



Attachment H – Access Arrangement Terms and Conditions – NT Gas response to AER amendments

No.	Matter	AER Amendment	NT Gas response
C.1	Obligation to Transport new clause	<p>Insert new clause 1 under the heading “Obligation to Transport”:</p> <p>“Subject to the terms of the Agreement, the Service Provider will receive gas from the Users at the Receipt Points and deliver gas at the Delivery Points.”</p>	<p>NT Gas accepts this amendment in part.</p> <p>NT Gas accepts the inclusion of an opening statement in the Terms and Conditions specifying that the Service Provider will provide the Firm Service (Reference Service) in accordance with the General Terms and Conditions set out in Schedule 3 of the Access Arrangement. NT Gas does not consider, however, that the AER’s proposed revision adequately reflects the nature of the Reference Service where it limits this Service to the receipt and delivery of Gas. The definition of the Firm Service refers to clause 2.2 of the Access Arrangement which describes the Reference Service. NT Gas has included a clause that requires it to provide the Firm Service in accordance with the Terms and Conditions set out in this Schedule 3 (<i>see clause 1 of the revised Ts and Cs</i>).</p> <p>To clarify this point, certain references to ‘Services’ in the Terms and Conditions have been revised to ‘Firm Service’.</p>
C.2	Prudential requirements clause 1 ¹	<p>Amend clause 1(a) as follows:</p> <p>“(a) require the User to provide, prior to commencement of Services and thereafter as reasonably required, financial security in the form of a parent company guarantee, bank guarantee or similar security as reasonably determined by the Service Provider for the performance...”</p> <p>Amendment to clause 1(b) as follows:</p> <p>“where the User:</p> <p>(i) fails to pay when due any amounts payable under the Transportation Agreement, excepting any</p>	<p>NT Gas accepts the AER’s amendment to clause 1(a) (<i>see clause 2(a) of revised Ts and Cs</i>).</p> <p>NT Gas accepts the AER’s amendment to clause 1(b) in part. NT Gas considers that a further condition needs to be added to clause 1(b) allowing NT Gas to require a User to provide further financial security where the user has a material adverse change to its credit rating or credit worthiness during the term of its Transportation Agreement and does not provide NT Gas with financial security as reasonably required to reflect this change in circumstance (<i>see clause 2(b)(iii) of revised Ts and Cs</i>).</p>

¹ Note that the clause references in this document refer to NT Gas’ original proposal, except where otherwise indicated



		<p><i>contested amounts; or</i></p> <p>(ii) <i>fails to obtain and maintain any Approvals required to meet its obligations under the Transportation Agreement</i></p> <p>subject to providing at least 7 days written notice to the User, refuse to provide or suspend the provision of Services, without liability to the User.”</p>	<p>Revised clause 2(a) allows NT Gas to require financial security as reasonably required. This can include differential levels of financial security required of different users, depending on their credit rating or credit worthiness. The additional clause 2(b)(iii) (<i>see clause 2(b)(iii) of revised Ts and Cs</i>) is required to ensure that NT Gas can require additional financial security during the term of a Transportation Agreement where a user’s credit rating or worthiness suffers a material adverse change.</p> <p>This ensures that Users with similar credit ratings or credit worthiness are treated similarly by NT Gas. Required financial security should match the financial circumstance of the User, which may change over the term of a Transportation Agreement, rather than the User’s financial circumstances at the start of the contract only.</p> <p>NT Gas accepts the AER amendment requiring it to provide the User with 7 days notice before refusing to provide or suspending the provision of the Firm Services to a User (<i>see clause 2(b) of the revised Ts and Cs</i>).</p>
C.3	<p>Nominations</p> <p>clauses 2-5</p>	<p>Delete clause 4.</p> <p>Amend clause 5.</p> <p><i>“The service provider will not be obliged to receive or deliver on any Day a quantity of gas in excess of the User’s MDQ.”</i></p> <p>The word <i>“intended”</i> to be deleted from the definition of <i>“Schedule”</i>.</p>	<p>NT Gas does not accept the AER’s deletion of clause 4.</p> <p>The AER states that clause 4 implies that NT Gas has no obligation to provide services but only to make a determination of what NT Gas intends to do. NT Gas does not consider that this characterisation is accurate.</p> <p>Notwithstanding the inclusion of the new clause 1 in the revised Terms and Conditions explicitly setting out the obligation to provide the Firm Service, the AER’s assessment does not adequately track through the nomination and scheduling process set out in the General Terms and Conditions.</p> <p>The provision of the Firm Service involves two intermediate stages - nomination and scheduling. To receive the Firm Service, the User must provide NT Gas with its Nominations in accordance with clauses 2 and 3. NT Gas is not liable to provide the Firm Service unless it is Scheduled (clause 4). Services must be Scheduled in accordance with clauses 6-10, and these clauses include provisions whereby a Nomination may legitimately not be Scheduled, even though it has been Nominated in accordance with clauses 2 and 3 (<i>see for example under clause 7</i>). Clause</p>



			<p>2.2 of the Access Arrangement completes this process by specifying that the Service Provider will provide the Firm Service as Scheduled in accordance with the Transportation Agreement.</p> <p>NT Gas therefore must Schedule a Nomination in accordance with clauses 6-10, and then must provide the Firm Service in accordance with the Schedule (subject to curtailment provisions or force majeure). The AER's concerns that NT Gas is only required to make a determination of its intent to provide the Firm Service is therefore unfounded. NT Gas has not accepted the AER's deletion of clause 4 as it describes a necessary part of the process in receiving and scheduling nominations for the provision of the Firm Service.</p> <p>Clause 4 establishes the requirement of the Service Provider to provide the Service as Scheduled by the Service Provider, following User Nomination. Scheduling, and the requirement to Schedule, it is also linked to the Service Provider's rights in respect of curtailment and Force Majeure.</p> <p>Further, NT Gas submits that the AER's concern with respect to the definition of Schedule is unfounded. The definition refers to a determination made the day prior to the day the Firm Service will be provided of the <i>intended</i> Schedule for the next day. This Schedule is <i>intended</i> as NT Gas may amend the Schedule in accordance with clause 9 of the Terms and Conditions. This does not impact the obligation for NT Gas to Schedule Nominations in accordance with clauses 6-10, and provide the Firm Service in accordance with that Schedule.</p> <p>In respect of clause 5, NT Gas accepts the AER's amendments to clause 5 with the exception of the change in the obligation to receive or deliver gas up to the Users MDQ. NT Gas does not consider that this change is appropriate as it does not reflect the nature of the delivery of pipeline services, and has the potential to significantly limit the ability of NT Gas to provide pipeline services to third party users (<i>see clause 6 of the revised Ts and Cs</i>).</p> <p>Subject to clauses 6 and 7, NT Gas is obliged to Schedule up to a Users MDQ where the User has nominated up to this value in accordance with</p>
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			<p>clauses 2 and 3. The MDQ is defined as the amount of Gas that the Service Provider is from time to time obliged to receive or deliver for a User on any day, as set out in the Transportation Agreement with that User. This amount can far exceed that User's requirement on any given day, as the User's MDQ is a maximum amount and may reflect seasonal variability or short term requirements during the term of the Transportation Agreement.</p> <p>It is because the User's actual requirements for Gas receipt and delivery on a given Day may vary from its MDQ that NT Gas requires each User to specify its Nominations for each Day. Knowledge of these Nominations allows NT Gas to effectively operate the Pipeline, and to Schedule other Users, including Users of Negotiated or Interruptible Services.</p> <p>If NT Gas was obliged to receive or deliver Gas up to a User's MDQ regardless of nominations (as required under the AER's proposed amendment to this clause) NT Gas would not be able to Schedule other users even where there is available capacity, as NT Gas could at any time be required to reserve capacity to deliver up to the User's MDQ even where this amount was not Nominated for that day. NT Gas does not consider that this is in the long term interests of consumers, as it limits the potential utilisation of the Pipeline for Services other than the Firm Service.</p> <p>For this reason, NT Gas should only be obliged to receive or deliver Gas up to the amount Scheduled, which relates to the Nominated amount, not the User's MDQ. NT Gas has not made the AER's requested revision to clause 5 of its Access Arrangement.</p>
C.4	<p>Scheduling clauses 6-10</p>	<p>Delete "<i>and subject to certain other exceptions</i>" from clause 6.</p> <p>Amend the definitions of Overrun Quantity and Overrun Charge in Schedule 2 by adding "<i>Overruns may be authorised or unauthorised.</i>"</p> <p>Amend Schedule 1 by adding "<i>Authorised Overrun Rate: 120% of Reference Tariff</i>" and adding "<i>Unauthorised</i>" at</p>	<p>NT Gas accepts the AER's concerns that the inclusion of '<i>and subject to certain other exceptions</i>' in clause 6 creates uncertainty. NT Gas notes, however, that there are other exceptions not listed in clause 6 which may limit NT Gas' obligations to Schedule a User's Gas. These include the necessity to carry out Pipeline works which may mean certain quantities cannot be Scheduled. NT Gas has therefore retained this phrase in clause 6 but made a further revision to specify that those exceptions are only those set out in the General Terms and Conditions. NT Gas considers that this amendment addresses the AER's concern that the clause provides NT</p>



		<p>the beginning of "Overrun Rate: 250% of Reference Tariff."</p> <p>Amend clause 7(a) by adding "<i>Such scheduling limitations will be applied only to the portion or portions of the Pipeline that are capacity constrained.</i>"</p> <p>Amend clause 7(b) by adding "<i>pursuant to authorised overruns.</i>"</p> <p>Require definition of As Available Transportation Agreement in Schedule 2.</p>	<p>Gas with more discretion than intended (<i>see clause 7 of the revised Ts and Cs</i>).</p> <p>The AER requires NT Gas to limit pro rata scheduling of the Firm Service only to the portion or portions of the Pipeline that are capacity constrained (clause 7(a)). NT Gas accepts this amendment, but notes that its ability to limit Scheduling to capacity constrained portions of the Pipeline should be subject to the extent this is reasonably practicable. This is because broader limitations on scheduling may be required for NT Gas to safely operate the Pipeline.</p> <p>The AER has required the inclusion of authorised overruns in NT Gas' Access Arrangement. NT Gas considers that authorised overruns, being the authorised receipt or delivery of gas in excess of the User's MDQ, is already addressed in the Access Arrangement through the inclusion of scope for Negotiated Services. APA Group's standard terms and conditions no longer include authorised overruns for this reason. An authorised overrun is essentially an 'as available' service, and is a service that would be able to be negotiated with NT Gas on terms and conditions appropriate to this service. It is important that this service be negotiated with separate terms and conditions to that of the Reference Service, as the nature of the service is different.</p> <p>NT Gas also notes that the AER's proposed amendment would give authorised overruns priority over Negotiated Services through the inclusion of '<i>pursuant to authorised overruns</i>' in clause 7(b). This clause effectively gives the foundation contractor priority over available capacity, even where another User also has a Negotiated Transportation Agreement in place for as available MDQ. NT Gas considers that this discriminates against other Users of the Pipeline, and is inconsistent with the AER's statements in the draft decision that reject the position put by PWC that it should have priority to capacity.²</p> <p>NT Gas has therefore not accepted the AER's required amendment to</p>
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² AER 2011, Draft Decision, p 225



			<p>include scope for authorised overruns, including a tariff. NT Gas considers that the inclusion of such terms would be discriminatory, and be akin to the AER setting terms and conditions and a tariff for a non-Reference Service.</p> <p>NT Gas has also removed reference to 'as available' service in the Access Arrangement as this service is a Negotiated Service and therefore should be referred to as such. This particularly impacts the scheduling and curtailment priorities which referred to as available services.</p>
C.5	<p>Curtailment clauses 11-14</p>	<p>Delete clause. 12(a)(ii)</p> <p>Delete clause 12(a)(iii)</p> <p>Amend clause 12(a) as follows in order to effect the change to clause 12(c):</p> <p>"if the interruption or curtailment <i>is due to</i>:</p> <p style="padding-left: 40px;">(a) <i>planned or unplanned maintenance in respect of the Pipeline and the Service Provider acts in accordance with clause 32 or clause 33; or</i></p> <p style="padding-left: 40px;">(b) <i>a Force Majeure Event.</i>"</p> <p>Delete clause 12(d)</p> <p>Amend clause 14 by adding words '<i>provided for in clause 13</i>' after the word adjustment.</p> <p>Definitions to be included for Minimum Bill and Capacity Charge.</p>	<p>NT Gas accepts amendments to 12(a)(i) requiring the inclusion of '<i>and the service provider acts</i>' into this clause.</p> <p>NT Gas does not accept the AER's deletion of clause 12(a)(ii). The AER considered that clause 12(a)(ii) was unnecessary as clauses 32 and 33 provide for curtailments and interruptions for planned and unplanned maintenance.</p> <p>Both clauses 32 and 33 provide for circumstances where work, repair or maintenance on the pipeline is required in accordance with Good Engineering and Operating Practice (GEOP). There may be circumstances in which curtailment is necessary for reasons other than the need to carry out work, repair or maintenance on the pipeline in ensuring the safe and efficient operation of the pipeline. For example, a severe weather event (either actual or anticipated) may require the demobilisation of service personnel such that a curtailment may be required. Another example may be where an issue arises in respect of an adjoining/interconnecting pipeline or facility which results in the need for a curtailment on the AGP. In both of these circumstances, the protections afforded under clauses 32 and 33 would not apply. Hence the need to maintain clause 12(a)(ii).</p> <p>NT Gas accepts the deletion of 12(a)(iii).</p> <p>NT Gas does not accept the deletion of 12(d) but proposes that the clause be amended such that NT Gas is not liable where the capacity is reduced other than due to its breach of the Transportation Agreement, negligence or Wilful Misconduct. NT Gas has proposed a definition of 'Wilful Misconduct' to clarify the meaning of that term.</p>



			<p>NT Gas has made minor additional amendments to clause 12 to improve continuity between the subclauses (<i>see clause 12 of the amended Ts and Cs</i>).</p> <p>NT Gas has not included definitions for a Minimum Bill or Capacity Charge in the Access Arrangement as these concepts do not meaningfully arise in the context of the Reference Service. NT Gas has instead amended this clause to refer to Charges, and included a definition of Charges in the Glossary that refers to Schedule 1 of the Access Arrangement. This change leads to consequential amendments in other parts of the Access Arrangement (<i>see clause 14 of the amended Ts and Cs</i>).</p> <p>NT Gas accepts the AER's amendments to clause 14 in part. To address the AER's concerns, NT Gas has removed references to Minimum Bill and Capacity Charge in the Access Arrangement, and included a definition of Charge which relates to part 4 of the Access Arrangement (<i>see clause 14 of the amended Ts and Cs</i>).</p>
C.6	<p>Imbalances clauses 15-19</p>	<p>Amend clause 17 as follows:</p> <p>Delete the words "as necessary or" and replace with "<i>to the extent necessary to enable NT Gas to comply with any requirements under the Transportation Agreement or to operate the Pipeline properly or, with the consent of the User,...</i>"</p> <p>Amend clause 18 as follows:</p> <p><i>"The User will indemnify the Service Provider for 100% of all costs and expenses reasonably incurred by the Service Provider in purchasing Gas to make a correction."</i></p>	<p>NT Gas accepts the AER's revisions to clause 17 in part. NT Gas accepts that its steps to correct an Unauthorised Imbalance should be limited to the extent necessary to enable NT Gas to transport the quantities of Gas Scheduled under the User's Transportation Agreement, or any other Transportation Agreement.³</p> <p>NT Gas does not consider that the AER's proposed redrafting of this clause has this effect as it limits NT Gas' actions to those necessary to enable NT Gas to comply with requirements under <i>the</i> Transportation Agreement. This needs to be wider, and refer to requirements to deliver gas scheduled under <i>any</i> Transportation Agreement.</p> <p>NT Gas has further replaced the reference to operating the Pipeline properly to operating the Pipeline in accordance with Good Engineering and Operating Practice, to be consistent with other parts of the Access Arrangement (<i>See clause 17 of the revised Ts and Cs</i>).</p>

³ AER 2011, *Draft Decision*, p 229



			<p>NT Gas does not accept that NT Gas' actions should be subject to the consent of the User. The AER revisions to this clause do not address the circumstances where the User does not provide consent to NT Gas to undertake any action, effectively allowing the User to override the scheduling and curtailment clauses of the Access Arrangement and erode the rights of other parties to Transportation Services.</p> <p>Managing Unauthorised Imbalances is clearly within the responsibilities of NT Gas as the operator of the Pipeline, and NT Gas must be able to ensure that it can operate the Pipeline in accordance with Good Engineering and Operating Practice to ensure the integrity and safety of the provision of services. NT Gas' only option to manage an Unauthorised Imbalance may be to buy or sell gas, and therefore this option cannot be constrained by the need to gain consent of the User. Please keep in mind that this action relates to gas receipts or deliveries in excess of that User's Scheduled Nominations, and is only undertaken where the Unauthorised Imbalance limits NT Gas' ability to deliver gas scheduled for another User, or where required to operate the Pipeline in accordance with Good Engineering and Operating Practice.</p> <p>NT Gas accepts the AER revisions to clause 18, but has made a slight revision to this clause to recognise that NT Gas' costs may not be limited to those associated with purchasing gas, noting that NT Gas may incur costs while selling gas or rescheduling Users (<i>see clause 18 of the amended Ts and Cs</i>).</p>
C.7	<p>Adjustments to Rates and Charges/Additional Payments clauses 20-23</p>	<p>Deletion of clauses 20, 21 and 22. Delete definitions of Impost, New Impost, Greenhouse Law, Emissions Permit and Substitute Permits.</p>	<p>As the Terms and Conditions now only apply to the Reference Service (Firm Service), NT Gas accepts the AER's deletion of clauses 20-22 and associated definitions.</p> <p>NT Gas considers, however, that for completeness the Terms and Conditions should refer to the reference tariff variation mechanism in the Access Arrangement (<i>See clause 21 in the revised Ts and Cs</i>).</p>



C.8	System Use Gas and Linepack clauses 24-29	<p>Amend clause 25 to include the following:</p> <p><i>“The Service Provider will provide all Users a monthly statement showing the calculation and the amount of gas used for System Use Gas.”</i></p> <p>Amend clause 28 to include the following:</p> <p><i>“The Service Provider will provide all Users a monthly statement showing the movement of User’s Line Pack.”</i></p> <p>Amend clause 29 as follows:</p> <p><i>, and the Service Provider must comply with such directions at no cost to the User.”</i></p>	<p>NT Gas accepts the AER’s amendments to clauses 25 and 28 in part. NT Gas has removed the reference to providing Users with information of <i>the calculation</i> of System Use Gas. Given the nature of System Use Gas, it is not feasible to include details of the calculation of this amount.</p> <p>NT Gas has also removed the reference to providing Users with details of <i>the movement</i> of User’s Line Pack. User’s Line Pack can change day to day, making it unfeasible to provide Users with details on each movement. NT Gas has therefore revised this clause to refer to providing Users with a monthly statement showing the amount of User’s Line Pack.</p> <p>NT Gas accepts that its should be required to comply with a Users’ directions and to delivery of that User’s Line Pack at no cost to the User, however such a requirement must be limited to NT Gas’ ability to comply with the direction, and for that direction to be reasonable. NT Gas has made these revisions to clause 29 (<i>see clause 27 of the revised Ts and Cs</i>).</p>
C.9	Operation of the Pipeline clauses 30-35	<p>Amend clause 32 as follows:</p> <p>Delete the words <i>“without liability to the User”</i></p> <p>Amend clause 35 as follows:</p> <p><i>“The User must facilitate the Servicer Provider’s access as reasonably required by the Servicer Provider to relevant charts...”</i></p>	<p>NT Gas does not accept the AER amendment to clause 32 which deletes the reference to curtailment without liability to the User.</p> <p>In order to operate the Pipeline, NT Gas must be able to curtail the Firm Service under clause 32 without liability to User. Curtailments contemplated under this clause can go beyond curtailments for insufficient capacity as provided for under clause 12, and can include other aspects of the Service provided to Users under the Transportation Agreement such as the provision of SCADA, and metering and measurement.</p> <p>The curtailment of the Firm Service may not limit NT Gas’ ability to receive or deliver Gas in accordance with Scheduled Nominations, but may mean that NT Gas cannot offer other aspects of the Firm Service during the period of curtailment such as metering data, or information on Line Pack. The limitation of liability offered under clause 12 would not extend to these circumstances. NT Gas must be able to curtail the Firm Service without liability to perform works necessary to maintain the safety and integrity of</p>



			<p>services, and of operating in accordance with Good Engineering and Operating Practice. NT Gas has therefore not adopted the AER's revisions to clause 32.</p> <p>NT Gas accepts the AER's amendments to clause 35 (<i>see clause 33 of the revised Ts and Cs</i>).</p>
C.10	Metering clauses 36-40	<p>Attach as a schedule to the Terms and Conditions the current version of the Metering and Measuring Requirements.</p> <p>Insert new clause:</p> <p><i>"The Service Provider will provide reasonable notice to the User of any changes to the Metering and Measuring Requirements and such changes are to be reasonably determined by the Servicer Provider."</i></p>	<p>NT Gas accepts the AER's amendments to this clause (<i>see clause 34 of the revised Ts and Cs</i>).</p> <p>NT Gas has included a schedule setting out its Metering and Measuring Requirements as an appendix to the General Terms and Conditions (<i>see Appendix B of the revised Ts and Cs</i>).</p>
C.11	Quality clause 41-46	<p>Attach as a schedule to the Terms and Conditions the current version of the Gas Specifications. Definition of Gas Specification to be amended as follows:</p> <p>"Gas Specification means the gas specifications in Schedule [X] and currently available at http://www.apa.com.au/media/185586/gas%20specification%20-%20agp.pdf."</p> <p>Include new clause as follows:</p> <p>"The Service Provider's right to vary the Gas Specifications is subject to the recognition and preservation of existing contractual rights and obligations."</p> <p>Amend clause 42 as follows:</p> <p>Delete all words from <i>"Without limiting...such costs on demand."</i></p> <p>Amend clause 43 as follows:</p> <p>"The User and the Servicer Provider must each notify the other</p>	<p>NT Gas accepts the inclusion of the current Gas Specification as an appendix to the Terms and Conditions, and has amended its definition of Gas Specification to refer to the APA Group website.</p> <p>NT Gas accepts in principle that its right to vary the Gas Specification should be subject to the preservation of existing contractual rights and obligations, however the preservation of these rights must be subordinate to safety, the operational integrity of the Pipeline, and with Good Engineering and Operating Practice (<i>see clause 41 of the revised Ts and Cs</i>).</p> <p>NT Gas accepts the AER's revisions to clauses 42 and 43 (<i>see clauses 42 and 43 of the revised Ts and Cs</i>).</p>



		<p>immediately....”</p> <p>Include definitions of Minimum Bill and Capacity Charge.</p>	
C.12	<p>Receipt pressures clauses 47-49</p>	<p>Amend clause 47 as follows:</p> <p>“The User must supply Gas to the Service Provider at the Receipt Points at pressures nominated by the Service Provider...but in no case greater than <i>the Receipt Point Pressure or the maximum allowable operating pressure.</i>”</p> <p>Include a definition of Receipt Point Pressure.</p> <p>Amend clause 48 as follows;</p> <p>“...the above obligation to the extent that the loss or damage was not caused or contributed to, by the negligence of the Service Provider.”</p> <p>Insert new clause:</p> <p><i>“Providing gas is received by the Service Provider in accordance with these conditions, the Service Provider will deliver Gas to the User’s Delivery Points at the pressure agreed between the Service Provider and the User.”</i></p>	<p>NT Gas has revised clause 47 to specify that the maximum pressure the User must supply is the Maximum Allowable Operating Pressure. NT Gas has included a definition of Maximum Allowable Operating Pressure in the Access Arrangement.</p> <p>NT Gas accepts the AER’s revisions to clause 48 (<i>see clause 48 of the revised Ts and Cs</i>).</p> <p>NT Gas does not accept the AER’s additional clause. The relationship between Receipt Point pressure and Delivery Point pressure is not direct. Delivery Point pressures are generally set by reference to the requirements of the User’s facilities at a Delivery Point, and are therefore generally minimum pressures. Receipt Point pressures are set in terms of maximum pressures, and reflect the maximum pressure of gas allowable to ensure the safety and integrity of the Pipeline. Because of this, there is not a direct relationship between the receipt of Gas within allowable pressure ranges, and the delivery of gas within allowable pressure ranges. It is therefore not appropriate to link these requirements in terms of the General Terms and Conditions provided by NT Gas to Users.</p>
C.13	<p>Title clauses 55-56</p>	<p>Include new clause as follows:</p> <p><i>On the termination of a Service Agreement, the User will be entitled to:</i></p> <p><i>(a) recover a quantity of gas equivalent to any quantity delivered by or on behalf of the User into the Pipeline (net of System Use Gas) and not delivered to or for the account of the User; or</i></p> <p><i>(b) sell the gas to another User and advise the Service Provider of the quantity and identity of that User.</i></p>	<p>The AER has included an additional clause in the terms and conditions to provide certainty on the rights of the parties on termination of the agreement.</p> <p>NT Gas accepts the AER’s new clause (a) (<i>see clause 55(a) of the revised Ts and Cs</i>).</p> <p>NT Gas has also clarified (b) to specify that where the User sells Gas to another User the new owner of the Gas must have a Transportation Agreement with NT Gas (<i>see clause 55(b) of the revised Ts and Cs</i>).</p>



C.14	Allocation of receipts and deliveries clauses 57-60	Delete clause 58. Amendment to clause 59: Delete phrase “to the above methodologies”	NT Gas accepts the AER’s deletion of clause 58 and revision of clause 59 (<i>see clause 59 of the revised Ts and Cs</i>). NT Gas has also deleted relevant definitions arising from clause 58.
C.15	Addition of Receipt Points and Delivery Points clauses 61-66	Amend clause 65(e) as follows: “the User must pay <i>only the incremental costs that are considered reasonable and efficient which have been incurred by the Service Provider in</i> ” Amend clause 65(e)(i) as follows: “ <i>designing and constructing the additional receipt point or additional delivery point to the appropriate industry standard</i> ” Amend clause 65(e)(ii) as follows: “obtaining a reasonable rate of return on capital expended to make the additional receipt point or additional delivery point available to the User, <i>where the costs are being recovered over time</i> ”	NT Gas does not accept the AER’s revisions to these clauses. The requirements of clause 65(e) only apply where the User requests an additional new receipt or delivery point that does not exist or does not meet the specification and standards published by the Service Provider. In these circumstances, NT Gas can be expected to incur additional costs that should be met by the User in respect of its request. NT Gas considers that the User should be required the pay NT Gas’ reasonable costs in this case, not just incremental costs, as work on the request may divert NT Gas resources away from other tasks. NT Gas also notes that it should not be limited to recovering the costs of designing and constructing the additional receipt or delivery point to the appropriate industry standard, as these clauses specifically state that they can relate to a new receipt or delivery point that does not meet this standard. NT Gas accepts the amendment to clause 65(e)(ii).
C.16	Dispute resolution clauses 70-72	Amend clause 67 as follows: “The Parties <i>by mutual agreement</i> , may refer for determination by an independent expert....Transportation Agreement. <i>In the absence of such agreement, the Parties may request that the Institute of Arbitrators nominate a person with appropriate commercial, technical and practical experience to determine the issue.</i> ”	NT Gas believes that a provision that allows either party to refer certain types of dispute to an independent expert is of mutual benefit to the parties, by providing for the certain resolution of disputes, and providing an incentive for the parties to resolve a dispute without incurring the costs of formal dispute resolution. Provisions of this kind are standard inclusions on a wide variety of contracts. NT Gas does not believe that the parties should be required to mutually agree at the time to have an accounting, engineering or scientific issue dealt with by an expert. However, if the parties are unable to agree on an expert, NT Gas accepts that the expert should be nominated by the Institute of Arbitrators and Mediators Australia (<i>see clause 67 of the revised Ts and Cs</i>).



C.17	Billing and Payment clause 73-76	Amendment to clause 74: <i>"The User will pay the Service Provider's tax invoices by the Payment Date. Late payment will attract an interest charge payable at the Commonwealth Bank corporate overdraft reference rate plus two percentage points."</i>	<p>NT Gas accepts that the Access Arrangement should include a definition of the interest charge for late payment. NT Gas does not accept the AER's definition of this charge, and has instead incorporated an alternative definition that is more in line with other APA Group transportation agreements (see clause 74 of the revised Ts and Cs).</p> <p>NT Gas has also clarified that its monthly accounts will be in respect of Charges and any other amounts payable to the Service Provider under the Transportation Agreement or Access Arrangement (see clause 73 of the revised Ts and Cs).</p>
C.18	Information Interface clauses 77-78	Clause 78 to be amended as follows: <i>"...above right of access. The User is liable for loss incurred by the Service provider resulting from the User's employees negligence or misuse of the Information Interface other than loss caused by the negligence of the Service Provider."</i>	<p>NT Gas does not accept that the User's liability should be limited to negligence or misuse of the Information Interface. A Users use of the interface could lead to losses by that User even where the User used the interface correctly. NT Gas should not be exposed to potential liability in this case. In addition, negligence does not necessarily extend to mistakes or errors, including input errors on the part of the User. These types of errors can cause the Service Provider and other Users to incur losses where these errors impact the revenue of other parties. NT Gas therefore does not accept the AER's revision to this clause that limits the liability of Users to only negligence or misuse of the interface.</p> <p>NT Gas accepts that the Users liability should be reduced to the extent of negligence by NT Gas.</p>
C.19	Limitation or Liability & Indemnity clauses 79-81	Amend clause 79: <i>"To the extent permitted by law, neither Party (including the Service Provider's Related Body Corporate) is liable to the other Party for Consequential Loss or for punitive or exemplary damages arising in respect of the Transportation Agreement except where such loss or damage arises out of:</i> <ul style="list-style-type: none"> <i>(a) gross negligence or wilful misconduct by either the Service Provider or the User;</i> <i>(b) the Service Provider's liability relating to the delivery of Off-Specification Gas to a Delivery Point due to its negligence or wilful default; or</i> 	<p>NT Gas does not accept the AER's changes to clauses 79-81. The principles and considerations underpinning the NT Gas' liability and indemnity clauses included in the Access Arrangement are described in section 12.1.2 of the submission. NT Gas' responses are made in the context of these principles and considerations.</p> <p>While arguments for reciprocity of obligations in respect of risk allocation between the Service Provider and Users may hold superficial appeal, the arguments are not consistent with the basic commercial contracting principle that:</p>



		<p>(c) <i>the User's liability relating to:</i></p> <ul style="list-style-type: none"> (i) <i>imbalances;</i> (ii) <i>the receipt, transportation or delivery of unauthorised Overrun Quantities</i> (iii) <i>the User's obligation to deliver gas which meets the quality required by the Gas Specification or any other quality as the law in the relevant jurisdiction requires;</i> (iv) <i>a failure to supply Gas at Receipt Points within a specified pressure range; and</i> (v) <i>the indemnity described in clause 81.</i> <p>Delete clause 80. Delete of subclause 81(a). Include new clause as follows:</p> <p><i>Each Party will be required to indemnify the other for any loss arising out of its gross negligence or wilful misconduct.</i></p>	<ul style="list-style-type: none"> • the party that controls the exposure to risk should assume the risk; and • the rate of return should be commensurate with the level of risk assumed. <p>NT Gas believes that the liability provisions detailed in 79 to 81 are appropriate given NT Gas' position in the supply chain and the return it receives for provision of pipeline services. NT Gas believes that, it is only appropriate for a party to a Transportation Agreement to be liable to the other for 'direct' losses with limited exceptions, namely those detailed in clause 79. To extend liability to Consequential Losses (even for negligence or default) would expose NT Gas to the risk of catastrophic losses for breach of contract such as a service delivery failure which of itself may carry a relatively low tariff charge. The rate of return on the asset is no way commensurate with the risk associated with any exposure to Consequential Losses. The User is able to protect itself by limiting its exposure to Consequential Losses in its contracts with end users.</p> <p>In respect of gas quality, NT Gas has no control over the Gas quality and pressure itself. The gas is made available at the Receipt Point and taken at the Delivery Point by the User. It is the User that can control the quality/pressure of Gas at the Receipt Point either itself or through its supply agreements with the gas producer. NT Gas has no control over the quality/pressure of Gas at the Receipt Points. However, Gas quality/pressure can detrimentally affect the pipeline as well as NT Gas' liability under other transportation agreements in respect of delivered Gas. For this reason, it is inappropriate for NT Gas to assume risk for Gas quality/pressure. It is also entirely appropriate for the User to be liable for all losses suffered by NT Gas as a result of the quality of Gas it makes available at the Receipt Point.</p> <p>NT Gas does not accept the insertion of unauthorised overruns in clause 79(c). NT Gas has not incorporated the new services proposed by the AER (authorised overruns) into the Access Arrangement as an authorised overrun is essentially a Negotiated Service. Therefore, all overruns in respect of the AGP will be unauthorised overruns.</p>
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			<p>NT Gas does not accept the AER's deletion of clause 79(h). As discussed in relation to clause 78, NT Gas considers that Users should be liable for losses incurred by NT Gas resulting from the use of the Information Interface by the User, and that these losses should not be limited to negligence or misuse of the Information Interface. NT Gas has therefore retained this clause.</p> <p>In respect of "rates, charges and other payments under the Transportation Agreement" in clause 79(b), this is required to make it clear that amounts owed under the Transportation Agreement must be paid regardless of their characterisation as direct or Consequential Losses. For example, interest charges may in certain circumstances be characterised as Consequential Loss. NT Gas should not be put in the position of having to establish whether amounts owed under the Transportation Agreement are direct losses prior to being able to recover those amounts.</p> <p>The deletion of the liability cap is not acceptable and would be completely out of step with usual commercial practice. The liability cap is a crucial plank of the Service Provider's risk management. It is usual in transportation agreements to have an aggregate liability cap of 10 per cent of the contract value. Recent transportation agreements entered into between APA and large, sophisticated users with significant countervailing power contain aggregate liability caps of this nature.</p> <p>In respect of the indemnity contained in clause 81(a), this indemnity is required as it is the only mechanism available to NT Gas to limit or control its exposure to claims potentially brought by the Users customers. As NT Gas does not contract directly with the end users of gas, its only recourse to manage its exposure to third party losses is via the indemnity mechanism with the User. The User is able to protect itself from the risk the indemnity will be called upon by putting in place appropriate back to back limitations of liability with its own users. Without the indemnity, NT Gas would be exposed to potentially catastrophic losses resulting from say a service delivery failure. The revenue and return is in no way commensurate with such risk.</p>
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			<p>NT Gas submits that the definition of 'Consequential Loss' is appropriate in the context of the General Terms and Conditions. It is preferable to define "Consequential Losses" to import certainty to the contracting parties. The definition of "Consequential Loss" is used as part of the limitation of liability clause. If loss falls within the definition of "Consequential Loss", the parties are not (with limited exceptions) liable for those losses. The AER's comments that certain heads of loss may extend beyond the definition of Consequential Loss and not be recoverable (as being too remote for example) has no practical consequence as the operative clause limits liability to direct losses only and such losses referred to by the AER would not in any event be recoverable under the operative provision.</p>
<p>C.20</p>	<p>Force Majeure clauses 82-87</p>	<p>Delete the word 'reasonable' from chapeau to clause 82.</p> <p>Amend clause 82 (a) to read... acts of God, including without limitation, earthquakes, floods, washouts, landslides, lightning, storms and <i>other acts caused by</i> the elements;</p> <p>Amend clause 82(f) by deleting the words "any order or direction of any Authority" and "or the failure to obtain or maintain any necessary Approval"</p> <p>Amend clause 82 (g) by deleting the words "breakdown, loss or damage or the necessity to undertake alterations, repairs or maintenance (other than routine maintenance for which notice has not been given)."</p> <p>Amend clause 83 to read: <i>"Lack of finances and changes in market conditions for the transportation and purchase or sale of gas are not a Force Majeure Event."</i></p> <p>Amend clause 84 as follows: <i>"Subject to certain exceptions as specified under clause 85, ..."</i></p> <p>Amend clause 85 by deleting the current wording and replacing it with the following: <i>'Where there is a charge based on a Minimum Bill, Capacity Charge, Tolling Charge or MDQ, and the Service Provider is unable to perform its obligations under the Service Agreement due to an event of Force Majeure the charge will be based on the highest quantity of</i></p>	<p>NT Gas does not accept the AER's deletion of 'reasonable' from clause 82. NT Gas does not agree that Force Majeure Events are limited to events for which the parties have absolutely no control. Many events which are commonly included in commercial Force Majeure clauses of this nature may be, to some extent, in the control of a Party. For example, strikes and lockouts in clause 82(b) are to some extent within the control of a party. For this reason, other safeguards are inserted into the clause (to prevent the spurious calling of Force Majeure) such that its effect must not be able to overcome by the exercise of due diligence, not able to be reasonably overcome or prevented. In the case of a strike, if a party could reasonably control the event or prevent or overcome it (say by settling the dispute on reasonable terms) the party would not be in a position to call Force Majeure.</p> <p>NT Gas notes that the User's liability to pay charges is reduced during a period of Force Majeure affecting NT Gas. NT Gas is not incentivised to call Force Majeure as its revenue will decrease.</p> <p>NT Gas accepts the AER's revision to clause 82(a)</p> <p>NT Gas does not accept the AER's revisions to clause 81(f). As discussed above, Force Majeure will only extend to events or circumstances beyond the reasonable control of a Party. Each of the events in paragraphs (a) to (g) must meet the criteria in the opening paragraph (i.e. they must be</p>



		<p><i>gas (up to the MDQ) available to be withdrawn during that period rather than MDQ. The ACQ specified in the Service Agreement will be adjusted to reflect the period during which the Service Provider was not able to deliver the quantity of gas nominated by the User.</i></p> <p>Include definition of <i>Tolling Charge</i></p>	<p>beyond the reasonable control of a party, which by the exercise of due diligence it is not reasonably able to prevented or overcome, etc.) Force majeure in modern commercial contracts is not constrained to merely storms, floods etc. Other events may provide a party with appropriate reason to be excused from its obligations under the Agreement. In respect of 82(f), NT Gas may be liaising with an authority in respect of an authorisation, as such, the event affecting the authority could be considered to be in NT Gas' control. However, if a decision impacting on NT Gas' ability to use the pipeline is not in its 'reasonable control' and could not have been overcome in the terms set out at the beginning of paragraph 82, NT Gas should be able to call Force Majeure. Of course, if it is in its reasonable control, or could have been overcome, it should not be entitled to call Force Majeure and this is provided for in the header to the clause.</p> <p>This should provide sufficient protection against the unwarranted calling of Force Majeure.</p> <p>NT Gas does not accept the AER's amendment to clause 82(g). As discussed above, Force Majeure is limited to events which are not within the reasonable control of the parties. This clause does not remove the Service Provider's obligations under the General Terms and Conditions to undertake alterations, repairs and maintenance of the Pipeline and to otherwise act in accordance with Good Engineering and Operating Practice, as failure to do these items (provided they were consistent with Good Engineering and Operating Practice) would negate the protection of the Force Majeure clauses. NT Gas would not be able to call Force Majeure if it has not used Good Engineering and Operating Practice. It would fail the test of being reasonably able to prevent the event.</p> <p>NT Gas further submits that the limitation to accidents is not sufficient as, even after the application of Good Engineering and Operating Practice, breakdown, loss or damage can occur leading to the need for alterations, repairs or maintenance.</p> <p>NT Gas notes that reciprocity in clause 82(g) (as suggested by Santos and</p>
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			<p>Magellan) would mean that the occurrence of a Force Majeure Event affecting the User, for example if the User was prevented from performance of an obligation under the Transportation Agreement for 12 months due to an equipment failure, would allow the User to terminate a Transportation Agreement. Where a single User underpins a substantial proportion of revenue for a Pipeline, and in particular where that user has underwritten that Pipeline through a long term contract with the Service Provider that recovers the cost of that asset over time, this clause introduces unacceptable risk that an investment in a Pipeline will not be recovered.</p> <p>NT Gas is not in a position to insure the User's equipment (or any asset other than the pipeline). Reciprocity would mean that NT Gas is taking the risk of events affecting upstream or downstream assets (and arrangements) over which it has no control. NT Gas notes that the User's obligation to pay Charges is reduced where NT Gas calls Force Majeure.</p> <p>NT Gas has not accepted the AER's revisions to clause 83, namely, placing inability of a User to source or supply gas potentially within the definition of Force Majeure. The terms and conditions are necessarily limited to Force Majeure Events affecting the pipeline. It is not appropriate for the Service Provider to be required to take on the risk of Force Majeure of other parties, effectively assuming risk that sits outside the operation of the pipeline itself such as upstream producer risk or downstream end user risk.</p> <p>The Pipeline by its nature has extremely high fixed costs. The rates of return are low reflecting the low risk allocated to the asset. The rate of return is not commensurate with assuming risk that sits outside the operation of the Pipeline such as upstream producer risk or downstream end user risk. This is particularly the case as the User is generally able to insure for such risks, but the service provider is not.</p> <p>The AER's amendments to clause 83 would mean that a User could enter into a long term contract for delivery of Gas that underpins the economic rationale for the construction or augmentation of a Pipeline, but terminate</p>
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			<p>that contract in the event that the supplying gas basin had insufficient reserves. This introduces an unacceptable risk for the Service Provider and undermines the security of its contracts.</p> <p>These risks would undermine the Service Provider's incentive to expand the capacity of the Pipeline and introduces an unacceptable risk for the pipeliner in the recovery of its investment.</p> <p>NT Gas accepts the AER's revision to clause 84.</p> <p>NT Gas does not accept the AER's deletion of clause 85 and substitution of a new clause. The Reference Service is a capacity service, and the obligation of the Service Provider is to receive or deliver gas Scheduled for delivery. As discussed above, the amount of gas Nominated by the User and consequently Scheduled, can be different from the MDQ reserved by the User. In a Force Majeure event, the User should only be relieved of a charge to the extent that they suffer damage. It is not appropriate for NT Gas to provide relief to a User for provision of a service that was not Nominated by the User and consequently Scheduled, and therefore the user was not entitled to receive.</p> <p>The AER's proposed revisions to this clause relate to gas quantities rather than capacity, and provide for relief from Charges where the User has suffered no loss. NT Gas considers these revisions are inappropriate and has not accepted the AER's revisions.</p>
C.21	<p>Confidentiality clauses 93-95</p>	<p>Amend clause 93 as follows: <i>"The User may use Confidential Information solely for the purposes of performing its obligations under the Transportation Agreement."</i></p> <p>Amend clause 94 as follows: "...for any other purpose <i>except where</i> disclosure is required by law or lawfully required by an Authority or if the information..."</p> <p>Delete clause 95.</p> <p>Insert new clause: <i>"The Service Provider must comply with any confidentiality</i></p>	<p>NT Gas does not accept the AER's amendment to clause 93.</p> <p>Confidential information is defined in the Access Arrangement as information (whether or not recorded in a material form) that is not publicly available and that becomes available to a Party in respect of the agreement, including (without limitation) the terms and conditions of the Transportation Agreement.</p> <p>This definition is far broader than the definition of confidential information in the National Gas Law, which is limited to information given to a service provider in confidence by a user that the user has asked to keep in</p>



		<p><i>requirements imposed on it pursuant to the National Gas Law and the National Gas Rules (Part 16)."</i></p>	<p>confidence.</p> <p>Clause 93 provides protection to both the Service Provider and the user that confidential information held between the parties will only be used for the purpose of performing obligations under the Transportation Agreement. Given the expanded scope of confidential information in the Access Arrangement, NT Gas considers that it is important for this obligation to rest on both the Service Provider and the User.</p> <p>Further, NT Gas does not accept the deletion of scope to use the information for internal purposes related to governance. This allows NT Gas and the User to disclose confidential information to its Board: a purpose not related to performing obligations under the Transportation Agreement, but nonetheless a necessary disclosure.</p> <p>NT Gas accepts the AER's amendments to clauses 94 and 95 (<i>see clause 90 – 95 of the revised Ts and Cs</i>).</p> <p>NT Gas accepts the AER's additional clause, at the same time noting that the provisions of the Transportation Agreement do not impact this overarching legislative requirement.</p>
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