



ICRC

Independent Competition and Regulatory Commission

Decision

**Assessment of Associate Contracts between
ActewAGL Distribution and ActewAGL Retail**

April 2004

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 local regulator in respect of gas distribution pipelines in the Australian Capital Territory.

The commission approved the current Access Arrangements for the ActewAGL Distribution System in ACT, Queanbeyan and Yarrowlunla in January 2001.

ActewAGL Distribution Limited has submitted to the commission two proposed contracts between itself and ActewAGL Retail:

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

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 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.

The commission released an issues paper inviting comments from interested parties in relation to the proposed Associate Contracts. One submission was received, from ActewAGL Distribution. The commission did not conduct public hearings in relation to this matter.

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

2 Proposed Associate Contracts

ActewAGL Distribution is required to provide certain services to gas suppliers in the ACT, Queanbeyan and Yarrowlumla Shire under the current Access Arrangement for the ActewAGL Distribution System in ACT, Queanbeyan and Yarrowlumla ("Access Arrangement").

Two proposed agreements 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.

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 part or all of the contract, subject to considerations of confidentiality and commercial sensitivity.

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.

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

3.1 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**.

The proposed contracts are for the provision of services as required under the Access Arrangement agreed by the commission in 2000.

The commission is satisfied that the proposed contracts meet the code definition of associate contracts.

3.2 Approval of the relevant regulator required for associate contracts

Under section 7.1 of the Code a service provider must not enter into a proposed associate contract without first obtaining the approval of the relevant regulator. The 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.

3.3 Public consultation

The Code (sections 7.2 and 7.3) 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 under section 7.1.

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, in that the terms of the two contracts are substantially the same, it was convenient that they be considered together. This approach, and the invitation for comment, were consistent with the commission's obligations under the Code, and with the commission's policy of openness and transparency in its decision-making functions, and its 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 March 2004 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 identification of the relevant market and the assessment of the potential impact of the contracts on competition in the markets identified.

The commission received one submission in response to the issues paper, from ActewAGL Distribution. The comments made in that submission were considered by the commission in making this decision.

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

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".

The Tribunal defined the steps involved in defining a market in *Re Tooth & Co Ltd; Re Tooheys Ltd* [1979] ATPR 40-113:

- identification of the areas of close competition relevant to the goods and services under consideration;
- comprehension of the maximum range of business activities and the widest geographical area within which, given sufficient price incentive, there will be cross-elasticity of demand and supply;
- consideration of the long-term substitution possibilities as opposed to the short term possibilities;
- identification of where there is such a break in substitution possibilities that firms within the defined area would collectively have substantial market power;
- consideration of whether the field of substitution contains submarkets; and
- consideration of the multi-dimensional nature of a market.

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

- the product market
- the functional market
- the geographic market
- the temporal market

Product market

The product market refers to the types of goods and services in a market, and can include a service market.

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.

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

- tariff services
- meter data services.

All services to be provided by ActewAGL Distribution under the proposed contracts are gas distribution services, provided under the Utility Services Licence for gas distribution and connection services issued to it under the *Utilities Act 2000*. The commission is satisfied that the services above are agreed as a reasonable definition of the product market and that there is no dissent from that view from ActewAGL or from any other interested party.

Functional market

The functional market refers to the different stages within a production process. Again, the proposed agreements relate to distribution as distinct from transmission.

The gas retail sales market in the ACT is also potentially relevant because there are potential advantages in an agreement between the sole licensed distributor in the ACT and a retailer within the same corporate group.

Geographic market

The commission considers the relevant geographic market to be the geographic area of the ActewAGL Distribution network as covered by the current Access Arrangement, which extends to the ACT, and the former shires of Queanbeyan and Yarrowlumla.

Since the approval of the current Access Arrangement, there have been substantial changes to the boundaries of local government areas subject to the Arrangement. The 10 shires previously in the broader ACT area have been amalgamated into 7 new local government areas. In particular:

- the former Yarrowlumla Shire has now been absorbed into the new Yass Valley and Greater Queanbeyan Local Government Areas
- the former Queanbeyan Shire is now within the new Greater Queanbeyan Local Government Area.

The geographic market potentially affected by the proposed contracts is therefore the ACT, Greater Queanbeyan and those parts of the Yass Valley LGA that were formally part of Yarrowlumla Shire.

The commission is also aware that ActewAGL Retail is able to supply gas at retail in a wider geographic area, but considers that, for the purposes of assessment of these contracts, the market is appropriately defined with reference to the Access Arrangement.

Temporal market

The temporal dimension of a market relates to changes to market conditions over time. There is relatively recent authority to the effect that ten to fifteen years is an appropriate period for consideration. In *Duke Eastern Gas Pipeline Pty Ltd (2001)* ATPR 41-821, the Australian Competition Tribunal commented that 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".

The proposed contracts will commence on the date approved by the commission. While the commission considers, consistently with the Tribunal's decision and with its adoption by other jurisdictional regulators, that a period of ten to fifteen years is appropriate for consideration of associate contracts generally, it is noted that the contracts that are the subject of this decision will expire within six months of the commencement of the revisions to the current Access Arrangement, which will take effect from 1 January 2005. That six-month period will allow time to renegotiate the contracts to take into account the changes made to the Access Arrangement. The renegotiated contracts will be subject to the same approval process under the Code as those currently under consideration.

Conclusions

The commission considers the markets relevant to its assessment of the impact that the proposed associate contracts would, or could, have on competition are:

- the market for gas distribution services in the ACT, and the Greater Queanbeyan and Yass Valley Local Government Areas as covered by the current Access Arrangement;
- the retail gas market in the ACT, and the Greater Queanbeyan and Yass Valley Local Government Areas as covered by the current Access Arrangement.

In its assessment the commission has taken into account potential changes in market conditions over the period in which the current Access Arrangement remains in place, bearing in mind the six-month grace period for renegotiation of these contracts following the commencement of the revised Access Arrangement.

4.2 Potential impact on competition

Under section 7.1 of the Code 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. 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 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.

Again, this approach is consistent with that adopted by other jurisdictional regulators.

ActewAGL Distribution 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 Retail is one of four retailers currently licensed in the ACT.

In its submission in response to the issues paper, ActewAGL Distribution made the following points in relation to the potential impact of the proposed contracts on competition in the affected markets:

- 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 which 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 information available to it and considered the terms of the contracts themselves, agrees with these submissions.

Conclusions

Having considered the information provided and its own analysis of the documents and the issues, 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.

Appendix A: Proposed Gas Transport Services Agreement for Large Customers

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, Queanbeyan and Yarrowlumla Shire 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 ICRC approval

This agreement is an Associate Contract under the *Third Party Access Code* and has been approved by the *ICRC* under clause 7.1 of that Code.

5 Supplier's customers covered by this agreement

Customers covered

- 5.1 The Distributor will supply to each *delivery point* in the *non-tariff list*, subject to this clause 5:
- (a) the gas distribution *services* identified in accordance with clause 5.2; and
 - (b) the *meter data services* in accordance with clause 9.
- 5.2 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.
- 5.3 The Supplier will also provide to the Distributor:

¹ *Access Arrangement*, Section 1.4, dot point 4 (Multiple Delivery Point Service).

² *Access Arrangement*, Section 1.1 (Capacity Reservation Service), Section 1.2 (Managed Capacity Service), Section 1.3 (Throughput Service) and Section 1.4 (Multiple Delivery Point Service) under the heading "Term" in each of those sections.

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- (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

5.4 The availability of the *services* is described in the *Access Arrangement*.⁵

Adding customers to the non-tariff list

5.5 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

5.6 Subject to clause 5.8, 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.

5.7 Additional requirements if a new connection is required at the *delivery point* are set out in the *Minimum Network Standards*.⁷

5.8 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 8.5;
- (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

³ Rules 5.1 and 6.2.

⁴ That information is maintained through ELMS, referred to in Schedule 2F of the *Access Arrangement*.

⁵ *Access Arrangement*, Section 1 (Services Policy) under the heading "Availability of Reference Services", Section 1.1 (Capacity Reservation Service), Section 1.2 (Managed Capacity Service), Section 1.3 (Throughput Service) and Section 1.4 (Multiple Delivery Point Service) under heading "General" in each of those sections, and Section 1.6 (Meter Data Service) para 3 under heading "General", and Section 7 (Extensions/Expansions Policy).

⁶ *Access Arrangement* Section 1.9 (Access and Requests for Service). This applies to the transfer of a customer to the Supplier, new connections and supply of new *services* to a site where there is an existing connection (eg where a customer moves into premises with an existing connection). The queuing policy in Section 6 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*, Section 1, paragraph (b) under the heading "Availability of Reference Services".

- (e) if there are multiple suppliers for the *delivery point* and allocation methodologies and notification processes as contemplated by paragraph 11, Schedule 2A of the *Access Arrangement* are not in place.

Changes to customer details

- 5.9 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.
- 5.10 Clause 5.9 does not apply to a proposed increase to the *MHQ* or *MDQ*. Instead, the request for service procedure in clause 5.5 applies.

Transfer out of customers

- 5.11 The Distributor will notify the Supplier if:
- (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*.
- 5.12 On notification from the Distributor under clause 5.11, the Supplier may request deletion of the *delivery point* from the *non-tariff list* and the parties will delete that point.
- 5.13 If a *delivery point* is deleted under clause 5.12, 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

- 5.14 Other than as described in clauses 5.11 to 5.13, 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*.

⁹ *Access Arrangement*, Section 1.9 (Access and Requests for Services), Section 5.3 (Change of Receipt Point or Delivery Point) and Section 6 (Queuing Policy). This would include allowing multiple users for a *delivery point* as contemplated by paragraph 11, Schedule 2A of the *Access Arrangement*.

¹⁰ If the amount under 5.13(b) is greater than the amount under 5.13(a), the rebate will be equal to the amount in 5.13(a).

Disconnection of customers

- 5.15 The parties will comply with their respective obligations under the *Minimum Network Standards* and the *Consumer Protection Code* with respect to disconnection and reconnection of customers.
- 5.16 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*.
- 5.17 The Supplier will include in its *customer supply contract* a right for the Distributor to disconnect customers in the circumstances referred to in clause 5.16. The Supplier holds that right on trust for the Distributor absolutely.

When a delivery point becomes a tariff delivery point

- 5.18 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 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

- 5.19 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*.

6 Services

Terms applying

- 6.1 Except to the extent of any inconsistency with this agreement, the terms applying to the *services* include:¹¹
- (a) for *non-tariff services* - Sections 1.1, 1.2 or 1.3 (as applicable to the gas transport *service* identified for a *delivery point*), section 1.4 and Schedules 2A, 2B, 2E and 2F of the *Access Arrangement*; and
 - (b) for *meter data services* - Section 1.6 and Schedules 2A, 2D and 2F of the *Access Arrangement*.

Special conditions

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

Compliance with law

- 6.4 The parties will comply with applicable *gas law* in performing their respective obligations under this agreement.

¹¹ See also *Access Arrangement*, paragraphs 1-4 Section 2 (Terms and Conditions of Service).

- 6.5 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

- 6.6 The Supplier will ensure that gas delivered to a *receipt point* meets the *Specifications*.¹²
- 6.7 The Supplier indemnifies the Distributor against all loss, liability and expense arising out of or in connection with a breach of clause 6.6.
- 6.8 Subject to the Supplier complying with clause 6.6, the Distributor will ensure that gas delivered to a *delivery point* meets the *Specifications*, and other applicable *gas law*.¹³
- 6.9 The parties will comply with the provisions of the *Access Arrangement* regarding non-specification gas.¹⁴

Gas testing

- 6.10 The Supplier will test the gas, or cause the gas to be tested, in accordance with the Distributor's *safety and operating plan*¹⁵.
- 6.11 The Distributor will give the Supplier a copy of the *safety and operating plan* on request, and reasonable notice of changes to the Distributor's *safety and operating plan*.
- 6.12 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 whether the gas meets the *Specifications*.
- 6.13 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* does not meet the *Specifications*.

Changes to receipt point

- 6.14 Changes to the *receipt point* will be dealt with in accordance with Section 5 of the *Access Arrangement*,¹⁶ subject to the Supplier first following the request for service procedure in section 1.9 of the *Access Arrangement*.

¹² *Access Arrangement*, paragraph 31, Schedule 2A (incorporating Schedule 3). Although note the definition in this agreement of *Specifications*.

¹³ *Access Arrangement*, paragraph 31, Schedule 2A (incorporating Schedule 3).

¹⁴ *Access Arrangement*, paragraphs 32 and 33, Schedule 2A.

¹⁵ 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 6.4 of this agreement regarding compliance with *gas law*).

¹⁶ *Access Arrangement*, Sections 5.3-5.4 (Changes to Receipt Point or Delivery Point).

Changes to regulatory environment¹⁷

- 6.15 The Distributor may amend this agreement from time to time by notice to the Supplier to reflect changes to:
- (a) any applicable law;
 - (b) the *Access Arrangement*; and
 - (c) the *Business Rules* or *Minimum Network Standards*, 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.

- 6.16 The Distributor will give the Supplier as much notice as reasonably practicable of any changes required under clause 6.15.

7 Delivery of Gas

Determining quantity of gas delivered at delivery points

- 7.1 Subject to clauses 7.2 and 7.3, the quantity of gas delivered to a *delivery point* is:
- (a) if the *delivery point* is equipped with daily meter reading facilities but not on-site heating value measurement - the amount determined under the *Access Arrangement*;¹⁸ 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.
- 7.2 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.¹⁹
- 7.3 If the *measuring equipment* at a *delivery point* fails to operate, the quantity of gas delivered to that point will be determined under clause 8.7.

Ceasing delivery of gas to receipt points

- 7.4 The Supplier will immediately cease the delivery of gas to the *receipt point*, or cease the delivery of gas to any system of pipes through which gas is delivered to the *receipt point*, if directed to do so by the Distributor under paragraph 32 of Schedule 2A of the *Access Arrangement*.

¹⁷ *Access Arrangement*, Introduction to Schedule 2A and paras 5-8 Section 2 (Terms and Conditions of Service)

¹⁸ *Access Arrangement*, paragraph 10, Schedule 2A.

¹⁹ *Access Arrangement*, paragraph 11, Schedule 2A.

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- 7.5 The Supplier indemnifies the Distributor against all loss, liability and expense incurred by the Distributor arising out of or in connection with a breach by the Supplier of clause 7.4.

Gas source

- 7.6 The Supplier will notify the Distributor of:
- (a) all points where gas is introduced into the system of pipes through which gas is delivered by or on behalf of the Supplier to a *receipt point*. This notice will include the contractual, and all the possible physical, sources of gas; and
 - (b) any change to those points or sources, before the change takes effect²⁰.
- 7.7 On request, the Supplier will provide evidence to the satisfaction of the Distributor that facilities exist at the *receipt point* and any point referred to in clause 7.6(a), to adequately measure the quality of the gas²¹.

Variations in quality and pressure, interruptions

- 7.8 The Distributor does not guarantee that there will be no:
- (a) variations in the quality or pressure of gas supplied; or
 - (b) interruptions to the gas supply,
- within the limitations set by applicable *gas law*.

MHQ and MDQ

- 7.9 For each *delivery point*, the Supplier will specify a *MHQ* and *MDQ* in accordance with the *Access Arrangement*²².
- 7.10 The Supplier may increase the *MDQ* for the *capacity reservation service* for a *delivery point* in accordance with the *Access Arrangement*²³. The Supplier may make a corresponding increase to the *MHQ* with the consent of the Distributor.
- 7.11 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

²⁰ In those circumstances, the Supplier must comply with its obligations under clause 7.7 and under paragraph 33 of Schedule 2A of the *Access Arrangement* with respect to the gas from the new source.

²¹ Note also paragraph 33 of Schedule 2A of the *Access Arrangement* which requires the Supplier, on request by the Distributor to provide facilities to enable the Distributor to monitor the quality of gas at any point where gas is introduced into the system of pipes through which it is delivered into the *network*. It also requires the Supplier to demonstrate it has contractual arrangements in place to prevent gas which does not meet the *Specifications* from entering the *network*.

²² *Access Arrangement*, Section 1.1 (Capacity Reservation Service), Section 1.2 (Managed Capacity Service) and Section 1.3 (Throughput Service) under the heading "MDQ and MHQ" and Schedule 2B paragraph 1 under the heading "MDQ and MHQ".

²³ *Access Arrangement*, Section 1.1 (Capacity Reservation Service), under the headings "MDQ and MHQ" (third dot point), "Summer Tranche Capacity", "Short Term Capacity for Users Supplying Customers below 30TJ per annum at a Delivery Point", "Short Term Capacity for Users Supplying Customer above 30TJ per annum at a Delivery Point" and "Additional Capacity for Remaining Term of Service Agreement". Increases are also subject to Section 1.9 of the *Access Arrangement* and the Queuing Policy in Section 6.

(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

- 7.12 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 paragraph 11 of Schedule 2A of the *Access Arrangement*.
- 7.13 If an overrun occurs in the situation in clause 7.12, the overrun will be treated in accordance with paragraph 12 of Schedule 2B of the *Access Arrangement*.

Overruns

- 7.14 The Supplier may request an *authorised overrun* in accordance with the *Access Arrangement*.²⁴
- 7.15 The Supplier will be liable for any loss, liability or expense suffered or incurred by the Distributor as a result of the Supplier taking more than the *MHQ* in any hour, or the *MDQ* on any day, for any *delivery point*, unless it is as the result of an *authorised overrun*.²⁵

Title to gas

- 7.16 The Supplier warrants that it has title to the gas it delivers into the *network*. The Supplier agrees to provide evidence of its title to the Distributor, on request. The evidence must be reasonably satisfactory to the Distributor.

Risk

- 7.17 The control of gas²⁶:
- (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*.
- 7.18 The Distributor will replace any gas lost while in its control.
- 7.19 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*.

8 Metering

Supply of basic metering equipment

- 8.1 The Distributor will supply *basic metering equipment* and *daily metering equipment* in accordance with the *Access Arrangement*²⁷ and other applicable *gas law*.

²⁴ *Access Arrangement*, Section 1.1 (Capacity Reservation Service), Section 1.2 (Managed Capacity Service) and Section 1.3 (Throughput Service) under the heading "Overruns" and Schedule 2B under the heading "Overruns".

²⁵ *Access Arrangement*, Section 1.1 (Capacity Reservation Service), Section 1.2 (Managed Capacity Service) and Section 1.3 (Throughput Service) under the heading "Overruns" and Schedule 2B under the heading "Overruns".

²⁶ *Access Arrangement*, paragraph 5, Schedule 2A ("Responsibility for Gas").

Changes to basic metering equipment

- 8.2 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.
- 8.3 The Distributor may downgrade *basic metering equipment* at any time. Subject to clause 8.4, the Distributor will pay the costs of the downgrade.
- 8.4 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

- 8.5 The Distributor may at all reasonable times have access to a *delivery point* and *measuring equipment*:
- (a) as permitted under the *Access Arrangement*²⁸ or other applicable *gas law*; and
 - (b) for any purpose related to this agreement.

Security and accuracy of measuring equipment

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

Estimating consumption

- 8.7 If the *measuring equipment* at a *delivery point* fails to operate for any period, or the Distributor is not able to access the *measuring equipment*, the quantity of gas delivered for that period will be determined by agreement, or failing agreement, by the Distributor:
- (a) using one of the other methods specified in the *Access Arrangement*²⁹; or
 - (b) having regard to gas consumption patterns for that *delivery point*.

Theft of gas

- 8.8 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*³⁰.

9 Meter Data Services

Meter data services

- 9.1 For so long as the Distributor offers *meter data services* as a *reference service*, the Distributor will provide and the Supplier will accept *meter*

²⁷ *Access Arrangement*, Section 1.1 (Capacity Reservation Service), Section 1.2 (Managed Capacity Service) and Section 1.3 (Throughput Service) under the heading "Metering", Schedule 2A and Schedule 2D paragraph 2.

²⁸ *Access Arrangement*, paragraph 7, Schedule 2A.

²⁹ *Access Arrangement* paragraphs 8 and 9, Schedule 2A.

³⁰ Section 11 ("Theft of Gas").

data services for each *delivery point* for which a *non-tariff service* has been requested by the Supplier³¹.

- 9.2 The Distributor will cease offering *meter data services* as a *reference service* in accordance with the *Access Arrangement*³².

Where meter data service is not offered as a reference service

- 9.3 Where *meter data services* are no longer offered by the Distributor as a *reference service*³³:

- (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 9.3(a)(iii); or
 - (iii) subject to clause 9.4, 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.

- 9.4 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 9.3(b)(iii).

Where services provided by third party supplier

- 9.5 The Supplier agrees that the terms of any agreement entered into under clause 9.3(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.
- 9.6 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.
- 9.7 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:

³¹ *Access Arrangement*, Section 1.1 (Capacity Reservation Service), Section 1.2 (Managed Capacity Service) and Section 1.3 (Throughput Service) second dot point under heading "Metering".

³² *Access Arrangement*, Section 1.6 (Meter Data Service), third dot point under heading "General".

³³ *Access Arrangement*, Section 1.6 (Meter Data Service) generally.

- (a) interfere with the operation of *measuring equipment* owned by the Distributor; or
- (b) corrupt any meter data at the *delivery point*.

10 Charges

- 10.1 The Distributor's charges for the *services*, and other related charges³⁴, are described in Section 3 of the *Access Arrangement*.³⁵
- 10.2 The Distributor may vary and adjust those charges from time to time, in accordance with the *Access Arrangement*.³⁶
- 10.3 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 5.2.

Network extensions and expansions

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

Invoices

- 10.5 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 8.7; or
 - (c) a capital contribution charge is payable for *network* extension or new connection; or
 - (d) any other applicable charge is payable.
- 10.6 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

- 10.7 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*.

³⁴ Section 3 to the *Access Arrangement* contains some charges which are not referable to specific services, such as a charge for transferring a Delivery Point from one supplier to another.

³⁵ See also *Access Arrangement* Section 1.1 (Capacity Reservation Service), Section 1.2 (Managed Capacity Service) and Section 1.3 (Throughput Service) under the applicable charges heading of each of those sections, Section 1.6 (Meter Data Service) under the applicable charges heading and Schedule 2E (Gas Balancing). NB: There are no charges for UAG in the *Access Arrangement* dated 17 January 2001.

³⁶ *Access Arrangement*, Section 3 (Reference Tariffs).

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- 10.8 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

- 10.9 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

- 10.10 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 10.11, pay the balance of the invoice.
- 10.11 The Supplier may not withhold payment of an amount under clause 10.10 if the total amount in dispute would then exceed the amount of the invoice for the previous payment period.

Interest³⁷

- 10.12 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 10.5.
- 10.13 Interest accrues under clause 10.12 on an amount that is disputed by the Supplier but is later agreed or determined to be payable, from the original due date.
- 10.14 To the extent that an amount is disputed and the Supplier is unable to withhold that amount because of clause 10.11, if that amount is later agreed or determined not to be payable by the Supplier, the Distributor must pay or credit the Supplier with the disputed amount plus interest at the *interest rate* on that amount from the original due date for payment of that amount, to the date it is paid or credited by the Distributor.

Errors in accounts

- 10.15 If the Distributor has overcharged the Supplier, the Distributor will credit the overpayment to an account nominated by the Supplier.
- 10.16 If the Distributor has undercharged the Supplier, the Distributor may adjust a subsequent invoice to recover the amount undercharged.

Set-off

- 10.17 The Supplier will make payments under this clause 10 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.

³⁷ *Access Arrangement*, paragraph 19 Schedule 2A.

11 GST

- 11.1 Unless otherwise indicated, all consideration for any supply under this agreement is exclusive of any GST imposed on the supply.
- 11.2 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.
- 11.3 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.

12 Security

Distributor may require Supplier to provide security³⁸

- 12.1 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.
- 12.2 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) an invoice within 10 *business days* of the due date;
 - (ii) 2 consecutive invoices by the due date; or
 - (iii) 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 10.10 and 10.11 is not a failure to pay; or
 - (c) the Distributor becomes entitled to terminate or suspend this agreement under clause 15 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.
- 12.3 The Supplier will provide the required *security* within 10 *business days* of the Distributor’s request.

³⁸ *Access Arrangement*, paragraph 1 Schedule 2A.

Amount of security

- 12.4 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.
- 12.5 If the amount of any *security* provided by the Supplier is in excess of the Distributor's estimation under clause 12.4, the Supplier may at its cost reduce the amount of that *security* so there is no excess.

Use of security

- 12.6 The Distributor may draw on the *security* for any amount owed by the Supplier to the Distributor under this agreement.
- 12.7 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.
- 12.8 The exercise by the Distributor of any right under this clause 12 does not prejudice any other right of recovery which the Distributor may have in respect of any amount owing to it by the Supplier.

13 Interruptions to gas supply**Interruptions to services**

- 13.1 The Distributor may interrupt or reduce the *services* in accordance with the *Access Arrangement*³⁹ and other applicable *gas law*⁴⁰.

Planned interruptions

- 13.2 The Distributor will give the Supplier and affected *NSW customers*⁴¹ at least 5 *business days* notice⁴² 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.
- 13.3 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.⁴³

Unplanned interruptions

- 13.4 In the event of an unplanned interruption or reduction in the *services*, the Distributor will, as soon as reasonably practicable, notify the Supplier of the circumstances giving rise to the interruption or reduction, and the likely duration of the interruption or reduction.⁴⁴

³⁹ *Access Arrangement*, Schedule 2F.

⁴⁰ See for example clause 19 Consumer Protection Code.

⁴¹ Clause 12.1 Minimum Network Standards.

⁴² Note, clause 19.2 Consumer Protection Code requires Supplier to give its customers at least 2 days notice of planned interruptions.

⁴³ Clause 19.2(2) Consumer Protection Code.

⁴⁴ Note, the Supplier will require such information to satisfy its obligation under clause 19.3 Consumer Protection Code.

Before notifying the Supplier, the Distributor may notify the customer at the affected *delivery point*⁴⁵ of the interruption or reduction.

Load shedding

- 13.5 If the Distributor initiates a load shedding procedure in accordance with the *Access Arrangement*⁴⁶, 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.
- 13.6 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.⁴⁷
- 13.7 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 13.5, the Distributor may take any action necessary to do so.

Suspension of service

- 13.8 The Distributor may suspend the delivery of gas to a *delivery point* if the Supplier:
- (a) does not deliver sufficient gas to the *receipt point* to meet the Supplier's withdrawal requirements; or
 - (b) does not cease to reduce the delivery of gas to a *receipt point* if notified to do so under clause 13.5; or
 - (c) is not a member of an *approved scheme*; or
 - (d) is instructed by the manager of an *approved scheme* to suspend delivery of gas to the *delivery point*; or
 - (e) does not maintain sufficient pressure at the *receipt point*.⁴⁸

Distributor's liability

- 13.9 If the Distributor interrupts, reduces or suspends the *services* under this clause 13, the Distributor will not be liable to compensate the Supplier for any loss, liability or expense incurred by the Supplier arising out of or in connection with that interruption, reduction or suspension of supply.
- 13.10 An interruption, reduction or suspension under this clause 13 does not affect the Supplier's obligations to pay for any *services* provided under this agreement.

⁴⁵ The Supplier is required, under paragraph 28 of Schedule 2A of the *Access Arrangement*, to provide the Distributor with accurate emergency contact information for the customer at each *delivery point*.

⁴⁶ *Access Arrangement*, Schedule 2F.

⁴⁷ Clause 19.4 Consumer Protection Code.

⁴⁸ Paragraph 4 (Receipt Point Pressure), Schedule 2A of the *Access Arrangement*.

- 13.11 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 an interruption, reduction or suspension under this clause 13.
- 13.12 For the avoidance of doubt, paragraph 25 of Schedule 2A of the *Access Arrangement* does not apply to an interruption, reduction or suspension of the *services* under this clause.

14 Confidentiality and Privacy

- 14.1 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.
- 14.2 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

- 14.3 Each party will comply with any applicable requirements of the National Privacy Principles under the *Privacy Act 1988*.
- 14.4 Without limiting clause 14.3, 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.

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- 14.5 Each party indemnifies the other against any loss, liability or expense arising out of or in connection with any breach of the *Privacy Act* by the first party or its employees, officers, agents or contractors.

Relationship with confidentiality provisions

- 14.6 Each party will comply with its obligations under clauses 14.3 and 14.4 despite anything in clause 14.1.

15 Termination and suspension

Termination

- 15.1 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 12 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.
- 15.2 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.
- 15.3 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

- 15.4 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.

15.5 A suspension under clause 15.4 does not affect the Supplier's obligation to pay for any *services* provided under this agreement.

Indemnity

15.6 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 15.

16 Limitation of liability

Terms implied by statute

16.1 Consumer protection legislation implies terms into contracts for the supply of certain services that cannot be excluded ("**Implied Terms**") but permits a supplier to limit its liability in respect of those terms in certain circumstances.

16.2 The Distributor's liability for breach of an Implied Term applying to the *services* to be provided under this agreement is limited at the Distributor's option to one of the following remedies:

(a) the supplying of the *services* again; or

(b) the payment of the cost of having the *services* supplied again.

16.3 The Distributor's liability will not be limited in this way if:

(a) the Supplier establishes that such a limitation is not fair or reasonable in the circumstances; or

(b) the Implied Term is implied under section 69 of the *Trade Practices Act 1974*.

Exclusion of other implied terms

16.4 The only terms, conditions or warranties which apply to the *services* to be provided under this agreement are:

(a) any Implied Terms, but subject to the preceding paragraphs of this clause; and

(b) the express terms of this agreement.

16.5 All other terms, conditions or warranties implied by law (including statute), custom or usage are excluded to the fullest extent permitted by law.

Limitation of liability for loss or damage

16.6 Subject to this clause 16:

(a) the Distributor is not liable to the Supplier for any loss, liability or expense which the Supplier may suffer or incur unless the loss, liability or expense is a direct result of the Distributor's negligence or breach of contract;

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- (b) without limiting paragraph (a), the Distributor is not liable for any loss of profits, business, or anticipated savings, or for any indirect or consequential loss, arising out of or in connection with the Distributor's performance (including any breach) of this agreement, whether in contract, tort (including negligence) or otherwise, except as provided in paragraph 27(b) of Schedule 2A of the *Access Arrangement*.

16.7 For the avoidance of doubt, paragraph 25 of Schedule 2A of the *Access Arrangement* is subject to this clause 16.

17 Force majeure

- 17.1 If *force majeure* affects either party's performance of this agreement, the force majeure provisions of the *Access Arrangement* will apply.⁴⁹
- 17.2 The notice required under paragraph 22 of Schedule 2A of the *Access Arrangement* will contain particulars of the event of *force majeure*, including its nature, likely duration and the nature and extent of its effect on the performance of that party's obligations under this agreement.
- 17.3 This clause does not apply to:
- (a) a party's failure to pay money under this agreement; or
 - (b) the Supplier's breach of clause 6.6 of this agreement.

18 Dispute Resolution

- 18.1 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 18.2 will apply.
- 18.2 Any dispute to which this clause 18.2 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.
- 18.3 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.

⁴⁹ *Access Arrangement*, paragraphs 20-24, Schedule 2A (Force Majeure).

Obligations not suspended

- 18.4 No party is relieved from performance of its obligations under this agreement during the investigation and determination of a dispute under this clause 18.

Disputes generally

- 18.5 No party may have recourse to litigation without first having complied with the procedure in this clause 18 and schedules 4 and 5 (as applicable).
- 18.6 This clause 18 does not prevent a party seeking an urgent interlocutory injunction from a court of competent jurisdiction.

19 Notices

- 19.1 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.
- 19.2 A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.
- 19.3 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.
- 19.4 If a communication is received after 4pm, it will be taken to have been received on the next *business day*.

20 Warranties

Supplier's warranties

- 20.1 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

- 20.2 Each representation and warranty under clause 20.1 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 5.6.

21 Miscellaneous**Assignment and transfer of contracted capacity**

- 21.1 Subject to clause 21.2, 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.
- 21.2 The Supplier may make a *bare transfer* in accordance with the procedure in the *Access Arrangement*⁵⁰.

Waiver

- 21.3 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

- 21.4 Unless otherwise provided under this agreement, any variation to this agreement must be in writing and signed by the parties.
- Such a variation will not take effect until approved by the *ICRC*.

Indemnities

- 21.5 It is not necessary for a party to incur expense or make a payment before enforcing a right of indemnity under this agreement.
- 21.6 Each indemnity in this agreement is subject to the limitation on liability set out in paragraph 27 of Schedule 2A of the *Access Arrangement* (if applicable).

Survival

- 21.7 Clauses 14 and 16 survive termination or expiry of this agreement.

Entire agreement

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

Inconsistency

- 21.9 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.
- 21.10 Clause 4 of Schedule 2B of the *Access Arrangement* does not apply. It is replaced by clause 3.2 of this agreement.

⁵⁰ *Access Arrangement*, Sections 5.2-5.3 (Trading Policy).

Governing law

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

EXECUTED as an agreement

Execution page

SIGNED by **JOHN ANGUS**)
MACKAY as attorney for)
ACTEWAGL DISTRIBUTION)
under power of attorney registered)
book 4334 no. 961 in the presence of:)

.....)
Signature of witness)

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

.....
By executing this agreement the
attorney states that the attorney has
received no notice of revocation of
the power of attorney

SIGNED by **IVAN ROMAN**)
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: Mr Scott Martin

Address: 18 Rodborough Road, Frenchs Forest NSW 2086

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

Telephone: (02) 8977 6541
Facsimile: (02) 8977 6819

SUPPLIER

Attention: General Manager ActewAGL Retail

Address: Level 2, ActewAGL House, Canberra, ACT 2600

Postal Address: GPO Box 366, Canberra, ACT 2601

Facsimile: (02) 6247 9495

Schedule 2**Special conditions**

There are no special conditions.

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.

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

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

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*⁵¹.

bare transfer has the meaning given in the *Third Party Access Code*.

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

business day means a day (not being a Saturday or Sunday) on which banks are open for general banking business in Canberra.

Business Rules mean the Gas Retail Market Business Rules to Support Retail Competition in Gas, in force from time to time.

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,

⁵¹ *Access Arrangement*, Schedule 2B under the heading "Overruns".

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.

daily metering equipment means a communication system at a *delivery point* which enables daily reading of the meter⁵².

delivery point has the meaning given in the *Access Arrangement*.⁵³

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

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 (including the common 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.

⁵² *Access Arrangement*, Schedule 2D, “Metering for Non-Tariff Delivery Points” paragraph 2.

⁵³ The definition in the *Access Arrangement* ensures that delivery points are only available on the *network*.

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) having jurisdiction and authority over a party.

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.

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.

IPART means the Independent Pricing and Regulatory Tribunal (NSW).

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 the Schedule 2F 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*.

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

maximum hourly quantity or **MHQ** 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 section 1.6 of the *Access Arrangement*.

Minimum Network Standards means the Distributor's Minimum Standards for Network Operation approved by the ICRC from time to time. These apply in the ACT and NSW.

network means the Distributor's gas distribution network in the ACT, Queanbeyan and Yarrowlunla.

non-tariff list means the list of *delivery points* for the Supplier's customers contained in Schedule 6 as amended from time to time.⁵⁴

non-tariff services are the services described in sections 1.1, 1.2, 1.3 and 1.4 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*.

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

reference tariffs means a tariff set out in the *Access Arrangement* which relates to a *service*.

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.

⁵⁴ *Access Arrangement*, Section 1.4 (Multiple Delivery Point Service) dot point 3 (under the heading "General").

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

Specifications means:

- (a) the specifications prescribed by *gas law* applying during the term of this agreement⁵⁵; and
- (b) if the *gas law* referred to in (a) does not prescribe a particular parameter (eg odorant levels), or for any period during this agreement where there is no such *gas law*, the specifications in Schedule 7 as varied by the Distributor on reasonable notice to the Supplier.

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.

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

⁵⁵ Specifications are prescribed by the *Gas Supply (Network Safety Management) Regulation 2002* made under the *Gas Supply Act 1996 (NSW)*. Other specifications may be prescribed by ACT law, although at the date of this agreement, no such specifications exist.

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.

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

First stage dispute resolution

- 1.1 This schedule applies to a dispute under clause 18.3(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 18.3(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 ⁵⁶ for service	MDQ	MHQ	Load Shedding Priority	Meter Data Service (Y/N) ⁵⁷
XRW12345	Retravisision Pty Limited	4 Smith St, Fyshwick	Hoskinstown	Throughout Service	15 March 2003 to 15 March 2004	XXGJ/day	YYGJ/hour	5	Y

⁵⁶ The end date for a service must be on or before the expiry date of this agreement.

⁵⁷ If the meter data service ceases to be a reference service, it may not be supplied for a delivery point (see clause 9.3).

Schedule 7 Specifications

Parameter		Specification Limit	
1	Wobbe Index ⁵⁸	Min.	46.0 MJ/m ³
		Max.	52.0 MJ/m ³
2	Oxygen ⁵⁸	Max.	0.2 mol%
3	Hydrogen Sulphide ⁵⁸	Max.	5.7 mg/m ³
4	Total Sulphur ^{58,59}	Max.	50 mg/m ³
5	Water Content ⁵⁸	Max. Dew Point 0°C at maximum transmission pressure upstream of <i>receipt point</i> , but in any case no more than 112.0 mg/m ³	
6	Hydrocarbon Dewpoint ⁵⁸	Max.	2° at 3,500 kPaG
7	Total Inert Gases ⁵⁸	Max.	7.0 mol %
8	Solid Matter and Liquids	Nil Permitted	
9	Temperature at Receipt Point	-5°C to 50°C	
10	Odorant	Odorant to be of a type approved by the Distributor. Level of odorant to be 12 milligrams per cubic metre or such other level as the Distributor may require.	

⁵⁸ The standard testing conditions for all gas properties are:

- Temperature 15°C
- Absolute Pressure 101.325 kPa,

with the natural gas dry (that is, completely free of water vapour).

⁵⁹ Including odorant, or an allowance for odorant in cases where odorant is injected downstream of test points.

Dated

2003

**Gas Transport Services
Agreement for large
customers**

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

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

Mallesons Stephen Jaques

10th Floor
St George Centre
60 Marcus Clarke Street
Canberra ACT 2601
T +61 2 6217 6000
F +61 2 6217 6999
DX 5610 Canberra

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Appendix B: Proposed Gas Transport Services Agreement for Small Customers

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, Queanbeyan and Yarrowlunla Shire 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*⁶⁰.

4 ICRC approval

This agreement is an Associate Contract under the Third Party Access Code and has been approved by the ICRC under clause 7.1 of that Code.

5 Supplier's customers covered by this agreement

Customers covered

- 5.1 The Distributor will provide the Supplier with *services* for each of the *delivery points* in the *tariff list*, subject to this clause 5.
- 5.2 The *services* to be provided for each *delivery point* are identified in the *tariff list*.
- 5.3 The availability of the *services* is described in the *Access Arrangement*.⁶¹
- 5.4 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*.⁶²
- 5.5 The Supplier will give the Distributor access to the *tariff list* in accordance with the *Access Arrangement*, on request⁶³.

Adding customers to the tariff list

- 5.6 Subject to clauses 5.7 and 5.8, the Supplier may:
- (a) add new *delivery points* to the *tariff list*;

⁶⁰ This overrides the default position in the *Access Arrangement* which would automatically terminate the agreement if a supplier is temporarily without customers in the region (see paragraph 1, Schedule 2C (Terms and Conditions Applicable to Tariff Reference Services)).

⁶¹ *Access Arrangement*, Section 1 (Services Policy) under the heading "Availability of Reference Services", Section 1.5 (Tariff Services) under heading "General", Section 1.6 (Meter Data Service) paragraph 3 under heading "General", and Section 7 (Extensions/Expansions Policy).

⁶² Rules 5.1 and 6.2.

⁶³ *Access Arrangement*, paragraph 2, Schedule 2C.

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- (b) delete *delivery points* from the list; or
 - (c) change a *delivery point* or any details relating to a *delivery point* in the list,⁶⁴

when the Supplier is notified by the *registry operator* in accordance with the procedures in the *Business Rules*⁶⁵. For new connections, the requirements of clause 5.10 will also be met.

5.7 Subject to clause 5.8, for *ACT franchise customers*, 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 list⁶⁶,

in accordance with the procedures in the *Access Arrangement*⁶⁷, subject to the Distributor's reasonable requirements being satisfied by the Supplier. For new connections, the requirements of clause 5.10 will also be met.

5.8 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
- (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 8.5.

5.9 The Supplier will promptly notify the Distributor of any change to the tariff list.

New connections

5.10 Additional requirements if a new connection is required at the *delivery point* are set out in the *Minimum Network Standards*⁶⁸.

Disconnection of customers

5.11 The parties will comply with their respective obligations under the *Minimum Network Standards* and the *Consumer Protection Code* with respect to disconnection and reconnection of customers.

5.12 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*.

⁶⁴ *Access Arrangement*, Sections 5.3-5.4 (Changes to Receipt Point of Delivery Point). This would include allowing multiple users for a *delivery point* as contemplated by paragraph 11, Schedule 2A of the *Access Arrangement*.

⁶⁵ Rule 7.6 for change of user transactions, and Rule 9.6 of new connections.

⁶⁶ *Access Arrangement*, Sections 5.3-5.4 (Changes to Receipt Point or Delivery Point).

⁶⁷ *Access Arrangement*, paragraphs 3-4 Schedule 2C, Section 1.9 (Access and Requests for Services), Section 5.3 (Change of Receipt Point or Delivery Point) and Section 6 (Queuing Policy).

⁶⁸ Part E.

- 5.13 The Supplier will include in its *customer supply contract* a right for the Distributor to disconnect customers in the circumstances referred to in clause 5.12. The Supplier holds that right on trust for the Distributor absolutely.

When a delivery point becomes a non-tariff delivery point

- 5.14 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

- 5.15 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*.

6 Services

Terms applying

- 6.1 Except to the extent of any inconsistency with this agreement, the terms applying to the *services* include:⁶⁹
- (a) for *tariff services* - Section 1.5 and Schedules 2A, 2C, 2E and 2F of the *Access Arrangement*; and
 - (b) for *meter data services* - Section 1.6 and Schedules 2A, 2D and 2F of the *Access Arrangement*.

Special conditions

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

Compliance with law

- 6.4 The parties will comply with applicable *gas law* in performing their respective obligations under this agreement.
- 6.5 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

- 6.6 The Supplier will ensure that gas delivered to a *receipt point* meets the *Specifications*.⁷⁰
- 6.7 The Supplier indemnifies the Distributor against all loss, liability and expense arising out of or in connection with a breach of clause 6.6.

⁶⁹ See also *Access Arrangement*, paragraphs 1-4, Section 2 (Terms and Conditions of Service).

⁷⁰ *Access Arrangement*, paragraph 31, Schedule 2A (incorporating Schedule 3). Although note the definition in this agreement of *Specifications*.

- 6.8 Subject to the Supplier complying with clause 6.6, the Distributor will ensure that gas delivered to a *delivery point* meets the *Specifications*, and other applicable *gas law*.⁷¹
- 6.9 The parties will comply with the provisions of the *Access Arrangement* regarding non-specification gas.⁷²

Gas Testing

- 6.10 The Supplier will test the gas, or cause the gas to be tested, in accordance with the Distributor's *safety and operating plan*.⁷³
- 6.11 The Distributor will give the Supplier a copy of the *safety and operating plan* on request, and reasonable notice of changes to the Distributor's *safety and operating plan*.
- 6.12 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 whether the gas meets the *Specifications*.
- 6.13 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* does not meet the *Specifications*.

Changes to receipt point

- 6.14 Changes to the *receipt point* will be dealt with in accordance with Section 5 of the *Access Arrangement*.⁷⁴

Changes to regulatory environment⁷⁵

- 6.15 The Distributor may amend this agreement from time to time by notice to the Supplier to reflect changes to:
- (a) any applicable law;
 - (b) the *Access Arrangement*; and
 - (c) the *Business Rules* or *Minimum Network Standards*, 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.

⁷¹ *Access Arrangement*, paragraph 31, Schedule 2A (incorporating Schedule 3).

⁷² *Access Arrangement*, paragraphs 32 and 33, Schedule 2A.

⁷³ 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 6.4 of this agreement regarding compliance with *gas law*).

⁷⁴ *Access Arrangement*, Sections 5.3-5.4 (Changes to Receipt Point or Delivery Point).

⁷⁵ *Access Arrangement*, Introduction to Schedule 2A and paragraphs 5-8 Section 2 (Terms and Conditions of Service).

- 6.16 The Distributor will give the Supplier as much notice as reasonably practicable of any changes required under clause 6.15.

7 Delivery of Gas

Determining quantity of gas delivered at *delivery points*

- 7.1 Subject to clauses 7.2 and 7.3, the quantity of gas delivered to a *delivery point* is:
- (a) if the *delivery point* is equipped with daily meter reading facilities but not on-site heating value measurement - the amount determined under the *Access Arrangement*; 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 period⁷⁶;
 - (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.
- 7.2 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.⁷⁷
- 7.3 If the *measuring equipment* at a *delivery point* fails to operate, the quantity of gas delivered to that point will be determined under clause 8.7.

Ceasing delivery of gas to receipt points

- 7.4 The Supplier will immediately cease the delivery of gas to the *receipt point*, or cease the delivery of gas to any system of pipes through which gas is delivered to the *receipt point*, if directed to do so by the Distributor under paragraph 32 of Schedule 2A of the *Access Arrangement*.
- 7.5 The Supplier indemnifies the Distributor against all loss, liability and expense incurred by the Distributor arising out of or in connection with a breach by the Supplier of clause 7.4.

Gas source

- 7.6 The Supplier will notify the Distributor of:
- (a) all points where gas is introduced into the system of pipes through which gas is delivered by or on behalf of the Supplier to a *receipt point*. This notice will include the contractual, and all the possible physical, sources of gas; and

⁷⁶*Access Arrangement*, paragraph 10, Schedule 2A.

⁷⁷*Access Arrangement*, paragraph 11, Schedule 2A.

- (b) any change to those points or sources, before the change takes effect.⁷⁸

7.7 On request, the Supplier will provide evidence to the satisfaction of the Distributor that facilities exist at the *receipt point* and any point referred to in clause 7.6(a), to adequately measure the quality of the gas.⁷⁹

Variations in quality and pressure, interruptions

7.8 The Distributor does not guarantee that there will be no:

- (a) variations in the quality or pressure of gas supplied; or
 (b) interruptions to the gas supply,

within the limitations set by applicable *gas law*.

MHQ

7.9 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*).

7.10 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*.

7.11 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.⁸⁰

Title to gas

7.12 The Supplier warrants that it has title to the gas it delivers into the network. The Supplier agrees to provide evidence of its title to the Distributor, on request. The evidence must be reasonably satisfactory to the Distributor.

Risk

7.13 The control of gas⁸¹:

- (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*.

7.14 The Distributor will replace any gas lost while in its control.

⁷⁸ In those circumstances, the Supplier must comply with its obligations under clause 7.7 and under paragraph 33 of Schedule 2A of the *Access Arrangement* with respect to the gas from the new source.

⁷⁹ Note also paragraph 33 of Schedule 2A of the *Access Arrangement* which requires the Supplier, on request by the Distributor to provide facilities to enable the Distributor to monitor the quality of gas at any point where gas is introduced into the system of pipes through which it is delivered into the *network*. It also requires the Supplier to demonstrate it has contractual arrangements in place to prevent gas which does not meet the *Specifications* from entering the *network*.

⁸⁰ *Access Arrangement*, Section 1.5 second paragraph under the heading "*MHQ*".

⁸¹ *Access Arrangement*, paragraph 5, Schedule 2A ("Responsibility for Gas").

- 7.15 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.

8 Metering

Supply of basic metering equipment

- 8.1 The Distributor will supply *basic metering equipment* in accordance with the *Access Arrangement*⁸² and other applicable *gas law*.

Changes to basic metering equipment

- 8.2 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.
- 8.3 The Distributor may downgrade *basic metering equipment* at any time. Subject to clause 8.4, the Distributor will pay the costs of the downgrade.
- 8.4 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

- 8.5 The Distributor may at all reasonable times have access to a *delivery point* and *measuring equipment*:
- (a) as permitted under the *Access Arrangement*⁸³ or other applicable *gas law*; and
 - (b) for any purpose related to this agreement.

Security and accuracy of measuring equipment

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

Estimating consumption

- 8.7 If the *measuring equipment* at a *delivery point* fails to operate for any period, or the Distributor is not able to access the *measuring equipment*, the quantity of gas delivered for that period will be determined by agreement, or failing agreement, by the Distributor:
- (a) using one of the other methods specified in the *Access Arrangement*⁸⁴; or
 - (b) having regard to gas consumption patterns for that *delivery point*.

Theft of gas

- 8.8 If the Distributor reasonably suspects there has been a theft of gas, the Distributor may recover from the Supplier the difference between what

⁸² *Access Arrangement*, Section 1.5 (Tariff Service) under the heading "Metering" and Schedule 2A.

⁸³ *Access Arrangement*, paragraph 7, Schedule 2A.

⁸⁴ *Access Arrangement*, paragraphs 8 and 9, Schedule 2A.

was billed and what should have been billed, in accordance with the *Minimum Network Standards*.⁸⁵

9 Meter Data Services

Meter data services

- 9.1 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.⁸⁶
- 9.2 The Distributor will cease offering *meter data services* as a *reference service* in accordance with the *Access Arrangement*.⁸⁷

Where meter data service is not offered as a reference service

- 9.3 Where *meter data services* are no longer offered by the Distributor as a *reference service*⁸⁸:
- (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 9.3(a)(iii); or
 - (iii) subject to clause 9.4, 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.
- 9.4 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 9.3(b)(iii).

Where services provided by third party supplier

- 9.5 The Supplier agrees that the terms of any agreement entered into under clause 9.3(b)(iii) will be consistent with the *Business Rules* and, unless

⁸⁵Section 11 ("Theft of Gas").

⁸⁶ *Access Arrangement*, Section 1.5 (Tariff Service) second dot point under heading "Metering".

⁸⁷ *Access Arrangement*, Section 1.6 (Meter Data Service), third dot point under heading "General".

⁸⁸ *Access Arrangement*, Section 1.6 (Meter Data Service) generally.

inconsistent with the *Business Rules*, will require *measuring equipment* to be read at the frequencies specified by the Distributor.

- 9.6 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.
- 9.7 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*.

10 Charges

- 10.1 The Distributor's charges for the *services*, and other related charges⁸⁹, are described in Section 3 of the *Access Arrangement*.⁹⁰
- 10.2 The Distributor may vary and adjust those charges from time to time, in accordance with the *Access Arrangement*.⁹¹
- 10.3 If the Supplier has accepted an alternative schedule of charges offered by the Distributor, the charges in that schedule will apply instead.⁹² The Distributor may vary those charges as set out in the alternative schedule.

Network extensions and expansions

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

Invoices

- 10.5 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 8.7; or
 - (c) a capital contribution charge is payable for *network* extension or new connection; or
 - (d) any other applicable charge is payable.
- 10.6 An invoice may:

⁸⁹ Section 3 to the *Access Arrangement* contains some charges which are not referable to specific services, such as a charge for transferring a *delivery point* from one supplier to another.

⁹⁰ See also *Access Arrangement*, Section 1.5 (Tariff Service) under the heading "Charges Applicable under a Tariff Service", and Schedule 2E (Gas Balancing). NB: There are no charges for UAG in the *Access Arrangement* dated 17 January 2001.

⁹¹ *Access Arrangement*, Section 3 (Reference Tariffs).

⁹² *Access Arrangement*, Section 1.5 (Tariff Service) under the heading "Alternative Tariff Structure".

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- (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

- 10.7 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*.
- 10.8 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

- 10.9 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

- 10.10 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 10.11, pay the balance of the invoice.
- 10.11 The Supplier may not withhold payment of an amount under clause 10.10 if the total amount in dispute would then exceed the amount of the invoice for the previous payment period.

Interest⁹³

- 10.12 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 10.5.
- 10.13 To the extent that an amount disputed and withheld by the Supplier is later agreed or determined to be payable by the Supplier, interest will accrue on that amount under clause 10.12 from the original due date for payment of that amount, to the date it is paid.
- 10.14 To the extent that an amount is disputed and the Supplier is unable to withhold that amount because of clause 10.11, if that amount is later agreed or determined not to be payable by the Supplier, the Distributor must pay or credit the Supplier with the disputed amount plus interest at the *interest rate* on that amount from the original due date for

⁹³ *Access Arrangement*, paragraph 19 Schedule 2A.

payment of that amount, to the date it is paid or credited by the Distributor.

Errors in accounts

- 10.15 If the Distributor has overcharged the Supplier, the Distributor will credit the overpayment to an account nominated by the Supplier.
- 10.16 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

- 10.17 The Supplier will make payments under this clause [10](#) 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.

11 GST

- 11.1 Unless otherwise indicated, all consideration for any supply under this agreement is exclusive of any GST imposed on the supply.
- 11.2 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.
- 11.3 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.

12 Security

Distributor may require Supplier to provide security⁹⁴

- 12.1 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.
- 12.2 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) an invoice within 10 *business days* of the due date;
 - (ii) 2 consecutive invoices by the due date; or

⁹⁴ *Access Arrangement*, paragraph 1 Schedule 2A.

(iii) 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 10.10 and 10.11 is not a failure to pay; or

- (c) the Distributor becomes entitled to terminate or suspend this agreement under clause 15 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.

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

Amount of security

12.4 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.

12.5 If the amount of any *security* provided by the Supplier is in excess of the Distributor's estimation under clause [12.4](#), the Supplier may at its cost reduce the amount of that *security* so there is no excess.

Use of security

12.6 The Distributor may draw on the *security* for any amount owed by the Supplier to the Distributor under this agreement.

12.7 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.

12.8 The exercise by the Distributor of any right under this clause 12 does not prejudice any other right of recovery which the Distributor may have in respect of any amount owing to it by the Supplier.

12.9 The Supplier must provide and maintain any security provided under this clause 11 for 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.

13 Interruptions to gas supply

Interruptions to services

13.1 The Distributor may interrupt or reduce the *services* in accordance with the *Access Arrangement*⁹⁵ and other applicable *gas law*⁹⁶.

⁹⁵ Schedule 2F.

Planned interruptions

- 13.2 The Distributor will give the Supplier and affected *NSW customers*⁹⁷ at least 5 *business days* notice⁹⁸ 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.
- 13.3 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.⁹⁹

Unplanned interruptions

- 13.4 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.¹⁰⁰ Before notifying the Supplier, the Distributor may notify the customer at the affected *delivery point*¹⁰¹ of the interruption or reduction.

Load shedding

- 13.5 If the Distributor initiates a load shedding procedure in accordance with the *Access Arrangement*¹⁰², 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.
- 13.6 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.¹⁰³
- 13.7 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 13.5, the Distributor may take any action necessary to do so.

Suspension of service

- 13.8 The Distributor may suspend the delivery of gas to a *delivery point* if the Supplier:

⁹⁶ See for example clause 19 Consumer Protection Code.

⁹⁷ Clause 12.1 *Minimum Network Standards*.

⁹⁸ Note, clause 19.2 Consumer Protection Code requires Supplier to give its customers at least 2 days notice of planned interruptions.

⁹⁹ Clause 19.2(2) Consumer Protection Code.

¹⁰⁰ Note, the Supplier will require such information to satisfy its obligation under clause 19.3 Consumer Protection Code.

¹⁰¹ The Supplier is required, under paragraph 28 of Schedule 2A of the *Access Arrangement*, to provide the Distributor with accurate emergency contact information for the customer at each *delivery point*.

¹⁰² *Access Arrangement*, Schedule 2F.

¹⁰³ Clause 19.4 Consumer Protection Code.

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- (a) does not deliver sufficient gas to the *receipt point* to meet the Supplier's withdrawal requirements;
 - (b) does not cease or reduce the delivery of gas to a *receipt point* if notified to do so under clause 13.5;
 - (c) is not a member of an *approved scheme*;
 - (d) is instructed by the manager of an *approved scheme* to suspend delivery of gas to the *delivery point*; or
 - (e) does not maintain sufficient pressure at the *receipt point*¹⁰⁴.

Distributor's liability

- 13.9 If the Distributor interrupts, reduces or suspends the *services* under this clause 13, the Distributor will not be liable to compensate the Supplier for any loss, liability or expense incurred by the Supplier arising out of or in connection with that interruption, reduction or suspension.
- 13.10 An interruption, reduction or suspension under this clause 13 does not affect the Supplier's obligation to pay for any *services* provided under this agreement.
- 13.11 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 an interruption, reduction or suspension under this clause 13.
- 13.12 For the avoidance of doubt, paragraph 25 of Schedule 2A of the *Access Arrangement* does not apply to an interruption, reduction or suspension of the *services* under this clause 13.

14 Confidentiality and Privacy

- 14.1 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.

¹⁰⁴ *Access Arrangement*, paragraph 4 (Receipt Point Pressure), Schedule 2A.

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- 14.2 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

- 14.3 Each party will comply with any applicable requirements of the National Privacy Principles under the *Privacy Act 1988*.
- 14.4 Without limiting clause 14.3, 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.
- 14.5 Each party indemnifies the other against any loss, liability or expense arising out of or in connection with any breach of the *Privacy Act* by the first party or its employees, officers, agents or contractors.

Relationship with confidentiality provisions

- 14.6 Each party will comply with its obligations under clauses [14.3](#) and [14.4](#) despite anything in clause 14.1.

15 Termination and suspension

Termination

- 15.1 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 12 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.

-
- 15.2 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.
- 15.3 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

- 15.4 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.
- 15.5 A suspension under clause 15.4 does not affect the Supplier's obligation to pay for any *services* provided under this agreement.

Indemnity

- 15.6 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 15.

16 Limitation of liability

Terms implied by statute

- 16.1 Consumer protection legislation implies terms into contracts for the supply of certain services that cannot be excluded ("**Implied Terms**") but permits a supplier to limit its liability in respect of those terms in certain circumstances.
- 16.2 The Distributor's liability for breach of an Implied Term applying to the *services* to be provided under this agreement is limited at the Distributor's option to one of the following remedies:
- (a) the supplying of the *services* again; or
 - (b) the payment of the cost of having the *services* supplied again.
- 16.3 The Distributor's liability will not be limited in this way if:
- (a) the Supplier establishes that such a limitation is not fair or reasonable in the circumstances; or

-
- (b) the Implied Term is implied under section 69 of the *Trade Practices Act 1974*.

Exclusion of other implied terms

- 16.4 The only terms, conditions or warranties which apply to the *services* to be provided under this agreement are:
- (a) any Implied Terms, but subject to the preceding paragraphs of this clause; and
 - (b) the express terms of this agreement.
- 16.5 All other terms, conditions or warranties implied by law (including statute), custom or usage are excluded to the fullest extent permitted by law.

Limitation of liability for loss or damage

- 16.6 Subject to this clause 16:
- (a) the Distributor is not liable to the Supplier for any loss, liability or expense which the Supplier may suffer or incur unless the loss, liability or expense is a direct result of the Distributor's negligence or breach of contract;
 - (b) without limiting paragraph (a), the Distributor is not liable for any loss of profits, business, or anticipated savings, or for any indirect or consequential loss, arising out of or in connection with the Distributor's performance (including any breach) of this agreement, whether in contract, tort (including negligence) or otherwise-except as provided in paragraph 27(b) of Schedule 2A of the *Access Agreement*.
- 16.7 For the avoidance of doubt, paragraph 25 of Schedule 2A of the *Access Arrangement* is subject to this clause 16.

17 Force majeure

- 17.1 If *force majeure* affects either party's performance of this agreement, the force majeure provisions of the *Access Arrangement* will apply.¹⁰⁵
- 17.2 The notice required under paragraph 22 of Schedule 2A of the *Access Arrangement* will contain particulars of the event of *force majeure*, including its nature, likely duration and the nature and extent of its effect on the performance of that party's obligations under this agreement.
- 17.3 This clause does not apply to:
- (a) a party's failure to pay money under this agreement; or
 - (b) the Supplier's breach of clause 6.6 of this agreement.

¹⁰⁵ *Access Arrangement*, paragraphs 20-24, Schedule 2A (Force Majeure).

18 Dispute Resolution

- 18.1 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 18.2 will apply.
- 18.2 Any dispute to which this clause 18.2 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.
- 18.3 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

- 18.4 No party is relieved from performance of its obligations under this agreement during the investigation and determination of a dispute under this clause 18.

Disputes generally

- 18.5 No party may have recourse to litigation without first having complied with the procedure in this clause 18 and schedules 4 and 5 (as applicable).
- 18.6 This clause 18 does not prevent a party seeking an urgent interlocutory injunction from a court of competent jurisdiction.

19 Notices

- 19.1 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.
- 19.2 A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.
- 19.3 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.

19.4 If a communication is received after 4pm, it will be taken to have been received on the next *business day*.

20 Warranties

Supplier's warranties

- 20.1 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

- 20.2 Each representation and warranty under clause 20.1 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 5.6.

21 Miscellaneous

Assignment and transfer of contracted capacity

- 21.1 Subject to clause 21.2, 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.
- 21.2 The Supplier may make a *bare transfer* in accordance with the procedure in the *Access Arrangement*¹⁰⁶.

Waiver

- 21.3 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

- 21.4 Unless otherwise provided under this agreement, any variation to this agreement must be in writing and signed by the parties.
- Such a variation will not take effect until approved by the *ICRC*.

Indemnities

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

¹⁰⁶ *Access Arrangement*, Sections 5.2-5.3 (Trading Policy).

21.6 Each indemnity in this agreement is subject to the limitation on liability set out in paragraph 27 of Schedule 2A of the *Access Arrangement* (if applicable).

Survival

21.7 Clauses 14 and 16 survive termination or expiry of this agreement.

Entire agreement

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

Inconsistency

21.9 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

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

EXECUTED as an agreement

Execution page

SIGNED by **JOHN ANGUS**)
MACKAY as attorney for)
ACTEWAGL DISTRIBUTION)
under power of attorney registered)
book 4334 no. 961 in the presence of:)

.....)
Signature of witness)

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

.....
By executing this agreement the
attorney states that the attorney has
received no notice of revocation of
the power of attorney

SIGNED by **IVAN ROMAN**)
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: Mr Scott Martin

Address: 18 Rodborough Road, Frenchs Forest NSW 2086

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

Telephone: (02) 8977 6541
Facsimile: (02) 8977 6819

SUPPLIER

Attention: General Manager ActewAGL Retail

Address: Level 2, ActewAGL House, Canberra, ACT 2600

Postal Address: GPO Box 366, Canberra, ACT 2601

Facsimile: (02) 6247 9495

Schedule 2**Special conditions**

There are no special conditions.

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.

ACT franchise customer means an *ACT customer* who is not a *non-franchise customer*¹⁰⁷.

bare transfer has the meaning given in the *Third Party Access Code*.

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

business day means a day (not being a Saturday or Sunday) on which banks are open for general banking business in Canberra.

Business Rules mean the Gas Retail Market Business Rules to Support Retail Competition in Gas, in force from time to time.

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

confidential information means:

- (c) the terms of this agreement;
- (d) all operations and dealings under this agreement; and
- (e) 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:

¹⁰⁷ These are customers who have not 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).

-
- (f) is or becomes part of the public domain other than as a result of a breach of this agreement; or
 - (g) is able to be lawfully obtained from another source; or
 - (h) 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*.¹⁰⁸

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

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 (including the common 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) having jurisdiction and authority over a party.

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

¹⁰⁸ 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.

IPART means the Independent Pricing and Regulatory Tribunal (NSW).

maximum hourly quantity or **MHQ** 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 section 1.6 of the *Access Arrangement*.

Minimum Network Standards means the Distributor's Minimum Standards for Network Operation approved by the ICRC from time to time. These apply in the ACT and NSW.

network means the Distributor's gas distribution network in the ACT, Queanbeyan and Yarrowlunla.

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).¹⁰⁹

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

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

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

reference tariffs means a tariff set out in the *Access Arrangement* which relates to a *service*.

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).

¹⁰⁹ 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).

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* and *tariff services* provided under this agreement.

Specifications means:

- (a) the specifications prescribed by *gas law* applying during the term of this agreement¹¹⁰; and
- (b) if the *gas law* referred to in (a) does not prescribe a particular parameter (eg odorant levels), or for any period during this agreement where there is no such *gas law*, the specifications in Schedule 7 as varied by the Distributor on reasonable notice to the Supplier.

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*¹¹¹.

tariff services are the services described in section 1.5 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

¹¹⁰ Specifications are prescribed by the *Gas Supply (Network Safety Management) Regulation 2002* made under the *Gas Supply Act 1996 (NSW)*. Other specifications may be prescribed by ACT law, although at the date of this agreement, no such specifications exist.

¹¹¹ *Access Arrangement*, paragraphs 2-4, Schedule 2C.

-
- (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.

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

First stage dispute resolution

- 1.1 This schedule applies to a dispute under clause 18.3(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

- 1.6 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

- 1.7 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.
- 1.8 The determination of the expert will be, in the absence of bias or manifest error, final and binding upon the parties.

Costs

- 1.9 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)**

- 1.7 This schedule applies to a dispute under clause 18.3(b) of this agreement.
- 1.8 Either party may require that the dispute be determined by mediation in accordance with this schedule.
- 1.9 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.
- 1.10 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.
- 1.11 The parties will share the costs of the mediator. Each party will pay its own costs of the mediation.
- 1.12 Either party may terminate the mediation at any time.

Schedule 6 Specifications

Parameter		Specification Limit	
1	Wobbe Index ¹¹²	Min.	46.0 MJ/m ³
		Max.	52.0 MJ/m ³
2	Oxygen ⁵³	Max.	0.2 mol%
3	Hydrogen Sulphide ⁵³	Max.	5.7 mg/m ³
4	Total Sulphur ^{53, 113}	Max.	50 mg/m ³
5	Water Content ⁵³	Max. Dew Point 0°C at maximum transmission pressure upstream of <i>receipt point</i> , but in any case no more than 112.0 mg/m ³	
6	Hydrocarbon Dewpoint ⁵³	Max.	2° at 3,500 kPaG
7	Total Inert Gases ⁵³	Max.	7.0 mol %
8	Solid Matter and Liquids	Nil Permitted	
9	Temperature at Receipt Point	-5°C to 50°C	
10	Odorant	Odorant to be of a type approved by the Distributor. Level of odorant to be 12 milligrams per cubic metre or such other level as the Distributor may require.	

¹¹² The standard testing conditions for all gas properties are:

- Temperature 15°C
- Absolute Pressure 101.325 kPa,

with the natural gas dry (that is, completely free of water vapour).

¹¹³ Including odorant, or an allowance for odorant in cases where odorant is injected downstream of test points.

**Gas Transport Services
Agreement for small
customers**

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

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

Mallesons Stephen Jaques

10th Floor
St George Centre
60 Marcus Clarke Street
Canberra ACT 2601
T +61 2 6217 6000
F +61 2 6217 6999
DX 5610 Canberra
Ref: 5216078

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