

PUBLIC VERSION

Application for Approval of an Associate Contract pursuant to Section 7.1 – 7.6 of the *National Third Party Access Code for Natural Gas Pipeline Systems ("Code")*

Associate Contract: A deed (**Interconnection Side Deed**) which novates certain rights and obligations (under an Embedded Network Service Agreement (**Interconnection Agreement**)) from the Embedded Network Operator (**the ENO**) to SPIC, and those novated rights and obligations of the Interconnection Agreement

Applicant: Alinta AGN Ltd

1. Name and address of the Service Provider

Name: Alinta AGN Ltd (**AAGN**)
Address: 321 Ferntree Gully Road, Mount Waverley Vic 3149
ABN: 87 003 004 322

2. Name, title and contact details of the person authorised by AAGN to provide more information in relation to the Application

Name: Chris Harvey
Title: Manager Asset Regulation & Strategy
Tel: 02 9270 4557
Email: charvey@alinta.net.au

3. Name and address of the other parties to the proposed Associate Contract

The Interconnection Side Deed has the following parties:

Outgoing party – the ENO

ABN: [ABN]
Address: [Address]

Incoming party – SPIC

ACN: [ABN]
Address: [Address]

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Remaining party – AAGN

See details in paragraph 1 above.

The Interconnection Side Deed novates the rights and obligations under the Interconnection Agreement between the ENO and AAGN.

(The Interconnection Agreement is an agreement setting out the interconnection of an embedded network service provided by AAGN for the establishment of a single Delivery Point on the embedded network on the connecting pipeline. Section 2.8 of the Access Arrangement contains the terms and conditions applicable to *Interconnection of Embedded Networks* services and lists the charges payable.)

All of the rights and obligations will be novated, **except** the obligations of the ENO to:

- make payments relating to costs and charges; and
- transfer the land.

These obligations will remain with the ENO.

4. Name and address of any end user customers

The ENO is the end user customer. See its details above.

5. Basis on which the contract, arrangement or understanding is an 'Associate Contract' for the purposes of the Code

The Code defines an "Associate Contract" as:

"a contract, arrangement or understanding between the Service Provider and an Associate in connection with the provision of a Service".

The proposed Associate Contract is:

(a) the Interconnection Side Deed between:

- AAGN – Service Provider
- the ENO – outgoing party
- SPIC - incoming party

to novate all the rights and obligations of the Interconnection Agreement (except the obligation of the ENO to make payments and to transfer the land) from the ENO to SPIC; and

(b) those novated rights and obligations of the Interconnection Agreement.

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Alinta LGA Ltd wholly owns AAGN. Alinta LGA Ltd also wholly owns SPIC.

Therefore, SPIC is a related body corporate of AAGN pursuant to sec 50(c) of the Corporations Act, and it is also an Associate of the Service Provider – AAGN - for the purposes of the Code.

It follows that the Interconnection Side Deed, including those parts of the Interconnection Agreement that are novated, is an Associate Contract.

6. Description of all the direct or indirect benefits that will accrue to SPIC for a non arm's length transaction

Not relevant.

7. Description of businesses carried on by all parties

AAGN – Service Provider

AAGN is the owner and operator of the NSW gas distribution network for the majority of NSW.

The ENO – outgoing party

[Description of the ENO.] The ENO has been granted approval to construct a gas fired peaking power plant (**Plant**) adjacent to [location].

The natural gas to fuel the Plant will be supplied via a new underground gas storage (or compressed storage) pipeline (**Pipeline**), which connects into the existing AAGN owned connecting pipeline.

Refer Annexure A for diagram.

SPIC - incoming party

The ENO issued a tender to build-own-operate the abovementioned Pipeline. SPIC is the successful tenderer.

SPIC is a special purpose vehicle formed to undertake the above.

8. Description of the Associate Contract and its commercial rationale

As the ENO wishes to connect the Pipeline to the connecting pipeline owned by AAGN, it is a commercial requirement of AAGN that the ENO enter into the Interconnection Agreement.

However, as SPIC will eventually own the Pipeline, and the Interconnection Agreement is between the owner of the Pipeline and AAGN, therefore the ENO will exercise its right of novation under the Interconnection Agreement, and novate its rights and obligations to SPIC.

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Hence the proposed Associate Contract was developed.

9. Outline of charges in the Associate Contract which are reference tariffs

There are no reference charges, or any other charges in the proposed Associate Contract.

The obligations for the ENO to make payments will not be novated to SPIC.

10. Copy of the proposed Associate Contract

The Associate Contract comprises:

- the Interconnection Agreement - refer Annexure B; and
- the Interconnection Side Deed - refer Annexure C.

11. Copy of any other documents or correspondence which reduce any particulars of the Associate Contract to writing

There are no such documents.

12. Outline of any differences in tariffs, terms and conditions between the Associate Contract and other contracts

There are no reference tariffs relevant to this transaction.

13. Outline of any of the terms and conditions of the Associate Contract that were offered to the other parties

The Interconnection Agreement and the Interconnection Side Deed are contracts specific to this end user, therefore there were no other parties to whom the terms and conditions were offered.

14. Indication of any documents or information that are supplied under an obligation of confidentiality and those which are provide for public release

[Reasons for confidentiality.]

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ANNEXURE A

PLANS OF SUBJECT AREA

(Plans intentionally omitted)

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ANNEXURE B

INTERCONNECTION AGREEMENT

INTERCONNECTION OF EMBEDDED NETWORK SERVICE AGREEMENT

Date: _____

Parties:

ALINTA AGN Ltd ABN 87 003 004 322 of 321 Ferntree Gully Road, Mount Waverley, Victoria 3149 ("**AAGN**");

and

EMBEDDED NETWORK OPERATOR ("the **ENO**")

Recitals

- A. The ENO is planning to construct and operate the Pipeline to transport Gas from an interconnection with AAGN's trunk network to the Power Station.
- B. The ENO wishes to interconnect the Pipeline to AAGN's trunk network. The interconnection will require the construction of the Delivery Station.
- C. AAGN agrees to design, construct, operate and maintain the Delivery Station for the purpose of an interconnection with the Pipeline, in accordance with the terms and conditions set out in this Agreement.

Operative Provisions

1. Definitions and interpretation

1.1 Definitions

The following definitions apply in this Agreement:

AAGN Pipelines Act Licence means any licence granted to AAGN under the *Pipelines Act 1967* (NSW) to build, operate and/or maintain a pipeline and includes "Pipeline Licence No. [pipeline licence number]" granted under that Act.

Access Arrangement means the "Access Arrangement for NSW Network" dated June 2005 (as modified, replaced or superseded from time to time) in relation to AAGN's Gas distribution network.

ACDC means the Australian Commercial Disputes Centre.

Agreement means this agreement including any schedules and annexures.

Approval means any approval (including any licence required under the *Pipelines Act 1967* (NSW) and any approval required under the *Environmental Planning and Assessment Act 1979* (NSW)), authority, licence, document, permit, consent, registration, determination, certificate, privilege or permission required or desirable to be issued, obtained, satisfied, held or complied with in connection with:

- (a) this Agreement or anything to be done pursuant to this Agreement;
- (b) the design, construction, completion and commissioning of the Delivery Station;
- (c) the Pipeline, the Power Station and anything else downstream of the Delivery Point;
- (d) the Site; or
- (e) the operation, maintenance and renewal of the Delivery Station,

but excludes the AAGN Pipeline Act Licences.

Authority means any government or minister or any governmental or semi-governmental entity, authority, agency, commission, corporation or body (including those constituted or formed under any Statute), local government authority, stock exchange, administrative or judicial body or tribunal.

Business Day means a day which is not a Saturday, Sunday, public holiday or bank holiday in Sydney.

Commencement Date means the date of execution of this Agreement by both of the parties.

Completion Date means the date on which stages 1 to 5 of the Works set out in Schedule 2 (or as otherwise amended pursuant to clause 4.3(e)) are completed, as determined by AAGN, acting reasonably.

Delivery Point means the point of custody transfer of Gas between AAGN's trunk network and the Pipeline at the property boundary of the Site, as generally indicated as "AAM Tie-in Point" in the preliminary Delivery Station layout drawing in Schedule 3.

Delivery Station means those facilities and improvements upstream of the Delivery Point and forming part of AAGN's trunk network, installed to enable the delivery of Gas from AAGN's network to the Pipeline, including:

- (a) all Gas pipe infrastructure, mechanical, electrical, measurement and communications plant and equipment, fencing, buildings and structures, access and parking and utilities, in each case as installed within the Site boundaries; and
- (b) pipework, components and improvements making up the hot tap connection and inlet pipework and componentry between AAGN's existing trunk pipeline and the Site.

Pipeline means a Gas pipeline from the Delivery Point to the Power Station.

Force Majeure Event means any event or circumstance beyond the reasonable control of the party whose obligations are to be suspended under clause 27.1 including, but not limited to, strikes, lockouts or any other labour difficulty, acts of God, unavoidable accidents, orders or acts of any Authority or official, acts of war, terrorism, failures to obtain any necessary consents or approvals from Authorities, breakages to equipment, shortages of equipment, materials or labour, delays in transportation, floods, fires, storms and explosions;

Gas means natural gas.

Gas Pipelines Access Law means the *Gas Pipelines Access (New South Wales) Act 1998* (NSW);

Insolvency Event occurs in relation to a party where that party, except for the purposes of a solvent reconstruction, merger, demerger, shareholders' scheme of arrangement or amalgamation:

- (a) suffers a resolution passed or an order made by a Court for its winding up;
- (b) is placed in liquidation or under external administration; or
- (c) makes or enters into or endeavours to make or enter into any composition, assignment or other arrangement with or for the benefit of its creditors.

Law means:

- (a) those principles of law established by decisions of Courts;
- (b) laws, legislation, statutes, acts, regulations, rules, orders, by-laws and other subordinate legislation of the Commonwealth Government, any State or Territory Government or any Authority;

- (c) any Approval (including any conditions or requirements under an Approval); and
- (d) the AAGN Pipelines Act Licences (including any conditions or requirements under them).

National Code means the *National Third Party Access Code for Natural Gas Pipeline Systems* established under the Gas Pipelines Access Law, as amended or replaced (including as replaced by a new national scheme) from time to time.

[certain design systems of the Pipeline]

Power Station means the end-user Gas-fired power station at [location].

Preliminary Works means those Works reasonably necessary to be carried out by AAGN (as determined by AAGN) to facilitate the applications for Approvals to be made by the ENO pursuant to clause 9.4.

Site is defined in clause 9.1.

Stage 1 means the activities constituting stage 1 in Schedule 2, as determined by AAGN.

Stage 2 means the activities constituting stage 2 in Schedule 2, as determined by AAGN.

Term means the period commencing on the date on which this Agreement commences in accordance with clause 2.1, and ending on the date on which this Agreement terminates in accordance with clause 2.2.

Transportation Agreement means a written agreement between AAGN and a user of AAGN's network, which provides for the transportation of Gas through AAGN's network to the Delivery Point.

Works means all construction and construction-related works (including but not limited to design, procurement and commissioning and includes the Preliminary Works) carried out by AAGN under this Agreement in relation to the Delivery Station and the connection of the Delivery Station to the Pipeline at the Delivery Point, including modifications to AAGN's systems and processes reasonably necessary to accommodate the Delivery Station.

Year of Operation means each consecutive period of 12 months during the Term, commencing on the Completion Date.

1.2 Interpretation

Headings are for convenience only, and do not affect interpretation. The following rules apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Agreement and a reference to this Agreement includes any annexure, exhibit or schedule;
 - (iv) a party to this Agreement or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (v) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - (vi) anything (including a right, obligation or concept) includes each part of it; and
 - (vii) any professional body includes the successor of that body.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) Wherever "include" or any form of that word is used it will be construed as if it were followed by "without being limited to".

1.3 **Precedence**

If there is any inconsistency between these operative provisions and the schedules to this Agreement, the operative provisions will prevail to the extent of that inconsistency.

2. **Term**

2.1 This Agreement commences on the Commencement Date.

2.2 [Term of the Agreement].

3. **The Works**

3.1 In consideration of the payment by the ENO to AAGN under clauses 8.1 to 8.5, and any other payment amounts required in connection with the Works under this Agreement, and subject to satisfaction of the conditions precedent set out in clause 24 of this Agreement, AAGN agrees to undertake the Works in accordance with this Agreement.

4. **Design**

4.1 A detailed design of the Delivery Station will be carried out by AAGN at the ENO's cost in accordance with relevant technical standards and specifications as reasonably determined by AAGN from time to time:

(a) to meet the design principles set out in Schedule 1 (or as otherwise amended pursuant to clause 4.3(e)) and other requirements of AAGN, and

(b) which reflect the design principles set out in clause 4.3.

4.2 The ENO represents and warrants to AAGN that the design principles set out in Schedule 1 (or as otherwise amended pursuant to clause 4.3(e)) and clause 4.3 meet its requirements for the performance and operation of the Delivery Station.

4.3 In addition to the design principles set out in Schedule 1, the parties acknowledge and agree that:

[Certain design principles]

- (d) The ENO acknowledges and agrees that the estimated costs and charges contained in this Agreement exclude any allowance for the cost of overpressure protection equipment.
- (e) Prior to the Commencement Date, the ENO notified AAGN of a change to the required "Design MHQ" from [a certain level of MHQ] standard cubic metres per hour to [another level of MHQ] standard cubic metres per hour. Such a change has not been incorporated into Schedules 1, 2 or 3 as at the Commencement Date, but changes to these Schedules will be necessary after the Commencement Date in order to accommodate the higher flow rate and consequential changes in AAGN's requirements within the Works, and will be documented in writing.

4.4 The parties agree to co-operate and assist each other by meeting and sharing information, as reasonably necessary to ensure that the design and installation of their respective facilities is consistent with the other party's requirements and to keep the other party informed as to the progress of their respective works programs.

5. Construction

5.1 The Works will be carried out by AAGN in accordance with the detailed design developed in accordance with clause 4, any applicable requirements of Schedule 1 (or otherwise as amended pursuant to clause 4.3(e)), and otherwise in accordance with AAGN's reasonable requirements.

6. Operating and Maintaining the Delivery Station

6.1 During the Term, AAGN will operate and maintain the Delivery Station at the ENO's cost. The ENO agrees to pay the charges for operating and maintaining the Delivery Station which are set out in clause 8.6.

6.2 For the avoidance of doubt, AAGN is not obliged to, and will not, operate the Delivery Station in a manner which allows Gas to be withdrawn at the Delivery Point unless corresponding arrangements for the transportation of that Gas through AAGN's trunk network for delivery to the Delivery Point are in place with a user of the AAGN Gas network.

6.3 At the ENO's request, and subject to reasonable prior notice, AAGN will provide operational assistance to the ENO by attending and operating the

Delivery Station, at the ENO's cost, during periods of maintenance of the Pipeline and during maintenance and commissioning of the Power Station.

- 6.4 For the avoidance of doubt, the parties acknowledge and agree that as between AAGN and the ENO, the ENO is solely responsible for the design, construction, maintenance and operation of the Pipeline.

7. Modifications to the Delivery Station

- 7.1 After construction of the Delivery Station, AAGN may make modifications to the Delivery Station if required:
- (a) as a result of changes in load or patterns of usage of Gas flow through the Delivery Station;
 - (b) for enhanced measurement performance;
 - (c) as a consequence of a change in Law or applicable technical standards; or
 - (d) as a result of any other change occurring after the completion of the Works which results in a change in AAGN's requirements for the Delivery Station.
- 7.2 Subject to clause 7.3, all costs reasonably incurred by AAGN for carrying out modifications pursuant to clause 7.1 must be borne by the ENO except to the extent that AAGN has recovered those costs from another party, and provided that the ENO shall only be liable for AAGN's costs under clause 7.1(d) to the extent that the modifications are in accordance with good industry practice, are reasonably necessary to comply with any Law and/or are in accordance with any appropriate Australian and internationally recognised standards and codes.
- 7.3 Other than where AAGN reasonably determines that it is unable or impracticable to do so in the case of emergency, AAGN will advise the ENO in writing of the nature and reasons for modifications under clause 7.1 and the estimated costs prior to the modifications being made.
- 7.4 If, after construction of the Delivery Station, the ENO requests upgrades to the Delivery Station to provide capacity and/or functionality greater than that set out in Schedule 1 (or as otherwise amended pursuant to clause 4.3(e)), such modifications will be carried out as soon as reasonably practicable by AAGN at the cost of the ENO. Charges for upgrades under

this clause will be agreed between the parties prior to the commencement of any upgrade.

8. Charges and payment terms

- 8.1 The Works will be carried out by AAGN at the ENO's cost. The ENO must bear AAGN's costs in accordance with this clause 8.
- 8.2 AAGN is not obliged to commence any stage of the Works until the progress payment for that stage (as identified in Schedule 2 (or as otherwise amended pursuant to clause 4.3(e))) has been received by AAGN from the ENO.
- 8.3 The ENO must pay the total costs and expenses reasonably incurred by AAGN for the Works. Such costs and expenses include (but are not limited to) the cost of materials, consultants and contractors costs, AAGN (and its agents) employees' time and recovery of allocated overheads and are not limited to the preliminary estimate of costs in Schedule 2. No later than one month after the date of an invoice issued by AAGN for costs and expenses payable by the ENO under this clause 8.3, the ENO may request AAGN to allocate the costs set out in that invoice in the manner described in Schedule 5.
- 8.4 Within a reasonable time after the Completion Date or the earlier termination of this Agreement, AAGN will invoice (or credit, as applicable) the ENO for the outstanding balance of its costs for the Works incurred in accordance with this Agreement, being the total actual costs and expenses reasonably incurred by AAGN less the aggregate of the progress payments already received by AAGN.
- 8.5 AAGN's preliminary estimate of the cost of the Works, the progress payments payable by the ENO for each stage of the Works and AAGN's indicative estimate of construction times are included in Schedule 2. The parties acknowledge and agree that:
- (a) the estimated costs, progress payments and estimated timeline in Schedule 2 are based on the design principles in Schedule 1 and clause 4.3. AAGN reserves the right to revise the estimated costs, estimated timeline and/or progress payments for any stage(s);
 - (b) notwithstanding any other clause of this Agreement, AAGN is not liable to the ENO for any loss, damage, claim or cost howsoever caused (whether by negligence or otherwise) arising from any failure

by AAGN to complete the Works within the indicative timeline in Schedule 2;

- (c) the estimated costs and progress payments set out in Schedule 2 were last reviewed in late 2006, and AAGN will review and update these estimated costs and progress payments as soon as reasonably possible after the Commencement Date; and
- (d) the progress payments and estimated costs set out in Schedule 2 do not limit the ENO's obligations to pay AAGN as set out in this Agreement.

8.6 In addition to paying the costs and charges set out elsewhere in this Agreement to AAGN, throughout the Term, the ENO must pay the following charges:

- (a) Station Maintenance Charge, as set out in clause 8.7, and
- (b) Capital Replacement Charge, as set out in clause 8.8.

8.7 The "**Station Maintenance Charge**" shall be calculated and charged as follows:

- (a) During the first Year of Operation, the Station Maintenance Charge shall be [\$ amount] per annum.
- (b) One month prior to the end of each Year of Operation, AAGN may notify the ENO of any change necessary in the Station Maintenance Charge for the coming Year of Operation so that AAGN is able to recover its reasonable costs and expenses expected to be incurred to operate and maintain the Delivery Station and AAGN shall provide a reasonable justification of any increase. The ENO will be under no obligation to pay the increased amount if this justification has not been provided.
- (c) If AAGN does not notify the ENO of any change for the coming year in accordance with clause 8.7(b), then:
 - (i) if the coming Year of Operation is the second Year of Operation, the Station Maintenance Charge for that Year of Operation will be [\$ amount] per annum; and

- (ii) if the coming Year of Operation is any other Year of Operation, the Station Management Charge for that Year of Operation will be the Station Management Charge paid during the previous Year of Operation adjusted by the same percentage as that used to adjust (for the most recently commenced year) AAGN's provision of metering equipment charges (non-tariff delivery points) or equivalent charge under the Access Arrangement.
- (d) If clause 8.7(c)(ii) applies, any increase that had been required under clause 8.7(b) for the previous year that was, in whole or in part, only required by AAGN for one Year of Operation shall be removed by AAGN from the previous year's charge when determining the Station Maintenance Charge for the following Year of Operation under clause 8.7(c)(ii).
- (e) The Station Maintenance Charge shall be invoiced monthly in arrears.

8.8 Where AAGN replaces, refurbishes or rectifies any part or component of the Delivery Station (other than as routine maintenance), the ENO will remain responsible to pay all associated costs and expenses reasonably incurred by AAGN. AAGN will invoice the ENO for any such costs and expenses, from time to time, as a "**Capital Replacement Charge**". Capital Replacement Charges may be invoiced in advance or in arrears.

8.9

- (a) All amounts payable by the ENO under this Agreement are payable within 14 days of the date of invoice ("**Due Date**"). If the ENO fails to pay an invoice by the Due Date for that payment, the ENO must pay AAGN interest on any amount outstanding in accordance with clause 8.9(b).
- (b) Interest on any unpaid amounts will be calculated from (but excluding) the Due Date to (and including) the date on which payment is made at an annual percentage rate equal to the aggregate of:
 - (i) the corporate overdraft reference rate (monthly charging cycle) applied by the Commonwealth Bank of Australia ("**Bank**") as at the Due Date (or if the Bank ceases to quote such a rate, then the rate which in the opinion of the Bank is equivalent to such rate in respect of similar overdraft accommodation) expressed as a percentage; plus
 - (ii) 2 per cent per annum.

8.10 Without limiting any other remedy that AAGN may have under this Agreement (including the payment of interest for late payment), if the ENO fails to make a payment due under this Agreement upon that payment becoming due, AAGN may suspend the Works and the ENO will be liable to AAGN and indemnifies AAGN in respect of any costs or expenses incurred by AAGN in suspending the Works (including any demobilisation, labour and/or holding costs) and any costs incurred by AAGN in relation to the Works or the Delivery Station during the period of suspension and any additional costs sustained by AAGN in recommencing the Works at the end of the period of suspension. Unless this Agreement has been terminated under clause 20, AAGN will recommence the Works within a reasonable time of all outstanding amounts being paid in full (including any interest due under clause 8.9(b)) by the ENO.

8.11

- (a) Unless expressly stated otherwise, all amounts payable or the value of other consideration provided in respect of supplies made in relation to this Agreement are exclusive of GST (if any). If a GST is levied or imposed on any supply made (or deemed to have been made) under or in accordance with this Agreement, the amounts payable or the value of the consideration provided for that supply (or deemed supply) ("**Payment**") shall be increased by such amount as is necessary to ensure that the amount of the Payment net of GST is the same as it would have been prior to the application of GST.
- (b) Where any amount is payable as a reimbursement, indemnification or similar payment calculated by reference to a loss, cost, expense or other amount incurred, then that amount must be reduced by any input tax credit available to that party and, if a taxable supply, must be increased by the GST payable in relation to the supply and a valid tax invoice will be provided by the party being reimbursed or indemnified.
- (c) All GST payable shall be payable at the time any payment to which it relates is payable. Where any GST payable is not referable to an actual payment then it shall be payable within 14 days of a valid tax invoice being issued by the party making the supply.
- (d) Where in relation to this Agreement a party makes a taxable supply, that party shall provide a valid tax invoice in respect of that supply before the GST payable in respect of that supply becomes due.
- (e) Terms defined in the *A New Tax System (Goods and Services Tax) Act 1999* of Australia have the same meaning when used in this clause.

9. Site

9.1 The ENO will provide AAGN with:

- (a) land suited for the dedicated and sole purpose of constructing, maintaining and operating AAGN's above ground infrastructure associated with the Delivery Station (the "**Site**"); and
- (b) (if the Site is not abutting the land on which AAGN's existing trunk main is situate) land forming a contiguous and uninterrupted corridor for construction, maintenance and operation of the connecting gas pipework and hot tap connection (and related above and below ground infrastructure) between AAGN's existing trunk main and the Site (the "**Corridor**").

9.1A. Unless otherwise agreed in writing by the parties, in consideration of AAGN's obligations under this Agreement, the ENO agrees to acquire the Site and to transfer freehold title in the Site to AAGN for [\$ amount] and to ensure that the title is free from lien or debt, and that all fees, duties, levies or charges (including, but not limited to stamp duty) in respect of the Site or its transfer to AAGN are paid by the ENO in accordance with any applicable Law and prior to commencement of construction of the Works.

9.2 The exact location and size of the Site and the Corridor, if applicable, must be surveyed by the ENO and agreed with AAGN prior to commencement of the Works. The parties anticipate that the Site will be located approximately [location].

9.3 Prior to commencement of the Works, the ENO must carry out the following work ("**Site Access Work**"):

- (a) acquire unencumbered title to the Site, capable of transfer to AAGN in accordance with clause 9.1; and
- (b) ensure that the Site is level, cleared of vegetation and adequately drained to AAGN's reasonable satisfaction to enable construction of the Delivery Station with minimal civil works; and
- (c) procure and provide sufficient lawful and sealed all weather road access to the Site and the Corridor, if applicable, for AAGN and its contractors, to AAGN's reasonable satisfaction; and
- (d) provide adequately rated mains power supply to the Site (that is, adequate for the purposes of the Works, as determined by AAGN, acting reasonably).

- 9.4 Subject to clause 9.5, from the Commencement Date, the ENO must diligently apply for and obtain any and all Approvals. The ENO indemnifies and holds AAGN harmless from any loss, damage, cost, liability or claim (including claims made by third parties), howsoever caused (whether by negligence or otherwise), arising out of any Approval or in connection with application for any Approval including, but not limited to, any:
- (a) application for an Approval or failure to apply for an Approval;
 - (b) error, misdescription or defect in any Approval or the application for that Approval;
 - (c) condition of an Approval, refusal to grant an Approval or delay in granting an Approval (including any delay caused by a challenge to an Approval made by a third party); or
 - (d) cost or expense caused by changes made to an Approval after the commencement of the Works.

For the avoidance of doubt, AAGN may suspend the Works or vary any element of the Works at the ENO's cost if required to do so under the terms of any Approval or AAGN Pipelines Act Licence or pursuant to any change to any Approval or AAGN Pipelines Act Licence during the Term.

- 9.4A Subject to clause 24, AAGN agrees to cooperate with the ENO and provide reasonable assistance, at the ENO's cost, to the ENO in the discharge of its obligation in clause 9.4.
- 9.5 Subject to clause 24, AAGN must apply for any necessary amendments to any Pipelines Act Licence, which are required in connection with the Works. AAGN's reasonable costs of securing such amendments will be borne by the ENO. The ENO will cooperate with AAGN and provide reasonable assistance to AAGN in the discharge of its obligation under this clause 9.5.
- 9.6 For the duration of the Term, the ENO must:
- (a) provide and maintain sufficient lawful and sealed all weather road access to the Site and the Corridor, if applicable, for AAGN and its contractors, to AAGN's reasonable satisfaction; and
 - (b) ensure that adequately rated mains power supply is provided to the Site (that is, adequate for the purposes of the Works, as determined by AAGN, acting reasonably).

10. Ownership

- 10.1 All Gas distribution and supply facilities upstream of the Delivery Point, including the Delivery Station, will be owned and operated by AAGN.
- 10.2 All Gas supply facilities downstream of the Delivery Point, including the Pipeline and any [certain design systems of the Pipeline] will be owned and operated by the ENO.
- 10.3 For the avoidance of doubt, the ENO acquires no title or interest in:
- (a) the infrastructure comprising the Delivery Station; or
 - (b) the AAGN Pipelines Act Licences or other authorisations held by AAGN,
- through this Agreement or anything done under or pursuant to this Agreement.
- 10.4 The parties acknowledge and agree that copyright and all other intellectual property rights in documents, data, programs or other material produced for or by AAGN in connection with the Works (including but not limited to the design principles contained in Schedule 1 (or as otherwise amended pursuant to clause 4.3(e))) vest or remain with AAGN absolutely, and that the ENO has no right whatsoever to use or licence the use of this intellectual property, unless AAGN agrees otherwise in writing.

11. Reduction and interruption of supply of Gas

- 11.1 The parties acknowledge and agree that AAGN has no obligation under this Agreement to maintain the continuity of supply or receipt of Gas by the ENO or any other person to or at the Delivery Point.

- 11.2 AAGN is not liable to the ENO or to the ENO's customers for any losses, claims or damages if the quantities of Gas that are able to be withdrawn at the Delivery Point are not sufficient to service the needs of the Pipeline or its customers (except to the extent that the Delivery Station is not fit for the levels of performance set out in clause 4.3 and Schedule 1 (or as otherwise amended pursuant to clause 4.3(e))). Unless otherwise agreed, the ENO indemnifies AAGN in respect of any costs, losses or damages arising in connection with any claims made by the ENO's customers or any other party (including against the ENO) arising in connection with any inability to withdraw sufficient Gas from the network at the Delivery Point (except to the extent that AAGN is liable due to the Delivery Station not being fit for the above levels of performance).
- 11.3 The ENO is responsible for managing load shedding of end users of Gas supplied from or through the Pipeline during periods of reduction or interruption of supply of Gas through the Delivery Station.

12. Suspension of Supply

- 12.1 AAGN will suspend the supply of Gas to the Delivery Point:
- (a) as soon as reasonably practicable after receipt of written notice from the ENO requesting that supply to the Pipeline is to be suspended;
 - (b) in accordance with any terms and conditions pertaining to suspension, curtailment, reduction or interruption of supply in any Transportation Agreement; or
 - (c) upon the termination or expiry of any Transportation Agreement(s), where no replacement arrangement or Transportation Agreement has been executed with AAGN.
- 12.1A Without limiting the remedies available to AAGN, whether under this Agreement or otherwise pursuant to applicable Laws, AAGN may suspend the supply of Gas to the Delivery Point at any time:
- (a) if [certain design systems of the Pipeline] are not acceptable to AAGN, or if the ENO does not comply with its obligations concerning [certain design systems of the Pipeline] as set out in clause 14.4; or
 - (b) if the ENO does not comply with clause 14.3 to the reasonable satisfaction of AAGN.

In each case, AAGN may suspend the supply of Gas for the duration of any non-compliance by the ENO with clauses 14.3 or 14.4.

- 12.2 Suspension of the supply of Gas under this clause does not relieve the ENO of any of its obligations under this Agreement, including without limitation, obligations to pay any charges to AAGN.
- 12.3 AAGN is not liable to the ENO or to the ENO's customers for any losses, claims or damages if AAGN suspends the supply of Gas under this clause 12. The ENO indemnifies AAGN in respect of any costs, losses or damages arising in connection with any claims made by the ENO's customers or any other party (including against the ENO) arising out of AAGN's actions pursuant to this clause 12.

13. Protocols and procedures

- 13.1 The ENO and AAGN agree to establish and maintain notification and operation communication protocols between their respective control rooms and other relevant personnel for emergency and operational management of AAGN's network and the Pipeline following the commencement of Gas supply to the Pipeline through the Delivery Station.
- 13.2 The ENO acknowledges that it is responsible for maintaining the safety of the Pipeline and accordingly must establish emergency communications protocols and emergency response procedures and capabilities to manage the safety and reliability of the Pipeline. The ENO will provide AAGN with copies of all protocols and procedures it generates which, if implemented, may impact on the operation of the Delivery Station.
- 13.3 The ENO and AAGN agree to participate in emergency simulations carried out by AAGN and/or the ENO from time to time as is reasonably required to test the readiness and effectiveness of AAGN's and/or the Pipeline's emergency management systems.

14. Pipeline

- 14.1 The ENO acknowledges that portions of the Pipeline will be constructed in the close vicinity of AAGN's infrastructure (including but not limited to part of AAGN's network and the Delivery Station). The ENO agrees:
- (a) to consult with AAGN concerning the proposed design, construction and operation of the Pipeline, both prior to the commencement of, and during the course of such work;

- (b) to implement, at its cost, any risk assessments and preventative measures reasonably required by AAGN to maintain the integrity and risk profile of AAGN's infrastructure; and
- (c) to pay costs associated with any works undertaken by AAGN to protect AAGN infrastructure where such works are undertaken as a result of the ENO's failure to consult or to implement necessary preventative measures reasonably required by AAGN.

14.2 The ENO must design, install and operate any cathodic protection system necessary to protect the Pipeline at its own cost. Cathodic protection facilities must be installed in such a manner as to avoid any interference which may be detrimental to the Delivery Station or other facilities owned or operated by AAGN and must be electrically isolated from those facilities.

14.3 The ENO is responsible for ensuring that it has and maintains all necessary Approvals for the construction and operation of the Pipeline and for the supply of Gas through the Pipeline, and must provide evidence of such Approvals to AAGN upon request.

14.4 The ENO agrees that it will design, install, maintain and operate [certain design principles of the Pipeline] at all times in a manner which is acceptable to AAGN. Without limiting the foregoing, the ENO agrees that:

- (a) [certain design principles of the Pipeline] will be established in accordance with design specifications, operating principles and maintenance plans, which have been reviewed by AAGN;
- (b) once [certain design principles of the Pipeline] have been established, the design specifications, operating principles and maintenance plans of [certain design principles of the Pipeline] may not be modified without the prior written agreement of AAGN;
- (c) [certain design principles of the Pipeline] will at all times be operated and maintained in accordance with operating principles and maintenance plans which have been reviewed by AAGN, and otherwise in accordance with good industry practice; and

- (d) it will provide AAGN with any information and/or access to Pipeline facilities as is reasonably required by AAGN from time to time for the purpose of monitoring the ENO's compliance with this clause 14.4.

15. Compliance

15.1 The ENO agrees that it will not, and will ensure that its employees, servants, agents and sub-contractors will not, at any time do or omit to do anything which:

- (a) adversely affects the Delivery Station or the Site (or any part of it) or its operation, so that it does not comply with any applicable Approval or applicable Law; or
- (b) causes or contributes to a breach by AAGN of any obligation under an AAGN Pipelines Act Licence, an Approval, a Law, a Transportation Agreement or the Access Arrangement.

16. Indemnity

16.1 Subject to clauses 16.2 and 17.2, the ENO must indemnify and hold AAGN harmless against any claim, loss, damage or liability arising from or in connection with the Pipeline, the Power Station or anything else downstream of the Delivery Point including, without limitation, any defect or failure affecting [certain design principles of the Pipeline]. Without limiting the generality of the foregoing, the ENO must indemnify and hold AAGN harmless against loss or damage in respect of the personal injury or death of any person, or loss of or damage to, any property, arising from or in connection with the Pipeline, the Power Station or anything else downstream of the Delivery Point.

16.2 For the purposes of clause 16.1, a claim, loss, damage or liability will not be taken to arise from or in connection with the Pipeline, the Power Station or anything else downstream of the Delivery Point to the extent that:

- (a) the claim, loss, damage or liability is contributed to or arises as a result of the:
 - (i) negligent, wrongful or wilful act or omission in relation to the performance of this Agreement; or
 - (ii) breach of this Agreement,

by AAGN or any of its contractors.

17. Liability

17.1 AAGN shall under no circumstances be liable to the ENO, whether in contract, tort or otherwise, for:

- (a) any indirect or consequential loss or damage; or
- (b) any economic loss whether direct, indirect or consequential, including loss of profit, revenue, use of capital, production, and business interruption,

arising from or in connection with this Agreement.

17.2 The ENO shall not be liable to AAGN, whether in contract, tort or otherwise for:

- (a) any indirect or consequential loss or damage; or
- (b) any economic loss whether direct, indirect or consequential, including loss of profit, revenue, use of capital, production, and business interruption,

arising from or in connection with this Agreement, except where that loss or damage or economic loss is contributed to or arises as a result of or in connection with:

- (c) any breach of clause 15 or any payment obligation;
- (d) the Pipeline (including [certain design principles of the Pipeline]), the Power Station or Approvals for the Delivery Station; or
- (e) any works, customers or activities connected with or related to the Pipeline, the Power Station or anything else down stream of the Delivery Point,

in which case, the ENO's liability to AAGN is not limited or excluded in any way.

18. Notices

18.1 A party giving notice or notifying under this Agreement to the other party must do so in writing:

- (a) directed to the recipient's specified address, as set out below (provided that the address may be varied from time to time by any notice identifying any changes to a party's contact details for notices); and
- (b) hand delivered or sent by prepaid post or facsimile to that address.

The ENO:

Address: [address]

Facsimile: [facsimile]

Attention: [name of representative]

AAGN:

Address: Alinta AGN Ltd
Level 15, 1 O'Connell Street, SYDNEY NSW 2000

Facsimile: 02 9270 4501

Attention: [name of representative]

18.2 A notice given in accordance with this clause 18 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, three days after the date of posting;
- (c) if sent by facsimile:
 - (i) by 5pm (local time in the place of receipt) on a business day – on that day; or
 - (ii) after 5pm (local time in the place of receipt) on a business day, or on a day that is not a business day – on the next business day,

where, for the purposes of paragraphs (i) and (ii) above, the facsimile is taken to have been sent when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice.

19. Assignment

19.1 Neither party may assign, novate, transfer or otherwise deal with their rights or obligations under this Agreement without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed), except where:

(a) in relation to AAGN:

- (i) the party to whom AAGN's rights or obligations are to be assigned, novated or transferred (the **AAGN Assignee**) is also acquiring the Sydney to Newcastle trunk pipeline ("Pipeline Licence No. [licence number]") and its associated business (the **AAGN Business**); and
- (ii) the AAGN Assignee has obtained and is reasonably capable of maintaining all licences and other approvals necessary to carry out the AAGN Business; or

(b) in relation to the ENO:

- (i) the party to whom the ENO's rights or obligations are to be assigned, novated or transferred (the **ENO Assignee**) owns at the Commencement Date, or will own (as the case may be), the Pipeline and its associated business (the **ENO's Business**); and
- (ii) any necessary Approvals (including, but not limited to any approval required under the National Code relating to associate contracts) have been obtained for the assignment, novation, transfer or other dealing to be entered into, effected or completed; and
- (iii) the ENO Assignee has obtained and is reasonably capable of maintaining all Approvals necessary to carry out the ENO's Business,

in which case, the other party agrees to execute any documentation which the assigning party reasonably requires it to execute in relation to such assignment, novation, transfer or other dealing and which does not alter the substance of this Agreement except as necessary to effect the assignment, novation, transfer or other dealing.

20. Termination

20.1 Termination by either party

Either party (the **First Party**) may terminate this Agreement by giving written notice to the other party (the **Second Party**) if:

- (a) an Insolvency Event has occurred in relation to the Second Party;
- (b) a Force Majeure Event has occurred and clause 27.4(b) is applied;
- (c) the condition precedent set out in clause 24.1(a) has not been satisfied or waived by AAGN on or before the date that is 6 months after the Commencement Date; or
- (d) the Second Party, by act or omission, breaches any material provision of this Agreement (other than an obligation to pay) and:
 - (i) where the breach is capable of remedy, fails to remedy the breach within 30 days from the receipt of notice given by the First Party requiring it to remedy the breach; or
 - (ii) where the breach is not capable of remedy, fails to mitigate the consequences (actual and potential) to the reasonable satisfaction of the First Party within 30 days (or such other time as the parties agree) from the receipt of notice from the First Party requiring it to mitigate the breach.

20.2 Termination by the ENO

The ENO may terminate this Agreement by giving written notice to AAGN that supply of Gas to the Pipeline through the Delivery Station is no longer required.

20.3 Termination by AAGN

Notwithstanding clause 20.1, AAGN may terminate this Agreement by giving written notice to the ENO if:

- (a) supply of Gas has not been re-established through the Delivery Point within 12 months following the date on which supply is suspended in accordance with clause 12.1, unless otherwise agreed by AAGN in writing;
- (b) each of the conditions precedent in clause 24 has not been either satisfied or waived by AAGN on or before the date that is 24 months after the Commencement Date; or
- (c) an amount due and payable by the ENO under this Agreement remains unpaid for more than 14 days and is not paid within 7 days of a notice from AAGN requiring payment of that amount.

20.4 Effect of termination on amounts payable

Notwithstanding any other provision of this Agreement, any amount payable by or liability of the ENO under this Agreement (including in respect of any Works carried out) relating to the period up to and including the date on which this Agreement is terminated becomes a debt due and payable to AAGN on the date on which this Agreement is terminated.

20.5 AAGN's right to decommission Delivery Station

If this Agreement is terminated and there is no reasonable prospect of a replacement agreement being entered into in the next 3 months then AAGN may (at its discretion) decommission (or decommission and remove) the Delivery Station.

20.6 Consequences of decommissioning

If AAGN, under clause 20.5, decommissions (or decommissions and removes) the Delivery Station then the ENO must pay AAGN's reasonable costs of decommissioning and (if AAGN also removes the Delivery Station) removing the Delivery Station (in whole or part) including the cost of restoring and remediating the Site to its former state.

21. Transportation Services

21.1 Terms and conditions concerning the transportation of Gas through AAGN's network to the Delivery Point are set out in a Transportation Agreement and are separate from, and additional to, the terms and conditions applying to the establishment of an interconnection as set out in this Agreement. In particular, but without limiting the generality of this clause, AAGN makes no representation under this Agreement of the availability or otherwise of network capacity for transportation of Gas through AAGN's network to the Delivery Point under a Transportation Agreement.

22. Confidentiality

22.1 Subject to clause 22.2, neither party will, at any time, whether before or after the expiration or sooner determination of the Term, without the consent of the other party, divulge or suffer or permit its employees, agents, consultants or contractors to divulge to any person:

- (a) any of the contents of this Agreement;
- (b) any information relating to the negotiation of this Agreement; or
- (c) any information which may have come to a party's knowledge in the course of such negotiations or otherwise in connection with this Agreement concerning the operations, dealings, transactions, contracts, commercial or financial arrangements or affairs of the other party.

22.2 The restrictions imposed by clause 22.1 will not apply to the disclosure of any information:

- (a) which is now or after the date of this Agreement comes into the public domain or which is obtainable with no more than reasonable diligence from sources other than the parties;
- (b) which is required to be disclosed by law;
- (c) required by a House of Parliament, by a Committee of a House of Parliament or for any legitimate government purpose or process;
- (d) to a court, arbitrator or administrative tribunal in the course of proceedings before it, him or her to which the disclosing party is a party or to an expert in the course of any determination by it, him or her to which the disclosing party is a party;

- (e) to a party's independent contractors, consultants and professional advisers whose duties reasonably require such disclosure;
- (f) to a party's directors, officers and employees;
- (g) to a bank or financial institution for the purposes of obtaining finance; or
- (h) to any person who is a prospective assignee of the rights of a party under this Agreement or that party's shares.

23. Co-operation

AAGN and the ENO will co-operate during construction of the Works and the Pipeline to effect tie-ins at the Delivery Point, establishment of the ENO remote monitoring and control functions and for commissioning the Works and the Pipeline.

24. Conditions precedent

24.1 Notwithstanding any other provision of this Agreement, AAGN is not obliged to undertake the Works unless and until AAGN is satisfied (in its sole discretion where an objective determination cannot be made) that:

- (a) the ENO's Board has approved the construction of the Power Station and the ENO has given written notice of that occurrence to AAGN;
- (b) any approval by the *Independent Pricing And Regulatory Tribunal* to the execution of this Agreement or any arrangement ancillary to this Agreement (which approval AAGN reasonably considers is required under the National Code or any other Law) has been obtained;
- (c) there will not be any further material changes to the design principles for the Delivery Station which are set out in Schedule 1 or in clause 4.3 or which have otherwise been agreed in writing by the Parties;
- (d) the Site Access Works have been completed to a level satisfactory to AAGN);
- (e) the ENO has paid the progress payment for Stage 1; and
- (f) the level of risk to the Delivery Station from the proposed [certain design principles of the Pipeline] is satisfactory.

24.2 Notwithstanding any other provision of this Agreement, and in addition to those conditions precedent in clause 24.1, AAGN is not obliged to undertake any stage of the Works other than the Preliminary Works unless and until:

- (a) the ENO has paid the progress payment for Stage 2 of the Works;
- (b) unencumbered title to the Site has been transferred to AAGN in accordance with clause 9.1 or as otherwise agreed by the parties;
- (c) any new AAGN Pipelines Act Licence or variation to an existing AAGN Pipelines Act Licence required for the Works or the Delivery Station has been obtained on terms satisfactory to AAGN (acting reasonably);
- (d) all Approvals which are required or desirable for that stage of the Works have been obtained on terms satisfactory to AAGN (acting reasonably); and
- (e) the ENO has procured and provided AAGN with any necessary permissions and rights of way over the Corridor that may be required by AAGN.

24.3 From the Commencement Date, each party will use its best endeavours to ensure that the conditions precedent in clauses 24.1(b) to (f) and clause 24.2 are met so as to enable the Works to be carried out in accordance with this Agreement.

25. Waiver and Variation

Waiver or variation of any provision of, or right under, this Agreement:

- (a) must be in writing and signed by the authorised representatives of both parties (or in the case of waiver, signed by the party entitled to the benefit of that provision or right); and
- (b) is effective only to the extent set out in any written waiver or variation (as the case may be),

and no other conduct of a party (including failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of a right.

26. Dispute Resolution

26.1 Application

- (a) The parties acknowledge and agree that this clause 26 does not, and is not intended to, limit or exclude in any way the provisions in the Gas Pipelines Access Law in relation to dispute resolution.
- (b) The parties agree that where a party refers any matter in connection with this Agreement or its performance to be dealt with in accordance with the dispute resolution provisions set out in the Gas Pipelines Access Law:
 - (i) any decision arising out of that referral is final and binding on the parties; and
 - (ii) neither party can subsequently utilise this clause 26 in respect of the same dispute.

26.2 Notification of Dispute

A party claiming that there exists:

- (a) any dispute or difference of opinion between the parties; or
- (b) the absence of agreement by the parties,

about a matter under or in connection with this Agreement or its performance ("**Dispute**") must:

- (c) notify the other party of the Dispute; and
- (d) not start court proceedings (except proceedings seeking interlocutory relief) in respect of the Dispute unless it has complied with this clause 26.

26.3 Nomination of Representative

As soon as practicable after a notice is given under clause 26.2, each party must nominate in writing a representative authorised to settle the Dispute on its behalf.

26.4 **Good Faith Discussions**

Each party must enter into discussions in good faith, to resolve the Dispute or to agree on a process to resolve all or part of the Dispute without arbitration or court proceedings. Unless the parties otherwise agree, discussions between the parties' representatives under this clause 26.4 must continue for 7 Business Days after notice of the Dispute was given under clause 26.2.

26.5 **Mediation**

- (a) If the Dispute is not resolved within 7 Business Days under clause 26.4, then the parties agree to settle the Dispute by mediation administered by the ACDC and in accordance with the 2003 ACDC Mediation Guidelines before having recourse to legal proceedings.
- (b) Before any mediation under this clause 26.5, the parties must sign a mediation agreement in the form of the 2003 ACDC Commercial Mediation Agreement.
- (c) The mediator must be appointed by agreement between the parties but, failing agreement, must be appointed by the Chairman of the ACDC or by the Chairman's authorised representative.

26.6 **Urgent relief**

Nothing in this clause 26 will prevent a party from seeking urgent declaratory or injunctive relief.

26.7 **Information confidential**

Any information or documents disclosed by a representative during the course of the discussions under this clause 26:

- (a) must be kept confidential; and
- (b) may not be used except to attempt to settle the Dispute.

26.8 **Without Prejudice Discussions**

Any discussions which take place as contemplated by this clause 26 will be without prejudice to the respective rights and obligations of the parties in relation to the subject matter of the Dispute.

27. Force Majeure

27.1 Suspension of obligations

The obligations of a party under this Agreement, other than the obligation to pay money and the obligation to indemnify, will be suspended while, and to the extent that, the party is prevented from complying with the terms of this Agreement due to a Force Majeure Event.

27.2 Exceptions

A party cannot claim the benefit of this clause 27 if the Force Majeure Event has been substantially caused by or is substantially attributable to its own shortage of funds, negligence or fault.

27.3 Notice and further action

As soon as possible after being affected by a Force Majeure Event, the party so affected must:

- (a) furnish to each other party all particulars of the Force Majeure Event and the extent to which the performance of its obligations under this Agreement has been affected by the Force Majeure Event; and
- (b) promptly and diligently pursue appropriate action to enable it to perform such obligations, but will not be obliged to settle any strike, lockout or other labour difficulty on terms contrary to its wishes.

27.4 Removal

If any Force Majeure Event cannot be removed, overcome or abated within 18 months (or such other period as the parties agree) from the date the party affected first became so affected:

- (a) the parties must meet to consider in good faith whether to modify the terms of this Agreement; and
- (b) if it is unreasonable in all the circumstances for a party to comply with its obligations under this Agreement then, following the above meeting, either party may terminate this Agreement by giving at least 14 days written notice to the other party.

28. Governing Law

28.1 This Agreement will be governed by and construed in accordance with the laws of the State of New South Wales.

29. General

29.1 Each party must do anything (including execute any document), and must ensure that its employees and agents do anything, that the other party may reasonably require to give full effect to this Agreement.

29.2 This Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.

29.3 Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.

29.4 Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

29.5 Each indemnity in this Agreement survives the expiry or termination of this Agreement.

29.6 A party may recover a payment under an indemnity in this Agreement before it makes the payment in respect of which the indemnity is given.

29.7 This Agreement may be executed in counterparts.

29.8 This clause 29.8, clauses 8.3, 8.4, 8.9, 8.10, 10.3, 10.4, 12.3, 14.1, 20.4, 20.5, 20.6, 20.7, 22, 29.5 and clause 1 (to the extent that terms defined in that clause are used in the other clauses referred to in this clause) survive the termination or expiry of this Agreement.

Executed as an Agreement

Executed by **Alinta AGN Ltd ABN 87 003**)
004 322 in accordance with s.127(1) of the)
Corporations Act 2001 in the presence of:)
)

.....
Signature of Director/Secretary

.....
Signature of Director

Signed for and on behalf of the **EMBEDDED**)
NETWORK OPERATOR by its authorised)
signatory who declares he/she is authorised to)
execute this Agreement in the presence of:)
)
)

.....
Signature of Authorised Signatory

.....
Signature of Witness

.....
(Print) Name of Authorised Signatory

.....
(Print) Name of Witness

.....
Office Held

SCHEDULE 1 - Design Principles for the Delivery Station

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SCHEDULE 2 - Estimated Costs and Indicative Timeline
(estimates valid until 31 May 2007)

[intentionally left blank]

SCHEDULE 3 - Delivery Station Layout

[intentionally left blank]

SCHEDULE 4 - Not used

SCHEDULE 5 - Information Concerning the Breakdown of Costs Pertaining to Clause 8.3

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PUBLIC VERSION

ANNEXURE C

INTERCONNECTION SIDE DEED

INTERCONNECTION SIDE DEED

This Deed is made

2008

Between

THE EMBEDDED NETWORK OPERATOR (“the ENO”)

and

ALINTA AGN LTD ABN 87 003 004 322 of 321 Ferntree Gully Road, Mount Waverley, Victoria 3149 (“**AAGN**”)

and

SPIC

RECITALS

- A. The ENO and AAGN have entered into an Interconnection of Embedded Network Service Agreement dated 7 January 2008 (the “**Prior Contract**”).
- B. Under the Prior Contract, AAGN is required to design, construct, operate and maintain a hot tap connection and delivery station, which connects the [location] Gas Pipeline with a high pressure gas pipeline to the proposed [infrastructure] (“**Lateral**”). A copy of the Prior Contract is attached to this deed as Annexure 1.
- C. The ENO has separately entered [an agreement] with SPIC (“**Agreement**”), pursuant to which SPIC will build, own and operate the Lateral.
- D. The parties have agreed to a novation of certain of the rights and liabilities and obligations under the Prior Contract from the ENO to SPIC, on and subject to the terms set out in this deed.

OPERATIVE PART

The parties each covenant and agree as follows:

1. Subject to clauses 2 and 3, on and from the date of this deed (“**Effective Date**”):
 - (a) SPIC:
 - (i) is bound by and must comply with the terms and conditions of the Prior Contract as they relate to the ENO, as if SPIC was a party to the Prior Contract instead of the ENO;
 - (ii) must punctually perform the obligations of the ENO under the Prior Contract;
 - (iii) obtains the rights and assumes the obligations and liabilities of the ENO under the terms and conditions of the Prior Contract, other than rights, obligations and liabilities which arise before the Effective Date; and

- (iv) will be liable to AAGN for all liabilities accrued to it under the Prior Contract on and from the Effective Date;
- (b) AAGN:
 - (i) is bound by and must comply with the terms and conditions of the Prior Contract as if SPIC were a party to the Prior Contract instead of the ENO;
 - (ii) will be liable to SPIC for all liabilities arising out of its obligations under the Prior Contract on and after the Effective Date; and
 - (iii) must continue to perform its obligations under the Prior Contract and be bound to SPIC as if the provisions of the Prior Contract were incorporated herein;
- (c) The ENO:
 - (i) releases AAGN from any and all obligations and liabilities owed to the ENO under the Prior Contract which arise after the Effective Date;
 - (ii) warrants that all fees, expenses, disbursements and other payments due and payable to AAGN under the Prior Contract as at the Effective Date have been paid by the ENO; and
 - (iii) releases and discharges AAGN from any action, claim or demand arising after the Effective Date which the ENO may have, but for this release, against AAGN under or in respect of the Prior Contract;
- (d) each reference in the Prior Contract to the ENO in any capacity is to be read as a reference to SPIC;
- (e) AAGN unconditionally releases and forever discharges the ENO from:
 - (i) the further performance of the Prior Contract and from all claims and demands in respect of the performance of the Prior Contract which accrue on or after the Effective Date, which AAGN would otherwise have against the ENO under or in respect of the Prior Contract;
 - (ii) any and all obligations and liabilities which the ENO has under or in respect of the Prior Contract on or after the Effective Date, and AAGN accepts the liability of SPIC under the Prior Contract instead of the liability of the ENO; and
 - (iii) any action, claim or demand AAGN may have, but for this release, against the ENO under or in respect of the performance of the Prior Contract on or after the Effective Date;
- (f) AAGN provides the releases in sub-clause (e) above even if at the Effective Date it is not aware of any facts or circumstances relevant to any right, obligation, liability, action, claim or demand in relation to or under the Prior Contract;

- (g) the releases in sub-clause (e) above do not affect any right SPIC or AAGN may have against the other as a result of the assumption by SPIC of the rights, obligations and liabilities of the ENO under the Prior Contract; and
 - (h) SPIC releases and forever discharges the ENO from:
 - (i) any further performance of the Prior Contract; and
 - (ii) all claims and demands arising from or in connection with the Prior Contract after the Effective Date, including but not limited to any claims which AAGN has or may have under the Prior Contract.
2. Notwithstanding clause 1, clauses [clause references] of the Prior Contract will not be novated to SPIC.
3. The parties acknowledge and agree that, to the extent required to give effect to the rights, liabilities and obligations arising by operation of clause 2 above, the Prior Contract will remain in place as a contract with full force and effect between AAGN and the ENO including (without limitation) clauses 16 and 17 of the Prior Contract.
4. On and from the Effective Date, the ENO must indemnify SPIC in relation to:
- (a) all costs and charges (including up-front progress payments for works as identified in the Prior Contract) due and payable by SPIC to AAGN under the Prior Contract, including where such costs and charges are incurred after the Effective Date; and
 - (b) all costs and charges incurred by SPIC in complying with clause [clause reference] of the Prior Contract,
- except to the extent that such costs and charges are incurred as a consequence of:
- (i) any breach of the Prior Contract by SPIC; or
 - (ii) wilful misconduct or negligence by SPIC,
- provided that this indemnity will not apply to the extent that such costs and charges are incurred after the date on which the GTSA terminates.
5. All amounts payable by the ENO under this deed are payable within 14 days of the date of SPIC's invoice ("**Due Date**"). If the ENO fails to pay an invoice by the Due Date for that payment, the ENO must pay SPIC interest on any amount outstanding in accordance with clause 6.
6. Interest on any unpaid amounts will be calculated from (but excluding) the Due Date to (and including) the date on which payment is made at an annual percentage rate equal to the aggregate of:
- (a) the corporate overdraft reference rate (monthly charging cycle) applied by the Commonwealth Bank of Australia ("**Bank**") as at the Due Date (or if the Bank ceases to quote such a rate, then the rate which in the opinion of the Bank is equivalent to such rate in respect of similar overdraft accommodation) expressed as a percentage; plus

- (b) 2 per cent per annum.
- 7.
- (a) Unless expressly stated otherwise, all amounts payable or the value of other consideration provided in respect of supplies made in relation to this deed are exclusive of GST (if any). If a GST is levied or imposed on any supply made (or deemed to have been made) under or in accordance with this deed, the amounts payable or the value of the consideration provided for that supply (or deemed supply) (“**Payment**”) shall be increased by such amount as is necessary to ensure that the amount of the Payment net of GST is the same as it would have been prior to the application of GST.
 - (b) Where any amount is payable as a reimbursement, indemnification or similar payment calculated by reference to a loss, cost, expense or other amount incurred, then that amount must be reduced by any input tax credit available to that party and, if a taxable supply, must be increased by the GST payable in relation to the supply and a valid tax invoice will be provided by the party being reimbursed or indemnified.
 - (c) All GST payable shall be payable at the time any payment to which it relates is payable. Where any GST payable is not referable to an actual payment then it shall be payable within 14 days of a valid tax invoice being issued by the party making the supply.
 - (d) Where in relation to this deed a party makes a taxable supply, that party shall provide a valid tax invoice in respect of that supply before the GST payable in respect of that supply becomes due.
 - (e) Terms defined in the *A New Tax System (Goods and Services Tax) Act 1999* of Australia have the same meaning when used in this clause.
8. This deed is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales.
9. This deed may consist of a number of counterparts and all those counterparts taken together are regarded as one document.
10. Each party must pay its own costs in connection with the negotiation and preparation of this deed.
11. A term or part of a term of this deed that is illegal or unenforceable may be severed from this deed and the remaining terms or parts of the term of this deed continue in force.
12. A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
13. Each party must do all things necessary or desirable to give full effect to this deed.

Executed as a Deed

Executed by **THE EMBEDDED NETWORK OPERATOR** by its authorised signatory who declares he/she is authorised to execute this deed in the presence of:

Witness

Authorised Signatory

Name of Witness
(BLOCK LETTERS)

Name and position of Authorised Signatory
(BLOCK LETTERS)

Executed by **SPIC** by its authorised representative in the presence of:

Witness

Authorised representative

Name of witness
(BLOCK LETTERS)

Name
(BLOCK LETTERS)

Executed by **ALINTA AGN LTD** by its authorised representative in the presence of:

Witness

Authorised representative

Name of witness
(BLOCK LETTERS)

Name
(BLOCK LETTERS)

ANNEXURE 1

Prior Contract

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ANNEXURE D

FURTHER INFORMATION REGARDING THE NATURAL GAS DISTRIBUTION SERVICES MARKET

1. Statement of Relevant Markets

AAGN submits that, in evaluating this Application, the Tribunal should employ the market definition outlined in the *Statement of Reasons for Decision in respect of AGL Gas Network Limited and AGL Energy Sales and Marketing Proposed Deed*, dated 9 February, 2001 (**2001 Decision**) modified as suggested in part 4 hereunder.

The 2001 Decision, issued pursuant to section 7.1 of the Code, determined that the dimensions of the markets potentially affected by an Associate Contract were:

- (a) **Product:** the markets for:
 - (i) natural gas; and
 - (ii) gas distribution or reticulation services;¹
- (b) **Functional:** the markets in which natural gas and gas distribution services are supplied to contestable contract customers under Associate Contracts either directly or via a gas retailer;
- (c) **Geographic:** the area in which sellers of the product operate and in which purchasers can practically turn for such goods and services, being:
 - (i) for natural gas:

A south east Australian market, comprising New South Wales, South Australia and Victoria. The Tribunal noted that these states were comprehensively interconnected by transmission pipelines, with the result that all gas producers, and other suppliers able to access these pipelines and the related distribution networks, competed amongst themselves in selling gas into NSW;
 - (ii) for gas distribution or reticulation services:

the wider Sydney area, north to the Hunter Valley and south to Shellharbour.

¹ Following *Re Queensland Co-operative Milling Association Ltd v Defiance Holdings Ltd* (1976) ATPR 40-012 and *Re AGL Cooper Basin* (1997) ATPR 41-593 at 44,210 – 44211.

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In the *Re AGL Cooper Basin* decision in which the Tribunal relied on its 2001 Decision, the Australian Competition Tribunal (**ACT**) noted the expansion that had occurred within the geographic market for natural gas; widening, within the decade between 1986 and the hearing, from a NSW market to a south-east Australian market.² The ACT also conjectured that this expanded market would ultimately crystallise, through continued interconnection, into a national market for natural gas.

2. Natural Gas Production and Retail Markets

AAGN notes that events since the ACT's comments in *Re AGL Cooper Basin* have borne out its prediction that both the natural gas production and retail sectors would experience increasing trends towards interconnection and convergence.

Additional transmission interconnection has been established between Western and Eastern Victoria; between NSW and Victoria; between Victoria and Tasmania; and between Victoria and Adelaide through the completion of the SEAGAS pipeline.

AAGN notes several new proposals to expand the Queensland network and connect it with New South Wales and South Australia. Epic Energy has announced construction of the QSN Link, which will join the South West Queensland Pipeline at Ballera to the Moomba–Sydney and Moomba–Adelaide pipelines and thus integrate Queensland into an interconnected east Australian gas transmission system.

Other proposals include those of Hunter Energy (a gas pipeline to ship gas from Wallumbilla Old to Hexham NSW) and the APA Group (a pipeline from Wallumbilla to Bulla Park on the MSP).

AAGN notes that new pipelines are frequently a response to new gas developments, such as BassGas in Victoria and the recent rapid exploitation of the Queensland coal seam methane (CSM) deposits.

Since 2001 in the retail sector, AGL has purchased Pulse Energy Ltd in Victoria and Sun Gas Retail and Powerdirect (retail electricity) in Queensland. Energex has expanded from its base in Queensland to supply natural gas and electricity to north NSW and Victoria, and Energy Australia has expanded from the NSW electricity market to compete in gas in NSW and gas and electricity in Victoria and South Australia. TRUenergy and Origin are competing in gas and electricity markets in New South Wales, Victoria and South Australia. Other gas/electricity retailers in NSW/ACT include Country Energy and ActewAGL. Australian Power & Gas entered the New South Wales retail market in April 2007.

2 ATPR 41-593 at 44, 211

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Business structures at the retail level therefore increasingly reflect an interconnected market populated by south-east Australian dual fuel energy providers. This geographically expanded dual fuel structure also reflects the degree to which energy retailers can exploit economies of scope between retailing gas and electricity (including marketing, billing and infrastructure activities).

AAGN submits that the market definition for the supply of natural gas adopted by the Tribunal in its 2001 Decision remains consistent with, and captures, recent changes within the natural gas production and retail markets. AAGN submits that the Tribunal reaffirmed this position in its *Statement of Reasons for Decision* in respect of AGL Gas Networks proposed Associate Contracts with AGL Retail Energy limited, AGL Energy Sales and Marketing Limited and ActewAGL Retail, dated 29 October 2003, (**2003 Decision**).

In this 2003 Decision, the Tribunal extended the dimensions of the south-east Australian market to include the Australian Capital Territory.

AAGN submits that the market definition for the supply of natural gas to contract and contestable tariff customers is presently a south-east Australian market, comprising New South Wales, South Australia, Victoria and ACT. In the near future, with the interconnection of Queensland, it seems most likely that this definition can be expanded to encompass a new eastern Australian market.

3. Natural Gas Distribution Services Market

In its 2001 Decision, the Tribunal adopted a narrower geographic market in relation to natural gas distribution services, proposing a market comprising the wider Sydney area, north to the Hunter Valley and south to Shellharbour.

In its 2003 Decision, the Tribunal considered that the appropriate geographic dimensions would be defined by the geographic boundaries of the areas covering delivery points anticipated to be supplied by AGL Gas Networks.

Notwithstanding the Tribunal's 2001 Decision and 2003 Decision, AAGN submits that regardless of the Tribunal's preferred characterisation of the geographic market for natural gas distribution services, the boundaries of the market will not be relevant to the Tribunal's evaluation of the proposed Associate Contract.

Natural gas distribution services constitute a natural monopoly service with the result that covered pipelines are subject to the Tribunal's regulatory supervision. Analysis of any actual or likely substantial lessening of competition in a natural monopoly market is redundant. This includes interconnection agreements. Consequently, even on the narrowest possible geographic dimension, the effect of the proposed Associate Contract will not be to substantially lessen competition in a market for the distribution of natural gas.

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4. Sub-set of the Natural Gas Distribution Services Market

The market assessments for natural gas and natural gas distribution services described in parts 2 and 3 above are most relevant when the "Associates" for whom approval of an Associate Contract is sought operate in the natural gas distribution and product markets respectively; eg a natural gas distributor and an associated retailer.

However, the present Application is being made in relation to a proposed Associate Contract between:

- (a) a natural gas distributor who has contracted to build-own-operate an interconnection to the connecting pipeline, being AAGN; and
- (b) a special purpose vehicle formed to build-own-operate a very highly specialised and location-specific piece of infrastructure - the Pipeline - comprising a high pressure gas pipeline, gas storage and a compressor, being SPIC.

AAGN therefore submits that the relevant market is:

the market for an interconnection service to the connecting pipeline in the vicinity of location].

The Interconnection Agreement between AAGN and SPIC (after novation) will be one between two infrastructure owner/operators. There are no limitations on which network users can supply gas to the contractual Delivery Point where custody of gas transfers from the connecting pipeline to the Pipeline.

The proposed Associate Contract does not address gas supply or transportation matters. Hence AAGN submits that there are no natural gas production and retail market issues of the kinds considered in part 2 above which could be relevant.

However, if the Tribunal is of the view that such matters are relevant, then AAGN relies on the market assessments provided in part 2.

With regard to the natural gas distribution services market, and in particular the sub-set of that market defined as an interconnection service to the connecting pipeline at [location], AAGN submits that the proposed Associate Contract will not have an adverse effect on competition for the reasons discussed below.

5. Impact of the proposed Associate Contract on Competition

AAGN submits that the proposed Associate Contract will not have the effect, and is not likely to have the effect, of substantially lessening, preventing or hindering competition in a market for the following reasons:

- (a) Market for gas distribution

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- (i) Natural gas distribution services (including interconnection services) constitute a natural monopoly service with the result that covered pipelines are subject to the Tribunal's regulatory supervision.
 - (ii) As noted in part 3, even on the narrowest possible geographic dimension, the effect of the proposed Associate Contract will not be to substantially lessen competition in a market for the distribution of natural gas.
- (b) Market for an interconnection service at the point of connection between the Pipeline to be constructed by SPIC and the connecting pipeline
- (i) The Delivery Station facility will be purpose-built for the Pipeline (see section 4 of Interconnection Agreement) and, to that extent, AAGN acknowledges that it would not be feasible to allow other parties to have access to the facility.
 - (ii) Nevertheless, it is open to any party to seek an alternative interconnection to the connecting pipeline if required. AAGN is unaware of any party or parties desiring interconnection at this time.
 - (iii) The proposed terms for the provision of the service offered in the Interconnection Agreement are consistent with terms and conditions in AAGN's *Access Arrangement "Interconnection of Embedded Network Service"*.³ AAGN would offer the same general terms to a similar embedded network.
 - (iv) The Interconnection Agreement between AAGN and the ENO has been developed on the basis that the ENO will be the counterparty. The assignment clause (clause 19) requires that (except for specified circumstances) neither party may unreasonably withhold consent to the assignment, novation or transfer of their rights and obligations. The ENO therefore retains the flexibility to assign the rights and obligations to the party of their choice.
 - (v) There is no arrangement or understanding as between AAGN and SPIC. Negotiations for the interconnection have been between AAGN and the ENO; and the response to the ENO's Expression of Interest for constructing/operating the Pipeline has been between SPIC and the ENO.
 - (vi) There has been no "third line forcing" which would require the ENO to accept any aspect of the interconnection service to be provided by AAGN on condition that specific conditions be met in respect of any ENO contract with SPIC.

³ **"Interconnection of Embedded Network Service"** is a service provided by AAGN for the establishment of a single Delivery Point on an embedded network on either the Trunk or the Local Network. Section 2.8 of the Access Arrangement contains the terms and conditions applicable to Interconnection of Embedded Networks services and lists the charges payable.

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Accordingly, AAGN considers that the proposed Associate Contract will not have the effect, and is not likely to have the effect, of substantially lessening, preventing or hindering competition in the market.

AAGN also notes that the proposed Associate Contract can be viewed as enhancing competition in the National Electricity Market by facilitating an additional source of peak generating capacity.