant TSA by a Shipper;

Claiming Shipper has the meaning set out in *section 8.14*;

Code means this Gas Transmission Code;

Commencement Date means the commencement date specified in *clause 2* of Part A of the relevant TSA;

Confidential Information has the meaning set out in *section 19.1*;

Confirmed Reservation Requirements has the meaning set out in *section 4.1(c)*;

Contingency Imbalance has the meaning set out in the CCM Regulations;

Correction Charges means the correction charges calculated in accordance with *section 15.5*;

Correction Date has the meaning set out in *section 8.21(a)*;

Credit Support means the credit support arrangements set out in *section 14.2(b)* or *(c)*;

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

Critical Contingency Management Plan means Firstgas' critical contingency management plan approved in accordance with the CCM Regulations (with a copy of the plan being posted on OATIS);

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

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

Default Rate means the Bill Rate plus 5% per annum;

Defending Party means a Shipper who purportedly breaches its TSA, in circumstances where a Claimant makes a claim against Firstgas arising out of or in connection with that purported breach;

Delivery Point means a point at which a Shipper's Gas is taken (or made available to be taken) from a Pipeline into another Pipeline, another transmission pipeline (whether owned by a Shipper or a third party), a Shipper's gas consuming facility or a Distribution System;

Delivery Quantity means the quantity of Gas taken by a Shipper at a Delivery Point in respect of the relevant TSA, as determined in accordance with *section 6.5*;

DIP means the daily incentive price for that Day, where "Daily Incentive Price" has the meaning given to it by the MPOC (or any replacement or substitute of that price);

Displaced Gas Nomination has the meaning given to it by the MPOC;

Dispute has the meaning set out in *sections 16.17* and *17.1*;

Dispute Notice has the meaning set out in *section 16.17*;

Distribution System means any pipeline system (excluding the Transmission System) which ordinarily operates at a pressure of less than 20 bar gauge and is used to convey Gas to one or more consumers;

Downstream Reconciliation Rules means the Gas (Downstream Reconciliation) Rules 2008;

Draft Change Request has the meaning set out in *section 25.7*;

Effective Date has the meaning set out in *section 4.8*;

Emergency means a state of affairs, or an event or circumstance that gives rise to that state of affairs, that Firstgas, acting as a Reasonable and Prudent Operator, determines to be an emergency, irrespective of the cause of the emergency and whether Firstgas or any other person may have caused or contributed to the emergency. Such a state of affairs may exist:

- (a) by reason of an escape, or reasonably suspected escape, of Gas from a Pipeline;
- (b) in circumstances in which, in Firstgas' opinion, acting as a Reasonable and Prudent Operator:
 - (i) the safety of the Transmission System is significantly at risk; or
 - (ii) the safe transportation of Gas by a Pipeline is significantly at risk;
- (c) where Gas received into, transported by or delivered from, a Pipeline is at such a pressure or of such a quality as to constitute, when supplied to a Distribution System or premises, a danger to life, a Station, metering, property or the environment;
- (d) where there exist any other circumstances reasonably believed by Firstgas to constitute an emergency (which, for the avoidance of doubt, may include circumstances upstream or downstream of the Transmission System); or
- (e) in particular, but without limitation, where Firstgas' ability to maintain safe pressures within a Pipeline is affected or threatened by:
 - (i) an interruption or disruption to the operations of a Pipeline;
 - (ii) an insufficiency of injections of Gas to a Pipeline;
 - (iii) any actual or potential failure of, or damage to, any part of a Pipeline; or
 - (iv) any off-take of Gas from a Pipeline which exceeds the relevant Maximum Design Flow Rate or exceeds the quantity or offtake rate specified in an Operational Flow Order;

Excess Daily Imbalance has the meaning given to it by paragraph (a) of that definition in the MPOC;

Existing Supplementary Agreement means a valid and binding supplementary agreement entered into between Firstgas and a shipper of Gas prior to 1

December 2007 in respect of a specific end-user of Gas and/or a specific site and which, except as provided in *section 2.7(e)*, incorporates or is deemed to incorporate all the terms and conditions of this Code and no other terms or conditions other than the necessary individual information required to complete the equivalent of Part A of the form set out in Schedule One;

Expiry Date means the expiry date of this Code, as set out in *section 20.2*;

Final Change Request has the meaning set out in *section 25.11*;

Firstgas means First Gas Limited at Wellington, and includes its successors and permitted assigns;

Firstgas Imbalance means, in respect of a Day and a Pipeline, the aggregate of (a), (b) and (c) of this definition (as calculated at the end of that Day):

- (a) any difference between the aggregate of Firstgas' receipt quantities associated with Fuel and Gas Vented on a Pipeline minus the aggregate of the Fuel consumed by Firstgas and Gas Vented on that Pipeline (where "Fuel" and "Gas Vented" have the meanings given to them in the definition of UFG);
- (b) for the purposes of the SKF Pipeline and the BOP Pipeline, any quantified imbalance in respect of the Inter-Pipeline Point known as Pokuru 2 Delivery, which imbalance is the result of Firstgas not being able to take receipt of Gas or make Gas available for delivery in accordance with the aggregate of all Nominated Quantities notified pursuant to *section 5.6*, in each case, in respect of that Inter-Pipeline Point; and
- (c) UFG in respect of that Pipeline;

Firstgas Running Imbalance means in respect of a Day, a Pipeline and each previous Day, the aggregate of (a), (b), (c) and (d) less the difference in (e) of this definition, in each case, on that Day (as calculated at the end of that Day):

- (a) any difference between the aggregate of Firstgas' receipt quantities associated with Fuel and Gas Vented on a Pipeline minus the aggregate of the Fuel consumed by Firstgas and Gas Vented on that Pipeline (where "Fuel" and "Gas Vented" have the meanings given to them in the definition of UFG);
- (b) for the purposes of the SKF Pipeline and the BOP Pipeline, any quantified imbalance in respect of the Inter-Pipeline Point known as Pokuru 2 Delivery, which imbalance is the result of Firstgas not being able to take receipt of Gas or make Gas available for delivery in accordance with the aggregate of all Nominated Quantities notified pursuant to *section 5.6*, in each case, in respect of that Inter-Pipeline Point;

- (c) UFG in respect of that Pipeline;
- (d) the difference between the quantity of Gas that Firstgas purchases pursuant to a Cash-out in respect of a Welded Point on that Pipeline and the aggregate quantity of Gas to which all Shippers are deemed to take title pursuant to *section 8.19(a)* as a result of that Cash-out (and each Non-Code Shipper is deemed to take title pursuant to the section equivalent to *section 8.19(a)* in its transmission services agreement); and
- (e) the difference between the quantity of Gas that Firstgas sells pursuant to a Cash-out in respect of a Welded Point on that Pipeline and the aggregate quantity of Gas to which title is deemed to have passed to Shippers pursuant to *section 8.19(b)* as a result of that Cash-out (and each Non-Code Shipper is deemed to take title pursuant to the section equivalent to *section 8.19(b)* in its transmission services agreement);

FM Loss has the meaning set out in *section 4.23*;

Force Majeure means an event or circumstance beyond the reasonable control of a Party which results in or causes a failure or inability by such Party in the performance of any obligations imposed on it by its TSA and/or (in the case of a Shipper) an inability of that Shipper to deliver or to take delivery of Gas pursuant to that Shipper's TSA notwithstanding the exercise by such Party of reasonable care and, subject to the foregoing, shall include any such event or circumstance which causes a Critical Contingency to be determined under the CCM Regulations and/or any action or inaction of a Party necessary to comply with the CCM Regulations;

Gas means gas that complies with the Gas Specification;

Gas Provider means a person who buys or sells a quantity of Balancing Gas or MDL when acting in its capacity as the buyer or seller of Gas in a Cash-out, as the case may be;

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

Gas Transfer Agent means Firstgas in its capacity as a gas transfer agent or a person approved by Firstgas pursuant to *section 6.3* and named as a gas transfer agent in the relevant Gas Transfer Agreement;

Gas Transfer Agreement means a valid and binding gas transfer agreement in respect of a Receipt Point or Inter-Pipeline Point between a transferor and transferee of Gas (who, for the avoidance of doubt, may be the same person) and the gas transfer agent named in that agreement, which complies with the requirements of Schedule Six;

Gigajoule or *GJ* means the energy equivalent of a quantity of gas, on a "Gross calorific value" (also known as "Higher Heating Value") basis;

Group Assurance Advisor means the assurance advisor of the Firstgas group appointed by Firstgas, as the name of that role may change from time to time;

GST means Goods and Services Tax payable pursuant to the Goods and Services Tax Act 1985;

GST Amount has the meaning set out in *section 16.8*;

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

ICP number means the installation control point unique alpha-numeric identifier assigned to each point on a Distribution System where a Shipper's customer takes gas from that Distribution System;

Inaccurate means, in relation to any gas measuring device forming part of the Metering, that it is not Accurate;

Incentives Pool has the meaning given to it by the MPOC;

Incentives Pool Claim has the meaning given to it by the MPOC;

Incentives Pool Debit has the meaning given to it by the MPOC;

Incentives Pool Payment has the meaning set out in *section 8.15*;

Incentives Pool Trustee has the meaning given to it by the MPOC;

Information means any information used by Firstgas to calculate any BPP Amounts;

Information Error has the meaning set out in *section 8.21(a)*;

Interconnected Party means a party whose pipeline, Distribution System or gas consuming, gas producing or gas processing facility is physically connected to a Pipeline at a Receipt Point or a Delivery Point;

Interconnection Agreement means an agreement between Firstgas and a party whose pipeline, Distribution System or Gas consuming, gas producing or gas processing facility are physically connected to a Pipeline at either a Receipt Point or a Delivery Point, which sets out the terms and conditions applicable to such connection;

Interconnection Point means a point identified by Firstgas at which a Pipeline is physically connected to an Interconnected Party's pipeline, Distribution System or Gas consuming, gas producing or gas processing facility, being located within a Receipt Point or a Delivery Point, as the case may be;

Interest Rate means the Bill Rate plus 2% per annum;

Inter-Pipeline Point means:

- (a) the point at which two Pipelines interconnect; or
- (b) any bi-directional point at which a Pipeline interconnects with the Maui Pipeline,

such that the point is simultaneously a Delivery Point on one Pipeline and a Receipt Point on the other Pipeline (where, for the avoidance of doubt, such point may be referred to by either of the respective Delivery Point and Receipt Point names in OATIS and elsewhere depending on the context), as Firstgas may, from time to time, designate and describe on OATIS;

Interruptible Agreement means an agreement under which Firstgas provides transmission services on the Transmission System which are interruptible in Firstgas' sole discretion for any reason at any time;

Large Consumer has the meaning set out in the CCM Regulations;

Large Station means a Station having a Maximum Design Flow Rate equal to, or greater than, 5000 standard cubic metres per hour;

Large Welded Point means a Welded Point that is a large station, where large station has the meaning given to large station by the MPOC;

Legislative Change has the meaning set out in section 25.3;

Liabe Party has the meaning set out in section 23.1;

Liabe Third Parties has the meaning set out in section 23.4(e);

Line Pack means, in relation to a Pipeline, the total quantity of Gas in that Pipeline at any time;

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

Maui Gas Contract has the meaning given to it by the MPOC;

Maui Pipeline means the high pressure pipeline for Gas and running from the outlet of the Maui Production Station metering at Oaonui to Rotowaro and

including the laterals to the New Plymouth and Huntly power stations as well as other items of plant, equipment, fixtures and fittings forming part of such pipeline;

Maui Quantity has the meaning set out in *section 8.15*;

Maximum Daily Quantity or *MDQ* means, in respect of a TSA and a Day, the maximum quantity of Gas (being the aggregate of the relevant Reserved Capacity plus any relevant Authorised Overrun Quantity) which the Shipper named in that TSA can require Firstgas to make available for that Shipper to take, and which that Shipper is entitled to take, on that Day at a Delivery Point;

Maximum Design Flow Rate means the maximum flow rate of Gas that the relevant Station, Receipt Point, Delivery Point or Metering is designed to have flow through it;

Maximum Hourly Quantity or *MHQ* means, in respect of a TSA, the maximum quantity of Gas which the Shipper named in that TSA can require Firstgas to make available for that Shipper to take, and which that Shipper is entitled to take, in any Hour at a Delivery Point in respect of that TSA which, unless otherwise agreed between the Parties and set out in the relevant Supplementary Agreement or Existing Supplementary Agreement, shall be 1/16th of the applicable Maximum Daily Quantity for that Delivery Point;

MDL means Maui Development Limited, at Wellington, including its successors and permitted assigns, being the current owner of the Maui Pipeline and any reference to MDL shall be deemed to include reference to any other owner of the Maui Pipeline in the event the Maui Pipeline is not operated or controlled by MDL;

MDL Correction Date has the meaning set out in *section 8.21(b)*;

MDL Information Error has the meaning set out in *section 8.21(b)*;

Methanex 20/20 Agreement has the meaning given to it by the MPOC;

Metering means the equipment installed at or near a Receipt Point or Delivery Point to measure the quantities of Gas received into a Pipeline at that Receipt Point or taken from a Pipeline at that Delivery Point, as the case may be;

Metering Owner means the party who owns the Metering;

Metering Requirements means the document entitled "Metering Requirements for Receipt Points and Delivery Points" posted on OATIS;

Mismatch means, in relation to a Day, a Pipeline and:

- (a) a Shipper and a TSA, that Shipper's aggregate Receipt Quantity on that Pipeline under that TSA minus that Shipper's aggregate Delivery Quantity on that Pipeline under that TSA, provided that where a Shipper has more than one TSA on the same Pipeline and it is allowable in accordance with *section 8.8*, the Shipper's Mismatch on a Day shall be calculated as the aggregate mismatch across all of that Shipper's TSAs for such Pipeline; or
- (b) a Non-Code Shipper and its transmission services agreement with Firstgas, that Non-Code Shipper's aggregate quantity of Gas received by Firstgas on that Pipeline at any Receipt Point specified to be a receipt point under that transmission services agreement (as determined in accordance with that transmission services agreement) minus that Non-Code Shipper's aggregate quantity of Gas taken by that Non-Code Shipper at the Delivery Point specified to be a delivery point in that transmission services agreement (as determined in accordance with that transmission services agreement), in each case, for that Pipeline under that transmission services agreement;

Month means the period beginning at 0000 hours (New Zealand standard time) on the first Day of a calendar month and ending at the end of the last Day of that month, and *Monthly* shall be construed accordingly;

MPOC means the Maui Pipeline Operating Code released by the Ministry of Economic Development on 17 August 2005 (called the "Final Operating Code 8 August 2005"), as amended from time to time in accordance with its terms (and includes any replacement Code, agreement or document as well as any regulatory substitution for or supplement to that Code in the event that a Maui Pipeline open access regime is provided for wholly or partly by statute or regulation);

Negative Mismatch Price means the negative mismatch price posted by MDL on OATIS;

Nomination Day means the day of the Week on which a Shipper is required to submit its Nominated Quantities to Firstgas under its TSA for the following Week, being the last Business Day of each Week;

Nominated Quantity means the quantity of Gas under a TSA which a Shipper expects to require Firstgas to receive into a Pipeline at a particular Receipt Point or to take from a Pipeline at a particular Delivery Point, as the case may be;

Non-Code Shipper means any party with whom Firstgas has a transmission services agreement with a commencement date prior to 1 December 2007, the terms of which are consistent with the principles set out in Schedule 9 of the MPOC, and which contains a provision that is substantially the same as the

Balancing and Peaking section in Firstgas' immediately preceding transmission services agreements prior to 1 December 2007, but which does not include all of the same provisions as *section 8* of this Code in substantially the same form as they appear in *section 8*;

Non-Code Shipper Verified Claim has the meaning set out in *section 8.14(f)*;

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

OATIS means the internet-based open access transmission information system, whose homepage is located at <http://www.oatis.co.nz> (or such other homepages as Firstgas may notify to the Shipper in writing from time to time), when accessed using a username provided by Firstgas and the relevant password (if any);

Operational Flow Order means a notice issued pursuant to *section 10.2*;

Operational Imbalance has the meaning given to it by paragraph (a) of that definition in the MPOC;

Other Party has the meaning set out in *section 23.1*;

Overrun Authorisation Charge means the charge calculated in accordance with *clause 7.3* of Part A of the relevant TSA;

Party means each of Firstgas and the other party to the relevant TSA and *Parties* means both of them collectively;

Peaking Allocation Methodology means the methodology in Schedule Nine;

Peaking Charge has the meaning given to it by the MPOC;

Peaking Cost has the meaning set out in *section 8.13(b)*;

Peaking Limit has the meaning given to it by the MPOC;

Physical Point Welded Party has the meaning given to it by the MPOC;

Physical Welded Point has the meaning given to it by the MPOC;

Pipeline means a high pressure pipeline for Gas (or group of high pressure pipelines, as the case may be), being part of the Transmission System, as more specifically described and posted on OATIS from time to time;

Pipeline Business means the Firstgas business of transporting gas using the Transmission System and includes Firstgas when acting as Gas Transfer Agent;

Positive Mismatch Price means the positive mismatch price posted by MDL on OATIS;

Posted Terms and Conditions for Displaced Gas Nominations means the document entitled "Posted Terms and Conditions for Displaced Gas Nominations" posted on OATIS which contains the terms and conditions that a Shipper agrees to comply with for each Displaced Gas Nomination in respect of a Welded Point on a Pipeline, as may be amended by Firstgas from time to time solely to reflect any change to Firstgas' obligations as a Welded Party under the MPOC as a result of an amendment to the MPOC;

Provisional Reservation Requirements has the meaning set out in *section 4.1(a)*;

Reasonable and Prudent Operator means, in relation to the performance of obligations under a TSA:

- (a) for Firstgas, an operator of a high pressure gas transmission system whose standard of performance is equal to or better than good high pressure gas transmission system operating practice as determined by reference to proper and prudent practices recognised internationally as applying to the operation of such systems; and
- (b) for a Shipper, a shipper of gas whose standard of performance is equal to or better than good gas shipping practice as determined by reference to proper and prudent practice recognised internationally as applying to shippers of gas;

Receipt Point means a point at which Firstgas is able to receive a Shipper's Gas into a Pipeline from another Pipeline, another party's transmission pipeline, gas producing or gas processing facility;

Receipt Quantity means the quantity of Gas received by Firstgas at a Receipt Point in respect of the relevant TSA, as determined in accordance with *section 6.1*;

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

Request has the meaning set out in *section 4.20*;

Reserved Capacity means, in relation to a Shipper and a TSA with that Shipper, the amount of that Shipper's reserved capacity under that TSA in the Transmission System, at a specified Delivery Point and for a specified Receipt Point, which capacity Firstgas notifies it accepts under *section 4*, as set out in that Shipper's Tracking Table and as amended from time to time in accordance with *section 4*;

Retailer has the meaning set out in the CCM Regulations;

RFT has the meaning set out in *section 8.4(c)(i)*;

ROI means running operational imbalance, where “Running Operational Imbalance” has the meaning given to it by the MPOC;

Running Mismatch means, in relation to a Day, a Pipeline and:

- (a) a Shipper and a TSA, the aggregate of the relevant Shipper’s Mismatch on that Pipeline on that and each previous Day (as calculated at the end of that Day) under that TSA, plus the quantity of any Gas to which title is deemed to have passed to the Shipper under *section 8.18(a)* or *8.19(a)* for any previous Day, less the quantity of any Gas in respect of which the Shipper is deemed to have passed title pursuant to *section 8.18(b)* or *8.19(b)* for any previous Day, as may be adjusted pursuant to *section 8*; or
- (b) a Non-Code Shipper and its transmission services agreement with Firstgas, the aggregate of the relevant Non-Code Shipper’s Mismatch on that Pipeline on that and each previous Day (as calculated at the end of that Day) under that transmission services agreement, plus the quantity of any Gas to which title is deemed to have passed to the Non-Code Shipper pursuant to a provision in its transmission services agreement equivalent to *section 8.18(a)* or *8.19(a)* for any previous Day, less the quantity of any Gas in respect of which the Non-Code Shipper is deemed to have passed title pursuant to a provision in its transmission services agreement equivalent to *section 8.18(b)* or *8.19(b)* for any previous Day, as may be adjusted pursuant to the section equivalent to *section 8* in its transmission services agreement;

SCADA means Firstgas’ “System Control and Data Acquisition” system which allows Firstgas to monitor Metering and other equipment, retrieve data, and control equipment such as compressors;

Scheduled Maintenance has the meaning described in *section 10.1(i)*;

Shipper means a person named as a shipper in a TSA with Firstgas (including, for the avoidance of doubt, a TSA which has been supplemented and amended by an Existing Supplementary Agreement or a Supplementary Agreement), and includes its successors and permitted assigns (and where applicable includes the extended meaning provided for in *section 1.2(j)*);

Shipper Allocation Formula means the following formula:

$$\begin{array}{l} \text{Amount} \\ \text{Payable} \\ \text{by a} \\ \text{Shipper} \end{array} = \frac{\text{Shipper's negative RM}}{(\sum \text{SRM} + \text{VRI})} \times (\text{Firstgas Costs} - \text{NCS Costs})$$

where, in respect of that Pipeline and on the relevant Day:

Shipper's negative RM means the Shipper's negative Running Mismatch;

Σ *SRM* means the aggregate of all Shippers' negative Running Mismatch;

VRI means negative Firstgas Running Imbalance;

Firstgas Costs means the costs paid by Firstgas in relation to the purchased Gas, or payment to the Incentives Pool Trustee under *section 8.13* (as applicable); and

NCS Costs means the Non-Code Shippers' costs, calculated as follows:

$$\text{NCS Costs} = \frac{\Sigma \text{NCSRM}}{(\Sigma \text{SRM} + \Sigma \text{NCSRM})} \times \text{Firstgas Costs}$$

where, in respect of that Pipeline and the relevant Day:

Σ *NCSRM* means the aggregate of all Non-Code Shippers' negative Running Mismatch;

SKF Pipeline has the meaning given to it on OATIS;

Small Station means any Station that is not a Large Station;

Small Welded Point means a Welded Point that is a small station, where small station has the meaning given to it by the MPOC;

SOE means a Shipper who is a State enterprise under the State Owned Enterprises Act 1986;

Station means a fenced compound containing equipment that is used in or associated with the interconnection of a Pipeline with another pipeline, gas consuming, gas producing or gas processing facility;

STOS means Shell Todd Oil Services Limited, and includes its successors and permitted assigns;

Supplementary Agreement means a valid and binding supplementary agreement (including an Interruptible Agreement) entered into between Firstgas and a shipper of Gas that has a Commencement Date after 1 December 2007 and that supplements and amends a TSA in compliance with *section 2.7(e)* for the purposes of delivery of Gas to:

- (a) a specific end-user and/or a specific site; or

(b) a specific Delivery Point;

Surplus Capacity has the meaning set out in *section 4.14*;

Tax has the meaning set out in *section 16.9*;

Tender Terms means the document entitled "Standard Terms for the Sale and Purchase of Gas by Tender" posted on OATIS, as amended from time to time in accordance with its terms;

Third Party Shippers has the meaning set out in *section 23.4(b)*;

Throughput Charge means the charge calculated in accordance with *clause 7.2* of Part A of the relevant TSA;

TOU Device means a device (such as a data logger or pressure-and-temperature correcting instrument incorporating electronic data storage) forming part of a gas measurement system that records the volume of gas that passes through a meter in pre-determined time periods (usually hourly);

Tracking Table means, in relation to each Shipper and a TSA, the record of that Shipper's Reserved Capacity between each Receipt Point and Delivery Point at any time, as amended from time to time in accordance with that TSA and posted on OATIS;

Transfer Date has the meaning set out in *section 4.27*;

Transmission Charges means each of the Capacity Reservation Charge, Throughput Charge, Overrun Authorisation Charge, Authorised Overrun Charge, Unauthorised Overrun Charge, and, where applicable, Alternative Transmission Services Charge;

Transmission Services Agreement or *TSA* means a valid and binding transmission services agreement:

- (a) in the form set out in Schedule One (including, for the avoidance of doubt, as such agreement may be supplemented and amended under *section 2.7(e)*) that is duly completed and executed by Firstgas and the shipper named in that agreement, which incorporates this Code and has a Commencement Date on or after 1 December 2007; or
- (b) which is deemed to apply between Firstgas and a shipper of Gas by virtue of a Existing Supplementary Agreement,

and, where applicable, includes the extended meaning provided for in *section 1.2(j)*;

Transmission System means the high pressure Gas transmission system owned and operated by Firstgas and used by Firstgas to transport Gas, as more particularly described on OATIS;

Unaccounted-For-Gas or *UFG* means the quantity of Gas calculated in accordance with the following formula:

$$UFG = \sum \text{Receipts} - \sum \text{Offtakes} + \text{Line Pack}_{\text{start}} - \text{Line Pack}_{\text{end}} - \text{Fuel} - \text{Gas Vented}$$

where, in respect of the relevant given time period:

Receipts means the aggregate quantities of Gas measured as having entered a Pipeline at all Receipt Points on that Pipeline within that period;

Offtakes means the aggregate quantities of Gas measured as having been taken at all Delivery Points on that Pipeline within that period;

Line Pack_{start} means the Line Pack at the start of that period;

Line Pack_{end} means the Line Pack at the end of that period;

Fuel means the quantity of Gas used in the operation of equipment on or near a Pipeline (including compressors and line heaters) during that period; and

Gas Vented means any quantity of Gas estimated to have been (deliberately or otherwise) vented during that period;

Unauthorised Overrun Charge is the charge calculated in accordance with clause 7.5 of Part A of the relevant TSA;

Unauthorised Overrun Quantity means, in relation to a TSA, that part of the relevant Shipper's Delivery Quantity at a Delivery Point (or if a Delivery Point is within a zone described in the Transmission Posted Prices Schedule posted on OATIS (the *Transmission Zone*), the relevant Shipper's Delivery Quantity within that Transmission Zone), on any Day that exceeds that Shipper's MDQ under that TSA for that Delivery Point (or for all Delivery Points within the Transmission Zone, as applicable) for that Day;

Uncertainty means the difference between the output reading or signal of any gas measurement device forming part of Metering and that of a verification device, or calibration standard as the case may be, expressed as a percentage;

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

User Contract has the meaning given to it by the MPOC;

Validated, in relation to data, means data that Firstgas, acting as a Reasonable and Prudent Operator, has used reasonable endeavours to verify is accurate taking into account the time available and the information reasonably available at that time;

Week means a period of 7 Days beginning at 0000 hours (New Zealand standard time) on Monday;

Welded Party means a *Physical Point Welded Party*;

Welded Point means a *Physical Welded Point*; and

Year means a period of 365 (or 366 in a leap Year) consecutive Days beginning at 0000 hours (New Zealand standard time) on the 1st day of October in each Year and ending at the end of the 30th Day of September in the following Year PROVIDED THAT the first Year shall be the broken period from 0000 hours on the Commencement Date (if not 1 October) to the end of the 30th Day of September immediately following the Commencement Date.

Construction

- 1.2 In this Code and each TSA, unless the context otherwise requires:
- (a) for the purposes of every section (other than *sections 8 and 14* and any definition as it is used in those sections), a reference to Firstgas means Firstgas acting in each of its capacities under a TSA as a provider of transmission services and as the BPP Trustee;
 - (b) *sections 1* (excluding the definition of Non-Specification Gas), *2 to 11, 13 to 33* and the schedules of the relevant TSA shall apply to Non-Specification Gas as if it was Gas;
 - (c) headings appear as a matter of convenience and do not affect the interpretation of this Code;
 - (d) all of the annexed schedules form part of this Code;
 - (e) a reference to a section is to a section of this Code, a reference to Part A is to Part A of the relevant TSA, a reference to a schedule is to a schedule attached to this Code, a reference to a clause is to a clause in Part A of a TSA, and a reference in any schedule to a paragraph is a reference to a paragraph in that schedule;
 - (f) the singular includes the plural and vice versa;
 - (g) in interpreting any provision of this Code, each TSA shall be deemed to be between Firstgas and the Shipper named in that TSA;

- (h) for the avoidance of doubt, nothing in this Code shall apply to, amend or be deemed to amend an Existing Supplementary Agreement or a transmission services agreement (as may be amended) executed by Firstgas and a shipper of Gas that had a commencement date before 1 December 2007 unless, and only to the extent that, such transmission services agreement or Existing Supplementary Agreement provides for such application or amendment;
- (i) for the purposes of interpreting a TSA, unless the context requires otherwise, any reference to a Shipper shall be the shipper stated in that TSA;
- (j) for the purposes of *sections 2.10, 2.17, 8, 16.6(b) and 16.6(c)(iii)* and any definition used in those sections, a reference to:
 - (i) a Shipper includes a reference to a Shipper (as defined in this Code) and to any party with whom Firstgas has a transmission services agreement that includes all of the same provisions as those in *section 8* in substantially the same form as they appear in *section 8*, but does not include a party acting in its capacity as a Non-Code Shipper; and
 - (ii) a TSA includes a reference to a TSA and any transmission services agreement between a Shipper (as construed in accordance with this *section 1.2(j)(i)*) and Firstgas, that includes all of the same provisions as those in *section 8* in substantially the same form as they appear in *section 8*, but does not include a transmission services agreement with a party acting in its capacity as a Non-Code Shipper;
- (k) references to persons shall be deemed to include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, states or agencies of state, government departments and local and municipal authorities in each case whether or not having separate legal personality;
- (l) a reference to a prohibition against doing anything is to be regarded as including a reference to not permitting, suffering or causing that thing to be done;
- (m) the rule of construction known as the *contra proferentem* rule does not apply to this Code;
- (n) a reference to any document, including this Code, the MPOC and a TSA, includes a reference to that document as amended or replaced from time to time;

- (o) where there is a reference to a definition of a term in the MPOC, any defined term used within that definition shall have the meaning given to it by the MPOC;
- (p) a reference to an enactment, New Zealand Standard or any regulation is a reference to that enactment, New Zealand Standard or regulation as amended, or to any enactment, New Zealand Standard or regulation substituted for that enactment, New Zealand Standard or regulation;
- (q) any reference to the word "including" shall mean "including without limitation", and "include" and "includes" shall be construed accordingly;
- (r) any reference to a "quantity of Gas" is a reference to Gigajoules of Gas unless otherwise stated;
- (s) any reference to a range of sections is inclusive of the first and last sections referenced;
- (t) any reference to a standard cubic meter means a cubic meter of gas at standard conditions of temperature and pressure, being 15 degrees Celsius and 1.01325 bar absolute;
- (u) all references to any time of the day in this document shall, unless expressly referring to New Zealand standard time (that is, GMT + 1200 hours), be references to New Zealand statutory time (that is, including adjustments for New Zealand daylight savings time), and any reference to a month, shall be a calendar month;
- (v) all references to monetary values shall refer to New Zealand currency; and
- (w) any reference to a party acting as a Reasonable and Prudent Operator shall not be construed or relied on to limit in any way the general obligation of each Party to act as a Reasonable and Prudent Operator when exercising any of its rights, powers, obligations and duties under the relevant TSA.

2 TRANSMISSION SERVICES

Transmission Services

- 2.1 Firstgas shall provide, and each Shipper shall accept the provision of, transmission services on the Transmission System on a 24 Hours per Day, 7 Days per Week basis, subject to the terms and conditions of the relevant TSA.

Transmission Rights

- 2.2 Subject to *sections 2.3 to 2.6, 2.20 to 2.25, 10.1, 10.2 and 20*, in relation to each TSA, Firstgas shall receive the quantity of Gas required by a Shipper at the Receipt Point specified as a Receipt Point under that Shipper's TSA and make an equivalent quantity of Gas available for that Shipper to take or transfer at a Delivery Point specified as a Delivery Point under that Shipper's TSA, to the extent that such quantity of Gas is not:
- (a) in excess of that Shipper's MDQ for that Delivery Point; and/or
 - (b) in excess of that Shipper's MHQ for that Delivery Point.
- 2.3 Without limiting *section 4*, Firstgas, in its sole discretion, may (but shall not be obliged to) make available to a Shipper at a Delivery Point any quantity of Gas in excess of that Shipper's MDQ or MHQ for that Delivery Point.

Uneconomic Transmission Services

- 2.4 Firstgas shall be under no obligation to:
- (a) enter into a transmission services agreement; or
 - (b) provide additional transmission services under an existing TSA,
- where it would involve the construction and/or commissioning of new assets and Firstgas' transmission charges from the arrangement will not (in Firstgas' reasonable opinion) cover Firstgas' capital and operating costs relating to that construction and/or commissioning.
- 2.5 Firstgas reserves the right, on 12 months' prior written notice, to discontinue providing transmission services to any Delivery Point at which Firstgas' revenue for providing transmission services over the preceding 12 months was less than \$10,000. Where this right is exercised:
- (a) all references in Tracking Tables to the Delivery Point will be deleted on the expiry of the notice period;
 - (b) for the period after the expiry of that notice period, a Shipper shall be relieved of any obligation to pay any Capacity Reservation Charges for that Delivery Point; and

- (c) Firstgas shall consult with each affected Shipper prior to the end of that 12 month notice period.

2.6 Notwithstanding the notice requirement in *section 2.5*, where no Shipper reserves capacity to a Delivery Point at the start of any Year (except in the case of a Delivery Point where offtake of Gas is seasonal and Firstgas reasonably considers that such reservation is unnecessary) and Firstgas' revenue for providing transmission services to that Delivery Point over the preceding 12 months was less than \$5,000, Firstgas may discontinue provision of transmission services to such Delivery Point immediately and will give notice of discontinuation in respect of that Delivery Point to Shippers by posting a notice on OATIS as soon as reasonably practicable thereafter.

Firstgas' Rights and Obligations

2.7 Firstgas shall:

- (a) act as a Reasonable and Prudent Operator when exercising any of its rights, powers, obligations and duties under a TSA;
- (b) deal with all shippers and interconnected parties on the Transmission System on an arms' length basis;
- (c) not enter into a transmission services agreement after 1 December 2007 to provide transmission services on the Transmission System to any person except in the form of a valid and binding TSA;
- (d) except as provided in *section 2.7(e)*, ensure that every TSA with a Shipper includes all of the terms and conditions of this Code and no other terms or conditions (other than the necessary individual information required to complete Part A of a TSA);
- (e) be entitled to enter into or amend a Supplementary Agreement which supplements and amends an underlying TSA or be entitled to amend an Existing Supplementary Agreement, in each case only in relation to any or all of the following:
 - (i) the term of the Supplementary Agreement or Existing Supplementary Agreement, with or without rights of renewal (and including amending the date specified in *section 20.2*), provided that a Supplementary Agreement or Existing Supplementary Agreement entered into any time prior to 30 September 2009 may have an expiry date after 30 September 2009. A Supplementary Agreement or Existing Supplementary Agreement with an expiry date after 30 September 2009 will:
 - (A) survive expiry or termination of this Code and the underlying TSA that it supplements and amends and shall continue in full

force and effect after 30 September 2009 for the term specified in it (subject to any early termination as provided for in it); and

- (B) incorporate the provisions of any replacement transmission code or regulations and any replacement underlying TSA, provided that to the extent there is any inconsistency between their terms and any terms of the Supplementary Agreement or Existing Supplementary Agreement which expressly supplement and amend the expired or terminated underlying TSA in compliance with *section 2.7(e)*, those supplementing and amending terms shall prevail;
- (ii) the setting and fixing of the amount of transmission capacity (including a maximum daily quantity and/or a maximum hourly quantity) available to the Shipper;
- (iii) the specifying of a Receipt Point and/or a Delivery Point to which the Supplementary Agreement or Existing Supplementary Agreement applies;
- (iv) the removal of any ability to transfer or trade the transmission capacity available to that Shipper;
- (v) the liability to pay Transmission Charges for the duration of the term of the agreement, notwithstanding earlier termination;
- (vi) whether there is a fixed daily fee, a variable throughput fee or an overrun fee;
- (vii) the process for redetermining transmission fees and adjusting transmission fees for inflation;
- (viii) in relation to an Interruptible Agreement only, providing for transmission services to be interruptible at Firstgas' sole discretion for any reason at any time;
- (ix) the procedure for obtaining, increasing or decreasing the amount of transmission capacity available to the Shipper, including prohibiting the Shipper increasing or decreasing the amount of transmission capacity;
- (x) charging for making Gas available at a Delivery Point at a pressure greater than 20 bar gauge;
- (xi) providing for the conversion of transmission capacity available under a Supplementary Agreement or Existing Supplementary Agreement

- to Reserved Capacity under a TSA in the event of plant failure caused by natural disaster or equipment failure beyond the reasonable control of the relevant party;
- (xii) arrangements and contributions by the Shipper of a financial nature (or otherwise) as a condition of access to transmission services;
 - (xiii) the making available of land necessary for Firstgas to construct necessary facilities (such as a new Delivery Point) as a condition of Firstgas providing transmission services;
 - (xiv) making execution of any Supplementary Agreement or Existing Supplementary Agreement conditional on the end-user signing a transmission pricing agreement committing that end-user to use Gas transported through the Transmission System for a period of time longer than the term of the Shipper's Supplementary Agreement or Existing Supplementary Agreement relating to that end-user; and/or
 - (xv) making the Supplementary Agreement or Existing Supplementary Agreement contingent on corporate and/or statutory approvals in relation to that Supplementary Agreement or Existing Supplementary Agreement;
- (f) where a person can demonstrate to Firstgas' reasonable satisfaction that it will meet the requirements of a Shipper set out in this Code, not unreasonably withhold or delay Firstgas' execution of a proposed TSA (with a duly completed transmission services agreement in the form set out in Schedule One) that has been validly executed by that person, except that Firstgas' execution will not be unreasonably withheld if the proposed TSA would have the purpose of undermining the Yearly capacity reservation regime; and
- (g) subject to *sections 2.7(a) to 2.7(f)*, have absolute discretion as to how it conducts the operation of the Transmission System, so long as it does not act in a manner inconsistent with its obligations under the relevant TSA.

Shipper RPO Obligation

- 2.8 Each Shipper shall act as a Reasonable and Prudent Operator when exercising any of its rights, powers, obligations and duties under the relevant TSA.

Transfer of Gas into or from the Transmission System

- 2.9 Each Shipper who:
- (a) delivers Gas to, receives Gas from, or trades Gas at, a Receipt Point or an Inter-Pipeline Point; and/or

- (b) delivers Gas to the Inter-Pipeline Point which is the Delivery Point known as Frankley Road (but not into the Maui Pipeline),

shall document each such transaction pursuant to a Gas Transfer Agreement (regardless of whether the Gas is to be transmitted through or from that Pipeline or the Transmission System, and regardless of whether the transferor and transferee of that Gas are the same person or not).

Sale of Gas on the Transmission System

- 2.10 A Shipper shall not sell Gas to any person at a point on the Transmission System where that Gas will be transmitted through any part of the Transmission System, unless that other person is a Shipper or a Non-Code Shipper (or has that Gas transmitted on its behalf by a person who is such a shipper) in relation to both that point and the TSA (or, in respect of a Non-Code Shipper, a transmission services agreement with Firstgas) under which that Gas will be transmitted and has a Gas Transfer Agreement (or, in respect of a Non-Code Shipper, a valid and binding gas transfer agreement that complies with its transmission services agreement) in respect of that transaction.
- 2.11 If an industry-wide market for trading Gas develops where buyers and sellers of Gas can trade at a Receipt Point (or any other point) on the Transmission System without knowing who is the counter-party to such trade, then each such buyer and seller shall be a Shipper for the purposes of *section 2.10* in respect of each such trade, but only if the terms and conditions for participation in that market include provisions that Firstgas determines, acting reasonably, satisfy the principles of Schedule 9 of the MPOC in a manner consistent with this Code.
- 2.12 A Shipper shall be entitled to rely on information posted on OATIS from time to time as to who are current Shippers and to which Receipt Points and Delivery Points each such Shipper's TSA relates. Firstgas will give notice to each Shipper via OATIS if the relevant TSA with a Shipper is suspended or terminated.
- 2.13 Firstgas will notify MDL that each TSA, until it expires or terminates, is a valid and binding transmission services agreement for the purposes of *section 2.14(b)* of the MPOC, is consistent with the principles set out in Schedule 9 of the MPOC and achieves the outcomes described in *section 2.13* of the MPOC.

Allocation Agreement

- 2.14 At each Delivery Point which is used by more than one Shipper and at which Delivery Quantities are not allocated under the Downstream Reconciliation Rules, each such Shipper agrees to be party to a valid Allocation Agreement in respect of that Delivery Point. Such Allocation Agreement must be with all other Shippers who use that Delivery Point.

No Preference or Priority

- 2.15 Without limiting the ordinary meaning of *section 2.7(b)*, Firstgas shall, in all of its dealings (including when exercising its rights or enforcing its obligations),

relationships and transactions relating to the provision of transmission services on the Transmission System:

- (a) not prefer or give any priority to any particular shipper over other shippers except as expressly provided for in this Code; and
- (b) not enter into any transactions, agreements, understandings or arrangements of any kind (whether in writing or not) which may have the purpose or effect, or likely effect, of giving rise to, or maintaining, any preference or priority of the type prohibited under *section 2.16(a)*.

Use of Transmission System

2.16 Firstgas:

- (a) shall only provide transmission services on the Transmission System to Shippers and Non-Code Shippers; and
- (b) acknowledges that the same person may be a Shipper in respect of one transmission services agreement it has entered into with Firstgas and be a Non-Code Shipper in respect of a separate transmission services agreement it has entered into with Firstgas.

CCM Regulations

2.17 The terms of the Code must be read subject to the CCM Regulations.

2.18 Firstgas' obligations under this Code are separate and distinct from any obligations Firstgas has under the CCM Regulations in its capacity as Critical Contingency Operator.

Downstream Reconciliation Rules

2.19 To the extent that the Downstream Reconciliation Rules apply, Firstgas and all Shippers shall comply with the Downstream Reconciliation Rules.

Alternative Transmission Services

2.20 Firstgas may, in its sole discretion, offer to provide temporary transmission services to a Shipper through alternative Pipelines (including where Firstgas redefines existing Pipelines in connection with the temporary transmission service) to transport Gas under that Shipper's TSA (*Alternative Transmission Services*) by providing each Shipper with an ATS Notice:

- (a) as soon as reasonably practicable where transmission services are curtailed or shutdown under:
 - (i) *section 10.1(a)*; or
 - (ii) *section 10.1(c)* for Maintenance (other than Scheduled Maintenance); or

- (b) at the same time as a 30 Day notice is published under *section 10.1(i)* for Scheduled Maintenance.
- 2.21 Each ATS Notice must be posted on OATIS as a critical notice and must include the following information (which may be detailed in a separate note referred to in the critical notice):
- (a) a description of the ATS, including the affected Receipt Points, Delivery Points and the affected Pipelines;
 - (b) whether the ATS will be interruptible;
 - (c) the expected duration of the ATS (which may be amended by Firstgas by further notice if required);
 - (d) any procedural requirements in relation to the ATS, including requirements for the Shipper to provide Nominated Quantities and the status and use of those Nominated Quantities;
 - (e) the methodology for determining the Delivery Quantity at any affected Delivery Point;
 - (f) the fees and the methodology to be used to calculate the ATS Charge, subject to *section 2.22*;
 - (g) the treatment of Receipt Quantities and Delivery Quantities in the BPP for the affected Pipelines (including Pipelines that have been redefined by Firstgas in connection with the Alternative Transmission Services); and
 - (h) any other relevant matters.
- 2.22 Where practicable, Firstgas will use reasonable endeavours to provide Shippers with not less than 12 Hours notice of the termination of an ATS, by critical notice posted on OATIS.
- 2.23 Provided a Shipper complies with the terms of an ATS Notice, the ATS Charge on each day will not exceed the total charges the Shipper would have been liable to pay MDL and Firstgas for transmission services on that day had transmission services under the Shipper's TSA not been curtailed or shutdown and the ATS not been put in place. In determining the fees for the provision of the ATS and/or the ATS Charge, Firstgas may take into account any charge a Shipper would not be liable to pay MDL for transmission services on that day as a consequence of using the ATS.
- 2.24 Each Shipper will be deemed to have accepted the ATS and will be required to comply with the ATS Notice unless that Shipper notifies Firstgas by email that it does not wish to use the ATS within:

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(a) 24 Hours of the time of the ATS Notice under *section 2.20(a)*; and

(b) 10 Days of the date of the ATS Notice under *section 2.20(b)*.

2.25 The provisions of the Code will apply to any ATS, except as follows:

(a) nothing in *sections 4 or 5* will apply to an ATS, but a Shipper must comply with any procedural requirements in the ATS Notice;

(b) *section 6* will continue to apply, except to the extent specified otherwise in the notice of the Alternative Transmission Services.

3 OATIS / INFORMATION FLOWS

- 3.1 Each Shipper agrees to the terms and conditions of access and use for OATIS, as set out in Schedule Three.
- 3.2 Each Shipper shall be solely responsible (at its cost) for ensuring it has the appropriate information technology systems in place, as set out in Schedule Three, in order to access OATIS. If Firstgas considers a change is required to the format of the information that is able to be uploaded or downloaded by the Shipper from OATIS for use in conjunction with the Shipper's information technology systems, then where Firstgas considers that such change may affect that Shipper's ability to upload or download that information, Firstgas will give written notice of that change and consult with each Shipper during a period of fifteen consecutive Business Days (the *Consultation Period*) from the date of such notice. Firstgas will provide each Shipper with not less than 3 months' prior written notice from the end of the Consultation Period of the change that Firstgas will implement.
- 3.3 Firstgas will provide each Shipper with the information set out in Schedules Four and Five:
- (a) via OATIS; or
 - (b) if OATIS is not available, by:
 - (i) communicating with the Shipper by whatever means are reasonably available to Firstgas; and
 - (ii) notifying the Shipper:
 - (A) of the information set out in Schedule Five at the frequency specified in Schedule Five; and
 - (B) where practicable, of the Energy Quantity, Operational Imbalance, ROI, Line Pack and Acceptable Operational Limit information specified in Schedule Four, in each case on the Business Day that follows the Day to which such Energy Quantity, Operational Imbalance, ROI, Line Pack and Acceptable Operational Limit information relates and all via whatever means are reasonably available to Firstgas,
- to the extent that Firstgas, acting reasonably, is able to provide such information.
- 3.4 Notwithstanding any other provision of a TSA, as:
- (a) Firstgas' ability to determine the Energy Quantity, Operational Imbalance, ROI, Line Pack and Acceptable Operational Limit information referred to in

Schedule Four is dependent on Firstgas' availability to obtain metering data via SCADA and/or other telecommunications systems or on MDL providing Firstgas with such information; and

- (b) OATIS is dependent on an electronic information system that will be accessed via the internet,

Firstgas makes no warranty about the availability of the Energy Quantity, Operational Imbalance, ROI, Line Pack and Acceptable Operational Limit information referred to in Schedule Four on OATIS at any time.

- 3.5 To the extent that a Shipper fails to comply with its obligations under its TSA as a direct result of the information identified as "Necessary Information" in Schedule Five not being available to that Shipper within a period of time to allow that Shipper to comply with its TSA, then, to the extent of such failure, the Shipper shall be relieved of liability.

4 CAPACITY RESERVATION

Capacity Reservation Procedure

- 4.1 Every Shipper shall reserve capacity in the Transmission System for a Year in accordance with the procedure set out in this *section 4.1*:
- (a) by 5pm on the second Friday in August in each Year, the Shipper shall give notice to Firstgas in good faith of its expected reserved capacity requirements between each Receipt Point and each Delivery Point specified in that notice for the next Year (the *Provisional Reservation Requirements*);
 - (b) by 5pm on the third Friday in August in each Year, Firstgas will notify the Shipper of the extent to which Firstgas accepts the Provisional Reservation Requirements;
 - (c) by 5pm on the second Friday in September in each Year, the Shipper will notify Firstgas of its confirmed reserved capacity requirements between each Receipt Point and each Delivery Point specified in that notice for the next Year (the *Confirmed Reservation Requirements*);
 - (d) by 5pm on the third Friday in September in each Year, Firstgas will notify the Shipper of the extent to which Firstgas has accepted the Confirmed Reservation Requirements; and
 - (e) if Firstgas does not accept all or part of the Shipper's Provisional Reservation Requirements or Confirmed Reservation Requirements, Firstgas will notify the Shipper in writing of the reason.
- 4.2 If, in respect of a Delivery Point, the aggregate of the Provisional Reservation Requirements received by Firstgas for a Year is zero, then Firstgas shall notify Shippers that *section 2.6* may be invoked by posting a notice on OATIS.
- 4.3 Where at the start of the Year there is insufficient transmission capacity in a Pipeline to meet the Confirmed Reservation Requirements of all Shippers for that Pipeline, Firstgas shall first allocate the capacity in accordance with *section 4.5* and then allocate the remaining capacity in the Pipeline to Shippers in each case based on the proportion that the Shipper's request for increased capacity from the previous Year on that Pipeline bears to the aggregate of all Shippers' requests for increased capacity from the previous Year on that Pipeline.
- ### Reserved Capacity Rights
- 4.4 Once a Shipper's Reserved Capacity for a Year has been established through compliance with the procedures set out in *sections 4.1* and *4.3*:
- (a) the Shipper shall have the right to require Firstgas to receive and make available for the Shipper to take in that Year a quantity of Gas:

- (i) on each Day up to the aggregate of the Shipper's Reserved Capacity and Authorised Overrun Quantity for the relevant Receipt Point and Delivery Point; and
 - (ii) in each Hour up to the Shipper's MHQ,
- in each case, subject to the terms and conditions contained in that Shipper's TSA;
- (b) Firstgas will not change the Shipper's Reserved Capacity except as a result of the process contained in this *section 4*;
 - (c) Firstgas will record any changes to the Shipper's Reserved Capacity made in accordance with this *section 4* in the Shipper's Tracking Table; and
 - (d) if the Shipper believes there is an error in its Tracking Table, it shall notify Firstgas thereof as soon as reasonably practicable. If Firstgas agrees the Tracking Table is in error, Firstgas will correct such error as soon as reasonably practicable. In any event Firstgas will advise the Shipper of Firstgas' response to the Shipper's notice and, if a correction is made, that correction.

Reserved Capacity in the Following Year

- 4.5 If a Shipper has Reserved Capacity between a Receipt Point and a Delivery Point for any Year ($Year_{(n)}$), that Shipper may request reserved capacity in accordance with *section 4.1* for the immediately following Year ($Year_{(n+1)}$) equal to, or less than, that Shipper's Reserved Capacity for that Receipt Point and that Delivery Point on the second Friday in September in $Year_{(n)}$. Upon receiving such request in writing, Firstgas shall confirm the reserved capacity requested for $Year_{(n+1)}$ within the timeframes set out in *section 4.1*.
- 4.6 Nothing in this *section 4* shall prevent a Shipper from requesting more reserved capacity for a following Year than it had at the end of the preceding Year.

Reservation of Additional Capacity during a Year

- 4.7 A Shipper shall be entitled to request Firstgas to provide additional reserved capacity between a Receipt Point and a Delivery Point during a Year, where:
- (a) that Shipper acquires a new customer that was previously supplied with Gas by another shipper at that Delivery Point during that Year;
 - (b) the Shipper proposes to supply Gas from that Delivery Point to a customer of the Shipper that has not previously used Gas;
 - (c) an existing customer of the Shipper proposes to install new plant or appliances during that Year such that the Shipper's take of Gas at that Delivery Point will increase; or

- (d) an existing customer of the Shipper proposes to increase the utilisation of its existing plant (excluding seasonal increases in that Shipper's customer's take) such that the Shipper will increase the quantity of Gas it takes at that Delivery Point for the remainder of that Year,

provided that the Shipper shall not be obliged to reserve additional capacity and, where it does request additional reserved capacity, may request Firstgas to provide such additional reserved capacity with an effective date later than:

- (e) in the case of *sections 4.7(a) and (b)*, the date on which the customer of the Shipper becomes a customer of that Shipper;
- (f) in the case of *section 4.7(c)*, the date on which the Shipper's customer commissions its new plant or appliances; or
- (g) in the case of *section 4.7(d)*, the date on which the Shipper anticipates its customer's plant utilisation will increase.

4.8 Firstgas will provide the additional reserved capacity requested under *section 4.7* to the requesting Shipper where Firstgas, acting reasonably, considers there is sufficient uncommitted capacity in the relevant Pipeline. The Shipper shall be liable to pay all applicable Transmission Charges from the date on which Firstgas agrees to make such additional Reserved Capacity available (the *Effective Date*) until the end of the then current Year. For the purposes of this *section 4.8* and *section 4.9*, Firstgas will determine the uncommitted capacity in a Pipeline taking into account all current Reserved Capacity and Authorised Overrun Quantities and all other shippers' reserved capacity and authorised overrun quantities on that Pipeline.

4.9 Where a Shipper requests additional reserved capacity for any reason other than those set out in *sections 4.7(a) to 4.7(d)*, Firstgas, where it reasonably determines that sufficient uncommitted capacity is available in the relevant Pipeline, will provide such additional reserved capacity to that Shipper and the Shipper will pay for the additional Reserved Capacity back-dated to the start of the then current Year, provided that Firstgas shall not be required to re-calculate or refund any Authorised Overrun Charges or Unauthorised Overrun Charges previously paid or payable by a Shipper since the start of the then current Year.

4.10 In response to any request from a Shipper for additional reserved capacity during a Year, Firstgas may request and, if so requested, the Shipper shall provide such information as Firstgas considers to be reasonably necessary to allow it to determine whether any of the circumstances set out in *section 4.7* apply, or whether *section 4.9* applies. Such information being, in relation to each customer on whose account additional reserved capacity is being requested:

- (a) the name, street address and ICP number of each customer;

- (b) the date on which the Shipper commenced (or reasonably expects to commence) supplying Gas to that customer;
 - (c) except in the case where the customer has not previously used Gas, Monthly consumption quantities for the preceding 12 Months and, where that customer's meter was fitted with a TOU Device, Daily consumption quantities recorded by such TOU Device for the preceding 12 Months (or such period that the TOU Device has been installed for, if less than 12 Months);
 - (d) estimated consumption quantities of Gas (such consumption quantities to be Monthly where the customer's annual consumption is expected to be less than 10 TJ, otherwise to be Daily) for the 12 Months following the requested effective date for the provision of that additional reserved capacity; and/or
 - (e) a detailed calculation showing how the customer's Gas consumption contributes to the total additional reserved capacity requested.
- 4.11 A Shipper requesting additional reserved capacity shall give Firstgas as much notice as practicable to allow Firstgas reasonable time to analyse any information provided by the Shipper pursuant to *section 4.10*. Firstgas will not be required to perform such analysis until Firstgas has all the information requested (if any) pursuant to *section 4.10*. As soon as reasonably practicable after the analysis is complete, Firstgas shall notify the Shipper as to the extent to which Firstgas accepts or declines the Shipper's request. Where Firstgas is unable to complete its analysis before the requested effective date (for example, where Firstgas has not received the information requested under *section 4.10*), Firstgas will, to the extent that it subsequently agrees to provide additional Reserved Capacity, back-date such provision to the requested effective date for that additional reserved capacity.
- 4.12 Where Firstgas is unable to agree to a request under *section 4.7* or *4.9* in full as a result of there being insufficient capacity in the relevant Pipeline, Firstgas shall allocate the available capacity in the relevant Pipeline on a first-in time priority queuing basis. Firstgas shall notify the Shipper of its allocation and the Shipper shall promptly notify Firstgas whether the Shipper accepts the quantity of reserved capacity notified by Firstgas and, if the Shipper does, Firstgas shall amend the Shipper's Tracking Table accordingly.

Cancellation of Reserved Capacity

- 4.13 Subject to *section 4.15*, the Shipper acknowledges that Firstgas' transmission regime is based on reservations of capacity by Shippers for a full Year and that, to the extent it has agreed to a Shipper's Confirmed Reservation Requirements for a Year, Firstgas shall not be obliged during that Year to cancel any amount of Reserved Capacity other than in accordance with this Code.

- 4.14 Subject to *sections 4.15* and *4.16*, the Shipper may request Firstgas to cancel any amount of Reserved Capacity that the Shipper believes it no longer requires on any Pipeline at any time during a Year (the *Surplus Capacity*).
- 4.15 Firstgas shall agree to a request under *section 4.14* where:
- (a) the Shipper is able to demonstrate, by providing to Firstgas such information as Firstgas may reasonably require which, for the avoidance of doubt, may include the customer's name, street address, ICP number and Monthly (and if recorded, Daily) consumption in the preceding 12 Months that the Surplus Capacity results from a previous customer of that Shipper switching to another Gas supplier;
 - (b) the Shipper is able to demonstrate, by providing to Firstgas such information as Firstgas may reasonably require, that that Shipper has not acquired additional customers during the Year, for the supply to whom the Shipper will reasonably require at least some part of the capacity in question; and
 - (c) the Shipper offers the Surplus Capacity for sale to other shippers by placing a notice to that effect using the trade opportunity functionality on OATIS for a period not exceeding 30 Business Days but no other shipper (or shippers) acquires the capacity offered within such 30 Business Day period,
 - (d) but only to the extent that Firstgas agrees to one or more other shippers reserving additional reserved capacity on the same Pipeline of up to an equivalent monetary value (to Firstgas) and with an Effective Date not later than 90 Days from the Reserved Capacity cancellation date requested by the Shipper pursuant to *section 4.14*, and provided that the Shipper shall not be entitled to request Firstgas to cancel Surplus Capacity where that Surplus Capacity represents a Yearly aggregate of Transmission Charges of less than \$30,000.
- 4.16 A Shipper shall not be entitled to request Firstgas to cancel Surplus Capacity that arises from:
- (a) any customer of the Shipper using less Gas than the Shipper anticipated, or ceasing operations during a Year for any reason, whether temporarily or permanently; or
 - (b) seasonal variations in Gas usage by any of the Shipper's customers.
- 4.17 Firstgas shall notify the Shipper of the extent to which Firstgas agrees to a request made under *section 4.14* and amend the Shipper's Tracking Table accordingly with effect from the date (or dates, where the cancellation relates to more than one shipper reserving additional reserved capacity under *section 4.15*)

the Shipper so accepts or such other date(s) as Firstgas and the Shipper agree in writing. If Firstgas does not agree to a request in full, it shall notify the relevant Shipper in writing of the reason for agreeing a lesser quantity.

- 4.18 If, in respect of more than one shipper requesting cancellation of Surplus Capacity on the same Pipeline in accordance with this *section 4* (the *Cancelling Shippers*), the reason Firstgas gives under *section 4.17* for agreeing that lesser quantity is that no equivalent monetary value of additional reserved capacity on that Pipeline has been reserved by any other shipper, then Firstgas shall apply the quantity of any subsequently agreed additional reserved capacity on that Pipeline in accordance with this *section 4* among the Cancelling Shippers on a first in time priority queuing basis.

Provision of information to any Shipper acquiring a customer

- 4.19 Each Shipper agrees that, when a customer to whom it previously supplied Gas switches to another shipper (the *Incoming Shipper*), it will:
- (a) provide to the Incoming Shipper any of the information that the Incoming Shipper may be requested to provide to Firstgas in accordance with *sections 4.10(a) to (d)*, if that customer requests and agrees in writing to provision of that information to Firstgas; and
 - (b) not do anything to prevent or delay that customer from obtaining that information or disclosing that information to the Incoming Shipper.

Authorised Overrun Quantities

- 4.20 If, in respect of any future Day, a Shipper believes that the quantity of Gas it will take at a Delivery Point may exceed the aggregate of its Reserved Capacity plus any Authorised Overrun Quantity existing at that time, that Shipper may request Firstgas in writing to approve an Authorised Overrun Quantity (or an additional Authorised Overrun Quantity) for such Day (the *Request*).
- 4.21 Firstgas may accept all or part of any Request from a Shipper in respect of any Day where, in Firstgas' opinion, acting as a Reasonable and Prudent Operator, it is reasonable to do so.
- 4.22 Firstgas shall notify the Shipper as soon as reasonably practicable, but in any event within five Business Days, after receiving any Request of the extent to which Firstgas accepts such Request, if at all. If Firstgas does not accept all or part of the Request, Firstgas will inform the Shipper in writing of its reasons.

Unauthorised Overrun Quantities

- 4.23 Each Shipper (*Indemnifying Shipper*) shall indemnify Firstgas for the amount of Capacity Reservation Charges (or any fixed charge which is not calculated by reference to the throughput of any quantity of Gas) to which a Shipper is relieved of its obligation to pay as a result of *section 22.2* or any force majeure clause that provides relief of such charges in a transmission services agreement

(*FM Loss*), to the extent that such FM Loss is a direct result of that Indemnifying Shipper receiving or taking any Unauthorised Overrun Quantity which directly caused or directly contributed to the Force Majeure event (or any force majeure event in the relevant transmission services agreement) to which Firstgas' FM Loss relates. Firstgas shall use all reasonable endeavours in the circumstances to mitigate the FM Loss. The maximum amount for which an Indemnifying Shipper shall be liable to indemnify Firstgas under this *section 4.23* shall be \$10,000,000 (ten million dollars) in respect of any single event or series of related events, and \$30,000,000 (thirty million dollars) in respect of any Year, irrespective of the number of events in such period. The limitations expressed in *section 23* (but not *section 23.4*, or in respect of a Shipper, not *section 23.1*) shall apply in respect of this indemnity and any claim made under this *section 4.23* shall be without prejudice to any other rights or remedies available to Firstgas.

- 4.24 For the avoidance of doubt, the indemnity in *section 4.23* applies only to FM Loss incurred by Firstgas.

Shipper may transfer Reserved Capacity to other locations

- 4.25 Subject to the following provisions of this *section 4*, where a Shipper has Reserved Capacity between a Receipt Point and a Delivery Point, that Shipper may transfer all or part of that Reserved Capacity to another Receipt Point and/or Delivery Point to which that Shipper's TSA applies.

Shipper may transfer Reserved Capacity to another Shipper

- 4.26 If a transfer of Reserved Capacity under *section 4.25* is to another Shipper, any Reserved Capacity transferred will be subject to the terms of each relevant Shipper's TSA with Firstgas.

Firstgas' consent required

- 4.27 All transfers of Reserved Capacity are subject to Firstgas' prior written consent, not to be unreasonably withheld. Such consent shall be deemed to be reasonably withheld where (but only where):
- (a) Firstgas believes, on reasonable grounds, that a transfer could result in Firstgas being unable to provide any quantity of another Shipper's Reserved Capacity or in Firstgas being unable to perform its obligations under this Code, any TSA or any transmission services agreement;
 - (b) the transferor, where it wishes to transfer Reserved Capacity for its own use, is unable to provide prior written evidence that it is party to:
 - (i) a Gas Transfer Agreement at the proposed Receipt Point or Inter-Pipeline Point; and/or
 - (ii) an Allocation Agreement at the proposed Delivery Point (if that Delivery Point is used by more than one Shipper and at which

Delivery Quantities are not allocated under the Downstream Reconciliation Rules);

- (c) the transferor, where it wishes to transfer Reserved Capacity to another Shipper, is unable to provide prior written evidence that the transferee is party to:
 - (i) a Gas Transfer Agreement at the proposed Receipt Point or Inter-Pipeline Point; or
 - (ii) an Allocation Agreement at the proposed Delivery Point (if that Delivery Point is used by more than one Shipper and at which Delivery Quantities are not allocated under the Downstream Reconciliation Rules);
- (d) the transferor wishes to transfer Reserved Capacity to another Shipper, but the transferor's and/or transferee's transmission services agreement with Firstgas expressly prohibits such transfers;
- (e) the proposed transferee is not a Shipper in respect of the Receipt Point and the Delivery Point to which the proposed transfer of Reserved Capacity relates; or
- (f) the transferor has given Firstgas less than one Business Day's notice of the proposed transfer prior to the proposed effective date of such transfer, provided that Firstgas may, at its sole discretion, consent to such transfer notwithstanding the lack of required notice.

Firstgas will give its decision on the proposed transfer as soon as reasonably practicable, but in any event within 5 days of receiving the request for the transfer from the Shipper. If Firstgas consents to that transfer, then that transfer will be effective from the date specified in the request for that transfer (the *Transfer Date*). In the absence of Firstgas' consent to a transfer, any purported transfer of capacity shall be void and of no effect.

Effect of a Reserved Capacity transfer

- 4.28 A transfer of Reserved Capacity to which Firstgas has consented under this *section 4* will add to or subtract from a Shipper's Reserved Capacity for the relevant Receipt Point(s) and Delivery Point(s) in accordance with the following formula:

$$RC_{NRDP} = RC_{ORPDP} \times CRF_{ORPDP} \div CRF_{NRDP}$$

Where:

RC_{NRDP} = the quantity of Reserved Capacity transferred to the new receipt point and delivery point;

RC_{ORPDP} = the quantity of Reserved Capacity transferred from the originating Receipt Point and Delivery Point;

CRF_{ORPDP} = the Capacity Reservation Fee at the originating Receipt Point and Delivery Point; and

CRF_{NRPDP} = the Capacity Reservation Fee at the new receipt point and delivery point.

Any transfer of Reserved Capacity to which Firstgas has consented in accordance with this *section 4* will apply from the Transfer Date for the balance of the Year (subject to any subsequent valid transfer).

Responsibility for Capacity Reservation Charges

- 4.29 From and including the Transfer Date of any transfer of Reserved Capacity in accordance with this *section 4*, the Tracking Table that relates to the TSA of any Shipper who was party to that transfer will be amended, and each Shipper's respective Transmission Charges will thenceforth be based on their amended Reserved Capacity calculated pursuant to *section 4.28*.

No Reserved Capacity transfer charge

- 4.30 Firstgas will not charge a Shipper any fee in relation to the process of transferring Reserved Capacity.

Use of OATIS

- 4.31 All requests for additional reserved capacity, to cancel Reserved Capacity or to transfer Reserved Capacity, will be notified to Firstgas using the appropriate screen on OATIS.
- 4.32 Firstgas will consent to or decline, as the case may be, all requests for additional reserved capacity, to cancel Reserved Capacity, or to transfer Reserved Capacity using OATIS.

Other transfers prohibited

- 4.33 Except as expressly set out in *sections 4* and *24*, no transfer of any rights in relation to Reserved Capacity is permitted.
- 4.34 No transfer of any rights in relation to Authorised Overrun Quantity is permitted.

5 **NOMINATED QUANTITIES**

General Provision of Nominated Quantities

- 5.1 Where a Receipt Point or a Delivery Point has a Maximum Design Flow Rate of equal to or greater than 1,000 GJ per Day, Firstgas, acting reasonably, may on 3 months' prior written notice to a Shipper, require that Shipper to provide Nominated Quantities in respect of that Receipt Point or that Delivery Point, respectively.
- 5.2 If Firstgas gives notice pursuant to *section 5.1*, then from the Nomination Day which falls immediately after the date three months from the day on which the Shipper receives such notice, the Shipper shall:
- (a) by 1400 hours on the Nomination Day, notify Firstgas of its Nominated Quantities for each Receipt Point and Delivery Point specified in Firstgas' notice under *section 5.1* for each Day of the following Week (that is, the following Monday to Sunday inclusive);
 - (b) notify Firstgas of any amendment to a Nominated Quantity as soon as reasonably practicable where that Shipper considers that such Nominated Quantity is, or will be, no longer accurate, but in any case, prior to the period to which that Nominated Quantity relates;
 - (c) provide all Nominated Quantities (and any amendments to them) in good faith; and
 - (d) notify Firstgas of each Nominated Quantity, and any amendment to it, in the manner reasonably requested by Firstgas, including by using the appropriate screen on OATIS.
- 5.3 For the avoidance of doubt, the nominations given by a Shipper to Firstgas in accordance with *sections 5.2(a)* and *(b)* are for informational purposes only and a Shipper shall not be liable for any Loss arising from a difference between a Nominated Quantity given pursuant to *sections 5.2(a)*, *(b)* and *(c)* and the actual quantity of Gas received at a Receipt Point or taken at a Delivery Point.
- 5.4 Notwithstanding *section 5.2*, Firstgas may, at its election, specify that the period to which the Nominated Quantity relates shall be an Hour and, if Firstgas so elects, the words "each Hour of" shall be deemed to be inserted before the words "each Day" in *section 5.2(a)*.
- 5.5 Unless otherwise agreed in writing between the Parties, nothing in this *section 5* derogates from *section 2.2* or *4*, or any requirements or process for nominations already in effect between the relevant Shipper and Firstgas at the Commencement Date.

Provision and use of Nominated Quantities for transmission between Pipelines

- 5.6 Notwithstanding *section 5.1*, if a Shipper wishes Firstgas to deliver a quantity of Gas from the SKF Pipeline into the BOP Pipeline at the Delivery Point known as Pokuru 2 Delivery on a Day on or after the Commencement Date then the Shipper shall comply with the nomination requirements set out in the Shipper's current Interruptible Agreement for the Kapuni to Pokuru 2 pipeline.

6 DETERMINATION OF GAS QUANTITIES

Determination of Receipt Gas Quantities

- 6.1 A Shipper's Receipt Quantity on a Day at each relevant Receipt Point will be as calculated and advised by the Gas Transfer Agent in respect of each such Receipt Point.
- 6.2 Each Shipper and (where Firstgas is the Gas Transfer Agent) Firstgas, shall ensure that each Gas Transfer Agreement to which it is a party includes a commitment on the Gas Transfer Agent to notify Firstgas in writing of each Shipper's Receipt Quantities at each relevant Receipt Point and Inter-Pipeline Point and to use reasonable endeavours to make that disclosure within the timeframes posted by Firstgas on OATIS. Firstgas must give Shippers at least 10 days' notice of any change to the timeframes posted on OATIS.
- 6.3 At any Receipt Point or Inter-Pipeline Point on the Transmission System, Firstgas will be the Gas Transfer Agent unless all Shippers in respect of whom that Receipt Point or Inter-Pipeline Point is specified in a TSA agree in writing to appoint a replacement Gas Transfer Agent and Firstgas, in its reasonable opinion, considers that replacement to be suitable to fulfil the Gas Transfer Agent role. Firstgas shall consider any proposed replacement Gas Transfer Agent unsuitable to fulfil the Gas Transfer Agent role if that proposed Gas Transfer Agent does not agree to the terms set out in Schedule Six that apply to a Gas Transfer Agent. If a replacement Gas Transfer Agent is appointed in accordance with this *section 6.3*, that person will remain the Gas Transfer Agent unless all the relevant Shippers and Firstgas further agree in writing to appoint another replacement in accordance with this *section 6.3*. Without limiting the foregoing sentences, any Shipper requiring a Gas Transfer Agreement for a Receipt Point or Inter-Pipeline Point where an existing Gas Transfer Agreement is in place shall agree to the appointment of the then current Gas Transfer Agent at that Receipt Point or Inter-Pipeline Point.

Gas Transfer Agent's agreement

- 6.4 Where Firstgas is the Gas Transfer Agent, it:
- (a) shall agree to and execute a Gas Transfer Agreement if it is in the form set out in Schedule Seven; and
 - (b) may, acting reasonably, agree to a Gas Transfer Agreement other than in the form set out in Schedule Seven.

Determination of the Delivery Quantity

- 6.5 A Shipper's Delivery Quantity on a Day at:
- (a) a Delivery Point on a Pipeline that is not used or available to be used by more than one Shipper, will be the metered quantity at that Delivery Point;

- (b) a Delivery Point on a Pipeline that is used by (or available to be used by) more than one Shipper, will be the Allocation Result;
 - (c) the Delivery Point known as Frankley Road will be the sum of:
 - (i) the Shipper's Approved Nomination for delivery into the Maui Pipeline at that Welded Point; and
 - (ii) where a Shipper requires delivery of a quantity of Gas to that Delivery Point but does not require that Gas to be delivered into the Maui Pipeline, as calculated and advised by the relevant Gas Transfer Agent;
 - (d) the Delivery Point known as Kapuni, will be all of the Shipper's Receipt Quantities on the Frankley Road to Kapuni pipeline (including at Frankley Road and Kapuni) minus all of the Shipper's Delivery Quantities on the Frankley Road to Kapuni pipeline (including each Delivery Quantity determined in accordance with *section 6.5(c)* but excluding Kapuni); and
 - (e) the Delivery Point known as Pokuru 2 Delivery, will be a quantity of Gas equal to the Interruptible Capacity (or the Reduced Interruptible Capacity, as the case may be) as defined under the Shipper's current Interruptible Agreement for the Kapuni to Pokuru 2 pipeline.
- 6.6 At each Delivery Point at which an Allocation Agreement applies, each Shipper shall ensure that such Allocation Agreement includes a commitment that, within two Business Days of the Allocation Agent receiving the input information from Firstgas for that Delivery Point, that Allocation Agent will notify Firstgas in writing of each Shipper's Delivery Quantities at that Delivery Point, but in any event shall not be obliged to provide those Delivery Quantities earlier than the timeframe required for Delivery Quantities under the Downstream Reconciliation Rules.

Finality of Allocation Results and Delivery Quantities

- 6.7 Except to the extent of any metering corrections or manifest error by Firstgas or the Gas Transfer Agent in determining any Delivery Quantity under *sections 6.5(c), (d) or (e)*, Firstgas shall be entitled to rely on the Allocation Result and shall not be obliged to check or correct any Delivery Quantity.

7 TITLE AND RISK

Title to Gas

- 7.1 The relevant Shipper shall at all times retain title to each Receipt Quantity and each Shipper hereby warrants to Firstgas that, at the time that Firstgas receives that Shipper's Receipt Quantity, the Shipper has good title to such Receipt Quantity, free and clear of all liens and encumbrances. For the purposes of this *section 7.1*, the reference to a Shipper shall, where applicable, include any principal on whose behalf that Shipper may be acting as agent, and that Shipper is and will be warranting as to that principal's unencumbered title to the Gas. In no circumstances shall title to Gas pass from a Shipper to Firstgas under a TSA other than pursuant to *section 8.18(b)* or *8.19(b)*.
- 7.2 Firstgas shall have the right to co-mingle a Shipper's Gas with other Gas in its Transmission System during transmission and to subject the Gas in its Transmission System to compression, cleaning and other processes consistent with Firstgas' operation of its Transmission System.

Control, Possession and Risk

- 7.3 The control and possession of, and risk in, Gas received by Firstgas under each TSA shall pass from the relevant Shipper to Firstgas at the Interconnection Point within the Receipt Point and shall pass from Firstgas to the relevant Shipper when Gas is delivered in accordance with *section 7.4*, at which time the control and possession of, and risk in, such Gas shall revert to that Shipper.

Deemed Delivery of Gas

- 7.4 Firstgas will be deemed to have delivered a Shipper's Gas to that Shipper when the Shipper takes delivery of the equivalent quantity of Gas at the relevant Interconnection Point within the relevant Delivery Point in accordance with the terms of its TSA.

8 **BALANCING AND PEAKING**

Matching Receipt and Delivery

- 8.1 Subject to the next sentence in this *section 8.1*, each Shipper shall use all reasonable endeavours to ensure that, in respect of each Day, the aggregate of its Receipt Quantities on a Pipeline matches the aggregate of its Delivery Quantities on that Pipeline. Firstgas acknowledges that, in respect of each Day, a Shipper may cause the aggregate of its Receipt Quantities on a Pipeline to be different to the aggregate of its Delivery Quantities on that Pipeline for the purpose of causing its Running Mismatch to tend towards zero.
- 8.2 Each Shipper shall use its reasonable endeavours to manage its Running Mismatch for a Pipeline connected to a Welded Point so that such Running Mismatch tends towards zero over a reasonable period of time.

Line Pack to Remain within Acceptable Operational Limits

- 8.3 Firstgas will use its best endeavours to manage the Line Pack in respect of each Pipeline to ensure that such Line Pack remains within the Acceptable Operational Limits for that Pipeline, which Acceptable Operational Limits shall be set by Firstgas at levels that are sufficient to enable Firstgas to comply with *sections 2.2* and *2.3*.
- 8.4 If the Line Pack reaches or is outside of the relevant Acceptable Operational Limit, Firstgas will (except during the period of any Critical Contingency which shall commence at the time a Critical Contingency is determined by the Critical Contingency Operator under regulation 48 of the CCM Regulations and end at the time the Critical Contingency is terminated as determined by the Critical Contingency Operator under regulation 61 of the CCM Regulations):
- (a) take steps to ensure that the Line Pack is returned within the relevant Acceptable Operational Limits;
 - (b) without limiting *sections 2.2* and *2.3*, use reasonable endeavours to minimise the cost of such return; and
 - (c) if Firstgas considers it has a reasonable period of time to complete the following process:
 - (i) issue a request for tenders (*RFT*) to Shippers and relevant gas industry members seeking tenders to buy or sell a quantity of Gas which it estimates to be sufficient to return the Line Pack within the Acceptable Operational Limits;
 - (ii) post on OATIS the price, quantity and delivery point from each tender received in response to the *RFT*, but not who submitted the tender; and

- (iii) if Firstgas accepts a tender at all, accept the lowest price tendered (if buying) or the highest price tendered (if selling) in response to the RFT,

and apply such Gas bought or sold to return the Line Pack within the Acceptable Operational Limits.

8.5 [deleted]

8.6 In evaluating the price tendered for, and determining the cost of, Balancing Gas under *section 8.4*, Firstgas shall be entitled to take into account the direct cost of transporting that Gas to the relevant Welded Point and such transportation costs shall be allocated to the BPP along with the cost of the Balancing Gas.

8.7 All RFTs requested under *section 8.4* shall be requested in accordance with the Tender Terms and shall be via a critical notice posted on OATIS. All notices given by Firstgas under this *section 8* shall be posted on OATIS, or where OATIS is not available, in the manner set out under *section 3*.

Aggregation of Mismatch

8.8 Where a Shipper has more than one TSA in respect of the same Pipeline, until 30 September 2009 Firstgas will, if requested in writing by that Shipper, calculate the Shipper's Mismatch as the aggregate Mismatch across all TSAs of that Shipper that relate to the same Pipeline. To avoid doubt, nothing in this *section 8.8* shall entitle a Non-Code Shipper to aggregate its Mismatch under any transmission services agreement with Mismatch under any of its other transmission services agreements or TSAs.

Balancing at Small Welded Points

8.9 Where MDL requires Firstgas to transfer any Accumulated Excess Operational Imbalance in accordance with section 12.5 of the MPOC, Firstgas will:

- (a) determine each Shipper's Running Mismatch at the Small Welded Point in question at the end of the relevant Month;
- (b) subject to *sections 8.10* and *8.11* and any restrictions that MDL may impose, transfer (in relation to a Shipper) to a Large Welded Point an amount of Operational Imbalance at the Small Welded Point equivalent to that Shipper's Running Mismatch at the end of the relevant Month that is the same sign (being negative or positive) as the Accumulated Excess Operational Imbalance of the Small Welded Point at the end of that Month;
- (c) effect the transfer of a Shipper's Running Mismatch as calculated under *section 8.9(b)* by:
 - (i) adjusting the amount of the relevant Shipper's Running Mismatch that relates to the Pipeline for which the Large Welded Point is a

Receipt Point (*Adjustment Amount*) with effect from the end of the Day on which that transfer is made; and

- (ii) adjusting the amount of that Shipper's Running Mismatch in relation to the Small Welded Point by the Adjustment Amount with effect from the end of the Day on which that transfer is made; and
 - (d) notify the relevant Shipper that a transfer has occurred under *section 8.9(b)*, specifying the quantum of that transfer and to which Welded Point that quantum was transferred.
- 8.10 For the purposes of *section 8.9*, where the aggregate of all Shippers' and all Non-Code Shippers' Running Mismatch of the same sign as the Accumulated Excess Operational Imbalance at the Small Welded Point that MDL requires Firstgas to transfer in accordance with section 12.5 of the MPOC is greater than that Accumulated Excess Operational Imbalance, Firstgas will allocate the Accumulated Excess Operational Imbalance based on each such Shipper's Running Mismatch of that sign in the proportion that such Running Mismatch bears to the aggregate of all such Shippers' Running Mismatch and all such Non-Code Shippers' Running Mismatch of that same sign.
- 8.11 Firstgas will not transfer a Shipper's Running Mismatch to any Large Welded Point on a Pipeline not used by that Shipper. Otherwise, Firstgas may, at its sole discretion (subject to any restrictions that MDL may impose), effect a transfer under *section 8.9* or *8.10* to any Large Welded Point.
- 8.12 [deleted]

Allocation of payments into and out of the BPP Pool

Payments to the Incentives Pool Trustee

- 8.13 If Firstgas, as a Welded Party:
- (a) Is required to make a payment to the Incentives Pool Trustee under the MPOC as a result of an Incentives Pool Debit arising from an Excess Daily Imbalance in respect of a Day (the Claim Day) then the BPP Trustee shall make a payment out of the BPP Account to Firstgas or, if Firstgas requests, the Incentives Pool Trustee. The amount payable by Firstgas to the Incentives Pool Trustee will, in relation to a Pipeline, be allocated to Shippers and Firstgas as follows:
 - (i) to each Shipper who has a negative Mismatch on that Pipeline on the Claim Day in the proportion calculated pursuant to the Shipper Allocation Formula, where for the purposes of that formula, the relevant Day is the Claim Day, each reference to Running Mismatch is deemed to be replaced by a reference to Mismatch and each reference to Firstgas Running Imbalance is deemed to be replaced by a reference to Firstgas Imbalance; and

- (ii) where Firstgas has a negative Firstgas Imbalance on that Pipeline on the Claim Day, the amount allocated to Firstgas shall be equal to the Firstgas Costs less the NCS Costs (each as defined in the Shipper Allocation Formula) then multiplied by the proportion that any negative Firstgas Imbalance on that Pipeline bears to the aggregate of any negative Firstgas Imbalance plus all Shippers' negative Mismatch on that Pipeline on that Claim Day,

and Firstgas and each such Shipper shall pay the amount so allocated to it into the BPP Account; or

- (b) is required to make a payment (including payment of a Peaking Charge) to MDL or the Incentives Pool Trustee (as applicable) under the MPOC as a result of a Peaking Limit being exceeded on a Day (*Peaking Cost*), the BPP Trustee shall make a payment out of the BPP Account to Firstgas or, if Firstgas requests, to MDL or the Incentives Pool Trustee. Where Firstgas, applying the Peaking Allocation Methodology, determines the Peaking Cost is on account of Gas delivered to:
 - (i) any one of, or any combination of Firstgas, one or more Shippers, and/or any Non-Code Shipper(s), Firstgas shall allocate the Peaking Cost among Firstgas and those Shippers and the Non-Code Shippers (if applicable) in accordance with the Peaking Allocation Methodology. Firstgas and each Shipper shall pay into the BPP Account any part of the Peaking Cost so allocated to it,

except that, to the extent that Firstgas has contributed to the Peaking Limit being exceeded by failing to act as a Reasonable and Prudent Operator, Firstgas shall pay the amount of such Peaking Cost (calculated in proportion to the extent to which Firstgas' failure to act as a Reasonable and Prudent Operator has contributed to the Peaking Cost) into the BPP Account (and the amount payable by Firstgas and/or a Shipper under *section 8.13(b)(i)* shall be reduced accordingly). For the purpose of *section 8.13(b)*, a reference to a "Shipper" will not include any Shipper (and a reference to a "Non-Code Shipper" will not include any Non-Code Shipper) who has demonstrated to Firstgas' reasonable satisfaction that it did not cause Firstgas to incur, or contribute to Firstgas incurring, that Peaking Cost.

Claims for non-delivery

- 8.14 If, in respect of a Pipeline and a Day, a Shipper (*Claiming Shipper*) was not able to take all of the Gas to which it was entitled (prior to any Operational Flow Order or curtailment or shutdown effected by Firstgas pursuant to *section 10.3* reducing that Shipper's entitlement) under its TSA and that Claiming Shipper considers, acting reasonably, that it has a bona fide claim and should be entitled to receive a payment under *sections 8.15* and/or *8.16*, that Claiming Shipper may make a claim in writing to Firstgas by the end of the Month following the Month in which

that Gas was not able to be taken and, if that Claiming Shipper does make such a claim, it shall:

- (a) state the quantity of Gas that it was unable to take on that Day; and
- (b) provide (including if reasonably requested by Firstgas) sufficient information to enable Firstgas to:
 - (i) verify whether that quantity of Gas was not able to be taken by that Claiming Shipper; and
 - (ii) if applicable, make an Incentives Pool Claim,

and Firstgas shall:

- (c) verify the extent to which the claim by that Claiming Shipper was bona fide;
- (d) verify the quantity of the claim by that Claiming Shipper;
- (e) to the extent the quantity of the claim by that Claiming Shipper is verified under this *section 8.14 (the Verified Claim)*, action that Verified Claim under *sections 8.15 and/or 8.16*, as applicable; and
- (f) verify the quantity of any bona fide claim from a Non-Code Shipper that the Non-Code Shipper was not able to take all of the Gas to which it was entitled under its transmission services agreement on that same Day (*Non-Code Shipper Verified Claim*).

8.15 It is agreed that:

- (a) any recovery of payment from the Incentives Pool in respect of a Verified Claim and a Non-Code Shipper Verified Claim, in each case, that arises in whole or in part as a result of the same event or circumstance on the Maui Pipeline shall be allocated between Shipper(s) and Non-Code Shipper(s) in the proportion that each such verified claim bears to the aggregate of all such verified claims in respect of that same event or circumstance on the Maui Pipeline; and
- (b) if Firstgas determines that the Verified Claim arises in whole or in part as a result of the same event or circumstance on the Maui Pipeline (*the Maui Quantity*), Firstgas shall use all reasonable endeavours to pursue and seek recovery of payment from the Incentives Pool in respect of that Maui Quantity. To the extent payment for any Maui Quantity from the Incentives Pool is recovered from MDL (*the Incentives Pool Payment*), Firstgas shall make such Incentives Pool Payment into the BPP Account. The BPP Trustee shall pay each Claiming Shipper who made a Verified

Claim in respect of which that Incentives Pool Payment was made, an amount of the Incentives Pool Payment that was allocated to Shippers pursuant to *section 8.15(a)*, such amount to be allocated to each Claiming Shipper in the proportion that its Maui Quantity bears to the aggregate of all such Claiming Shippers' Maui Quantities.

8.16 The BPP Trustee shall pay each Claiming Shipper with a Verified Claim (in addition to any amount payable to that Claiming Shipper pursuant to *section 8.15*) an amount based on the following calculation:

$$\text{Shipper's Verified Claim} \quad \times \quad \text{DIP}$$

provided that:

- (a) the Shipper's Verified Claim shall be deemed to be reduced by that Shipper's Maui Quantity (if any) (*Adjusted Verified Claim*), regardless of whether an Incentives Pool Payment in relation to that Maui Quantity is received by Firstgas;
- (b) the BPP Trustee's liability (after the application of *section 8.16(a)*) to pay that Claiming Shipper under this *section 8.16* shall be limited to the aggregate amount recovered under *section 8.17* and any amount recovered by Firstgas from a Non-Code Shipper (which amount Firstgas shall pay to the BPP Trustee) as a result of that Non-Code Shipper's negative Mismatch giving rise or contributing to the Claiming Shipper's Verified Claim (and the BPP Trustee and Firstgas, as applicable, shall use all reasonable endeavours to recover such amounts as soon as reasonably practicable). Where the aggregate amount recovered under this *section 8.16(b)* and *section 8.17* is less than the aggregate of the amount payable to all Claiming Shippers under this *section 8.16* (after the application of *section 8.16(a)*), the BPP Trustee shall pay the amount so recovered to each such Claiming Shipper that is entitled to receive a payment under this *section 8.16* based on the proportion that the BPP Trustee's liability to that Claiming Shipper under this *section 8.16* bears to the aggregate of the BPP Trustee's liability to all such Claiming Shippers with Adjusted Verified Claims under this *section 8.16*; and
- (c) in respect of each amount to be paid or recovered under *section 8.15*, *8.16* or *8.17*, such amount arises in whole or in part as a result of the same event or circumstance.

Payment for causing non-delivery

8.17 Where, in respect of a Pipeline and a Day on which a Claiming Shipper has a Verified Claim, Firstgas has negative Firstgas Imbalance or a Shipper has a negative Mismatch then, Firstgas (if applicable) and/or each such Shipper shall pay an amount directly into the BPP Account calculated as follows:

- (a) Amount Payable by a Shipper for a Shipper's Negative Mismatch = $\frac{\text{that Shipper's Negative Mismatch}}{(\sum \text{Negative Mismatch} + \text{Firstgas Negative Imbalance})}$ x DIP x (\sum Adjusted Verified Claims)
- (b) Amount Payable by Firstgas for a negative Firstgas Imbalance = $\frac{\text{Firstgas Negative Imbalance}}{(\sum \text{Negative Mismatch} + \text{Firstgas Negative Imbalance})}$ x DIP x (\sum Adjusted Verified Claims)

where:

\sum *Adjusted Verified Claims* means the sum of all Shippers' relevant Adjusted Verified Claims in respect of that Pipeline on that Day;

\sum *Negative Mismatch* means the sum of all Shippers' negative Mismatch on that Pipeline on that Day;

Shipper's Negative Mismatch means the relevant Shipper's negative Mismatch for that Pipeline on that Day; and

Firstgas Negative Imbalance means any negative Firstgas Imbalance for that Pipeline on that Day,

provided that, for that Pipeline for that Day:

- (c) subject to *section 8.17(d)* and *(e)*, the aggregate liability of Firstgas and/or each such Shipper to pay into the BPP Account under this *section 8.17* shall be limited to the amount payable for the aggregate Adjusted Verified Claims of all Claiming Shippers under *section 8.16(a)* less any amounts recovered from the Non-Code Shippers pursuant to *section 8.16(b)*;
- (d) the liability of a Shipper shall be limited to that Shipper's Negative Mismatch on that Day; and
- (e) the liability of Firstgas shall be limited to any negative Firstgas Imbalance on that Day.

Where a sale or purchase of Balancing Gas occurs

8.18 If, for a Day, a payment is required as a result of a sale or purchase of Balancing Gas under *section 8.4* (which, to avoid doubt, will not include payments associated with Firstgas Running Imbalance) then:

- (a) where Firstgas purchases Gas, the BPP Trustee shall make a payment out of the BPP Account to Firstgas or, if Firstgas requests, the Gas Provider who sold such Gas. Each Shipper who has a negative Running Mismatch

on the relevant Pipeline on the BPP Allocation Day shall purchase a quantity of Gas from Firstgas. Such quantity shall be calculated by dividing the quantity of Gas so purchased by Firstgas among all Shippers and Non-Code Shippers with a negative Running Mismatch on the relevant Pipeline on the BPP Allocation Day in accordance with this *section 8.18(a)*. Title to such Gas shall be deemed to have passed on the BPP Allocation Day. Each such Shipper shall pay into the BPP Account the proportion of costs paid by Firstgas in relation to the purchased Gas that such Shipper's negative Running Mismatch on that Pipeline on the BPP Allocation Day bears to the aggregate of all Shippers' and all Non-Code Shippers' negative Running Mismatch, in each case on that Pipeline and on the BPP Allocation Day;

- (b) where Firstgas sells Gas, Firstgas shall pay the proceeds of such sale into the BPP Account. Each Shipper who has a positive Running Mismatch on the relevant Pipeline on the BPP Allocation Day shall sell a quantity of Gas to Firstgas. Such quantity shall be calculated by dividing the quantity of Gas so sold by Firstgas among all Shippers and Non-Code Shippers who have a positive Running Mismatch on the relevant Pipeline on the BPP Allocation Day in accordance with this *section 8.18(b)*. Title to such Gas shall be deemed to have passed on the BPP Allocation Day. Each Shipper shall be entitled to receive from the BPP Account the proportion of funds received by Firstgas for the sale of such Gas that such Shipper's positive Running Mismatch bears to the aggregate of all Shippers' and all Non-Code Shippers' positive Running Mismatch, in each case on that Pipeline and on the BPP Allocation Day.

Where a Cash-out occurs

8.19 If, for a day, a payment is required as a result of a Cash-out then:

- (a) where Firstgas purchases Gas, the BPP Trustee shall make a payment out of the BPP Account to Firstgas or, if Firstgas requests, the Gas Provider who sold such Gas. Each Shipper who has a negative Running Mismatch on the relevant Pipeline on the BPP Allocation Day shall purchase a quantity of Gas from Firstgas. Such quantity shall be calculated and allocated by dividing the quantity of Gas so purchased by Firstgas from the Gas Provider among all Shippers with a negative Running Mismatch and Firstgas, if it has a negative Firstgas Running Imbalance, in each case on the relevant Pipeline on the BPP Allocation Day, in accordance with *sections 8.19(a)(i)* and *(ii)*. Title to such Gas shall be deemed to have passed on the BPP Allocation Day. The costs paid by Firstgas in relation to the purchased Gas shall be allocated to Shippers and Firstgas as follows:
- (i) each such Shipper with a negative Running Mismatch on the relevant Pipeline on the BPP Allocation Day shall be allocated and pay into the BPP Account an amount calculated pursuant to the Shipper Allocation Formula, where, for the purposes of that formula, the relevant Day is the BPP Allocation Day; and

- (ii) where Firstgas has a negative Firstgas Running Imbalance on the relevant Pipeline, Firstgas shall be allocated an amount equal to the Firstgas Costs less the NCS Costs (each as defined in the Shipper Allocation Formula) then multiplied by the proportion that the negative Firstgas Running Imbalance on that Pipeline on that BPP Allocation Day bears to the aggregate of any such negative Firstgas Running Imbalance plus all Shippers' negative Running Mismatch on that Pipeline on that BPP Allocation Day;
- (b) where Firstgas sells Gas, Firstgas shall pay the proceeds of such sale into the BPP Account. Each Shipper who has a positive Running Mismatch on the relevant Pipeline on the BPP Allocation Day shall sell a quantity of Gas to Firstgas. Such quantity shall be calculated by dividing the quantity of Gas so sold by Firstgas among all Shippers who have a positive Running Mismatch and Firstgas, if it has a positive Firstgas Running Imbalance, in each case on the relevant Pipeline on the BPP allocation Day, in accordance with *sections 8.19(b)(i) and (ii)*. Title to such Gas shall be deemed to have passed on the BPP Allocation Day. The proceeds of such sale shall be allocated to Shippers and Firstgas and paid out of the BPP Account as follows:
 - (i) each Shipper shall be entitled to receive from the BPP Account an amount calculated as follows:

$$\begin{array}{l} \text{Amount} \\ \text{Payable to a} \\ \text{Shipper} \end{array} = \frac{\text{Shipper's positive RM}}{(\sum \text{SRM} + \text{VRI})} \times (\text{Firstgas Funds} - \text{NCS Funds})$$

where, in respect of that Pipeline and on the BPP Allocation Day:

Shipper's positive RM means the Shipper's positive Running Mismatch;

$\sum \text{SRM}$ means the aggregate of all Shippers' positive Running Mismatch;

VRI means positive Firstgas Running Imbalance;

Firstgas Funds means the funds received by Firstgas for the sale of such Gas; and

NCS Funds means the Non-Code Shippers' funds, calculated as follows:

$$\text{NCS Funds} = \frac{\sum \text{NCSRM}}{(\sum \text{SRM} + \sum \text{NCSRM})} \times \text{Firstgas Funds}$$

where, in respect of that Pipeline and on the BPP Allocation Day:

Σ *NCSR*M means the aggregate of all Non-Code Shippers' positive Running Mismatch.

- (ii) where Firstgas has a positive Firstgas Running Imbalance on the relevant Pipeline, Firstgas shall be entitled to receive from the BPP Account an amount equal to the Firstgas Funds less the NCS Funds (each as defined in *section 8.19(b)(i)* above) then multiplied by the proportion that any positive Firstgas Running Imbalance on that Pipeline on that BPP Allocation Day bears to the aggregate of any positive Firstgas Running Imbalance plus all Shippers' positive Running Mismatch, in each case on that Pipeline on that BPP Allocation Day.

Financially neutral

- 8.20 Firstgas, in its capacity as pipeline owner and operator, shall only recover direct costs in relation to, and will not add a margin in respect of, the sale and purchase of Balancing Gas or a Cash-out (to avoid doubt, this does not prevent Firstgas from making a profit from Transmission Charges relating to Balancing Gas). However, Firstgas shall be entitled to recover costs paid to a third party for the administration of Firstgas' operation of the BPP Account, including audit fees and bank charges (net of any interest earned). Firstgas shall recover such administration costs from each Shipper, and each Shipper shall pay such administration costs, in the proportion that the quantity of each Shipper's aggregate deliveries of Gas bears to the quantity of all Shippers' aggregate deliveries of Gas over the relevant period.

Corrections

- 8.21 Subject to *section 16.17*, if, on or after the BPP Commencement Day:
- (a) Firstgas becomes aware that any Information (other than MDL-supplied Information) is incorrect (*Information Error*), it shall:
 - (i) not be required to alter or undo any allocation or transfer based on that Information; and
 - (ii) within two Business Days of becoming aware of the Information Error, post on OATIS notification of that Information Error; and
 - (iii) in respect of each Day affected by the Information Error (each an *Affected Day*), with effect from the start of the first day of *the Month* following the Month in which Firstgas becomes aware of the Information Error (the *Correction Date*);

(A) for each Shipper, correct its Receipt Quantities (as notified by the Gas Transfer Agent) and/or Delivery Quantities and Mismatch; and

(B) for Firstgas, correct the Firstgas Imbalance,

in each case so as to remove the effect of the Information Error on each Affected Day; and

(C) recalculate each Shipper's Running Mismatch and the Firstgas Running Imbalance for each Affected Day and each following Day, to effect a correction to the opening Running Mismatch and opening Firstgas Running Imbalance positions at the start of the Correction Date; and then

as soon as reasonably practical after the completion of the corrections and recalculations described in paragraphs (A)-(C) above, post on OATIS a notification of the correction of the Information Error. For the avoidance of doubt Firstgas shall not be required to correct any BPP Amount paid or payable by any Party affected by the Information Error;

(b) Firstgas receives a notice that any Information supplied by MDL is incorrect (*MDL Information Error*), it shall:

(i) within two Business Days of becoming aware of an MDL Information Error post on OATIS notification of the MDL Information Error;

(ii) settle the MDL Information Error with MDL as soon as reasonably practicable following notification in accordance with *section 8.21(b)(i)* and within two Business Days of that settlement post on OATIS notification that the MDL Information Error has been settled and the impact of the settlement on the Shippers Receipt Quantities and/or Delivery Quantities;

(iii) in respect of each Day affected by the MDL Information Error, with effect from no earlier than the start of the first day of the Month following the Month in which Firstgas settles the MDL Information Error (*the MDL Correction Date*);

(A) for each Shipper, correct its Receipt Quantities and/or Delivery Quantities and Mismatch; and

(B) for Firstgas, correct the Firstgas Imbalance,

in each case so as to remove the effect of the MDL Information Error, and then;

- (C) recalculate each Shipper's Running Mismatch and Firstgas' Firstgas Running Imbalance for each Affected Day and each following day to effect a correction to the opening Running Mismatch and opening Firstgas Running Imbalance positions at the start of the MDL Correction Date; and
- (iv) as soon as reasonably practicable after the completion of the corrections and recalculations described in paragraphs (A)-(C) above, post on OATIS a notification of the correction of the MDL Information Error; and
- (v) as soon as is reasonably practicable following notification in accordance with *section 8.21(b)(iv)*, issue a debit note or credit note in accordance with the Goods and Services Tax Act 1985 for any BPP Amounts where appropriate to give effect to the settlement of the MDL Information Error.

Peaking

8.22 If a Shipper suspects that it will take a quantity of Gas in an Hour at a Delivery Point at a rate which may cause a Peaking Limit to be exceeded, then that Shipper may give written notice to Firstgas specifying the:

- (a) Hours during which it expects to take such Gas;
- (b) quantity of such Gas it expects to take in each such Hour; and
- (c) relevant Delivery Point and Receipt Point.

Upon receipt of such notice, Firstgas shall seek MDL's consent to exceed the relevant Peaking Limit under section 13.2 of the MPOC. If MDL does not give its consent to a Shipper exceeding a Peaking Limit, the Shipper shall not cause the Peaking Limit to be exceeded. Nothing in this *section 8* shall imply any approval or acknowledgement by Firstgas of a Shipper exceeding a Peaking Limit.

8.23 If Firstgas reasonably considers that a Peaking Limit will be exceeded, Firstgas will give notice to each Shipper via OATIS of the anticipated excess as soon as reasonably practicable.

Balancing and Peaking Pool

8.24 Firstgas shall open an interest-bearing bank account with a registered bank in New Zealand known as the "BPP Account". All money held in the BPP Account (including any interest earned on such money) will be held by the BPP Trustee for payment in accordance with this *section 8* for the benefit of Shippers, Non-Code Shippers and Firstgas or, if Firstgas makes a request under *sections 8.13, 8.18(a)* and/or *8.19(a)*, the Incentives Pool Trustee, MDL and/or the Gas Provider. Firstgas warrants that:

- (a) the BPP Account is an account separate from all of Firstgas' other bank accounts;
- (b) the amounts in the BPP Account will not be subject to any charge or encumbrance in favour of any bank or third party; and
- (c) where requested by a Shipper who is required to make or entitled to receive payment into or from the BPP Account under this *section 8*, Firstgas shall procure from the bank with which the BPP Account is maintained a written acknowledgement that the funds in it are held on trust by Firstgas and are not funds of Firstgas, or to be commingled with funds of Firstgas, except as expressly provided for in this *section 8*.

Payments from BPP Account

8.25 The BPP Trustee shall:

- (a) make any payments from the BPP Account in accordance with:
 - (i) this *section 8* only to Shippers and Firstgas or, if Firstgas makes a request under *sections 8.13, 8.18(a)* and/or *8.19(a)*, the Incentives Pool Trustee, MDL and/or the Gas Provider; and
 - (ii) the equivalent section to *section 8* in a Non-Code Shipper's transmission services agreement only to Non-Code Shippers and Firstgas or, if Firstgas makes a request under the equivalent sections to *sections 8.13, 8.18(a)* and/or *8.19(a)*, the Incentives Pool Trustee, MDL and/or the Gas Provider;
- (b) have, and may exercise, the power to borrow for the purpose of enabling payments from the BPP Account to be made pursuant to *paragraph (a)* above.

Books and Records

8.26 The BPP Trustee shall keep full, complete and current records of all money paid into and out of the BPP Account.

Trustee's Liability

8.27 The BPP Trustee's liability shall be limited to the funds for the time being in, or payable to, the BPP Account (the *Funds*), unless the BPP Trustee has been negligent or is in wilful default of its obligations under the relevant TSA, in which case, the BPP Trustee's liability shall not be limited to the Funds but the limitations and exclusions set out in *section 23* shall apply.

Audit

8.28 The BPP Trustee shall ensure that the BPP is audited within three Months following the end of each Year in respect of that Year by a duly qualified,

independent auditor against the BPP Trustee's obligations under this *section 8* and shall post that independent auditor's report on OATIS.

- 8.29 A Shipper may request the BPP Trustee to have the BPP audited by a duly qualified, independent auditor, against the BPP Trustee's obligations in this *section 8* and the BPP Trustee shall do so unless an audit of the BPP has been initiated (whether by the BPP Trustee or at any Shipper's request) within the 6 months prior to the then current request. The BPP Trustee shall post that independent auditor's report on OATIS. The costs of such audit and auditor will be at that Shipper's sole cost unless the auditor finds an error with a value that is greater than \$10,000.

No Limitation

- 8.30 The limitations arising under *section 23* shall not apply to any liability to make a payment into or out of the BPP arising under this *section 8*.

Liquidated Damages Regime

- 8.31 Subject to *section 8.32*, Firstgas and each Shipper acknowledges that any amount payable under this *section 8* does not constitute a penalty and is a reasonable and genuine pre-estimate of Loss that may be suffered in the circumstances.
- 8.32 To the extent that Firstgas has failed to act as a Reasonable and Prudent Operator and a Shipper is not able to take all of the Gas to which it was entitled under its TSA, nothing in this *section 8* will limit the rights and remedies of a Shipper against Firstgas (except where the exception in *section 8.13(b)* applies, in which case the Shipper's sole remedy against Firstgas shall be as set out in that *section 8.13(b)*).

Contingency Imbalances

- 8.33 Firstgas shall calculate the Contingency Imbalances (volume and value) for each Day on which a Critical Contingency exists, in accordance with the Critical Contingency Management Plan.
- 8.34 Except as provided in the Critical Contingency Management Plan, all Mismatch and Firstgas Imbalance arising on a Day on which a Critical Contingency exists shall be treated as Contingency Imbalance in accordance with the Critical Contingency Management Plan and shall not be taken into account in determining Running Mismatch or Firstgas Running Imbalance, after the time the Critical Contingency is terminated, as determined by the Critical Contingency Operator. Additional payments required following termination of a Critical Contingency, as set out in the Critical Contingency Management Plan, shall be treated as BPP Amounts and made in accordance with *sections 15 and 16*.
- 8.35 *Sections 8.33* and *8.34* do not apply to a Regional Critical Contingency.

9 DISPLACED GAS NOMINATIONS

9.1 A Shipper may only make a Displaced Gas Nomination in respect of a Welded Point on a Pipeline if that Shipper has obtained the prior written consent of Firstgas in accordance with this *section 9*.

9.2 Firstgas will consent in writing to a Displaced Gas Nomination notified by a Shipper if (but only if) that Shipper:

- (a) has submitted to Firstgas a completed consent application in the form available to all Shippers on OATIS under the heading "Consent Form – Displaced Gas Nominations" (the *Consent Form*); and
- (b) agrees to be bound by the Posted Terms and Conditions for Displaced Gas Nominations for each Displaced Gas Nomination that occurs pursuant to a Consent Form.

Firstgas will notify that Shipper in writing of that consent within one Business Day of receiving that Shipper's application.

9.3 The Parties acknowledge that Firstgas' consent is only given under this *section 9* in order to satisfy the requirements of section 8.1(d) of the MPOC, and does not imply any additional approval, or additional acknowledgement, by Firstgas of the direct or indirect effects of a Displaced Gas Nomination.

9.4 Any Displaced Gas Nomination to which Firstgas consents shall always (and only) be governed by the then current relevant terms of the MPOC and the then current Posted Terms and Conditions for Displaced Gas Nominations, as at the time the Displaced Gas Nomination was made.

10 INTERRUPTION OF TRANSMISSION

Curtailement and Shutdown

- 10.1 Firstgas may, without incurring any liability to a Shipper under the relevant TSA, curtail or shutdown the receipt of Gas at a Receipt Point, transmission of Gas through a Pipeline, or the quantity of Gas made available at a Delivery Point, to the extent and for the duration that Firstgas, acting as a Reasonable and Prudent Operator, determines is necessary where:
- (a) Firstgas detects or suspects that:
 - (i) an Emergency is occurring or will occur;
 - (ii) Force Majeure is in effect; or
 - (iii) such a curtailment or shutdown is necessary to avoid a Critical Contingency being determined by the Critical Contingency Operator;
 - (b) Firstgas' ability to make Gas available for delivery to any shipper on the Transmission System is impaired, or the safe and reliable operation of a Pipeline, another pipeline or Distribution System, is at risk, as a result of:
 - (i) a Shipper exceeding its relevant MDQ on a Day, or MHQ in an Hour, for a Delivery Point;
 - (ii) an Operational Imbalance between that Pipeline and the Maui Pipeline; or
 - (iii) a depletion in Line Pack outside the Acceptable Operational Limits;
 - (c) Firstgas is performing maintenance on a Pipeline or associated equipment, including for the purposes of testing, adding to, altering, repairing, replacing, inspecting, cleaning, maintaining or removing any part of its Transmission System (including any Pipeline, compressor, valve, monitoring or metering equipment) (*Maintenance*);
 - (d) an Interconnected Party ceases to have a valid Interconnection Agreement in respect of the Relevant Receipt Point or Delivery Point; and/or
 - (e) a Shipper ceases to have a valid:
 - (i) Gas Transfer Agreement in respect of the relevant Receipt Point or Inter-Pipeline Point; or
 - (ii) Allocation Agreement in respect of the relevant Delivery Point,

provided that Firstgas shall:

- (f) use all reasonable endeavours to curtail or shutdown the receipt of Gas at a Receipt Point, transmission of Gas through a Pipeline, or the quantity of Gas made available at a Delivery Point, in each case, under any Interruptible Agreement prior to any other such curtailment or shutdown under a TSA, but except where *sections 10.1(a)(i)* and/or *(iii)* apply, Firstgas shall do so only to the extent reasonably practicable;
- (g) curtail or shutdown the receipt of Gas at a Receipt Point, transmission of Gas through a Pipeline, or the quantity of Gas made available at a Delivery Point in a way that ensures that the remaining allocation (if any) is on a fair basis determined by Firstgas, acting as a Reasonable and Prudent Operator, taking into account the requirements of the Shipper, other affected shippers and affected Interconnected Parties;
- (h) without limiting *section 10.1(i)*, give each Shipper notice as early as reasonably practicable prior to such curtailment or shutdown of Firstgas' intention to curtail or shutdown the receipt, transmission or making available of Gas of the reason, likely duration and extent of the curtailment or shutdown;
- (i) where the curtailment or shutdown is for Scheduled Maintenance, give each Shipper at least 30 days' notice of such Maintenance and the likely times of such Maintenance. For the purpose of this *section 10.1(i)*, Scheduled Maintenance means Maintenance that will affect Firstgas' ability to receive Gas from, or make Gas available to, a Shipper in accordance with a TSA and of which Firstgas is aware at least 30 days prior to the date on which such Maintenance will occur;
- (j) minimise the period of curtailment or shutdown to the extent reasonably practicable and resume making Gas available at a Delivery Point as soon as reasonably practicable; and
- (k) consult, if reasonably practicable, with each Shipper regarding the timing of the curtailment or shutdown so as to minimise the disturbance to that Shipper's and other Shippers' businesses.

Operational Flow Order

- 10.2 If any of the events described in *sections 10.1(a)* to *10.1(d)* occur, Firstgas may give a Shipper an "Operational Flow Order", being a notice requiring that Shipper to ensure that its offtake of Gas at a Delivery Point is curtailed and/or that its Nominated Quantities are reduced at a Receipt Point, as the case may be, and that Shipper shall use its best endeavours to comply with such Operational Flow Order immediately (acknowledging in the case of major plant the need to shut down in accordance with safe operating procedures). Firstgas will minimise the

period of curtailment or shutdown required under an Operational Flow Order to the extent reasonably practicable.

Critical Contingency

- 10.3 Firstgas may, without incurring any liability to a Shipper under the relevant TSA, curtail or shut down the receipt of Gas at a Receipt Point, transmission of Gas through a Pipeline, or the quantity of Gas made available at a Delivery Point, as required to comply with the CCM Regulations.

Rebate of Charges

- 10.4 In any case of curtailment or shutdown under *sections 10.1, 10.2 or 10.3*, Firstgas shall provide each Shipper with an appropriate rebate of the Capacity Reservation Charge and any fixed charge which is not calculated by reference to the throughput of any quantity of Gas in an Existing Supplementary Agreement, Supplementary Agreement or pursuant to an ATS Notice, paid by that Shipper for the loss or reduction of transmission service as a result of the period of curtailment or shutdown, except to the extent that the Shipper has caused or contributed to any event or circumstance giving rise to such curtailment or shutdown.

11 TECHNICAL STANDARDS / MEASUREMENT AND TESTING

Metering Standards

- 11.1 Firstgas shall ensure that all gas that flows through any Receipt Point or any Delivery Point is measured:
- (a) by Metering for that Receipt Point or for that Delivery Point (as the case may be);
 - (b) if no Metering existed at a Delivery Point as at 30 November 2005, by the arrangements for determining gas quantities as at (and prior to) that date; or
 - (c) if no Metering exists at a Delivery Point at the date a Shipper first starts using such Delivery Point and there are existing arrangements for determining gas quantities at such Delivery Point, by the arrangements for determining gas quantities as at that date.
- 11.2 Subject to *section 11.3*, Firstgas shall:
- (a) where Firstgas is the Metering Owner, ensure that the installation, operation and maintenance of Metering at:
 - (i) a Welded Point interconnected with a Pipeline complies with section 16 of the MPOC; or
 - (ii) a Receipt Point or a Delivery Point that is not a Welded Point complies with the Metering Requirements; or
 - (b) where Firstgas is not the Metering Owner, exercise any contractual rights it has to ensure that the installation, operation and maintenance of Metering at:
 - (i) a Welded Point interconnected with a Pipeline complies with section 16 of the MPOC; or
 - (ii) a Receipt Point or a Delivery Point that is not a Welded Point complies with the Metering Requirements,and if a Shipper can exercise similar contractual rights against the Metering Owner, whether in its capacity as a shipper or otherwise, it will do so.
- 11.3 In relation to Metering in existence on 30 November 2005, the Metering Owner shall be relieved of the need to comply with the requirements set out in Parts 1 and 2 of the Metering Requirements, provided that:

- (a) to the extent that such Metering complies with Parts 1 and 2 of the Metering Requirements, where Firstgas is the Metering Owner it shall, and, where the Metering Owner is a third party, Firstgas shall exercise any contractual rights it has to ensure that the Metering Owner shall, continue to maintain such compliance;
- (b) all gas measurement devices of the types set out below that form part of Metering shall be subject to As-Found Testing (as that term is described in the Metering Requirements) either in-situ or off-site, at the frequency stated in Part 2 of the Metering Requirements:
 - (i) meters;
 - (ii) pressure, temperature and density transducers that are separate from and external to any other gas measurement device;
 - (iii) gas chromatographs or other analysers used to determine the composition of Gas and Gas properties such as calorific value;
 - (iv) flow computers; and
 - (v) flow correctors;
- (c) the Metering Owner shall use (and where the Metering Owner is not Firstgas, Firstgas and any Shipper (whether in its capacity as a shipper or otherwise) that has contractual rights against the Metering Owner, shall each use its reasonable endeavours to ensure that the Metering Owner uses) reasonable endeavours to ensure that any gas measurement device of the type listed in *section 11.3(b)* that forms part of Metering is Accurate; and
- (d) any gas measurement device referred to in *section 11.3(b)* that forms part of Metering shall be deemed to be Accurate only to the extent that, when subject to As-Found Testing, its Uncertainty is determined to be within the accuracy limits set out in Part 2 of the Metering Requirements, otherwise such meter shall be deemed to be Inaccurate.

Special Testing of Metering

- 11.4 Where Firstgas is the Metering Owner, the Shipper may, acting reasonably, request Firstgas to carry out (or, where Firstgas is not the Metering Owner, to exercise any contractual rights it has to require a Metering Owner to carry out) a special test of any Metering or any gas measurement device forming part of such Metering, and provide that Shipper with the test results and/or allow that Shipper or its representative to be present during such testing. Firstgas shall comply with any such request, provided that:

- (a) the Metering Owner shall not be required to undertake such special testing of the same gas measurement device:
 - (i) where the Metering Owner has tested the same Metering or gas measurement device within 1 month of the Shipper's request; or
 - (ii) more frequently than once every 3 months;
- (b) where the Metering or gas measurement device is found to be Accurate, the Shipper will reimburse the Metering Owner for all reasonable costs incurred by the Metering Owner in undertaking the testing; and
- (c) where the Metering or gas measurement device is found to be Inaccurate:
 - (i) Firstgas, where it is the Metering Owner, shall bear all costs incurred by it in undertaking the special test (but not any costs incurred by the Shipper or any other party);
 - (ii) Firstgas, where it is the Metering Owner, at its own cost and as soon as reasonably practicable, will service, repair, recalibrate or replace the Metering or gas measurement device as may be required to make such Metering Accurate; and
 - (iii) Firstgas, where it is not the Metering Owner, as soon as reasonably practicable, will exercise any contractual rights it has to require the Metering Owner to service, repair, recalibrate or replace the Metering or gas measurement device as may be required to make such Metering Accurate.

Corrections for Inaccurate Metering

- 11.5 Where Metering is found to be Inaccurate then Firstgas, where it is the Metering Owner, shall ensure and, where Firstgas is not the Metering Owner, shall exercise any contractual rights it has to ensure, that gas quantities computed by such Metering are corrected in accordance with Part 3 of the Metering Requirements.

Future contractual arrangements

- 11.6 Firstgas shall ensure that all Interconnection Agreements it enters into on or after 1 December 2007 give Firstgas substantially the same rights as those contemplated by *sections 11.2(b), 11.4 and 11.5* (being the rights referred to in those sections enabling Firstgas to require the relevant metering owner to install, operate and maintain Metering to the relevant standard, carry out special testing of Metering, service, repair, recalibrate or replace Metering as may be required to make such metering Accurate and to make corrections for Inaccurate Metering).

The Metering Owner

- 11.7 For the purposes of each TSA, for a Delivery Point, Firstgas shall be the Metering Owner unless otherwise agreed in writing by Firstgas and the relevant Shipper. If

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a replacement Metering Owner is agreed to in accordance with this *section 11.7*, that person will remain the Metering Owner unless the relevant Shipper and Firstgas further agree in writing to appoint another Metering Owner. Without limiting the foregoing sentences, any Shipper requiring transmission services to a Delivery Point shall agree to the appointment of the then current Metering Owner at that Delivery Point.

12 GAS SPECIFICATION

- 12.1 Firstgas and each Shipper shall ensure that any contract it has with a third party entered into on or after 30 November 2005 for the sale or purchase of gas (excluding any gas trade where the gas for that trade is sourced from a contract entered into before 30 November 2005) where such gas will enter, or is in, a Pipeline includes a requirement that all such gas must comply with the Gas Specification at the delivery point stated in that contract.
- 12.2 Firstgas shall ensure that any Interconnection Agreement for a receipt point entered into by Firstgas on or after 30 November 2005:
- (a) requires the counterparty to ensure that all gas that counterparty injects into a Pipeline complies with the Gas Specification; and
 - (b) gives Firstgas the right to make the counterparty demonstrate that it has adequate facilities, systems and procedures in place to ensure that it is able to comply with its obligation to inject into a Pipeline only Gas.
- 12.3 Without limiting either Firstgas' or a Shipper's obligation to act as a Reasonable and Prudent Operator or to mitigate its Loss arising out of or in relation to Non-Specification Gas that enters, or is in, a Pipeline, each Party acknowledges that should Non-Specification Gas enter, or be in, a Pipeline, Firstgas is unlikely to be able to prevent such Non-Specification Gas from reaching a Delivery Point.
- 12.4 As soon as reasonably practicable upon Firstgas or a Shipper detecting or, in its reasonable opinion, suspecting that Non-Specification Gas is flowing, or is likely to flow, through a Receipt Point or a Delivery Point, that Party will notify the other Party of the same (except where that Party has first received notice from the other Party of the Non-Specification Gas) and provide any details of which that Party is aware in relation to:
- (a) the reason why that gas is Non-Specification Gas;
 - (b) the likely period of time during which the Non-Specification Gas will be injected into the Pipeline;
 - (c) the likely period of time during which the Non-Specification Gas will be made available at a Delivery Point; and
 - (d) the nature and extent of the deviation of the gas from the Gas Specification.
- 12.5 Firstgas, upon receiving a reasonable written request from a Shipper, shall exercise any contractual rights it has to require a party who injects gas into a Pipeline (or the party who injects gas into that party's pipeline) to demonstrate that such party has adequate facilities, systems and procedures in place to

ensure that it is able to comply with its obligation to inject only gas which complies with the Gas Specification into a Pipeline, provided that Firstgas shall not be obliged to exercise such rights where the relevant Shipper can exercise similar contractual rights against such party, whether in its capacity as a shipper or otherwise. Firstgas shall have no liability to the requesting Shipper by reason only that Firstgas exercised its rights described in this *section 12.5*.

- 12.6 Nothing in this *section 12* requires Firstgas to monitor the quality of Gas entering a Pipeline.
- 12.7 Firstgas shall indemnify each Shipper for any Loss incurred by that Shipper arising out of or in relation to that Shipper taking Non-Specification Gas at a Delivery Point, except to the extent that such Loss arose from the Shipper causing or contributing to the Non-Specification Gas entering the relevant Pipeline. The indemnity shall not apply to the extent that the Shipper has not mitigated its Loss to the fullest extent reasonably practicable.
- 12.8 Where Firstgas did not cause Gas to become Non-Specification Gas, the indemnity under *section 12.7* will be subject to the limitations and exclusions set out in *sections 23.2, 23.3, 23.4* and *23.5*.
- 12.9 Where Firstgas caused Gas to become Non-Specification Gas, the indemnity under *section 12.7* will be subject to the limitations and exclusions set out in *sections 23.1, 23.2, 23.3, 23.4(c), (d)* and *(f)* and *23.5*.
- 12.10 For the purpose of *sections 12.7, 12.8* and *12.9*, any Non-Specification Gas will be deemed to have been Non-Specification Gas at the time it was injected or delivered into a Pipeline unless it is shown that Firstgas caused Gas to become Non-Specification Gas.
- 12.11 Any claim made under *section 12.7* shall be without prejudice to any other rights or remedies available to each Shipper.
- 12.12 In relation to Gas taken at each Delivery Point Firstgas will, in accordance with Schedule Five, publish on OATIS the following data:
- (a) the date;
 - (b) daily average carbon dioxide and nitrogen content (in mole %);
 - (c) daily average Gross Calorific Value (in Megajoules per standard cubic metre); and
 - (d) relative density (or specific gravity).

Firstgas shall publish on OATIS not less than once during each Year a summary report describing the facilities, systems, procedures and monitoring it uses to

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verify that the defined gas type data published pursuant to Table A, Schedule Five is accurate.

13 **ODORISATION**

- 13.1 Firstgas will not odorise Gas in an unodorised Pipeline, or cease to odorise Gas in an odorised Pipeline, unless each shipper using that Pipeline requests in writing that Firstgas alter the odorisation status of that Pipeline, and if Firstgas agrees, Firstgas shall odorise, or cease to odorise, as appropriate, that Pipeline. Notwithstanding the foregoing, Firstgas may cease to odorise Gas in an odorised Pipeline upon 12 months written notice to each of the shippers using that Pipeline. For the purposes of this *section 13.1*, references to an "odorised Pipeline" or an "unodorised Pipeline" shall also mean an odorised part of a Pipeline or an unodorised part of a Pipeline, respectively.
- 13.2 Where Firstgas odorises Gas in a Pipeline in accordance with *section 13.1*, it will inject such quantities of a suitable odorant into the Gas that, in normal circumstances, ensures that the Gas, when delivered through a typical distribution network, complies with the New Zealand Standard 5263:2003: Gas Detection and Odorisation.
- 13.3 Firstgas will conduct spot checks from time to time on each odorised Pipeline (but not, for the avoidance of doubt, at all Delivery Points on such Pipeline) to test whether the Gas leaving that Pipeline meets the detectability requirements set out in New Zealand Standard 5263:2003. If Firstgas becomes aware that such Gas does not meet these requirements, notwithstanding that normal quantities of odorant have been injected, Firstgas will advise each affected Shipper as soon as reasonably practicable and take all reasonable steps to remedy the situation.
- 13.4 Notwithstanding this *section 13*, in no event or circumstance shall Firstgas have any liability whatsoever to any Shipper for any Loss incurred by that Shipper from a loss of odorisation attributable to any change in the composition or properties of the Gas beyond the control of Firstgas.
- 13.5 Each Month, Firstgas will publish on OATIS the results of any odorisation spot checks completed in the previous Month. Firstgas shall also publish on OATIS not less than once during each Year a summary report describing the facilities, systems, procedures and monitoring that it uses in order to verify compliance with *section 13.2*.

14 PRUDENTIAL REQUIREMENTS

- 14.1 A reference in *sections 14.2 to 14.8* to Firstgas means Firstgas acting solely in its capacity under a TSA as provider of transmission services, and a reference in *sections 14.9 to 14.13* to Firstgas means Firstgas acting in each of its capacities under a TSA as provider of transmission services and as the BPP Trustee.
- 14.2 By 1 January 2008 and at all times until the Shipper has paid all outstanding amounts and all amounts payable or which may become payable in the 30 months following expiry or termination of the Shipper's TSA, each Shipper must comply, at its election, with one of the following:
- (a) hold an acceptable credit rating in accordance with *section 14.3*;
 - (b) pay two separate cash bonds, one to Firstgas and another to the BPP Trustee. Firstgas and the BPP Trustee will deal with the respective bonds in accordance with this *section 14*; or
 - (c) arrange for a third party to provide one or a combination of the following securities, for the amount required in accordance with this *section 14*, provided the party providing the security maintains an acceptable credit rating in accordance with *section 14.3*:
 - (i) an unconditional payment guarantee or letter of credit in favour of Firstgas or the BPP Trustee;
 - (ii) an unconditional third party payment guarantee in favour of Firstgas or the BPP Trustee; or
 - (iii) a security bond in favour of Firstgas or the BPP Trustee.
- 14.3 For the purposes of *sections 14.2(a)* and (c), an acceptable credit rating means a long term credit rating of at least Baa3 (Moody's Investor Services Inc.), BBB- (Standard & Poors Ratings Group), B (AM Best), B (Fitch), such other equivalent credit rating or other reference from a reputable person which is reasonably acceptable to Firstgas or the BPP Trustee, as applicable, (including confirmation from an independent auditor that, in its opinion, the relevant Shipper or third party security provider satisfies the criteria that would be applied in the granting of such a credit rating).
- 14.4 The Shipper or third party security provider (as the case may be) will provide such evidence of the acceptable credit rating (as set out in *section 14.3*), as Firstgas or the BPP Trustee may from time to time reasonably require.
- 14.5 The amount of a cash bond or the amount which may be payable to Firstgas or the BPP Trustee pursuant to any security provided pursuant to *section 14.2* (as the case may be) shall be:

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- (a) for the BPP Trustee, \$115,000.00; and
 - (b) for Firstgas, Firstgas' reasonable estimate of three months of the Shipper's Transmission Charges (including GST).
- 14.6 Either the Shipper or Firstgas may review the amount of the cash bond or security provided pursuant to *sections 14.5(b)*, and require such amount to be adjusted up or down on a quarterly basis to reflect the Shipper's obligation to pay Transmission Charges.
- 14.7 Where a Shipper has complied with the requirements of *section 14.2*, that Shipper shall as soon as reasonably practicable notify Firstgas and the BPP Trustee should any of the following occur:
- (a) the Shipper ceases to comply with the requirements of *section 14.2*;
 - (b) the Shipper reasonably believes that its financial position is likely to be materially adversely impaired such that its ability to pay the Transmission Charges will be consequently affected; or
 - (c) a third party security provider (upon which its current satisfaction of the prudential requirements in this *section 14* is dependent) no longer holds an acceptable credit rating in terms of *section 14.3*.
- 14.8 Each of Firstgas and the BPP Trustee will hold the relevant cash bond paid to it in a separate, interest bearing, trust account with a bank. Any interest paid will accrue and be added to the value of the cash bond, minus any applicable bank fees incurred for that trust account.
- 14.9 If the Shipper fails to pay Firstgas any amount set out in any invoice issued by Firstgas pursuant to a TSA on the due date for payment (otherwise than for manifest error or as a result of a dispute under *section 16.17*) then on the expiry of five days prior written notice from Firstgas, without limiting any other right Firstgas may have under that TSA, Firstgas may:
- (a) make a claim under any Credit Support to the extent payment is due and the Shipper shall procure such payment;
 - (b) require Credit Support from the Shipper, if Credit Support has not already been provided by the Shipper;
 - (c) require a change to the type of Credit Support provided for the Shipper;
 - (d) require an increase to the level of Credit Support held for the Shipper; and/or

- (e) apply any Credit Support claimed by Firstgas and procured by the Shipper pursuant to *section 14.9* in respect of a non-payment to the BPP Account solely for payment to the BPP Account.
- 14.10 Where any claim is made under any Credit Support instrument a Shipper, upon notification from Firstgas, must procure replacement Credit Support so that the Credit Support requirements set out in *section 14.2* continue to be met.
- 14.11 Where a Shipper is required to provide new, replacement or additional Credit Support, it must do so within 20 Business Days of Firstgas' written request.
- 14.12 If a TSA is terminated, Firstgas will release any associated security and repay any bond (including any interest accrued under *section 14.8*, minus any applicable bank fees) to the extent that the relevant Shipper has paid all outstanding amounts and amounts payable under all of its TSAs except to the extent:
- (a) of any claim made by Firstgas under such security in accordance with Agreement; and/or
 - (b) the relevant Shipper has not paid all outstanding amounts and all amounts payable or which may reasonably be considered by Firstgas to become payable in the following 30 months under that TSA.
- 14.13 If required by Firstgas in writing, a Shipper will show evidence of comprehensive liability insurance covering third party property damage and personal liability for which that Shipper may be legally liable under or in relation to a TSA, up to the Capped Amounts, except to the extent that such insurance is not permitted by law.

15 FEES AND CHARGES

Transmission and other Charges

- 15.1 For each Month, each Shipper shall pay to Firstgas:
- (a) the Capacity Reservation Charge;
 - (b) the Throughput Charge;
 - (c) the Overrun Authorisation Charge, if any;
 - (d) the Authorised Overrun Charge, if any;
 - (e) the Unauthorised Overrun Charge, if any;
 - (f) the Alternative Transmission Services Charge, if any;
 - (g) any Correction Charges incurred pursuant to *section 15.5*; and
 - (h) any other charges specified in the Shipper's TSA.

No Rebate for Reserved Capacity Not Used

- 15.2 Except as otherwise expressly provided under the relevant TSA, a Shipper shall not be entitled to any rebate for Reserved Capacity or Authorised Overrun Capacity that it does not use.

Balancing and Peaking Pool Charges and Other Charges

- 15.3 For each Month each Shipper shall pay to Firstgas all amounts payable by it pursuant to, and determined in accordance with, *section 8*.
- 15.4 For each Month Firstgas shall pay to each Shipper and Firstgas all amounts to which that Shipper or Firstgas (as applicable) is entitled pursuant to, and determined in accordance with, *section 8*.

Correction Charges

- 15.5 A Shipper shall pay to Firstgas any costs incurred by Firstgas in having to recalculate Transmission Charges payable by any Shippers that arise from:
- (a) that Shipper (or its agent) providing incorrect information to an Allocation Agent; or
 - (b) any failure to provide information within the time specified in *section 6.2* (except that, where Firstgas is the Gas Transfer Agent, this *section 15.5(b)* shall not apply if any failure to provide information within the timeframe specified in *section 6.2* was caused by the Gas Transfer Agent),

on a time basis, calculated as follows:

Correction Fee (\$/hour) x Time

where:

Correction Fee = \$100 per hour; and

Time = the number of hours reasonably expended by Firstgas staff to recalculate such charges, costs or credits.

Redetermination and Adjustment of Fees

- 15.6 Firstgas will give each Shipper notice by 1 June in each year of the provisional fees to be used in the calculation of the Transmission Charges for the Year following that 1 June and the confirmed fees to be used in such calculations by 1 September, such confirmed fees to replace the relevant then current fees and be effective as of, and including, 1 October of that following Year. Firstgas will post such provisional and confirmed fees on OATIS.
- 15.7 In the event that a Shipper does not accept the confirmed fees, that Shipper may require Firstgas to submit to the dispute resolution procedure outlined in Schedule Two. In any such process or arbitration, Firstgas will provide the relevant Shipper and the mediator or arbitrator (or such other authorised person as the case may be) with the prevailing applicable pricing methodology as a basis for examining the fees set, provided that the methodology itself will not be the subject of the dispute resolution procedure or arbitration.
- 15.8 Firstgas agrees that it will not adjust any of the fees posted on OATIS except when such fees have been amended in accordance with *sections 15.5 and/or 15.6*, subject to any adjustment that may be required to correct a manifest error or omission.

16 INVOICING AND PAYMENT

Transmission Service Invoice

- 16.1 On or before the 10th day of each month, (or as soon thereafter as is reasonably practicable), Firstgas shall invoice each Shipper for all Transmission Charges payable by that Shipper under each TSA with respect to any previous Month.

Balancing and Peaking Pool Invoice

- 16.2 On or before the 14th day of each month (or as soon thereafter as is reasonably practicable), Firstgas shall invoice each Shipper and Firstgas for all BPP Amounts (if any) payable by that Shipper or Firstgas with respect to any previous Month and any costs payable but not paid. Firstgas may apply (without prior notice or demand) any credit balance of a Shipper in an invoice under this *section 16.2* in or towards satisfaction of any indebtedness then due to it under an invoice under this *section 16.2*, except where any such credit balance is the subject of a dispute under *section 16.17*.

Shipper's Invoice to Balancing and Peaking Pool

- 16.3 On or before the 14th day of each month (or as soon thereafter as is reasonably practicable), Firstgas shall render to each Shipper a schedule summarising the amount of the payment (if any) to which that Shipper is entitled under its TSA pursuant to *section 8* in respect of a previous Month (the *BPP Schedule*), such BPP Schedule to include the information in *sections 16.6(b)* and *(c)*. Except to the extent of any amount in dispute under *section 16.17*, each Shipper shall provide an invoice to Firstgas for the aggregate amount stated in the BPP Schedule within 3 Business Days of the BPP Schedule being rendered (except where Firstgas has approval from the Commissioner of Inland Revenue to issue a "buyer-created tax invoice", in which case the invoice for such charges shall be provided by Firstgas and not by the relevant Shipper).

Contents of Transmission Service Invoice

- 16.4 Invoices rendered for Transmission Charges under *section 16.1* shall include the following information:
- (a) the Delivery Quantities taken by the relevant Shipper on each Day at each Delivery Point in the previous Month;
 - (b) each Transmission Charge payable pursuant to *section 15.1* for the previous Month;
 - (c) any change in Transmission Charges payable for any prior Month in accordance with *section 16.19*; and
 - (d) the GST Amount, if any.

Firstgas may render a separate invoice for each such Transmission Charge.

Transmission Services Statements

- 16.5 On or before the 10th day of each Month (or as soon thereafter as reasonably practicable), Firstgas shall issue each Shipper with a statement of any Transmission Charges outstanding in respect of that Shipper for any prior Month.

Contents of Balancing and Peaking Pool Invoices

- 16.6 Any invoice rendered for BPP Amounts under *section 16.2* shall include all of the following information, and any invoice rendered pursuant to *section 16.3* shall include the information in *sections 16.6(a) and (d)*:
- (a) any BPP Amounts payable by the relevant Shipper or which the Shipper is entitled to receive for each Day of any previous Month under that TSA;
 - (b) for each Pipeline under that TSA:
 - (i) the relevant Shipper's Mismatch on each Day, and how it was calculated;
 - (ii) the relevant Shipper's Running Mismatch;
 - (iii) the aggregate Running Mismatch on each Day of all Shippers and Non-Code Shippers on that Pipeline with a negative Running Mismatch;
 - (iv) the aggregate Running Mismatch on each Day of all Shippers and Non-Code Shippers on that Pipeline with positive Running Mismatch;
 - (v) debits or credits of Balancing Gas and Cash-out quantities (in GJ) and the associated prices of such Gas; and
 - (vi) the calculation of the relevant Shipper's resulting debits and credits;
 - (c) information regarding the time and magnitude of a Peaking Limit being exceeded and the calculation of the relevant Shipper's debits and credits, which will include:
 - (i) the information received from MDL regarding the relevant Peaking Limit being exceeded (being the Welded Point, the date, time and amount);
 - (ii) which allocation mechanism in *section 8* Firstgas determined was applicable; and
 - (iii) the aggregate contribution of all Shippers (in GJ) and the Shipper's and Non-Code Shipper's contribution (in dollars and GJ);
 - (d) the GST Amount, if any.

Balancing and Peaking Pool Statements

- 16.7 On or before the 14th day of each Month (or as soon thereafter as reasonably practicable), Firstgas shall issue each Shipper with a statement of any BPP Amounts outstanding in respect of that Shipper or which that Shipper is entitled to receive for any prior Month.

Goods and Services Tax

- 16.8 All amounts payable under a TSA are stated before the calculation of GST, which shall be due and payable at the same time as the payment to which it relates is due (*GST Amount*). Any invoices provided under this *section 16* shall specify the GST Amount and shall meet the requirements for a tax invoice in the Goods and Services Tax Act 1985.

Other Taxes

- 16.9 In addition to the fees, charges and GST payable pursuant to *section 15*, each Shipper shall pay to Firstgas an amount equal to any new or increased tax, duty, impost, levy or charge (but excluding income tax and rates) (each a *Tax*) from time to time directly or indirectly imposed by the Government or any other regulatory authority, and incurred by Firstgas after 1 December 2007 directly relating to the provision of transmission services by Firstgas under that Shipper's TSA (including the sale and purchase of Gas by Firstgas pursuant to *section 8*), or in respect of any goods or services provided pursuant to the relevant TSA and this Code (including without limitation, any increase of any such Tax). Firstgas agrees that any decrease of any such Tax will be passed on to the relevant Shippers.
- 16.10 In addition to the fees, charges and GST payable pursuant to *section 15*, the Parties agree that, should the Government or any other regulatory authority impose an initiative in respect of greenhouse gases or their emission or any emissions trading regime that imposes a cost of any kind on Firstgas directly relating to the provision of transmission services by Firstgas under that Shipper's TSA (including the sale and purchase of Gas by Firstgas pursuant to *section 8*) then *section 16.9* can be amended by Firstgas (through notification in writing by Firstgas to each Shipper), following industry consultation, so that the principle of pass-through set out in that *section 16.9* extends to that cost.
- 16.11 In the event that Firstgas requires payment by a Shipper of any Tax pursuant to *section 16.9* (including as amended in accordance with *section 16.10*), it shall provide to that Shipper a certificate from Firstgas' auditors:
- (a) confirming the amount is properly payable by Firstgas;
 - (b) verifying the accuracy of the amount charged by Firstgas; and
 - (c) where the amount is payable by Firstgas in respect of all or some of its Shippers, confirming that the proportion payable by that Shipper has been determined on an appropriate and reasonable basis taking into account the

quantity of transmission services purchased by the Shipper in comparison to all transmission services purchased from Firstgas and any other factor relevant to the new or increased Tax.

Firstgas shall notify each Shipper of the corresponding revision in the amounts payable by that Shipper under the relevant TSA.

Presentation of Invoices

16.12 Firstgas, in its sole discretion, may issue a BPP Schedule or any invoice under *section 16.1* or *16.2* by:

- (a) e-mailing to a Shipper's e-mail address most recently (and specifically) notified in writing to Firstgas; and
- (b) posting the invoice as one or more PDF files on OATIS.

16.13 A Shipper may issue any invoice under *section 16.3* by e-mailing to Firstgas' e-mail address most recently (and specifically) notified in writing to that Shipper.

Payment by the Shipper

16.14 Subject to *sections 16.17* and *16.19* and receiving an invoice rendered under *section 16.1*, each Shipper shall pay to Firstgas the aggregate amount stated in a Firstgas invoice by direct credit to Firstgas' bank account by the later of the 20th day of the month in which the invoice is rendered or 10 Business Days after receipt of such invoice. Each Shipper shall:

- (a) ensure that payment of an invoice rendered under *section 16.1* is credited to Firstgas' bank account 030:05390193635:00 or such other bank account as notified by Firstgas in writing from time to time, or credited in such other manner as may be agreed by the Parties in writing from time to time; and
- (b) immediately give notice to Firstgas of the invoice numbers and the respective amounts to which the payment relates.

16.15 Each Shipper shall pay to Firstgas the aggregate amount stated in the invoice rendered by Firstgas pursuant to *section 16.2* within 10 Business Days of receiving such invoice by direct credit into the BPP Account (number 030:539243479:00, or such other bank account as notified by Firstgas in writing from time to time), or credited in such other manner as may be mutually agreed between the Parties in writing from time to time.

Payment by Firstgas

16.16 Subject to *sections 16.17* and *16.19* Firstgas shall pay:

- (a) into the BPP Account the aggregate amount stated in any invoice from Firstgas pursuant to *section 16.2* within 10 Business Days of receiving such

invoice by direct credit to the BPP Account (number 030:539243479:00, or such other bank account as notified by Firstgas in writing from time to time); and

- (b) each Shipper from the BPP Account the aggregate amount stated in the invoice rendered by that Shipper pursuant to *section 16.3* by direct credit to the relevant Shipper's bank account (as notified in writing to Firstgas from time to time) within 10 Business Days of receiving the Shipper's invoice (or within 10 Business Days of providing the Shipper's invoice if it is a "buyer-created tax invoice"); and
- (c) each Shipper the amount of any overcharge.

Disputed Invoices

16.17 If a Shipper disputes any amount invoiced under *section 16.1 (Dispute)*, that Shipper shall, within 10 days from the date it received the invoice under *section 16.1*, notify Firstgas in writing identifying the amount in dispute and giving full reasons for the dispute (*Dispute Notice*). The disputing Shipper shall pay the undisputed portion of the invoice under *section 16.1* that is in dispute. If the Dispute has not been resolved by negotiation between the parties within 15 Business Days of Firstgas receiving the Dispute Notice under this section, a Party may refer the Dispute to an independent expert for binding resolution in accordance with *section 17.2* (which shall mean, for the avoidance of doubt, that Schedule Two will not apply). In the event that a Shipper complies with the provisions of this section, Firstgas shall not have the right to suspend transmission services by reason only of that Shipper's withholding of the disputed amount or invoice. In the absence of any manifest error in Firstgas' use of any Information in calculating any BPP Amount invoiced under *section 16.2* or *section 16.3*, a Shipper must not dispute any BPP Amount, must pay any applicable BPP Amount promptly in full without any deduction or set-off of any kind in accordance with clause 16.14 and hereby waives any and all rights to withhold, dispute or otherwise make any claim in relation to any such amount it may have under this Code or otherwise.

Interest on Disputed Amount

16.18 Where a Party has to pay money to the other as a result of the resolution or determination of a Dispute notified under *section 16.17* then, in addition to such payment, interest calculated on a daily basis (compounded monthly) shall be payable from (but not including) the due date for payment of the invoice until actual payment at a rate equal to the Interest Rate.

Overcharges and Undercharges

16.19 If it shall be found at any time that a Shipper or Firstgas, has been overcharged or undercharged under the provisions of its TSA:

- (a) if the overcharge or undercharge relates to a BPP Amount calculated in accordance with *section 8*, Firstgas is not required to issue a debit note or

credit note under the Goods and Services Tax Act 1985 (or refund any amounts paid to any Shipper), except:

- (i) in relation to any manifest error or omission in Firstgas' use of any Information; or
 - (ii) in accordance with *section 8.21(b)(v)*.
- (b) if the overcharge or undercharge relates to a Transmission Charge under *section 16.1* and results from a revised Delivery Quantity, Firstgas will:
- (i) if the revised Delivery Quantity results in an undercharge, issue a debit note to the Shipper (in accordance with the Goods and Services Tax Act 1985) with the next invoice issued to the Shipper under *section 16.1*; or
 - (ii) if the revised Delivery Quantity results in an overcharge, issue a credit note to the Shipper (in accordance with the Goods and Services Tax Act 1985) with the next invoice issued to the Shipper under *section 16.1* and where the Shipper has paid the invoices containing such overcharge, refund to the Shipper the amount of any such overcharge;
- (c) for all other overcharges or undercharges, then, within 30 Days after the amount of the overcharge or undercharge has been agreed to by the Parties or determined by an independent expert pursuant to *section 17.2*, Firstgas or the relevant Shipper, as appropriate, shall issue a credit note or debit note (as appropriate) in accordance with the Goods and Services Tax Act 1985; and
- (i) where such Party has actually paid the invoices containing an overcharge refund to the other Party the amount of any such overcharge, or
 - (ii) where an undercharge applies, pay the amount of the undercharge,

in both cases together with interest on the overcharged or undercharged amount at the Interest Rate calculated from the due date for payment of the appropriate invoice to the date of actual payment of the overcharged or undercharged amount.

Subject to *section 16.20* there shall be no right to re-open invoices for Transmission Charges or BPP Amounts if more than 18 months has elapsed since the date of the first invoice containing the original Transmission Charges or BPP Amounts.

16.20 Notwithstanding that such period of time set out in *section 16.19* may have elapsed;

- (a) if a dispute under the Maui Gas Contract, a User Contract or the Methanex 20/20 Agreement has been resolved in a manner that means the relevant Shipper has been undercharged or overcharged, then neither Party shall lose its right to re-open the invoice until a date six months after the date that either Party first becomes aware of the resolution of such dispute. Each Party shall notify the other Party of such resolution immediately upon becoming aware of it, except where the second Party becomes aware of it because of such a notice from the first Party.
- (b) if a Shipper's Delivery Quantities change as a result of a special allocation performed under the Downstream Reconciliation Rules, the time period under *section 16.19* may be extended for a period of up to 30 months since the date of the first invoice containing the original Transmission Charges.

Default Interest

16.21 If either Firstgas or a Shipper makes default without lawful excuse in the payment of money payable under a TSA and this Code on the due date for payment (or, where money is payable upon demand, upon demand being made) then interest shall be payable on the amount unpaid from the due date for payment until actual payment, at a rate equal to the Default Rate, calculated on a Daily basis (compounded monthly).

17 DISPUTE RESOLUTION

- 17.1 Subject to *section 16.17*, in the event of any dispute or difference between Firstgas and a Shipper arising out of their TSA (*Dispute*), the Dispute shall be resolved in accordance with the dispute resolution procedure contained in Schedule Two.
- 17.2 If a Party is to refer a Dispute under *section 16.17* to an independent expert, that expert is to be nominated in writing by Firstgas and the relevant Shipper jointly (or, in default of agreement within 20 Business Days from the date that the Dispute Notice is delivered, by the President for the time being of the New Zealand Institute of Chartered Accountants (*NZICA*)). The determination in writing of the independent expert or the nominee of the President of NZICA on the matter in dispute will be conclusive and binding on the Parties and will be deemed to have been given as an expert and not an arbitrator. The costs of the independent expert or the nominee of the President of NZICA (as the case may be) will be borne as to one half by Firstgas and as to the other half by the Shipper or as otherwise determined by that independent expert or that nominee. For the avoidance of doubt, the provisions of the Arbitration Act 1996 shall not apply to such determination.
- 17.3 Nothing in *section 17* or *18* shall in any way limit or affect the right of a Party to enforce the terms of its TSA by seeking, including by way of court proceedings, relief by way of injunction and/or summary judgment.

18 **ARBITRATION**

- 18.1 Where *paragraph 5* of Schedule Two applies, either Firstgas or the Shipper may submit the Dispute to arbitration in accordance with the Arbitration Act 1996 except that sections 4 and 5 of the Second Schedule to the Arbitration Act 1996 shall not apply.
- 18.2 Either Firstgas or a Shipper may refer a matter to arbitration in accordance with *section 18.1* by giving to the other Party notice in writing stating the subject matter and details of the Dispute and that Party's desire to have the matter referred to arbitration (the *Arbitration Notice*).
- 18.3 The arbitration shall be by one arbitrator to be agreed upon by the Parties or, in the event that a single arbitrator cannot be agreed within 30 Business Days from the date that the Arbitration Notice is delivered, then an arbitrator for the matter in dispute shall be appointed by the President for the time being of the Arbitrators' and Mediators' Institute of New Zealand Inc.
- 18.4 The final determination of the arbitrator will not, unless otherwise agreed in writing between the relevant parties, be confidential to the relevant Parties.
- 18.5 Pending resolution of any Dispute, the Parties shall continue to perform their obligations pursuant to the provisions of the relevant TSA.

19 CONFIDENTIALITY

Confidential Information

- 19.1 Firstgas and each Shipper may use or disclose the provisions of the TSA relevant to that Shipper and any information made available by, on behalf of, or at the request of the other Party in connection with the TSA, except to the extent that such information:
- (a) is provided by Firstgas or a Shipper in accordance with *section 4.1(a),(b),(c) or (e)*;
 - (b) relates to *section 8* other than information required to be disclosed under *section 8*;
 - (c) relates to Non-Specification Gas flowing through a Receipt Point or Delivery Point or otherwise in a Pipeline, other than information required to be disclosed under *section 12*;
 - (d) is provided by a Shipper to Firstgas in accordance with *section 14*;
 - (e) comprises invoices and associated information described in *section 16*, other than the existence of any Dispute under *section 16.17*;
 - (f) relates to the basis on which Firstgas sets its fees (other than information required to be disclosed by law) as described in *sections 15 and 21.2*;
 - (g) comprises the substance (but not the fact or existence) of any Dispute between Firstgas and any Shipper where either:
 - (i) that substance is listed in this *section 19.1(a) to (l)*; or
 - (ii) Firstgas and the relevant Shipper have agreed in writing that the substance is confidential;
 - (h) comprises documents or information referred to in *paragraph 4.2 of Schedule 2*;
 - (i) is set out in Table B of *Schedule 5*;
 - (j) is provided by a Shipper in response to a request for tender by Firstgas under this Code;
 - (k) comprises the fact or existence and terms of any Gas Transfer Agreement;
 - (l) comprises advice which is protected by legal professional privilege,
- the information listed in *section 19.1(a) to (l)* being "Confidential Information".

19.2 Confidential Information shall only be used or disclosed by a Party to the extent:

- (a) the information becomes public knowledge otherwise than by a breach of this *section 19*;
- (b) the information was known to that Party at the Commencement Date and was not subject to any obligation of confidentiality;
- (c) that Party considers the use or disclosure is necessary to maintain the safety and reliability of the Transmission System, or is required to give effect to the relevant TSA to which the Confidential Information relates;
- (d) use or disclosure is required by law (including all information disclosure requirements and/or the listing rules of a recognised stock exchange) or any order of a competent court;
- (e) use or disclosure is required or allowed by the relevant TSA to which the Confidential Information relates;
- (f) the other Party has consented in writing to the use or disclosure;
- (g) the information is obtained from a third party, who that Party believes, in good faith, to be under no obligation of confidentiality;
- (h) disclosure is to that Party's professional advisor(s) or consultant(s) on a need to know basis;
- (i) disclosure is to the auditor as contemplated by *section 8*; or
- (j) disclosure is part of the dispute procedures set out under *sections 16.17, 17, 18* and/or Schedule Two.

19.3 To avoid doubt, the information that is set out in each of Schedule Four and Table A of Schedule Five is not subject to any obligation of confidentiality.

Arm's length arrangements

19.4 Firstgas will deal with all users of the Transmission System on an arm's length basis and, subject to section 19.2, will:

- (a) ensure that any confidential information it holds belonging to another Party is kept confidential;
- (b) only use Confidential Information or other information it obtains solely in connection with this Code or otherwise through its Pipeline Business for its

Pipeline Business except to the extent that information was provided for other purposes; and

- (c) not use any Confidential Information or other information it obtains solely in connection with this Code or otherwise through its Pipeline Business to advance any gas trading business operated by Firstgas (or any of its related companies).

Complaints and Breach Procedure

19.5 Firstgas and each Shipper must:

- (a) immediately notify the other in writing of a suspected breach of, or complaint in relation to, this *section 19*;
- (b) where there is a suspected breach of this *section 19*, take all reasonable steps to mitigate any wrongful use or disclosure of Confidential Information; and
- (c) co-operate with the other Party throughout the course of any investigation.

19.6 Firstgas will:

- (a) maintain a record of all such suspected breaches and complaints;
- (b) require its Group Assurance Advisor to investigate each suspected breach or complaint and to produce a report on the incident together with any recommendations (if considered appropriate) aimed at preventing a re-occurrence of a breach;
- (c) provide the report to each affected Shipper (if any); and
- (d) acting as a Reasonable and Prudent Operator, use its best endeavours to implement any recommendations made by its Group Assurance Officer in accordance with *section 19.6(b)*.

20 TERMINATION OR SUSPENSION

Term

20.1 Each TSA shall commence on the Commencement Date and expire on the Expiry Date unless terminated earlier in accordance with this *section 20*.

Term of Code

20.2 Except for *section 2.7(e)(i)*, the terms and conditions of this Code shall expire from the end of:

- (a) 30 September 2024; or
- (b) 30 September 2025, provided Firstgas notifies all Shippers in writing thereof prior to 1 July in the Year ending 30 September 2024; or
- (c) 30 September 2026, provided Firstgas notifies all Shippers in writing thereof prior to 1 July in the Year ending 30 September 2025,

(in each case, the *Expiry Date*.)

Defaults May Lead to Termination

20.3 If:

- (a) either Party defaults in payment of any money payable under its TSA (for reasons other than those in *section 16.17*) for a period of 10 Business Days;
- (b) a Shipper fails to comply with the prudential requirements set out in *section 14* for a period of 60 Business Days;
- (c) either Party defaults in the performance of any of the other material covenants or obligations imposed upon it by its TSA;
- (d) a resolution is passed or an order made by the Court for the liquidation of either Party, except for the purposes of reconstruction or amalgamation;
- (e) either Party makes or enters into or endeavours to make or enter into any composition, assignment or other arrangement with or for the benefit of that Party's creditors; or
- (f) a Force Majeure event or circumstance occurs with the result that it is unlikely that one Party could be in a position to perform its obligations under its TSA within one year,

then the Party to the relevant TSA who is not in default or who is unaffected by the circumstances (the *Notifying Party*) may at its option give notice to terminate the relevant TSA in the following manner:

- (g) the Notifying Party shall give written notice to be served on the other Party (the *Defaulting Party*) stating specifically the cause for terminating the relevant TSA and declaring it to be the intention of the Notifying Party to terminate the same;
- (h) where the notice is given in respect of a default under *sections 20.3(a) to 20.3(c)* (a *30 Day Default*), the Defaulting Party shall have 30 days after the service of that notice in which to remedy or remove the cause or causes stated in the notice for terminating the relevant TSA. In respect of a default under *section 20.3(d), 20.3(e) or 20.3(f)*, no such 30 day period shall apply and termination can be effected immediately upon delivery of the notice;
- (i) in respect of a 30 Day Default if, within 30 days after the delivery of a notice under *section 20.3(h)*, the Defaulting Party does remove and remedy the cause or causes, then such notice of default shall be deemed to be withdrawn and the relevant TSA shall continue in full force and effect; and
- (j) in respect of a 30 Day Default if, the Defaulting Party does not so remedy and remove the cause or causes to the satisfaction of the Notifying Party within 30 days, then the Notifying Party shall be entitled to terminate the relevant TSA forthwith.

Defaults may lead to Suspension

- 20.4 Notwithstanding *section 20.3*, if Firstgas becomes aware that a Shipper is in breach of any material term or condition of that Shipper's TSA, then Firstgas shall be entitled to suspend any transmission services on the Transmission System provided to that Shipper for the duration of any non-compliance if, and to the extent that, in Firstgas' opinion, such action is necessary to protect other shippers or the use of the Transmission System by other shippers.

Shipper May Terminate

- 20.5 A Shipper shall be entitled to terminate its TSA at the end of any Year provided that it has given Firstgas notice in writing of its intention to do so on or before the second Friday in August in the Year in question.

Termination Without Prejudice to the Amounts Outstanding

- 20.6 The expiry or termination of a TSA shall not:
- (a) relieve a Shipper or Firstgas of its obligation to pay any money outstanding under that TSA at that time, which (without limiting *section 20.6(d)*) in respect of Reserved Capacity, is the Monthly payment of money for Reserved Capacity until the end of that Year;
 - (b) relieve Firstgas or the Shipper, as the case may be, of its obligation to settle the Shipper's Running Mismatch, which, at Firstgas' election (where

Firstgas is the terminating Party) but following consultation with that Shipper, may be done either in dollar terms determined using the then current Positive Mismatch Price or Negative Mismatch Price (as applicable) or by making Gas available for delivery to, or taking Gas from, the Shipper;

- (c) relieve Firstgas of its obligation to pay any money outstanding in accordance with *section 16* at that time; or
- (d) constitute a waiver of any remedy to which the Party not in default may be entitled for breach of the relevant TSA.

Effects of Termination

20.7 The termination rights set out in *sections 20.3* and *20.5* shall be in addition to, and not in substitution for, any other rights and remedies available to a Party, whether pursuant to a TSA, at law, at equity or otherwise.

20.8 The provisions of *sections 1, 8.12 to 8.23, 8.27, 8.30, 8.31, 17 to 18, 20.6 to 20.8, 23* and *25 to 33* of this Code shall continue in effect after expiry or termination of the relevant TSA to the extent they relate to an event or circumstance that occurred prior to the date of such expiry or termination. The provisions of *section 19* shall continue in effect for 5 years after expiry or termination of the relevant TSA.

21 RECORDS AND INFORMATION

21.1 Firstgas and each Shipper shall:

- (a) keep proper records of all matters concerning the TSA between them; and
- (b) subject always to the right of each Party to withhold information not related to the performance of the TSA, make those records available, at the request of the other Party, to any representative (including any qualified auditor) of the other Party to allow that other Party to carry out an audit for the purposes of verifying any statement, computation or claim made under the provisions of that TSA, provided that where any such records held by Firstgas include Confidential Information relating to another Shipper, Firstgas shall withhold that Confidential Information.

21.2 It is hereby acknowledged by each Party that:

- (a) all information relating to the basis on which Firstgas sets its fees (other than information required to be disclosed by law) is Confidential Information for the purposes of *section 21.1*; and
- (b) in respect of the derivation of a Shipper's Transmission Charges, a certificate given by Firstgas' auditors shall be conclusive evidence of the correctness or otherwise of the calculation of that Shipper's Transmission Charges based on the relevant TSA.

21.3 Each Shipper shall keep Firstgas notified at all times of details of its Retailer and Large Consumer customers sufficient to enable Firstgas to comply with its obligations to issue directions to Retailers and Large Consumers under the CCM Regulations.

22 **FORCE MAJEURE**

22.1 Notwithstanding the other provisions of the relevant TSA, but subject to *section 22.2*, a Party shall be relieved from liability under its TSA:

- (a) in the case of Firstgas, to the extent that on account of Force Majeure, Firstgas has not received at a Receipt Point or made available at a Delivery Point or is unable to receive at a Receipt Point or make available at a Delivery Point quantities of Gas in accordance with that TSA or has failed to perform any of its obligations under such TSA; and
- (b) in the case of the Shipper, to the extent that on account of Force Majeure, the Shipper has not delivered Gas to Firstgas or taken delivery of Gas from Firstgas pursuant to its TSA or has failed to perform any of its obligations under its TSA.

22.2 Notwithstanding *section 22.1*, nothing in this *section 22* shall relieve a Party from liability:

- (a) to pay money due under its TSA;
- (b) to give any notice which may be required to be given pursuant to its TSA (other than a notice via OATIS where OATIS is affected by such Force Majeure);
- (c) in relation to a Shipper, for any Mismatch and Running Mismatch that may arise out of or in connection to, or before, during or after, the event of Force Majeure; or
- (d) in relation to Firstgas, for any Firstgas Imbalance and Firstgas Running Imbalance that may arise out of or in connection to, or before, during or after, the event of Force Majeure,

provided that a Shipper shall be relieved of its obligation to pay the Capacity Reservation Charge relating to Reserved Capacity for a Receipt Point and Delivery Point (or any fixed charge which is not calculated by reference to the throughput of any quantity of Gas), to the extent that Firstgas cannot receive a quantity of Gas at that Receipt Point or make a quantity of Gas available at that Delivery Point up to such Reserved Capacity on account of that Force Majeure.

22.3 If a Party seeks relief under *section 22.1*, that Party shall, upon the occurrence of any such failure due to Force Majeure:

- (a) as soon as reasonably practicable but in any event within 48 hours give notice to the other Party of the occurrence of the event or circumstance claimed to be Force Majeure and provide to the other Party full particulars relating to the event or circumstance and the cause of such failure. Such

notice shall also contain an estimate of the period of time required to remedy such failure;

- (b) render the other Party reasonable opportunity and assistance to examine and investigate the event or circumstance and the matters which caused the event or circumstance and failure;
- (c) as quickly as reasonably practicable, use due diligence and take all reasonable steps which may be necessary to rectify, remedy, shorten or mitigate the event or circumstance giving rise to Force Majeure so as to minimise any loss, damage, expense or other effects of the suspension of obligations suffered or incurred, or likely to be suffered or incurred by the Party; and
- (d) give notice as soon as reasonably practicable but in any event within 48 hours to the other Party upon termination of the Force Majeure.

22.4 For the avoidance of doubt, a Shipper will not be able to claim relief from liability under *section 22.1(b)* solely as a result of the suspended performance, or non-performance, of obligations of its customers, howsoever caused.

22.5 If, as a result of Force Majeure, Firstgas is not able to provide transmission services on the Transmission System in accordance with the relevant TSA then Firstgas shall, in good faith, allocate among all shippers any available transmission services, provided that, to the extent a Critical Contingency is determined under the CCM Regulations, Firstgas shall allocate transmission services in accordance with the CCM Regulations.

23 LIABILITIES

Exclusion from a Party's Liability

- 23.1 Subject to any further limitations contained in this *section 23*, a Party (*Liable Party*) will not be liable to the other Party (*Other Party*) in respect of any Loss suffered or incurred by that Other Party that arises out of or in connection with a TSA (in contract, tort or generally at common law, equity or otherwise), except to the extent that such Loss arose from an act or omission of the Liable Party that constituted a failure by it to comply with a provision of that TSA to the standard of a Reasonable and Prudent Operator. The Liable Party shall not be liable to the Other Party to the extent that the Other Party caused or contributed to such Loss (in whole or in part) through breach of that TSA. The Liable Party shall not be liable to the extent that the Other Party has not mitigated its Loss to the fullest extent reasonably practicable.

Limitation of a Party's Liability

- 23.2 If the Liable Party is liable to the Other Party in respect of any Loss suffered or incurred by that Other Party that arises out of or in connection with a TSA (in contract, tort or generally at common law, equity or otherwise), other than for payment of amounts due pursuant to *section 16*, the Liable Party will only be liable for direct Loss suffered or incurred by the Other Party excluding (and the Liable Party shall not be liable for):
- (a) any loss of use, revenue, profit or savings by the Other Party;
 - (b) the amount of any damages awarded against the Other Party in favour of a third party, except where the Liable Party is liable for a payment under *sections 4.23* and *12.7*; and
 - (c) the amount of any money paid by the Other Party by way of settlement to a third party, except where the Liable Party is liable for a payment under *sections 4.23* and *12.7*.
- 23.3 The Liable Party shall in no circumstances be liable for any indirect or consequential Loss arising directly or indirectly from any breach of its (or any of the other Party's) obligations under its TSA, whether or not the Loss was, or ought to have been, known by the Liable Party.

Capped Liability

- 23.4 Where:
- (a) the Shipper is the Liable Party, the maximum liability of the Shipper to Firstgas; and
 - (b) Firstgas is the Liable Party, the maximum liability of Firstgas to the Shipper and all other Shippers (*Third Party Shippers*),

(in each case excluding liability, if any, that arises under *section 4.23* or *12.7*) will be:

- (c) in relation to any single event or series of related events, \$10,000,000 (ten million dollars); and
- (d) in any Year, \$30,000,000 (thirty million dollars), irrespective of the number of events in such period,

(and for this purpose, an event is part of a series of related events only if such event or events factually arise from the same cause) provided that:

- (e) where Firstgas is the Liable Party arising out of or in connection with more than one TSA and/or Interconnection Agreement, but Firstgas' liability is wholly or partially caused or contributed to by a breach of more than one different TSA and/or Interconnection Agreement by one or more Third Party Shipper and/or Interconnected Party (*Liable Third Parties*), and Firstgas recovers (using all reasonable endeavours to pursue and seek recovery of such amounts) any amount from those Liable Third Parties in respect of that breach, then Firstgas' liability as the Liable Party shall be limited to the aggregate of the amount so recovered plus any Firstgas-caused liability (where the Firstgas-caused liability is any amount for which Firstgas is liable as a result of failing to act as a Reasonable and Prudent Operator, which in any event shall be limited to the Capped Amounts); and
- (f) the Capped Amounts shall each be adjusted annually on 1 October of each Year by multiplying each Capped Amount by the following adjustment factor:

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

where:

PPI_n means the most recently published PPI Index for the then preceding June quarter; and

$\text{PPI}_{(n-1)}$ means the most recently published PPI Index for the June quarter in the Year before the Year in which the adjustment is being made.

The first such adjustment will take place on 1 October in the Year following the Commencement Date and the adjusted Capped Amounts calculated pursuant to this *section 23.4(f)* shall be rounded up to the nearest whole number.

For the purposes of this *section 23.4*:

“*PPI*” means the *Producer Prices Index (Inputs All Industries excluding administration, health and education)* published by Statistics New Zealand or, if that index ceases to be published or in the opinion of the Government Statistician (or his/her replacement as the case may be) the basis for it changes significantly, such other producer price index as Firstgas, acting reasonably, considers most closely approximates the purpose and composition of PPI and the date from which that substitute index shall apply to the extent that any substitute index (or adjusted formula) and the date for its application will, to the extent reasonably possible, have the same economic effect as would have been the case had PPI continued to be published on the basis it was published for the quarter ending 30 June 2007. Firstgas shall give notice to each Shipper of any change of the Capped Amounts or substitute index promptly upon such change occurring; and

“*Capped Amounts*” means the amounts specified in *sections 23.4(c)* and/or *(d)* (as applicable), as adjusted in accordance with *section 23.4(f)*.

Liability where Firstgas is the Liable Party under multiple agreements

- 23.5 If Firstgas is the Liable Party under more than one TSA and/or Interconnection Agreement and the sum of Firstgas’ liability to the Other Party and those Third Party Shippers and/or Interconnected Parties is greater than the relevant amount of Firstgas’ liability as the Liable Party calculated in accordance with *section 23.4(e)*, Firstgas shall divide that amount among the Other Party and those Third Party Shippers and/or Interconnected Parties in the proportion that Firstgas’ liability to each such party bears to the sum of Firstgas’ liability to all such parties.

General

- 23.6 Each limitation or exclusion of this *section 23* and each protection given to Firstgas or a Shipper or its respective officers, employees, or agents by any provision of this *section 23* is to be construed as a separate limitation or exclusion applying and surviving even if for any reason any of the provisions is held inapplicable in any circumstances and is intended to be for the benefit of and enforceable by each of the Party’s officers, employees, and agents.
- 23.7 Nothing in a TSA shall limit the right of Firstgas or a Shipper to enforce the terms of its TSA by seeking equitable relief, including injunction and specific performance, in addition to all other remedies at law or in equity.
- 23.8 If Firstgas is the subject of a claim by a Claimant, where the claim is caused by a purported breach of a TSA by a Defending Party, the following procedure shall apply:
- (a) Firstgas shall immediately give notice of the claim to the Defending Party;

- (b) Firstgas will not make any payment or admission of liability in respect of the claim without the prior written consent of the Defending Party. The Defending Party will not unreasonably withhold or delay its consent under this *section 23.8(b)*;
- (c) the Defending Party (and its legal representatives) may elect to defend in the name of Firstgas any third party claim involving any litigation. The Defending Party must notify Firstgas of its election within 14 Business Days of receiving notice of the claim. Firstgas shall provide or procure to be provided such assistance as the Defending Party may reasonably require if:
 - (i) the Defending Party first agrees in writing to indemnify Firstgas against any liabilities resulting from such claim and/or defence of that claim except to the extent that Firstgas has caused such liabilities; and
 - (ii) the Defending Party agrees that it will pay reasonable costs of Firstgas in providing assistance in defending the claim,provided that Firstgas shall not be required to render any assistance to the Defending Party pursuant to this *section 23.8(c)* (other than allowing a defence in Firstgas' name) in circumstances where Firstgas reasonably believes that its reputation could be damaged or impaired by such assistance;
- (d) if the Defending Party elects to defend a claim under *section 23.8(c)* then it may choose its own counsel for such defence. The costs of that counsel will be met by the Defending Party;
- (e) Firstgas will not take any active steps which could reasonably be expected to directly result in the occurrence of an event for which an indemnity is payable under *section 23.8(c)(i)*; and
- (f) the Defending Party shall not be required to make any payment in respect of any claim under this *section 23.8* based on a contingent liability until the contingent liability becomes an actual liability and is due and payable.

23.9 A Shipper shall not make any claim, demand or commence proceedings directly against another Shipper in relation to that other Shipper's breach of its transmission services agreement with Firstgas or negligence in relation to any matter pertaining to or dealt with in that agreement. Neither a Shipper nor Firstgas shall make any claims, demands or commence proceedings against each other in relation to any matter dealt with by a TSA (including a claim that Firstgas or a Shipper has been negligent in relation to any matter pertaining to or dealt with in that TSA) except in accordance with that TSA. For the avoidance of doubt, nothing shall prevent:

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- (a) Firstgas from exercising its rights and remedies under its interconnection agreement with a welded party connected to the Transmission System; or
- (b) a transferor, transferee or Gas Transfer Agent from exercising its rights and remedies under a Gas Transfer Agreement.

23.10 Prior to Firstgas making any claim against any Liable Third Parties, Firstgas shall first consult any Shipper who is a Claimant and provide an opportunity for such Shipper to have its Loss included in Firstgas' claim(s).

23.11 Nothing in this *section 23* shall affect any liability a Party may have under the MPOC.

24 **ASSIGNMENT**

- 24.1 A Shipper shall not assign or transfer any of its rights and obligations under a TSA, unless it has obtained Firstgas' prior written consent, such consent not to be unreasonably withheld or delayed.
- 24.2 Firstgas shall not assign or transfer any of its rights and obligations under any TSA, unless it believes, acting as a Reasonable and Prudent Operator, that the assignee is capable of meeting Firstgas' obligations under that TSA.
- 24.3 In the event of assignment or transfer by a Shipper (if it has obtained Firstgas' prior written consent to such assignment or transfer) or Firstgas (in each case, the *assignor*), the assignor shall remain liable to the other Party for the due performance of all obligations under the relevant TSA as primary obligor and not merely as surety or guarantor only, unless that other Party has given its prior written consent to the release of the assignor from its obligations.
- 24.4 Prior to any assignment, the assignor shall obtain execution by the assignee of a "Deed of Covenant" binding the assignee (consequent upon the assignment) to observe and perform all the duties and obligations arising to be observed and performed under the relevant TSA.
- 24.5 Notwithstanding any assignment, the assignor shall remain liable for any costs payable by it up to the end of the month during which the assignment takes place.
- 24.6 Notwithstanding *sections 24.2 to 24.5*, each Shipper agrees to any novation of a TSA by Firstgas to a Related Company (as "Related Company" is defined in the Companies Act 1993).

25 **AMENDMENT / NOTIFICATIONS**

Amendment of Code

25.1 This Code shall only be amended in accordance with *section 16.10* and this *section 25* unless otherwise agreed in writing by Firstgas and all Shippers.

Good faith

25.2 Firstgas and each Shipper shall participate in the change process set out in this *section 25* in good faith.

Amendments required by law

25.3 This Code will be, or will be deemed to have been (provided that Firstgas will still publish a Draft Change Request in accordance with *section 25.3(b)*), amended to the extent necessary to incorporate any changes that are required as a result of any law change (including any change of an applicable regulation), or order of any Court of competent jurisdiction (each a *Legislative Change*), with effect from the effective date of the Legislative Change. Firstgas will publish:

- (a) the fact that a Legislative Change has occurred, as soon as practicable after becoming aware of it; and
- (b) a Draft Change Request to reflect the Legislative Change within a further two months after the date of publication of the fact of the Legislative Change by Firstgas (or as soon as reasonably practicable after a deemed amendment has become effective), and *sections 25.7 to 25.15* shall apply (but a Change Request Notification will not be required).

Change Request Notification

25.4 Other than as provided in *section 25.3*, if Firstgas or any Shipper wishes to amend this Code, it shall publish a notification, which must include a summary of the proposed change (including the reasons for the proposed change and the intended effect and impact of the proposed change) and the proposed date on which the proposed change would take effect, if approved (a *Change Request Notification*).

25.5 Within 10 Business Days after the date of publication of the Change Request Notification, Firstgas or any Shipper may request the Party issuing the Change Request Notification to provide additional, relevant detail about the proposed change. Provided that the request is reasonable the Party issuing the Change Request Notification must publish that detail as soon as reasonably practicable.

25.6 Within 15 Business Days after the date the Change Request Notification is published, any Party may publish a response stating whether that Party supports the proposed change in principle, any specific objections to it, and any conditions to the Party's support for the proposed change, in each case including reasons. Firstgas and each Shipper acknowledge that the Gas Industry Company or any

other person may publish a response setting out its views on the proposed changes.

Draft Change Request

25.7 Not later than 10 Business Days after the end of the prescribed time period for responses under *section 25.6*, the Party who issued the Change Request Notification may publish a request which must include:

- (a) a summary of the proposed change (including the reasons for the proposed change and the intended effect and impact of the proposed change), and the proposed date on which the change will take effect, having regard to any responses published under *section 25.6*; and
- (b) an amended version of the Code showing any proposed changes to it in track changes,

(a *Draft Change Request*), provided that, if the Party who issued the Change Request Notification does not publish a Draft Change Request within the prescribed time period for publication under this *section 25.7*, the proposed change will be treated as formally withdrawn.

Consultation

25.8 Following publication of a Draft Change Request in accordance with *section 25.7*, Firstgas and each Shipper will consult for a period of not more than 15 Business Days.

25.9 On or before the end of the 15 Business Day consultation period, any Party may publish a response to the Draft Change Request stating whether the Party supports the proposed change in principle, any specific objections to it and any conditions to the Party's support for the proposed change, in each case including reasons. Firstgas and each Shipper acknowledge that the Gas Industry Company or any other person may also publish a response setting out its views on the proposed changes.

25.10 If Firstgas or any Shipper does not publish a response in accordance with *section 25.9*, then that Party will be deemed to approve the Draft Change Request and will not be entitled to vote against the Final Change Request under *section 25.11*.

Final Change Request

25.11 Not later than five Business Days after the end of the prescribed time period for responses under *section 25.9*, the Party who issued the Draft Change Request may publish a request which must include:

- (a) a summary of the proposed change (including the reasons for the proposed change and the intended effect and impact of the proposed change), and

the proposed date on which the change will take effect, having regard to any responses published under *section 25.9*;

- (b) a response to any substantive specific objections raised in any response published under *section 25.9*; and
- (c) an amended version of the Code showing the proposed change in track changes,

(a *Final Change Request*) provided that, if the Party who issued the Draft Change Request does not publish a Final Change Request within the prescribed time period for publication under this *section 25.11* the proposed change will be treated as formally withdrawn.

25.12 Not later than 15 Business Days after the date of publication of the Final Change Request, Firstgas and each Shipper may publish a notice stating whether it consents to the Final Change Request for the purpose of approval of the Final Change Request under *section 25.13* (and for this purpose each Shipper and its related companies shall be entitled to one vote only, even if that Shipper and its related companies are party to more than one TSA). If Firstgas or any Shipper does not publish a notice under this *section 25.12*, then that Party will be deemed to have consented to the Final Change Request.

25.13 A Final Change Request shall be approved and will become effective on the date specified in the Final Change Request, unless:

- (a) 25% or more of the total number of Shippers, or where a single Shipper comprises 25% or more of Shippers, at least two Shippers, do not consent to the Final Change Request; or
- (b) Firstgas does not consent to the Final Change Request in accordance with *section 25.14*.

For the avoidance of doubt, a Final Change Request approved in accordance with this *section 25.13* will become effective notwithstanding any dispute raised by one or more of the Parties.

25.14 Firstgas may withhold its consent to a Final Change Request if it considers (acting reasonably) that any Shipper has not participated in the process set out in this *section 25* in good faith. Otherwise, Firstgas' consent to a Final Change Request shall not be unreasonably withheld or delayed. Without limiting the previous sentence, it will not be considered unreasonable for Firstgas to withhold its consent where the proposed change would:

- (a) require Firstgas to incur capital expenditure;

- (b) require Firstgas to incur operating expenses or costs that it cannot reasonably expect to recover; or
- (c) be likely to adversely affect:
 - (i) the structure of Firstgas' transmission services, business structure or the structure or magnitude of Firstgas' transmission revenues; or
 - (ii) the compatibility of Firstgas' Transmission System open access regime and the open access regime on the Maui Pipeline,

provided that Firstgas provides a written explanation of its reasons.

Changes to timeframes

25.15 Firstgas or any Shipper may request that the timeframes for consultation or voting in this *section 25* are reduced or extended in respect of the change proposed in a Change Request Notification, Draft Change Request or Final Change Request by publishing the proposed new timeframes. The timeframes will be changed only if:

- (a) in the case of reduction to the timeframe, Firstgas and all Shippers consent to the proposed new timeframe; and
- (b) in the case of an extension to the timeframe, a simple majority of Firstgas and all Shippers (each Shipper and its related companies having one vote even if party to more than one TSA) consent to the proposed new timeframe,

in accordance with this *section 25.15*. A Party's consent to a proposed new timeframe must not be unreasonably withheld or delayed and any Party that does not publish its response within two Business Days of the date of publication of the timeframe amendment request will be deemed to have consented to the proposed new timeframe.

Disputes

25.16 A dispute between Firstgas and any Shipper arising out of this *section 25* (including a dispute as to whether Firstgas or any Shipper has complied with *section 25.2*) is a Dispute for the purposes of *section 17* and Schedule 2, and shall be resolved in accordance with the dispute resolution procedure contained in Schedule 2.

MPOC changes

25.17 Firstgas shall not withhold its consent to a proposed amendment to the MPOC made in accordance with the process in *section 29.4* of the MPOC where:

- (a) all parties with whom Firstgas has an agreement who would or might be affected by the proposed amendment, including all Shippers, any

Interconnected Party and any party with whom Firstgas has a standing contractual arrangement for Gas, agree in writing to such proposed amendment;

- (b) such proposed amendment would not:
 - (i) require Firstgas to incur capital expenditure;
 - (ii) require Firstgas to incur operating expenses or costs that cannot be recovered;
 - (iii) adversely affect Firstgas' transmission pipeline business or any part of it;
 - (iv) cause Firstgas to breach the provisions of any agreement to which it is a party;
 - (v) in Firstgas' reasonable opinion, require a change to the rules for participating in an industry-wide market (as described in *section 2.11*); and/or
 - (vi) in Firstgas' reasonable opinion, adversely affect the compatibility of Firstgas' open access regime on the Transmission System, or operation of its Transmission System, with any Distribution System; and
- (c) any of the circumstances in *sections 25.17(a)* and/or *(b)(iv)* apply and each such affected counterparty agrees to amend its agreement with Firstgas in the manner that Firstgas, acting reasonably, determines is necessary.

Publication of documents under this Section 25

25.18 In this *section 25*:

- (a) to "publish" means to post an item on a publically accessible website (where any person can request notification of a new publication) or where such website is temporarily not available, by whatever means are available and can reasonably be expected to achieve successful notification of Firstgas and all Shippers, and "published" and "publication" have the equivalent meaning; and
- (b) a document published before 5pm on a Business Day shall be deemed to have been published on that Business Day and a document published on a day that is not a Business Day, or after 5pm on a Business Day, shall be deemed to have been published on the next Business Day.

26 **NOTICES**

26.1 Each Party shall provide written notification to the other at the earliest practicable time of any factor, event or impending event known to it which may affect its ability to meet the requirements of a TSA.

26.2 Any notice or other communication relating to Firstgas' invoices must be addressed to:

Transmission Manager – Commercial
First Gas Limited
Level 9, Midland Chambers
45 Johnston Street
PO Box 865
Wellington 6011

Email: commercial.analyst@firstgas.co.nz

26.3 Subject to *sections 26.2 and 26.4* all notices, demands, consents and requests required or permitted to be given or made to either Party pursuant to a TSA, shall be in writing and shall be deemed to be sufficiently given or made if personally delivered, if sent by registered mail or e-mail addressed, in the case of Firstgas as set forth below, and, in the case of the Shipper to the address or e-mail address (as the case may be) specified in the relevant TSA, or in either case to such other address as the Party to be notified shall designate by written notice given to the other Party:

Transmission Manager – Commercial
First Gas Limited
Level 9, Midland Chambers
45 Johnston Street
PO Box 865
Wellington 6011

Email: gasrec@firstgas.co.nz

26.4 For the avoidance of doubt, *section 26.3* shall not apply in respect of operational notifications given via OATIS pursuant to a TSA, except where Firstgas, acting as a Reasonable and Prudent Operator, declares that OATIS is not operational in whole or in part.

26.5 A notice:

- (a) sent by registered mail shall be deemed served on the earlier of the date of receipt or on the second Business Day after the same was committed to post;

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- (b) posted on OATIS shall be deemed to be served on the date and at the time it is first posted on OATIS; and
 - (c) sent by e-mail shall, if sent prior to 4.00 p.m. on any Business Day, be deemed served on that Business Day. If sent after 4.00 p.m. on any Business Day, it shall be deemed served on the next Business Day.
- 26.6 Firstgas and a Shipper must notify the other Party as soon as reasonably practicable of any change of its address, e-mail address or telephone numbers.

27 **WAIVER**

Any failure or delay by either Party in exercising any of its rights under a TSA shall not operate as a waiver of its rights, or acquiescence to the other Party's acts or omissions, and shall not prevent such Party from subsequently enforcing any right or treating any breach by the other Party as a repudiation of that TSA.

28 **ENTIRE AGREEMENT**

Each TSA constitutes the entire agreement between the Parties from the Commencement Date in relation to the subject matter of that TSA and supersedes all prior negotiations, representations and agreements between the Parties.

29 **EXCLUSION OF IMPLIED TERMS**

All terms and conditions relating to a TSA that are implied by law or custom are excluded to the maximum extent permitted by law.

30 **CONTRACT PRIVACY**

A TSA shall not, and is not intended to, confer any benefit on or create any obligation enforceable by any person not a Party to that TSA.

31 **SEVERABILITY AND SURVIVAL**

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

32 **CONSUMER GUARANTEES ACT**

Each Shipper represents and warrants that it has entered into its TSA solely for business purposes. Nothing in the Consumer Guarantees Act 1993 is to apply to any right or obligation under a TSA.

33 **GOVERNING LAW**

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

4 **RECEIPTS POINTS**

4.1 The following Receipt Points are valid under this transmission services agreement:

(a) all Welded Points; and

(b) [].

5 **DELIVERY POINTS**

5.1 The following Delivery Points are valid under this transmission services agreement:

(a) all Delivery Points listed in Firstgas' current Transmission Posted Price Schedule as posted on OATIS from time to time; and

(b) [].

6 **RESERVED CAPACITY**

The Shipper's Reserved Capacity shall be as recorded by Firstgas in the Shipper's Tracking Table from time to time.

7 **FEES AND CHARGES**

Capacity Reservation Charge

7.1 The Capacity Reservation Charge for each Day of the relevant Month and in respect of each Receipt Point and Delivery Point between which capacity has been reserved under this TSA shall be equal to:

Capacity Reservation Fee (\$/GJ of Reserved Capacity) × Reserved Capacity (GJ) ÷ 365 (or 366 in a leap year)

where:

Capacity Reservation Fee = the applicable capacity reservation fee (subject to adjustment in accordance with *section 15.6* of the Code), as posted on OATIS; and

Reserved Capacity = the Shipper's Reserved Capacity as defined in the Code.

Throughput Charge

- 7.2 The Throughput Charge for each Day of the relevant Month and in respect of each Delivery Point where the Shipper takes or transfers Gas shall be equal to:

$$\text{Throughput Fee (\$/GJ)} \times \text{Delivery Quantity (GJ)}$$

where:

Throughput Fee = the applicable throughput fee (subject to adjustment in accordance with *section 15.6* of the Code), as posted on OATIS.

Overrun Authorisation Charge

- 7.3 The Overrun Authorisation Charge between the relevant Receipt Point and relevant Delivery Point for each Day of the relevant Month shall be equal to:

$$\text{Capacity Reservation Fee (\$/GJ)} \times \text{Authorised Overrun Quantity (GJ)} \div 365 \text{ (or 366 in a leap year)}$$

where:

Capacity Reservation Fee = the applicable capacity reservation fee referred to in *clause 7.1* of this transmission services agreement; and

Authorised Overrun Quantity = the Authorised Overrun Quantity, as defined in *section 1* of the Code.

Authorised Overrun Charge

- 7.4 The Authorised Overrun Charge between the relevant Receipt Point and relevant Delivery Point for each Day of the relevant Month shall be equal to:

$$\text{Capacity Reservation Fee (\$/GJ)} \times 8 \times \text{Overrun Quantity Within Authorisation (GJ)} \div 365 \text{ (or 366 in a leap year)}$$

where:

Capacity Reservation Fee = the applicable capacity reservation fee referred to in *clause 7.1* of this transmission services agreement; and

Overrun Quantity Within Authorisation = the Shipper's Delivery Quantity at the relevant Delivery Point on that Day that exceeds the Shipper's Reserved Capacity for that Delivery Point for that Day but which falls within the Shipper's Authorised Overrun Quantity for that Delivery Point for that Day.

Unauthorised Oerrun Charge

- 7.5 The Unauthorised Oerrun Charge for each Day of the relevant Month and in respect of each Delivery Point at which the Shipper incurs an Unauthorised Oerrun Quantity shall be equal to:

$$\text{Capacity Reservation Fee (\$/GJ)} \times 10 \times \text{Unauthorised Oerrun Quantity (GJ)} \div 365 \text{ (or 366 in a leap year)}$$

where:

Capacity Reservation Fee = the applicable capacity reservation fee as referred to in *clause 7.1* of this transmission services agreement; and

Unauthorised Oerrun Quantity = the Unauthorised Oerrun Quantity, as defined in *section 1* of the Code.

Payment Period

- 7.6 The Shipper shall pay to Firstgas the Transmission Charges monthly in arrears in accordance with *section 16* of the Code.

PART B: INCORPORATION OF CODE

Each Party agrees that this transmission services agreement (once duly completed and executed) and the Gas Transmission Code released by Firstgas, a copy of which was posted on OATIS on 23 November 2007, as amended in accordance with its terms (the *Code*) together comprise the agreement between the Parties in relation to gas transmission services between the Receipt Points and Delivery Points for which the Shipper has Reserved Capacity. Each Party agrees to comply with and be bound by the terms and conditions of the Code as if they were set out in full in this transmission services agreement. Except as the context otherwise requires, all terms used in this transmission services agreement that are defined in the Code shall have the same meaning where used in this transmission services agreement.

IN WITNESS WHEREOF this transmission services agreement was executed by the Parties on the date first written above:

Signed for and on behalf of
First Gas Limited (including in its capacity
as the BPP Trustee) by:

Signed for and on behalf of
[the Shipper]
by:

Authorised Signatory

Authorised Signatory

in the presence of:

in the presence of:

Signature

Signature

Name

Name

Occupation

Occupation

Address

Address

**SCHEDULE TWO:
DISPUTE RESOLUTION PROCEDURE**

1 CONSTRUCTION

Unless otherwise defined or the context otherwise requires, all terms which are capitalised in this Schedule Two shall bear the same meaning as in the main body of the Code.

2 INITIATING RESOLUTION

If a Dispute arises, the Parties agree to make a genuine effort to resolve the Dispute without resorting to litigation, using the procedure set out in this Schedule Two. Either Party may initiate these procedures by giving written notice to the other Party.

3 NEGOTIATIONS

The Party who initiates the procedures set out in this Schedule Two must name its representative in the negotiations when giving written notice to the other Party. The Party receiving such written notice must within three Business Days of receiving that notice give written notice to the other Party naming its representative in the negotiations. Each representative must have authority to settle the Dispute. As soon as possible after both Parties have been so advised of each others' representatives, the representatives must enter into negotiations to try to resolve the Dispute.

4 ALTERNATIVE DISPUTE RESOLUTION

4.1 If the Dispute is not resolved within 8 Business Days of both Parties being advised of each other's representatives under *paragraph 3* of this Schedule Two, then within a further 5 Business Days, the Parties must either:

- (a) initiate any available standard industry dispute resolution procedure if such a procedure has been agreed to by both Parties in writing with respect to the particular Dispute; or
- (b) in the event that *paragraph 4.1(a)* of this Schedule Two does not apply, attempt to agree on a process for resolving the Dispute, such as further negotiations, mediation, or independent expert determination, but not arbitration or litigation. Agreement on a process is to include agreement on:
 - (i) the procedure and timetable for any exchange of documents and other information relating to the Dispute;

- (ii) procedural rules and a timetable for the conduct of the selected method of proceeding;
- (iii) a procedure for selection and compensation of any neutral person who may be employed by the Parties in dispute; and
- (iv) whether or not the decision of any mediator or independent expert, or other neutral person who may be employed by the parties in dispute or other decision reached as a result of further negotiation or other dispute resolution process, will be final and binding on the Parties.

4.2 The Parties must maintain the confidentiality of any documents or other information made available to, or coming to the knowledge of, any Party in the course of negotiations or other dispute resolution process established under this *paragraph 4* of this Schedule Two. The Parties may use such information in settling the Dispute, but not for any other purpose. They may not rely on, or introduce as evidence in any arbitral, judicial or other proceeding:

- (a) views expressed or suggestions made by either Party or another party on a possible settlement of the Dispute;
- (b) any admission or concession made by either Party or another party in the course of negotiations or any other agreed process to resolve the Dispute;
- (c) proposals made or views expressed by a neutral person employed by the Parties to the Dispute; or
- (d) the fact that either Party had or had not indicated willingness to accept a proposal for settlement.

4.3 Where a time limit is set in the procedures set out in this Schedule Two for doing something the Parties' representatives may agree in writing to extend that time limit.

5 **ARBITRATION**

If:

- (a) the Parties fail to agree on a standard industry dispute resolution procedure or dispute resolution process within the applicable time limit under *paragraph 4* of this Schedule Two; or
- (b) using an agreed dispute resolution process (including any standard dispute resolution procedure initiated under *paragraph 4.1(a)* of this Schedule Two) the Parties fail to resolve the Dispute within a further 20 Business

Days from the date that the agreed dispute resolution process was initiated or agreed,

subject to any agreement made pursuant to *paragraph 4.1(b)(iv)* of this Schedule Two, the Parties shall refer the Dispute to arbitration in accordance with the Arbitration Act 1996 pursuant to *section 18* of the Code.

6 JOINING SHIPPERS TO DISPUTE

- 6.1 Without limiting clause 2 of the Second Schedule to the Arbitration Act 1996, if a Party wishes to have any other shipper or shippers participate in a Dispute, it can do so if both Parties to that Dispute and that other shipper or shippers consent in writing to that other shipper or shippers so participating.
- 6.2 If a Shipper participates in a Dispute pursuant to this paragraph 6, a reference to "Party" in this Schedule Two shall be read to include the other shipper or shippers, unless the context requires otherwise.

**SCHEDULE THREE:
TERMS AND CONDITIONS OF ACCESS TO AND USE OF OATIS**

Each Shipper agrees to be bound by the terms of this Schedule Three and the Code when using or accessing OATIS.

Ownership of Content

The materials posted on OATIS (including without limitation, all real time or other information, notices, data, text, materials, graphics, software, tools, results, names, logos and trade marks on OATIS) (*Content*) are protected by copyright, trade mark and other intellectual property laws unless expressly indicated otherwise on OATIS. All rights, title and interest in and to the Content are owned by Firstgas or Firstgas' licensor(s). If the owner of any material posted on OATIS is not Firstgas, a Shipper's rights in respect of that material will be as defined by the copyright owner of the material concerned.

Access to and use of Content

A Shipper may use OATIS only if it has logged-in using the relevant username given to that Shipper by Firstgas and the relevant password. If a Shipper has been appointed as an agent, or granted an authorisation by another person (*Authorisation*), that Shipper shall log onto OATIS using the username and password applicable to that Authorisation on each occasion the Shipper exercises that Authorisation. A Shipper shall not use that user name and password when using OATIS for purposes other than exercising the Authorisation.

A Shipper may only use OATIS for its own business use and information or that of the person who has given that Shipper an Authorisation. Firstgas grants each Shipper a non-exclusive licence to view and print the Content and make such copies as are reasonably necessary for that Shipper to obtain and retain information about its gas transportation arrangements. A Shipper shall ensure that any copies of the Content that it makes retains all applicable copyright and other notices on OATIS. Except as provided above, a Shipper may not copy, store (either in hard copy or in an electronic retrieval system), use, modify, transmit, publish, reproduce, post, distribute, sell, license, or otherwise transfer any Content to a third party.

A Shipper shall not use OATIS or the Content in any manner or for any purpose, which is unlawful or in any manner which violates any right of Firstgas or the owner of any Content.

Disclaimer

Firstgas and its directors, officers, agents, employees or contractors do not warrant that any of the functions contained in OATIS or a Shipper's access to OATIS will be uninterrupted or error-free, and Firstgas will have no liability arising therefrom.

Liability

Each Shipper acknowledges that metering data and information received from a party other than Firstgas, and any information derived from any of the above may not be accurate or complete. Firstgas will use reasonable endeavours to rectify any material error in any of the above information as soon as reasonably practicable upon being notified that such information is materially inaccurate or incomplete.

Linking to and from this Site

OATIS may from time to time contain links to third party web sites (*Other Websites*). Other Websites may not be under the control of Firstgas, and Firstgas takes no responsibility under any TSA for the content of Other Websites. The inclusion of any link on OATIS does not imply any endorsement by Firstgas of Other Websites.

Firstgas prohibits caching, unauthorised hypertext links (including deep linking) to OATIS and the framing of any Content without Firstgas' prior written consent. Firstgas reserves the right to disable any unauthorised links or frames and disclaims any responsibility for the Content available on Other Websites by links to or from OATIS.

Cookies

A cookie is a small text file, which Firstgas may put on the Shipper's computer's hard disk in order to recognise a Shipper's computer at a later time. A cookie cannot read a Shipper's hard drive or perform any commands on that Shipper's computer and does not contain that Shipper's name, address, telephone number, or email address. A Shipper may configure its web browser to not accept cookies, however it may experience a loss of functionality as a result. Amongst other things, Firstgas may use the information collected by cookies to track OATIS usage patterns or display Content more relevant to a Shipper based on information Firstgas collects when that Shipper visits OATIS.

Prevention of Harm

Each Party will use its best endeavours to ensure that it does not introduce any virus, trojan horse or malicious computer programming code into OATIS which would have the effect of disrupting, impairing, disabling or otherwise adversely affecting, shutting down or denying access to any other user of OATIS.

Violations of this Schedule Three

Firstgas reserves the right to seek all remedies available at law for violations of this Schedule Three, including, without limitation, the right to block access from a particular internet address to OATIS.

Information Systems Technical Configuration Requirements

The following is the minimum configuration for accessing OATIS. This list does not constitute an endorsement for any of the specific products listed. Other products meeting the minimum technical characteristics described may be used.

GAS TRANSMISSION CODE

PC HARDWARE

PU: Pentium4 level processor (or equivalent)

Memory (RAM): 256MB or greater

OPERATING SYSTEM

Windows 2000 or XP

Display Resolution of 1024 x 768

SOFTWARE

MS Excel 2000 or 2003

WinZip 6 or above

Internet Explorer 6.0 with current level service pack applied

Adobe Reader 7.0

CONNECTION

256kbs or greater per connection (available bandwidth)

Cookies enabled

IE scripting enabled

SCHEDULE FOUR: INFORMATION ON OATIS**Table 1: Scheduled Quantities and Operational Imbalances**

Welded Point	Scheduled Quantity Posted to OATIS	Operational Imbalance Posted to OATIS	ROI Posted to OATIS
Rotowaro	As soon as reasonably practicable after it is agreed with MDL	Daily	Daily
Pokuru			
Frankley Rd			

Table 2: Line Pack

Pipeline	Data Source	Data Presentation	Data Posted to OATIS	Operational Limits
Bay of Plenty	SCADA calc	Graphical display + table - rolling 48 hours data	Unvalidated Hourly, Validated next Business Day	As amended by Firstgas from time to time
Frankley Rd to Kapuni				
Kapuni to Rotowaro				
Morrinsville				
North				
South				

Table 3: Energy Quantities for Large Welded Points

Welded Point	Data Type	Data Collection Method	Data Posted to OATIS	DDRs Available	HDRs Available
Rotowaro	Energy Quantities	SCADA	Hourly	Validated by 14:00 on the following Business Day	
Pokuru		SCADA	Hourly		
Frankley Rd		SCADA	Hourly		

Table 4: Energy Quantities for Small Welded Points

Metering Data Collection Method	DDRs Available	HDRs Available
Telemetry	Unvalidated by 10:00, Validated by 14:00 on the following Business Day	
Manual	Validated by 12:00 on 4 th Business Day of the following Month	

Table 5: Energy Quantities for Receipt Points and Delivery Points other than Welded Points

Metering Data Collection Method	Data Posted to OATIS	DDRs Available	HDRs Available
SCADA	Next Business Day	Unvalidated by 10:00, Validated by 14:00 on the following Business Day	
Telemetry			
Manual	After Month-end	Validated by 12:00 on 4 th Business Day of the following Month	

Definitions Applicable to this Schedule Four

DDR means daily delivery report, in the format notified by Firstgas from time to time;

HDR means hourly delivery report, in the format notified by Firstgas from time to time;

Hourly means the frequency at which data is posted to OATIS. Data sourced from SCADA is normally posted shortly after each hour rolls over. Depending on the frequency at which SCADA polls the Metering at a site, refreshed data may not be available until a further hour rolls over; and

SCADA calc means that the relevant Line Pack is calculated within SCADA using key pressures obtained from pressure-measuring instruments on the pipeline.

Over-Writing of Previously Published Data

Unvalidated data may be over-written without notice.

Validated data may not necessarily be of "billing quality" when posted to OATIS.

Validated data previously published will not be over-written however. Previously published data will be kept along with any new version.

Availability

The information set out in this Schedule Four will be made available to each Shipper in accordance with *section 3.3* of the Code.

**SCHEDULE FIVE:
INFORMATION TO BE AVAILABLE VIA OATIS**

Table A: Information generally available on OATIS

Information Type	Frequency of Posting	Necessary Information
Capacity Reservation Fee (<i>section 15.6</i>)	Annually, with the provisional fee for Year _(n+1) by 1 June and the confirmed fee for Year _(n+1) by 1 September in Year _(n)	×
Throughput Fee (<i>section 15.6</i>)	Annually, with the provisional fee for Year _(n+1) by 1 June and the confirmed fee for Year _(n+1) by 1 September in Year _(n)	×
Correction Fee (<i>section 15.5</i>)	As soon as reasonably practical after being amended in accordance with the Code, but no more than annually	×
Transmission Posted Price Schedule	Annually	×
Defined gas types and certain properties of each gas type for each Business Day at each Delivery Point	By 1200 hours on each Business Day following the Day on which the Shipper takes that gas	×
Notice of delivery of Non-Specification Gas (<i>section 12</i>)	As soon as reasonably practicable upon detecting or suspecting such occurrence	√
Request for Tenders issued in accordance with <i>section 8.4</i>	Issued by Firstgas as required	×
Each Tender for Gas (including the details specified in <i>section 8.4(c)(ii)</i>)	As soon as reasonably practicable following the period for submitting tenders	×
The Acceptable Operational Limits (<i>section 1.1</i>)	At the Commencement Date and updated as soon as reasonably practicable following amendment	×
The Code (Part B of Schedule One)	At the Commencement Date and updated as soon as reasonably practicable following amendment	×

Information Type	Frequency of Posting	Necessary Information
Notice that Line Pack has reached or is outside of the Acceptable Operational Limits (<i>section 8.4</i>)	As soon as reasonably practicable	×
Each response from MDL to a notification given to MDL of Peaking Limit under section 13.2 of the MPOC (<i>section 8.22</i>)	As soon as reasonably practicable	√
Schedule of Shippers including the Receipt Points and Delivery Points to which each such shipper's transmission services agreement relates (and other information that Firstgas may post pursuant to <i>section 2.10</i>)	In respect of (a) a transmission services agreement, as soon as reasonably practicable after execution of each such agreement and (b) other information, at Firstgas' discretion	×
Each Inter-Pipeline Point (<i>section 1.1</i>)	At the Commencement Date and updated as soon as reasonably practicable following amendment	×
Status of each Shipper's TSA under <i>section 2.12</i>	As required under <i>section 2</i>	×
UFG – Actual for previous month and daily unvalidated	As soon as practicable after calculation at the start of the following month	×
Notice that <i>section 2.6</i> may be invoked (<i>section 4.2</i>)	As soon as reasonably practicable following the receipt by Firstgas of the Provisional Reservation Requirements	×
Notice that Peaking Limit may be exceeded (<i>section 8.23</i>)	As soon as reasonably practicable	√
Operational Flow Order (<i>section 10.2</i>)	As soon as reasonably practicable after Firstgas gives notice under <i>section 10.2</i>	√
Force Majeure Notice (<i>section 22.3</i>)	As soon as reasonably practicable after Firstgas gives notice under <i>section 22.3</i>	√

Information Type	Frequency of Posting	Necessary Information
Metering Requirements for Receipt Points and Delivery Points (<i>section 1.1</i>)	At the Commencement Date and updated as soon as reasonably practicable following amendment	×
Description of Pipelines (<i>section 1.1</i>)	At the Commencement Date and updated as soon as reasonably practicable following amendment	×
Tender Terms (<i>section 1.1</i>)	At the Commencement Date and updated following amendment	×
Firstgas Running Imbalance (whether positive or negative) on each Day for each Pipeline	The day Firstgas issues invoices to Shippers under <i>section 16.2</i>	×
All remaining notices issued to Firstgas as a Welded Party under the MPOC that Firstgas determines are relevant to the Shipper	As soon as reasonably practicable following receipt by Firstgas	×
Scheduled Maintenance (<i>section 10.1(i)</i>)	At least 30 days before the date on which the Scheduled Maintenance is expected to occur	√
Description of Transmission System (<i>section 1.1</i>)	Annually, as part of pipeline capacity disclosure	×
List of odorised Pipelines, notice of intention to change the odorisation status of a Pipeline and notice that a change has occurred (<i>section 13.1</i>)	At the Commencement Date, at least 12 months prior to the change in odorisation status and as soon as reasonably practicable following any change to the odorisation status of a Pipeline	×
Independent Auditors' Report of BPP Account (as required by <i>sections 8.28</i> and <i>8.29</i>)	Annually, as soon as reasonably practicable following receipt by Firstgas or as otherwise required	×
The Posted Terms and Conditions for Displaced Gas Nominations, and any	At the Commencement Date and updated following amendment	×

Information Type	Frequency of Posting	Necessary Information
Consent Form – Displaced Gas Nominations (<i>sections 1.1 and 9.2(a)</i>)		
Critical Contingency Management Plan (<i>section 1.1</i>)	At the Commencement Date and as soon as reasonably practicable following its amendment or replacement	x
ATS Notice (<i>sections 1.1 and 2.21</i>)	As soon as reasonably practicable where transmission services are curtailed or shutdown under <i>section 10.1(a)</i> or (<i>c</i>). At the same time as a 30 Day notice is published under <i>section 10.1(i)</i> for Scheduled Maintenance.	√
Firstgas exercising its rights to interrupt, accept or not accept nominations or revised nominations in full under a Supplementary Agreement	Monthly report	X
All requests by Shippers and responses by Firstgas under <i>section 5 (section 5.6)</i>	As soon as reasonably practicable	x
Aggregate DDRs, HDRs and station metering	As soon as reasonably practicable	X
Supplementary Agreements	As soon as reasonably practicable	X
Report showing, by Shipper, the Receipt Point, Delivery Point, Reserved Capacity and Authorised Overrun Quantity for each Receipt Point and Delivery Point	Quarterly	x
Reconciled Daily Delivery Reports (DDR) for each Shipper	Monthly in arrears, by 0800 hours on the 6th Business Day of the Month	√

Table B: Information restricted to each Shipper on OATIS

Information Type	Frequency of Posting	Necessary Information
Tracking Table showing the Receipt Point, Delivery Point, Reserved Capacity and Authorised Overrun Quantity for each Receipt Point and Delivery Point (as required under <i>section 4</i>)	Prior to the third Friday in September each Year and as soon as reasonably practicable following any change to a Receipt Point, Delivery Point, Reserved Capacity and/or Authorised Overrun Quantity in accordance with a TSA	×
All requests by Shippers and responses by Firstgas under <i>section 4</i>	As soon as reasonably practicable	×
Acceptance Notice for each Tender(s) (as required by <i>section 8.4</i>)	As soon as reasonably practicable once accepted by Firstgas	×
The BPP Schedule and invoices issued by Firstgas under <i>sections 16.1</i> and <i>16.2</i> where Firstgas elects to provide them via OATIS under <i>section 16.12(b)</i>	In respect of invoices issued under <i>section 14.1</i> on or before the 10 th day of each month for the previous Month In respect of invoices issued under <i>section 14.3</i> on or before the 14 th day of each month for the previous Month	×

PROVIDED THAT:

Location of Information Available via OATIS

Information described in the above tables that is to be provided by Firstgas may be included in documents (e.g. Transmission Posted Price Schedule, Transmission System Information Memorandum or the Pipeline Capacity Disclosure) located outside OATIS but accessible from OATIS via a hyperlink to another website.

**SCHEDULE SIX:
REQUIREMENTS OF GAS TRANSFER AGREEMENTS**

General Requirements

1 A Gas Transfer Agreement:

1.1 must:

- (a) be documented in writing;
- (b) be executed by the transferor and transferee;
- (c) be provided to the proposed Gas Transfer Agent at the relevant Receipt Point or Inter-Pipeline Point for consideration and execution and be executed by the Gas Transfer Agent no less than 2 hours before the Gas to which that Gas Transfer Agreement refers is to flow into, out of, or on the Transmission System except where the Gas is to flow on a Day that is not a Business Day, in which case the Gas Transfer Agreement must be provided to the Gas Transfer Agent no less than 8 hours before the Gas is to begin flowing;
- (d) provide unambiguous mechanisms for determining the quantity of Gas transferred by the transferor to the transferee;
- (e) specify the order of priority between two or more of the transferor's Gas Transfer Agreements for the same Receipt Point or Inter-Pipeline Point in the event of any inconsistency between those agreements;
- (f) provide for all Inputs in respect of each timeframe (as posted by Firstgas on OATIS) to which the Gas Transfer Agreement relates to be made available to the Gas Transfer Agent within the timeframes posted by Firstgas on OATIS; and
- (g) provide for the Gas Transfer Agent to disclose the Outputs to Firstgas and to use reasonable endeavours to make that disclosure within the timeframes posted by Firstgas on OATIS;

1.2 shall set out transfer rules which:

- (a) for Receipt Points which are not Inter-Pipeline Points, acknowledge (either explicitly or implicitly) that, except where this Schedule Six allows a transferor to go into negative Mismatch, the total quantity of Gas available on a Day for transfer by a transferor:

- (i) at a Receipt Point which is a Welded Point at which Gas is being injected into the Transmission System, is the transferor's Approved Nomination at that point plus or minus any earlier traded quantities; and
- (ii) at a Receipt Point at which Gas is being injected into the Transmission System which is not a Welded Point, is the metered quantity;
- (b) are compatible with the transferor's other Gas Transfer Agreements in respect of the same Receipt Point or Inter-Pipeline Point; and
- (c) are not conditional on allocated quantities at Delivery Points.

Specific Requirements

2 A Gas Transfer Agreement:

2.1 covering a transfer at an Inter-Pipeline Point must state that:

- (a) where the Inter-Pipeline Point is the Delivery Point known as Pokuru 2 Delivery, the quantity of Gas transferred will be a quantity equal to the Interruptible Capacity (or the Reduced Interruptible Capacity, as the case may be) as defined under the Shipper's current Interruptible Agreement for the Kapuni to Pokuru 2 pipeline.
- (b) where the Inter-Pipeline Point is the Delivery Point known as Frankley Road, the quantity transferred is:
 - (i) the Shipper's Approved Nomination for delivery into the Maui Pipeline at that Welded Point; or
 - (ii) where a Shipper requires delivery of a quantity of Gas to that Delivery Point but does not require that Gas to be delivered into the Maui Pipeline, as calculated and advised by the relevant Gas Transfer Agent; and
- (c) the transferor will go into negative Mismatch to complete the transfer; and

2.2 must:

- (a) specify that if the quantity of Gas available to the transferor to transfer (as determined by, or calculated by reference to, the Inputs) is insufficient to meet the proposed transfer:

- (i) the transferor will go into negative Mismatch to complete the transfer, if that transferor is a Shipper on the Transmission System; and
 - (ii) the transfer will not be completed to the extent of the insufficiency, if that transferor is not a Shipper on the Transmission System;
- (b) set out default rules to be applied by the Gas Transfer Agent where:
 - (i) the Inputs are not provided or received in full and within the required timeframes or if they contain any deficiency;
 - (ii) the Inputs cannot be calculated for any reason other than Force Majeure;
 - (iii) the Outputs cannot be calculated for any reason other than Force Majeure;
 - (iv) the quantity of Gas available to the transferor is less than the combined quantities claimed for transfer by the transferee(s) and the transferor is not eligible to go into negative Mismatch to complete the transfer;
 - (v) the quantity of Gas available to be allocated is a metered quantity, and the total quantity claimed by the transferee or transferees does not equal this metered quantity;
 - (vi) there is a dispute between the parties to the Gas Transfer Agreement (or any two of them) as to the Inputs, Outputs or the interpretation of the Gas Transfer Agreement affecting the determination or calculation of those Inputs or Outputs – such mechanism to define the process and ensure the determination of the Outputs by the 12th Day of the Month following the Month in which the Gas flowed and not, under any circumstance, to involve Firstgas (as the owner and operator of the Transmission System); and
- (c) set out the following rules (the “*Fall Back Default Rules*”) for application by the Gas Transfer Agent if a default rule referred to in *paragraph 2.2(b)* above fails:
 - (i) where any of the default rules in relation to *paragraphs 2.2(b)(i) to (iii)* or *(vi)* of this Schedule Six fails, the Gas Transfer Agent shall determine that no transfer of Gas to the transferee has occurred;

- (ii) where the default rule in relation to *paragraph 2.2(b)(iv)* of this Schedule Six fails, the Gas Transfer Agent shall complete the transfer to the extent of the Gas available but on a pro rata basis, across the transferee's nominations; or
- (iii) where the default rule in relation to *paragraph 2.2(b)(v)* of this Schedule Six fails, the Gas Transfer Agent shall:
 - A transfer the metered quantity to the transferee, if there is only one transferee; or
 - B split the metered quantity equally between the transferees, if there is more than one transferee.

3 In this Schedule Six:

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

Outputs means the quantities of gas transferred after application of the relevant transfer rules.

**SCHEDULE SEVEN:
FORM OF GAS TRANSFER AGREEMENT**

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GAS TRANSFER AGREEMENT

1. Parties	
Transferor	[] Limited
Transferee	[] Limited [and [] Limited]
Gas Transfer Agent	First Gas Limited

2. Agreement - terms that apply

The Transferor, Transferee and the Gas Transfer Agent wish to agree the Gas Transfer Rules in relation to the transfer of gas into, out of and on the Transmission System.

The Transferor, Transferee and the Gas Transfer Agent agree to enter into this Gas Transfer Agreement on the terms set out below.

Duration	Start Date:	End Date: [no later than the Expiry Date]
Receipt Point		
Services	Determination and disclosure of Outputs.	

Terms	<p>1. Definitions</p> <p>(a) In addition to the terms defined above, in this Agreement:</p> <p><i>Agreement</i> means this Gas Transfer Agreement (including the Schedule);</p> <p><i>Default Rules</i> means those rules set out in the Schedule and described as such (including the Fall Back Default Rules set out in, and required by, Schedule Six of the Gas Transmission Code);</p> <p><i>Force Majeure Event</i> means any event beyond the reasonable control of a party including any act of God, government, war, terrorism, civil disturbance, labour disruption, fire, earthquake or flood;</p> <p><i>Gas Transfer Rules</i> means the rules set out in the Schedule (being the Primary Rules and the Default Rules);</p> <p><i>GJ</i> means the energy equivalent of a quantity of gas, on a "gross calorific value" (also known as "Higher Heating" basis);</p> <p><i>Inputs</i> means the data required to perform the calculations anticipated by the Gas Transfer Rules;</p> <p><i>MPOC</i> means the Maui Pipeline Operating Code released by the Ministry of Economic Development on 17 August 2005 (called the "Final Operating Code 8 August 2005"), as amended from time to time in accordance with its terms;</p> <p><i>Outputs</i> means the quantities of gas calculated to be transferred (in GJ) after application of the Gas Transfer Rules;</p> <p><i>Party</i> means each of the Gas Transfer Agent, Transferor and Transferee and <i>Parties</i> means all of them;</p> <p><i>Primary Rules</i> means those rules set out in the Schedule and described as such;</p> <p><i>Schedule</i> means the schedule entitled "Information and Rules" and beginning on page 4 of this Agreement; and</p> <p><i>Services</i> means the services described above.</p> <p>(b) Capitalised terms not defined in this Agreement shall have the meaning ascribed to them under the Gas Transmission Code.</p> <p>2. Services</p> <p>(a) The Gas Transfer Agent agrees to provide the Services on the terms and conditions contained in this Agreement.</p> <p>3. Term</p> <p>(a) This Agreement shall commence on the start date set out above and expire on the end date set out above unless terminated earlier in accordance with <i>clause 5</i> of this Agreement.</p> <p>4. Undertakings</p> <p>(a) The Gas Transfer Agent agrees:</p> <p>(i) to be bound by the terms of Schedule Six of the Gas Transmission Code that apply to a Gas Transfer Agent whilst providing the Services;</p> <p>(ii) that in performing the Services, it will exercise the degree of skill, diligence and foresight that would reasonably and ordinarily be expected from a skilled and experienced operator engaged in New Zealand in the same type of undertaking under the same or similar circumstances including</p>
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	<p>compliance with applicable statutory, similar regulatory and industry requirements and standards; and</p> <p>(iii) to disclose the Outputs to the Transferor and the Transferee for verification, and then to disclose the verified Outputs (or in the event that the Parties cannot agree the verified amounts, the Outputs determined by the Gas Transfer Agent in accordance with the Default Rules) to the persons specified in the Gas Transfer Rules and by the timeframes referred to in Schedule Six of the Gas Transmission Code.</p> <p>(b) The Transferor and Transferee agree:</p> <p>(i) to provide Gas Transfer Rules that comply with the terms of Schedule Six of the Gas Transmission Code;</p> <p>(ii) to provide (or procure the provision of) the Inputs to the Gas Transfer Agent within the timeframes referred to in Schedule Six of the Gas Transmission Code;</p> <p>(iii) to verify or dispute (and notify the Gas Transfer Agent of the same) the Outputs disclosed by the Gas Transfer Agent for verification in accordance with <i>clause 4(a)(iii)</i> of this Agreement as soon as practicable and in any event within the timeframes referred to in Schedule Six of the Gas Transmission Code;</p> <p>(iv) that in the event that the Inputs are not received in accordance with clause 4(b)(ii) of this Agreement, are incomplete, inconsistent, disputed or on the occurrence of any other event specified in the Default Rules (including where the Parties cannot agree on the Outputs disclosed for verification in accordance with clause 4(a)(iii) of this Agreement), the Gas Transfer Agent will apply the Default Rules to complete (or in the case of a dispute, to redo) the required calculations;</p> <p>(v) that in performing the Services, the Gas Transfer Agent makes no representation as to the validity or suitability of the Gas Transfer Rules, nor as to whether they comply with Schedule Six of the Gas Transmission Code; and</p> <p>(vi) that the Outputs depend on the accuracy of the Inputs and information provided to the Gas Transfer Agent in accordance with the Gas Transfer Rules and that the Gas Transfer Agent is not responsible for the accuracy (or otherwise) of those Inputs or the effect they may have on the Outputs.</p> <p>5. Termination</p> <p>(a) The Transferor or Transferee may terminate this Agreement at any time by providing to the other Parties prior written notice of at least 1 Business Day.</p> <p>(b) The termination of this Agreement:</p> <p>(i) is without prejudice to the rights and obligations of a Party accrued up to and including the date of termination; and</p> <p>(ii) will not affect any provisions of this Agreement that are by their nature intended to continue after termination.</p> <p>6. Force Majeure</p>
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	<p>(a) Non-performance by any Party of any of its obligations under this Agreement will be excused, without liability for non-performance, where that non-performance is a direct or indirect result of a Force Majeure Event.</p> <p>(b) If a Party believes that it may fail to meet any of its obligations under this Agreement because of a Force Majeure Event, it must:</p> <p>(i) promptly give notice to the other Parties specifying the cause and extent of its inability to perform any of its obligations and the likely duration of that non-performance; and</p> <p>(ii) take all reasonable steps to remedy or mitigate the effects of the Force Majeure Event, provided that the notifying party is not required to change the way it would otherwise deal with or settle a labour dispute.</p> <p>7. Liability</p> <p>(a) Except in the case of the negligence or wilful breach by the Gas Transfer Agent in the performance of any of its obligations under this Agreement, the Gas Transfer Agent will not be liable for any loss or damage sustained by any Party in relation to this Agreement (in contract, tort, generally at common law, equity or otherwise).</p> <p>(b) Where the Gas Transfer Agent is liable, its liability for any single event or series of related events will be limited to \$5000 and, in any Year, to \$30,000 irrespective of the number of events in such period.</p> <p>(c) The Transferor and Transferee must each take all reasonable steps to mitigate any losses it may suffer or incur arising out of anything done, or not done, by the Gas Transfer Agent under this Agreement.</p> <p>(d) Notwithstanding any other provision of this Agreement, the Gas Transfer Agent will not be liable to the Transferor or Transferee under this Agreement for:</p> <p>(i) any loss of profit, loss of revenue, loss of anticipated savings, loss of use, loss of contract or loss of goodwill of any person;</p> <p>(ii) any indirect or consequential loss; or</p> <p>(iii) any loss of a third party.</p> <p>8. Confidential Information</p> <p>(a) Each Party will always keep confidential and secure, and not exploit or otherwise misuse, any information of another Party which is confidential or commercially sensitive. A Party may only disclose and/or use that information to the extent necessary to enable it to perform its obligations under this Agreement, to any third party if it has the prior written consent of the proprietary Party, or to the extent required by law.</p> <p>(b) For the purposes of <i>clause 8(a)</i> of this Agreement, the Inputs, Gas Transfer Rules, Outputs and the existence of this Agreement shall be deemed to be confidential and commercially sensitive to the Parties.</p> <p>9. Intellectual Property</p> <p>(a) Any patent, design, trademark, copyright or any other intellectual property right created by the Gas Transfer Agent in the course of performing the Services belongs to the Gas Transfer Agent.</p> <p>(b) Nothing in this Agreement will confer upon the Gas Transfer Agent any intellectual property right in any of the Inputs or Outputs.</p>
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	<p>General</p> <p>(c) Each Party acknowledges that, subject to <i>clause 4(a)(i)</i>, any delay in the provision of the Inputs (and consequently, the Outputs) may occur as a result of delays in the completion of the processes under section 4.10 of the MPOC and that no Party shall be deemed to be in breach of this Agreement nor incur liability under <i>clause 7(a)</i> this Agreement as a result of such a delay.</p> <p>(d) The Transferor and Transferee acknowledge that the Services are being provided for the purposes of a business and the Consumer Guarantees Act 1993 does not apply to them.</p> <p>(e) Except as expressly set out in this Agreement, all representations and warranties (statutory, express or implied), except any which may not be lawfully excluded, are expressly excluded.</p> <p>(f) No failure to exercise, and no delay in exercising, a right of a Party under this Agreement will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right. No waiver by a Party of its rights under this Agreement is effective unless it is in writing signed by that Party.</p> <p>(g) This Agreement constitutes the entire agreement of the Parties in respect of the matters covered by it and supersedes all previous agreements in respect of those matters.</p> <p>(h) Neither the Transferor or the Transferee may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Gas Transfer Agent.</p> <p>(i) This Agreement shall not, and is not intended to, confer any benefit on or create any obligation enforceable by any person not a Party to this Agreement.</p> <p>(j) The singular includes the plural and vice versa.</p> <p>(k) This Agreement shall be construed and interpreted in accordance with the law of New Zealand and the Parties submit to the non-exclusive jurisdiction of the New Zealand courts.</p>
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3. Signatures			
For the Gas Transfer Agent		For the Transferor	
<hr/> Signature of authorised signatory		<hr/> Signature of authorised signatory	
<hr/> Print name		<hr/> Print name	
Dated:		Dated:	
For the Transferee		[For the Transferee]	

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<hr/> Signature of authorised signatory <hr/>		<hr/> Signature of authorised signatory <hr/>	
Print name		Print name	
Dated:		Dated:	

SCHEDULE**Information and Rules****Gas Transfer Rules****Primary Rules**

[Provide rules and a formula (or formulae) for calculating the Inputs (if a calculation is required), the Outputs and who the Outputs are to be disclosed to. Reference may be made to the following Input Information and Output Information tables]

Input Information

Input Data Code	Input Data Name	Person Supplying Input	Method of Communication to Gas Transfer Agent

Output Information

Output Data Code	Output Data Name	Party Receiving Output	Method of Communication

Default Rules

[Provide Default Rules to be applied by the Gas Transfer Agent including if:

- the Inputs are not provided or received in full and in the required timeframes (as the case may be);*
- the Inputs contain any deficiency;*
- the Inputs cannot be calculated for any reason;*
- the Transferor has insufficient gas available to it to complete the transfer anticipated by this Agreement;*
- the Outputs cannot be calculated for any reason;*
- transferee(s) claims for a metered quantity of Gas do not equal the metered quantity;*
- there is a dispute between the Parties (or any two of them) as to the Inputs, Outputs or interpretation of the Agreement affecting the calculation of those Inputs or Outputs,*

and for any other circumstance that the Parties reasonably consider needs covering.

Include the "Fall Back Default Rules" set out in Schedule Six of the Gas Transmission Code.]

**SCHEDULE NINE:
PEAKING ALLOCATION METHODOLOGY**

1 PEAKING ALLOCATION METHODOLOGY

- 1.1 Firstgas will calculate Firstgas' and each Shipper's and Non-Code Shipper(s) hourly Receipt Quantity for the period during which a Peaking Limit was exceeded (as advised by MDL). Hourly Receipt Quantities are determined by:
- (a) hourly metered quantities for Receipt Points from another Pipeline (not being another party's transmission pipeline) gas producing or gas processing facility; and
 - (b) for Receipt Points from another party's transmission pipeline, Firstgas' and each Shipper's and Non-Code Shipper(s) Maui nominations to the relevant Welded Point divided by 24 (and taking into account any intraday nomination changes).
- 1.2 Firstgas will then calculate Firstgas' and each Shipper's and Non-Code Shipper(s) hourly Delivery Quantity for the period during which a Peaking Limit was exceeded (as advised by MDL). Hourly Delivery Quantities are determined by:
- (a) hourly metered quantities for Delivery Points from which Gas is taken directly by a gas consuming facility (and not another Pipeline, transmission pipeline or Distribution System); and
 - (b) for all other Delivery Points, Firstgas' and each Shipper's allocated Delivery Quantity for the relevant Delivery Point (determined in accordance with section 6.5 for Shippers) divided by 24 (and taking into account any intraday nomination changes).
- 1.3 The MPOC provides a "Peaking Tolerance" at each Welded Point. This Peaking Tolerance is applied to the relevant quantities for Firstgas, and each Shipper and Non-Code Shipper.
- 1.4 If Firstgas', a Shipper's or a Non-Code Shipper(s) hourly Receipt Quantity (including the Peaking Tolerance as defined in the MPOC) exceeds its hourly Delivery Quantity for the period during which a Peaking Limit was exceeded, then Firstgas, that Shipper or that Non-Code Shipper is not considered to have caused or contributed to the Peaking Limit being exceeded and will not be allocated any Peaking Costs.
- 1.5 If Firstgas', a Shipper's or a Non-Code Shipper(s) hourly Delivery Quantity exceeds its hourly Receipt Quantity (including the Peaking Tolerance as defined in the MPOC) for the period during which a Peaking Limit was exceeded, then Firstgas, that Shipper and/or that Non-Code Shipper is considered to have caused

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or contributed to the Peaking Limit being exceeded and will be allocated a share of the Peaking Costs in accordance with section 1.6 of this Schedule Nine.

- 1.6 The total Peaking Cost is then allocated to Firstgas and all Shippers or Non-Code Shipper(s) who are considered to have caused or contributed to the Peaking Limit being exceeded, by applying the following formula:

$$\text{Peaking cost } x = \frac{\text{total peaking cost} \times (\text{Peaking Tolerance} \times \text{hourly RQ}_x - \text{hourly DQ}_x)}{\text{sum of } (\text{Peaking Tolerance} \times \text{hourly RQ}_{\text{ALL}} - \text{hourly DQ}_{\text{ALL}})}$$

Where:

X = any one of Firstgas, a Shipper or a Non-Code Shipper

ALL = all contributing Shippers, Non-Code Shippers and Firstgas