

# **APPENDIX C: TERMS & CONDITIONS**

---

**Allgas Energy Pty Ltd**  
(ABN 52 009 656 446)

**1 October 2005**

---



## TABLE OF CONTENTS

<b>BACKGROUND</b> .....	<b>I</b>
<b>1. ACKNOWLEDGMENT</b> .....	<b>I</b>
<b>2. REFERENCE SERVICES</b> .....	<b>I</b>
2.1 PROVISION OF REFERENCE SERVICES .....	I
2.2 DETERMINATION OF CUSTOMER .....	I
2.3 OPERATION AND MANAGEMENT .....	I
<b>3. CAPACITY MANAGEMENT</b> .....	<b>II</b>
3.1 QUANTITY DELIVERED.....	II
3.2 MDQ OVERRUNS.....	II
3.3 AUTHORISATION.....	II
3.4 NETWORK LIMITATIONS .....	II
3.5 GAS BALANCING .....	II
3.6 QUANTITY RECEIVED .....	II
<b>4. METERING</b> .....	<b>III</b>
4.1 GENERAL OBLIGATIONS .....	III
4.2 METER READING.....	III
<b>5. NETWORK PRESSURES</b> .....	<b>IV</b>
5.1 RECEIPT POINT PRESSURES .....	IV
5.2 DELIVERY POINT PRESSURES.....	IV
<b>6. GAS SPECIFICATIONS</b> .....	<b>IV</b>
6.1 ODOURISATION .....	V
6.2 QUALITY OF GAS.....	V
6.3 FAILURE TO COMPLY.....	V
<b>7. OWNERSHIP OF GAS</b> .....	<b>V</b>
7.1 WARRANTY OF TITLE.....	V
7.2 OWNERSHIP.....	V
7.3 COMMINGLING .....	V
<b>8. CHARGES, INVOICING AND PAYMENTS</b> .....	<b>VI</b>
8.1 SECURITY .....	VI
8.2 OBLIGATION TO PAY CHARGES.....	VI
8.3 INVOICING.....	VI
8.4 PAYMENT.....	VI
8.5 FAILURE TO PAY THE TAX INVOICE.....	VII
8.6 DISPUTED TAX INVOICES .....	VII
8.7 INCORRECT TAX INVOICES.....	VII
8.8 INTEREST ON DISPUTED OR INCORRECT AMOUNT .....	VII
8.9 ADJUSTMENT WHERE TAX INVOICE ESTIMATED .....	VIII

---

<b>9.</b>	<b>TAXATION.....</b>	<b>VIII</b>
9.1	EXISTING IMPOST INCREASES.....	VIII
9.2	EXISTING IMPOST DECREASES .....	VIII
9.3	NEW IMPOST.....	VIII
<b>10.</b>	<b>INFORMATION AND ASSISTANCE.....</b>	<b>VIII</b>
<b>11.</b>	<b>ACCESS TO PREMISES.....</b>	<b>IX</b>
11.1	USER'S OBLIGATION.....	IX
11.2	ALLGAS' OBLIGATION .....	IX
<b>12.</b>	<b>INTERRUPTIONS FOR MAINTENANCE.....</b>	<b>IX</b>
12.1	IMMEDIATE REPAIRS OR MAINTENANCE .....	IX
12.2	PLANNED REPAIRS OR MAINTENANCE.....	IX
<b>13.</b>	<b>INSURANCE.....</b>	<b>X</b>
13.1	USER'S OBLIGATION.....	X
13.2	CLAIMS.....	X
13.3	FAILURE TO INSURE .....	X
<b>14.</b>	<b>WARRANTIES, INDEMNITIES AND LIMITATION OF LIABILITY .....</b>	<b>XI</b>
14.1	INDIRECT OR CONSEQUENTIAL LOSS .....	XI
14.2	CLAIM BY THE USER.....	XI
14.3	LIMIT OF LIABILITY.....	XI
14.4	IMPLIED WARRANTIES .....	XI
14.5	INDEMNITIES.....	XI
<b>15.</b>	<b>CONFIDENTIALITY .....</b>	<b>XII</b>
15.1	USER'S OBLIGATIONS.....	XII
15.2	DISCLOSURE.....	XII
15.3	ALLGAS' OBLIGATIONS .....	XII
<b>16.</b>	<b>DISPUTE RESOLUTION .....</b>	<b>XII</b>
<b>17.</b>	<b>SETTLEMENT OF INDUSTRIAL DISPUTES .....</b>	<b>XIII</b>
<b>18.</b>	<b>TERMINATION .....</b>	<b>XIII</b>
18.1	DEFAULT BY THE USER .....	XIII
18.2	DEFAULT BY ALLGAS.....	XIV
18.3	AFTER TERMINATION.....	XIV
18.4	COSTS.....	XIV
18.5	ADDITIONAL RIGHTS AND REMEDIES .....	XIV
18.6	EFFECT OF TERMINATION .....	XIV
<b>19.</b>	<b>FORCE MAJEURE .....</b>	<b>XIV</b>
19.1	EFFECT OF FORCE MAJEURE .....	XIV
19.2	TERMINATION.....	XV

---

<b>20.</b>	<b>ASSIGNMENT .....</b>	<b>XV</b>
20.1	THE USER .....	XV
20.2	ALLGAS .....	XV
20.3	EFFECT OF ASSIGNMENT.....	XV
<b>21.</b>	<b>NOTICES .....</b>	<b>XV</b>
21.1	WRITTEN NOTICE.....	XV
21.2	WHEN NOTICE RECEIVED.....	XV
<b>22.</b>	<b>MISCELLANEOUS PROVISIONS.....</b>	<b>XVI</b>
22.1	AUTHORITY TO SIGN .....	XVI
22.2	WAIVER .....	XVI
22.3	RIGHTS, POWERS AND REMEDIES.....	XVI
22.4	GOVERNING LAW .....	XVI
22.5	SEVERABILITY .....	XVI
22.6	NO BENEFIT TO OTHER PERSONS .....	XVI
22.7	RELATIONSHIP .....	XVI
22.8	COSTS AND STAMP DUTY.....	XVII
22.9	FURTHER ASSURANCES .....	XVII
22.10	ALTERATION .....	XVII
22.11	COUNTERPARTS .....	XVII
<b>23.</b>	<b>DEFINITIONS AND INTERPRETATION.....</b>	<b>XVIII</b>
23.1	DEFINITIONS .....	XVIII
23.2	INTERPRETATION .....	XXI
23.3	TERMINOLOGY .....	XXI

---

## **BACKGROUND**

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

## **AGREEMENT**

### **1. ACKNOWLEDGMENT**

Allgas and the User acknowledge:

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

### **2. REFERENCE SERVICES**

#### **2.1 Provision of Reference Services**

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

#### **2.2 Determination of Customer**

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

#### **2.3 Operation and Management**

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

### **3. CAPACITY MANAGEMENT**

#### **3.1 Quantity Delivered**

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

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

#### **3.2 MDQ Overruns**

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

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

Where the Metering for a Demand Customer does not measure the actual MDQ, the MDQ for that Delivery Point is calculated as the average daily quantity of gas delivered to the Delivery Point during the billing period multiplied by a factor of 1.1.

#### **3.3 Authorisation**

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

#### **3.4 Network Limitations**

At no time will Allgas have any obligation to deliver more Natural Gas through any Delivery Point than is possible given the technical, physical or other limitations of the Network and the pressure and flow-rate of the Natural Gas within the Network. Allgas will not connect a new Delivery Point to the Network unless the system has sufficient capacity to sustain that End User.

#### **3.5 Gas Balancing**

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

#### **3.6 Quantity Received**

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

## **4. METERING**

### **4.1 General Obligations**

#### **4.1.1 Provision of Metering Equipment**

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

#### **4.1.2 Maintenance**

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

#### **4.1.3 Meter Accuracy**

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

#### **4.1.4 Correction of Readings**

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

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

## **4.2 Meter Reading**

### **4.2.1 Scheduled**

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

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

### **4.2.2 Special**

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

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

### **4.2.3 No Measurements**

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

## **NETWORK PRESSURES**

### **5.1 Receipt Point Pressures**

#### **5.1.1 User's Obligation**

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

#### **5.1.2 Failure to Comply**

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

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

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

### **5.2 Delivery Point Pressures**

#### **5.2.1 Allgas' Obligation**

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

#### **5.2.2 Failure to Comply**

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

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

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

#### **5.2.3 No Implied Obligation**

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

## **GAS SPECIFICATIONS**

## **6.1 Odourisation**

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

## **6.2 Quality of Gas**

The User must

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

## **6.3 Failure to Comply**

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

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

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

## **7. OWNERSHIP OF GAS**

### **7.1 Warranty of Title**

The User warrants that:

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

### **7.2 Ownership**

Upon receipt of Natural Gas at a Receipt Point:

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

### **7.3 Commingling**

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

## **8. CHARGES, INVOICING AND PAYMENTS**

### **8.1 Security**

Allgas may require a User to:

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

### **8.2 Obligation to Pay Charges**

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

### **8.3 Invoicing**

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

- (a) of the amounts due in respect of the Reference Services supplied to the User in the preceding Month;
- (b) of any other item agreed between the parties; and
- (c) describing each item with sufficient information to enable the User to verify each amount.

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

### **8.4 Payment**

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

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

## **8.5 Failure to Pay the Tax Invoice**

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

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

## **8.6 Disputed Tax Invoices**

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

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

## **8.7 Incorrect Tax Invoices**

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

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

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

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

## **8.8 Interest on Disputed or Incorrect Amount**

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

## **8.9 Adjustment Where Tax Invoice Estimated**

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

## **9. TAXATION**

### **9.1 Existing Impost Increases**

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

### **9.2 Existing Impost Decreases**

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

### **9.3 New Impost**

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

## **10. INFORMATION AND ASSISTANCE**

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

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

in connection with this Agreement.

## **11. ACCESS TO PREMISES**

### **11.1 User's Obligation**

The User must:

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

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

### **11.2 Allgas' Obligation**

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

## **12. INTERRUPTIONS FOR MAINTENANCE**

### **12.1 Immediate Repairs or Maintenance**

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

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

### **12.2 Planned Repairs or Maintenance**

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

## **13. INSURANCE**

### **13.1 User's Obligation**

The User must:

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

### **13.2 Claims**

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

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

### **13.3 Failure to Insure**

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

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

## 14. WARRANTIES, INDEMNITIES AND LIMITATION OF LIABILITY

### 14.1 Indirect or Consequential Loss

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

### 14.2 Claim by the User

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

### 14.3 Limit of Liability

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

### 14.4 Implied Warranties

In respect of implied conditions and warranties:

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

### 14.5 Indemnities

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

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

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

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

## **15. CONFIDENTIALITY**

### **15.1 User's Obligations**

The User:

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

### **15.2 Disclosure**

The User may disclose Confidential Information:

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

### **15.3 Allgas' Obligations**

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

## **16. DISPUTE RESOLUTION**

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

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

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

## **17. SETTLEMENT OF INDUSTRIAL DISPUTES**

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

## **18. TERMINATION**

### **18.1 Default by the User**

If the User:

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

Allgas may at its sole discretion:

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

## 18.2 Default by Allgas

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

## 18.3 After Termination

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

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

## 18.4 Costs

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

## 18.5 Additional Rights and Remedies

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

## 18.6 Effect of Termination

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

## 19. FORCE MAJEURE

### 19.1 Effect of Force Majeure

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

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

## 19.2 Termination

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

## 20. ASSIGNMENT

### 20.1 The User

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

### 20.2 Allgas

Allgas may:

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

### 20.3 Effect of Assignment

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

## 21. NOTICES

### 21.1 Written Notice

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

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

Allgas' address and facsimile numbers is:

**Allgas:** Chief Executive Officer  
Allgas Energy Pty Ltd  
GPO Box 1461  
Brisbane 4001 Australia  
  
Tel: (07) 3426 1618  
Fax: (07) 3426 1665

### 21.2 When Notice Received

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

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, 3 Business Days after the date of posting; or
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within eight

Business Hours after that transmission, the recipient informs the sender that it has not received the entire notice.

## **22. MISCELLANEOUS PROVISIONS**

### **22.1 Authority to Sign**

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

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

### **22.2 Waiver**

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

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

### **22.3 Rights, Powers and Remedies**

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

### **22.4 Governing Law**

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

### **22.5 Severability**

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

### **22.6 No Benefit to Other Persons**

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

### **22.7 Relationship**

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

## **22.8 Costs and Stamp Duty**

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

## **22.9 Further Assurances**

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

## **22.10 Alteration**

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

## **22.11 Counterparts**

This Agreement may be executed in any number of counterparts.

## 23. DEFINITIONS AND INTERPRETATION

### 23.1 Definitions

<b>Access Arrangement</b>	has the meaning given in Recital A.
<b>Access Arrangement Information</b>	has the meaning given to it in the Code, as applicable to the Access Arrangement.
<b>Agreed Demand</b>	means the nominated MHQ as determined by Allgas.
<b>Allowable Margin of Accuracy</b>	means in respect of Meters operating at outlet pressures up to 7kPa and not exceeding 6 cubic metres per hour capacity, an accuracy of between plus two and minus three percent and in respect of all other Meters, an overall accuracy within plus or minus one per cent.
<b>Business Day</b>	means a Day other than a Saturday or Sunday or a gazetted Public Holiday in the State of Queensland.
<b>Business Hours</b>	means the hours between 9am and 4pm on a Business Day.
<b>Business Rules</b>	means the <i>Gas Retail Market Business Rules for consumers using at least 1TJ per year</i> , which is an industry Code of Conduct legislated under to the <i>Gas Supply Regulations 2003</i> .
<b>Charges</b>	means the amounts payable for the Reference Services calculated in accordance with Appendix B of the Access Arrangement.'
<b>Code</b>	means the <i>National Third Party Access Code for Natural Gas Pipeline Systems</i> established under the Gas Pipelines Access Law.
<b>Commencement Date</b>	has the meaning given in section 1.2 of the Access Arrangement.
<b>Confidential Information</b>	means: (a) all information: (i) disclosed (whether orally, in writing or in any other form) by a party ('Discloser') to the other party ('Recipient') in relation to this Agreement; and (ii) treated by the Discloser as confidential; and (b) all copies, notes, records and related information generated by the Recipient based on or arising out of any such disclosure.
<b>Contract Year</b>	means a year commencing at 8.00am Eastern Standard Time on the date specified by Allgas.
<b>Day</b>	means a period of 24 consecutive hours beginning at 8.00am Australian Eastern Standard Time.
<b>Delivery Point</b>	means a point on the Network at which Natural Gas is delivered from the Network to or for the account of the User.

<b>Delivery Point Facilities</b>	means those facilities installed at a Delivery Point to enable delivery of Natural Gas from the Network including a tapping point, a remote shut-off valve, any communication facilities and associated power supply.
<b>Demand Customer</b>	means an End User who withdraws from the Network a quantity of Natural Gas of at least 10TJ per year.
<b>Demand Customer Service</b>	means the provision of Reference Services to a Demand Customer in respect of the forward haulage of Natural Gas.
<b>Due Date</b>	is 14 Days after the date on the Tax Invoice.
<b>End User</b>	means the person who acquires Natural Gas from a User or a Producer.
<b>Force Majeure Event</b>	means anything affecting a person outside of that party's reasonable control including, but not limited to, fire, storm, flood, earthquake, explosion, war, invasion, rebellion, sabotage, epidemic, labour dispute, labour shortage, failure or delay in transportation, act or omission (including laws, regulations, disapprovals or failures to approve) of any third person (including, but not limited to, subcontractors, customers, governments or government agencies).
<b>GJ</b>	means a gigajoule of Natural Gas or 10 <sup>9</sup> J, as that term is defined in Australian Standard AS 1000-1979.
<b>Impost</b>	means any tax or other statutory charge, or costs imposed as a result of major changes in government policy (for example, the costs associated with the introduction of full retail contestability).
<b>Insolvency Event</b>	means in relation to any party: <ul style="list-style-type: none"><li>(a) a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the assets or undertaking of the party (<b>Receiver Appointed</b>);</li><li>(b) the party suspends payment of its debt generally (<b>Payments Suspended</b>);</li><li>(c) the party is or becomes unable to pay its debts when they are due or is unable to pay its debts within the meaning of the Corporations Law or the party may be presumed to be insolvent under section 459C of the Corporations Law (<b>Unable to Pay</b>);</li><li>(d) the party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them (<b>Arrangements with Creditors</b>);</li><li>(e) an application or order is made for the winding up or dissolution of, or the appointment of a provisional liquidator to the party or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the party otherwise than for the purpose of an amalgamation or reconstruction (<b>Winding Up</b>); or</li><li>(f) an administrator is appointed in relation to the person under Division 2 of Part 5.3A of the Corporations Law (<b>Administration</b>).</li></ul>
<b>Instrument of Agreement</b>	means the specific contractual arrangement agreed between Allgas and a User in relation to the Allgas Access Arrangement.

<b>Meter</b>	means the device used to measure the volume or demand of Natural Gas.
<b>Metering</b>	means the Meter and any associated equipment, including filters, regulators, pipework and other equipment used to measure the volume or demand of Natural Gas.
<b>MHQ</b>	means the maximum hourly quantity of Natural Gas (in GJ) which Allgas is obliged to receive on behalf of the User and to transport and deliver to Delivery Points on behalf of the User during an hour (net of Unaccounted for Gas).
<b>Month</b>	means a calendar month.
<b>Natural Gas</b>	has the meaning given in the Code.
<b>Network</b>	means the distribution network owned by Allgas through which gas will be transported and includes the Receipt Point Facilities and Delivery Point Facilities which exist from time to time.
<b>Producer</b>	means a supplier of Natural Gas.
<b>Rate</b>	means the Commonwealth Bank Corporate Overdraft Reference Rate (monthly charging) current on the first Day of each Month.
<b>Receipt Point</b>	means a point on the Network at which Natural Gas is received into the Network from or on account of the User.
<b>Receipt Point Facilities</b>	means those facilities installed at a Receipt Point to enable receipt of Natural Gas into the Network including a tapping point, a remote shut-off valve, any communication facilities and associated power supply.
<b>Reference Services</b>	means any or all of the Reference Services referred to in section 2.1 of the Access Arrangement.
<b>Term</b>	refers to section 1.3 of the Access Arrangement.
<b>Unaccounted for Gas</b>	means the quantities of Natural Gas necessary for the efficient operation of the Network, including gas used for compressors or other equipment, and quantities otherwise lost and unaccounted for in connection with the operation of the Network, including as a result of any limitations on the accuracy of Metering Equipment.
<b>User</b>	has the meaning given to it in the Code.
<b>Volume Customer</b>	means an End User who withdraws from the Network a quantity of Natural Gas less than 10TJ per year.
<b>Volume Customer Service</b>	means the provision of Reference Services to a Volume Customer in respect of the forward haulage of Natural Gas

## 23.2 Interpretation

In this Agreement, unless the contrary intention appears:

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

## 23.3 Terminology

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