

Revised Final Plan Attachment 15.5

Response to the Draft Decision: Engagement on
the Proposed Terms and Conditions

August 2017

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Introduction

This attachment summarises feedback that Australian Gas Networks (AGN) and the Australian Energy Regulator (AER) have received pertaining to the proposed terms and conditions (proposed terms) to apply to the Victorian and Albury gas distribution networks (the networks) over the next (2018 to 2022) Access Arrangement (AA) Period.

We have conducted direct consultation with our Retailer Reference Group (RRG) which comprises representatives from retailers that operate in our Victorian and Albury natural gas distribution markets (see Section 5.3 of the Final Plan¹ for a description of our RRG).

We provided several opportunities to provide feedback on the proposed terms and our plans for comment, including on:

- *29 April 2016* – first draft of the proposed terms circulated to the RRG for their comment;
- *1 August 2016* – after considering the feedback received on the earlier draft, we issued a further draft of the proposed terms to our RRG;
- *8 December 2016* – further draft of the proposed terms circulated to the RRG, again inviting any further comment on any outstanding issues that remained;
- *23 December 2016* – we submitted our Final Plan to the AER which included the proposed terms and a summary of our engagement activities on the proposed terms;
- *1 February 2017* – we presented our proposal to stakeholders at a AER public forum in Melbourne;
- *17 February to 21 March 2017* – the AER received submissions from the following stakeholders and RRG members;
 - Origin Energy (Origin) – 17 February 2017;
 - Red Energy (Red) and Lumo Energy (Lumo) – 6 March 2017; and
 - AGL Energy Ltd (AGL) – 21 March 2017;
- *22 February 2017* – we discussed the Final Plan update focusing on the key deliverables and tariffs with our RRG. Feedback included at the meeting that members were comfortable with the Plan and it was consistent with what had been presented previously; and
- *25 July 2017* – we discussed the AER's Draft Decision and our proposed response. We also circulated the revised proposed terms to our RRG, incorporating the changes from the AER Draft Decision and feedback from stakeholder submission to the AER. General feedback from this meeting was that the group was satisfied with the terms proposed in our Revised Final Plan.

Feedback was received from the RRG via discussion in RRG meetings, direct email correspondence and via a written submissions on the Draft Plan and the Final Plan to the AER.

¹ AGN, *Victoria and Albury Final Plan*, December 2016, page 31.

Feedback on our Revised Proposed Terms and Conditions

Table 1 sets out all the feedback received from Origin and AGL submissions to the AER on the proposed terms including how we have incorporated their feedback into our revised proposed terms and conditions. Red and Lumo's submission discussed issues ranging from expenditure and pricing issues, they did not raise any issues with our proposed terms. Red and Lumo stated in their submission that our effective stakeholder engagement program gave them the opportunity to provide feedback on key aspects of our proposal.²

Table 1: Origin and AGL submissions on our Proposed Terms and Conditions and our Consideration in the Revised Proposed Terms and Conditions

Clause	Origin and AGL Feedback	Our Response to Feedback on Terms and Conditions
NA	Origin stated in their submission to the AER: <i>"AGN's merging of its Victorian and Albury terms and conditions for access and use of its distribution network supported and will reduce administrative and legal costs for both distributors and retailers over the forthcoming access arrangement period."</i> ³	As stated in our Final Plan we applied to the AER to consolidate the two AA Documents into a single AA Document with a view to reducing administrative costs and improving stakeholder engagement.
NA	Origin stated in their submission to the AER: <i>"We agree with the distributors' views that terms and conditions have evolved over the previous access arrangement periods and support their continued engagement and willingness to negotiate minor elements of these as required."</i> ⁴	The terms and conditions are consistent with those outlined throughout our engagement on the terms and conditions and those in the Final Plan. We will continue to engage and negotiate with the Retailers. We have accepted the changes as requested by the AER in the Draft Decision.
3.2	AGL maintains its position that Retailers should not be liable to discharge network charges levied for a DP where there is no customer contract. AGL therefore seeks to amend clause 3.2 to include the following sentence: <i>"The Network User is not responsible for settling the account relating to, and will not pay any Haulage Service Charges (neither Fixed Charges nor Charges for the Quantity of Gas delivered) associated with, any DP for which the Network User does not have a Shared Customer."</i> ⁵	We do not agree with AGL's position that Retailers should not be liable to discharge network charges levied for a Delivery Point (DP) where there is no customer contract. This approach is consistent with the terms and conditions applied to our South Australian network which were approved recently by the AER. As a result we do not support AGL's proposed change to clause 3.2 as:

² Red Energy and Lumo Energy, *Australian Gas Networks Access Arrangement*, 6 March 2017.

³ Origin Energy, *Victorian Gas Access Arrangement Review 2018-22 Response to Gas Distribution Business' Proposal*, 17 February 2017, page 5.

⁴ *Ibid.*

⁵ AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017.

Clause	Origin and AGL Feedback	Our Response to Feedback on Terms and Conditions
		<ol style="list-style-type: none"> 1. the terms and conditions as currently drafted by AGN are consistent with the terms and conditions approved for our South Australian AA and this promotes national consistency and efficiency across our networks; and 2. we need the ability to recover base charges which apply to each DP for which a Retailer is the financially responsible organisation (FRO) under the Retail Market Procedures and the proposed change to clause 3.2 removes this ability. <p>Under clause 2.1(d) of the Gas Distribution System Code (Victoria), we are obliged to maintain metering installations at vacant sites, which poses a significant cost to AGN.</p> <p>Under the National Gas Rules (NGR), market participants (such as AGL) must contribute their share of the costs incurred by a responsible person (such as AGN) at metering installations. These costs include the total costs incurred by the responsible person in operating and maintaining the metering installation (rule 290(5)). The NGR therefore require AGL as a market participant to contribute to the total costs incurred by AGN as responsible person in operating and maintaining the metering installation. It does not matter that there is no shared customer. AGL's position that retailers should not be liable to discharge network charges levied for a DP where there is no shared customer is inconsistent with the NGR.</p> <p>The National Gas Objective (NGO) is to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.⁶ If our ability to recover base charges for distribution supply points for which there is no shared customer is removed from the terms and conditions, the cost to AGN should be included in the calculation of reference tariffs and recovered through the reference tariffs and ultimately borne by customers. We cannot manage or avoid the costs because it cannot disconnect the DP without a direction from the Retailer (as FRO). These outcomes are not consistent with the NGO.</p> <p>If there is no shared customer at a DP, the Retailer can decide whether it wishes to continue to remain financially responsible for the base charges or whether it wishes to request the decommissioning of the DP. The Retailer can manage the costs of maintaining the connection at the vacant site as it has the choice to decommission or maintain the supply point. Retailers therefore have an economic incentive to manage costs (either by</p>

⁶ National Gas (South Australia) Act 2008, s23.

Clause	Origin and AGL Feedback	Our Response to Feedback on Terms and Conditions
		<p>disconnecting or not disconnecting vacant DP) in a manner which provides the most efficient outcome for gas customers. These outcomes are consistent with the NGO.</p>
<p>3.3</p>	<p>AGL maintains its position that Retailers should not be liable to discharge network charges levied for a DP where there is no customer contract. AGL seeks the following change:</p> <p><i>“If the Network User requests disconnection of a User DP (or, if the Network User is a Gas Retailer, any Shared Customer’s premises), and AGN is entitled to disconnect the User DP in accordance with sub-clause 18.1, the Network User will cease to have a Shared Customer in relation to that User DP, and will not be responsible to pay Haulage Service Charges in respect of that User DP, from the date the Network User ceases to have a customer contract for that User DP in place.”⁷</i></p>	<p>We do not agree with AGL’s position that Retailers should not be liable to discharge network charges levied for a DP where there is no customer contract.</p> <p>Please refer to the response to clause 3.2 above.</p> <p>We acknowledge that AGL continues to have issues with the wording of clause 3.3. The AER reviewed these issues as part of our South Australian Draft Decision.⁸ As detailed in our Final Plan (see section 15.4.3)⁹ we proposed the wording approved in the Final Decision for our South Australia network.</p> <p>The AER also reviewed the AGL submission on clause 3.3 as part of the Victoria Draft Decision for 2013 – 17 and found that this sub-clause was appropriate.¹⁰</p>
<p>16.1</p>	<p>AGL seeks to amend clause 16.1 to read as follows:</p> <p><i>“The Network User warrants that the Network User has good title to all Gas supplied to AGN at each Receipt Point by or for the account of the Network User. The Network User also warrants that the Network User has the right to supply Gas at each Receipt Point for transportation by AGN under the Agreement.”</i></p> <p>This amendment was accepted by AGN in Qld.¹¹</p>	<p>We have accepted AGL’s comments in line with our approach of standardising our terms and conditions across all jurisdictions where appropriate.</p>
<p>16.3</p>	<p>AGL seeks to amend clause 16.3 as follows:</p> <p><i>“Subject to any exclusion or limitation arising under sub-clauses 29.6 and 29.7, the Network User will indemnify AGN against any loss, cost, expense or damage arising from or out of any breach by the Network User of any warranty made or deemed to be made under clause 16.1, or 16.2, by the Network User under the Agreement.”¹²</i></p>	<p>We do not agree with AGL’s proposed changes to the indemnity in clause 16.3. Clause 16.3 clause appears in the terms and conditions approved for our South Australian AA and its inclusion in the proposed Victorian and Albury AA terms and conditions promotes national consistency and efficiency across our networks.</p>

⁷ AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017.

⁸ AER, *Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21*, November 2015, page 12-12.

⁹ AGN, *Victoria and Albury Final Plan*, December 2016, page 184.

¹⁰ AER, *Access arrangement draft decision | Envestra Ltd 2013–17 | Part 3 appendices*, September 2012, page 134.

¹¹ AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017.

¹² *Ibid.*

Clause	Origin and AGL Feedback	Our Response to Feedback on Terms and Conditions
		<p>We believe it is appropriate for AGN to have the benefit of an indemnity from AGL in respect of any breach by the Network User of any warranty made or deemed to be made under the Agreement, not only those warranties given under clauses 16.1 and 16.2.</p> <p>We are a regulated service provider and earn a regulated rate of return determined on the basis that gas distribution is a low risk business. To remain a low risk business and to avoid passing on the costs associated with a higher risk profile to customers through higher reference tariffs, We need protection against AGL breaching any warranties under the terms and conditions, not only those associated with title to gas. These outcomes are not consistent with the national gas objective.</p> <p>Unlike AGN, AGL is not subject to rate of return regulation and can pass on to customers any costs imposed by exposure to risk. This outcome supports the NGO.</p>
<p>17.7</p>	<p>AGL seeks to amend clause 17.7 as follows:</p> <p><i>“If the Network User is a Gas Retailer, the Network User must use best endeavours to cause or procure each Shared Customer to give AGN whatever assistance AGN reasonably requests from time to time to interrupt or curtail deliveries of Gas at any User DP.”</i></p> <p>This puts a significant burden on Retailers. AGL will commit to using its best endeavours but it cannot control the actions of third parties. While this may be a common term in other agreements AGN has AGL does not believe it is a term that should apply in its current standing for the reason stated. This also requires no process change from AGN to implement.¹³</p>	<p>We have accepted AGL’s comments in line with our approach of standardising our terms and conditions across all jurisdictions where appropriate.</p>
<p>18.2</p>	<p>AGL submits that a requirement should be included that when the Network reconnects a User DP they notify the current retailer. This is particularly an issue when another retailer requests a reconnection because the customer is churning but the transfer is cancelled.</p> <p>The incumbent retailer is not advised by the network that the meter status should be switched from “inactive” to “active” and the network starts billing the retailer for consumption. If the retailer was advised at this stage that the meter status was active then the retailer would know to bill and contact the customer to set up an account. If this advice is not provided the retailer has no way of knowing that the site should be billed.</p>	<p>We do not believe AGL’s proposed change is necessary as the Australian Energy Market Operator (AEMO) Retail Market Procedures (Victoria) already contain notification provisions in respect of reconnecting any User DP.</p> <p>Section 3.5.1(g) of the Retail Market Procedures requires Distributors to notify the prospective FRO that a distribution supply point has come into existence by midnight on the first business day after it has come into existence, and provide the Meter Installation Reference Number (MIRN) for that DP to the prospective FRO. Given these notification provisions, We believe it</p>

¹³ AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017.

Clause	Origin and AGL Feedback	Our Response to Feedback on Terms and Conditions
	<p>Additional wording should be included, such as the following: <i>"Following the reconnection of any User DP, the incumbent retailer shall be notified by AGN."</i>¹⁴</p>	<p>unnecessary to include further notification provisions in the terms and conditions.¹⁵</p> <p>In any event these types of issues should be dealt with by the Retail Market Procedures rather than the terms and conditions of an AA.</p> <p>We acknowledge that AGL continues to have issues with the wording of clause 18.2. The AER reviewed these issues as part of our South Australian Draft Decision and did not require us to include this requirement in the terms and conditions.¹⁶</p>
<p>20.2</p>	<p>AGL seeks deletion of clause 20.2(a). This is in line with AGL's comments on Clause 3.¹⁷</p>	<p>We acknowledge that AGL continues to have issues with the wording of clause 20.2 of the proposed terms.</p> <p>AGL's comments on the proposed Victorian and Albury terms and conditions do not provide any cogent or new reasons to override the AER's previous decision on clause 20.2.</p> <p>As stated in Attachment 15.1 of our Victoria and Albury Final Plan, we do not agree with the quoted statement that <i>"AGL Energy is not AGN's customer"</i> and, therefore, do not support the conclusion, that AGL Energy should not be responsible for network charges where there is no shared customer.¹⁸</p> <p>Under the National Gas Law (NGL), AGN is a service provider and must submit an AA which describes the reference services and the proposed terms and conditions on which the reference service will be provided.</p> <p>Under the proposed Victorian and Albury AA, reference services are provided to "Users". The term "User" has the meaning given to it in the NGL, where it is defined to mean <i>"a person who is a party to a contract with a service provider under which the service provider provides or intends to provide a pipeline service to that person by means of a scheme pipeline"</i>.</p> <p>The persons who are parties to the contract with AGN are gas retailers and, under the AA, the reference services are provided to the gas retailers. It follows that gas retailers, like AGL, are customers of AGN.</p>

¹⁴ AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017.

¹⁵ AEMO, *Retail Market Procedures (Victoria)*, Version No: 12.0, 16 November 2016.

¹⁶ AER, *Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21*, November 2015, page 12-20.

¹⁷ AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017.

¹⁸ AGN, *Final Plan Attachment 15.1, Engagement with the Australian Gas Networks Retailer Reference Group on the Proposed Terms and Conditions*, December 2016, pages 3 and 4.

Clause	Origin and AGL Feedback	Our Response to Feedback on Terms and Conditions
		<p>Clause 20.2 of the proposed Victorian and Albury terms and conditions is the same as clause 20.2 of the South Australian terms and conditions which were reviewed and accepted by the AER.¹⁹</p> <p>When the South Australian AA was submitted for public consultation, AGL made submissions on clause 20.2 to the effect that AGL should not be liable for charges where there was no shared customer.</p> <p>In its Final Decision on the South Australian AA, the AER indicated that it did not agree with AGL's submissions and approved clause 20.2 as drafted by AGN.²⁰</p> <p>AGL's comments on the proposed Victorian and Albury terms and conditions do not provide any cogent or new reasons to override the AER's previous decision on clause 20.2.</p> <p>From our perspective, there are two reasons to retain clause 20.2 in the proposed terms:</p> <ol style="list-style-type: none"> 1 it is consistent with the terms and conditions as approved for South Australia and, thus, promotes national consistency and efficiency across our networks; and 2 it allows AGN to recover base charges which apply to each DP for which a Retailer is the FRO under the Retail Market Procedures. <p>If there is no shared customer at the DP, the Retailer can decide whether it wishes to continue to remain financially responsible for the base charges or whether it wishes to request the decommissioning of the DP.</p>
<p>22.3</p>	<p>AGL states the time limitation is unrealistic. Issues are often not discovered within 11 months and some issues are due to an AGN fault – AGL should not have to bear the financial consequences of AGN's errors when they have no ability to prevent or rectify the issue. AGL proposes the following changes to the clause.</p> <p>22.3 Time Limit</p>	<p>We acknowledge that AGL continues to have issues with the wording of clause 22.3 of the proposed terms.</p> <p>Clause 22.3 as drafted reflects the outcome of previous consultation with retailers in the context of the South Australian AA and, in particular, changes made by AGN to clause 22.3 in response to previous submissions from AGL and Simply Energy.²²</p>

¹⁹ AER, *Attachment 12 – Non-tariff components | Final decision: Australian Gas Networks Access Arrangement 2016-21*, May 2016, pages 12-7 and 12-10 to 12-12.

²⁰ *Ibid.*

²² AGN, *AA Proposal for the South Australian gas distribution network, Attachment 17.2, Engagement with Australian Gas Networks Retailer Reference Group on Terms and Conditions*, 1 July 2015, page 1-2.

Clause	Origin and AGL Feedback	Our Response to Feedback on Terms and Conditions
	<p>(a) Subject to clause 22.3(b), the Network User may not make any claim for an adjustment of the Distribution Service Charges in a statement of charges:</p> <p>(i) unless full particulars of that claim are given by the Network User to AGN within three six months after the claim becomes known (or should have become known) to the Network User (or its officers, servants, agents or contractors);</p> <p>(ii) in any event, more than eleven months three years after the date of the relevant statement of charges.</p> <p>(b) If the Network User is a retailer, clause 22.3(a) will not limit any claim, or the time for any claim, which the Network User is required or permitted by law to make or pursue on behalf of a Shared Customer.</p> <p>(c) For the purposes of this clause, "should have become known" means would have become known to the Network User if the Network User had exercised reasonable care and acted in a diligent and prudent manner.</p> <p>We note that part (c) was not included in the QLD General Terms and conditions and AGL requests its deletion. ²¹</p>	<p>Clause 22.3 has been included in the proposed Victorian and Albury terms and conditions for two reasons:</p> <ol style="list-style-type: none"> 1 the clause appears in the terms and conditions for the South Australian access arrangement and its inclusion in the proposed Victorian and Albury terms and conditions promotes national consistency and efficiency; and 2 the clause is necessary to support the integrity of AGN's revenue. <p>AGL's comments on clause 22.3 do not raise any new points which were not already raised by AGL and Simply Energy in their submissions on the South Australian terms and conditions and which were not already addressed by the AER in its Draft Decision on the South Australian terms and conditions.</p> <p>The AER considered AGL's submissions and approved clause 22.3 in the AER's Draft Decision on the South Australian AA.²³</p> <p>The three month time limit is not unreasonable because that time limit only runs from the time at which a user becomes aware of a claim.</p> <p>It is not unreasonable for AGN to require users to notify AGN of claims of which users are aware. At the same time, it is unreasonable for users to fail to notify claims after they have become aware of the claims.</p> <p>A period of three months should give a User sufficient time to notify AGN of any claim of which the retailer becomes aware.</p> <p>The 11 month time limit is not unreasonable. It mirrors similar time limitations in the Energy Retail Code, see:</p> <ol style="list-style-type: none"> 1 12 months in clause 3E for issues about explicit informed consent; 2 clause 19 (2) which requires a retailer to ensure an actual meter read as frequently as is required and, in any event, at least once in every 12 months; 3 clause 23 which requires an actual meter read at the end of any 12 month period;

²¹ AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017.

²³ AER, *Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21*, November 2015, pages 12-15 to 12-16.

Clause	Origin and AGL Feedback	Our Response to Feedback on Terms and Conditions
		<p>4 clause 30(2) which imposes a 9 month time limit on the recovery of charges by retailers; and</p> <p>5 clause 31(5) which imposes a time limit of 12 months on refunds to a customer where the customer is at fault.²⁴</p> <p>Moreover, as noted in the previous submissions on this clause, the clause does not prevent a retailer from pursuing any claim which it is required by law to pursue on behalf of a customer, see clause 22.3(b).</p> <p>Inclusion of the words “or should have become known” ensures retailers exercise reasonable care and are diligent and prudent with respect to their billing procedures.</p> <p>Clause 22.3 (c) was added in the proposed Victorian and Albury Terms and Conditions as a result of Origin requesting greater clarity regarding how the term ‘should become known’ is defined as part of our consultation with our RRG.</p>
24.1	<p>AGL requests deletion of ‘or expected to be delivered’ noting that this phrase was not included in Clause 24.1 of the 2013-17 Access Arrangement.</p> <p>AGN currently utilises monthly forward estimate billing in QLD and SA but does not forward estimate bills in Victoria.</p> <p>AGN is the only Network that bills in this manner (both NECF and Victoria) and estimate quantities that are expected to be delivered as a BAU practice.</p> <p>AGL submits that the inclusion of ‘or expected to be delivered’ is a precursor to commencing forward estimated billing in Victoria. This process is financially detrimental to AGL and results in considerable rework every month. AGL therefore requests this phrase be deleted.²⁵</p>	<p>We submit that clause 24.1 as currently drafted reflects the AER approved tariff structure.</p> <p>We note that clause 24 requires AGN to make any determination in accordance with the law or any relevant rules or agreement that binds AGN and the Network User (such as the Retail Market Procedures). The law and the Retail Market Procedures regulate the basis on which AGN can determine quantities of gas using actual reads, estimated reads and substituted reads. These words have not been added to allow for forward estimated billing in Victoria.</p> <p>We also note that certain provisions of the Access Arrangement (i.e. <i>Annexure C - Calculation of Charges for Delivery Points to the Victorian Access Arrangement for 2013-2017</i>²⁶, details that, in some circumstances, the charges for new Demand Delivery Points are calculated on the basis of the quantity of gas “expected to be delivered” over a calendar year. These charges are based on expected capacity usage (“expected to be withdrawn”) and do not allow AGN to bill for future consumption.</p>
28.2	<p>AGL submits that “14 days” should be replaced with “28 days” as the time frame is too short.</p>	<p>We do not consider that the notice period in clause 28.2 is too short and remains unchanged from the 2013-17 Access Arrangement. In the event an</p>

²⁴ Essential Services Commission, *Energy Retail Code Version 11*, 1 January 2015.

²⁵ AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017.

²⁶ Envestra, *Access Arrangement for Envestra’s Victorian Gas Distribution System 2013 – 2017*, April 2013, page 36.

Clause	Origin and AGL Feedback	Our Response to Feedback on Terms and Conditions
	<p>In addition, this does not seem to be appropriate grounds to terminate an agreement of this nature, particularly if there were a dispute over charges. Terms of payment should align with the National Gas Rules and the B2B requirements administered by AEMO. ²⁷</p>	<p>amount is not paid under the Agreement, the Network User will be given a period of 14 days in which to remedy the failure to pay, plus an additional seven days' notice of termination. We believe this is a sufficient period to allow retailers to remedy any breach of a payment provision.</p> <p>We note that the NGR require payment of statement of charges within 10 business days of the date specified for payment and the 14 day period in which AGN requires payment would only commence once the 10 business day period has been breached. This allows sufficient time for retailers to arrange payment.</p> <p>In response to AGL's comment,</p> <p><i>"In addition, this does not seem to be appropriate grounds to terminate an agreement of this nature, particularly if there were a dispute over charges"</i>²⁸</p> <p>We note that the Network User has the ability to dispute a termination notice under clause 28.4 for payment related breaches.</p>
<p>28.6</p>	<p>AGL seeks deletion of this clause. Deletion of this clause was accepted by AGN in Qld. ²⁹</p>	<p>We have accepted AGL's comments in line with our approach of standardising our terms and conditions across all jurisdictions where appropriate.</p>
<p>29.1</p>	<p>AGL requests the inclusion of the following change to clause 29. <i>as a result arising out of any negligent act or omission on the part of AGN or its officers, servants, or agents, or contractors in connection with the provision to the Network User of Distribution Services pursuant to the Agreement or the operation, maintenance, repair, administration or management of the Network or any part of it.</i> Currently, contractors are not explicitly mentioned while they are explicitly mentioned in clause (b) and this would resolve the inconsistency. ³⁰</p>	<p>We do not agree that clause 29 as currently drafted is inconsistent in respect to its reference to contractors.</p> <p>Clause 29 operates so that AGN indemnifies AGL against any injury caused to AGL's officers, servants, agents or contractors caused by AGN or its officers, servants or agents.</p> <p>AGL's proposal would be to expand the clause so that AGN indemnifies AGL against the negligence of AGN's contractors even if this involved no negligence on the part of AGN. This is unnecessary – if AGN's contractors are negligent independent of AGN then AGL can sue the contractors directly in negligence. It does not need to insert AGN as an intermediary.</p> <p>It is inappropriate for AGN to extend this indemnity to apply to contractors as this would unduly expand AGN's risk profile and expose AGN to the risk of large uninsured claims.</p>

²⁷ AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

Clause	Origin and AGL Feedback	Our Response to Feedback on Terms and Conditions
		<p>Clause 29 appears in the terms and conditions approved for our South Australian AA, this clause also remains unchanged from the current 2013 – 2017 Victorian and Albury terms and conditions. Maintaining the existing clause promotes national consistency and efficiency across our networks.</p> <p>As set out in relation to clause 16.1 above, we are a regulated service provider earning a regulated return on the basis of a certain risk profile. The changes to clause 29.1 suggested by AGL would increase our risk profile, the cost of which would need to be included in reference tariff calculations and ultimately borne by customers.</p> <p>Clause 29.1 as it is currently drafted supports the NGO.</p>
<p>29.2</p>	<p>AGL seeks the following amendment: <i>AGN's obligation to indemnify the Network User under this clause will be reduced in proportion to the extent that the damage or injury has been caused by <u>any negligent or wrongful act or omission on the part of any of the following</u>:³¹</i></p>	<p>Clause 29.2 is in the form approved by the AER for the South Australian AA terms and conditions and remains largely unchanged from the current 2013 – 2017 Victorian and Albury terms and conditions.</p> <p>We submit that it is inappropriate to amend the provision so that only negligent or wrongful acts will reduce AGN's obligation to indemnify Retailers for damage or injury as it unduly expands our risk profile.</p> <p>To the extent damage or injury has been caused by the Network User or its customers, AGN should not be liable for it – an enquiry into the nature of the act or omission and whether it is negligent, wrongful or otherwise is irrelevant.</p> <p>Clause 29.2 encourages diligent and prudent behaviour on behalf of Retailers to mitigate potential damage and injury, the risk of which should not be passed onto AGN as a regulated service provider. As set out in relation to clause 29.1 above, the cost of any changes to AGN's risk profile would need to be included in reference tariff calculations and ultimately borne by customers. Rather than AGN bearing this risk, it should be borne by the party most able to mitigate the risk, being Retailers. Retailers who seek access to our network are aware of the terms and conditions and can effect their own insurance to mitigate risk or take other steps in the management of their businesses. This is consistent with the national gas objective.</p>
<p>29.5</p>	<p>AGL seeks the following amendment: <i>To the extent permitted by law, AGN will have no liability to the Network User, for or in respect of any Claim, unless full particulars of that Claim are given by the Network User to AGN within three months years after that Claim becomes known to the Network User (or its officers, servants, agents or</i></p>	<p>We acknowledge that AGL continues to have issues with the wording of clause 29.5 of the proposed terms.</p> <p>Clause 29.5 reflects the outcome of previous consultation with Retailers in respect to the South Australian AA. The AER considered AGL's submission on the time limitations as part of the South Australian the Draft Decision. The</p>

³¹ *Ibid.*

Clause	Origin and AGL Feedback	Our Response to Feedback on Terms and Conditions
	<p><i>contractors) or should have become known to the Network User (or its officers, servants, agents or contractors) (whichever is earlier). This sub-clause will survive the termination of the Agreement.</i></p> <p>AGL submits that the proposed time frames were unrealistic. The nature of the industry is that issues often are not identified within three months and can take time to investigate. Further it is unreasonable for the retailer to suffer the financial burden of Network errors.³²</p>	<p>AER did not require any changes to the time limitation and noted that time limitations provide incentives for Retailers to alert AGN to claims as soon as reasonably practicable.³³</p> <p>Clause 29.5 is in the form approved by the AER for the South Australian AA terms and conditions.</p> <p>We do not agree that the time frame proposed in clause 29.5 is unrealistic. The three month time period runs from the time a claim becomes known to a retailer and three months should give retailers sufficient time to notify AGN of the claim.</p> <p>Encouraging Retailers to notify AGN of claims as soon as possible protects AGN from the possibility of a large unexpected claim. As AGN is required to renegotiate its access arrangements every five years, encouraging timely notification of claims by retailers also protects AGN from claims arising in respect of access arrangements that have expired. If Retailers are required to notify AGN of claims within a three month period, there is only small risk of claims crossing AA Periods and AGN can calculate future reference tariffs to include the costs of any notified claims.</p> <p>The words “<i>or should have become known</i>” ensures Retailers exercise reasonable care and are diligent and prudent with respect to becoming aware of claims and notifying AGN of claims as they arise.</p> <p>We believe that clause 29.5 as currently drafted supports the national gas objective. In response to an AGL submission on clause 29.5 as part of the Victoria Draft Decision for 2013 – 17 the AER also considered that a limitation period is reasonable and consistent with the national gas objective.³⁴</p>
<p>33.2 33.3 33.4 33.5 33.6 33.7</p>	<p>AGL seeks the following amendments:</p> <p>33.2 Network Damage</p> <p><i>Subject to any exclusion or limitation arising under sub-clauses Error! Reference source not found. and Error! Reference source not found., the Network User will indemnify AGN against all loss, cost, expense or damage which AGN might suffer or incur in relation to any Receipt Point, Metering Installation or the operation, administration, maintenance, repair or management of the Network (other than those associated with any</i></p>	<p>In respect to AGL’s proposed changes to clauses 33.2, 33.3, 33.4 and 33.5, We require more information in relation which sub clauses AGL is referring to before responding to this proposed amendment.</p> <p>We do not agree with AGL’s proposed amendment to clause 33.6 or the addition of clause 33.7 which change alter our risk profile on which our tariffs have been set.</p>

³² AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017.

³³ AER, *Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21*, November 2015, page 12-16.

³⁴ AER, *Access arrangement draft decision | Envestra Ltd 2013–17 | Part 3 appendices*, September 2012, page 144.

Clause	Origin and AGL Feedback	Our Response to Feedback on Terms and Conditions
	<p><i>curtailment or interruption of the delivery of Gas referred to in sub-clause 33.5) that is caused by any of the following:</i></p> <p><i>(a) the Network User or any of its officers, servants, agents, contractors or invitees; or</i></p> <p><i>(b) if the Network User is a Gas Retailer, any Shared Customer or any officer, servant, agent, contractor or invitee of any Shared Customer, arising out of:</i></p> <p><i>(c) any negligence or wrongful act or omission by the Network User or, if the Network User is a Gas Retailer, any Shared Customer, or any of their respective officers, servants, agents, contractors or invitees; or</i></p> <p><i>(d) any breach of this Agreement by the Network User.</i></p> <p>33.3 Death and Personal Injury</p> <p><u><i>Subject to any exclusion or limitation arising under sub-clauses Error! Reference source not found. and Error! Reference source not found., the Network User will indemnify AGN against the death or injury of any servant, agent or contractor or invitee of AGN that is caused by any negligent act or omission on the part of the Network User or any of its officers, servants or agents in connection with the provision to the Network User of Distribution Services or the operation, maintenance, repair, administration or management of the Network or any part of it.</i></u></p> <p>33.4 Service Indemnity</p> <p><u><i>Subject to any exclusion or limitation arising under sub-clauses Error! Reference source not found. and Error! Reference source not found., and Subject to sub-clause 33.6, the Network User will indemnify AGN against all loss, cost, expense or damage which AGN might suffer as a result of any negligent or wrongful act or omission on the part of the Network User (or, if the Network User is a Gas Retailer, on the part of any Shared Customer) in connection with, or in relation to, any Service provided by AGN to the Network User pursuant to the Agreement (including, in particular (but without limitation), in connection with or in relation to the Disconnection or Reconnection of any User DP pursuant to the Agreement).</i></u></p> <p>33.5 Curtailment Indemnity</p> <p><u><i>Subject to any exclusion or limitation arising under sub-clauses Error! Reference source not found. and Error! Reference source not found., and Subject to sub-clause 33.6, the Network User will indemnify AGN against all loss, cost, expense or damage which AGN might suffer or incur in connection with, or in relation to any curtailment or interruption of the delivery of Gas as</i></u></p>	<p>Also the effect of clause 33.6 is to make AGN liable for contractor's acts even where those acts involve no wrong doing on the part of AGN. If AGL has an issue with an AGN contractor it can pursue that contractor directly.</p> <p>Such a claim puts AGN at risk of insolvency and does not encourage safety, reliability and security of supply of natural gas.</p>

Clause	Origin and AGL Feedback	Our Response to Feedback on Terms and Conditions
	<p><i>a result of any negligent or wrongful act or omission on the part of a Network User or, if the Network User is a Gas Retailer, a Shared Customer, or any of their respective officers, servants, agents, contractors or invitees.</i></p> <p>33.6 Indemnity Qualification</p> <p><i>The Network User's obligation to indemnify AGN under this clause will be reduced in proportion to the extent that any negligent or wrongful act or omission of AGN (including, but without limitation, any breach by AGN of its obligations under the Agreement), or any of its officers, servants, agents or contractors, contributes to the loss or liability.</i></p> <p>AGL also request insertion of the limitation period applicable to a claim by AGL under Clause 29. If amendment to period in Clause 29 is not accepted, the accepted period should be mirrored in the below.</p> <p>33.7 Limitation Period</p> <p><i>To the extent permitted by law, Network User will have no liability to AGN, for or in respect of any Claim, unless full particulars of that Claim are given by AGN to the Network User within three years after that Claim becomes known to AGN (or its officers, servants, agents or contractors) or should have become known to AGN (or its officers, servants, agents or contractors), whichever is earlier. This sub-clause will survive the termination of the Agreement.</i>³⁵</p>	
<p>34.1</p> <p>34.4</p> <p>34.5</p> <p>34.6</p>	<p>AGL seeks the following amendments:</p> <p>Clause 34.1</p> <p>Delete 'approved by AGN (which approval shall not be unreasonably withheld)'</p> <p>Deletion of this phrase was accepted by AGN in Qld.</p> <p>Clause 34.4</p> <p>Delete 'or might have arisen', cannot settle a maybe claim.</p> <p>Deletion of this clause was accepted by AGN in Qld.</p> <p>Clause 34.5</p> <p>Delete Clause 34.5, AGN not party to Retailer's insurance and cannot have input into reasonableness of settlement discussion.</p> <p>Deletion of this clause was accepted by AGN in Qld.</p>	<p>We have accepted AGL's comments in line with our approach of standardising our terms and conditions across all jurisdictions where appropriate.</p>

³⁵ AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017.

Clause	Origin and AGL Feedback	Our Response to Feedback on Terms and Conditions
	<p>Clause 34.6 Delete Clause 34.6 - If AGN seeks additional insurance to be obtained then these should be listed. Deletion of this clause was accepted by AGN in Qld. ³⁶</p>	
35.5	<p>AGL disagrees that AGN should have no liability when they are unable to gain access to a meter. The meter is the asset of AGN and AGN should take an element of responsibility for its own property. This clause should be deleted. ³⁷</p>	<p>We acknowledge that AGL continues to have issues with the wording of clause 35.5 of the proposed terms. Clause 35.5 was considered by the AER in its Draft Decision on the Victorian terms and conditions for the 2013-2017 AA. In its decision, the AER stated that it was reasonable not to expect AGN to perform the agreement because it could not obtain safe access, but that AGN should use reasonable endeavours to obtain safe access. If clause 35.5 was deleted as suggested by AGL, AGN would be liable for a failure to provide services where AGN made reasonable endeavours to gain safe access to a premises but was unable to do so. We believe this is unreasonable and places AGN in an untenable position. We note that the AER did not consider that this provision was necessary for the South Australian AA as under the National Energy Retail Law and Rules (NERL), shared customers have an obligation to provide AGN with access to premises and AGN can enforce this obligation directly against the shared customer. We note that the relevant provisions of the NERL are part of the National Energy Customer Framework (NECF) which does not apply in Victoria, therefore AGN has no enforceable right of access against shared customers.</p>
36	<p>AGL proposes the following inclusion: <i>“Each party may disclose Confidential Information to any body corporate that is its related body corporate (within the meaning of the Corporations Act). However, the party must ensure that its related body corporate does not disclose the Confidential Information to any person to whom the party could not make disclosure pursuant to the Agreement.”</i> ³⁸</p>	<p>We accept AGL’s feedback and have inserted clause 36.6 in response.</p>

³⁶ AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017.

³⁷ *Ibid.*

³⁸ *Ibid.*

Clause	Origin and AGL Feedback	Our Response to Feedback on Terms and Conditions
42.1	<p>AGL proposes the following change</p> <p><i>(d) a reference to Distribution Service Charges payable in respect of a Shared Customer includes a reference to Distribution Service Charges that accrue, in relation to a User DP, whilst the Network User is the FRO for that has a retail contract with the Shared customer for that User DP under the Retail Market Procedures;</i></p> <p>This is to align with AGL's proposed amendments to Clause 3.³⁹</p>	<p>We do not agree with AGL's position that Retailers should not be liable to discharge network charges levied for a DP where there is no customer contract.</p> <p>Please refer to the response to clause 3.2 above.</p>
N/A	<p>AGL in their submission raised the issue of performance reporting:</p> <p><i>"At a minimum AGL submits that the inclusion of a clause requiring the Network to enter good faith discussions with Retailers to develop performance reporting and key performance indicators is required."</i>⁴⁰</p>	<p>We believe any performance reporting should be coordinated between all gas distribution businesses and Retailers, and should provide for performance indicators for retailers and gas distributors. Presently, all the Victorian gas distribution businesses report performance indicators to Energy Safety Victoria (ESV) and the AER on a quarterly and annual basis.</p>
N/A	<p>AGL proposed the following wording relating to commercial agreements in their submission:</p> <p><i>"The Service Provider must exercise best endeavours to enter into a commercial arrangement with a User in a timely manner where the user can demonstrate that the agreement would provide benefits to the end customer and the agreement can mitigate risk to the Service Provider and be provided in a fair and equitable format to all Users."</i>⁴¹</p>	<p>We believe we have demonstrated throughout the Victorian and Albury engagement process that we are willing to negotiate our terms and conditions with Retailers. This is a continuation of the same principles applied in our recent South Australian gas distribution network review.</p> <p>We support the AER's position in this Draft Decision that the clause is unnecessary, which is consistent with the AER's recent decision for our South Australian terms and conditions.⁴²</p>

³⁹ AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² AER, *Attachment 12 – Non tariff components / Draft decision - AGN Victoria and Albury gas access arrangement 2018–22*, July 2017.

AER Draft Decision on our proposed Terms and Conditions

Table 2 sets out the AER's Draft Decision on the proposed terms including how we have incorporated their feedback into our revised proposed terms and conditions.

Table 2: AER Draft Decision on our Proposed Terms and Conditions and our Consideration in the Revised Proposed Terms and Conditions

Clause	AER Draft Decision	Our Response to AER Draft Decision on Terms and Conditions
N/A	Duty to negotiate – the AER considered the AEMC's review of Parts 8-12 of the NGR is the appropriate path for addressing any issues regarding the accessibility of the dispute resolution mechanism in the NGL and NGR. ⁴³	We support the AER's position in the Draft Decision and we are actively taking part in the AEMC's review.
3.3, 16.3, 20.2, 22.3, 24.1, 29.2, 33, 35.5, 36 and 42.1	Accepted AGN's proposed drafting of the clauses. ⁴⁴	We support the AER's position in the Draft Decision and our reasoning for this is detailed in the respective clauses see Table 1.
17.7	Required an amendment to clause 17.7 requiring a shipper to use 'best endeavours' to ensure customers provide the relevant assistance to the service provider. ⁴⁵	We have accepted the AER's Draft Decision and AGL's feedback and have amended clause 17.7 in response.
16.1, 28.6, 34.1, 34.4, 34.5 and 34.6	Accepted AGN's proposed drafting of the clause. ⁴⁶	While the AER have accepted our proposed drafting for these clauses we have accepted AGL's feedback and have amended the clauses in line with our approach of standardising our terms and conditions across all jurisdictions where appropriate.
36	Accepted AGN's proposed drafting of the clause rather than the amendments suggested by AGL. ⁴⁷	While the AER have rejected AGL's proposed insertion of the new clause we have accepted AGL's feedback and have amended clause 36.6 in response.

⁴³ AER, *Attachment 12 – Non tariff components / Draft decision - AGN Victoria and Albury gas access arrangement 2018–22*, July 2017.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

While the AER has not made a direct comment on AGL's proposed amendments to AGN's clause 18.2 reconnection, they have discussed AGL's submission to AusNet Services on reconnection. AGL submitted that both AGN's and AusNet Service's proposed terms should require the service provider to notify the current retailer when reconnecting a user delivery point after disconnection from the network. The AER reviewed AGL's amendments and stated:

*"We considered a similar AGL proposal in our decision on AGN's South Australian Distribution Network. Consistent with our earlier decision, we consider this is more appropriately a matter for the Retail Market Procedures or, if it is not an obligation to apply to all distributors, for commercial agreement between the parties. It is open to users to negotiate a similar term with AusNet. For these reasons, our draft decision is not to require AusNet to include this requirement in the terms and conditions."*⁴⁸

We support the AER's position in the Draft Decision for AusNet Services and given the AGL suggested wording on reconnection was the same for both AusNet Service and AGN, we believe this applies as equally to AGN as AusNet Services. In addition, the AER referred to AGN's South Australian Distribution Network and the wording of these clauses are consistent between our Victorian and South Australian Distribution Network as a result of our harmonisation approach.

Proposed Victorian and Albury Terms and Conditions

As discussed in our Final Plan (see Section 15.4) we commenced a process of standardising our terms across all jurisdictions where we have networks in 2012. We believe there are a number of benefits to our customers as it promotes greater efficiency across the industry and reduces transaction costs.

Our approach to the proposed terms and conditions included:

- consolidating the Victorian and Albury terms and conditions;
- harmonising the proposed terms with the South Australian terms and conditions taking into consideration that jurisdictional differences will always contribute to some variation (including adopting all of the amendments required by the AER in its recent decision for our South Australian network); and
- incorporating feedback from our RRG on the proposed terms;
- incorporating feedback from written submission on the proposed terms;
- incorporating feedback from the AER Draft Decision on the proposed terms; and
- incorporating feedback any further feedback on the proposed terms.

⁴⁸ AER, Attachment 12 – Non tariff components / Draft decision - AusNet Services gas access arrangement 2018–22, July 2017.

Table 3 summarises the specific changes to the proposed terms (these changes are marked in Attachment 15.4 to the Revised Final Plan), including that arising from the above feedback from written submissions and the AER Draft Decisions.

It is noted that the following abbreviations apply in the following table:

- AEMC = Draft rule determination for National Electricity Amendment(Retailer-distributor credit support requirements) Rule 2016 National Gas Amendment (Retailer-distributor credit support requirements) Rule 2016 by the Australian Energy Market Commission (AEMC) dated 27 October 2016.
- AER V&A Draft Dec = AER's draft decision on the Victoria and Albury AA;
- Written Submissions = changes as a direct result of written submission on our proposed terms;
- AER SA Draft Dec = AER's draft decision on the South Australian AA;
- AER SA Final Dec = AER's final decision on the South Australian AA;
- SATC = AER approved terms and conditions for South Australian AA;
- Consolidation = Consolidation of the Victorian and Albury proposed terms;
- Feedback from RRG = changes as a direct result of discussion with our RRG; and
- Other = other minor amendments to correct simple errors or improve language.

Table 3: Summary of changes of Victorian and Albury proposed Terms and Conditions

Clause	Proposed Changes	Comment	Reference
Front Page	Inserted Albury in the title.	These proposed terms cover both Victorian and Albury gas distribution networks.	Consolidation
Introduction paragraph	Removed reference to " <i>Vic Gas Distribution Pty Ltd</i> ". Service Provider is now defined in the Glossary	These proposed terms cover both Victorian and Albury gas distribution networks.	Consolidation
2.7	" <i>exercises</i> " replaced with " <i>uses</i> ".	Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.	Clause 2.7 SATC
3.3	Deleted " <i>whether or not there is any Shared Customer in respect of that User DP</i> ".	Change confirms to clause 3.3 as required by the AER SA Draft Dec. ⁴⁹	AER SA Draft Dec
3.4	insertion of "... <i>shared</i> ".	This simply corrects an error in the proposed terms.	Other
11.1	Deleted " <i>any User DP that is</i> ".	Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.	Clause 11.1 SATC

⁴⁹ AER, *Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21*, November 2015, page 12-31.

11.2	Deleted " <i>any User DP that is</i> " and added " <i>(or, if the meter at a Demand DP is an interval meter, then AGN will obtain the meter reading data as and when required in accordance with the Retail Market Procedures)</i> ".	Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.	Clause 11.2 SATC
11.3, 11.4, 11.5 and 11.6	Deleted " <i>any User DP that is</i> ".	Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.	Clause 11.3, 11.4, 11.5 and 11.6 SATC
12.1	Added " <i>The specification specified at the start of the Agreement is that contained in AS 4564 – 2011, Specification for General Purpose Natural Gas.</i> "	Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.	Clause 12.1 SATC
12.8	Added Clause 12.8.	Added Clause 12.7 from Albury terms and conditions. It addresses the situation contemplated by section 23(2)(a) of <i>the Gas Supply (Safety and Network Management) Regulation 2008</i> (NSW).	Consolidation
12.8	Added " <i>AGN is required or permitted to do so by law. In New South Wales, AGN is permitted to do so where</i> "	Change in clause wording in response to feedback from Origin Energy and Red Energy.	Feedback from RRG
13.1	Deleted " <i>agreed in writing between Envestra and the Network User</i> " and added " <i>which is within the limits specified</i> " and " <i>in Appendix 1</i> ".	Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.	Clause 13.1 SATC
13.6	New clause: <i>"Network User Obligations</i> <i>Nothing in sub-clauses 13.3 or 13.5 will relieve the Network User of its obligations under sub-clause 13.1."</i>	This new clause is the same as clause 13.6 in the South Australian terms and conditions. It has been added so that the proposed terms aligns to the South Australian terms and conditions.	Clause 13.6 SATC
16.1	Deleted " <i>, free and clear of all mortgages, charges and other encumbrances and all other third party rights and claims in and to any Gas (other than any floating charge that has not become a fixed charge and that permits the Network User to sell or supply that Gas)</i> ".	We accept AGL's feedback and have amended the clause.	Written Submission
17.3 (a)	" <i>any</i> " changed to " <i>those</i> ".	Change to improve language.	Other

17.7	Added "use best endeavours to"	We accept the AER's and AGL's feedback and have amended clause the in response.	Written Submission and AER V&A Draft Dec
19.1	Added " <i>Ancillary Reference Services</i> " and deleted " <i>Disconnection and Reconnection of DPs, and carry out Meter and Gas Installation Tests, Meter Removal, Meter Reinstallation and Special Meter Readings</i> ".	Change in terminology to simplify and align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.	Clause 19.1 SATC
20.2	<p>Changes included the deletion of "<i>subject to sub-clause 22.1</i>" and "<i>the Network User is liable for those Distribution Service Charges whether or not the Shared Customer pays those Distribution Service Charges or any other amount to the Network User</i>".</p> <p>Addition of:</p> <p><i>"(a) the Network User is liable for any component of the Distribution Service Charges which accrues in relation to a User DP whilst there is no Shared Customer in respect of that User DP;</i></p> <p><i>(b) if there is a Shared Customer in respect of a User DP and the Network User is not permitted to recover Distribution Service Charges from that Shared Customer under the NERL or NERR (once they are adopted in the relevant jurisdiction), clause 22.1 applies and AGN is not permitted to recover those Distribution Service Charges from the Network User; and</i></p> <p><i>(c) unless clause 22.1 applies, if there is a Shared Customer in respect of a User DP, the Network User is liable for those Distribution Services Charges which accrue in respect of that User DP, even if the Shared Customer has not paid, or does not pay, those Distribution Service Charges to the Network User."</i></p>	<p>Incorporated changes as proposed by AGN in response to requirement by the AER SA Draft Dec.⁵⁰</p> <p>In response to comments from Red Energy and Lumo AGN has also amended clause 20.2(b) to include similar language to that used in clause 22.1 – that is "<i>... the NERL or the NERR (once they are adopted in the relevant jurisdiction).</i>"</p>	<p>AER SA Draft Dec</p> <p>Feedback from RRG</p>
22.1	Amended to remove specific reference to " <i>Victoria</i> ".	Change to make clause generic for application to Victoria and New South Wales.	Consolidation

⁵⁰ AER, Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21, November 2015, page 12-31.

22.3	<p>Addition of:</p> <p><i>“(a) Subject to clause 22.3(b), the Network User may not make any claim for an adjustment of the Distribution Service Charges in a statement of charges:</i></p> <p><i>(i) unless full particulars of that claim are given by the Network User to AGN within three months after the claim becomes known (or should have become known) to the Network User (or its officers, servants, agents or contractors);</i></p> <p><i>(ii) in any event, more than eleven months after the date of the relevant statement of charges.</i></p> <p><i>(b) If the Network User is a retailer, clause 22.3(a) will not limit any claim, or the time for any claim, which the Network User is required by law to make or pursue on behalf of a Shared Customer.”</i></p>	<p>Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.</p> <p>Change in South Australian terms and conditions were in response to comments from Simply Energy and AGL Energy, we redrafted this clause for clarification.</p>	<p>Clause 22.3 SATC</p>
Deletion of:	<p><i>“No claim for an adjustment will be made by the Network User after the expiration of the period mentioned in sub-clause 29.5 or, in any event, more than eleven months after the date of the relevant statement of charges (except, if the Network User is a Gas Retailer, the Network User may make any claim which the Network User is required by law to pursue on behalf of a Shared Customer).”</i></p>		
22.3 (c)	<p>Addition of:</p> <p><i>“For the purposes of this clause, “should have become known” means would have become known to the Network User if the Network User had exercised reasonable care and acted in a diligent and prudent manner.”</i></p>	<p>Change in proposed clause wording in response to feedback from Origin Energy and AGL Energy.</p>	<p>Feedback from RRG</p>
24.1	<p>Added <i>“or expected to be delivered”</i> and minor drafting change to (c).</p>	<p>Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.</p>	<p>Clause 24.1 SATC</p>
24.6	<p>New Clause:</p> <p><i>“If the Charges payable by the Network User in respect of any Billing Period were</i></p>	<p>This new clause is the same as clause 24.6 in the South Australian terms and conditions. It has been added so</p>	<p>Clause 24.6 SATC</p>

calculated on the basis of estimated deliveries of Gas during that Billing Period and subsequently a reading taken from Metering Equipment enables AGN to determine the actual Quantity of Gas delivered (assuming, if necessary, that Gas was delivered at a constant rate), AGN will determine the actual Quantity of Gas delivered (if necessary, based on that assumption) and will determine whether the Network User has overpaid or underpaid the tariffs and other charges. AGN will credit the Network User with any overpayment, or debit the Network User with any underpayment, in the next statement of charges issued pursuant to the Agreement."

that the proposed terms aligns to the South Australian terms and conditions.

24.7	Deletion of " <i>Whenever Envestra</i> ", " <i>estimated</i> " " <i>have been</i> " " <i>in accordance with clause 24.1, that</i> ". Addition of " <i>AGN will</i> ", " <i>on a reasonable basis</i> " " <i>expected</i> " " <i>be</i> " " <i>Such</i> ".	Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.	Clause 24.7 SATC
27.2(b)	Changed "10 Business Days" to "5 Business Days"	Change as a result of the Draft rule determination for National Electricity Amendment (Retailer-distributor credit support requirements) Rule 2016 National Gas Amendment (Retailer-distributor credit support requirements) Rule 2016 by the Australian Energy Market Commission dated 27 October 2016.	AEMC
28.2 (a)	Changes included the addition of " <i>subject to clause 28.4, AGN</i> ".	Incorporated changes as proposed by AGN in response to requirement by the AER SA Draft Dec. ⁵¹	AER SA Draft Dec
28.2 (b)	Addition of " <i>clause 28.4</i> " deletion of " <i>clause 23 and 27</i> ".	Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.	Clause 28.2 (b) SATC
28.3 (a)	Addition of " <i>subject to clause 28.4 AGN</i> ".	This clause has been amended so that it mirrors the terms of clause 28.2(a) and (b), where relevant and to align the proposed terms of the clause with the equivalent clause in	Clause 28.3 (a) SATC

⁵¹ AER, Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21, November 2015, pages 12-31 to 12-33.

		the South Australian terms and conditions.	
28.4	<p>New Clause:</p> <p><i>"AGN may not give notice of termination under clause 28.2(a) or 28.2(b) for an alleged breach of an obligation by the Network User if the Network User, in good faith, disputes the alleged breach and gives AGN notice of that dispute in accordance with clause 37 within 14 days after the Network User receives notice of the alleged breach. This clause will not apply in any case where it has been determined that the Network User is in breach of an obligation (either by the Independent Expert appointed to resolve the dispute or by a court of law).</i></p> <p><i>The Network User may not give notice of termination under clause 28.3(a) for an alleged breach of an obligation by AGN if AGN, in good faith, disputes the alleged breach and gives the Network User notice of that dispute in accordance with clause 37 within 14 days after AGN receives notice of the alleged breach. This clause will not apply in any case where it has been determined that AGN is in breach of an obligation (either by the Independent Expert appointed to resolve the dispute or by a court of law)."</i></p>	<p>Added Clause 28.4 Disputed Right of Termination.</p> <p>Incorporated the changes made in the South Australian terms and conditions for the 2016/17 to 2020/21 period and changes as proposed by AGN in response to requirement by the AER SA Draft Dec⁵².</p>	AER SA Draft Dec
28.6	Deletion of clause	We accept AGL's feedback and have amended the clause.	Written Submission
29.2 (b)	Addition of <i>"of a Shared Customer"</i> and minor drafting change to delete <i>"of its"</i> .	Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.	Clause 29.2 (b) SATC
29.6	Added <i>"(whether in tort, in contract or otherwise)"</i> .	Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.	Clause 29.6 SATC
30.1	Added <i>"domestic"</i> and deleted <i>"residential"</i> .	Change to align the proposed terms of the clause with the equivalent	Clause 30.1 SATC

⁵² AER, Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21, November 2015, pages 12-31 to 12-33.

		clause in the South Australian terms and conditions.	
33.2 (b)	Addition of <i>"of a Shared Customer"</i> and minor drafting change to delete <i>"of its"</i> .	Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.	Clause 33.2 (b) SATC
33.3	Deletion of <i>"Subject to the other terms of the agreement"</i> , <i>"caused to an officer"</i> , <i>"Envestra as a result of"</i> and <i>"pursuant to the Agreement"</i> . Addition of <i>"the death or"</i> , <i>"of any"</i> , <i>"or invitee"</i> , <i>"that is caused by"</i> and <i>"or any of"</i> .	Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.	Clause 33.3 SATC
34.1	Deletion of <i>"insurers approved by AGN (which approval shall not be unreasonably withheld)"</i>	We accept AGL's feedback and have amended the clause.	Written Submission
34.4	Deletion of <i>" , or might have arisen,"</i>	We accept AGL's feedback and have amended the clause.	Written Submission
34.5	Deletion of clause	We accept AGL's feedback and have deleted the clause.	Written Submission
34.6	Deletion of clause	We accept AGL's feedback and have deleted the clause.	Written Submission
34.6	Deletion of clause	We accept AGL's feedback and have deleted the clause.	Written Submission
34.7, 34.8 and 34.9	Deletion of the Clause 34.7 Insurance Required, Clause 34.8 Insurance Information and Clause 34.9 Notification.	Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.	SATC
35.1	Added <i>"or any Network User's Customer"</i> to align to the SATC.	Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions. Change in South Australian terms and conditions were in response to comments from Origin.	Clause 35.1 SATC
35.2	Addition of <i>"or such notice as is agreed with the owner or occupier"</i> .	Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.	Clause 35.2 SATC

35.4	Deleted " <i>use reasonable endeavours</i> " and addition of " <i>give reasonable assistance</i> ".	Incorporated changes required by the AER SA Draft Dec. ⁵³	AER SA Draft Dec
35.5	Addition of " <i>This clause 35.5 will not apply after the National Energy Retail Law applies to the Network (but without prejudice to its operation in relation to the period prior to that time).</i> "	Change to clarify that the clause will not apply after the commencement of the NERL to the network.	Feedback from RRG
36.6	New Clause added " <i>Each party may disclose Confidential Information to any body corporate that is its related body corporate (within the meaning of the Corporations Act 2001). However, the party must ensure that its related body corporate does not disclose the Confidential Information to any person to whom the party could not make disclosure pursuant to the Agreement.</i> "	We accept AGL's feedback and have added the clause.	Written Submission
37.4	Deletion of " <i>the Parties are unable to resolve</i> " and addition of " <i>is not resolved</i> ".	Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.	Clause 37.4 SATC
37.5	Deletion of "5" and " <i>the Parties will jointly</i> ". Addition of " <i>five</i> " and " <i>either Party may</i> ".	Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.	Clause 37.5 SATC
37.6	Addition of " <i>(or, to the extent not agreed, the terms specified by the Independent Expert).</i> "	Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.	Clause 37.6 SATC
37.9	Addition of " <i>and, in any event, within 20 Business Days after the Independent Expert was appointed (or within whatever longer period the Parties may agree).</i> "	Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.	Clause 37.6 SATC
39.1	Addition of " <i>Neither Party may</i> " and " <i>the Agreement or</i> ". Deletion of " <i>by the Network User</i> " and " <i>The Parties must not</i> ".	Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.	Clause 39.1 SATC
39.2	Removal of "5" addition of "11"	As a result of feedback from Red Energy the version of the Retail Market Procedures was updated from	Feedback from RRG

⁵³ AER, Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21, November 2015, pages 12-31 to 12-32.

5 to 11. Version 11 was made effective from the 27 September 2016

41.3	<p>Addition of <i>"either party", "that party", "or delay", "Each party" and "If either party withholds consent, it must explain why it has withheld its consent or approval has been withheld. Any explanation is without prejudice."</i></p> <p>Deletion of <i>"Envestra"</i>.</p>	<p>Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.</p> <p>Change in SATC were in response to comments from Origin Energy, clause was made reciprocal.</p>	Clause 41.3 SATC
41.4	<p>Addition of <i>"in which the Network is located"</i> and deletion of <i>"of Victoria"</i></p>	<p>Change to make clause generic for application to Victoria and New South Wales.</p>	Consolidation
41.11	<p>Addition of <i>"which gives effect to a" and "by the Network User"</i>.</p> <p>Deletion of <i>"other", "Reasonably necessary pursuant to the Agreement (other than any", "executed" and "or any deed poll executed pursuant to sub clause 39.4)"</i>.</p>	<p>Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.</p>	Clause 41.11 SATC
42.1	<p>Deletion of Clause 42.1 (b) <i>"a reference to a regulatory authority includes a reference to any court or other body exercising judicial powers and to any other person established by law or authorised by law to act"</i> and Minor wording changes.</p>	<p>Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.</p>	Clause 42.1 SATC
43.2 (c)	<p>Addition of <i>" 10 businesses days"</i> and deletion of <i>" 7 days"</i>.</p>	<p>Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.</p> <p>Change in South Australian terms and conditions were in response to comment from Origin Energy, amended timeframe to 10 business days.</p>	Clause 43.2 (c) SATC
43.4	<p>Addition of <i>"section" and "finding of the Commissioner of Taxation in respect"</i>.</p> <p>Deletion of <i>"clause" and "as that Act is varied in its effect on an event, matter, thing, agreement, transaction or the like by A New Tax System (Goods and Services Tax Transition) Act 1999."</i></p>	<p>Change to align the proposed terms of the clause with the equivalent clause in the South Australian terms and conditions.</p> <p>Change in South Australian terms and conditions were in response to comment from Origin Energy, amendment to Goods and Services Tax clause.</p>	Clause 43.4 SATC

Appendix 1 Addition of "*Receipt Point Pressures*".

Change to align the appendix of the proposed terms with the equivalent appendix in the South Australian terms and conditions.

Appendix 1
SATC
