

WA GAS NETWORKS - PROPOSED REVISED ACCESS ARRANGEMENT FOR THE MID-WEST AND SOUTH-WEST GAS DISTRIBUTION SYSTEMS

WAGN TEMPLATE HAULAGE CONTRACT		
Clause	Issue	Comment
General drafting issue	<p>Many of the key concepts in the Template Haulage Contract are dealt with in a fragmented, and sometimes materially inconsistent way. We cannot highlight every instance in this submission but some significant examples are:</p> <ol style="list-style-type: none"> 1. Curtailment Events are set out in clause 7.2, but the Haulage Contract contains many other rights to Curtail, some of which are repeated in clause 7.2, some of which are not. See clauses 6.6, 7.3, 14.5, 15.1, 15.2. 2. Payment of Haulage Charges and Force Majeure are dealt with in clauses 4.2(a), 4.2(b) and 11(b). 3. The approved System Pressure Protection Plan is dealt with in clauses 1.1(a), 5.9, 5.10, 7.2(e), 15.1(b), 17.1(b). 	Alinta considers that the Haulage Contract would be much more approachable for potential Users if it dealt with each key concept in one regime in one part of the contract.
1.1(a)(i) Conditions Precedent	Service Provider approval of a System Pressure Protection Plan	Is there to be a standard System Pressure Protection Plan (SPPP) that Service Provider approves for use by all Users, or is each User to propose its own? The process for approval of the SPPP under the Haulage Contract and the draft Access Arrangement itself is not clear. If the Service Provider is to approve each User's SPPP then its right to approve "in its absolute discretion" should be replaced with "acting reasonably", and User should only be obliged to have SPPP approved once, and not each time the "Application Procedure" is invoked by the Service Provider under the Haulage Contract.
1.1(a)(ii)	The requirement that User demonstrates to Service Provider's	The requirement should be to Service Provider's "reasonable" satisfaction.

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Conditions Precedent	satisfaction of conditions 1.1(a)(ii)(A) to (E)	
1.1(a)(ii)(A) Conditions Precedent	Condition that User is able to, and will for the duration of the Haulage Contract, comply with the Approved SPPP	The condition should relate to the status of User's ability to comply at the time for satisfaction of the condition only – including in the condition reference to demonstrating future compliance by the User throughout the duration of the Haulage Contract is so difficult to satisfy as to be misconceived, and should be deleted. Ongoing obligations on User in relation to the SPPP are addressed elsewhere in the Contract (e.g. clause 5.10 and 17.1(a) and (b)).
1.1(a)(ii)(B) Conditions Precedent	Condition that User's prudential and financial standing meets the minimum prudential and financial requirements in the Access Offer that led to the Haulage Contract	There are no reasonableness criteria for the minimum prudential and financial requirements which may be specified in an Access Offer and this may be a barrier to entry. The Service Provider has rights to security under clause 15.2, which are also unconstrained. There should be a requirement that the prudential and financial requirements, and the right to call for security should be relative to the maximum amount of the User's likely outstanding indebtedness to the Service Provider at any time considering the Service Provider's rights to Curtail and/or terminate.
1.1(a)(ii)(D) Conditions Precedent	Requirement that User has in place a gas supply agreement providing gas transport sufficient to meet the aggregate of all the Contracted Peak Rates at Delivery Points on the same Sub-network	The condition should contemplate that there may be more than one gas supply agreement, and gas transmission pipeline transportation may be under a separate agreement, and not covered by the "Gas supply agreement". Alinta is also concerned as to the manner in which it may be required to demonstrate satisfaction of this condition – the issue should be dealt with by way of ongoing warranty or covenant rather than by a broad condition precedent with a potential obligation to disclose sensitive commercial information.
1.1(a)(ii)(E) Conditions Precedent	Condition that User is able to and will for the duration of the Haulage Contract be able to deliver Gas to the Receipt Points	The condition should relate to the status of User's ability to deliver Gas at the time for satisfaction of the condition only – including in the condition reference to demonstrating future compliance by the User throughout the duration of the Haulage Contract is so difficult to satisfy as to be misconceived, and should be deleted.

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1.1(d) Conditions Precedent	User to advise Service Provider of the satisfaction of each Condition Precedent	All the Conditions Precedent include an element of the Service Provider's approval or satisfaction as to the underlying matter in each condition – User cannot therefore advise Service Provider of the satisfaction of the Conditions Precedent – the obligation to advise as to satisfaction should be reversed.
1.1(f) Conditions Precedent	Consequences of failure to satisfy Conditions Precedent	This provision should be amended to make clear the fact that it is Service Provider and not the User that determines whether the Conditions Precedent have been satisfied. The inconsistent use of the concepts of “satisfy” and “comply” add to the opaqueness of the clause, and “satisfy” should be used throughout with grammatical modification throughout.
1.1 Conditions Precedent	Structure of the Conditions Precedent generally	The use of clause “1.1” may suggest a missing clause 1.2.
4.1(c) Obligation to pay for Haulage Services	Nothing in clause 4.1(a) prevents Service provider from recovering any other monies otherwise payable by User	Clause 4.1(c) is redundant, and confusing as clause 4.1(a) does not in any way purport to be exclusive or cover the field. Alinta considers clause 4.1(c) should be deleted.
4.2(a)(ii) Ongoing obligation to pay	Obligation to pay Haulage Charge for each Haulage Service accessed even if Service Provider is unable to provide, undertake or complete one or more Haulage Services as a result of that Haulage Service not being able to be provided or undertaken in respect of the Delivery Point.	Alinta considers that a User should not be required to pay for a Haulage Service that is not available to it. This applies to each element of a Haulage Charge; e.g. Standing Charge, Demand Charge, User Specific Charge and Usage Charge. No reason is stated for Service Provider's inability to provide, which could be because Service Provider has something better to do than provide the Haulage Service.
4.2(a)(iii) Ongoing obligation to pay	Obligation to pay Haulage Charge where Haulage Services not provided due to an event of Force Majeure	Obligation on User to pay should only include where the event of Force Majeure affects the User and not the Service Provider (i.e. the Service Provider remains ready, willing and able to satisfy its obligations under the Haulage Contract). Where the Service Provider is the Party affected by the event of Force Majeure then there should be no obligation on the User to pay the Haulage Charge. Clause 4.2(b)(iv) and (v) are redundant as the matter is dealt with under clause 4.2(a)(iii) (as modified). Clause 11(b) must also be amended to reflect this

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		position.
5.2(b) Obligation to accept and deliver Gas	Service Provider must use reasonable endeavours to deliver Gas at the Delivery Point at the Nominal Daily Pressure	The words “use reasonable endeavours to” should be deleted.
5.4 Delivery Point Register	Delivery Point Register	Alinta considers Service Provider should be required to give on request by a User an extract of the Delivery Point Register containing the User’s Delivery Points, and should also be required to provide Users with periodic notification (e.g. once every 12 months) as to Delivery Points with End Dates falling within a certain period (for example, within 12 months after the date of the notice).
5.4(j)(iii) and (iv) Delivery Point Register	For each Delivery Point to which Service A1 applies the Delivery Point Register should record details relating to the User Specific Delivery Facilities and the User Specific Charge	There may be no User Specific Delivery Facilities and no User Specific Charge – for example the facilities may already be installed and amortised. Alinta considers the provisions should recognise that this information may not be relevant.
5.5(a) New Delivery Points and increasing Contracted Peak Rate	A request by User to add a Delivery Point, increase the Contracted Peak Rate for a Delivery Point to which Service A1, A2 or B1 applies or to change an End Date for a Delivery Point to a later date is subject to Service Provider’s approval	Service Provider should be obliged to agree unless there are technical or commercial reasons to reject the application (see comments on 5.5(b) immediately below). The Service Provider’s discretion within these draft provisions relating to New Delivery Points and Contracted Peak Rates is too broad.
5.5(b) New Delivery Points and increasing Contracted Peak Rate	A request by User to add a Delivery Point, increase the Contracted Peak Rate for a Delivery Point to which Service A1, A2 or B1 applies or to change an End Date for a Delivery Point to a later date is subject to the Application Procedure and its attendant pre-conditions and restrictions	This provision should expressly reflect the fact that the User is an existing user that is seeking to increase capacity – the Application procedure and pre-conditions should only apply to the extent they are strictly necessary to allow the Service Provider to determine whether the WAGN GDS has the requisite capacity to cope with User’s request, and to comply with any queuing requirements. For example, the User’s request should not trigger a further obligation on the User to provide information as to prudential and financial matters

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		when that information will already have been provided and the Contract contains ongoing obligations in relation to security and insurances.
5.6 Deregistration of Delivery Points	The User must request Deregistration of a Delivery Point if there is no other User for that Delivery Point on the relevant End Date	The Service Provider maintains the Delivery Point Register, and is therefore the Party with the relevant information that would allow the Deregistration of the Delivery Point. If User is to be required to apply for Deregistration, then Service Provider must be obliged to provide the relevant End Date information to User in a timely manner, and User ought not be obliged to make the payments referred to under clause 5.6(b) until Service Provider has given that information. The obligation to apply for Deregistration must be subject to any application for an extension of the End Date.
5.8(b) Gas quality and Gas Quality Data	User is obliged to provide daily (or more frequently if requested) Gas Quality Data to Service Provider in relation to Gas delivered to each Receipt Point	Information should be provided by the operators of Interconnected Pipelines to Service Provider directly under Interconnection Agreements – Alinta is presently contractually constrained from passing information about Gas Quality Data which it receives from operator of an Interconnected Pipeline to anyone, including the Service Provider and cannot put itself in a position of contract conflict. Alinta considers this clause should be deleted or amended accordingly.
5.8(d)(i) Gas quality and Gas Quality Data	User acknowledges and agrees that Service Provider has no control over the quality of Gas in the WAGN GDS	Service Provider may have no control over the quality of Gas entering the WAGN GDS, but does have control over what happens to the quality of Gas once in that system. This clause should be deleted or amended.
5.8(d)(iii) Gas quality and Gas Quality Data	Service Provider excludes liability for out-of-specification Gas	Liability should not be excluded in circumstances of wilful default, negligence or fraud on the part of the Service Provider while Gas is in the WAGN GDS which causes the Gas delivered to be out of specification.
5.9(a)	User must ensure deliveries into each Sub-network equate to Gas received by User from that Sub-network	The absolute obligation to ensure that “Gas in” equals “Gas out” should be replaced with the obligation on User to use reasonable endeavours in good faith.

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Gas balancing		
5.9(c) Gas balancing	User agrees that nothing in the Contract makes Service Provider liable for loss, damage or other consequence suffered by User in connection with a failure by the operator of an Interconnected Pipeline to deliver Gas into the WAGN GDS at a Receipt Point	Service Provider should be liable to the extent it contributed to such loss, damage or other consequence.
5.9(d)(iv) Gas balancing	User must ensure its Related Shippers' or related Swing Service Providers' conduct does not cause any User or other person loss or damage	Obligations in relation to conduct should be limited to that relating to usage of the WAGN GDS, and not to conduct in general.
5.10 Approved System Pressure Protection Plan	User must comply with its Approved System Pressure Protection Plan	This clause is redundant as this is already dealt with in clause 5.9(d)(iii). Alinta considers clause 5.10(a) should be deleted (or clause 5.9(d)(iii)). This matter is also dealt with (inconsistently) in clauses 7.2(e) and 15.1(b)
5.11(d) Emergencies	User liable for any injury, death, loss or damage, be it direct or indirect, suffered by reason of User's failure to comply with an instruction regarding an emergency	Reference to User's liability for indirect loss or damage should be deleted.
6.2(a) and (b) Only User may take delivery, title and possession of Gas from Service Provider	Only User can receive Gas at a Delivery Point under the Haulage Contract. The delivery by Service Provider is a transfer of title to and control and possession of the Gas to User	The User as a matter of fact and physical gas flow does not receive Gas at the Delivery Point, its End User does. Alinta considers that the provisions should be amended to reflect that only the User is entitled to receive gas and that title passes to the User. Control and possession of the gas passes to the End User.
6.5	Service Provider may commingle Gas where and when it considers it necessary or convenient to do so	Alinta notes it improbable that a Service Provider would elect not to commingle Gas delivered into the WAGN GDS with other Gas in that system and not deliver Gas in a commingled

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Commingling permitted		state. Alinta considers the last line of clause 6.5 should be deleted as it is a nonsense.
6.6(a)(ii)(B) and 6.6(d) Interconnection issues	If Service Provider considers that an Interconnection Event has occurred in relation to a Physical Gate Point then User must not deliver Gas at that Physical Gate Point, nor take delivery from a Delivery Point associated with that Physical Gate Point, and Service Provider may refuse to accept Gas or Curtail at an associated Delivery Point	Service Provider must act reasonably in exercising the rights it has under this provision. The potential consequences for the User are significant. Additionally whether there is an Interconnection Agreement is in the hands of the Service Provider and not the User, and there may not be an Interconnection Agreement for many reasons other than termination or breach; e.g. expiration and/or failure to renew. The reason for there not being an Interconnection Agreement must be expanded to include all events other than the default of, or failure to reasonably agree by, an Interconnected Pipeline owner. The requirement for negligence should be removed. Clause 6.6(d) should be deleted.
6.6(e) Interconnection issues	Service Provider may disclose to an operator of an Interconnected Pipeline certain operational information relating to the interconnection	Service Provider must require operator of Interconnected Pipeline to keep information confidential and only use the information strictly as required for operation of the Interconnected Pipeline and must indemnify User for loss or damage caused by Service Provider's breach.
6.7 Delivery facilities installation, maintenance and operation	Service Provider liable to pay compensation for or in respect of, or make good any damage done to the land or premises of User or User's customer, by Service Provider, its officers, servants or agents in the course of installing, maintaining or operating User Specific Delivery Facilities	Service Provider to also have liability for actions of its contractors and sub-contractors.
6.7(b)(ii) Delivery facilities installation, maintenance and	If, in the course of installing User Specific Delivery Facilities or Standard Delivery Facilities, Service Provider causes damage to land or premises, then Service Provider will, in its absolute discretion, either fill in any ground or at the User's expense and without obtaining prior consent from User, restore the land or	Service Provider to consult with User as to whether land/premises is to be restored, and any restoration should be at Service Provider's expense. Clauses 6.7(c), (d), (e) and (f) are unreasonable and are inconsistent with clauses 6.7(a) and (b) should be deleted

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operation	premises	
7.2(d) Curtailment Events	Service Provider may Curtail where it has refused to accept out of specification Gas from an Interconnected Pipeline	Alinta considers that a Curtailment can only be made in a Sub-network in respect of which the Service provider has refused to accept Gas. See clause (f) for the appropriate approach.
7.2(f) Curtailment Events		
7.2(g),(h),(i) and (k) Curtailment Events	Service Provider may Curtail for the reasons set out in the clauses listed	The issue is the same in principle as the issue raised in respect of clause 7.2(d). Alinta considers that if an issue relates to a Sub-network the Curtailment should be limited to the Sub-network. Again see clause (f).
7.2(h) Service Provider's right to refuse to accept Gas at Receipt Point	Curtailment due to fact that the level of Capacity of the WAGN GDS falls or remains below that necessary to meet all Users' requirements	Any Curtailment should be pro-rata across all Users in proportion to their total Capacity rights to the WAGN GDS or in the affected Sub-network.
7.3 Curtailment for certain activities	Service Provider may Curtail to undertake Extension or Expansion of the WAGN GDS or for its operation by giving 10 days written notice to User	Service Provider must be required to give 90 days written notice to User.
7.4(f) Service Provider's right	Service Provider may refuse to accept Gas at a Receipt Point if either party experiences Force Majeure	This clause is redundant as it is dealt with in clause 11, which provides for proper notices, etc. Alinta considers this clause should be deleted.

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to refuse Gas		
7.4(i) Service Provider's right to refuse Gas	Service Provider may refuse to accept Gas at a Receipt Point if User is in breach of the Haulage Contract	This clause is redundant as it is dealt with in clause 14.5, which has proper default procedures. Alinta considers the clause should be deleted.
7.5(b) User to comply with notice of Curtailment	Service Provider is only required to give reasons for any Curtailment in a Curtailment notice if it considers it appropriate	Service Provider must be obliged to provide reasons for the Curtailment in a Curtailment notice unless reasons have already been given in any "advance warning" under clause 7.8(c).
7.5(d) User to comply with notice of Curtailment	Nothing in clause 7.5 (dealing with the issue of Curtailment notices by Service Provider) limits Service Provider's rights to effect a Curtailment	Prior notice of any Curtailment must be provided by the Service Provider other than in emergencies.
7.6(b) User to comply with notice of refusal to accept Gas	Service Provider is only required to give reasons for any refusal to accept Gas in a refusal notice if it considers it appropriate	Service Provider must be obliged to provide reasons for the refusal to accept Gas in any notice unless reasons have already been given in any "advance warning" under clause 7.8(c).
7.6(d) User to comply with notice of refusal to accept Gas	Nothing in clause 7.6 (dealing with the issue of refusal to accept Gas notices by Service Providers) limits Service Provider's rights to refuse to accept Gas	Prior notice of any refusal to accept Gas must be provided by the Service Provider other than in emergencies.
7.8(c)	Service Provider to provide advance warning of Curtailment or	Service Provider should also be required to provide User with any updated information in relation to the magnitude, duration and any related information during any Curtailment or

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Method of Curtailment or refusal to accept	refusal to accept Gas	refusal to accept Gas as and when it is available to keep User fully informed and allow User to manage its customers.
8.1 Operating meters	Requirements in relation to the design, adjustment, operation and maintenance of User Specific Delivery Facilities and Standard Delivery Facilities	User Specific Delivery Facilities and Standard Delivery Facilities should also be designed, adjusted, operated and maintained in compliance with all Laws
8.2 Use of Gas Quality Data from other locations	Service Provider may use Gas Quality Data from equipment at one or more locations to estimate Gas quality at a Delivery Point	The data from equipment located in one Sub-network should only be used to estimate gas quantity at other locations (Delivery Points) in that Sub-network. Alinta considers the provision should be amended to specify this limitation.
9.1(c)(i) and (ii) Invoicing	Contents of invoices and notices comprising a Payment Claim	Service Provider should be required to give a breakdown of the calculation of the Haulage Charges set out in Payment Claims.
9.2(a) Payment Claim review process	Within 3 Business Days of receipt of a Payment Claim User must by separate notices agree or dispute line items in the notice of a Payment Claim	User to be given at least 10 Business Days to respond to the Payment Claim as to whether any line items are disputed, and to do so in a single return notice. User to provide details of reason for any dispute. If not disputed each line item is taken to be agreed.
9.2(b)(ii) Payment Claim review process	Service Provider to inform User by Resolution Notification whether it agrees or disagrees with User's reasons for a disputed line item	If Service Provider disagrees with User then it must provide reasons but not if it agrees.
9.2(c)(iii) and (iv) Payment Claim review	If Service Provider does not agree that a line item is incorrect or does not issue a Resolution Notification with 5 Business Days then line item is payable by User	The default position that if Service Provider does not consider the line item is incorrect then it should be paid is not acceptable to Alinta – nor is the position where if Service Provider does not respond in time then the amount is payable. If the Parties cannot agree on a disputed line item then there should be a streamlined process for an appropriate expert (accountant or

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process		<p>similar) to determine the dispute. If the Service Provider does not provide the User with the Resolution Notification in time the disputed line item should not be payable, and should be credited against the next Payment Claim.</p> <p>Alinta considers it may be more appropriate to have a payment/dispute regime where Alinta pays any undisputed amount and half of any disputed line item within the timeframes in the Haulage Contract – and interest is payable by Alinta if the dispute is resolved in Service Provider's favour, or by the Service Provider where the dispute is resolved in Alinta's favour. This regime (which is the regime currently used by Service Provider and Alinta under the existing haulage contract), which involves payment of interest on disputed amounts ultimately determined to be payable, would clearly serve to disincentivise the lodgement of marginal disputes which is in the interests of both parties.</p>
9.2(f) Payment Claim review process	Adjustment for an incorrect line item where no further Payment Claim to be issued by the Service Provider under the Haulage Contract	Service Provider must credit the amount to the User, and the amount will be a debt owed to the User by the Service Provider.
9.4 Accounting for errors after payment has been made – claim by User	If User considers there has been an error in a Payment Claim after payment has been made then User may give a Retrospective Dispute Notification	Alinta considers that there should again be a streamlined process for determination of the retrospective claim by an accountant or similar expert in circumstances where Service Provider does not agree that there has been an error in a previous Payment Claim where User has already paid the disputed amount.
9.5 Accounting for errors after payment has been made	If the Service Provider considers there has been an error in a Payment Claim it may give a Retrospective Error Notification and the next Payment Claim is then adjusted	There is no process for review of, or disputing a Retrospective Error Notification; the next Payment Claim is simply adjusted. A process for resolving any dispute about that notification should be included in the provision rather than pushing it into the next Payment Claim.

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9.6 Guaranteed Service Level payments	User agrees to comply with any obligation imposed on the user under the GSL.	Given the GSL may be amended by the Service Provider, Alinta considers it is not appropriate that the user be required to agree to comply with an obligation imposed by the GSL.
11(b) Force Majeure	Force Majeure claimed by Service Provider does not relieve User from paying Haulage Charges	Alinta considers that if the Service Provider does not provide Haulage Services for any reason, Alinta should not pay Haulage Charges. If Force Majeure affects Alinta's ability to use Haulage Services, it is prepared to pay Haulage Services. A consistent regime to the effect should be set out in one place in the Haulage Contract.
11(d)(iv) Force Majeure	Obligation to resume full performance following an event of Force Majeure	The requirement to resume full performance should be to do so "without delay" rather than as soon as reasonably practicable – particularly where User is required to pay Haulage Charges during the Force Majeure event (which Alinta does not agree with – see comments above and on clause 4.2(a)(iii)).
12.1(b) Replacement of Haulage Services	Service Provider to consult with User before giving notice to replace one Haulage Service for a Delivery Point with another Haulage Service	The period of consultation with the User prior to issuing any service replacement notice should be at least 20 Business Days to allow User time to gather sufficient evidence and information as to why the notice should not be given. The decision by Service Provider on this issue has significant commercial consequences for Alinta and its relevant customer/s.
12.4 Revisions to Access Arrangement that affect the terms and conditions of Pipeline Services	If the Access Arrangement is revised so that the terms and conditions on which an Original Pipeline Service is provided are varied then Service Provider must issue a Change Notice amending the Haulage Contract to reflect the revised terms and conditions	This provision is an unacceptable and unilateral interference with contractual rights. The provisions of clause 12(2) and 12(3) must only operate where the Pipeline Services are sufficiently similar for the new or varied Pipeline Service to be able to operate within the existing terms and conditions. Amendments to the Access Arrangement are made at the instance of the Service Provider and the Service Provider must take into account the existing contractual rights of Users when planning and proposing variations to, or new, Pipeline Services. If the terms and conditions are required to be changed to accommodate the varied or new Pipeline Service, the Service Provider must seek the agreement of Users.
12.7	If the Access Arrangement terminates or expires, the Service	The Haulage Contract takes effect as a contract independently of the Access Arrangement in

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Right to terminate if Access Arrangement terminates or expires	Provider may terminate the Haulage Contract	force at the time it is entered into. This provision should be deleted.
13.2 Bare transfers	The User is required to provide information to the Service Provider about the bare transferee, when the bare transfer makes no charge in the contractual or operational relationship between the Service Provider and the User	Alinta considers that in the case of a bare transfer, there should be no requirement to provide any information to the Service Provider.
13.3(c) Other transfers	Third Party may be required to comply with the full Application Procedure and pre-conditions before Service Provider consents to transfer of Contracted Peak Rates at a Delivery Point	There should be no requirement to comply with the elements of the Application Procedure and pre-conditions that relate to capacity issues for a transfer, where no increase (or decrease) in capacity is being sought.
13.5 Costs	The User must reimburse the Service Providers' costs in processing a transfer under clause 13.2	The Service Provider is not required to process anything under clause 13.2 and this reference in clause 13.5(a) should be deleted. There is also an incorrect clause reference in clause 13.5(c).
13.6(a) Novation Rights	Service Provider may withhold consent to User novation if there would be, in the Service Provider's opinion, an increase in the commercial or technical risk to Service Provider	The determination that there would be an increase in commercial or technical risk must be in Service Provider's "reasonable" opinion
13.6(c) Novation Rights	Service Provider may novate the Contract on giving reasonable written notice to User	Service Provider may only novate the Contract with User's written consent and execution of an appropriate deed of novation. User may withhold its consent on reasonable commercial or technical grounds or give its consent on conditions on reasonable technical or commercial grounds.
13.7(b) and (c) Changing a Receipt Point or Delivery Point	Requests by User for changes to Receipt Points or Delivery Points can be made subject to satisfaction of pre-conditions in the Application Procedure	Service Provider only to be permitted to impose Application Procedure or pre-conditions where such conditions are relevant to the request – Alinta is concerned that the full Application Procedure for changes to Delivery Points in particular may impose an unnecessary and costly burden on Alinta

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15.1(b) Relationship between the Parties	Service Provider may require User to provide written evidence that User has the ability to comply, is complying and will comply, with the Approved SPPP	This provision should be deleted and the ongoing requirement in relation to the Approved SPPP reserved to the warranty in clauses 17.1(a) and (b). The additional requirement in clause 15.1(b) is not reasonable in light of the various other obligations imposed on User in relation to the Approved SPPP under the Contract.
15.1(c) Relationship between the Parties	User may be required to provide written evidence that User is complying with Gas Quality Specifications	Service Provider will receive Gas Quality Data directly from the relevant Pipeline Owner – User ought not to be required to provide written evidence which will only ever be evidence of a contractual position rather than the physical position reflected in the Gas Quality Data (the physical position being most important to Service Provider).
15.2(b)(i) Security for performance	Service Provider may require a bank guarantee that's extends to beyond the end of the Haulage Contract	The bank guarantee should expire with the expiry or termination of the Contract – consistent with clause 15.2(j).
15.2(b)(ii) Security for performance	Service Provider may require a bank guarantee for a minimum of 2 months Haulage Charges	The 2 months' Haulage Charges as security is an arbitrary amount – the reference to 2 month's charges should be replaced with a requirement that the security be limited to the minimum amount necessary to protect Service Provider's legitimate business interests.
15.3(a)(i)(A), 15.3(a)(ii)(A) Insurances	Insurer to have a Standard & Poors rating of at least "AA"	Alinta considers the relevant qualification should be that the insurer is supervised by the Australian Prudential Regulation Authority.
15.3(a)(i)(B) Insurances	Service Provider to accept manner in which Service provider noted on User's insurance policies	The requirement to have Service Provider approve the manner in which its interest is noted in the insurance policy is not acceptable.

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16.1(b)(i) Liability for negligence and default limited to Direct Damage	Service Provider is not liable to User for Direct Damage or Indirect Damage caused by or arising out of any refusal to accept Gas at a Receipt Point or Curtailment of Gas deliveries to User undertaken under the Contract or pursuant to Law	The provision must be clarified so that it is only where the refusal to accept Gas or Curtailment is undertaken as permitted by the Contract – any refusal or Curtailment by Service Provider that is not authorised by the Contract must not be affected by the exclusion of liability.
16.1(b)(ii) Liability for negligence and default limited to Direct Damage	Service Provider is not liable to User for Direct Damage or Indirect Damage caused by or arising out of any non-delivery of Gas into the WAGN GDS	This provision must also be clarified to ensure that liability is only excluded where the non-delivery has not been caused by or contributed to by Service Provider or its officers, employees, agents, contractors, subcontractors or other representatives.
16.4 Extended operation of clause 16.3	User indemnifies Service Provider against Indirect Damage for any Upstream Person or Downstream Person	Alinta does not accept that it should indemnify Service Provider against any liability for Indirect Damage for any third person – to do so would increase Alinta's own liability to its customers and suppliers under its existing contractual arrangements and is not acceptable.
16.8 Set-off	Service Provider may set-off amounts owing to User under other contracts against amounts payable by User under the Haulage Contract	Alinta does not accept the Service Provider's rights of set-off. Alinta and Service Provider are parties to other significant commercial contracts and it is neither appropriate nor acceptable to merge the payment obligations under the different agreements. This clause should be deleted.
17.1 User representations and warranties	Many of the representations or warranties are not governed by a materiality threshold and are accordingly a hair trigger for a default	The provisions of clauses 17.1(b), (c), (d) and (e) should also contain a materiality threshold.
17.1(h) User representations	User warrants that there is no pending or threatened proceeding which will or might reasonably be expected to affect its ability to perform its obligations under the Contract	Given the significance of the consequences of a breach of warranty under the Haulage Contract, it is not appropriate to include a warranty that can be triggered by the threat of an action or proceeding. The warranty is too broad and should be deleted.

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Clause	Issue	Comment
and warranties		
17.1(m) User representations and warranties	User will procure compliance with the Retail Market Scheme by the operator of an Interconnected Pipeline or a person who delivers Gas to the WAGN GDS on User's behalf.	User has contractual arrangements with pipeline operators and gas suppliers, and can seek to enforce its rights under those arrangements – however User cannot procure their compliance with the Retail Market Scheme. Service Provider has its own contractual arrangements with operators of interconnected pipelines and should seek to enforce any compliance directly. Clause 17.1(m) should be deleted.
18.1(c) Parties attempt to resolve	Authorised officers to meet within 5 Business Days after the Parties' initial attempt to resolve a dispute	5 Business Days should be replaced with 10 Business Days.
19(c) Notices	Service Provider may recover from User reasonable additional costs in dealing with a notice that is not provided in accordance with clause 19(a) (as required by the Retail Market Scheme) or 19(b) (by electronic mail only)	This obligation is not acceptable and should be deleted in its entirety.
20.1(b) Intellectual Property	All documents, tools, software, reports diagrams etc created under the Haulage Contract including Intellectual Property Rights are owned absolutely by Service Provider on creation	This provision should be amended to provide that all documents, tools, software, reports diagrams etc created by User are owned by User.
20.2(c) Disclosure of Confidential Information	Disclosure is permitted at the request of the Party to whom the information relates where the information is about the use of Pipeline Services or the acquisition or consumption of Gas	The intent and effect of this provision is not clear and the provision should be deleted.
20.3(a) Other provisions	A Party must use reasonable endeavours to only disclose Confidential Information (where permitted) on terms which preserve as far as practicable the confidentiality of the information.	This provision needs to be tightened to oblige the disclosing Party to ensure that confidentiality is maintained including by ensuring that the recipients of the Confidential Information are bound by appropriate and enforceable confidentiality undertakings. A

WAGN TEMPLATE HAULAGE CONTRACT		
Clause	Issue	Comment
concerning disclosure		reasonable endeavours obligation is insufficient.
Schedule 1, 2, 3, 4, 5 – 2(b)	Service Provider will design and construct all User Specific Delivery Facilities, and will have regard to User's reasonable requirements in doing so.	Given User will incur cost of User Specific Delivery Facilities, the obligation on the Service Provider should be to design and construct the User Specific Delivery Facilities with regard to User's requirements. Alinta considers "reasonable" should be deleted.
Schedule 1, 2, 3, 4, 5 – 2(c)	Service Provider will own, operate and maintain, and may from time to time modify, any User Specific Delivery Facilities.	Given User will incur cost of User Specific Delivery Facilities, it seems reasonable that Service Provider be required to liaise with User if it intends to modify any User Specific Delivery Facilities.
Schedule 1 – 2(e), 9(c)(i) Schedule 2 – 2(e), 9(c)(ii) Schedule 3 – 2(f), 8(c)(ii) Schedule 4 – 2(d), 7(c)(ii), 8(c)(ii), 9(c)(ii), 10(c)(ii), 11(c)(ii) Schedule 5 – 2(d), 7(c)(ii), 8(c)(ii), 9(c)(ii), 10(c)(ii), 11(c)(ii)	These clauses provide that User must provide or procure unfettered access to all land or premises to which access is required to allow Service Provider to undertake certain specified activities	These clauses are all repetitive and redundant because the issue is dealt with satisfactorily in clause 8.3 of the Haulage Contract. Alinta considers these clauses should be deleted.
Schedule 1 – 4(b) Schedule 2 – 4(b)	The Nominal Delivery Pressure will be amended to the pressure that Service Provider determines, in its absolute discretion from time to time, as the minimum nominal operating pressure for the main to	End User facilities will be engineered to receive gas between a range of pressures. There must be some assurance that there is an absolute minimum to which the Service Provider may amend the Nominal Delivery Pressure which is published and understood at the time

WAGN TEMPLATE HAULAGE CONTRACT		
Clause	Issue	Comment
Schedule 3 – 4(b)	which the Delivery Point is connected	the Haulage Contract is entered into and will be complied with.
Schedule 1 and 2 – 5(b)	Service Provider will endeavour to take such Telemetry readings every day	Alinta considers “endeavour to” should be deleted. The Retail Market Rules (v6.0) require that the network operator obtain the meter reading data for a gas day daily after the end of the gas day (R142).
Schedule 1, 2 – 9(c)(i) Schedule 3 – 8(c)(i) Schedule 4 & 5 – 7(c)(i)	User acknowledges and agrees that Service Provider is not liable to User in respect of any Claim, loss or damages (including Indirect Damage and Direct Damage) if it fails to permanently deregister the Delivery Point	Liability should not be excluded in circumstances of wilful default, negligence or fraud on the part of the Service Provider.
Schedule 4 and Schedule 5	Unique Specific Terms and Conditions for B2 and B3 service.	Where as previously, the same specific terms and conditions applied in respect of the B2 and B3 services, WAGN have sought to change these.
Schedule 4 and 5	Deregistering a delivery point, Applying a meter lock to a Delivery Point, Removing a meter lock from a delivery point, Disconnecting a delivery point, reconnecting a delivery point	<p>The Retail Market Rules (v6.0) set out the network operator’s obligations when disconnecting and reconnecting delivery points. It appears that the timeframes in Schedule 4 and 5 may not be consistent with these obligations.</p> <p>For example, where the network operator receives a valid disconnection notice, the network operator must (subject to law), within 2 business days after receiving a valid disconnection notice, disconnect and undertake a meter reading of, and obtain the meter reading data for, the delivery point.</p> <p>Further, the form of the ‘transactions’ associated with these services may be prescribed by the Retail Market Rules (v6.0) and/or the B2B Service Order Specification, and therefore must be consistent.</p> <p>For example, the B2B Service Order Specification specifies the manner in which a user must request that the Service Provider apply a meter lock.</p>

WAGN ACCESS ARRANGEMENT		
Clause	Issue	Comment
5.2(a)	The information must include information as to the Prospective Users' compliance with WAGN's minimal prudential and insurance requirements.	WAGN's minimum prudential and insurance requirements should be subject to a reasonableness test and should be relative to the maximum amount that could be outstanding from the User to the Service Provider at any time, considering the Service Provider's rights of Curtailment and termination. In this respect see also clause 5.5(a)(x).
5.7	WAGN need only approve a System Pressure Protection Plan if, acting as a reasonable person, it is satisfied with it. Clause 5.7(b) sets out what a System Pressure Protection Plan must ensure.	Alinta considers that if a System Pressure Protection Plan ensures that the Prospective User has sufficient contractual entitlements to firm Gas transportation capacity to meet the aggregate of all of the Contracted Peak Rates requested by the Prospective User at the Delivery Points then the System Pressure Protection Plan should be treated as an Approved System Pressure Protection Plan. Any requirement for WAGN to be satisfied with it in that circumstance should be dispensed with.
6.3(a)(ii)	The User must notify WAGN in the case of a bare transfer, of the subcontract and its likely duration, the identify of the Third Party and the amount of capacity transferred.	As the transfer by way of subcontract, or bare transfer, has no contractual effect on, or operational implications for, the relationship between the User and the Service Provider this provision of information is unnecessary and inappropriate.
6.4(a)(ii)	The Third Party (transferee or assignee) satisfies the precondition specified in paragraph 5.5, as directed by WAGN.	As this is an assignment of existing contracted capacity at existing Delivery Points with a Contracted Peak Rates, most of the requirements of clause 5.5 are irrelevant. WAGN should specify which preconditions are relevant.