



Independent Competition and Regulatory Commission

Decision

Assessment of Associate Contracts between ActewAGL Distribution and ActewAGL Retail

Report 11 of 2005

October 2005

The Independent Competition and Regulatory Commission (the Commission) was established by the *Independent Competition and Regulatory Commission Act 1997* to determine prices for regulated industries, advise government about industry matters, advise on access to infrastructure and determine access disputes. The Commission also has responsibilities under the Act for determining competitive neutrality complaints and providing advice about other government-regulated activities.

The Commission has three Commissioners:

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For further information on this or any other matters of concern to the Commission please contact Ian Primrose, Chief Executive Officer, on 6205 0779.

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1 Summary

The *Gas Pipelines Access Act 1998* (ACT) gives effect in the Territory to the *National Third Party Access Code for Natural Gas Pipeline Systems* (the Code) and nominates the Independent Competition and Regulatory Commission (the Commission) as the relevant regulator in respect of gas distribution pipelines in the Australian Capital Territory.

Under section 7.1 of the Code, a service provider must not enter into an associate contract as defined in the Code without first obtaining the approval of the relevant regulator. The Commission, as relevant regulator must not refuse to approve a proposed associate contract unless it considers that the contract would have the effect, or would be likely to have the effect, of substantially lessening, preventing or hindering competition in a market. A decision by the relevant regulator to not approve an associate contract is a reviewable decision (section 7.6).

ActewAGL Distribution has submitted to the Commission two proposed contracts between itself and ActewAGL Retail, an associate:

- Gas Transport Services Agreement for Large Customers
- Gas Transport Services Agreement for Small Customers

The proposed associate contracts are broadly consistent with ActewAGL Distribution's *Access Arrangement for the ActewAGL Gas Distribution System in ACT and Greater Queanbeyan* (Access Arrangement) approved by the Commission in October 2004. The term of the Access Arrangement is from 1 January 2005 to 30 June 2010.

The Commission released an issues paper inviting comments from interested parties in relation to the proposed associate contracts. The Commission received no submissions in response to that issues paper. EnergyAustralia, a licensed supplier in the ACT, did not lodge a submission but informed the Commission informally that it had no concerns with the proposed associate contracts. The Chief Minister for the ACT informed the Commission he had no comments on the proposed associate contracts.

The Commission did not conduct public hearings in relation to this matter.

The Commission does not consider that the proposed associate contracts are likely to have the effect of substantially lessening, preventing or hindering competition in a market. Accordingly, the Commission approves the associate contracts as provided in the Code.

2 Proposed Associate Contracts

ActewAGL Distribution is required to provide certain services to gas suppliers in the ACT and Greater Queanbeyan under its Access Arrangement.

Two proposed associate contracts by which these services will be provided, in part, have been submitted to the Commission for approval.

- The proposed Gas Transport Services Agreement for Large Customers sets out the terms on which ActewAGL Distribution will provide ActewAGL Retail with:

- (a) non-tariff services; and
- (b) meter data services while they remain non-contestable services.

It covers all customers on ActewAGL Retail's non-tariff list and provides a procedure for updating that list as customers are transferred to and from ActewAGL Retail.

- The proposed Gas Transport Services Agreement for Small Customers sets out the terms on which ActewAGL Distribution will provide ActewAGL Retail with:

- (a) tariff services; and
- (b) meter data services while they remain non-contestable services.

It covers all customers on ActewAGL Retail's tariff list and provides a procedure for updating that list as customers are transferred to and from ActewAGL Retail. All customers on ActewAGL Retail's tariff list are now non-franchise customers pursuant to an ACT Government Declaration under Subsection 18(4), Utilities Act 2001 in April 2001¹.

Under section 7.3 of the Code, the Commission may, in conducting public consultation in relation to a proposed associate contract, make public the content of an associate contract, in whole or in part, subject to considerations of confidentiality and commercial sensitivity.

ActewAGL Distribution did not bring to the attention of the Commission any concerns of confidentiality or commercial sensitivity in relation to either proposed associate contract. As such, the Commission reproduced both proposed associate contracts in its issues paper and does so again in this decision.

The proposed Gas Transport Services Agreements for Large and Small Customers are Appendices A and B to this decision respectively. The Commission has also made these contracts available on its website, www.icrc.act.gov.au.

¹ Instrument No. 94 of 2001, available at: <http://www.legislation.act.gov.au/a/2000-65/di.asp>

3 Application of the National Third Party Access Code for Natural Gas Pipelines

3.1 Approval required for associate contracts

ActewAGL Distribution as service provider, must not enter into a proposed associate contract without first obtaining the approval of the Commission as relevant regulator (section 7.1 of the Code).

3.2 Associate contracts

Section 10.8 of the Code defines an associate contract as:

- (a) a contract, arrangement or understanding between the service provider and an associate in connection with the provision of a service; or
- (b) a contract, arrangement or understanding between the service provider and any person in connection with the provision of a service which provides a direct or indirect benefit to an associate and which is not an arm's length transaction.

ActewAGL formed in October 2000 when the Australian Gas Light Company (AGL), a major private sector group, and ACTEW Corporation, a government-owned enterprise, entered into Australia's first utility joint venture. Ownership of ActewAGL is shared equally between AGL and ACTEW Corporation. The proposed contracts are between the two partnerships into which the ActewAGL joint venture is structured:

- ACTEW Distribution Limited ABN 83 073 025 224 and AGL Gas Company (ACT) Pty Ltd ABN 24 008 552 663, trading as **ActewAGL Distribution ABN 76 670 568 688**
- and
- ACTEW Retail Limited ABN 23 074 371 207 and AGL ACT Retail Investments Pty Limited ABN 53 093 631 586, trading as **ActewAGL Retail ABN 46 221 314 841**

ActewAGL Distribution and ActewAGL Retail accordingly are associates for the purposes of the Code. The proposed contracts to be agreed by ActewAGL Distribution and ActewAGL Retail as associates are for the provision of gas transport services.

The Commission therefore is satisfied that the proposed contracts meet the Code definition of associate contracts.

3.3 Public consultation

The Code requires that, unless the proposed associate contract is for the supply of services at the reference tariff, the Commission must conduct such public consultation as it considers appropriate prior to making its decision (sections 7.2 and 7.3).

The proposed Gas Transport Services Agreement for Large Customers provides for the provision of services in addition to those provided purely at the reference tariffs.

While public consultation in respect of the Gas Transport Services Agreement for Small Customers was not strictly necessary, as the terms of the two proposed associate contracts are substantially the same, the Commission considered it appropriate that they be considered together.

The Commission's approach and its invitation for comment are consistent with the Commission's:

- obligations under the Code;
- policy of openness and transparency in its decision-making functions; and
- mandate to inquire into issues in a publicly accountable and open way and to report publicly its findings and advice.

The Commission released an issues paper on 16 September 2005 inviting comment from interested parties on the following issues:

- the potential of the proposed associate contracts to have the effect, or be likely to have the effect, of substantially lessening, preventing or hindering competition in a market
- the Commission's proposed approach to identifying the relevant markets and the assessment of the potential impact of the proposed associate contracts on competition in the markets identified.

The Commission received no submissions in response to the issues paper. EnergyAustralia did not lodge a submission but informally said to the Commission that it had no concerns with the proposed associate contracts. The Chief Minister for the ACT informed the Commission by letter he had no comments on the proposed associate contracts. The Commission noted these responses.

The Commission is concerned, however, by the lack of submissions as it means the Commission may not be able to make as fully informed a decision as otherwise would be possible as to whether the proposed associate contracts would have the effect, or would be likely to have the effect, of substantially lessening, preventing or hindering competition in a market. For the Commission to make a comprehensive assessment of proposed associate contracts for the purposes of the Code requires the active participation of stakeholders.

4 Substantial lessening, prevention or hindrance of competition in a market

The Commission must not refuse to approve a proposed associate contract unless it considers that the contract would have the effect, or would be likely to have the effect, of substantially lessening, preventing or hindering competition in a market (section 7.1 of the Code).

Assessment of the potential for a proposed associate contract to substantially lessen, prevent or hinder competition in a market involves two steps:

- identification of the relevant market(s)
- assessment of the likely impact of the proposed contract on competition in the market(s).

4.1 Relevant market(s)

The Code does not define 'market', or provide guidance as to how the dimensions of a particular market should be determined. The Commission considers that the approach taken to market definition under the *Trade Practices Act 1974* (TPA) is appropriate in considering associate contracts under the Code. This approach is common in other jurisdictional regulators.

'Market' is defined in section 4E of the TPA as "a market in Australia and, when used in relation to any goods or services, includes a market for those goods or services and other goods or services that are substitutable for, or otherwise competitive with, the first-mentioned goods or services".

That definition was elaborated upon by the Trade Practices Tribunal in *Re Queensland Co-Operative Milling Association Ltd, Defiance Holdings Ltd* (1976) 25 FLR 169 (at 190):

A market is the field of actual and potential transactions between buyers and sellers amongst whom there can be strong substitution, at least in the long run, if given a sufficient price incentive. Within the bounds of a market there is substitution – substitution between one product and another, and between one source of supply and another, in response to changing prices. So a market is the field of actual and potential transactions between buyers and sellers amongst whom there can be strong substitution, at least in the long run, if given a sufficient price incentive ...

Market definition under the TPA involves the application of these principles to the four identified dimensions of a market:

- the product dimension
- the functional dimension
- the geographic dimension
- the temporal dimension

Product dimension

The product dimension refers to the types of goods and services in a market, and can include a service. Close substitutes to a product or service also fall within a product dimension.

The proposed Gas Transport Services Agreement for Large Customers is for the provision of:

- capacity reservation services
- managed capacity services
- throughput services
- multiple delivery point services
- meter data services while they remain non-contestable services.

The proposed Gas Transport Services Agreement for Small Customers is for the provision of:

- tariff services
- meter data services while they remain non-contestable services.

These services constitute or facilitate the transportation or distribution of gas to ACT customers, and measurement of gas consumption (metering) and meter reading and on-site data and communication equipment at delivery points (meter data services). ActewAGL Distribution provides these services under its Utility Services Licence for gas distribution and connection services issued to it under the *Utilities Act 2000*. The purpose of the proposed associate contracts is to facilitate the sale of gas.

As such, the Commission considers the relevant product dimensions are natural gas, gas distribution services, metering and meter data services. While in theory natural gas might extend at the margin to encompass alternative and complementary energy sources, such as electricity, at times, generally speaking the product market is limited to natural gas². Similarly, for gas transport services while there may be alternatives to transferring gas between delivery points through other mechanisms, it is generally accepted that the product market is limited to gas distribution³.

The Commission agrees that in reality there are minimal opportunities to substitute other energy sources or other forms of gas distribution at this time. While there may be potential substitutes to meter data services and metering neither are currently contestable.

Functional dimension

The functional dimension refers to services that are functionally discrete from other services within a broader industry. For example, within the gas industry generally, the measurement of gas consumption is separate from the distribution of gas and is separate from the sale of gas⁴.

As such, the Commission considers four functional dimensions are relevant to the services that are the subject of the proposed associate contracts: the distribution of gas, the sale of gas, metering and meter data services. However, the definition of

² See *AGL Cooper Basin Natural Gas Supply Arrangements* [1997] ACompT 2

³ *Ibid*; see also *Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2

⁴ See, for example, *Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2

infrastructure used by a person to distribute gas to another person includes meters⁵ and meter data services are currently reference services⁶.

Geographic dimension

The relevant geographic dimension will differ depending on the conclusions reached in the Commission's analysis of the appropriate product dimension.

In relation to the gas distribution services, metering and meter data services as currently prescribed⁷, the geographic dimension will be determined by the physical limits of ActewAGL Distribution's distribution network. In relation to natural gas, the geographic dimension will be determined by the area within which there are potential purchasers to whom ActewAGL Retail can potentially supply natural gas. Previous considerations of the natural gas market suggest the geographic scope is South East Australia⁸.

For the purposes of the proposed associate contracts, the physical limit of ActewAGL Distribution's distribution network, including meters, is that covered by its Access Arrangement. As such, the geographic dimension of ActewAGL Distribution's gas distribution services is the ACT and Greater Queanbeyan.

In relation to the sale of gas the Commission agrees with previous findings that the geographical limit of ActewAGL Retail's business is South East Australia.

Temporal dimension

The temporal dimension of a market relates to changes to market conditions over time with 10 to 15 years being an appropriate period for consideration for both natural gas and gas distribution services: this period "... appears to be sufficient ... given the uncertainties surrounding the operation of a competitive market and forecasts of demand, the existence of spare capacity and significant long term contracts ... and the time to develop new pipelines and new gas fields"⁹.

The Commission agrees the relevant temporal dimension for the sale of natural gas and gas distribution services is 10 to 15 years. Given metering and meter data services are currently not contestable, the Commission declines to make a decision on the likely temporal dimensions for these services at this time. However, the Commission considers they are likely to be less than that for the sale of gas and gas distribution services.

Conclusions

The Commission is satisfied that the relevant markets for the purposes of its assessment of the proposed associate contracts are:

- the sale of natural gas in South East Australia; and
- the provision of gas distribution services to the extent of the physical limits of ActewAGL Distribution's infrastructure in the ACT,

for a period of 10 to 15 years.

⁵ Section 10(3), *Utilities Act 2000*

⁶ Reference services are services covered by ActewAGL Distribution's Access Arrangement.

⁷ The Commission notes, however, that in the event of contestability the geographic dimensions of metering and meter data services potentially could be South East Australia or indeed Australia wide.

⁸ *AGL Cooper Basin Natural Gas Supply Arrangements* [1997] ACompT 2 and *Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2

⁹ *Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2

4.2 Potential impact on competition

As already noted, the Commission can only refuse to approve an associate contract if it considers that the contract would have, or is likely to have, the effect of substantially lessening, hindering or preventing competition in a market (section 7.1). In the absence of further guidance in the Code, it is again useful to refer to the TPA, which for practical purposes uses comparable terminology. Sections 45 and 50 of the TPA prohibit contracts, arrangements, understandings and acquisitions that are likely to have the effect of substantially lessening competition. Section 4G of the TPA includes preventing or hindering competition in its definition of lessening competition.

The assessment of substantial lessening of competition in a market under the TPA is the subject of extensive commentary from the Courts, the Australian Competition Tribunal and the Australian Competition and Consumer Commission. Assessment is based on the 'with or without' test, usefully set out in *Dandy Power Equipment Pty Ltd v Mercury Marine Pty Limited* (1982) 64 FLR 238:

“To apply the concept of substantially lessening competition in a market, it is necessary to assess the nature and extent of the market, *the probable nature and extent of competition which would exist therein but for the conduct in question*, the way the market operates and the nature and extent of the contemplated lessening... ‘Substantially’ is a word the meaning of which in the circumstances in which it is applied must, to some extent, be of uncertain incidence and a matter of judgment. There is no precise scale by which to measure what is substantial.”

In making its decision the Commission will compare the likely future state of competition in the relevant markets if the proposed associate contracts were approved with that if they were not. Section 50(3) of the TPA sets out a number of considerations that are useful in the assessment of a contract's potential impact on competition. The Commission may consider, for example, the effect the proposed contract would have on:

- barriers to entry to the market
- market concentration
- degrees of countervailing power in the market
- the availability of substitutes in the market
- the dynamic characteristics of the market, including growth, innovation and technological change
- the nature and extent of vertical integration in the market.

There are currently five gas retailers currently licensed in the ACT: ActewAGL Retail, Energex Retail, Country Energy, EnergyAustralia and TRUenergy Pty Ltd. ActewAGL Distribution, however, currently holds the only licence for gas distribution and connection services in the ACT and the extended area including Queanbeyan and parts of Greater Queanbeyan and Yass Valley shires. ActewAGL Distribution also is currently the only business that owns, installs, maintains and reads approved meters¹⁰.

The Commission received no submissions from any stakeholder in response to its issues paper. Although ActewAGL Distribution did not lodge a submission the Commission notes that, with some exceptions, the proposed associate contracts are

¹⁰ Approved meters means a meter that complies with the relevant technical code: section 97, *Utilities Act 2000*

virtually identical to those approved by the Commission in April 2004. In response to the issues paper relevant to the Commission's consideration of those proposed associate contracts, ActewAGL Distribution made the following points:

- The proposed contracts do not hinder entry by competitors into the gas distribution or retail markets. The contracts do not contain provisions requiring one party to acquire or supply services exclusively to the other, nor do they have that effect. Further, the contracts provide for the transfer of customers between ActewAGL Retail and other retailers, in accordance with the Gas Retail Market Business Rules, and contemplate the transfer of customers away from ActewAGL Retail to other retailers.
- The proposed contracts do not contain any terms that provide, or would provide, ActewAGL Retail with more favourable conditions for the distribution of gas than other retailers. The contracts place significant reliance on the terms and conditions for the supply of gas distribution services set out in the current Access Arrangement, which forms the basis for the supply of those services to all other retailers. In particular, no special pricing is offered to ActewAGL Retail.

The Commission, having reviewed the limited information available to it and considered the terms of the contracts themselves agrees with ActewAGL Distribution's earlier comments subject to the following qualifications.

The Commission notes each proposed associate contract has three provisions the wording of which could be interpreted as merely being included for information purposes rather than imposing an obligation on the parties. These provisions are:

- The Access Arrangement sets out provisions regarding **gas quality** and non-specification gas. (Clause 5.6 in both proposed associate contracts.)
- The Access Arrangement sets out provisions regarding **title to gas**. (Clauses 6.7 and 6.11 of the Gas Transport Services Agreement for small customers and large customers respectively.)
- The Access Arrangement contains an **indemnity** for breach of the **Privacy Act** by either party. (Clause 13.5 of both proposed associate contracts.)

Assuming these same provisions are found in ActewAGL Distribution's transport agreements with third parties and are interpreted consistently across all users then no discrepancies between users will arise. However, if these provisions are interpreted differently depending on the identity of users, then inconsistent treatment of retailers could result in anti-competitive outcomes.

ActewAGL has informed the Commission that these provisions are intended to impose obligations. The Commission expects these obligations to be interpreted consistently across the users.¹¹ As such, to the extent possible given the lack of comment from stakeholders, the Commission has concluded it is satisfied that inconsistent treatment between retailers is unlikely to occur.

The term for the proposed associate contracts is the same as the term of the Access Arrangement – that is to 1 July 2010 – which is less than the relevant temporal dimension (10 to 15 years). The term for the proposed associate contract for large customers, however, can be extended for a further term. ActewAGL Distribution informed the Commission this was to accommodate individual non-tariff sites that are

¹¹ By email on 19 October 2005

added to the contract in minimum periods of 12 months.¹² As such, it is arguable that the proposed associate contract for large customers could discourage entry of third party suppliers. However, the Commission notes that each proposed associate contract allows for the transfer of customers from ActewAGL Retail to another supplier (although the process by which large customers can transfer is less straightforward than the process for small customers). Again, to the extent possible given the lack of comment from stakeholders, the Commission has concluded the terms of the proposed associate contracts will not have the effect, or likely effect, of substantially lessening competition.

Finally, in relation to meter data services, the Commission notes there is as yet no time frame as to when contestability in the measurement of gas consumption and meter data services is likely to be introduced. However, the Commission notes that provisions in both proposed associate contracts provide that in the event contestability in meter data services is introduced, it will cease offering meter data services as a reference service and may cease providing it as a service¹³.

The Commission notes that in addition to the Code, the TPA also applies to the conduct of ActewAGL Distribution and ActewAGL Retail.

Conclusions

The Commission concludes that the proposed associate contracts would not prevent, hinder or lessen competition or be likely to have the effect of preventing, hindering or lessening competition in the markets discussed.

The Commission's decision is therefore to approve the proposed associate contracts for the purposes of section 7.1 of the Code.

The Commission made this decision having received no submissions in response to the issues paper it released in September 2005. The Commission notes that the associate contracts approval process can only be effective if stakeholders actively participate in the process. The lack of submissions by stakeholders means the Commission's assessment of the proposed associate contracts was not as informed and comprehensive of the potential impact of the proposed associate contracts as it might have been otherwise. This means its decision is the only one the Commission can make in the circumstances.

The Commission notes that it has reached this conclusion based on the limited information before it and on the assumption that the market as currently structured is likely to continue for the foreseeable future. However, the Commission also notes that regulatory structure and relevant regulator will change as of December 2006 when the Australian Energy Regulator (AER) assumes control of energy regulation. It is unclear whether the same regulatory framework relevant, and the same approach, to associate contracts – and indeed the dimensions of the markets defined for the purposes of the associate contracts – will continue under the AER.

¹² By email of 19 October 2005

¹³ Clause 8.2 and clause subclause 8.3(a) respectively of each proposed associate contract.

Gas Transport Services Agreement for small customers

Date:

Parties:

ACTEW Distribution Limited ABN 83 073 025 224 and AGL Gas Company (ACT) Pty Limited ABN 24 008 552 663, trading as ActewAGL Distribution ABN 76 670 568 688 of Level 5, ActewAGL House, 221-223 London Circuit, Canberra City ACT 2601 (“Distributor”)

ACTEW Retail Limited ABN 23 074 371 207 and AGL ACT Retail Investments Pty Limited ABN 53 093 631 586, trading as ActewAGL Retail ABN 46 221 314 841 of Level 5, ActewAGL House, 221-223 London Circuit, Canberra City ACT 2601 (“Supplier”)

Recitals:

- A. The Distributor is required to provide certain services to gas suppliers in the ACT and *Greater Queanbeyan* under the approved *Access Arrangement*.
- B. This agreement sets out the terms on which the Distributor will provide the Supplier with:
 - (a) *tariff services*; and
 - (b) *meter data services* while they remain non-contestable services.
- C. Other services covered by the *Access Arrangement* are dealt with under a separate agreement.
- D. This agreement covers all the customers on the Supplier’s *tariff list* and provides a procedure for updating that list as customers are transferred to and from the Supplier.

Operative provisions:

1 Words and phrases used in this agreement

- 1.1 Words and phrases in italics have the meaning given in schedule 3.
- 1.2 The rules of interpretation set out in that schedule apply to this agreement.

2 Approach to regulatory requirements

- 2.1 There are numerous regulatory requirements referred to in this agreement which apply to the parties. This agreement does not attempt to repeat the detail of those requirements in full. Rather, it sets out the high level rights and obligations which arise, and explains in footnotes where the detail can be found.

- 2.2 The *gas law* may impose additional obligations or confer additional rights on the parties apart from those set out in this agreement.

3 Term

- 3.1 This agreement commences on the *commencement date* and expires on the *expiry date*.

4 Supplier's customers covered by this agreement

Customers covered

- 4.1 The Distributor will provide the Supplier with *services* for each of the *delivery points* in the *tariff list*, subject to this clause 4 and clauses 8.1 and 8.2.
- 4.2 The *services* to be provided for each *delivery point* are identified in the *tariff list*.
- 4.3 The availability of the *services* is described in the *Access Arrangement*.¹
- 4.4 The Supplier will include in the *tariff list* all appropriate information, reasonably requested by the Distributor, to enable the Distributor to provide the *registry operator* with any *delivery point* information required of the Distributor under the *Business Rules*.²
- 4.5 The Supplier will provide the Distributor with the *tariff list* in accordance with the *Access Arrangement*, and on request³.

Adding customers to the tariff list

- 4.6 Subject to clauses 4.7. and 4.8, the Supplier may:
- (a) add new *delivery points* to the *tariff list*;
 - (b) delete *delivery points* from the list; or
 - (c) change a *delivery point* or any details relating to a *delivery point* in the list,⁴
- when the Supplier is notified by the *registry operator* in accordance with the procedures in the *Business Rules*⁵. For new connections, the requirements of clause 4.10 will also be met.
- 4.7 The Supplier will not add a *delivery point* to the *tariff list*:
- (a) if a working connection does not exist between the customer's premises and the *network*; or

¹ *Access Arrangement*, Part 2 (Services Policy) under the heading "Availability of Reference Services" (clauses 2.7 to 2.9), Attachment 3E (Tariff Services) under heading "General" (clauses 1.1 to 1.3), Attachment 3F (Meter Data Services) under heading "General" (clauses 1.1 to 1.4), and Part 7 (Extensions/Expansions Policy).

² Rules 6.2.

³ *Access Arrangement*, clause 1.5, Attachment 3E.

⁴ *Access Arrangement*, clauses 8.4 - 8.7 (Changes to Receipt Point or Delivery Point) and (ActewAGL's consent).

⁵ Rule 7.8 for change of user transactions, and Rule 9.6 for new connections.

- (b) if the Supplier has not entered into contractual arrangements for its customer to provide the Distributor with access to the *delivery point* or *measuring equipment* in accordance with clause 7.5.

- 4.8 The Supplier will promptly notify the Distributor of any change to the *tariff list*.

New connections

- 4.9 The parties will comply with the any additional requirements set out in the *Minimum Network Standards*⁶, where a new connection is required at the *delivery point*.

Disconnection of customers

- 4.10 The parties will comply with their respective obligations under the *Minimum Network Standards* with respect to disconnection and reconnection of customers.
- 4.11 The Supplier acknowledges that the Distributor may also disconnect customers in accordance with the Distributor's *standard customer connection contract* (for customers to whom that contract applies), in equivalent circumstances to that contract (for other customers) and otherwise as required or permitted by applicable *gas law*.
- 4.12 The Supplier will include in its *customer supply contract* a right for the Distributor to disconnect customers in the circumstances referred to in clause 4.11. The Supplier holds that right on trust for the Distributor absolutely.

When a delivery point becomes a non-tariff delivery point

- 4.13 If more than 10TJ of gas is delivered to a *delivery point* in any *contract year*, the Supplier will promptly request the Distributor to remove that *delivery point* from the *tariff list*, unless the Supplier satisfies the Distributor that it is reasonable to expect consumption at that *delivery point* will be less than 10TJ for the next *contract year*.

Retrospective application to existing customers

- 4.14 Where the *effective date of transfer* for a *delivery point* listed in the *tariff list* occurs before the *commencement date*, this agreement applies in respect of that *delivery point* on and from the *effective date of transfer*.

5 Services

Terms applying

- 5.1 Except to the extent of any inconsistency with this agreement, the terms applying to the *services* include:
- (a) for *tariff services* - and Parts 2 and 3, and Attachment 3E of the *Access Arrangement*; and
- (b) for *meter data services* - Parts 2 and 3, and Attachment 3F of the *Access Arrangement*.

⁶ Part E.

Special conditions

- 5.2 Schedule 2 to this agreement contains the special conditions that apply to the *services*, if any.
- 5.3 Those conditions prevail over the other terms of this agreement to the extent of any inconsistency.

Compliance with law

- 5.4 The parties will comply with applicable *gas law* in performing their respective obligations under this agreement.
- 5.5 The Supplier must include in its *customer supply contract*, a provision that requires the customer to comply with the rules (if any) published from time to time by the Distributor for gas service and installation.

Quality of gas

- 5.6 The *Access Arrangement* sets out provisions regarding gas quality and non-specification gas.⁷

Gas Testing

- 5.7 The Supplier will test the gas, or cause the gas to be tested, in accordance with the Distributor's *safety and operating plan*.⁸
- 5.8 The Distributor will give the Supplier a copy of the relevant sections of the *safety and operating plan* on request, and reasonable notice of changes to relevant sections of the Distributor's *safety and operating plan*.
- 5.9 The Supplier will provide to the Distributor on request and at no cost, all records relating to:
- (a) the testing of the gas (including raw measurements used to obtain test results);
 - (b) the maintenance of the gas testing equipment; and
 - (c) any notices provided by the Supplier to any person in relation to the quality of gas.
- 5.10 The Supplier will notify the Distributor as soon as reasonably practicable if a test result shows that gas to be delivered to the *receipt point* is non-specification gas.

Changes to receipt point

- 5.11 Changes to the *receipt point* will be dealt with in accordance with Part 8 of the *Access Arrangement*.⁹

Changes to regulatory environment

- 5.12 The Distributor may amend this agreement from time to time by notice to the Supplier to reflect changes to the *Business Rules, Minimum*

⁷ *Access Arrangement*, clauses 3.42 to 3.45, 3.59 and 3.60 (General Terms and Conditions).

⁸ Note that as the Supplier is testing the gas, rather than the Distributor as the reticulator, the Supplier must comply with the obligations imposed on a testing agency under the *Gas Supply (Network Safety Management) Regulation 2002 (NSW)* (see clause 5.4 of this agreement regarding compliance with *gas law*).

⁹ *Access Arrangement*, clauses 8.4 - 8.7 (Changes to Receipt Point or Delivery Point) and (ActewAGL's consent).

Network Standards or applicable *gas law*, as described in the *Access Arrangement*¹⁰.

The Supplier agrees to be bound by an amendment on and from the effective time set out in the notice.

6 Delivery of Gas

Determining quantity of gas delivered at *delivery points*

- 6.1 Subject to clauses 6.2 and 6.3, the quantity of gas delivered to a *delivery point* will be:
- (a) if the *delivery point* is equipped with daily meter reading facilities but not on-site heating value measurement - calculated in accordance with the method set out in the *Access Arrangement*¹¹; or
 - (b) if the *delivery point* is not equipped with daily meter reading facilities - the product of the volume of gas (measured at the *delivery point* for the period between meter readings) and the average of the heating values of gas declared for all days in the period;
 - (c) if the *delivery point* has daily meter reading facilities and on-site heating value measurement - the product of the actual volume of gas and the actual heating value of the gas; or
 - (d) any other amount agreed by the parties.
- 6.2 If more than one supplier has been approved for a *delivery point*, gas will be apportioned between the suppliers using the reasonable apportionment methodology approved by the Distributor.¹²
- 6.3 If the *measuring equipment* at a *delivery point* fails to operate, the quantity of gas delivered to that point will be determined under clause 7.7.

MHQ

- 6.4 For each *delivery point*, the Supplier may not take in any hour more than the specified *MHQ* for that *point* (or 6m³/hour if there is no specified *MHQ*).
- 6.5 If the Supplier has specified an *MHQ* greater than 6m³/hour for a *delivery point*, the Supplier will promptly notify the Distributor of any actual or anticipated change in the *MHQ*.
- 6.6 The Distributor's obligation to provide *tariff services* to a *delivery point* is limited to:
- (a) the *MHQ* per hour for that point; or
 - (b) if no *MHQ* is specified for that point, 6m³/hour.¹³

¹⁰ *Access Arrangement*, clauses 3.12-3.14 (General Terms and Conditions).

¹¹ *Access Arrangement*, clauses 3.33 - 3.35.

¹² *Access Arrangement*, clause 3.39.

Title to gas

6.7 The *Access Arrangement* sets out provisions regarding title to gas.¹⁴

Risk

6.8 The control of gas¹⁵:

(a) passes from the Supplier to the Distributor on delivery to the *receipt point*; and

(b) passes from the Distributor to the Supplier on delivery to the *delivery point*.

6.9 The Distributor will replace lost gas in accordance with the *Access Arrangement*¹⁶.

6.10 The Supplier will include in its *customer supply contract*, a provision that sets out where the *network* boundary is, in accordance with the *Gas Network Boundary Code*.

7 Metering

Supply of basic metering equipment

7.1 The Distributor will supply *basic metering equipment* in accordance with the *Access Arrangement*¹⁷ and other applicable *gas law*.

Changes to basic metering equipment

7.2 The Distributor will upgrade *basic metering equipment* at a *delivery point* if required for the purposes of accepting the specified *MHQ* at that point. The Supplier will pay the costs of the upgrade.

7.3 The Distributor may downgrade *basic metering equipment* at any time. Subject to clause 7.4, the Distributor will pay the costs of the downgrade.

7.4 If a downgrade is required because of a change in load or pattern usage by the Supplier's customer, the Supplier will pay the costs of the downgrade.

Access to measuring equipment

7.5 The Distributor may at all reasonable times have access to a *delivery point* and *measuring equipment*:

(a) as permitted under the *Access Arrangement*¹⁸ or other applicable *gas law*; and

(b) for any purpose related to this agreement.

Security and accuracy of measuring equipment

7.6 The *Minimum Network Standards* set out additional requirements relating to security and accuracy of *measuring equipment*.

¹³ *Access Arrangement*, clause 1.9(b) of Attachment 3E (Tariff Service).

¹⁴ *Access Arrangement*, clause 3.40.

¹⁵ See also *Access Arrangement* clause 3.19.

¹⁶ *Access Arrangement*, clause 3.19.

¹⁷ *Access Arrangement*, clause 1.10 of Attachment 3E (Basic Metering Equipment).

¹⁸ *Access Arrangement*, clause 3.34.

Estimating consumption

- 7.7 The Distributor may estimate the quantity of gas delivered to a *delivery point* for a period in certain circumstances as described in the *Access Arrangement*¹⁹.

Theft of gas

- 7.8 If the Distributor reasonably suspects there has been a theft of gas from a *delivery point* in the *tariff list*, the Distributor may recover from the Supplier the difference between what was billed and what should have been billed, in accordance with the *Minimum Network Standards*.²⁰

8 Meter Data Services

Meter data services

- 8.1 For so long as the Distributor offers *meter data services* as a *reference service*, the Distributor will provide and the Supplier will accept *meter data services* for each *delivery point* for which a *tariff service* has been requested by the Supplier.²¹
- 8.2 The Distributor will cease offering *meter data services* as a *reference service* in accordance with the *Access Arrangement*.²²

Where meter data service is not offered as a reference service

- 8.3 Where *meter data services* are no longer offered by the Distributor as a *reference service*²³:
- (a) the Distributor:
 - (i) may stop providing meter data;
 - (ii) will stop providing *meter data services* at the Supplier's request; and
 - (iii) may offer to provide an equivalent service to the Supplier in respect of each *delivery point* for which a *tariff service* has been requested, on terms consistent with the *Business Rules*;
 - (b) the Supplier may:
 - (i) request the Distributor to stop providing *meter data services*;
 - (ii) accept the Distributor's offer under clause 8.3(a)(iii); or
 - (iii) subject to clause 8.4, acquire equivalent services from an *accredited* third party supplier in respect of a *delivery point* for which *tariff services* have been requested under this agreement.

¹⁹ *Access Arrangement*, clauses 3.36 and 3.37.

²⁰Section 11 *Minimum Network Standards* ("Theft of Gas").

²¹ *Access Arrangement*, clauses 2.4 and 2.7.

²² *Access Arrangement*, clauses 2.8 and 2.9.

²³ *Access Arrangement*, clauses 2.8 and 2.9.

- 8.4 The Distributor is not obliged to provide *tariff services* for a *delivery point* until the Supplier provides the Distributor with evidence that the Supplier has acquired an equivalent meter data service for that *delivery point* in accordance with clause 8.3(b)(iii).

Where services provided by third party supplier

- 8.5 The Supplier agrees that the terms of any agreement entered into under clause 8.3(b)(iii) will be consistent with the *Business Rules* and, unless inconsistent with the *Business Rules*, will require *measuring equipment* to be read at the frequencies specified by the Distributor.
- 8.6 The Supplier will provide the Distributor with details of the meters and meter readings in the form requested by the Distributor, within 3 *business days* of a meter being read.
- 8.7 The Supplier may not, and will ensure that its third party supplier does not, install or remove at a *delivery point* any meter reading facilities, communications equipment, or connections that:
- (a) interfere with the operation of *measuring equipment* owned by the Distributor; or
 - (b) corrupt any meter data at the *delivery point*.

9 Charges

- 9.1 Subject to clause 9.3, the Distributor's charges for the *services*, and other related charges, are described in Part 5 and Attachments 3E and 3F of the *Access Arrangement*.
- 9.2 The Distributor may vary and adjust those charges from time to time, in accordance with the *Access Arrangement*.²⁴
- 9.3 If the Supplier has accepted an alternative schedule of charges offered by the Distributor, the charges in that schedule will apply instead.²⁵ The Distributor may vary those charges as set out in the alternative schedule.

Network extensions and expansions

- 9.4 The Distributor may charge the Supplier a surcharge in respect of a *network* extension or expansion, in the circumstances described in Part 7 of the *Access Arrangement*.

Invoices

- 9.5 Each month the Distributor will give the Supplier an invoice relating to the *delivery points* for which:
- (a) the gas meter has been read in the previous month in accordance with the *Access Arrangement*; or
 - (b) consumption has been estimated under clause 7.7; or
 - (c) a capital contribution charge is payable for *network* extension or new connection; or

²⁴ *Access Arrangement*, Part 6 (Variations to Reference Tariffs).

²⁵ *Access Arrangement*, clauses 1.21 and 1.22 of Attachment 3E (Tariff Service).

(d) any other applicable charge is payable.

9.6 An invoice may:

- (a) include a claim for payment in respect of one or more *delivery points*;
- (b) relate to any number of meter reading cycles; and
- (c) include adjustments to amounts claimed in previous accounts, as determined by the Distributor from time to time.

Occupancy change

9.7 For the avoidance of doubt, the Supplier will be charged for all *services* provided in respect of a *delivery point* while that *delivery point* remains on the *tariff list*.

9.8 If there is a change of occupancy at a *delivery point* without a change to the *tariff list*, the Supplier will continue to be liable for payment of the charges for the *services* in accordance with this agreement.

Payment of invoices

9.9 The Supplier will pay an account by electronic funds transfer into the account nominated by the Distributor from time to time, or by cheque in immediately available funds, within 10 *business days* of the date of the invoice.

Disputed accounts

9.10 If the Supplier reasonably considers that an account shows an amount payable that exceeds the amount properly payable, the Supplier will:

- (a) notify the Distributor of the amount in dispute within 7 *business days* after receipt of the account; and
- (b) subject to clause 9.11, pay the balance of the invoice.

9.11 The Supplier may not withhold payment of an amount under clause 9.10 if the total amount in dispute would then exceed the amount of the invoice for the previous payment period.

Interest²⁶

9.12 Any amount payable under this agreement which remains unpaid by the Supplier after the due date is a debt to the Distributor and attracts interest at the *interest rate*, accruing daily from the due date until the amount is paid. The Distributor may include an amount of interest payable by the Supplier accrued under this clause in an invoice under clause 9.5.

9.13 To the extent that an amount disputed and withheld by the Supplier is later agreed or determined to be payable by the Supplier, interest at the *interest rate* will accrue on that amount under clause 9.12 from the original due date for payment of that amount, to the date it is paid.

²⁶ *Access Arrangement*, clause 3.18.

Errors in accounts

- 9.14 If the Distributor has overcharged the Supplier, the Distributor will credit the overpayment to an account nominated by the Supplier.
- 9.15 If the Distributor has undercharged the Supplier, the Distributor may adjust a subsequent invoice to recover the amount undercharged, subject to any applicable requirements in the *Minimum Network Standards*.

Set-off

- 9.16 The Supplier will make payments under this clause 9 without set-off or counterclaim and free and clear of any withholding or deduction for any tax, impost, levy, duty or withholding unless required by law.

10 GST

- 10.1 Unless otherwise indicated, all consideration for any supply under this agreement is exclusive of any *GST* imposed on the supply.
- 10.2 If *GST* is imposed on a supply by one party (**provider**) to the other (**recipient**) under this agreement, and the provider gives the recipient a tax invoice for the supply, the recipient will pay to the provider the amount of *GST* imposed in addition without set-off to the consideration the recipient is required to give to the provider for the supply in question.
- 10.3 The recipient of a supply under this agreement is not liable to reimburse the provider in relation to any amount for which the provider can claim an input tax credit.

11 Security

Distributor may require Supplier to provide security²⁷

- 11.1 If a trigger event occurs, the Distributor may require the Supplier to provide the Distributor with *security* of a type and in an amount and on terms and conditions reasonably required by the Distributor.
- 11.2 A “trigger event” occurs if:
- (a) the Supplier does not have an unqualified credit rating with Standard and Poors (Australia) Pty Limited, Moody’s Investor Service Pty Limited, or another reputable credit reporting agency reasonably acceptable to the Distributor of at least “BBB” or its equivalent; or
 - (b) the Supplier has failed to pay:
 - (i) 2 consecutive invoices by the due date; or
 - (ii) 3 invoices by the due date,

within the previous 12 months (including prior to the commencement of this agreement). For the avoidance of

²⁷ *Access Arrangement*, clause 3.49.

doubt, withholding an amount in accordance with clauses 9.10 and 9.11 is not a failure to pay; or

- (c) the Distributor becomes entitled to terminate or suspend this agreement under clause 14 due to an act or omission of the Supplier; or
- (d) any person from whom the Supplier purchases gas, calls on any *security* provided by the Supplier, or provided by another person in respect of the Supplier.

11.3 The Supplier will provide the required *security* within 10 *business days* of the Distributor's request.

Amount of security

11.4 The amount of *security* required by the Distributor at any time may not exceed the amount of charges the Distributor reasonably anticipates to be payable by the Supplier in the next three month period.

11.5 If the amount of any *security* provided by the Supplier is in excess of the Distributor's estimation under clause 11.4, the Supplier may at its cost reduce the amount of that *security* so there is no excess.

Use of security

11.6 The Distributor may draw on the *security* for any amount owed (and overdue) by the Supplier to the Distributor under this agreement. The Distributor will notify the Supplier after the *security* has been drawn on.

11.7 If the Distributor draws on the *security* and the *security* is a bank guarantee or similar *security* for a fixed amount, the Supplier will provide the Distributor with an additional *security* for the amount drawn of the same kind and on the same terms, within 14 days of a request from the Distributor to do so.

11.8 The exercise by the Distributor of any right under this clause 11 does not prejudice any other right of recovery which the Distributor may have in respect of any amount owing to it by the Supplier.

11.9 The Supplier must provide and maintain any *security* provided under this clause 11 for the remainder of the term of this agreement and for a period of 3 months after the expiry of the term. If the *security* is held by the Distributor (such as cash collateral), then the Distributor must return the *security* within 3 months after the expiry of the term of this agreement.

12 Interruptions to gas supply

Interruptions to services

12.1 The Distributor may interrupt or reduce the *services* in accordance with the *Access Arrangement* and other applicable *gas law*²⁸.

²⁸ See for example clause 19 *Consumer Protection Code*.

Planned interruptions

- 12.2 The Distributor must take reasonable steps to give the Supplier and affected *NSW customers*²⁹ at least 5 *business days* notice³⁰ of a planned interruption or reduction to the *services*. The notice must specify the reason for the interruption or reduction, and the expected date, time and reasonably anticipated duration of the interruption or reduction.
- 12.3 If the Distributor undertakes a planned interruption, it will take all reasonable steps to ensure that the duration of the interruption does not exceed the duration that it has notified the Supplier.³¹

Unplanned interruptions

- 12.4 In the event of an unplanned interruption or reduction in the *services*, the Distributor will, as soon as reasonably practicable, notify the Supplier and the customer of the circumstances giving rise to the interruption or reduction, and the likely duration of the interruption or reduction.³² Before notifying the Supplier, the Distributor may notify the customer at the affected *delivery point*³³ of the interruption or reduction.

Load shedding

- 12.5 If the Distributor initiates a load shedding procedure in accordance with the *Access Arrangement*³⁴, the Supplier will:
- (a) take reasonable steps to cease or reduce the delivery of gas to any *receipt point*; or
 - (b) take, or ensure that its customer takes, reasonable steps to cease or reduce the taking of gas at any *delivery point*,
- as directed by the Distributor. In the case of a notice under paragraph (b), the Distributor may give the notice to the customer.
- 12.6 If the supply of *services* is likely to be interrupted by load shedding, the Distributor will, if it is reasonable in the circumstances, give the Supplier enough notice of that to allow the Supplier to notify its customers.³⁵
- 12.7 If the Supplier has not ceased or reduced the delivery of gas to a *receipt point* or the taking of gas at a *delivery point* under clause 12.5, the Distributor may take any action necessary to do so.

Suspension of service

- 12.8 The Distributor may suspend the delivery of gas to a *delivery point*:
- (a) in the circumstances permitted by the *Access Arrangement*; or

²⁹ Clause 12.1 *Minimum Network Standards*.

³⁰ Note, clause 19.2 *Consumer Protection Code* requires Supplier to give its customers at least 2 business days notice of planned interruptions.

³¹ Clause 19.2(2) *Consumer Protection Code*.

³² Note, the Supplier will require such information to satisfy its obligation under clause 19.3 *Consumer Protection Code*.

³³ The Supplier is required, under clause 3.72 of the *Access Arrangement*, to provide the Distributor with accurate emergency contact information for the customer at each tariff *delivery point*.

³⁴ *Access Arrangement*, Attachment 4.

³⁵ Clause 19.4 *Consumer Protection Code*.

- (b) if the Supplier does not maintain pressure at the *receipt point*³⁶.

The Distributor must resume the delivery of gas to a *delivery point* if the reason for the suspension has been removed to the reasonable satisfaction of the Distributor.

Distributor's liability

- 12.9 If the Distributor interrupts, reduces or suspends the *services* under this clause 12, the parties' respective liability is as described in the *Access Arrangement*³⁷.
- 12.10 An interruption, reduction or suspension under this clause 12 does not affect the Supplier's obligation to pay for any *services* provided under this agreement.

13 Confidentiality and Privacy

- 13.1 All *confidential information* exchanged under this agreement will remain strictly confidential between the parties and may not be used otherwise than for the purposes of this agreement, or disclosed to any other person except:
- (a) legal advisers, auditors, financial advisers and bona fide consultants and contractors in respect of or pertaining to this agreement, who have first agreed in writing with the disclosing party to be bound by the confidentiality obligations of the disclosing party; or
 - (b) with the consent of the party who supplied the information; or
 - (c) if required by law (including applicable *gas law*) or any *government or authority* or in connection with legal proceedings relating to this agreement; or
 - (d) if the information is generally and publicly available other than as a result of a breach of confidentiality by the party receiving the information.
- 13.2 Where this agreement permits a party to disclose *confidential information* to another person for a purpose, the disclosing party will use all reasonable endeavours to limit the disclosure to those matters which reasonably need to be disclosed in order to accomplish that purpose.

Privacy

- 13.3 Each party will comply with any applicable requirements of the National Privacy Principles under the *Privacy Act 1988*.
- 13.4 Without limiting clause 13.3, each party will:
- (a) only use personal information provided by the other party or collected under this agreement, for the purposes of performing its obligations under this agreement; and

³⁶ *Access Arrangement*, clause 3.20.

³⁷ *Access Arrangement*, clauses 1.16 and 1.17 of Attachment 4 (for load shedding) and clauses 3.62 and 3.63 (for other interruptions, reductions and suspensions of supply).

- (b) when collecting personal information from or about an individual which will be disclosed under this agreement, ensure that the individual is aware that their personal information may be disclosed to the other party and of the purposes for which their information will be used.

13.5 The *Access Arrangement* contains an indemnity for breach of the *Privacy Act* by either party.³⁸

Relationship with confidentiality provisions

13.6 Each party will comply with its obligations under clauses 13.3 and 13.4 despite anything in clause 13.1.

14 Termination and suspension

Termination

14.1 The Distributor may terminate this agreement by notice to the Supplier if:

- (a) the Supplier fails to pay charges or other amounts due under this agreement within 5 *business days* of receipt of written notice from the Distributor to the Supplier setting out the amount owing and notifying the Supplier that this agreement will be terminated without further notice if the amount is not paid within that time; or
- (b) the Supplier fails to provide any *security* required by the Distributor in accordance with clause 11 within the time required by that clause; or
- (c) the Supplier fails to perform any other obligation under this agreement within 30 days of written notice from the Distributor to the Supplier describing the default and notifying the Supplier that this agreement will be terminated without further notice if the default is not remedied within that time; or
- (d) where required or authorised by *gas law*; or
- (e) the *Access Arrangement* ceases to apply.

14.2 Either party may terminate this agreement immediately on notice where it or the other party ceases to hold any relevant licence, approval, authorisation or consent required to enable it to comply with its obligations under this agreement.

14.3 Either party may terminate this agreement by giving the other 2 *business days* notice if:

- (a) the other party becomes *insolvent*; or
- (b) the other party has repeatedly breached any of its obligations under this agreement which has a material and adverse effect on the interests of the terminating party.

³⁸ *Access Arrangement*, clause 3.64.

Suspension

- 14.4 The Distributor may suspend this agreement:
- (a) for any period while the Distributor's or the Supplier's *utility licence* is suspended; or
 - (b) if another regulatory requirement intervenes; or
 - (c) where required or authorised by *gas law*; or
 - (d) if the *Business Rules* cease to be in force.
- 14.5 A suspension under clause 14.4 does not affect the Supplier's obligation to pay for any *services* provided under this agreement.

Indemnity

- 14.6 The Supplier indemnifies the Distributor against any loss, liability or expense the Distributor incurs arising out of or in connection with a claim by a third party for termination or suspension under this clause 14.

15 Limitation of liability

The Distributor's liability is limited as described in the *Access Arrangement*³⁹.

16 Force majeure

- 16.1 If *force majeure* affects or prevents either party's performance of this agreement, the force majeure provisions of the *Access Arrangement* will apply.⁴⁰

17 Dispute Resolution

- 17.1 If either party gives the other notice of dispute under this agreement the following procedure will apply:
- (a) if the dispute comes within the dispute resolution provisions of applicable *gas law* - the dispute resolution procedure in that law will apply; or
 - (b) otherwise, clause 17.2 will apply.
- 17.2 Any dispute to which this clause 17.2 applies will be referred initially to the Supplier's General Manager ActewAGL Retail and the Distributor's General Manager Networks Commercial, who will endeavour to resolve the dispute within 10 *business days* of the giving of the notice.
- 17.3 If the dispute is not resolved within that time, either party may:

³⁹ *Access Arrangement*, principally clauses 3.65 to 3.71.

⁴⁰ *Access Arrangement*, clauses 3.50 to 3.53 (Force Majeure).

- (a) in the case of a dispute about a technical matter - refer the dispute to expert determination under schedule 4; or
- (b) otherwise - refer the dispute to mediation under schedule 5.

Obligations not suspended

- 17.4 No party is relieved from performance of its obligations under this agreement during the investigation and determination of a dispute under this clause 17.

Disputes generally

- 17.5 No party may have recourse to litigation without first having complied with the procedure in this clause 17 and schedules 4 and 5 (as applicable).
- 17.6 This clause 17 does not prevent a party seeking an urgent interlocutory injunction from a court of competent jurisdiction.

18 Notices

- 18.1 A notice, approval, consent or other communication issued under or in connection with this agreement must be in writing and sent to the address of the relevant party indicated in schedule 1 or any other address notified in writing by the relevant party.
- 18.2 A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.
- 18.3 A communication is taken to be received:
- (a) in the case of a posted letter, 2 *business days* after the date of posting;
 - (b) in the case of a facsimile, on creation of an entry in the transmission log of the machine from which the facsimile was sent indicating the facsimile was sent to the facsimile number of the addressee; or
 - (c) in the case of an email, when it is delivered to a system from which the addressee can retrieve it and which is capable of generating a delivery confirmation report.
- 18.4 If a communication is received after 4pm, it will be taken to have been received on the next *business day*.

19 Warranties

Supplier's warranties

- 19.1 The Supplier represents and warrants that:
- (a) it holds and will continue to hold a *utility licence* for the duration of this agreement;
 - (b) it has a valid and binding *customer supply contract* with each customer;

- (c) in entering into this agreement, it has not relied on any representations or warranties about its subject matter except as provided in this agreement; and
- (d) each *ACT customer* is a *non-franchise customer*.

Date warranties are given

- 19.2 Each representation and warranty under clause 19.1 is given in respect of each customer as at the date on which the Supplier adds the *delivery point* for that customer to the *tariff list* under clause 4.6.

20 Miscellaneous

Assignment and transfer of contracted capacity

- 20.1 Subject to clause 20.2, neither party may assign any of its rights under this agreement without the prior written consent of the other. Consent may not be unreasonably withheld or delayed where the proposed assignee holds the relevant licence and has the financial and technical capacity to perform its obligations under this agreement. The Distributor may impose reasonable conditions on its consent.
- 20.2 The Supplier may make a *bare transfer* in accordance with the procedure in the *Access Arrangement*⁴¹.

Waiver

- 20.3 Any waiver of a breach of a provision of this agreement must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.

Amendment

- 20.4 Unless otherwise provided under this agreement, any variation to this agreement must be in writing and signed by the parties.

Indemnities

- 20.5 It is not necessary for a party to incur expense or make a payment before enforcing a right of indemnity under this agreement.

Survival

- 20.6 Clauses 13 and 15 survive expiry or termination, in addition to any clauses that expressly or by their nature survive expiry or termination.

Entire agreement

- 20.7 This agreement constitutes the entire agreement between the parties about its subject matter.

Inconsistency

- 20.8 The parties will comply with the obligations imposed on them by applicable *gas law*, except where those obligations are inconsistent with this agreement, in which case the provisions of this agreement will prevail to the extent permitted by law.

Governing law

- 20.9 This agreement is governed by the laws of the Australian Capital Territory.

⁴¹ *Access Arrangement*, clause 8.3 and 8.4.

EXECUTED as an agreement

Execution page

SIGNED by **JOHN ANGUS**)
MACKAY as authorised)
representative for **ACTEWAGL**)
DISTRIBUTION in the presence of:)

.....)
Signature of witness)

.....)
Name of witness (block letters))

.....
By executing this agreement the
signatory warrants that the signatory
is duly authorised to execute this
agreement on behalf of **ACTEWAGL**
DISTRIBUTION

SIGNED by **IVAN SLAVICH** as)
authorised representative for)
ACTEWAGL RETAIL in the)
presence of:)

.....)
Signature of witness)

.....)
Name of witness (block letters))

.....
By executing this agreement the
signatory warrants that the signatory
is duly authorised to execute this
agreement on behalf of **ACTEWAGL**
RETAIL

Schedule 1 **Party details**

Item 1 *Commencement date:*
Expiry date:

Item 2*DISTRIBUTOR*

Attention: Ms Fiona Osman

Address: 18 Rodborough Road, Frenchs Forest NSW 2086

Postal Address: PO Box 6300, Frenchs Forest Delivery Centre NSW
1640

Telephone: (02) 8977 6540
Facsimile: (02) 8977 6819

SUPPLIER

Attention: Ayesha Razzaq, Manager Wholesale

Address: ActewAGL House, 221 London Circuit, Canberra ACT
2601

Postal Address: GPO Box 366, Canberra ACT 2601

Facsimile: (02) 6248 3825

Schedule 2

Special conditions

Nil

Schedule 3 Interpretation

Definitions

1.1 In this agreement:

Access Arrangement means the access arrangement for the *network* approved under the *Third Party Access Code*, in force from time to time.

approved scheme means a scheme for the operation of the retail gas market in New South Wales approved by the Minister for Energy.

accredited means accredited under the accreditation system established on *meter data services* no longer being offered as a *reference service*.

ACT customer means a customer whose *delivery point* is situated in the ACT.

bare transfer has the meaning given in the *Access Arrangement*.

basic metering equipment has the meaning given in the *Access Arrangement*.

business day means any day which is not a Saturday, Sunday or a public holiday in New South Wales or the Australian Capital Territory.

Business Rules has the meaning given in the *Access Arrangement*.

commencement date is the commencement date shown in item 1 of schedule 1.

confidential information means:

- (a) the terms of this agreement;
- (b) all operations and dealings under this agreement; and
- (c) all information:
 - (i) disclosed by one party to the other under this agreement (including metering and metering data); or
 - (ii) if disclosed prior to the date of this agreement, in anticipation of this agreement coming into effect,

and which by its nature is confidential to the party disclosing the information, but excluding information which:

- (d) is or becomes part of the public domain other than as a result of a breach of this agreement; or
- (e) is able to be lawfully obtained from another source; or

- (f) is already known to the other party at the date of disclosure and was not acquired directly or indirectly from the disclosing party.

Consumer Protection Code means the Australian Capital Territory Consumer Protection Code approved or determined by the *ICRC* from time to time.

contract year has the meaning given in the *Access Arrangement*.

customer supply contract means the gas supply contract between the Supplier and a customer.

delivery point has the meaning given in the *Access Arrangement*.⁴²

effective date of transfer means the date on which the *registry operator* notifies the Distributor that a change of user transaction will be permitted in accordance with the *Business Rules*.

expiry date is the expiry date shown in item 1 of schedule 1.

force majeure has the meaning given in the *Access Arrangement*.

gas law means the *Utilities Act 2000 (ACT)*, the *Gas Safety Act 2000 (ACT)*, the *Gas Pipelines Access Act 1998 (ACT)*, the *Access Arrangement*, the *Minimum Network Standards*, the *Gas Supply Act 1996 (NSW)* any other applicable market, industry, or technical code, any licence issued under the *Utilities Act 2000 (ACT)* or the *Gas Supply Act 1996 (NSW)*, and any other statute, regulation, ordinance, code or other law, whether territory, state or federal, including any lawfully binding determination, decree, edict, declaration, ruling, order or other similar pronouncement validly made by any *government or authority*.

Gas Network Boundary Code means the Australian Capital Territory Gas Network Boundary Code approved or determined by the *ICRC* from time to time.

government or authority means the Commonwealth of Australia, any Australian State or Territory or local government, and any minister, department, statutory authority, corporation or agency (including the *ICRC* and IPART (the Independent Pricing and Regulatory Tribunal in NSW) having jurisdiction and authority over a party.

Greater Queanbeyan has the meaning given in the *Access Arrangement*.

GST has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999*.

ICRC means the Independent Competition and Regulatory Commission (ACT).

interest rate means interest at 2.5% above the Commonwealth Bank of Australia's Corporate Overdraft Reference Rate.

⁴² The definition in the *Access Arrangement* ensures that *delivery points* are only available on the *network*.

insolvent means being an insolvent under administration or insolvent (each as defined in the Corporations Act) or having a controller (as defined in the Corporations Act) appointed, or being in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out reconstruction while solvent) or being otherwise unable to pay debts when they fall due or having something with the same or a similar effect happen under the laws of any jurisdiction.

MHQ or **maximum hourly quantity** has the meaning given in the *Access Arrangement*.

measuring equipment has the meaning given in the *Access Arrangement*.

meter data services are the services described in Attachment 3F of the *Access Arrangement*.

Minimum Network Standards has the meaning given in the *Access Arrangement*.

network means the Distributor's gas distribution network in the ACT and *Greater Queanbeyan*, as defined in the *Access Arrangement*.

non-franchise customer means a non-franchise customer for the supply of gas to the relevant premises, as defined in the *Utilities Act 2000 (ACT)*.⁴³

NSW customer means a customer whose *delivery point* is situated in NSW.

receipt point has the meaning given in the *Access Arrangement*.

reference service has the meaning given in the *Access Arrangement*.

registry operator has the meaning given in the *Business Rules*, and is the operator of the gas retail market (currently Gas Market Company Limited).

safety and operating plan means:

- (a) in relation to the Distributor's NSW gas network operations, the safety and operating plan lodged in accordance with the *Gas Supply (Network Safety Management) Regulation 2002 (NSW)*; and
- (b) in relation to the Distributor's ACT gas network operations, the safety and operating plan lodged in accordance with the *Gas Safety and Operating Plan Code 2000* made under the *Utilities Act 2000 (ACT)*,

as amended from time to time.

⁴³ These are customers who have declared themselves to be non-franchise customers in respect of the premises, in accordance with the procedure in the applicable Ministerial declaration under the *Utilities Act 2000 (ACT)*.

security means an unconditional bank guarantee or a parent guarantee, cash collateral, letter of credit or other similar form of credit support.

services mean the *meter data services* and *tariff services* provided under this agreement.

standard customer connection contract means the Standard Customer Contract for Gas Connection and Supply published by the Distributor from time to time applying to the relevant premises.

tariff list means the list of *delivery points* for the Supplier's customers provided by the Supplier in accordance with the *Access Arrangement*⁴⁴.

tariff services are the services described in Attachment 3E of the *Access Arrangement*.

Third Party Access Code means the National Third Party Access Code for Natural Gas Pipeline Systems.

TJ stands for terajoule.

utility licence means a licence or authorisation under applicable *gas law* to:

- (a) for the Distributor - distribute gas through the *network*; and
- (b) for the Supplier - supply gas to premises covered by this agreement.

Interpretation

1.2 Unless the contrary intention appears, a reference in this agreement to:

- (a) **(variations or replacement)** a document (including this agreement) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(reference to clauses of Access Arrangement etc)** a reference to a provision of the *Access Arrangement*,

⁴⁴ *Access Arrangement*, clauses 1.5 - 1.7, Attachment 3E.

Business Rules or any other document is a reference to the equivalent provision in force from time to time;

- (f) **(singular includes plural)** the singular includes the plural and vice versa;
- (g) **(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any Government Agency;
- (h) **(executors, administrators, successors)** a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (i) **(two or more persons)** an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (j) **(jointly and severally)** an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (k) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (l) **(calculation of time)** if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (m) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (n) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (o) **(next day)** if an act under this agreement to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day;
- (p) **(next business day)** if an event under this agreement will occur on a stipulated day which is not a *business day* then the stipulated day will be taken to be the next *business day*;
- (q) **(time of day)** time is a reference to Canberra time;
- (r) **(reference to anything)** anything (including any amount) is a reference to the whole and each part of it.

Headings and footnotes

- 1.3 Headings (including those in brackets at the beginning of paragraphs) and footnotes are for convenience only and do not affect the interpretation of this agreement.

References to the Access Arrangement

- 1.4 Clause 5.1 (which refers to Parts 2 and 3, and Attachments 3E and 3F of the *Access Arrangement*) is not limited by references to particular provisions or requirements of the *Access Arrangement* elsewhere in this agreement.

Schedule 4**Dispute resolution procedure - expert resolution
(technical disputes)**

First stage dispute resolution

- 1.1 This schedule applies to a dispute under clause 17.3(a) of this agreement.

Reference to and appointment of an expert

- 1.2 Either party may require that the dispute be determined by an independent expert appointed in accordance with clause 1.3 of this schedule.
- 1.3 The party wishing to have the dispute determined by an expert will give written notice to that effect to the other party specifying the nature of the dispute. The parties will meet and use all reasonable endeavours to agree upon the identity of the expert, but if they are unable to agree within 5 *business days* of the date of receipt of the notice, then either party may refer the matter to the President for the time being of the Institution of Engineers, Australia (or, if that body no longer exists, then to the President for the time being of such successor body or association as is then performing the function formerly carried out by the Institution of Engineers, Australia), to nominate a suitably qualified person to act as the expert to determine the dispute.

Role of expert

- 1.4 The expert will:
- (a) act as an expert and not as an arbitrator;
 - (b) have no interest or duty which conflicts, or which may conflict, with his or her function as the expert;
 - (c) not be a former or current employee or representative of either party or of a related body corporate of either of them; and
 - (d) disclose fully to the parties, before being appointed, any interest or duty which may conflict with his or her position.

Representation and evidence

- 1.5 Each party:
- (a) may be legally represented at any hearing before the expert;
 - (b) will be entitled to produce to the expert any materials or evidence which that party believes is relevant to the dispute; and

- (c) will make available to the expert all materials requested by him or her and all other materials which are relevant to his or her determination.

Rules of evidence

- 1.6 The expert will not be bound by the rules of evidence.

Power of expert

- 1.7 The expert will have the power to inform himself or herself independently as to the facts to which the dispute relates and to take such measures as he or she thinks fit to expedite the determination of the dispute.

Determination

- 1.8 The expert will make a determination on the dispute and:

- (a) will determine what, if any, adjustments may be necessary between the parties; or
- (b) if relevant, determine the amendments required to the terms of this agreement.

- 1.9 The determination of the expert will be, in the absence of bias or manifest error, final and binding upon the parties.

Costs

- 1.10 The costs in relation to a determination by the expert will be dealt with as follows:

- (a) the remuneration of the expert will be agreed by the parties;
- (b) unless the parties otherwise agree, the expert will determine which party will bear the costs of the determination and in what proportion, having regard to the degree to which he or she considers that party was at fault or unreasonable in failing to agree to the matter under reference, and that party will bear those costs accordingly; and
- (c) the parties will bear their own costs incurred in the preparation and presentation of any submissions or evidence to the expert.

Schedule 5**Dispute resolution procedure - mediation (other disputes)**

- 1.1 This schedule applies to a dispute under clause 17.3(b) of this agreement.
- 1.2 Either party may require that the dispute be determined by mediation in accordance with this schedule.
- 1.3 The party wishing to have the dispute determined by mediation will give written notice to that effect to the other party specifying the nature of the dispute. If notice is given, the dispute is by this clause submitted to mediation. The mediation will be conducted in Canberra. The Institute of Arbitrators Australia Rules for the Mediation of Commercial Disputes (in force as at the date of the notice) apply to the mediation, except to the extent they conflict with this Schedule.
- 1.4 If the parties have not agreed on the mediator and the mediator's remuneration within 7 days after the day the notice is given, the mediator will be appointed by the President of the Australian Capital Territory Law Society or the President's nominee, at the request of either party, and that person will also determine the amount or rate of the mediator's remuneration.
- 1.5 The parties will share the costs of the mediator. Each party will pay its own costs of the mediation.
- 1.6 Either party may terminate the mediation at any time.

Dated

2005

**Gas Transport Services
Agreement for small
customers**

**ACTEW Distribution Limited and
AGL Gas Company (ACT) Pty
Limited, trading as ActewAGL
Distribution
("Distributor")**

AND

**ACTEW Retail Limited and AGL
ACT Retail Investments Pty Limited
trading as ActewAGL Retail
("Supplier")**

D r a f t

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Gas Transport Services Agreement for large customers

Date:

Parties:

ACTEW Distribution Limited ABN 83 073 025 224 and AGL Gas Company (ACT) Pty Limited ABN 24 008 552 663, trading as ActewAGL Distribution ABN 76 670 568 688 of Level 5, ActewAGL House, 221-223 London Circuit, Canberra City ACT 2601 (“**Distributor**”)

ACTEW Retail Limited ABN 23 074 371 207 and AGL ACT Retail Investments Pty Limited ABN 53 093 631 586, trading as ActewAGL Retail ABN 46 221 314 841 of Level 5, ActewAGL House, 221-223 London Circuit, Canberra City ACT 2601 (“**Supplier**”)

Recitals:

- A. The Distributor is required to provide certain *services* to gas suppliers in the ACT and *Greater Queanbeyan* under the approved *Access Arrangement*.
- B. This agreement sets out the terms on which the Distributor will provide the Supplier with:
 - (a) *non-tariff services*; and
 - (b) *meter data services* while they remain non-contestable *services*.
- C. Other *services* covered by the *Access Arrangement* are dealt with under a separate agreement.
- D. This agreement covers all the customers on the Supplier’s *non-tariff list* and provides a procedure for updating that list as customers are transferred to and from the Supplier.

Operative provisions:

1 Words and phrases used in this agreement

- 1.1 Words and phrases in italics have the meaning given in schedule 3.
- 1.2 The rules of interpretation set out in that schedule apply to this agreement.

2 Approach to regulatory requirements

- 2.1 There are numerous regulatory requirements referred to in this agreement which apply to the parties. This agreement does not attempt to repeat the detail of those requirements in full. Rather, it sets out the high level rights and obligations which arise, and explains in footnotes where the detail can be found.

- 2.2 The *gas law* may impose additional obligations or confer additional rights on the parties apart from those set out in this agreement.

3 Term

- 3.1 Subject to 3.2 this agreement commences on the *commencement date* and expires on the *expiry date*.
- 3.2 Before the *expiry date*, the parties may agree to:
- (a) extend this agreement for a further term; or
 - (b) negotiate a new agreement for the supply of the *services*.

4 Supplier's customers covered by this agreement

Customers covered

- 4.1 The Distributor will supply to each *delivery point* in the *non-tariff list*, subject to this clause 4:
- (a) the gas distribution *services* identified in accordance with clause 4.2; and
 - (b) the *meter data services* in accordance with clause 8.
- 4.2 Each *delivery point* will be identified in the *non-tariff list*:
- (a) as requiring either a *capacity reservation service*, a *managed capacity service* or a *throughput service*¹ and a term for each *service* in accordance with the *Access Arrangement*²; and
 - (b) with the other information required by Schedule 6.
- 4.3 The Supplier will also provide to the Distributor:
- (a) all information reasonably requested by the Distributor, to enable the Distributor to provide the *registry operator* with any *delivery point* information required of the Distributor under the *Business Rules*³; and
 - (b) the *load shedding details* for each *delivery point*.⁴
- 4.4 The availability of the *services* is described in the *Access Arrangement*.⁵

¹ *Access Arrangement*, clause 2.3.

² *Access Arrangement* clause 1.5 of Attachment 3A (Capacity Reservation Service), Clause 1.6 of Attachment 3B (Managed Capacity Service), clause 1.5 of Attachment 3C (Throughput Service) and clause 1.6 of Attachment 3D (Multiple Delivery Point Service).

³ Rules 6.2.

⁴ That information is maintained through ELMS, referred to in Attachment 4 of the *Access Arrangement*.

⁵ *Access Arrangement*, Part 2 (Services Policy) under the heading "Availability of Reference Services", Attachment 3A (Capacity Reservation Service), Attachment 3B (Managed Capacity Service), Attachment 3C (Throughput Service) and Attachment 3D (Multiple Delivery Point Service) and Attachment 3F (Meter Data Service), and Part 7 (Extensions/Expansions Policy).

Adding customers to the non-tariff list

- 4.5 If the Supplier wishes to add a new *delivery point* to the *non-tariff list*, it will follow the request for service procedure in the *Access Arrangement*.⁶
- 4.6 Subject to clause 4.8, the parties will vary the *non-tariff list* to add a *delivery point* to the list if:
- (a) the requirements of the request for service procedure are met;
 - (b) the parties have agreed on the details listed in Schedule 6 for the *delivery point* (including an *MHQ* and *MDQ*); and
 - (c) the Supplier satisfies any other reasonable requirements of the Distributor.
- 4.7 Additional requirements if a new connection is required at the *delivery point* are set out in the *Minimum Network Standards*.⁷
- 4.8 The Supplier may not add a *delivery point* to the *non-tariff list*;
- (a) if a working connection does not exist between the customer's premises and the *network*;
 - (b) if the Supplier does not have the right to provide the Distributor with access to the *delivery point* or *measuring equipment* in accordance with clause 7.5;
 - (c) if the Supplier's customer at the *delivery point* is not reasonably expected to withdraw at least 10TJ of gas per annum;
 - (d) where the facility serving the proposed new *delivery point* has an allowable operating pressure of more than 1,050 kPa⁸; or
 - (e) if there are multiple suppliers for the *delivery point* and allocation methodologies and notification processes as contemplated by clause 3.39 of the *Access Arrangement* are not in place.

Changes to customer details

- 4.9 The Supplier may change a *delivery point* or any details relating to a *delivery point* in the *non-tariff list* in accordance with the procedures in the *Access Arrangement*⁹ and any reasonable requirements of the Distributor.
- 4.10 Clause 4.9 does not apply to a proposed increase to the *MHQ* or *MDQ*. Instead, the request for service procedure in clause 4.5 applies.

Transfer out of customers

- 4.11 The Distributor will notify the Supplier if:

⁶ *Access Arrangement* clauses 2.10 to 2.12 and Attachment 2 (Requests for Service). The queuing policy in Part 9 of the *Access Arrangement* also applies each time the request for service procedure applies if there is insufficient capacity.

⁷ Part E.

⁸ *Access Arrangement*, clause 2.7(b).

⁹ *Access Arrangement*, clauses 8.4 to 8.7 (Change of Receipt Point or Delivery Point) and (ActewAGL's consent).

-
- (a) the Distributor adds a *delivery point* which is on the Supplier's *non-tariff list* to the *non-tariff list* of another supplier; and
 - (b) the Distributor has been requested to deliver what the Distributor reasonably regards as the same tranche of capacity as that being delivered to the Supplier for that *delivery point*.
- 4.12 On notification from the Distributor under clause 4.11, the Supplier may request deletion of the *delivery point* from the *non-tariff list* and the parties will delete that point.
- 4.13 If a *delivery point* is deleted under clause 4.12, the following provisions apply:
- (a) the Supplier will pay the charges for that *delivery point* until the *end date*; and
 - (b) in the next invoice after the *end date*, the Distributor will credit the Supplier an amount equal to the charges payable to the Distributor by the supplier who transferred the customer, from the date the *delivery point* is deleted from the *non-tariff list* up to and including the *end date*.¹⁰

If requested by the Supplier before the *end date*, the Distributor will provide an estimate of the difference between the amounts in paragraph (a) and (b).

Deletion of customers where there is no transfer

- 4.14 Other than as described in clauses 4.11 to 4.13, a *delivery point* may only be deleted before the *end date* for that point, by agreement of the parties. After the *end date*, the point will automatically be deleted unless a new *service* is requested for that *delivery point*.

Disconnection of customers

- 4.15 The parties will comply with their respective obligations under the *Minimum Network Standards* with respect to disconnection and reconnection of customers.
- 4.16 The Supplier acknowledges that the Distributor may also disconnect customers in accordance with the Distributor's *standard customer connection contract* (for customers to whom that contract applies), in equivalent circumstances (for other customers) and otherwise as required or permitted by applicable *gas law*.
- 4.17 The Supplier will include in its *customer supply contract* a right for the Distributor to disconnect customers in the circumstances referred to in clause 4.16. The Supplier holds that right on trust for the Distributor absolutely.

When a delivery point becomes a tariff delivery point

- 4.18 If less than 10TJ of gas is delivered to a *delivery point* in any *contract year*, the Distributor may remove that *delivery point* from the *non-tariff list* on 21 days notice to the Supplier, unless the Supplier satisfies

¹⁰ If the amount under clause 4.13(b) is greater than the amount under clause 4.13(a), the rebate will be equal to the amount in clause 4.13(a).

the Distributor that it is reasonable to expect consumption at that *delivery point* will be more than 10TJ for the next *contract year*.

Retrospective application to existing customers

- 4.19 Where the *effective date of transfer* for a customer listed in the *non-tariff list* occurs before the *commencement date*, this agreement applies in respect of that *delivery point* on and from the *effective date of transfer*.

5 Services

Terms applying

- 5.1 Except to the extent of any inconsistency with this agreement, the terms applying to the *services* include:
- (a) for *non-tariff services* - Parts 2 and 3 of the *Access Arrangement*, and Attachments 3A, 3B, 3C or 3D (as applicable to the gas transport *service* identified for a *delivery point*); and
 - (b) for *meter data services* - Parts 2 and 3, and Attachment 3F of the *Access Arrangement*.

Special conditions

- 5.2 Schedule 2 to this agreement contains the special conditions that apply to the *services*, if any.
- 5.3 Those conditions prevail over the other terms of this agreement to the extent of any inconsistency.

Compliance with law

- 5.4 The parties will comply with applicable *gas law* in performing their respective obligations under this agreement.
- 5.5 The Supplier will include in its *customer supply contract*, a provision that requires the customer to comply with the rules (if any) published from time to time by the Distributor for gas service and installation.

Quality of gas

- 5.6 The *Access Arrangement* sets out provisions regarding gas quality and non-specification gas.¹¹

Gas testing

- 5.7 The Supplier will test the gas, or cause the gas to be tested, in accordance with the Distributor's *safety and operating plan*¹².
- 5.8 The Distributor will give the Supplier a copy of the relevant sections of the *safety and operating plan* on request, and reasonable notice of changes to the relevant sections of the Distributor's *safety and operating plan*.

¹¹ *Access Arrangement*, clauses 3.42 to 3.45 and 3.59 to 3.60 (General Terms and Conditions).

¹² Note that as the Supplier is testing the gas, rather than the Distributor as the reticulator, the Supplier must comply with the obligations imposed on a testing agency under the *Gas Supply (Network Safety Management) Regulation 2002 (NSW)* (see clause 5.4 of this agreement regarding compliance with *gas law*).

- 5.9 The Supplier will provide to the Distributor on request and at no cost, all records relating to:
- (a) the testing of the gas (including raw measurements used to obtain test results);
 - (b) the maintenance of the gas testing equipment; and
 - (c) any notices provided by the Supplier to any person in relation to the quality of gas.
- 5.10 The Supplier will notify the Distributor as soon as reasonably practicable if a test result shows that gas to be delivered to the *receipt point* is non-specification gas.

Changes to receipt point

- 5.11 Changes to the *receipt point* will be dealt with in accordance with Part 8 of the *Access Arrangement*,¹³ subject to the Supplier first following the request for service procedure in Part 2 of the *Access Arrangement*.

Changes to regulatory environment

- 5.12 The Distributor may amend this agreement from time to time by notice to the Supplier to reflect changes to the *Business Rules*, *Minimum Network Standards* or applicable *Gas Law*, as described in the *Access Arrangement*¹⁴, to the extent consistent with the *Access Arrangement*.

The Supplier agrees to be bound by an amendment on and from the effective time set out in the notice.

6 Delivery of Gas

Determining quantity of gas delivered at delivery points

- 6.1 Subject to clauses 6.2 and 6.3, the quantity of gas delivered to a *delivery point* will be:
- (a) if the *delivery point* is equipped with daily meter reading facilities but not on-site heating value measurement - calculated in accordance with the method set out in the *Access Arrangement*,¹⁵ or
 - (b) if the *delivery point* is not equipped with daily meter reading facilities - the product of the volume of gas (measured at the *delivery point* for the period between meter readings) and the average heating values of gas declared for all days in the period; or
 - (c) if the *delivery point* has daily meter reading facilities and on-site heating value measurement - the product of the actual volume of gas and the actual heating value of the gas; or
 - (d) any other amount agreed by the parties.

¹³ *Access Arrangement*, clauses 8.4 to 8.7 (Changes to Receipt Point and Delivery Point) and (ActewAGL consent).

¹⁴ *Access Arrangement*, clauses 3.12 to 3.14 (General Terms and Conditions).

¹⁵ *Access Arrangement*, clauses 3.33 and 3.35.

- 6.2 If more than one supplier has been approved for a *delivery point*, gas will be apportioned between the suppliers using the apportionment methodology approved by the Distributor.¹⁶
- 6.3 If the *measuring equipment* at a *delivery point* fails to operate, the quantity of gas delivered to that point will be determined under clause 7.7.

MHQ and MDQ

- 6.4 For each *delivery point*, the Supplier will specify a *MHQ* and *MDQ* in accordance with the *Access Arrangement*¹⁷.
- 6.5 The Supplier may increase the *MDQ* for the *capacity reservation service* for a *delivery point* in accordance with the *Access Arrangement*¹⁸. The Supplier may make a corresponding increase to the *MHQ* with the consent of the Distributor.
- 6.6 The Distributor's obligation to provide *non-tariff services* to a *delivery point* is limited to:
- (a) the *MHQ* per hour for that point; and
 - (b) the *MDQ* per day for that point,
- subject to the Distributor's obligation to supply *non-tariff services* if there is an *authorised overrun*.

Allocation

- 6.7 If a *delivery point* on the Supplier's *non-tariff list* is served by more than one supplier or more than one gas distribution service, the Supplier will comply with clause 3.39 of the *Access Arrangement*.
- 6.8 If an overrun occurs in the situation in clause 6.7, the overrun will be treated in accordance with the *Access Arrangement*.¹⁹

Overruns

- 6.9 The Supplier may request an *authorised overrun* in accordance with the *Access Arrangement*.²⁰
- 6.10 The Supplier's liability for an *unauthorised overrun* is as described in the *Access Arrangement*.

Title to gas

- 6.11 The *Access Arrangement* sets out provisions regarding title to gas.²¹

¹⁶ *Access Arrangement*, clause 3.39.

¹⁷ *Access Arrangement*, clause 1.11 of Attachment 3A (Capacity Reservation Service), clause 1.13 of Attachment 3B (Managed Capacity Service) and clause 1.11 of Attachment 3C (Throughput Service) under the heading "MDQ and MHQ".

¹⁸ *Access Arrangement*, clauses 1.13, 1.14, 1.22, 1.25 and 1.28 of Attachment 3A (Capacity Reservation Service). Increases are also subject to the terms of Attachment 2 (Requests for Service) of the *Access Arrangement* and the Queuing Policy in Part 9.

¹⁹ Overruns are dealt with in *Access Arrangement*, clause 3.61, and for each service, in Attachments 3A, 3B, 3C and 3D.

²⁰ *Access Arrangement*, clauses 1.17 to 1.20 of Attachment 3A (Capacity Reservation Service), clause 1.17 of Attachment 3B (Managed Capacity Service) and clause 1.16 of Attachment 3C (Throughput Service), and clause 3.61.

²¹ *Access Arrangement*, clause 3.40.

Risk

- 6.12 The control of gas²²:
- (a) passes from the Supplier to the Distributor on delivery to the *receipt point*; and
 - (b) passes from the Distributor to the Supplier on delivery to the *delivery point*.
- 6.13 The Distributor will replace lost gas in accordance with the *Access Arrangement*²³.
- 6.14 The Supplier will include in its *customer supply contract*, a provision that sets out where the *network* boundary is, in accordance with the *Gas Network Boundary Code*.

7 Metering**Supply of basic metering equipment**

- 7.1 The Distributor will supply *basic metering equipment* in accordance with the *Access Arrangement*²⁴ and other applicable *gas law*.

Changes to basic metering equipment

- 7.2 The Distributor will upgrade *basic metering equipment* at a *delivery point* if required for the purposes of accepting the specified *MHQ* or *MDQ* at that point. The Supplier will pay the costs of the upgrade.
- 7.3 The Distributor may downgrade *basic metering equipment* at any time. Subject to clause 7.4, the Distributor will pay the costs of the downgrade.
- 7.4 If a downgrade is required because of a change in load or pattern usage by the Supplier's customer, the Supplier will pay the costs of the downgrade.

Access to measuring equipment

- 7.5 The Distributor may at all reasonable times have access to a *delivery point* and *measuring equipment*:
- (a) as permitted under the *Access Arrangement*²⁵ or other applicable *gas law*; and
 - (b) for any purpose related to this agreement.

Security and accuracy of measuring equipment

- 7.6 The *Minimum Network Standards* set out additional requirements relating to *security* and accuracy of *measuring equipment*.

²² See also *Access Arrangement*, clause 3.19.

²³ *Access Arrangement*, clause 3.19.

²⁴ *Access Arrangement*, clause 1.15 of Attachment 3A (Capacity Reservation Service), clause 1.15 of Attachment 3B (Managed Capacity Service) and clause 1.14 of Attachment 3C (Throughput Service).

²⁵ *Access Arrangement*, clause 3.34.

Estimating consumption

- 7.7 The Distributor may estimate the quantity of gas delivered to a *delivery point* for a period in certain circumstances, as described in the *Access Arrangement*.²⁶

Theft of gas

- 7.8 If the Distributor reasonably suspects there has been a theft of gas, the Distributor may recover from the Supplier the difference between what was billed and what should have been billed, in accordance with the *Minimum Network Standards*.²⁷

8 Meter Data Services

Meter data services

- 8.1 For so long as the Distributor offers *meter data services* as a *reference service*, the Distributor will provide and the Supplier will accept *meter data services* for each *delivery point* for which a *non-tariff service* has been requested by the Supplier²⁸.
- 8.2 The Distributor will cease offering *meter data services* as a *reference service* in accordance with the *Access Arrangement*.²⁹

Where meter data service is not offered as a reference service

- 8.3 Where *meter data services* are no longer offered by the Distributor as a *reference service*³⁰:
- (a) the Distributor:
 - (i) may stop providing meter data;
 - (ii) will stop providing *meter data services* at the Supplier's request; and
 - (iii) may offer to provide an equivalent service to the Supplier in respect of each *delivery point* for which a *non-tariff service* has been requested, on terms consistent with the *Business Rules*;
 - (b) the Supplier may:
 - (i) request the Distributor to stop providing *meter data services*;
 - (ii) accept the Distributor's offer under clause 8.3(a)(iii); or
 - (iii) subject to clause 8.4, acquire equivalent *services* from an *accredited* third party supplier in respect of a *delivery point* for which *non-tariff services* have been requested under this agreement.

²⁶ *Access Arrangement*, clauses 3.36 and 3.37

²⁷ Section 11 *Minimum Network Standards* ("Theft of Gas").

²⁸ *Access Arrangement*, clauses 2.4 and 2.7, clause 1.16 of Attachment 3A (Capacity Reservation Service), clause 1.16 of Attachment 3B (Managed Capacity Service) and clause 1.15 of Attachment 3C (Throughput Service).

²⁹ *Access Arrangement*, clauses 2.8 and 2.9.

³⁰ *Access Arrangement*, clauses 2.8 and 2.9.

-
- 8.4 The Distributor is not obliged to provide *non-tariff services* for a *delivery point* until the Supplier provides the Distributor with evidence that the Supplier has acquired an equivalent meter data service for that *delivery point* in accordance with clause 8.3(b)(iii).

Where services provided by third party supplier

- 8.5 The Supplier agrees that the terms of any agreement entered into under clause 8.3(b)(iii) will be consistent with the *Business Rules* and, unless inconsistent with the *Business Rules*, will require *measuring equipment* to be read at the frequencies specified by the Distributor.
- 8.6 The Supplier will provide the Distributor with details of the meters and meter readings in the form requested by the Distributor, within 3 *business days* of a meter being read.
- 8.7 The Supplier may not, and will ensure that its third party supplier does not, install or remove at a *delivery point* any meter reading facilities, communications equipment, or connections that:
- (a) interfere with the operation of *measuring equipment* owned by the Distributor; or
 - (b) corrupt any meter data at the *delivery point*.

9 Charges

- 9.1 The Distributor's charges for the *services*, and other related charges, are described in Part 5 and Attachments 3A, 3B 3C and 3F of the *Access Arrangement*.
- 9.2 The Distributor may vary and adjust those charges from time to time, in accordance with the *Access Arrangement*.³¹
- 9.3 The charges for the gas distribution *service* to a *delivery point* will vary according to the *service* identified for that *delivery point* in accordance with clause 4.2.

Network extensions and expansions

- 9.4 The Distributor may charge the Supplier a surcharge in respect of a *network* extension or expansion, in the circumstances described in Part 7 of the *Access Arrangement*.

Invoices

- 9.5 Each month the Distributor will give the Supplier an invoice relating to the *delivery points* for which:
- (a) the gas meter has been read in the previous month in accordance with the *Access Arrangement*; or
 - (b) consumption has been estimated under clause 7.7; or
 - (c) a capital contribution charge is payable for *network* extension or new connection; or
 - (d) any other applicable charge is payable.

³¹ *Access Arrangement*, Part 6 (Variation to Reference Tariffs).

-
- 9.6 An invoice may:
- (a) include a claim in respect of one or more *delivery points*;
 - (b) relate to any number of meter reading cycles; and
 - (c) include adjustments to amounts claimed in previous accounts, as determined by the Distributor from time to time.

Occupancy Change

- 9.7 For the avoidance of doubt, the Supplier will be charged for all *services* provided in respect of a *delivery point* while that *delivery point* remains on the *non-tariff list*.
- 9.8 If there is a change of occupancy at a *delivery point* without a change to the *non-tariff list*, the Supplier will continue to be liable for payment of the charges for the *services* in accordance with this agreement.

Payment of invoices

- 9.9 The Supplier will pay an account by electronic funds transfer into the account nominated by the Distributor from time to time, or by cheque in immediately available funds, within 10 *business days* of the date of the invoice.

Disputed accounts

- 9.10 If the Supplier reasonably considers that an account shows an amount payable that exceeds the amount properly payable, the Supplier will:
- (a) notify the Distributor of the amount in dispute within 7 *business days* after receipt of the account; and
 - (b) subject to clause 9.11, pay the balance of the invoice.
- 9.11 The Supplier may not withhold payment of an amount under clause 9.10 if the total amount in dispute would then exceed the amount of the invoice for the previous payment period.

Interest³²

- 9.12 Any amount payable under this agreement which remains unpaid by the Supplier after the due date is a debt to the Distributor and attracts interest at the *interest rate*, accruing daily from the due date until the amount is paid. The Distributor may include an amount of interest payable by the Supplier accrued under this clause in an invoice under clause 9.5.
- 9.13 Interest accrues under clause 9.12 on an amount that is disputed by the Supplier but is later agreed or determined to be payable, from the original due date.

Errors in accounts

- 9.14 If the Distributor has overcharged the Supplier, the Distributor will credit the overpayment to an account nominated by the Supplier.

³² *Access Arrangement*, clause 3.18.

-
- 9.15 If the Distributor has undercharged the Supplier, the Distributor may adjust a subsequent invoice to recover the amount undercharged.

Set-off

- 9.16 The Supplier will make payments under this clause 9 without set-off or counterclaim and free and clear of any withholding or deduction for any tax, impost, levy, duty or withholding unless required by law.

10 GST

- 10.1 Unless otherwise indicated, all consideration for any supply under this agreement is exclusive of any *GST* imposed on the supply.
- 10.2 If *GST* is imposed on a supply by one party (**provider**) to the other (**recipient**) under this agreement, and the provider gives the recipient a tax invoice for the supply, the recipient will pay to the provider the amount of *GST* imposed in addition without set-off to the consideration the recipient is required to give to the provider for the supply in question.
- 10.3 The recipient of a supply under this agreement is not liable to reimburse the provider in relation to any amount for which the provider can claim an input tax credit.

11 Security

Distributor may require Supplier to provide security³³

- 11.1 If a trigger event occurs, the Distributor may require the Supplier to provide the Distributor with *security* of a type and in an amount and on terms and conditions reasonably required by the Distributor.
- 11.2 A “trigger event” occurs if:
- (a) the Supplier does not have an unqualified credit rating with Standard and Poors (Australia) Pty Limited, Moody’s Investor Service Pty Limited, or another reputable credit reporting agency reasonably acceptable to the Distributor of at least “BBB” or its equivalent; or
 - (b) the Supplier has failed to pay:
 - (i) 2 consecutive invoices by the due date; or
 - (ii) 3 invoices by the due date,
 within the previous 12 months (including prior to the commencement of this agreement). For the avoidance of doubt, withholding an amount in accordance with clauses 9.10 and 9.11 is not a failure to pay; or
 - (c) the Distributor becomes entitled to terminate or suspend this agreement under clause 14 due to an act or omission of the Supplier; or

³³ *Access Arrangement*, clause 3.49.

- (d) any person from whom the Supplier purchases gas, calls on any *security* provided by the Supplier, or provided by another person in respect of the Supplier.

- 11.3 The Supplier will provide the required *security* within 10 *business days* of the Distributor's request.

Amount of security

- 11.4 The amount of *security* required by the Distributor at any time may not exceed the amount of charges the Distributor reasonably anticipates to be payable by the Supplier in the next three month period.
- 11.5 If the amount of any *security* provided by the Supplier is in excess of the Distributor's estimation under clause 11.4, the Supplier may at its cost reduce the amount of that *security* so there is no excess.

Use of security

- 11.6 The Distributor may draw on the *security* for any amount owed by the Supplier to the Distributor under this agreement.
- 11.7 If the Distributor draws on the *security* and the *security* is a bank guarantee or similar *security* for a fixed amount, the Supplier will provide the Distributor with an additional *security* for the amount drawn of the same kind and on the same terms, within 14 days of a request from the Distributor to do so.
- 11.8 The exercise by the Distributor of any right under this clause 11 does not prejudice any other right of recovery which the Distributor may have in respect of any amount owing to it by the Supplier.

12 Interruptions to gas supply

Interruptions to services

- 12.1 The Distributor may interrupt or reduce the *services* in accordance with the *Access Arrangement*³⁴ and other applicable *gas law*³⁵.

Planned interruptions

- 12.2 The Distributor must take reasonable steps to give the Supplier and affected *NSW customers*³⁶ at least 5 *business days* notice³⁷ of a planned interruption or reduction to the *services*. The notice must specify the reason for the interruption or reduction, and the expected date, time and reasonably anticipated duration of the interruption or reduction.
- 12.3 If the Distributor undertakes a planned interruption, it will take all reasonable steps to ensure that the duration of the interruption does not exceed the duration that it has notified the Supplier.³⁸

Unplanned interruptions

- 12.4 In the event of an unplanned interruption or reduction in the *services*, the Distributor will, as soon as reasonably practicable, notify the

³⁴ *Access Arrangement*, clause 3.58

³⁵ See for example clause 19 *Consumer Protection Code*.

³⁶ Clause 12.1 *Minimum Network Standards*.

³⁷ Note, clause 19.2 *Consumer Protection Code* requires Supplier to give its customers at least 2 business days' notice of planned interruptions.

³⁸ Clause 19.2(2) *Consumer Protection Code*.

Supplier of the circumstances giving rise to the interruption or reduction, and the likely duration of the interruption or reduction.³⁹ Before notifying the Supplier, the Distributor may notify the customer at the affected *delivery point*⁴⁰ of the interruption or reduction.

Load shedding

- 12.5 If the Distributor initiates a load shedding procedure in accordance with the *Access Arrangement*⁴¹, the Supplier will:
- (a) take reasonable steps to cease or reduce the delivery of gas to any *receipt point*; and
 - (b) take, or ensure that its customer takes, reasonable steps to cease or reduce the taking of gas at any *delivery point*, as directed by the Distributor. In the case of a notice under paragraph (b), the Distributor may give the notice to the customer.
- 12.6 If the supply of *services* is likely to be interrupted by load shedding, the Distributor will, if it is reasonable in the circumstances, give the Supplier enough notice of that to allow the Supplier to notify its customers.⁴²
- 12.7 If the Supplier has not ceased or reduced the delivery of gas to a *receipt point* or the taking of gas at a *delivery point* under clause 12.5, the Distributor may take any action necessary to do so.

Suspension of service

- 12.8 The Distributor may suspend the delivery of gas to a *delivery point*:
- (a) in the circumstances permitted by the *Access Arrangement*; or
 - (b) if the Supplier does not maintain pressure at the *receipt point*.⁴³

The Distributor must resume the delivery of gas to a *delivery point* if the reason for the suspension has been removed to the reasonable satisfaction of the Distributor.

Distributor's liability

- 12.9 If the Distributor interrupts, reduces or suspends the *services* under this clause 12, the parties' respective liability is as described in the *Access Arrangement*⁴⁴.
- 12.10 An interruption, reduction or suspension under this clause 12 does not affect the Supplier's obligations to pay for any *services* provided under this agreement.

³⁹ Note, the Supplier will require such information to satisfy its obligation under clause 19.3 *Consumer Protection Code*.

⁴⁰ The Supplier is required, under clause 3.72 and clause 1.10 of Attachment 4 of the *Access Arrangement*, to provide the Distributor with accurate emergency contact information for the customer at each *delivery point*.

⁴¹ *Access Arrangement*, Attachment 4.

⁴² Clause 19.4 *Consumer Protection Code*.

⁴³ *Access Arrangement*, clause 3.20.

⁴⁴ *Access Arrangement*, clauses 3.62 and 3.63 (for other interruptions, reductions and suspensions of supply), clauses 1.16 and 1.17 of Attachment 4 (for load shedding).

13 Confidentiality and Privacy

- 13.1 All *confidential information* exchanged under this agreement will remain strictly confidential between the parties and may not be used otherwise than for the purposes of this agreement, or disclosed to any other person except:
- (a) legal advisers, auditors, financial advisers and bona fide consultants and contractors in respect of or pertaining to this agreement, who have first agreed in writing with the disclosing party to be bound by the confidentiality obligations of the disclosing party; or
 - (b) with the consent of the party who supplied the information; or
 - (c) if required by law (including applicable *gas law*) or any *government or authority* or in connection with legal proceedings relating to this agreement; or
 - (d) if the information is generally and publicly available other than as a result of a breach of confidentiality by the party receiving the information.
- 13.2 Where this agreement permits a party to disclose *confidential information* to another person for a purpose, the disclosing party will use all reasonable endeavours to limit the disclosure to those matters which reasonably need to be disclosed in order to accomplish that purpose.

Privacy

- 13.3 Each party will comply with any applicable requirements of the National Privacy Principles under the *Privacy Act 1988*.
- 13.4 Without limiting clause 13.3, each party will:
- (a) only use personal information provided by the other party or collected under this agreement, for the purposes of performing its obligations under this agreement; and
 - (b) when collecting personal information from or about an individual which will be disclosed under this agreement, ensure that the individual is aware that their personal information may be disclosed to the other party and of the purposes for which their information will be used.
- 13.5 The *Access Arrangement* contains an indemnity for breach of the *Privacy Act* by either party.⁴⁵

Relationship with confidentiality provisions

- 13.6 Each party will comply with its obligations under clauses 13.3 and 13.4 despite anything in clause 13.1.

⁴⁵ *Access Arrangement* clause 3.64 .

14 Termination and suspension

Termination

- 14.1 The Distributor may terminate this agreement by notice to the Supplier if:
- (a) the Supplier fails to pay charges or other amounts due under this agreement within 5 *business days* written notice from the Distributor to the Supplier setting out the amount owing and notifying the Supplier that this agreement will be terminated without further notice if the amount is not paid within that time; or
 - (b) the Supplier fails to provide any *security* required by the Distributor in accordance with clause 11 within the time required by that clause; or
 - (c) the Supplier fails to perform any other obligation under this agreement within 30 days of written notice from the Distributor to the Supplier describing the default and notifying the Supplier that this agreement will be terminated without further notice if the default is not remedied within that time;
 - (d) where required or authorised by *gas law*; or
 - (e) the *Access Arrangement* ceases to apply.
- 14.2 Either party may terminate this agreement immediately on notice where it or the other party ceases to hold any relevant licence, approval, authorisation or consent required to enable it to comply with its obligations under this agreement.
- 14.3 Either party may terminate this agreement by giving the other 2 *business days* notice if:
- (a) the other party becomes *insolvent*; or
 - (b) the other party has repeatedly breached any of its obligations under this agreement which has a material and adverse effect on the interests of the terminating party.

Suspension

- 14.4 The Distributor may suspend this agreement:
- (a) for any period while the Distributor's or the Supplier's *utility licence* is suspended; or
 - (b) if another regulatory requirement intervenes; or
 - (c) where required or authorised by *gas law*; or
 - (d) if the *Business Rules* cease to be in force.
- 14.5 A suspension under clause 14.4 does not affect the Supplier's obligation to pay for any *services* provided under this agreement.

Indemnity

- 14.6 The Supplier indemnifies the Distributor against any loss, liability or expense the Distributor incurs arising out of or in connection with a claim by a third party for termination or suspension under this clause 14.

15 Limitation of liability

- 15.1 The Distributor's liability is limited as described in the *Access Arrangement*⁴⁶.

16 Force majeure

- 16.1 If *force majeure* affects or prevents either party's performance of this agreement, the *force majeure* provisions of the *Access Arrangement* will apply.⁴⁷

17 Dispute Resolution

- 17.1 If either party gives the other notice of dispute under this agreement the following procedure will apply:
- (a) if the dispute comes within the dispute resolution provisions of applicable *gas law* - the dispute resolution procedure in that law will apply; or
 - (b) otherwise, clause 17.2 will apply.
- 17.2 Any dispute to which this clause 17.2 applies will be referred initially to the Supplier's General Manager ActewAGL Retail and the Distributor's General Manager Commercial, who will endeavour to resolve the dispute within 10 *business days* of the giving of the notice.
- 17.3 If the dispute is not resolved within that time, either party may:
- (a) in the case of a dispute about a technical matter - refer the dispute to expert determination under schedule 4; or
 - (b) otherwise - refer the dispute to mediation under schedule 5.

Obligations not suspended

- 17.4 No party is relieved from performance of its obligations under this agreement during the investigation and determination of a dispute under this clause 17.

Disputes generally

- 17.5 No party may have recourse to litigation without first having complied with the procedure in this clause 17 and schedules 4 and 5 (as applicable).
- 17.6 This clause 17 does not prevent a party seeking an urgent interlocutory injunction from a court of competent jurisdiction.

⁴⁶ *Access Arrangement*, principally clauses 3.65 to 3.71.

⁴⁷ *Access Arrangement*, clauses 3.50 to 3.53 (Force Majeure).

18 Notices

- 18.1 A notice, approval, consent or other communication issued under or in connection with this agreement must be in writing and sent to the address of the relevant party indicated in schedule 1 or any other address notified in writing by the relevant party.
- 18.2 A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.
- 18.3 A communication is taken to be received:
- (a) in the case of a posted letter, 2 *business days* after the date of posting;
 - (b) in the case of a facsimile, on creation of an entry in the transmission log of the machine from which the facsimile was sent indicating the facsimile was sent to the facsimile number of the addressee; or
 - (c) in the case of an email, when it is delivered to a system from which the addressee can retrieve it and which is capable of generating a delivery confirmation report.
- 18.4 If a communication is received after 4pm, it will be taken to have been received on the next *business day*.

19 Warranties

Supplier's warranties

- 19.1 The Supplier represents and warrants that:
- (a) it holds and will continue to hold a *utility licence* for the duration of this agreement;
 - (b) it has a valid and binding *customer supply contract* with each customer; and
 - (c) in entering into this agreement, it has not relied on any representations or warranties about its subject matter except as provided in this agreement.

Date warranties are given

- 19.2 Each representation and warranty under clause 19.1 is given in respect of each customer as at the date on which a *delivery point* for that customer is added to the *non-tariff list* under clause 4.6.

20 Miscellaneous

Assignment and transfer of contracted capacity

- 20.1 Subject to clause 20.2, neither party may assign any of its rights under this agreement without the prior written consent of the other. Consent may not be unreasonably withheld or delayed where the proposed assignee holds the relevant licence and has the financial and technical

capacity to perform its obligations under this agreement. The Distributor may impose reasonable conditions on its consent.

20.2 The Supplier may make a *bare transfer* in accordance with the procedure in the *Access Arrangement*⁴⁸.

Waiver

20.3 Any waiver of a breach of a provision of this agreement must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.

Amendment

20.4 Unless otherwise provided under this agreement, any variation to this agreement must be in writing and signed by the parties.

Indemnities

20.5 It is not necessary for a party to incur expense or make a payment before enforcing a right of indemnity under this agreement.

Survival

20.6 Clauses 13 and 15 survive expiry or termination of this agreement, in addition to any clauses that expressly or by their nature survive expiry or termination.

Entire agreement

20.7 This agreement constitutes the entire agreement between the parties about its subject matter.

Inconsistency

20.8 The parties will comply with the obligations imposed on them by applicable *gas law*, except where those obligations are inconsistent with this agreement, in which case the provisions of this agreement will prevail to the extent permitted by law.

Governing law

20.9 This agreement is governed by the laws of the Australian Capital Territory.

EXECUTED as an agreement

⁴⁸ *Access Arrangement*, clauses 8.3 and 8.4.

Execution page

SIGNED by **JOHN ANGUS**)
MACKAY as authorised)
representative for **ACTEWAGL**)
DISTRIBUTION in the presence of:)

.....)
Signature of witness)

.....)
Name of witness (block letters))

.....)
By executing this agreement the)
signatory warrants that the signatory)
is duly authorised to execute this)
agreement on behalf of **ACTEWAGL**)
DISTRIBUTION)

SIGNED by **IVAN SLAVICH** as)
authorised representative for)
ACTEWAGL RETAIL in the)
presence of::)

.....)
Signature of witness)

.....)
Name of witness (block letters))

.....)
By executing this agreement the)
signatory warrants that the signatory)
is duly authorised to execute this)
agreement on behalf of **ACTEWAGL**)
RETAIL)

Schedule 1 **Party details**

Item 1 *Commencement date:*
Expiry date:

Item 2*DISTRIBUTOR*

Attention: Ms Fiona Osman
Address: 18 Rodborough Road, Frenchs Forest NSW 2086

Postal Address: PO Box 6300, Frenchs Forest Delivery Centre NSW
1640

Telephone: (02) 8977 6540
Facsimile: (02) 8977 6819

SUPPLIER

Attention: Ayesha Razzaq, Manager Wholesale
Address: ActewAGL House, 221 London Circuit, Canberra ACT
2601

Postal Address: GPO Box 366, Canberra ACT 2601

Facsimile: (02) 6248 3825

Schedule 2**Special conditions**

Nil

Schedule 3 Interpretation

Definitions

1.1 In this agreement:

Access Arrangement means the access arrangement for the *network* approved under the *Third Party Access Code* in force from time to time.

accredited means accredited under the accreditation system established on *meter data services* no longer being offered as a *reference service*.

authorised overrun means an overrun of gas which is authorised by the Distributor following a request from the Supplier in accordance with the *Access Arrangement*⁴⁹.

bare transfer has the meaning given in the *Access Arrangement*.

basic metering equipment has the meaning given in the *Access Arrangement*.

business day means any day which is not a Saturday, Sunday or a public holiday in New South Wales or the Australian Capital Territory.

Business Rules has the meaning given in the *Access Arrangement*.

capacity reservation service has the meaning given in the *Access Arrangement*.

commencement date is the commencement date shown in item 1 of schedule 1.

confidential information means:

- (a) the terms of this agreement;
- (b) all operations and dealings under this agreement; and
- (c) all information:
 - (i) disclosed by one party to the other under this agreement (including metering and metering data); or
 - (ii) if disclosed prior to the date of this agreement, in anticipation of this agreement coming into effect,

and which by its nature is confidential to the party disclosing the information, but excluding information which:

- (d) is or becomes part of the public domain other than as a result of a breach of this agreement; or

⁴⁹ *Access Arrangement*, clauses 1.17 to 1.20 of Attachment 3A, clause 1.17 of Attachment 3B, and clause 1.16 of Attachment 3C.

- (e) is able to be lawfully obtained from another source; or
- (f) is already known to the other party at the date of disclosure and was not acquired directly or indirectly from the disclosing party.

Consumer Protection Code means the Australian Capital Territory Consumer Protection Code approved or determined by the *ICRC* from time to time.

contract year has the meaning given in the *Access Arrangement*.

customer supply contract means the gas supply contract between the Supplier and a customer.

delivery point has the meaning given in the *Access Arrangement*.⁵⁰

effective date of transfer means the date on which the *registry operator* notifies the Distributor that a change of user transaction will be permitted in accordance with the *Business Rules*.

end date for a *delivery point* is the end date specified in the *non-tariff list*.

expiry date is the expiry date shown in item 1 of schedule 1.

force majeure has the meaning given in the *Access Arrangement*.

gas law means the *Utilities Act 2000 (ACT)*, the *Gas Safety Act 2000 (ACT)*, the *Gas Pipelines Access Act 1998 (ACT)*, the *Access Arrangement*, the *Minimum Network Standards*, the *Gas Supply Act 1996 (NSW)* any other applicable market, industry, or technical code, any licence issued under the *Utilities Act 2000 (ACT)* or the *Gas Supply Act 1996 (NSW)*, and any other statute, regulation, ordinance, code or other law, whether territory, state or federal, including any lawfully binding determination, decree, edict, declaration, ruling, order or other similar pronouncement validly made by any *government or authority*.

Gas Network Boundary Code means the Australian Capital Territory Gas Network Boundary Code approved or determined by the *ICRC* from time to time.

government or authority means the Commonwealth of Australia, any Australian State or Territory or local government, and any minister, department, statutory authority, corporation or agency (including the *ICRC* and IPART (the Independent Pricing and Regulatory Tribunal in NSW)) having jurisdiction and authority over a party.

Greater Queanbeyan has the meaning given in the *Access Arrangement*.

GST has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999*.

⁵⁰ The definition in the *Access Arrangement* ensures that *delivery points* are only available on the *network*.

ICRC means the Independent Competition and Regulatory Commission (ACT).

interest rate means interest at 2.5% above the Commonwealth Bank of Australia's Corporate Overdraft Reference Rate.

insolvent means being an insolvent under administration or insolvent (each as defined in the Corporations Act) or having a controller (as defined in the Corporations Act) appointed, or being in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out reconstruction while solvent) or being otherwise unable to pay debts when they fall due or having something with the same or a similar effect happen under the laws of any jurisdiction.

load shedding details for a *delivery point* means:

- (a) the Supplier's name, address telephone number and fax number;
- (b) 3 business hours emergency site contacts and 3 after hours emergency site contacts (with telephone numbers for all contacts);
- (c) the name of a person to be contacted on behalf of the Supplier and their contact numbers, 24 hours per day, 7 days per week;
- (d) the *delivery point* load categorised into load shedding priority (in accordance with Attachment 4 of the *Access Arrangement* and as agreed with the Distributor) and the reasons for that categorisation.
- (e) the length of time necessary to reduce the *delivery point* load; and
- (f) any changes to the information above.

managed capacity service has the meaning given in the *Access Arrangement*.

MDQ or **maximum daily quantity** has the meaning given in the *Access Arrangement*.

measuring equipment has the meaning given in the *Access Arrangement*.

meter data services are the *services* described in Attachment 3F of the *Access Arrangement*.

MHQ or **maximum hourly quantity** has the meaning given in the *Access Arrangement*.

Minimum Network Standards has the meaning given in the *Access Arrangement*.

network means the Distributor's gas distribution network in the ACT and *Greater Queanbeyan*, as defined in the *Access Arrangement*.

non-tariff list means the list of *delivery points* for the Supplier's customers contained in Schedule 6 as amended from time to time.⁵¹

non-tariff services are the *services* described in clause 2.3 of the *Access Arrangement*.

NSW customer means a customer whose *delivery point* is situated in NSW.

receipt point has the meaning given in the *Access Arrangement*

reference service has the meaning given in the *Access Arrangement*.

registry operator has the meaning given in the *Business Rules*, and is the operator of the gas retail market (currently Gas Market Company Limited).

safety and operating plan means:

- (a) in relation to the Distributor's NSW gas *network* operations, the safety and operating plan lodged in accordance with the *Gas Supply (Network Safety Management) Regulation 2002 (NSW)*; and
- (b) in relation to the Distributor's ACT gas *network* operations, the safety and operating plan lodged in accordance with the *Gas Safety and Operating Plan Code 2000* made under the *Utilities Act 2000 (ACT)*,

as amended from time to time.

security means an unconditional bank guarantee or a parent guarantee, cash collateral letter of credit or other similar form of credit support.

services mean the *meter data services, capacity reservation services, managed capacity services and throughput services* provided under this agreement.

standard customer connection contract means the Standard Customer Contract for Gas Connection and Supply published by the Distributor from time to time applying to the relevant premises.

throughput service has the meaning given in the *Access Arrangement*.

Third Party Access Code means the National Third Party Access Code for Natural Gas Pipeline Systems.

TJ stands for one terajoule.

unauthorised overrun has the meaning given in the *Access Arrangement*.

⁵¹ *Access Arrangement*, clause 2.3.

utility licence means a licence or authorisation under applicable *gas law* to:

- (a) for the Distributor - distribute gas through the *network*; and
- (b) for the Supplier - supply gas to premises covered by this agreement.

Interpretation

1.2 Unless the contrary intention appears, a reference in this agreement to:

- (a) **(variations or replacement)** a document (including this agreement) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(reference to clauses of Access Arrangement etc)** a reference to a provision of the *Access Arrangement*, *Business Rules* or any other document is a reference to the equivalent provision in force from time to time;
- (f) **(singular includes plural)** the singular includes the plural and vice versa;
- (g) **(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any Government Agency;
- (h) **(executors, administrators, successors)** a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (i) **(two or more persons)** an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (j) **(jointly and severally)** an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;

- (k) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (l) **(calculation of time)** if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (m) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (n) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (o) **(next day)** if an act under this agreement to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day;
- (p) **(next business day)** if an event under this agreement will occur on a stipulated day which is not a *business day* then the stipulated day will be taken to be the next *business day*;
- (q) **(time of day)** time is a reference to Canberra time;
- (r) **(reference to anything)** anything (including any amount) is a reference to the whole and each part of it.

Headings and footnotes

- 1.3 Headings (including those in brackets at the beginning of paragraphs) and footnotes are for convenience only and do not affect the interpretation of this agreement.

References to the Access Arrangement

- 1.4 Clause 5.1 (which refers to Parts 2 and 3, and Attachments 3A, 3B, 3C and 3D of the *Access Arrangement*) is not limited by references to particular provisions or requirements of the *Access Arrangement* elsewhere in this agreement.

Schedule 4**Dispute resolution procedure - expert resolution
(technical disputes)**

First stage dispute resolution

- 1.1 This schedule applies to a dispute under clause 17.3(a) of this agreement.

Reference to and appointment of an expert

- 1.2 Either party may require that the dispute be determined by an independent expert appointed in accordance with clause 1.3 of this schedule.
- 1.3 The party wishing to have the dispute determined by an expert will give written notice to that effect to the other party specifying the nature of the dispute. The parties will meet and use all reasonable endeavours to agree upon the identity of the expert, but if they are unable to agree within 5 *business days* of the date of receipt of the notice, then either party may refer the matter to the President for the time being of the Institution of Engineers, Australia (or, if that body no longer exists, then to the President for the time being of such successor body or association as is then performing the function formerly carried out by the Institution of Engineers, Australia), to nominate a suitably qualified person to act as the expert to determine the dispute.

Role of expert

- 1.4 The expert will:
- (a) act as an expert and not as an arbitrator;
 - (b) have no interest or duty which conflicts, or which may conflict, with his or her function as the expert;
 - (c) not be a former or current employee or representative of either party or of a related body corporate of either of them; and
 - (d) disclose fully to the parties, before being appointed, any interest or duty which may conflict with his or her position.

Representation and evidence

- 1.5 Each party:
- (a) may be legally represented at any hearing before the expert;
 - (b) will be entitled to produce to the expert any materials or evidence which that party believes is relevant to the dispute; and

-
- (c) will make available to the expert all materials requested by him or her and all other materials which are relevant to his or her determination.

Rules of evidence

- 1.6 The expert will not be bound by the rules of evidence.

Power of expert

- 1.7 The expert will have the power to inform himself or herself independently as to the facts to which the dispute relates and to take such measures as he or she thinks fit to expedite the determination of the dispute.

Determination

- 1.8 The expert will make a determination on the dispute and:
- (a) will determine what, if any, adjustments may be necessary between the parties; or
 - (b) if relevant, determine the amendments required to the terms of this agreement.
- 1.9 The determination of the expert will be, in the absence of bias or manifest error, final and binding upon the parties.

Costs

- 1.10 The costs in relation to a determination by the expert will be dealt with as follows:
- (a) the remuneration of the expert will be agreed by the parties;
 - (b) unless the parties otherwise agree, the expert will determine which party will bear the costs of the determination and in what proportion, having regard to the degree to which he or she considers that party was at fault or unreasonable in failing to agree to the matter under reference, and that party will bear those costs accordingly; and
 - (c) the parties will bear their own costs incurred in the preparation and presentation of any submissions or evidence to the expert.

Schedule 5**Dispute resolution procedure - mediation (other disputes)**

- 1.1 This schedule applies to a dispute under clause 17.3(b) of this agreement.
- 1.2 Either party may require that the dispute be determined by mediation in accordance with this schedule.
- 1.3 The party wishing to have the dispute determined by mediation will give written notice to that effect to the other party specifying the nature of the dispute. If notice is given, the dispute is by this clause submitted to mediation. The mediation will be conducted in Canberra. The Institute of Arbitrators Australia Rules for the Mediation of Commercial Disputes (in force as at the date of the notice) apply to the mediation, except to the extent they conflict with this Schedule.
- 1.4 If the parties have not agreed on the mediator and the mediator's remuneration within 7 days after the day the notice is given, the mediator will be appointed by the President of the Australian Capital Territory Law Society or the President's nominee, at the request of either party, and that person will also determine the amount or rate of the mediator's remuneration.
- 1.5 The parties will share the costs of the mediator. Each party will pay its own costs of the mediation.
- 1.6 Either party may terminate the mediation at any time.

Schedule 6 Non-tariff list

Delivery Point Identifier	Customer Name	Delivery Point (Address)	Receipt Point	Transportation Service	Commencement date and end date ⁵² for service	MDQ	MHQ	Load Shedding Priority	Meter Data Service (Y/N) ⁵³
XRW12345	Retravision Pty Limited	4 Smith St, Fyshwick	Hoskinstown	Throughout Service	15 March 2003 to 15 March 2004	XXGJ/day	YYGJ/hour	5	Y

⁵² The end date for a service must be on or before the expiry date of this agreement.

⁵³ If the meter data service ceases to be a reference service, it may not be supplied for a delivery point (see clause 8.3).

Dated

2005

**Gas Transport Services
Agreement for large
customers**

**ACTEW Distribution Limited and
AGL Gas Company (ACT) Pty
Limited, trading as ActewAGL
Distribution
("Distributor")**

AND

**ACTEW Retail Limited and AGL
ACT Retail Investments Pty Limited
trading as ActewAGL Retail
("Supplier")**

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DX 5610 Canberra
Ref: 8065941_2

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